

8765

No. _____

Supreme Court of Illinois

Ezekiel M. Miller

vs.

Daniel M. Jones, Admr.

ABSTRACT.

EZEKIEL M. MILLER,
Survivor, &c.

vs.

DANIEL M. JONES,
Adm'r de bonis non,
&c., of JOHN ADAMS, dec'd.

} Error to Union.

Page 1 On 9th May, 1860, Sylvester Adams, Administrator of John Adams, deceased, filed his bill in chancery in the Union County Circuit Court, vs. Ezekiel M. Miller and Nimrod C. E. Adams. The bill sets forth that John Adams, dec'd, and said Ezekiel and Nimrod, entered into co-partnership in a Mill, in 1856, in Union County, Illinois. That the interest of each was equal in profits and losses, and expenses, in erecting said Mill (a steam circular saw and grist mill.) That intestate did advance the land, worth \$100, on which it was erected, and that he joined his said partners in borrowing money and buying merchandize, as follows, to-wit :

Produce of Jacob Reinhart	\$1,179 43
Willis Willard, note	118 90
Willard & Co., acc't.	149 59
Paul Croaker	79 08
John Kelly	113 60
Sylvester Adams	147 29
Other sums, with interest, amounting to about	200 09
Total	\$1,987 88

3 That said intestate died October 31st 1858. That complainant was appointed administrator in 1858; proffert of letters. That all of said claims had been proven and allowed before County Court against said estate, and weredrawing interest. That said defendants (below) had, in the last two years, derived and used large profits from said Mill, to-wit : \$2000, of which one-third belonged to said complainant, as administrator, &c. That at death of intestate said firm had due them by note and accounts about two thousand (\$2000) other dollars. That said surviving partners collected said debts, used the stock on hand, the Mill, &c., but have not paid the debts of said firm, nor attempted it; nor have they settled with said complainant, as administrator therefor, but they falsely pretend they are not able to do so, and want the administrator to do so out of individual means of deceased.

5 Prays summons, and asks for ANSWER UNDER OATH as to said allegations, and the business of said firm, and for an account of stock on hand at decease of intestate, and of amounts due said firm; what debts were owing; value of the land, and use of said Mill. Prays also for a "decree" for what may be due said estate, and for a receiver and sale of partnership effects to pay said debts; offers to account for partnership dealings of deceased. Prays injunction, &c.

6 Summons in chancery in usual form, dated 9th May, 1860. Served
7 12th May, 1860. At May Term, (24th May,) 1860, defendants ruled to answer.

8 On 28th May E. M. Miller filed his demurer to said bill.

9 On 30th May demurer overruled, and defendants have leave to answer again.

10 On 1st day of June defendants file their joint SWORN ANSWER, admitting partnership, but deny that it was entered into in April, 1856; admit that John Adams advanced one acre of land for mill, but deny that

it was worth \$100; deny that they joined the intestate in the loan of any sums of money whatever, but admit the purchase of produce and merchandize, as follows:

Willard & Co., account.....	\$149 58
Paul Croaker.....	79 08
John Kelly.....	113 60
Sylvester Adams.....	147 29
Other sums amounting to.....	200 00

- Admit that intestate died 31st October, 1858, and that complainant was his administrator; deny that they, as co-partners of deceased, used and derived large profits from use of said mill, amounting to \$2000. They deny that at death of intestate said firm held notes and accounts to amount of \$2000, and deny that they have collected said sums and sold the stock on hand; admit the use of mill and land to "some extent," and insist that they have paid a large sum on firm debts; deny that there has been no settlement; deny that they have refused to settle with the administrator, deny that they were unable to pay their share of firm debts, and that they requested the administrator to do so out of means of deceased. They show that the stock on hand at death of intestate was sold and one-third part paid over to his administrator; show that at death of intestate whole gross proceeds of said mill in money collected and debts due was \$1,861 83. Of this sum only \$1,151 70 was collected—and the "same was paid out for the benefit of the firm." They also show that the firm debts at the time were \$2,600, "as near as they recollect," and respondents have paid with their "individual means, since the death of John Adams, the sum of \$629 27." The expenses of running said mill, amounts sued for and suits pending, accounts outstanding, lumber in market, and amounts not known, respondents cannot state or show.

