

Jefferson County Circuit Court
Case Files - Civil

Box 18 Folder 37

November 1866

Baker, Henry

Baker, Catherine

vs.

Schoeneman, E. L., exec.

Runkle, John C.

Appeal

Plaintiffs appealed from County Court
on settlement of Runkle's estate

Baker

1865
 Mrs Catharine ~~Runkel~~ ^{and her husband Henry} late Widow of John C Runkel, of John C Runkel, dec'd, late of Jefferson Co. Mo.
 Dr E. A. Schoenemann, Executor
 of the Estate of John C. Runkel dec'd

1. For applying the proceeds of the sale of Straw berries to her own use and benefit 200 00
- 2 Applying the proceeds of a load of Wheat sold to H. Pflersch & Lange, to her own use and benefit 48 15
- 3 Money fraudulently retained, and kept from the hands of the Executor, after first deducting \$24⁴⁵ which was delivered, as per Inventory and leaving a Balance so retained of 953 45
- 4 Draft sent to Germany to order of Henry Eitz and collected by Mrs Runkel's father after the death of John C. Runkel 40 00
- 5 For Meat, Lard, Potatoes, Beans, Grapes and other small fruit and garden vegetables, left unused for the benefit of the widow 100 00
- 6 Household goods, such as Pillow Cases, Sheets, Dishes, cups & saucers, Plates, Coffin mts, Suits, Shirts, Vests and other clothing, belonging to said Runkel dec'd, partly done away with by her and left unused ~~100 00~~
- 7 Arising differences by brow beating, and fraudulently preventing others from bidding on the property of said Estate between the Appraisement and Sale to her as follows

Difference on Flours	\$ 9. 00
do on Farm Wagon	10. 00
do on 2 acres Potatoes	20. 00
do Corn in Orchard	30. 00
do on fruit in Orchard	35. 00 ~~20 00~~
	<u>\$1545 60</u>

Jefferson Co Decr 18/1865.

John

Her January 1866
Cincinnati Ohio

Catharine Baker &
Henry Baker her husband
distintly and interested in the
estate of J. C. Rundle

vs
E. S. Schoenmann Ex. of said
estate.

Now come, the plaintiffs, and
object to the settlement of said Executor
this day made for the following
reasons—

1. That an amt ~~allowed~~ ^{claimed} on voucher
No 15 to said Executor for fifty three ⁵³ ~~three~~
dollars ~~is~~ not a proper and legal
allowance
2. That an amt ~~allowed~~ ^{claimed} on voucher
No 17 for \$158.90 are costs which
accrued in a suit of the plaintiffs
against said E. S. Schoenmann Ex.
to recover property & money improperly
withheld by said E. S. Schoenmann, & which
was the absolute property of the plaintiffs
3. That an amt claimed on voucher
Nos 12 & 18. is for attorney fees in part
for defending said suit. and illegally
& improperly claimed

P. Pipkin for
plffs.

Arthur & Wife

3
61. Schumann

referring to the
settlement of
Enclosure

copy

Wm. Jay & Son
Attorneys at Law

State of Missouri } In the County Court
County of Jefferson } July 3rd 1866
The following proceeding was had To wit,

Henry Baker & Catharine Baker
vs

E. L. Schweneman Executor of John Ruckel } Objections to the settlement
of E. L. Schweneman as Executor of the Estate of J. Ruckel
Decd. are filed by the Plaintiffs, and overruled by the Court,

July 5th as follows To wit.

Henry Baker & Catharine Baker
vs

E. L. Schweneman Executor of J. Ruckel Decd. } On objections filed to the settlement
of E. L. Schweneman as Executor
of J. Ruckel Decd.

Now at this day comes said administrator & presents
the plaintiffs by their attorney and present their affidavits with
bond for appeal to the Circuit Court, stating among other
things that the appeal is not taken for vexation or delay but because
the affiants believe themselves aggrieved by the decision of the Court.
which bond is approved and the appeal ordered to be granted,

I Wm. McMullin Clerk of the County Court within & for the
County aforesaid, hereby certify the foregoing to be a true and correct
copy of all the record in the above entitled cause, as the same
remains of record, in my office.

