No. 14795

Supreme Court of Illinois

Fossler, Admr.

vs.

Schribner

71641

1865 14

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 122

J. W. Middleton & Co., Stationers, 196 Lake St.

14795

Fassler

vs

Lembke

1865

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM; A. D. 1865.

EDWARD FOSSLER, Administrator of Estate of Salome Fossler.
vs.
JOHN SCHRIBER, Heir at Law of SALOME FOSSLER,

Appeal from Stephenson.

Nature of Case.

This is an attempt to compel Appellant as Administrator of the Estate of Salome Fossler, to inventory and cause to be appraised certain property, claimed by Appellee to belong to the estate of Salome Fossler, and which was not by said Administrator inventoried as part of her Estate.

Abstract of Record.

PAGE OF RECORD.

1 Placita Stephenson Circuit Court, in which the case is by appeal from Stephenson County Court.

Record of proceedings in County Court shows:

2 1st. Precipe for Citation.

3 2d. Citation to Appellant.

4 3d. Citation returned served.

5 4th. Appearance of parties and continuance of cause.

5th. Motion to quash Citation because issued without affidavit filed to warrant Court in issuing it—Motion overruled—Trial, and
7 Court orders Administrator to inventory, and cause to be appraised a span of horses and three colts, as property of Salome Fossler.

8 6th. Fee Bill in County Court—Clerk's Certificate—Appeal Bond to Circuit Court.

December Term A. D. 1864 of Stephenson Circuit Court, into which the case is by appeal.

Appellee at said Term moves to dismiss said Appeal. Motion overruled—issue
9 joined, and trial had—verdict finding that Appellant had failed to inventory $286.98 and one bay mare belonging to estate of Salome Fossler.

10 Appellant enters motion for new trial, also motion in arrest judgment.

Order of Stephenson County Circuit Court entered at said December Term, reciting that jury found issues for Appellee, and that Appellant as Administrator had failed to inventory $286.98 and one bay mare, and to cause to be appraised said mare.

both money and mare belonging to estate of Salome Fossler. And the Court having
11 overruled motion for new trial and motion in arrest of judgment, orders that Appellant within twenty days from rising Court make an inventory of said money and said mare, and that within said twenty days he cause to be appraised said mare, and file said inventory and appraisement in office of Clerk of said County Court, and that Appellant pay costs of suit.

Appeal to Supreme Court prayed and allowed on Appellant filing Bond within thirty days in sum of seven hundred dollars, with Wm. G. Woodruff as surety.

12 **Bill of Exceptions.**

Appellee called Edward Hiller,

Who says:—Knows the parties. Salome Fossler about 60 years old. About 70 acres in the farm on which she resided at the time of her death. Her husband died in 1847. The farm was left her by her husband, Englard Fossler, at the time he died. The farm was under cultivation. He died without children. He settled upon the farm about 22 years ago. He died and left his property to his wife. Defendant in his single days worked for Salome Fossler and carried on the farm. So far as I know she owned the farm. She had a span of mules, worth I should think $200. A pony worth $150. Were on the place
13 before and after she died. There was a mare and horse on the place too, worth $150. There were cattle in the pasture, but I could not say whose they were. Could not say whose the horses were. There was a wagon on the place. Could not say whose it was. Worth $50. Saw property above mentioned after she died. It was hers as far as I know. There was some grain raised on the place. Could not say how much. Defendant had a judgment against me in Ogle County. I cannot say what crops grew on the place. Could see about ten acres of corn in passing by. Think I saw some wheat there, from 10 to 15 acres. Saw some buckwheat. I saw no hogs. Salome Fossler lived on the place. Don't know who worked it for her. Saw defendant sow wheat the spring before. Saw Salome work
" on the farm herself. A Dutchman working in the field. Old Fossler and his wife simply took defendant when a small boy to raise. Don't know what tenants were on the place. Defendant has acted for Salome. He lived with her the same as I lived with my parents. I do not know on what terms he worked there. She did a good business, but did not get along so prosperously within the last 7 years. She was not in debt to my knowledge in 1854 or '56. So far as I knew defendant did her business. He hauled her grain. Know of no debts of hers except those contracted for her by defendant. The mare and horse were bought of a man in Ogle County. Salome bought them I suppose. Salome paid for them. I do not know who bought or paid for the span of mules. Saw no grain on the placme after Saloe died. Saw no other property except some corn there after she died. Looked as if there was 5 or 600 bushels. Salome could not speak English.

14 Cross-Examined.—Have no knowledge as to who the property on the place belonged to, except such as I heard through the neighborhood, and from seeing it on the place. Never heard Salome and defendant say anything about who owned the property, or of their relations as to property. I only know from hearing, and all the knowledge I have of defendant's relation to Salome is what I understood in the neighborhood and from seeing them together.

Appellee called John M. Schaffstall,

Who says:—Know the parties to this suit. Known defendant 25 years. Do not know who the property on the place belonged to. Defendant done the business for Salome. I saw property as I passed the place. Saw a span of horses and a pony. Seems to me I saw colts. Could not say now many. Could not say whose colts they were. Have passed and repassed the place. Have no other means of knowledge. Two years ago I contracted with

defendant for one hundred bushels corn. Went there after it. Told Salome I came for corn, got it, and afterwards paid defendant. At the sale after Salome's death saw some corn lying round. Some lay in the stable.

Cross-Examined. Do not know that the property I have described belonged to Salome Fossler. I heard so from the neighbors. Defendant never said anything to me about it. I only know what I heard in the neighborhood.

15 Appellee called Gottlieb Myers,

Who says:—After Salome was dead there was the same property on the place as before she died. Defendant cultivated it. Defendant has worked on the place, seen him driving horses. He rented out the place for her, and done the business for her. He drew off the grain. Can't say whether he worked for himself or her. The horses on the place have been there a good while. Defendant bought the mules of Woodruff. Whatever defendant had, he made on the place. Was about 130 acres under plough all in crops last year. Was 30 or 40 acres corn. 15 acres wheat. 5 head cattle. A few shoats. A couple of fattening hogs. Saw no oats, wheat or rye. Saw some corn. Did not see any colts.

Cross-Examination.—Cannot say whether the property I have described belonged to defendant or not. Know nothing about it. It was on the place where Salome and defendant lived, that is all I know. Do not know of my own knowledge whether defendant was acting for himself or for Salome. Never heard defendant say anything about it.

Appellee recalled Edward Hiller,

Who says:—There was a colt bought the fall of
16 '54. Salome paid for it. The last I knew of it, it was represented by a pony. I paid a judgment against me in favor of defendant for $286.98. Paid it on third day of May, 1864, after death of Salome. The judgment was obtained in the Ogle Circuit Court. It was a judgment on a note which I had given to Salome, and she had signed it over to the defendant.

Appellee called Urban D. Meacham.

Who says:—Am an Attorney at Law. Knew Salome Fossler in her life time. She came to my office in Freeport. Defendant was with her. She wanted to advise with me as to a disposition of her property. I advised with her as her Attorney.

Defendant's Attorney here inquired whether witness proposed to disclose what had transpired between witness and Salome Fossler at time he was employed as
" her counsel.

Witness said he did.

Objected to by defendant on ground of being privileged communication. Objection overruled and disclosure allowed.

To overruling of which objection defendant then and there excepted.

Witness then continued—I drew a Deed from Salome Fossler to defendant for 80 acres of land on which she lived, with a with a Mortgage or Trust Deed back. I advised her to keep her property in her own hands, which she finally concluded to do, and the papers were not executed. At another time Salome and defendant came to my office. She said she had a note made to her by Edward Hiller, that Hiller had a defence of set off to the note, and she was afraid to sue
17 it, and wanted to manage it so that Hiller could not set up his defense of set off to the note. I told her to endorse the note and let it be sued in the name of the indorsee, and it would cut off Hiller's defense.

Cross-Examination.—I was acting as the Attorney of Salome Fossler. She came to my office to consult me. I was employed by her, and drew up the Deed and Mortgage I have mentioned. She said Hiller had a defense of set off to the note, and I told her how to manage it. She was consulting me as Attorney.

Defendant moved the Court to exclude from the jury the evidence of the witness, on ground of being privileged communication.

Motion overruled. Defendant excepted to overruling.

19 Appellee then gives in evidence letters of administration and inventory of real and
21 personal property, to wit: Real Estate—sw ¼ nw ¼ S. 14 T. 25 R. 9; se ¼ S. 34 and
22 nw ¼ nw ¼ sw ¼ S. 35 T. 26 R. 9, also lot S. 24 T. 27 R. 9. Personal Property—1 cow three years old, 1 calf one year old in spring, 1 bureau, 2 tables, 4 chairs, 1 rocking chair, 1 bedstead, 1 bed and bedding, 1 cooking stove, 1 clock, 1 large spinning wheel and reel, 1 small do, 3 coverlids, 2 shawls, 6 dresses, 4 bonnets, 5 handkerchiefs, 1 cloth cloak, 3 aprons, 1 lot books, meal seive and steel yards, 1 stand, lot carpets, looking glass, table cover, 1 lot dishes, 2 pair shoes, 1 cupboard, 2 baskets and box, 2 flat irons, 1 coffee mill.

29 Appellant then called William Shrader,

Who says:—Have lived within one mile and a half of the Fossler place for 24 years. Have known Salome Fossler and the defendant for that length of time. I speak German. Salome could not speak English. Have heard Salome and defendant talking in German frequently about their business matters. Heard Salome say that defendant was to have two-thirds of the crops for carrying on the place, and she was to have one-third. Have heard the testimony of plaintiff's witnesses. I knew the mules before Woodruff sold them to defendant. Woodruff sold them to him. I know the span of horses that plaintiff's witnesses have spoken of. One of them was a horse the other a
" mare. Defendant bought them of Matthew Welch. I was present and saw him buy them. There were three colts on the place. One of them was from the mare I have mentioned. Defendant traded for the pony with Randall. I was present when the trade was made. Defendant bought two of the cattle at Norwinger sale. It was a public sale. I was there and saw defendant driving the cattle home. There was a wagon on the place. Defendant bought it of Sam Fossler and I saw him pay for it. There was about 150 bushels corn on the place when Salome died. It was defendant's share of the corn crop when he and Salome divided. There were no oats, no wheat, no barley, no rye, no hogs on the place when Salome died. Defendant had hauled her share of the wheat to Rockford and sold it, and I saw him pay her the money for it when he came back. Defendant has been married three or
30 four years and has children. He always lived with his family on the place. Family relations between defendant and old Mrs. Salome Fossler always kind. Have often heard conversation when defendant and Salome present, in which she said defendant should have all her property.