Affidavit of truth of answer annexed.

- 14 Complainants filed exceptions to said answer, and they were sus-
15-16 tained, and defendants ruled to file an additional answer.

On 26th October, 1860, defendants filed their additional answer, as follows, to-wit:

- 17 They deny that at the death of said intestate there was any money on hand belonging to said firm; assert that the lumber on hand was divided, one-third thereof being given to said administrator and by him sold, the remainder thereof (\$261 67) sold and the proceeds "applied to the use and benefit of their said partnership business."

- 18 They submit schedule "A" as an account of lumber sold, to be \$2,043 62, amount of receipts for same \$1,741 37—balance outstanding, \$302 25. They submit schedule "B," indebtedness due said firm for sales of lumber and amounts paid thereon since the death of intestate. Sales \$3,438 67; gross receipts on the same, \$1,910 49; due on said schedule \$1,528 20. They submit schedule "C," showing amount of expenses of said mill before the death of intestate, and the payments made thereon; amounts due and owing by said firm \$789 87; amount paid thereon \$703 00; leaving balance due, \$83 87.

They submit schedule "D," showing amount of expenses incurred for timber and cutting during said partnership and amounts paid. It shows amounts paid by respondents, \$471 40.

- 19 They submit schedule "E," wherein E. Miller shows due him for board of hands before death of intestate, the sum of \$18 68, and since his death, for same, \$158 13; he charges for his own labor, twenty months and fourteen and a-half days, at \$50 per month, total \$1,027 88. Admits that he has received out of said mill \$696 41, in money, trade, &c., &c., and that he also received his share (\$136 69) of lumber on hand at Adams' death.

They submit schedule "F," which shows expenses for work, &c.

since death of intestate, \$1,456 35, and that they paid on same \$1,262 40—balance due \$193 95.

They submit schedule "G," which shows the amount of claims allowed by the County Court of Union County against estate of John Adams, deceased, for firm debts ; amount \$2,038 02.

P. 20 They submit schedule "H," which shows the debts contracted before the death of intestate and paid since by respondents, amount \$985 86. Respondents admit that they, together with one Lyrion Davis, Sylvester Adams and the deceased, borrowed from one Jacob Reinhart the sum of \$_____, but they deny that the note given at the time was executed by the firm of Adams, Miller & Co., but aver that it was a joint and several note for the payment of the said sum, and NOT A FIRM NOTE.

Answer duly sworn to by respondents.

21-22-23-24 Schedule A.

25-26-27-28

29-30 Schedule B.

31 Schedule C.

32 Schedule D.

33 Schedule E.

34-35-36 Schedule F.

37 Schedule G.

38 Schedule H.

39 Replication filed by complainants.

40-41 The cause was then continued from term to term until May term, 1863, when it was, by consent of parties, set down for hearing at next term, October, 1863.

42 The Court then made the following

DECREE.

DANIEL M. JONES,

Adm'r de bonis non.

&c., of JOHN ADAMS, dec'd.

vs.

EZEKIEL M. MILLER, and

NIMROD C. E. ADAMS.

} Bill for account of Partnership.

This day came the said complainant, by J. Daugherty, his solicitor, as also the said defendants, by W. A. Hacker, their solicitor, and thereupon this bill came on to be heard, upon the bill, answer and replication, and submitted the same to the Court without argument, on consideration whereof the Court finds that John Adams, in his life-time, and the said defendants, Ezekiel M. Miller and Nimrod C. E. Adams, were equal partners in a saw-mill, by the name and style of Adams, Miller & Co., and were to share equally in the profits arising therefrom, and were to bear an equal proportion of the losses, if any were sustained, The Court further finds that the saw-mill was operated and run by the three partners during the life-time of said John Adams, and after his death by the surviving partners, Ezekiel M. Miller and Nimrod C. E. Adams, the defendants herein, and by consent of Sylvester Adams, administrator of John Adams, deceased, and until the _____ day of _____ A. D. 18____, and accounted to the estate of said John Adams, deceased, for the amount of lumber made and sold. And the Court further finds that the amount of lumber sold from the mill by the defendants, and before unaccounted for to the estate of John Adams, deceased, to be the sum of five thousand four hundred and eighty-two dollars and twenty-seven cents, (\$5,482 27.) and that the expenses of running said mill (reducing the monthly wages of Ezekiel M. Miller from fifty (\$50 00) as charged, to forty (\$40 00) dollars per month,) and money paid out on partnership debts, &c., by the defendants, as per account rendered by the defendants, to be the sum of four thousand