Witness my hand and the seal of said
Court hereunto affixed this 12th day of July A.D. 1866
Wm. McMullin Clerk

Henry Baker & Catharine Baker
add
Ed. D. Hutchinson Treasurer of
J. C. Throckmold & Sons

Ammonia alba

2. 83

child

Catharine Baker & husband
against
E. S. Schoeneman Exr. } 3

The following are
the facts as agreed upon in this case

That the plaintiff Catharine Baker
is the widow of John C. Runkle & since
his death ~~Married~~ Baker, that Runkle
made a will giving to his widow
one half of his estate, that Schoeneman
was appointed executor, that he sold
all the ~~personal~~ ^{personal} estate in August 1865,
that his widow renounced the provisions
of the will in her behalf on the 7th
day of October 1865 in due form,
that prior to that time she gave
defendant notice that she would
make application to the County Court
of Jefferson County for an order
upon the executor to pay over to her
all the personal property which she
was entitled to absolutely by law,
that said application was made on the
7th October 1865, and the Court finding
the property had been sold ordered
the executor to pay over the proceeds of
the same amounting to \$25 dollars,
that afterwards the defendant made
affidavit that the plaintiff Catharine
Baker had embezzled the money of the

deceased and his various produce
and other property, ~~the whole~~ ^{and that}
the Court granted a new trial, which
took place on the 7th of January 1866.
that at that trial defendant filed
an affidavit in words and figures, as
follows (her copy) that said Court
struck out, ^{all off} said affidavit except items
1st. & that a judgment was
rendered for plaintiff for \$880, and
an order made upon him to pay
over the same as the proceeds of the
said plaintiffs absolute property &
years support from which judgment
of the Court there has been no
appeal, that the costs incurred
in the prosecution and defending of
said suit on the new trial in Clerk
Shiriff Writings & Lawyers fees is
\$296.45, that the same has been
paid by executor out of the assets
of the estate and allowed by the
County Court at said Executors first
settlement, that ~~Plaintiffs~~ objected
to the allowance of said costs against
the estate and moved the Court to
tax the same against the defendant.
that the Court overruled said objections &
motion and ^{the plaintiff brings} ~~took~~ the case to this

County appeal,

It is further agreed, that after the judgment was rendered in the County Court on the new trial for \$880. The plaintiff moved the Court to Tax the defendant with the said cost & the County Court overruled the motion from which decision plaintiff took an appeal to the Circuit Court and voluntarily took a nonsuit. After this the said settlement was made in the County Court from which this appeal has been taken.

It is further agreed that on the new trial a jury was called by plaintiffs who tried the cause & whose fees were \$36. or thereabouts,

Jos. J. Williams
Atty. for Defendant
P. Phipps atty for
Plaintiff

Pathestral
n

Schneemann

2nd

as well statement
of fact.

original

C. Baker & husband

vs
E. S. Schoeneman Ex^r

John C. Runkler decd

Appeal from the
County Court of
Jefferson

Now come the parties and another party requiring a jury, the Court doth find that the settlement of the account made in the County^{court} of Jefferson County, Wisconsin on the 3^d day of July 1866, was erroneous, that the same be set aside, and the Court proceeding to try the cause anew, doth find that the said executor obtained credit in said County Court for the sum of \$296.45, as costs attorney fees and commissions, which accrued in a proceeding instituted by the plaintiff against the executor to recover her absolute property in the estate of said deceased, that said sum was illegally and erroneously allowed to said executor in said settlement, that the same should have been taxed against said Executor de bonis propriis, It is therefore ordered and adjudged that the said sum be taxed against the defendant as ^{above said} that he be charged with said sum as assets of said estate, and that this judgment of this Court be Certified to the County Court of said Jefferson County. It is further adjudged that the plaintiffs have and recover of and from the defendant their costs in this behalf expended

Baker & Baker

Chaunceman

first print of the
count

signed

Willard Nov 17 1866

Saml A B Baker

CD

Henry Baker & Catharine Baker
Wife of said Henry Baker

¹⁴
E. L. Schoeneman Executor of the
Estate of John C. Runkle

In the Circuit Court
Jefferson County Mo.
Nov Term 1866

Now at this day comes said Defendant
and moves the Court to set aside the
finding of the Court in this Cause and to
grant Defendant a new Trial for the
following reasons, To wit,

1st Because the finding of the Court is
against the ~~evidence~~ and the Law in

2nd Because upon the Agreed Statement of facts
submitted to the Court - & upon which the Court
decided this Cause does not warrant the
Court in finding for the Plaintiff and
against the Defendant - that the amount of
Two hundred and ninety six & $\frac{46}{100}$ Dollars heretofore
allowed Defendant in his settlement with the
County Court be paid against Defendant
instead of said Estate

Jos. J. Williams
Atty for Defendant

Henry Leatharine
Baker

E. J. Schaeferman
2 of J. H. Kunkle

Motion for new
trial

Agreed

Filed. Nov 17 1866
Saml A. W. Polley clk

Henry Baker & Catharine Baker
wife of said Henry Baker

E. L. Schoeneman Executor of John
C. Runkle Deceased

In the Circuit Court of
Jefferson County Mo.

