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NEW JERSEY COURT OF ERRORS & APPEALS.

HARRIS EAMES AND JOSEPH H. EAMES,
PLAINTIFFS IN ERROR,
vs.
ETHAN D. STILES, DEFENDANT IN ERROR.

In Error.
To Essex Circuit
Court.

STATE OF CASE.

ESSEX COUNTY CIRCUIT COURT
Of the twenty-eighth day of April as of April Term, A. D. 1862.
Present, Hon. DANIEL HAINES, *Judge.*

IN MATTER OF THE SUBMISSION TO ARBITRATION OF
ETHAN D. STILES
AND
HARRIS EAMES AND JOSEPH H. EAMES.

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Upon reading and filing the bond of submission and continuance thereof and affidavits of the witness thereto of the execution thereof—It is on the twenty-eighth day of April, in the year eighteen hundred and sixty-two, ordered by the court that the parties shall submit to and finally be concluded by the arbitration of the arbitrators therein made.

On motion in behalf of said Ethan D. Stiles,
By GEORGE F. TUTTLE, *Att'y.*

IN MATTER OF THE SUBMISSION TO ARBITRATION OF
ETHAN D. STILES
AND
HARRIS EAMES AND JOSEPH H. EAMES.

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It is ordered in this cause that the said Ethan D. Stiles show cause at the next term of this court why the award made in said cause by the arbitrators therein should not be set aside, and that the said Harris Eames and Joseph H. Eames be permitted to take depositions to be used in the argument of said rule.

Entered May 2, 1862. On motion of
HENRY J. MILLS, *Att'y, &c.*

BETWEEN
 ETHAN D. STILES
 AND
 HARRIS EAMES AND JOSEPH H EAMES.

} *In Arbitration.*

A rule having been granted on the second day of May, A. D. 1862, by this court in behalf of the said Harris Eames and Joseph H. Eames, for the said Ethan D. Stiles to show cause why the award made by the arbitrators should not be set aside, and the parties having been heard, and the court, having considered the matters submitted, do order the said rule to be discharged with costs.

On motion of GEORGE F. TUTTLE,

Att'y of Ethan D. Stiles.

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EXHIBIT No. 1.

Know all men by these presents, that I, Ethan D. Stiles, of the city of Newark, County of Essex, and State of New Jersey, am held and firmly bound unto Harris Eames and Joseph H. Eames of the same place, in the sum of five hundred dollars lawful money, to be paid to the said Harris Eames and Joseph H. Eames, or to their certain attorney, executors, administrators or assigns. To which payment well and truly to be made I bind myself, my heirs, executors and administrators firmly by these presents. Sealed with my seal and dated this fifteen day of May, A. D. eighteen hundred and sixty-one.

The condition of the above obligation is such that if the above bounden Ethan D. Stiles, his heirs, executors and administrators for and on his and their parts and behalf, do and shall well and truly stand to, obey, abide, perform, observe and keep the award, order, arbitrament, final end and determination of William G. Lord, Cornelius Walsh, and some third person to be selected by the said William G. Lord and Cornelius Walsh, or any two of them arbitrators as well for the above bounden Ethan D. Stiles, as of the above mentioned Harris Eames and Joseph H. Eames, to arbitrate, award and determine of and concerning all action and actions, cause and causes of action and actions, and demands whatsoever now existing between the said parties, so as the said award be made in writing and ready to be delivered to the said parties on or before the first day of July, now next ensuing: then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in the presence of }
 HENRY J. MILLS. }

E. D. STILES.

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I hereby assent to the choice and selection of John W. McLeod as the third person in the above arbitration.

E. D. STILES.

We, Ethan D. Stiles, of the one part, and Harris Eames and Joseph H. Eames of the other part, in the foregoing bond of submission named, do hereby agree to give and allow to the arbitrators therein mentioned and provided for, a further time for making their award until the thirty-first day of July next after the date hereof, and we do further declare and agree that all the provisions of said bond shall continue of full force and effect; except that the same shall be construed and read as if the day hereby given and allowed had been given and allowed for the making of the award in and by the said bond of submission. 10

In witness whereof, we have hereunto set our hands and seals the twenty-seventh day of June, in the year eighteen hundred and sixty-one.

Sealed and delivered in presence of	}	E. D. STILES,	}	20
		H. EAMES,		
HENRY J. MILLS.		JOSEPH H. EAMES.		

We, Ethan D. Stiles, of the one part, and Harris Eames and Joseph H. Eames of the other part, in the foregoing bond of submission named, do hereby agree to give and allow to the arbitrators therein mentioned and provided for, a further time for making their award, namely, until the 2d day of December next after the date hereof; and we do further hereby consent and agree that the said submission shall be made a rule of the Essex County Circuit Court at the instance of either of the said parties, their executors or administrators, and that all the provisions of the said bond shall continue of full force and effect, except that the same shall be construed and read as if the day hereby given and allowed had been given and allowed for the making of the award in and by the said bond of submission, and as if the same had embodied the provision herein contained for making the submission a rule of court. 30

Witness our hands and seals this thirtieth day of July, in the year eighteen hundred and sixty-one.