one hundred and twenty-eight dollars and sixteen cents, (\$128 16,) which being deducted from the amount of lumber sold, as per account rendered, leaves a balance of thirteen hundred and fifty-four dollars and eleven cents, (\$1,354 11); of this balance the estate of John Adams, deceased, is entitled to the one-fourth part thereof, the same being the sum of four hundred and fifty-one dollars and thirty-seven cents, (\$451 37.) And the Court finds further, that the firm of Adams, Miller & Co. were indebted in the sum of two thousand and thirty-eight dollars and two cents (\$2,038 02), which has been allowed by the County Court of Union County against the estate of John Adams, deceased, and that of the sum, the said estate of John Adams, deceased, in equity, ought to pay the sum of six hundred and seventy-nine dollars and thirty-four cents, with the interest on the same from the time of said allowance until paid, and that the remaining two-thirds, amounting to the sum of one thousand three hundred and fifty-eight dollars and sixty-eight cents, (\$1,358 68,) with the interest on the same from the date said allowance was made by said County Court against said estate of John Adams, deceased, to the 2nd day of November, A. D. 1863, the date of the decree, amounting to the sum of three hundred and seventy-nine dollars and seventy-four cents, (\$379 74,) the defendants Ezekiel M. Miller and Nimrod C. E. Adams are in equity severally and jointly bound to pay to the said complainant, together with the aforesaid sum of four hundred and fifty-one dollars and thirty-seven cents, (\$451 37.) the one-third part of the net proceeds of sales of lumber, as per account of defendants rendered as aforesaid, making the aggregate sum of two thousand one hundred and eighty-nine dollars and seventy-nine cents, (\$2,189 79.) the aforesaid two-thirds of indebtedness of said firm of Adams, Miller & Co., allowed against the estate of said John Adams, deceased, by the County Court of Union County, the interest on the same, as aforesaid, and the said one-third net proceeds of sales, &c., aforesaid.

It is therefore ordered, adjudged and decreed by the Court, that the said defendants, Ezekiel M. Miller and Nimrod C. E. Adams, within ninety days from this date, pay to the said complainant, Daniel M. Jones, administrator de bonis non of the estate of John Adams, deceased, the said sum of two thousand one hundred and eighty-nine dollars and seventy-nine cents, (\$2,189 79,) with the interest thereon, to be computed from this day until paid, and also the costs of this suit to be taxed, and in default thereof that execution issue on the decree against the said defendants for the debt and costs aforesaid, and the money collected and paid over to the said complainant, as under execution issued upon judgments at law.

It is further ordered, adjudged and decreed that a lien be, and a lien is hereby created upon said mill in complainant's bill mentioned, and also upon the estates of each of the said defendants, both real and personal, for the payment of said sum of money, debt and aforesaid, and interest on the same until paid.

It is further ordered and decreed that the said complainant, immediately on the receipt of the money, the debt, interest and costs aforesaid, apply it to the satisfaction and in payment of the said sum of two thousand and thirty-eight dollars and two cents, (\$2,038 02,) with the interest thereon, allowed against the estate of John Adams, deceased, and for no other purpose whatever.

And it is further ordered, that the Master in Chancery of Union County be and he is hereby required, and it is hereby made his special duty to look after and see that the decree is complied with by the parties thereto, and report to this Court at the next term, &c.

E R R O R S A S S I G N E D .

First. The Court erred in rendering a finding that there was only \$4,128 16 expended and due defendants, or entitled to be deducted from gross receipts.

Second. The Court erred in rendering a decree for \$451 37, as distributive share of said estate, due from defendants.

Third. The Court erred in decreeing that said defendants should pay to said administrator two-thirds of the claims allowed against the estate of said deceased, which, together with interest thereon, and the \$451 37 above, made \$2,189 79.