Nov. Term 1866

Be it remembered that on the Trial of the
above entitled Cause the Plaintiff and
Defendant - submitted ^{said cause} to the Court upon an
agreed Statement of facts & thereupon
demanded a decision of the Court in said
Cause which said Statement of facts is
in words and figures as follows, To wit
(here copy Statement of facts) whereupon the
Court found for plaintiffs & against the
Defendants as follows, To wit, that the
amount of two hundred and ninty six
and $\frac{45}{100}$ Dollars allowed said Executor by
the County Court of said County in his
Settlement with said Court ~~as per vouchers~~
as Costs Attorneys fees & commissions which
acrued in a proceeding instituted by Plaintiff
against said Executor to recover her absolute
property in the Estate of John C. Runkle, was
illegally allowed to said Executor, and that
the same be disallowed & taxed against said
Executor "De bonis propriis," and that said
Executor be charged with said sum as assets

of said Estate of John C. Kunkle —
Whereupon Defendant
~~filed a motion that the Court moved~~
the Court to set aside the finding of the
Court and to grant Defendant a new Trial
which motion is in words & figures as follows
To wit, (here copy motion for a new Trial) which
motion being seen by the Court and by the
Court understood was by the Court overruled
to which action of the Court in overruling
said motion ~~for a new Trial~~ Defendant
then and there Excepted, Whereupon the
Court rendered judgment for the plaintiff
and against the Defendant which judgment
is in words and figure as follows, To wit,
(here copy judgment) to which action of the
Court in rendering judgment in favor of the
plaintiff and against Defendant, the
Defendant then and ~~there~~ there Excepted
And here I tender his Bill of Exception which
he prays may be signed sealed and made
a part of the record which is done

James H. Vail {Seal}
Judge

W. & L. Baker

E. L. Schenckman
E of J. L. Kunkle

Bill of 2 copies

Filed Nov 17th 1866

Samuel H. Kunkle
Clerk

Supreme Court St Louis
October Term 1867.

Catharine & Henry Baker J.E. }
vs: } Opinion of the Court
E. L. Schoeneman Exr of Estate }
of J. C. Runckel dec'd P.E. }

It may be gathered from the record in this case that the subject matter of controversy between these parties is as to the correctness of an allowance made by the County Court of Jefferson County in favor of the plaintiff herein and carried into his first annual settlement as a credit. - An appeal was taken to the Circuit Court of that County where the action of the Circuit Court of that County was held to be erroneous and the settlement set aside. The following extract from the records of the Circuit Court will show the facts found as well as its judgment. - "And the Court proceeding to try the cause anew doth find that the said Executor obtained credit in said County Court for the sum of \$296.45 as Costs, Attorneys fees and commissions which accrued in a proceeding instituted by the plaintiff against the executor to recover her absolute property in the estate of said deceased; that said sum was illegally and erroneously allowed to said executor in said settlement; that the same should have been taxed against said Executor de bonis propriis - It is therefore ordered &c" The case was taken to the Second District Court by writ of error and the

judgments of the Circuit Court affirmed - This now brought here upon a writ of error to the last named Court - It is manifest upon this state of facts that the first inquiry must be directed to the question as to whether an appeal would properly flow from the action of the County Court.

The order of the Court which placed the amount in controversy to the credit of the plaintiff is an order upon the settlement of his accounts was not a decision or determination of any matter separate and distinct from the settlement itself. On the contrary, it was just as much a part of it as any other item in the account. The agreed statement of facts upon which the case was decided in the Circuit Court as well as the judgment of that tribunal, treats the whole proceeding as an appeal from the settlement.

So we shall treat it here and proceed to inquire whether the law authorizes such an appeal. The cases in which appeals shall be allowed from the decisions of the Courts having probate jurisdiction are specifically set out in section one, Chapter 127 General Statutes 1868. It is only necessary to refer to the two clauses first enumerated "First on demand against an estate exceeding ten dollars second - On all settlements of Executors and Administrators" The District Court seems to have proceeded upon the theory that this was a demand against the estate and therefore embraced in the first class. In our view of the law, this

is clearly erroneous. The word "demands" as used in this statute must be understood as covering no other classes of claims except those enumerated in Chapter 123- General Statutes 1865.