Appellant then called Christopher Harris,

Who says:—Know the parties to this suit. Know that the defendant worked hard on the place. Have heard testimony of plaintiff's witnesses. Know that defendant bought three head of cattle that were on the place at Bissing's sale. It was a public sale. I was there and saw defendant buy them. He gave his notes for them. He left them at my house after he bought them. There was no oats, barley, rye or buckwheat raised on the place the summer before Salome died. Nor was there any on the place after her death. There was about 70 bushels of wheat raised. Wheat was very light. There was about 150 bushels corn on the place when Salome died. I am defendant's wife's father, and gave her a cow which was taken to the Fossler place.

Appellant then called John C. Plum,

Who says:—Know parties to this suit. Know of defendant's buying three head of cattle at Bessing's sale. I was there and saw
31 him buy them, and helped defendant drive them home to the Fossler place. A

man named Anthony bought a colt at the sale. I saw him buy and pay for it. He left it with defendant to take care of, as he was a cattle drover. I saw defendant buy a cow and calf at Norwinger's sale. I know that defendant's father-in-law gave defendant's wife a cow.

Appellant then read in evidence Transcript of Record from Cook County Circuit Court, showing a judgement in favor of John V. Farwell *vs.* Salome Fossler and and appellant, on which execution had been issued to Sheriff of Stephenson County, and a levy upon, and sale to Wm. G. Woodruff of two bay horses, one set double harness, one stirring plow, two sorrel horses, a bay pony, two mules, 2 stacks wheat, 2 of oats, and one reaper, sold on 21st February, 1862.

Appellant then called Wm. A. Youngman,

Who says:—Know defendant Edward Fossler. Knew Salome Fossler in her life time. Witness is shown transcript of record above offered in evidence. I was Sheriff of Stephenson County, Illinois, at the date of the execution as set out in this transcript of record, and about that time an execution as is therein set out, and of which a copy is in this transcript, came to my hands. The execution was against Salome Fossler and Edward Fossler. I went to their place, and levied on the property I found there, and sold it to Wm. G. Woodruff, except the mules, which were claimed by Woodruff. I did not sell the mules. I made endorsement of levy and return on the execution as is set out in this record. The word "or" should be "one" in endorsement of levy. When I sold the property to Woodruff he took possession of it, and turned it over to the defendant. He sold it to defendant on time.

Appellant rested.

And Appellee then called Edward Hiller,

Who says:—I stopped at Salome Fossler's one night when a man came there and said he came to pay $20 on the price of a colt. He paid $20 to her.

The above was all the evidence offered by either of said parties.

Plaintiff's Instructions—given without objection.

Defendant's Instructions—given without objection.

Motion for new trial—

1st. Because the Court overruled defendant's objection to evidence and admitted the same.

2d. Because the jury found contrary to the evidence.

3d. Because the jury found contrary to the law and the evidence.

Appeal Bond—Fee Bill in Stephenson Circuit Court.

Errors assigned—

The Court erred in allowing witness Meacham to disclose privileged communication.

The Court erred in disallowing appellant's motion to exclude witness Meacham's evidence from consideration of jury.

The Court erred in refusing appellant a new trial.

The Court erred in entering up judgment on verdict.

J. A. CRAIN,
Attorney for Appellant.

122

Fosler

Vs

Schriber

Abstract

Filed Apr 1st 1865
L. Leland, Clk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1865, AT OTTAWA.

EDWARD FOSLER, Administrator of the Estate of SALOME FOSLER,
vs.
JOHN SCHRIBER, one of the heirs-at-law of SALOME FOSLER.

Appeal from Stephenson.

As stated in the abstract, this case is an attempt on the part of one of the heirs-at-law of Salome Fosler to compel appellant, as administrator of the estate of Salome Fosler, to inventory and cause to be appraised certain property claimed by appellee to belong to her estate, and which was not so inventoried and appraised.

On a trial of the case in the court below the jury found that appellant had failed to inventory *one bay mare* and $286.98 belonging to her estate. The court entered judgment accordingly, from which appellant brings the case to this court.

The first error complained of is, that the court allowed the attorney Meacham to testify.

And here, as we pass the testimony of Meacham, the attorney who tried and who testified in the case in the court below, we cannot but advert to the fact, that when questions of this privilege have been before the courts, in nearly every case we have examined, we have found the attorney jealous to raise the objection in behalf of his client, rarely—very rarely, to the credit of the profession be it said—is he to found eager to mount the witness stand and proclaim abroad secrets committed to his keeping as a member of an honorable profession.

The evidence shows that Meacham was consulted as attorney by Salome in her lifetime; that he was employed, consulted, and advised her as such. This being the case, it is clear that during her lifetime he could disclose nothing occurring at such consultations without her consent.

1 Greanleaf's Ev. 308, and cases cited.

And that this privilege continued for the protection of her heirs-at-law after her decease.

Chant vs. Brown, 27 English Ch. R. 78.

The court will observe that this suit was brought by John Schriber, *one* of the *heirs* at-law of Salome Fosler. It is apparent then that there were *other* heirs, who, as such, were equally with appellee entitled to claim that the interest which *they* had derived under Salome should be protected from disclosure; that communications made by their decedent should not as to them be disclosed without their consent.

The plaintiff might consent for himself, but certainly he had no right to consent away the protection which the law afforded to the rights of the other heirs.

But, passing to the evidence, the jury found that one *bay mare* and $298.68 belonged to the estate. Let us look into the evidence and see whether, as to this *bay mare*, the evidence warranted the finding.

The first witness called by our opponents, Hiller, says: "A pony," and a "mare and a horse" were on the place before and after Salome died. This was everything said by witness as to anything that could in his testimony have been a *bay* mare; and, on cross-examination as to these, he says, he has no knowledge as to who owned them—only knows from neighborhood hearsay.

Their next witness, Shaffstall, says, that he saw a span of horses and a pony on the place as he passed it; but he also, on cross-examination, admits, that all he knows about it is neighborhood hearsay.

Their third witness, Meyers, saw "horses" on the place, but what kind or how many he does not pretend to tell; and, when he is examined as to who they belonged to, he says, that the property was on the place where they both lived, and that is all he knows about it.

They then recalled Hiller, who speaks of "a pony," but says nothing as to the ownership of even that, unless it can be got out of the word "represented," which expression, when considered in connection with and explained by his former statements, where he says, that all he knows about the ownership is neighborhood hearsay, is extremely weak.

The above is all the evidence that can even remotely be brought to show that the title to a mare—much less a *bay* mare—is in the estate of Salome Fosler. Suppose the case had rested here, would the jury have been warranted in finding that a *bay* mare was in the case at all?—much less that such an animal belonged to the Fosler estate.

But to return to the evidence offered by appellant.

Shrader, our first witness, who had known Salome intimately for nearly a quarter of a century, and as a near neighbor, says, he frequently heard appellant and Salome talking together, and that the understanding was, that appellant was to have two-thirds of the crops for carrying on the place; that he had heard the testimony of the plaintiff's witnesses; that he knows the span of horses that plaintiff's witnesses have spoken of; that one was a horse, the other a mare; and that defendant (appellant) bought them of Matthew Welch; that he was present, and saw him pay for them; that defendant (appellant) traded with one Randall for the pony; that he was present when the trade was made, &c.

The court will observe that this is no *guess* work, no neighborhood *hearsay*, as was appellee's testimony, as to who owned the *pony, mare and horse;* but it is clear and positive that it is the property of appellant.

But, as if this was not enough to establish appellant's title beyond question, we come last to the evidence of the judgment and execution from Cook county against *Salome* and appellant, which was admitted without objection, on which the sheriff of Stephenson, as he testifies, sold on the 21st Feb. '62, to Wm. G. Woodruff, among other articles, "*two bay horses and a bay pony,*" which he found on the Fosler place. Woodruff afterwards sold the property to appellant on time.

On the record then, we think, it is clear that in the first instance there is no such evidence offered by appellee, as plaintiff below, which could warrant the jury in finding that a "*bay* mare" belonged to the estate.

And, in the second place, that the evidence adduced by appellant is clear, undisputed, and positive—no guess work or hearsay about it; that the span of horses—one a horse, the other a mare—together with the pony, was the property of appellant; and that, lastly, if up to this point even a doubt should linger, that doubt is put to flight by the positive, unquestionable, uncontradicted evidence of the sale to Woodruff under the execution, which was against Salome as well as appellant, of "two bay horses and a bay pony." If Salome up to this point ever had title to what, under the evidence, could have been called a *bay mare*, it certainly was cut off by this sale.

We would remark here, that there is but one bay mare in the evidence, and the jury, as to her, found either too much or too little; for, all through the evidence, from first to last, the span of mares, the horse and the mare, the "bay horses," as the Sheriff describes them, have figured as one team, and if the mare was Salome's, so was the horse; and if the horse was not Salome's, neither was the mare. There is no avoiding ~~the~~ this conclusion, and we think it would puzzle the jury to explain themselves on this matter.

It seems hardly credible that twelve "good and lawful men," if they were indeed such, should, on this testimony, ever have arrived at such an absurd conclusion.

We therefore, most respectfully, ask the reversal of the judgment of the court below, and that we may have a new trial.