Fourth. The Court erred in rendering a decree for complainant for any sum at all.

Fifth. The schedules show that the debts due from the estate and expenditures were more than the receipts in defendants' hands, and the Court should have so found, and erred in not so doing.

Sixth. The decree shows that no part of the claims allowed against said deceased's estate were paid by said estate, and yet because they had been FILED AND ALLOWED, the Court decreed the survivors to pay two-thirds of the partnership debts to the administrator, when they were still bound to pay the whole to the creditors ; this was error.

Seventh. The Court erred in not dismissing complainant's bill, and in not rendering decree on said bill, answer and replication, in favor of defendants below, and against complainant, for there is no equity shown in the same. Wherefore plaintiff in error prays that said decree may be reversed, set aside and made void, and the bill dismissed.

Haynie J. Marshall

For Plaintiff in Error.

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Survivor, &c.

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5 Prays summons, and asks for answer UNDER OATH as to said allegations, and the business of said firm, and for an account of stock on hand at decease of intestate, and of amounts due said firm; what debts were owing; value of the land, and use of said Mill. Prays also for a "decree" for what may be due said estate, and for a receiver and sale of partnership effects to pay said debts; offers to account for partnership dealings of deceased. Prays injunction, &c.

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Affidavit of truth of answer annexed.

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They submit schedule "D," showing amount of expenses incurred for timber and cutting during said partnership and amounts PAID. It shows amounts paid by respondents, \$471 40.

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Answer duly sworn to by respondents.

21-22-23-24 Schedule A.

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39 Replication filed by complainants.

40-41 The cause was then continued from term to term until May term, 1863, when it was, by consent of parties, set down for hearing at next term, October, 1863.

42 The Court then made the following

DECREE.

DANIEL M. JONES, Adm'r de bonis non, &c., of JOHN ADAMS, dec'd. vs. EZEKIEL M. MILLER, and NIMROD C. E. ADAMS.	}	Bill for account of Partnership.
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This day came the said complainant, by J. Daugherty, his solicitor, as also the said defendants, by W. A. Hacker, their solicitor, and thereupon this bill came on to be heard, upon the bill, answer and replication, and submitted the same to the Court without argument, on consideration whereof the Court finds that John Adams, in his life-time, and the said defendants, Ezekiel M. Miller and Nimrod C. E. Adams, were equal partners in a saw-mill, by the name and style of Adams, Miller & Co., and were to share equally in the profits arising therefrom, and were to bear an equal proportion of the losses, if any were sustained, The Court further finds that the saw-mill was operated and run by the three partners during the life-time of said John Adams, and after his death by the surviving partners, Ezekiel M. Miller and Nimrod C. E. Adams, the defendants herein, and by consent of Sylvester Adams, administrator of John Adams, deceased, and until the _____ day of _____ A. D. 18____, and accounted to the estate of said John Adams, deceased, for the amount of lumber made and sold. And the Court further finds that the amount of lumber sold from the mill by the defendants, and before unaccounted for to the estate of John Adams, deceased, to be the sum of five thousand four hundred and eighty-two dollars and twenty-seven cents, (\$5,482 27,) and that the expenses of running said mill (reducing the monthly wages of Ezekiel M. Miller from fifty (\$50 00) as charged, to forty (\$40 00) dollars per month,) and money paid out on partnership debts, &c., by the defendants, as per account rendered by the defendants, to be the sum of four thousand