It is admitted that the language of the statute is very broad in setting out the second class of cases, but still we think there is no difficulty in coming to a proper conclusion as to its true intent and meaning. An appeal from one tribunal to another is never contemplated in any case except where there has been a final determination of the matter in controversy. This proposition need not be argued, it is too plain to admit of any doubt or error. The question is then fairly presented - viz. Is an annual settlement of an executor's administration a judgment? In the case of *Pick v. Biddis* admin. 35 Mo. 29, this question seems to have been very carefully considered. The former decisions of this Court touching this point were examined with much care and the conclusion reached, we think must clearly follow from the reasoning of the Judge who delivered the opinion of the Court. We concur fully in the opinion that such settlements have not the force and effect of judgments and are not conclusive against the persons by whom they are made, nor any other parties interested in the estate - - We apprehend that in all of the cases determined by this Court, whenever settlements have been referred to as having the effect of judgments, they were final and not annual settlements. It has been the uniform practice of the Courts having probate jurisdiction and we think correctly so, to treat these annual settlements of accounts as mere exhibits of the condition

of estates and upon which order for the payment of debts
of distribution might be made according to the circum-
stances of the case. With this view of the statute, it is
apparent that the appeal from the County to the Circuit
Court was improperly taken - The propriety of al-
lowing the Credit Claimant by the executor and carried
into his annual settlement, may still be reviewed
upon a final settlement of his accounts and we
are therefore not called upon to express any opinion
upon that point - The other judges concurring
the judgment of the Circuit Court will be reversed
and the Cause remanded.

Thos. L. C. Fagg - - -

Filed in office CLK 2nd
District Court Dec. 16, 1867

L. Sargeant Clerk

State of Missouri }
Second Judicial District } ss = I, the undersigned Clerk of
the District Court within and for said District hereby certify
that the above and foregoing is a true and perfect copy
of the opinion of the Supreme Court of Missouri in the
above ~~entitled~~ Cause as fully as the same remains
on file in my office. In testimony whereof witness my
hand & seal of said Court hereunto affixed at
office in Cape Girardeau this 31st July 1868
Leonard Sargeant Clerk -

Catharine Baker & Henry Baker D.C. }
 -vs- }
 J. L. Schoeneman ~~Exr~~ of Estate of }
 J. C. Runkel Decree P.C. }
 July Term - July 22, 1868

Term to Jefferson
 Co. Circuit Court
 (Off July Term 1867)

Now again comes this matter before the Court and
 it appearing that the mandate and opinion of the
 Supreme Court has been filed in this Cause reversing
 the judgment of the Second District Court herein
 it is therefore adjudged and decreed, in conformity with
 the judgment and opinion of the Supreme Court herein
 filed, that the judgment rendered herein by the said Cir-
 cuit Court of Jefferson County, ^{& the Second District Court} be reversed, annulled
 and for naught held and esteemed and that the said
 plaintiffs in error be restored to all things he has
 lost by reason of the said judgment, that the said
 Cause be remanded to the said Circuit Court of Jef-
 ferson County for further proceedings to be had therein
 in conformity as aforesaid and that the plaintiffs
 in error receive of the defendants in error his costs
 and charges herein expended and here expending
 therefore

State of Missouri }
 Second Judicial District } J. Leonard Sargeant
 Clerk of the District Court in & for said District
 Certifies that the above is a true copy of the order
 of the District Court in the above matter as

Catharine & Henry Baker

vs

G. L. Schoeneman Exr of

Est. of G. B. Buckel decd

fully as the same appears from the records of my
office. In testimony whereof within my hand
& seal of said Court hereto affixed at office in
the City of Cape Girardeau this
31st day of July 1868 -
Leonard Sargeant Clerk



Filed Aug 5-1868.
E. J. Henry Cl

Nathaniel Baker & Henry Baker d. & } do the share
 per } District Court
 L. J. Chapman. Erg Estate of } Feb term 1868
 John C. Runkle decd - } P. S.

The Vice - ~ Chapman left in sum
 due in share District Court - ~

Justice opinion of shp. Court and order
 of District Court with fee vice, ^(with fee) \$2.75 =

Amount of shp. Court - sum due Court (pd) \$6.50
 Paid of even & District fee in Dist Court (pd) \$11.00
 \$17.50

which has ^{only} been paid to J. J. & H. in sum, leaving the

Item of \$275 due Elk Dist Court -
Fee due as sufficient for left 66 66. \$282 -

State of Missouri }
Grand Juried District } The undersigned Clerk of the
District Court within and without County the above &c
above City is the aggregate for my fee both in the above
and these cases: and that the debt is now due to me
for the same: On testimony of my before me
Grand Juried of said Court Court Officer
at office in both Grand Juried 81 1/2
day of July 1868 - Thomas Sargent
Clerk

State of Missouri } In the Cir Court
County of Jefferson }

Henry Baker Est at
against
McCune & Est } Appeal from County Court
Fee Bill.

R W McMullin, County Clerk, transcript c & c. 2, 25 225

S A Rapp Cir Clerk, 3 files 15¢ dismissal 55¢ 70

Judgt. 50¢ filing & entering 20¢ 70

Entg & filing vice exceptions & docket 10¢ 45 1 85

E F Honey Indexes 30¢ 30

making transcript and postage 2 82

for making his fee bill. 50 3 62

\$ 7.72

amt paid by Deft. 2 83

\$ 10.57