J. A. CRAIN,
Appellant's Attorney.

No 122 120

Edward Foster
Admr.
vs
John Schriber
one of the heirs

Appellants Brief

Filed May 9. 1815
S Leavenworth

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

EDWARD FOSSLER, Administrator of the Estate of SALOME FOSSLER, *Appellant*,
vs.
JOHN SCHRIBNER, Heir at Law of SALOME FOSSLER, *Appellee*.

Appeal from Stephenson County.

Salome Fossler died December 1, 1863. Letters of administration upon her estate were issued to the appellant, Edward Fossler. On the 11th of May, 1864, the appellee, Jacob Scribner, as heir at law of Salome, filed a principe in the office of the Clerk of the County Court of Stephenson County, requesting citation to issue to appellant to show cause why certain property therein named should not be inventoried and appraised as the property of the estate. Citation issued on the same day.

Parties appeared and case was tried in County Court, May 23, 1864, and judgment or order of the County Court entered, that appellant should inventory one span of horses and three colts as the property of the estate. From this order appellant appealed, and case was tried in Circuit Court, by a jury, in December, 1864, and the jury finding by their verdict that $286.98 and one bay mare came to the possession of appellant as the property of the estate, a judgment was entered directing appellant to inventory said money as the property of the estate, and to inventory said personal property, to wit: one bay mare—and cause the same to be appraised as the property of the estate within twenty days from the rising of the Court.

No question is raised upon the regularity of these proceedings.

By the 151st section of the act concerning Wills, the administrator is required to make a full and perfect inventory of all the estate, real and per-

sonal, or the proceeds thereof as shall come to his hands, possession or knowledge, and to return the same to the office of the Probate Justice, within three months from the date of the letters of administration.

Section 89 of the same act requires the administrator to make a further inventory from time to time of all moneys, judgments, bonds, promissory notes, open accounts, or other evidences of debt.

And Section 108 forbids the sale of the real estate of the decedent until all the personal estate shall have been applied to the payment of the debts, and by section 139, power is given to the Probate Court to enforce due observance of all its orders, decisions, judgments and decrees which shall at any time be made in discharge of its official duty.

The Probate Court must necessarily have power to require the administrator to perform the duties which are imposed upon him by law, among which is that of making an inventory of all the personal property belonging to the estate of the decedent, and upon the application of any party interested, or upon its own motion, to direct an inquiry and decide what property should be inventoried as belonging to the estate.

The party injured or prejudiced has his remedy, by appeal to the Circuit Court, which is granted by the 138th section of the act above referred to.

The administrator in this case, appealed from the decision of the County Court, to the Circuit Court, and the inquiry before the Circuit Court was, whether the administrator had inventoried all the property in his possession belonging to the estate; and, if not all, what specific property he had failed to inventory.

This question was tried by a jury, and they found that there was one bay mare and $286.98 in money in the possession of the administrator, and belonging to the estate, which he had failed to inventory.

It appears from the evidence that Englard Fossler, a farmer in Stephenson County, took the appellant, when a small boy, into his family, and brought him up. Englard died in 1847, and the appellant remained on the place with the widow of the deceased, working the farm for her, until she died, in 1863. After her husband's death she became the owner of the personal property on the place, and continued the owner of it until she died, when the appellant became the administrator of her estate.

The witness Hiller testifies that at the time of her death there was one pony on the place worth $150, and one mare and one horse worth $150; and the witness knows that she paid for the horse and mare. *

* Witness Hiller says no such thing
See his testimony page 2 of abstract

With regard to the money, Meacham testifies that Salome came with appellant to his office to advise with reference to a note she had against Hiller; that Hiller had an off-set which she wished to avoid, and witness advised her to endorse the note to appellant, and bring suit in his name; and Hiller swears that on the 4th of May, 1864, he paid appellant $286.98, in satisfaction of a judgment recovered on this note, and recovered in appellant's name.

There can be no question but what this money should have been inventoried as the property of the estate. His evidence was competent, for he testified to nothing but what took place in the presence of the appellant. 1 He was not in any sense the attorney of the appellant, and was, therefore, a competent witness. 2

No exception was taken to the instructions, and the case was properly left to the jury.

It is evident, from the testimony, that no injustice has been done the appellant—and the judgment below should be affirmed.

Lowry vs. Orr et al., 1 Gilm., 70—84.
Gillett et al. vs. Sweat, 1 Gilm., 475. 3

U. D. MEACHAM,
And
MILLER & LEWIS,
Attorneys for Appellee.

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1 The presence of appellant—a third party—at the consultation, cuts no figure in the application of the rule of the right of the client, and those claiming under him to prevent their attorney from disclosing professional communications. We have never heard that the fact that a third party was present at such consultation, removed the seal of the law from the lips of the attorney.

2 This is a misconception on part of appellee. It is not claimed by us that Meacham was appellee's attorney, but that he was—as he himself swears—Salome's attorney, and as such could not disclose communications made to him, without the consent of *all* the persons who had derived under her an interest in her estate; that this suit is brought by "*one of the heirs*" only, and there is nothing in the record showing a *waiver* of the privilege on the part of the *others*.

Chant vs. Brown, 27 English Ch. R. 78.

3 In this case the rule is laid down, "That in cases where the verdict of the jury has been given contrary to the evidence, or where there is no evidence at all to support the verdict, the Court will interpose and relieve the party prejudiced by such finding, by granting a new trial."

J. A. CRAIN,
Appellant's Attorney.

122 122

Supreme Court of Illinois

3rd Grand Division

"

Edward Fossler administrator of the Estate of Salome Fossler appellant

"

vs

John Schreiber Heir at Law of Salome Fossler appellee

"

Brief for appellee

"

Filed April 20. 1865

L Leland Clk

U. D. Meacham &
Miller & Lewis
attys for appellee

United States of America,
State of Illinois,
Stephenson County. } ss:

Be it remembered, that heretofore, to wit: on the 16th day of June A.D. 1864, there was filed in said Court the following Precipe for a Scilation and clothed in the words and figures following, to wit:

State of Illinois,
Stephenson County, ss: Stephenson County Court
May Term A.D. 1864

Jacob Schriber one of the heirs
at Law of Salome Fossler deceased
vs
Edward Fossler Administrator
of the Estate of Salome Fossler
late of Stephenson County deceased

The Clerk of

said Court will please issue a Citation to the above named Edward Fossler Administrator of the Estate of Salome Fossler deceased to show cause why he the said Edward Fossler Administrator as aforesaid should not as Administrator as aforesaid inventory and cause to be appraised as property belonging to said Estate, One span of Horses; one Poney; one Wagon now in the possession of the said Edward Fossler, Five hundred bushels of Wheat; five hundred bushels of Corn, and five hundred bushels of Oats, and five hundred bushels of other grain grown on the farm of Deceased in the summer of A. D. 1863. And also why he the said Edward Fossler should not account as such Administrator for Five hundred Dollars in money in his hands belonging to said Estate & not accounted for by him as such Administrator, & also for five hundred Dollars worth of other property belonging to said Estate & in the possession of the said Administrator and not inventoried or accounted for by said Edward Fossler as Administrator as aforesaid.

Jacob Schriber heir at Law of
the said Salome Fossler
By H. D. Meacham his Atty

And also on said 16th day of said June A. D. 1864 there was filed in said Circuit Court a Citation of which the following is a copy, to wit:

State of Illinois, } ss.
Stephenson County, }

The People of the State of Illinois, to the Sheriff of said County, Greeting:
Whereas, Jacob Schreiber, by H. D. Meacham his Attorney as one of the heirs of Salome Fossler deed. has this day filed a precipe for a Citation

to issue to Edwd. Fozler Admr. of the Estt. of Salome Fozler decd. requiring him to appear at the next term of this Court and show cause if any, why he does not Inventory the property of his decedent & have the same appraised and why he does not account for money in his hands, belonging to the Estate of said decd. You are, therefore, hereby commanded that you cite and give notice to the said Edward Fozler Administrator as aforesaid, that he be and appear before the County Court of Stephenson County, at a regular Term thereof, to be holden at the Court House, in Freeport on the 16th day of May A. D. 1864, then and there to answer as such Administrator in the premises; and further to do and perform what shall then, by the said Court, be required and adjudged. And hereof make due service and return as the law directs. Witness, D.A. Sunderland Clerk of the County Court for the said County of Stephenson at his office in Freeport this 10th day of May A.D. 1864. D.A. Sunderland

(Seal)

Clerk of the County Court
By A. W. Brewster Dep

On which Citation was the following endorsement

Served the 11th day of May A. D. 1864 by reading to the within named Edward Fozler. Sheriff's Fees, $1.40.

W. W. Robey Sheriff
By M. Woods Graham Dep

And also on said 16th day of said June A. D. 1864 there was filed in said Circuit Court an appeal Bond, of which the following is a copy, to wit:

Know all Men by these Presents, That we Edward Fozler Administrator of the Estate of Salome

Foster & Wm S. Woodruff are held and firmly bound unto Jacob Schriber in the penal sum of One Hundred Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this Sixth day of June A. D. 1864. The condition of the above Obligation is such, Whereas, the said Jacob Schriber did on the 23d day of May A. D. 1864, before C. B. Wright Esq. County Judge of the County Court of said County recover a judgment against the above bounden Edward Foster requiring him to inventory & appraise certain property adjudged to belong to said Estate, and costs of suit, from which said judgment the said Edward Foster Administrator aforesaid has taken an appeal to the Circuit Court of the County of Stephenson aforesaid, and State of Illinois. Now, if the said Edward Foster shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the court, upon dismissal or trial of said appeal, then the above obligation to be void; otherwise to remain in full force and effect.

Edward Foster Seal
In Presence of. Wm S. Woodruff Seal

On which Appeal Bond was endorsed as follows, to wit:

Taken, filed and approved by me this 6th day of June A. D. 1864.

D N. Sunderland Clerk
By C. S. Hill Dept.

And also on said 16th day of said June A. D. 1864. There was filed in said Circuit Court the Transcript of a Record of proceedings had in the County Court of said Stephenson County,

of which the following is a copy, to wit:

State of Illinois, } ss. In the County Court of said
Stephenson County, } County of the May Term 1864.