Signed, sealed and delivered in the presence	}	}	40
of, one word being erased, (September			
erased and December interlined, and re ac-			
knowledge August 28, 1861.)			
GEORGE F. TUTTLE.		E. D. STILES,	
		HARRIS EAMES.	
		JOSEPH H. EAMES.	

We, Ethan D. Stiles of the one part, and Harris Eames and Joseph H. Eames of the other part, in the annexed bond of submission named, do hereby agree to give and allow to the arbitrators therein named and provided for, a further time for making their award, namely, until the first day of January next after the date hereof; and do hereby continue all the other provisions thereof, 50

and of the continuance thereof endorsed thereon in full force and effect.

Witness our hands and seals this twenty-fifth day of November, in the year eighted hundred and sixty-one.

Signed, sealed and delivered in the presence } E. D. STILES,
of (four words first erased) } HARRIS EAMES,
GEORGE F. TUTTLE. } JOSEPH H. EAMES.

We, Ethan D. Stiles of the one part, and Harris Eames and
10 Joseph H. Eames of the other part, in the annexed bond of submission named, do hereby agree to give and allow to the arbitrators therein mentioned and provided for, a further time for making their award, namely, until the twenty-first day of February next after the date hereof; and we do further hereby consent and agree that the said submission shall be made a rule of the Circuit Court in and for the County of Essex, at the instance of either of the said parties, their executors or administrators, and that all the provisions of the said bond shall continue in full force and effect, except that the same shall be construed and read as if the day hereby given
20 and allowed had been given and allowed for the making of the award in and by the said bond of submission, and as if the same had embodied the provision herein contained for making the submission a rule of court.

Witness our hands and seals this twenty-sixth day of December, in the year eighteen hundred and sixty-one.

Signed, sealed and delivered in the } E. D. STILES,
presence of } HARRIS EAMES,
GEORGE F. TUTTLE. } JOSEPH H. EAMES.

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EXHIBIT No. 2.

40 Whereas Harris Eames and Joseph H. Eames of the city of Newark, in the county of Essex and state of New Jersey, did by their bond bearing date the fifteenth day of May, in the year eighteen hundred and sixty-one, became bound to Ethan D. Stiles of the same city in the penal sum of five hundred dollars, and the said Ethan D. Stiles by his bond of the same date also became bound to the said Harris Eames and Joseph H. Eames in the like sum, which bonds respectively were conditioned, that the said obligors should well and truly stand to, obey, abide, perform, observe and keep the award, order, arbitrament, final end and determination of
50 William G. Lord and Cornelius Walsh, and some third person to

be selected by the said William G. Lord and Cornelius Walsh, or any two of them arbitrators as well for the said Harris Eames and Joseph H. Eames, as for the said Ethan D. Stiles, to arbitrate, award and determine of and concerning all action and actions, cause and causes of action and demands whatsoever then existing between the said parties, and whereas the said William G. Lord and Cornelius Walsh did select as such third person John W. McLeod, and the said William G. Lord, Cornelius Walsh and John W. McLeod, having each severally first duly taken an oath faithfully and fairly to hear and examine the matters in difference submitted 10 to them and make a just and true award, according to the best of their skill and understanding, did proceed to hear and examine the matters so submitted to them as aforesaid, and have heard the allegations and proofs of the parties and considered the same.

Now, therefore, we, William G. Lord and John W. McLeod, two of the arbitrators aforesaid, do award and determine that the said Harris Eames and Joseph H. Eames are indebted to the said Ethan D. Stiles, at the date of this our award, in the sum of seven hundred and twenty-eight dollars and thirty-nine cents, and that the said Harris Eames and Joseph H. Eames do pay to the said 20 Ethan D. Stiles within ten days from the date of this our award, the said sum with interest thereon at the rate of six per centum per annum from the date hereof, and the said Harris Eames and Joseph H. Eames do pay to the said arbitrators the sum of fifty dollars, and that the said Ethan D. Stiles do also pay to the said arbitrators the like sum for their services in the said arbitration, and that the said Harris Eames and Joseph H. Eames do make the said payment to the said Ethan D. Stiles, and the said Ethan D. Stiles do receive the same in full settlement and satisfaction of all matters in difference so submitted to us as aforesaid. 30

In witness whereof, we have hereunto set our hands this eighteenth day of February, in the year eighteen hundred and sixty-two.

Witness present,

WM. G. McDONALD. }

WM. G. LORD,
JOHN W. MCLEOD.