one hundred and twenty-eight dollars and sixteen cents, (\$4128 16,) which being deducted from the amount of lumber sold, as per account rendered, leaves a balance of thirteen hundred and fifty-four dollars and eleven cents, (\$1,354 11); of this balance the estate of John Adams, deceased, is entitled to the one-fourth part thereof, the same being the sum of four hundred and fifty-one dollars and thirty-seven cents, (\$451 37.) And the Court finds further, that the firm of Adams, Miller & Co. were indebted in the sum of two thousand and thirty-eight dollars and two cents (\$2,038 02), which has been allowed by the County Court of Union County against the estate of John Adams, deceased, and that of the sum, the said estate of John Adams, deceased, in equity, ought to pay the sum of six hundred and seventy-nine dollars and thirty-four cents, with the interest on the same from the time of said allowance until paid, and that the remaining two-thirds, amounting to the sum of one thousand three hundred and fifty-eight dollars and sixty-eight cents, (\$1,358 68,) with the interest on the same from the date said allowance was made by said County Court against said estate of John Adams, deceased, to the 2nd day of November, A. D. 1863, the date of the decree, amounting to the sum of three hundred and seventy-nine dollars and seventy-four cents, (\$379 74,) the defendants Ezekiel M. Miller and Nimrod C. E. Adams are in equity severally and jointly bound to pay to the said complainant, together with the aforesaid sum of four hundred and fifty-one dollars and thirty-seven cents, (\$451 37,) the one-third part of the net proceeds of sales of lumber, as per account of defendants rendered as aforesaid, making the aggregate sum of two thousand one hundred and eighty-nine dollars and seventy-nine cents, (\$2,189 79,) the aforesaid two-thirds of indebtedness of said firm of Adams, Miller & Co., allowed against the estate of said John Adams, deceased, by the County Court of Union County, the interest on the same, as aforesaid, and the said one-third net proceeds of sales, &c., aforesaid.

It is therefore ordered, adjudged and decreed by the Court, that the said defendants, Ezekiel M. Miller and Nimrod C. E. Adams, within ninety days from this date, pay to the said complainant, Daniel M. Jones, administrator de bonis non of the estate of John Adams, deceased, the said sum of two thousand one hundred and eighty-nine dollars and seventy-nine cents, (\$2,189 79,) with the interest thereon, to be computed from this day until paid, and also the costs of this suit to be taxed, and in default thereof that execution issue on the decree against the said defendants for the debt and costs aforesaid, and the money collected and paid over to the said complainant, as under execution issued upon judgments at law.

It is further ordered, adjudged and decreed that a lien be, and a lien is hereby created upon said mill in complainant's bill mentioned, and also upon the estates of each of the said defendants, both real and personal, for the payment of said sum of money, debt and aforesaid, and interest on the same until paid.

It is further ordered and decreed that the said complainant, immediately on the receipt of the money, the debt, interest and costs aforesaid, apply it to the satisfaction and in payment of the said sum of two thousand and thirty-eight dollars and two cents, (\$2,038 02,) with the interest thereon, allowed against the estate of John Adams, deceased, and for no other purpose whatever.

And it is further ordered, that the Master in Chancery of Union County be and he is hereby required, and it is hereby made his special duty to look after and see that the decree is complied with by the parties thereto, and report to this Court at the next term, &c.

E R R O R S A S S I G N E D .

First. The Court erred in rendering a finding that there was only \$4,128 16 expended and due defendants, or entitled to be deducted from gross receipts.

Second. The Court erred in rendering a decree for \$451 37, as distributive share of said estate, due from defendants.

Third. The Court erred in decreeing that said defendants should pay to said administrator two-thirds of the claims allowed against the estate of said deceased, which, together with interest thereon, and the \$451 37 above, made \$2,189 79.

Fourth. The Court erred in rendering a decree for complainant for any sum at all.

Fifth. The schedules show that the debts due from the estate and expenditures were more than the receipts in defendants' hands, and the Court should have so found, and erred in not so doing.

Sixth. The decree shows that no part of the claims allowed against said deceased's estate were paid by said estate, and yet because they had been FILED AND ALLOWED, the Court decreed the survivors to pay two-thirds of the partnership debts to the administrator, when they were still bound to pay the whole to the creditors; this was error.

Seventh. The Court erred in not dismissing complainant's bill, and in not rendering decree on said bill, answer and replication, in favor of defendants below, and against complainant, for there is no equity shown in the same. Wherefore plaintiff in error prays that said decree may be reversed, set aside and made void, and the bill dismissed.

Haynie J. Marshall

For Plaintiff in Error.

28—

E. M. Miller -
Survivor &c.

by

D. M. Jones -
Advt. &c.

Abstract - and
Assignment of
Errors -

8765

Filed - Oct. 20 - 1864.
N. Johnston City

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ERRORS ASSIGNED.