Be it remembered, that heretofore, to wit: On the 19th day of May A. D. 1864 the following proceedings were had in said Court.

Jacob Schrieber
vs
Edward Fosler

Now on this day comes the parties by their Attornies, and by mutual agreement of parties this cause is continued by order of the Court to 10 o'clock A. M. Saturday next.

Then again, to wit: On Saturday May 21st A. D. 1864 the following proceedings were had.

Jacob Schrieber
vs
Edward Fosler
Administrator of the
Estate of Salome Fosler

Now on this day comes the parties by their Attornies, and the Counsel for the Defendant moves the Court to quash the Citation upon which this suit was brought, and the Court after hearing the arguments of Counsel overruled said motion, and the Counsel for defendant enters his objections to the ruling of the Court upon the motion to quash the Citation upon the ground, that no affidavit was filed, upon which to issue a citation and that the statements made in precipe upon which said citation did issue are too indefinite, and John M. Shaffstall, John Piper, Gotlieb Meyers, Perin

R. Allen were called and sworn as witness on the part of the Plaintiff, and the hour having arrived to adjourn the Court it is ordered that this cause be continued to Monday morning next at 10 o'clock A. M.

Then again, to wit: On Monday the 23rd day of May A. D. 1864 the following proceedings were had

Jacob Schrieber
vs
Edward Foster, Administrator
of the Estate of Salome Foster

Now on this day comes the parties by their Attornies and this cause coming on for further hearing, Edward Miller and H. D. Meacham were called and sworn on the part of the Plaintiff and also come Christopher Harris, Edward Reynolds and William Shroeder were called and sworn on the part of the defendant and by mutual agreement of the Attornies the cause is submitted without argument. And it appearing to the Court from the proofs herein that there is one span of Horses and three Colts belonging to said Estate which have not been inventoried and appraised. It is therefore considered and ordered by the Court that said Administrator inventory and cause to be appraised the said span of Horses and three Colts, and make due return of the same to this Court, and it is further ordered that he pay the costs in and about this proceeding expended.

Jacob Schrieber
vs
Edward Foster Admr.
of Estate of Salome Foster

Fee Bill

Clerks Fees

Dock Suit 10c filing Precipe 5c	.15
Sug afiling Citation 30c Entg appearance of Attornies 15c	.45
Entg ord of continuance 20c Sug afiling 2 Sub 60c	.80
Entg appearance of Attornies 15c Entg Motion to quash Citation 20c	.35
Entg objection to ruling of Court 20c	.20
Entg order of contin. 20c Entg appr. of parties 15c	.35
Swg to afiling 9 Writs aff. $1.35 Swg 1 Writ 5c	1.40
Entg order to invent 20c Entg order to make return 20c	.40
Filing precipe for Sub. 5c Sug afiling 3 Sub 90c	.95
Entg order for costs 20c making bill cost 20c	.40
Making bill cost with Cer. & Seal	.35
Taking & filing Appeal Bond	.55
Making Transcript of proceedings with Cer. & Seal	1.50
	$7.85

Sheriffs Fees

Serving & returning Citation (Roby Sheriff)	1.40
Serving & returning Sub " "	2.20
" " " " " "	2.65
" " " " " "	.45
	$6.70

Witness Fees

W. J. Woodruff	2 days	11 Miles	2.55
Wm Schroder	1 "	17 "	1.85
Edward Reynolds	1 "	12 "	1.60
Christopher Harris	1 "	18 "	1.90
Edward Miller	1 "	15 "	1.75
Gotlieb Meyer	3 "	16 "	3.80
Perin R. Allen	1 "	16 "	1.80
J. M. Schaffstall	2 "	20 "	3.00
John Piper	3 "	15 "	3.75
			$22.00

State of Illinois, } ss.
Stephenson County, } I, David N. Sunderland Clerk of the County Court in and for said County, do hereby certify, that the foregoing is a true and correct copy of the

proceedings had in the County Court of said County in the above entitled cause as appears from the records of said Court now in my office.

Seal
Wm. J. Taylor 50 cents

Witness my hand and the Seal of said Court this 16th day of June A. D. 1864.

D. W. Sunderland Clk
By C. T. Hill Dept.

And afterwards, to wit: at said December Term of said Circuit Court, to wit: On the 23d day of December A. D. 1864, the following among other proceedings were had in said Court and entered of record, to wit:

L 111

Jacob Schreiber
vs
Edward Forster Admr. of Estate of Salome Forster decd.
} Appeal

Now on this day come the said parties by their Attorneys, and the said Plaintiff enters and files his motion to dismiss this appeal, and the motion having been duly considered by the Court. It is ordered overruled. And now upon the issues joined for trial the said parties put themselves upon the Country. Thereupon come a jury of twelve good and lawful men, to wit: Thomas S. French and eleven others who were severally duly elected, tried and sworn, and after hearing a portion of the evidence adduced, the hour of adjournment having arrived, it is ordered that the further hearing of this cause be postponed until tomorrow morning.

And afterwards, to wit: On the 24th day of said December A. D. 1864, and as yet of said December Term A. D. 1864 of said Circuit Court

the following among other proceedings were had in said Circuit Court and entered of Record, to wit:

L 111

Jacob Schreiber
vs
Edward Fossler Administrator of the Estate of Salome Fossler deceased } Appeal

And now again on this day come the said parties by their Attorneys, and also come the jury heretofore empaneled herein, and they having heard the remainder of the testimony and the arguments of respective counsel retire in charge of an officer to consider of their verdict and after a short absence they return into Court with their verdict, and say the find their issue for the Plaintiff, and that said Defendant has failed to inventory Two hundred Eighty-six and 68/100 Dollars owing by himself to the estate of Salome Fossler deceased, also one bay mare belonging to said Estate, Thereupon said Defendant enters his motion for a new trial and in arrest of judgment.

And afterwards, to wit on the 30th day of said December A. D. 1864 and as yet of said December Term A. D. 1864 of said Circuit Court the following among other proceedings were had in said Circuit Court and entered of Record, to wit:

State of Illinois,
Stephenson County, Ss:

In the Circuit Court of
Stephenson County
December Term A. D. 1864.

10.

Jacob Schreiber
vs
Edward Fossler
Administrator of the Estate
of Salome Fossler deceased

Appeal from County Court.

The Jury duly chosen, tried and sworn to try the issues in this cause having by their verdict returned into Court found the issues for the plaintiff and that the defendant as administrator of the Estate of Salome Fossler deceased had failed to inventory $286 98/100 which came to his hands third day of May 1864, and also that the said defendant as such Administrator had failed to inventory and cause to be appraised one bay Mare of the said Salome Fossler belonging to her at the time of her death and which came to the possession of the said Edward Fossler as such administrator and the Court having overruled a motion made by the defendant by his Counsel for a new trial, and also having overruled a motion in arrest of judgment in this cause and the Court upon the evidence being satisfied with the said verdict of the said Jury. It is therefore ordered, adjudged and decreed by the Court & the Court by virtue of the power and authority in vested does order adjudge and decree that the defendant Edward Fossler Administrator of the Estate of Salome Fossler late of Stephenson County deceased within twenty days from the rising of this Court Inventory and file in the office of the Clerk of the County Court of Stephenson County Illinois an inventory of Two hundred and Eighty six 98/100 Dollars part and parcel of the Estate of said which Salome Fossler due and owing by Defendant to said Estate and also that the

said Defendant as such Administrator of the Estate of Salome Forster dec'd inventory and cause to be appraised within twenty days from the rising of of this Court, one bay Mare the property of the said deceased at the time of her death, and which has come to the possession of the said Defendant as such Administrator which appraisment and inventory of said bay Mare the said Defendant as such Administrator is to file in the office of the Clerk of the County Court of said Stephenson County within twenty days from the rising of this Court, & it is further ordered adjudged and decreed by the Court that the said Defendant personally pay the costs of this suit & that the Plaintiff have execution therefor December 30th A. 1864.

Benj R. Sheldon

And afterwards, to wit: On the 3d day of January A. D. 1864, and as yet of said December Term A. D. 1864 of said Circuit Court the following among other proceedings were had in said Circuit Court and entered of Record, to wit:

Jacob Schriber
vs
Edward Forster Administrator of the Estate of Salome Forster deceased
} Appeal

Now on this day comes the said Defendant by Crain his Attorney and prays an appeal. Thereupon it is considered and ordered by the Court that an appeal be allowed on condition that he file with the Clerk of this Court his appeal bond properly conditioned to said Plaintiff, in the penal sum of Seven hundred dollars with William G. Woodruff

as surety within thirty days.

And afterwards, to wit: On the 5th day of January A. D 1865, and as yet of said December Term A. D. 1864 of said Circuit Court the following Bill of Exceptions was presented, settled, signed, sealed and filed in said Circuit Court a copy of which is in the words and figures, to wit:

State of Illinois, } Ss. Circuit Court of said
Stephenson County } County December Term A.D.
1864.

Jacob Schriber
vs
Edward Foster
Administrator of Estate
of Salome Foster dec'd. } Bill of Exceptions

Be it remembered that on the trial of this cause at the December Term A. D. 1864 of said Circuit Court the said Plaintiff to maintain the issue on his part gave in evidence to the jury the testimony of Edward Miller, who testified as follows; Knows the parties - Salome Foster about 60 years old - About 70 acres in the farm on which she resided at the time of her death - Her husband died in 1847 - The farm was left her by her husband England Foster at the time he died - The farm was under cultivation - He died without children - He settled on the farm about 22 years ago - He died and left his property to his wife - Defendant in this single days worked for Salome Foster, and carried on the farm - So far as I know she owned the farm She had a span of mules, worth I should think 200 $ - a pony worth 150 $, were on the place before and after she died. There was a mare and horse on the place too worth 150 $ - There were cattle in

the pasture, but I could not say whose they were could not say whose the horses were - There was a wagon on the place, could not say whose it was it was worth 50 $ - Saw property above mentioned after she died - It was hers so far as I know - There was some grain raised on the place could not say how much - Defendant had a judgment against me in Ogle County - I cannot say what crops grew on the place - could see about ten acres corn in passing by - Think I saw some wheat there - From 10 to 15 acres - Saw some buckwheat - I saw no hogs - Salome Foster lived on the place - Don't know who worked it for her - Saw defendant sow wheat the spring before - Saw Salome work on the farm herself - a dutchman working in the field. Old Foster & his wife simply took Defendant when a small boy to raise - Don't know what tennants were on the place - Defendant has acted for Salome - He lived with her the same as I lived with my parents - I do not know on what terms he worked there - She did a good business, but did not get along so prosperously within the last seven years - She was not in debt to my knowledge in 1854 & 56 - So far as I knew, Defendant did her business - He hauled her grain - Know of no debts of hers, except those contracted for her by Defendant - The mare and horse were bought of a man in Ogle County - Salome bought them I suppose - Salome paid for them - I do not know who bought or paid for the span of mules - Saw no grain on the place after Salome died - Saw no other property, except some corn there after she died looked as if there was 5 or 600 bushels - Salome could not speak english -

Cross Ex.

13. Have no knowledge as to who the property on

the place belonged to except such as I heard through the neighborhood and from seeing it on the place - Never heard Salome and Defendant say any thing about who owned the property; or of their relations as to property - I only know from hearing - All the knowledge I have of Defendants relation to Salome is what I understood in the neighborhood and from seeing them together)

leave out (And the Plaintiff to further maintain the issues on his part called on a witness and who testified as follows

Appelle also sworn

John M. Schoffstall who says

(Know the parties to the suit Know Defendant 25 years - Do not know who the property on the place belonged to - Defendant done the business for Salome - I saw property as I passed the place - Saw a span of horses and a pony, seems to me I saw colts, could not say how many - could not say whose colts they were - Have passed and repassed the place - Have no other means of knowledge - Two years ago I contracted with Defft for 100 bushels corn Went there after it - Told Salome I came for corn, got it, and afterwards paid Defendant - At the sale after Salome's death saw some corn lying round - some lay in the stable

Cross Ex.

Do not know that the property I have described belonged to Salome Foster - I heard so from the neighbors - Defendant never said any thing to me about it - I only know what I heard in the neighborhood)

(And Plaintiff to further maintain the issues

on his park called a witness, and who testified as follows,

Gotlieb Meyers

After Salome was dead there was the same property on the place as before she died - Defendant cultivated it - Defendant has worked on the place seen him driving horses - He rented the place for her - & done the business for her - He drew off the grain Cant say whether he worked for himself or her The horses on the place have been there a good while - Defendant bought the mules of Woodruff - Whatever Defendant had he made on the place - Was about 130 acres under plough all in crops last year - Was 30 or 40 acres corn 15 acres wheat - 5 head cattle a few shoats, a couple of fattening hogs - Saw no oats wheat or rye, cant some corn - Did not see any colts.

Cross Ex.

Can not say whether the property I have described belonged to Defendant or not - Know nothing about it - it was on the place where Salome and Defendant lived that is all I know - Do not know of my own knowledge whether Defendant was acting for himself or for Salome - Never heard Defendant say anything about it.

And Plaintiff to further maintain the issues on his part called as a witness and who testified as follows

Edward Miller

Re-called by Plff - There was a colt bought the Fall of 54 - Salome paid for it - The last I know of it it was represented

16.

by a pony - I paid a judgment against me in favor of Defendant for $286.98 - Paid it on third May 1864 after death of Salome - The judgment was obtained in the Ogle circuit court It was a judgment on a note which I had given to Salome and she had signed it over to the Defendant -)

leave ad

And Plaintiff to further maintain the issues on his part called as a witness and who testified as follows

Plaintiff also called

Herban D. Meacham. (who says)

(Am an Attorney at Law Knew Salome Foxler in her life time - She came to my office in Freeport - Defendant was with her - She wanted to advise with me as to a disposition of her property - I advised with her as her attorney - Defendants attorney here enquired whether witness proposed to disclose what had transpired between witness and Salome Foxler at time he was employed as her counsel as above stated - Witness said he did - Objected to by Defendant on ground of being privileged communication - objection overruled and disclosure allowed, to overruling of which objection Defendant then and there excepted - Witness then continued - I drew a deed from Salome Foxler to Defendant for 80 acres of land on which she lived with a Mortgage with a Mortgage or Trust Deed back - I advised her to keep her property in her own hands which she finally concluded to do & the papers were not executed - At another time Salome & Defdt came to my office she said she had a note made to her by Edward Miller that Miller had a defence of set off to the note and she was afraid to sue it, and wanted to manage

it so that Hiller could not set up this de=
fence of set off to the note - I told her to en=
dorse the note and let it be sued in the
name of the indorsee and it would cut off
Hiller's defence -
Cross Examined
I was acting as the Attorney
of Salome Fosler - she came to my office
to consult me I was employed by her and
drew up the deed and mortgage I have men=
tioned - She said Hiller had a defence of set
off to the note and I told her how to
manage it, she was consulting me as At=
torney - Defs moved the Court to exclude
from the jury the evidence of witness Meach=
am on ground of being privileged communica=
tion - motion overruled - Defs excepted to
ruling -)

Plaintiff give in evidence Letters of Adminis=
tration all Inventory & Appraisment Bills in
the County Court of Stephenson County
in matter of Estate of Salome Fosler deed which
are as follows

LETTERS OF ADMINISTRATION.—Sold by Culver, Page & Hoyne, Stationers, 125 and 130 Lake Street, Chicago.

LETTERS OF ADMINISTRATION.

STATE OF ILLINOIS, } SCT.
Stephenson County. }

The People of the State of Illinois, to all to whom these Presents shall come, GREETING:

KNOW YE, THAT WHEREAS, Salome Fossler of the County of Stephenson and State of Illinois, died intestate, as it is said, on or about the First day of December A. D. 1863, having, at the time of her decease personal property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same.

TO THE END THEREFORE, That said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint Edward Fossler of the County of Stephenson and State of Illinois, Administrator of all and singular the goods and chattels, rights and credits, which were of the said Salome Fossler at the time of her decease; with full power and authority to secure and collect said property and debts, wheresoever the same may be found in this State, and in general to do and perform all other acts which now are, or hereafter may be required of him by law.

WITNESS, D. N. Sunderland Clerk of County Court, in and for the said County of Stephenson at his office in Freeport this 25th day of January A. D. 1864, and Probate Seal of said Court hereunto affixed.

(Seal)

N. J. Stamp
50 cents

D. N. Sunderland
Clerk of the County Court.
By A. W. Brewster Dep.

LETTERS OF ADMINISTRATION.

Stephenson County Court.

Estate of

Salomes Fosler

Deceased.

Edward Fosler

Administrator

Book ---------- Page ----------

Order No. ----------

Filed this 25th day of

January, 1864, and

Recorded in Book A

Page 143.

D. N. Sunderland Clerk.

Culver, Page & Hoyne, Stationers, Chicago.

By N. W. Brewster Dep

2.0.

INVENTORY.—Culver, Page & Hoyne, Stationers, 128 and 130 Lake Street, Chicago.

STATE OF ILLINOIS, } ss.
Stephenson County.

In the matter of the Estate of Salome Foster Deceased.

The following is a full and perfect inventory of all the Real and Personal Estate of the said deceased, so far as the same has come to the possession or knowledge of the undersigned Administrator of said Estate

	REAL ESTATE.	VALUE. DOLLARS	CTS.
	South West quarter of the North West quarter of Section fourteen (14) Town twenty five (25) Range nine (9) The South East quarter of Section number thirty-four (34) in Township number twenty six (26) of Range nine East North West quarter of North West quarter of South West quarter of Section thirty-five (35) Township number twenty six (26) Range nine East (9) containing ten acres Lot number Section twenty four Township twenty-seven (27) Range nine East (9)		

21.

No	CHATTEL PROPERTY.	VALUE. DOLLS.	VALUE. CTS.
1	One Cow, three years old		
2	One Calf, one year old in the Spring		
3	One Bureau		
4	Two Tables		
5	4 Chairs and one Rocking Chair		
6	1 Bedstead		
7	1 Bed and Beding		
8	1 Cooking Stove		
9	1 Clock		
10	1 Large Spinning Wheel & Reel		
11	1 Small Do Do		
12	3 Coverlids		
13	2 Shawls		
14	Six Dresses		
15	4 Bonnets		
16	5 Handkerchiefs		
17	1 Cloth Cloak		
18	3 Aprons		
19	1 Lot of Books		
20	Meal Sieve & Steelyards		
21	1 Stand		
22.	Lot of Carpets		
23	Looking Glass		
24	Table Cover		
25	1 Lot Dishes		
26	2 pair Shoes		
27	1 Cupboard		
28	2 Baskets and Box		
29	2 Flat Irons		
	1 Coffee Mill		

Cash on hand at time of Decease, $ 2. 50

NOTES AND ACCOUNTS.

BY WHOM OWING.	DATE.	INTEREST.	GOOD.	DOUBTFUL.	DESPERATE.	AMOUNT.

I do hereby certify that the above is a correct Inventory of the Real and Personal Estate of Salome Foster Deceased.

Given under my hand this 23d day of January, 1864

E. Foster
Administrator.

23.

INVENTORY.

ESTATE OF

Salome Fossler

DECEASED.

Filed this Third

day of March 1864

D.H. Sunderland CLERK.

By A.W. Brewster Dep

Culver, Page & Hoyne, Stationers, 128 & 130 Lake St., Chicago.

NOTE.—This Inventory to be filed in the Clerk's Office within three months from the issuing of letters.

Dep.

NOTE.—By Section 89 of the Revised Statutes of the State of Illinois, of 1845, entitled Wills, it is made the duty of Administrators and Executors to Inventory the Real Estate belonging to the Estate of their decedents, and to give the kind, quantity, quality, situation and value of the same, by what title held, and from whom purchased, if known.

8.

APPRAISEMENT BILL.—Sold by Culver, Page & Hoyne, Stationers, Chicago.

WARRANT TO APPRAISERS.

Estate of Salome Foster *Deceased.*

STATE OF ILLINOIS, Stephenson COUNTY. } In County Court, December Term, A. D. 1863.

THE PEOPLE OF THE STATE OF ILLINOIS, TO Wm G. Woodruff, John Piper and Stephen Roberts of the County of Stephenson and State of Illinois, GREETING:

THIS is to authorize you, jointly, to appraise the goods, chattels and personal estate of Salome Foster late of the County of Stephenson and State of Illinois, deceased, so far as the same shall come to your sight and knowledge, each of you having first taken the oath hereto annexed; a certificate whereof you are to return, annexed to an Appraisement Bill of said goods, chattels, and personal estate, by you appraised, in dollars and cents; and in the said bill of appraisement you are to set down in a column or columns, opposite to each article appraised, the value thereof.

WITNESS, D. A. Sunderland Clerk of the County Court for the said County of Stephenson at his office in Freeport this 21st day of December A. D. 1863, and the Probate Seal of said Court hereunto affixed.

D A Sunderland CLERK.
By A W Brewster Dep

OATH OF APPRAISERS.

You and each of you do solemnly swear, that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of Salome Foster deceased, so far as the same shall come to your sight and knowledge; and that you will in all respects perform your duty as appraisers to the best of your skill and judgment.

Stephen Roberts
William G Woodruff
John Piper

Subscribed and sworn to this ..... day of ..... A. D. 186 , before me,

..... JUSTICE OF THE PEACE.

PLEASE READ THIS LAW.

By the Act of the Legislature of this State, of February 11th, 1847, it is declared that "widows living in this State, of persons whose estates are administered upon in this State, shall be allowed in all cases, in exclusion of creditors, as their sole and exclusive property, forever, necessary beds, bedsteads and bedding for themselves and families, necessary household and kitchen furniture, one spinning wheel, one loom and its appendages, one pair of cards, one stove and necessary pipe therefor, the wearing apparel of themselves and families, one milch cow and calf for every four persons in the family, one horse at the value of forty dollars, one woman's saddle and bridle of the value of fifteen dollars, provisions for themselves and families for one year, two sheep for each member of the family, and the fleeces taken from the same, food for the stock above described for six months, fuel for themselves and families for three months, and sixty dollars' worth of other property." By the same Act it is directed that "the appraisers shall make out and certify to the Court of Probate, an estimate of the value of each article of specific property herein allowed to the widow."

☞ On the next page will be found a blank to be filled up and signed by the appraisers for this purpose.

☞ Much difficulty is occasioned in many instances by the appraisers mistaking the ESTIMATE FOR THE WIDOW as a part of the appraisement. IT IS NO PART OF THE APPRAISEMENT, and it is no matter whether the Estate has the particular articles mentioned in the following table, or whether there is nothing of the sort among the property of the Estate. The appraisers will take each item in its order, and estimate what it ought to be worth, and then set down the estimated value in the column headed DOLLARS CENTS. Begin with "necessary beds, bedsteads and bedding for the widow and family," estimate what you think would be fair to allow the widow for that, and set it down in the column. When you come to "One Spinning Wheel," "One Loom and its Appendages," and other items, don't pass one of them by, but set down what in your opinion such things ought to be worth, and if the Estate has not got those articles, the widow can take their estimated value in other things, or in cash. Don't alter the printed amounts in the column, as they are established by law, and cannot be changed.

Having finished your estimates, foot it up, and that foot will be the amount of the widow's allowance, which she can take in the above articles, if the Estate has them, or in other things at the appraised value, or in money.

☞ Recollect that the above estimate is not appraising. Having completed that estimate, go on and appraise EVERY article of personal property belonging to the Estate, OMITTING NOTHING, and set them down with their prices in the Appraisement Bill following.

The appraisers having nothing to do with Notes, Accounts, Stocks in Companies, or any other papers, as they cannot be appraised, such things must be left out of the Appraisement Bill entirely. They are proper matters to be listed in the inventory, filled by the Executor or Administrator, which is a separate matter from the appraisement bill.

25.

26

APPRAISERS' ESTIMATE FOR THE WIDOW.

We, the undersigned, appraisers appointed by the Judge of the County Court of ..... County, to appraise and value the goods, chattels and personal estate of ..... deceased, do hereby make and certify to said Court, the following estimate of the value of each article of specific property allowed by law to the widow for herself and family, to wit:

	DOLLARS.	CENTS.
Necessary Beds, Bedsteads and Bedding for the widow and family,		
Necessary Household and Kitchen Furniture,		
One Spinning Wheel,		
One Loom and its appendages,		
One Pair Cards,		
One Stove and necessary Pipe therefor,		
Wearing Apparel for Widow and Family,		
.....Milch Cow and Calf (being one for every four in the family),		
One Horse,	40	00
One Woman's Saddle and Bridle,	15	00
Provisions for one year,		
.....Sheep and Fleeces (being two for each member of the family),		
Food for the above Stock six months,		
Fuel for three months,		
Other Property,	60	00
TOTAL,		

Given under our hands,

_____

_____ } APPRAISERS.

_____

APPRAISERS' BILL.

Estate of ..... *Deceased.*

STATE OF ILLINOIS, } **In County Court,** ..... **Term, 186**
..... COUNTY. }

An Appraisement Bill of Goods, Chattels and Personal Estate of ..... late of said County, deceased, so far as the same have come to our sight and knowledge, which appraisement has been made by us by virtue of the annexed Warrant from the County Court of said County, we having been first duly sworn, as required by law.

	ARTICLES.	DOLLARS.	CENTS.
1	One Cow	15.	00
2	One Calf	5.	00
3	One Bureau	7.	50
4	One Table	4.	00
5	One Table	1.	00
6	Rocking Chair	1.	25
7	Four Chairs	1.	75
8	1 Bedstead	2.	00
9	1 Bed and Beding	9.	00
10	1 Cooking Stove	4	
11	1 Clock	5.	00
12	1 Spinning Wheel & Reel	2	
13	1 Small Do	3	

15	1 do	1	
16	1 Quilt	3	00
17	1 Shawl	4	00
18	1 Do	1	00
19	Six Dresses	9	00
20	4 Bonnets	1	00
21	5 Handkerchief	2	00
22	1 Cloak	2	00
23	3 Aprons	1	00
24	1 Lot Books	5	00
25	1 Meal Sieve & Steelyard	1	00
26	1 Stand		50
27	1 lot Carpet	2	00
28	1 Looking Glass		50
29	1 Table Cover		75
30	1 lot Dishes		15
31	1 Coffee Mill	2	00
32	2 pair Shoes		25
33	2 Baskets, one Box		50
34	1 Cupboard		50
35	2 Flax Wong		
36.			
	TOTAL.	$ 108.	15

Certified by us this Twenty third day of January A. D. 1864

John Piper
Wm G. Woodruff
Stephen Roberts
} Appraisers

We, the appraisers above named, do certify, that we have attended and served ..... day each, in appraising the Estate of said deceased.

.....
.....
.....
} Appraisers.

APPRAISEMENT BILL.

Stephenson County Court.

ESTATE OF

Salome Foraker

DECEASED.

Filed this Third

day of March 1864

D. V. Sunderland

CLERK.

By A. W. Brewster Dep

Approved _____ 186

_____

COUNTY JUDGE.

Recorded in Book _____ Page

_____

_____

CLERK.

Culver, Page & Hoyne, Stationers, Chicago.

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And the said Defendant to maintain the issues on his part called the following named witness, who testified as follows

William Shrader

Have lived within one mile and a half of the Foster place for 24 years - Have known Salome Foster, and the Defendant for that length of time - I speak german - Salome could not speak english - Have heard Salome and Defendant talking in german frequently about their business matters - Heard Salome say that Defendant was to have 2/3 of the crops for carrying on the place and she was to have 1/3 - Have heard the testimony of Plaintiff witnesses - I Knew the mules before Woodruff sold them to Defendant - Woodruff sold them to him - I Know the span of Horses that Plaintiff's witnesses have spoken of - One of them was a horse the other a mare - Defendant bought them of Mathew Welch - I was present and saw him buy them - There were three colts on the place one of them was from the mare I have mentioned - Defendant traded for the pony with Randall - I was present when the trade was made - Defendant bought two of the cattle at Norwinger sale - It was a public sale - I was there and saw defendant driving the cattle home - There was a wagon on the place defendant bought it of Sam. Foster, and I saw him pay for it - There was about 150 bushels of corn on the place when Salome died - It was defendants share of the corn crop set apart to him when he and Salome divided - There were no oats - No wheat - No barley - No rye - No hogs on the place when Salome died - Defendant had hauled her share of the wheat to Rockford and sold it, and I saw him pay her the money for it when he came back - Defendant has been married three or four

years, and has children - He always lived with his family on the place - Family relations between Defendant and old Mrs. Salome Foster always kind - Have often heard conversation when Defendant and Salome present in which she said Defendant should have all her property.)

Defendant

And Defendant to further maintain the issues on his part called as a witness, and who testified as follows.

Appellant

Christopher Harris. sworn

Know the parties to this suit - Know that Defendant worked hard on the place Have heard testimony of Plaintiffs witnesses - Know that defendant bought three head of cattle, that was on the place at Bessing Sale - It was a public sale - I was there and saw Defendant buy them - He gave his notes for them - He left them at my house after he bought them - There was no oats, barley, rye or buckwheat raised on the place the summer before Salome died - nor was there any on the place after her death - There was about 70 bushels of wheat raised - Wheat was very light - There was about 150 bushels of corn on the place when Salome died - I am defendants wife's Father, and gave her a cow which was taken to the Foster place -

And Defendant to further maintain the issues on his part called as a witness, and who testified as follows

John L. Rum

Know parties to this suit - Know of defendants buying three head cattle at Bessing Sale - I was there, saw him buy them, and helped

Defendant drive them home to the Foden place A man named Anthony bought a colt at the sale I saw him buy and pay for it- He left it with defendant to take care of as he was a cattle drover- I saw Defendant buy a cow and calf at Nowingers Sale- I know that defendants father-in-law gave defendants wife a cow.

And Defendant to further maintain the issues on his part here gave in evidence Transcript of a Record from the Cook Circuit Court in the words and figures following, to wit:

United States of America, } ss.
State of Illinois, County of Cook, }

Pleas before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Fourth Monday, (being the twenty sixth day) of May in the year of our Lord one thousand eight hundred and sixty-two and of the Independence of the said United States the eighty sixth.

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois
Joseph Knox States Attorney.
A. C. Hesing Sheriff of Cook County.
Attest, William L. Church Clerk.

Be it remembered, that heretofore, to wit: On the sixth day of May in the year of our Lord one thousand eight hundred and sixty-two, there issued out of said Court and under

the seal thereof the People's writ of summons, directed to the Sheriff of Stephenson County to execute and clothed in the words and figures following to wit:

State of Illinois } ss.
Cook County }

The People of the State of Illinois to the Sheriff of Stephenson County, Greeting:

We command you, that you summon Edward Foster and Salome Foster, if they shall be found in your County, personally to be and appear before the Circuit Court of Cook County on the first day of the next term thereof, to be holden at the Court House in Chicago in said County of Cook on the fourth Monday of May inst to answer unto John V. Farwell in a plea of trespass on the case on promises to the damage of the said plaintiff as is said in the sum of Six hundred dollars. And have you there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness, William L. Church Clerk of our said Court, and the seal thereof at Chicago aforesaid this sixth day of May A. D. 1862.

(Seal)

Wm. L. Church,
Clerk.

And on the same day and year last aforesaid the said plaintiff by C. M. Hawley his Attorney filed in said Court his certain declaration in the words and figures following, to wit:

State of Illinois, } ss. In the Cook County Cir-
Cook County, } cuit Court of the May Term
Eighteen hundred and Sixty-two

John V. Farwell plaintiff by C. M. Hawley his Attorney comes and complain of Edward Foster

and Salome Fozler defendants who are summoned &c. of a plea of trespass on the case upon promises for that whereas the said defendants heretofore, to wit: On the tenth day of July in the year of our Lord one thousand eight hundred and sixty at Chicago, to wit: in the County of Cook and State of Illinois made their certain instrument in writing commonly called a promissory note, bearing date the day and year last above mentioned, and then and there delivered the said instrument in writing to Francis B. Cooley and thereby then and there promised to pay to the order of Francis B. Cooley twelve months after date thereof the sum of Two hundred forty two 62/100 dollars at the office Mitchell & Co., to wit: at Chicago aforesaid with exchange on Chicago and interest at six per cent for value received and the said plaintiff avers, that exchange on Chicago at that time was worth one per cent. And the said Francis B. Cooley to whom said note was made payable afterwards, to wit: on the day and year and at the place aforesaid before said note became due assigned the same in writing thereon endorsed and delivered the same to the said plaintiff, of which the said defendants then and there had notice. But also the said note hath become due and the said defendant hath been requested to pay the same to the plaintiff they have refused so to do, to wit: At Chicago aforesaid. And whereas also the said defendants heretofore, to wit: on the tenth day of July in the year of our Lord One Thousand Eight hundred and Sixty at Chicago, to wit: in the County of Cook and State of Illinois made their certain other instrument in writing commonly called a promissory note, bearing

 date the day and year last aforesaid mentioned

and then and there delivered said instrument in writing to the said Francis B. Cooley and thereby then and there promised to pay to the order of Francis B. Cooley eighteen months after the date thereof the sum of Two hundred and forty two 62/100 dollars with interest at six per cent and with exchange on Chicago for value received at the office of Mitchell & Co. in Chicago aforesaid and the said plaintiff avers that at that time, to wit: when the same was due and payable as aforesaid was worth one per cent.

And the said Francis B. Cooley afterwards and before said note became due, to wit: on the day and year and at the place aforesaid, assigned said note in writing thereon endorsed and delivered the same to said plaintiff, of which the said defendants then and there had notice. Yet although the said note hath become due and the said defendant hath been requested to pay the same to said plaintiff they have refused so to do, to wit: at Chicago aforesaid. And for that whereas also the said Defendants heretofore, to wit: on the first day of May A.D. 1862, at Chicago in said County were indebted to the said plaintiff in the sum of Six hundred dollars for goods, wares and merchandize sold and delivered by the said plaintiff to the said defendants at their request. And in the sum of Six hundred dollars for money before that time lent and advanced by plaintiff to defendants at their request. And in the sum of Six hundred dollars for money then and there paid by plaintiff for use of defendants at their request. And in the sum of Six hundred dollars for money found to be due and owing from said defendants to said plaintiff on

an account then and there had and stated between them - And the defendants being so indebted afterwards, to wit: On the day and year last aforesaid, at the place aforesaid in consideration of the premises, respectively promised the said plaintiff to pay to him the said several moneys last afore-mentioned, on request. Yet the defendants although often requested, to wit: afterwards, on the day and year and at the place last aforesaid have disregarded their promises and have not paid said moneys above mentioned or any or either of them, or any part thereof, to the damage of the plaintiff of Six hundred dollars and thereupon he bring suit &c

C. M. Dawley
Plaintiffs Attorney

Copy of Instrument sued upon and sole cause of action

$ 242 62/100. Chicago July 10th 1860.

Twelve months after date we or either of us subscribers of Ridott, County of Stephenson State of Ill. promise to pay to the order of Francis B. Cooley Two hundred Forty two 62/100 dollars at the Office of Jos. Mitchell & Co with int. at 6% exchange on Chicago value received.

E. Forler
Salome Forler

Endorsed on the back as follows
Pay to John V. Farwell or order.

F. B. Cooley

$ 242 62/100 Chicago July 10th 1860.

Eighteen months after date we or either of us the subscribers of Ridott, County of Stephenson, State of Ills. promise to pay to the order of Francis B. Cooley Two hundred Forty two 62/100 dollars at the office of Jos. Mitchell & Co.

with exchange on Chicago and int. at 6% value received

E. Foxler
Salome Foxler

Endorsed on the back as follows
Pay to John V. Farwell or order
F. B. Cooley.

And afterwards, to wit: On the 19th day of May A. D. 1862 the said Summons was returned into said Court by said Sheriff endorsed as follows, to wit:

Served by reading to the within named Edward Foxler and Salome Foxler the 16th day of May 1862

Fees: Service 1.00
Mile 1.50
Return .10 $2.60

W. A. Youngman Sheriff
By M. Woods Graham Deputy

And afterwards, to wit: at the May Term of said Court, to wit: On the 28th day of May A. D. 1862, the following among other proceedings were had in said Court and entered of Record, to wit

John V. Farwell
vs
Edward Foxler and
Salome Foxler
} Assumpsit

This day comes the said plaintiff by C. M. Hawley his Attorney and due personal service of process of summons issued in said cause having been had on the said defendants and they being now three times severally solemnly called in open Court come not, nor does any person for them, but herein they make default, which on motion

ich is ordered to be taken and entered of record Whereupon said Plaintiff ought to have and recover of the said defendants his damages herein sustained by occasion of the premises and the Court after hearing the allegations and proofs submitted by said Plaintiff and being fully advised in the premises, doth assess said plaintiffs damages herein to the sum of Five Hundred and Forty one dollars and eighty eight cents. Therefore it is considered, that said plaintiff do have and recover of the said defendant his damages of Five hundred and forty one dollars and eighty eight cents in form aforesaid assessed together with his costs and charges by him about his suit in this behalf expended and have execution therefor.

And thereupon afterwards, to wit: On the 23d day of June A. D. 1862. there issued out of said Court and under the seal thereof the Peoples writ of Fieri Facias directed to the Sheriff of Stephenson County to execute which writ with the Sheriffs return endorsed thereon is in the words and figures following, to wit:

State of Illinois, } ss:
County of Cook, } The People of the State of Illinois to the Sheriff of Stephenson County, Greeting:

We command you, that of the lands and tenements, goods and chattels of Edward Foster and Salome Foster defendants in your County you cause to be made the sum of Five hundred forty one dollars and eighty eight cents which John T. Farwell plaintiff lately in the Circuit Court of Cook County, at a term thereof begun and held at Chicago in said Cook County on the fourth Monday of May

Each part recovered against the said defendants and which by the said Court were adjudged to the said plaintiff for his damages -
And also the further sum of Nine dollars and ten cents which were adjudged to the said plaintiff for his costs and charges in that behalf expended, whereof said defendants are convicted as appears to us of record. And have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof. Witness, William L. Church, Clerk of our said Court and the seal thereof at Chicago in said County this 23d day of June A. D. 1862.

(Seal) Wm L. Church Clerk

Damages $541.88
Plaintiffs Cost 9.10 $550.98.

The Sheriff will collect interest from May 28. 1862.

Wm L. Church Clerk

Sheriff will pay costs (Jury & witness fees excepted) to Plaintiff's Attorney

Wm. L. Church Clerk

Received this Ex. for collection this 23 day of June A. D. 1862

W. A. Youngman Sheriff

By virtue of the within execution I have this day levied upon two bay horses, one set double harness, one stirring plow, two sorrel horses, or a bay horse, two mules, 2 stack of wheat, 2 of oats, & one reaper this 23d day of September A. D. 1862.

W. A. Youngman Sheriff of Stephenson County.

Received of W. A. Youngman Ex Sheriff of Stephenson County, Judgment, cost and interest in

full on the within Execution this 21st day of February A. D. 1863

John V. Farwell
By Ray

The within execution returned satisfied and paid in full by Plaintiffs receipt and by sale of the above described property to William G. Woodruff of Stephenson County Illinois

W. A. Youngman Sheriff
Stephenson County Ill.

I, William L. Church, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of all pleadings on file & judgment and proceedings preceding the same of record in a certain cause lately pending in said Court, on the Common Law side thereof, wherein John V. Farwell was Plaintiff and Edward Foster & Salome Foster were Defendants - In witness whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this 15th day of December A. D. 1864

Seal — U. S. Stamp 5 cents

Wm. L. Church
Clerk.

Defendant then to further maintain the issues on his part called as a witness, and who testified as follows

Wm. A. Youngman

Know defendant Edward Foster Knew Salome Foster in her life time - Witness is shown Transcript of Record above offered in evidence - I was sheriff of Stephenson County Illinois at the date of the execution as set out in this Transcript of Record, and about that time an execution as is therein set out

and of which a copy is in this transcript came to my hands - The execution was against Salome Fosler and Edward Fosler - I went to their place: and levied on the property I found there, and sold it to William G. Woodruff, except the mules which were claimed by Woodruff - I did not sell the mules - I made endorsement of levy and return on the execution as is set out in this record - The word "or" should be "one" in endorsement of levy - When I sold the property to Woodruff he took possession of it, and turned it over to the defendant - He sold it to Defendant on time -

And the plaintiff to further maintain the issues on his part called as a witness Edward Miller who testified - I stoped at Salome Fosler's over night when a man came there and said he came to pay 20# on the price of a colt - He paid 20# to her. - The above was all the evidence offered by either of said parties -

Stop here

The Plaintiff then moved the court to instruct the Jury as follows -

If the Jury believe from the evidence that the Defendant was or is Administrator of the Estate of Salome Fosler dec. it was or is his duty as such Administrator to inventory all the personal estate, money, notes and accounts of the Deceased and file the same in the Probate office of this County and if the Jury find from the evidence that the Defendant has failed to do it the Jury will find for the Plaintiff and in their verdict specify the identical property which the Defendant has failed to inventory -

Given.

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The Plaintiffs Counsel ask the Court to instruct the jury - That if they believe from the evidence that the Defendant was appointed by the County Court Administrator of the Estate of Salome Foster late of Stephenson County deceased it then become the duty of the Defendant to inventory and cause to be appraised all the personal property of the deceased which come to the possession or knowledge of the Defendant and file in the Probate office of this County an inventory and appraisment bill of said property, and if the jury believe from the evidence that the Defendant as Administrator of said Estate has not inventoried & appraised all the property belonging to said Estate which has come to the possession or knowledge of the Defendant then the jury should find for the Plaintiff, and specify the property which the Defendant has not inventoried & appraised. - Which instructions the Court then and there gave as requested.

Given.

Whereupon the Defendant moved the Court to instruct the jury as follows. - The Court instructs the jury that if they believe from the evidence that the record of judgment from the Cook Circuit Court to be an authenticated copy of a part of the records of that Court, that said copy of said record cannot be impeached in this proceeding, and if the jury find from the evidence that the Sheriff of Stephenson County levied on and sold a portion of the property in controversy in this case then the legal presumption is that such sale was regular, and that such notice was given as the law requires, of such sale. There being no trust deed in evidence in this case the jury should not consider any such

Given

41. Given

deed, or pay any attention to it in their consideration of this case.- Which instructions the Court then and there gave as requested-

And thereupon the jury gave their verdict against said Defendant, whereupon the counsel for defendant filed the following motion for a new trial-

1st Because the Court overruled defendants objection to evidence, and admitted said evidence.

2d Because the Jury found contrary to the evidence

3d Because the Jury found contrary to the law and the evidence- But the Court overruled said motion- Deft then moved the Court to arrest the judgment in said cause; which motion, the Court overruled, and gave judgment upon said verdict of said Jury against the defendant, to which defendant then and there excepted, And inasmuch as the matters aforesaid do not appear of record the counsel for defendant presents this Bill of Exceptions and prays that the same may be signed and sealed by the Court and made a part of the record in said cause and it is done accordingly

Benj R. Sheldon (Seal)

And afterwards, to wit: on the 12th day of January A. D. 1865, and within the time by by the above order of said Circuit Court limited there was filed with the Clerk of said Circuit Court of Stephenson County in the State of Illinois an appeal bond, a copy of which is in the words and figures following, to wit:

Know all Men by these Presents, That we

Edward Foxler Principal and William G. Woodruff surety both of the County of Stephenson in the State of Illinois are held and firmly bound unto Jacab Schriber one of the heirs at law of Salome Foxler deceased of Stephenson County Illinois in the sum of Seven hundred Dollars for the payment of which well and truly to be made, we bind ourselves our heirs, executors, administrators and assigns jointly, severally, firmly by these presents signed with our hands and sealed with our seals this sixth day of January A. D. 1865. The condition of the above obligation is such, That whereas in a certain suit heretofore pending in the Circuit Court of said Stephenson County wherein the said Schriber one of the heirs at law of said Salome Foxler dec'd. was plaintiff and and Edward Foxler Administrator of the Estate of Salome Foxler dec'd. was defendant judgment was rendered against the said defendant, and he has prayed an appeal to the Supreme Court of said State of Illinois - Now, if the said plaintiff shall duly prosecute his said appeal and pay or cause to be paid all costs which have accrued, or which may accrue in said cause, and all interest and damages and keep and perform the order of the Court herein entered in case the judgment of said Circuit Court shall be approved, then this obligation to be void

Executed in presence of J. A. Cerain

Edward Foxler (Seal)
Wm G. Woodruff (Seal)

Jacob Schriber
vs
Edward Fowler Admr. } Plaintiffs Costs.

Doc ruh 10c Entg app & atty 15c filg & Pape 20c .45
Swg rcalg Jury 15c Entg & filg Mo dis. appeal 25c .40
Filg 2 Instrcts 10c Filg 5 Papl. 25c 1 Supbs 40c .80
Entg only Mo dis 20c Entg ord postpone hearing 20c .40
" & filg Verdict 10c Entg ord Defts to Inventory 20c .30
" ord Involg mare 20c Entg ord Jugt 20 .40
Entg Jugt 25c Sats 15c ord Ex 20c Ex & filg 45c 1.05
Doc Ex 10c Stffs rch 10c Rlo. 30c Log & C. 35 .85
Swg & filg 2 Writ affts 30c Swg 5 writs 25c .55 5.20

Stffs fees - Piersol Serv & rch Subpl 1.25
Witnesses - G. Meyer 3 days 16 miles 3.80
" Edw Miller 5 " 36 " 6.80 10.60
17.05

Costs in Co. Court
D. N. Sunderland Cer 7.85
W. W. Robey Stff 6.70
Witnesses - W. G. Woodruff 2 days 11 miles 2.55
" Wm Schroder 1 " 17 " 1.85
" Edw Reynolds 1 " 12 " 1.60
" E. Miller 1 " 15 " 1.75
" G. Harris 1 " 18 " 1.90
" Gotlieb Meyer-3 " 16 " 3.80
" P. R. Allen 1 " 16 " 1.80
" J. M. Schaffstall 2 " 20 " 3.00
" John Piper 3 " 15 " 3.75 36.55
53.60

Defendants Costs
Entg app. & atty 15c Filg & Papl 45c .60
Filg 3 Instrcts 15c filg 2 Proof 10c & Supbs & filg 1.60 1.85
Entg Mo new trial 20c Mo arrest Jugt 20c .40
" ord only Do 20c ord only Mo new T 20c .40
" Mo & ord appl 40c Ilg & filg Appl Bond 40c .80

Fily bill Excpts 5c fily Prae for record 5c	.10	
Transcript of Record 15.00 (Paid by appellants)	15.00	
Swg & fily 4 Writ affts 60c Swg 4 Writs 20c	.80.	19.95
Co. fee 5.00 (pd by J. A. Lerain) Doc fee 1.00		6.00
Shff fees - Piersol serving 1 writ Subpa		.85
" Serving calg Jury (Piersal)		.65
Witnesses - John L. Plum 3 days - 32 miles	4.60	
" L. Harris 3 " 32 "	4.60	
" E. Reynolds 3 " 13 "	3.65	
" W. A. Youngman 3 " 76	6.80.	19.65
		$ 47.10

State of Illinois, } ss.
Stephenson County, }

I, Edward P. Hodges Clerk of the Circuit Court in and for said County, do hereby certify that the above and foregoing, to be a true, perfect and complete copy of the Precipe for Citation, Citation, Appeal Bond from County Court, Transcript from Co. Court, All orders of Court Verdict of Jury, Bill of Exceptions, Appeal Bond to the Supreme Court & Bill of Costs in a certain cause lately pending in said Court on the Common Law side thereof, wherein Jacob Schriber was plaintiff and Edward Forster Admr of the Estate of Salome Forster deed was Defendant

In witness whereof, I have hereunto set my hand and the Seal of our said Court at the City of Freeport this 20th day of February A.D. 1865.

Edward P. Hodges Clk
By Henry M. Mayer Dep

45.

In Supreme Court of the State of Illinois
Third Grand Division April Term
A. D. 1865.

Edward Foster: Administrator of
the Estate of Salome Foster
Appellant

vs

John Schriber heir at Law of
Salome Foster
Appellee

Assignment of
Errors

And now the said Appellant
comes and says that in the record and proceedings
aforesaid there is manifest Error in this, to wit:

1st The Court erred in allowing witness Meacham to disclose priveledged communication

2d The Court erred in dis-allowing appellants motion to exclude witness Meachams evidence from consideration of Jury

3d The Court erred in refusing appellant a new trial

4th The Court erred in entering up Judgment in verdict.

By reason whereof the appellant prays that said Judgment may be reversed &c

Stevens
Appellants Attorney

And now comes the said Appellee and says that in the above Record and proceedings aforesaid there is no error and prays that said Judgment may be affirmed.

W D Meacham attorney for
appellee

122 120

Supreme Court Illinois.

Edward Foster

vs.

John Schriber.

Record.

Filed April 1st 1865.

L. Leland

Clerk

A. Lorain, Appl's Atty.