ESSEX CIRCUIT COURT.

IN THE MATTER OF ARBITRATION BETWEEN ETHAN D. STILES OF THE ONE PART AND HARRIS EAMES AND JOSEPH H. EAMES OF THE OTHER PART.	}	<i>On Rule,</i> <i>to show cause why the</i> <i>award should not be</i> <i>set aside.</i>
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The following are the reasons relied upon by the said Harris Eames and Joseph H. Eames for setting aside and vacating the award made by William G. Lord and John W. McLeod, two of the arbitrators named in the submission in this case.

First. Because the said award is unjust and partial, and contrary to the evidence given in said cause.

Second. Because the William G. Lord and John McLeod misbehaved themselves and acted in a partial manner in the conduct of the said arbitration, by receiving testimony and taking evidence when the other arbitrator was not present; and when the said Harris Eames and Joseph H. Eames or either of them, or any person in their behalf were not present, and in other respects manifesting great partiality and unfairness.

Third. Because William G. Lord, one of the said arbitrators, took and received testimony and information relative to the matter submitted to said arbitrators, from the said Ethan D. Stiles and others privately and unknown to the said Harris Eames and Joseph H. Eames and the other arbitrators, and in their absence.

Fourth. Because the said award was determined upon by the said William G. Lord and John W. McLeod in the absence of Cornelius Walsh the other arbitrator.

Fifth. Because the said award was not made in the presence of all the arbitrators.

Sixth. Because the award given to said Harris Eames and Joseph H. Eames was not submitted to the said Cornelius Walsh for his signature or approval, nor signed in his presence.

Seventh. Because the award actually signed by the said Cornelius Walsh was suppressed by the said William G. Lord and John W. McLeod.

Eighth. Because a certain award was made by the said William G. Lord and John W. McLeod and submitted to the said Cornelius Walsh, to which award the said Walsh annexed his protest and signed the same, and which award was afterwards suppressed by said William G. Lord and John W. McLeod, and a new award was made by them without consultation with or submission to said Cornelius Walsh, to wit, the award now in question.

Ninth. Because the said award was procured by undue means.

HENRY J. MILLS,

Att'y of Harris Eames and Joseph H. Eames.

ESSEX CIRCUIT COURT.

IN MATTER OF ARBITRATION BETWEEN ETHAN D.	} <i>On Rule.</i>
STILES OF ONE PART,	
AND	
HARRIS EAMES AND JOSEPH H. EAMES OF THE	
OTHER PART.	} <i>To show</i> <i>cause, &c.</i>

Testimony taken before me, Staats S. Morris, a Supreme Court Commissioner, at my office in the city of Newark, on this tenth day of September, in the year one thousand eight hundred and sixty-two, in pursuance of a notice of the taking of depositions and making of exhibits to be used on the argument of the above rule, the service of which notice is admitted. Present, Henry J. Mills, Esq., att'y, and J. P. Bradley Esq., of council for H. and J. H. Eames, and George F. Tuttle, Esq., att'y for Ethan D. Stiles. 10

The counsel for Eames offer in evidence the submission to arbitration and the several continuations thereof as contained in the original arbitration bond of Ethan D. Stiles and the papers thereto annexed which I have marked exhibit No. 1, on the part of Eames. The execution of which are admitted. Also the award signed by William G. Lord and John W. McLeod, dated 18th of February, 1862. The execution of which is admitted, and which I have marked exhibit No. 2 on the part of Eames.

HARRIS EAMES sworn on the part of Harris Eames and Joseph H. Eames, says as follows: 20

Exhibit No. 2 being shown to the witness, he says, That is the award that was delivered to me upon the arbitration, I believe. It was handed to me by William G. Lord, in Newark, at his house a few days after the date of the award, which is the 18th of February, 1862. It was on Saturday Evening. As soon as I learned it was ready I went for it, and Dr. Lord handed me this. I never saw any other than this. I am one of the parties to the arbitration.

Question—What were the matters of difference between you and and Joseph H. Eames on one side and Ethan D. Stiles on the other, 30 which were submitted before the arbitrators? (Objected to.)

Answer.—Mr. Stiles claimed a balance due him on account. I claimed damage for stock badly Japanned. That was the amount of the difference understood before the arbitration. After the arbitration was commenced Mr. Stiles annulled the contract which was between me and him and claimed a deduction of half in our account from the contract that was entered in the books from the

beginning for retanning splits. He made some new charges against me which were incorrect. There were a number of little items, I don't know that I can bring them to my mind know.

Q.—What were your business relations to one another, and how did they begin? (Objected to.)

A.—They began by—we carried on tanning and currying; Mr. Stiles carried on the japanning. We entered into an arrangement together in the month of May, 1858. We bought hides together, each being at half the expense. I prepared the hides for japanning 10 and he japanned them. The first tanning of the hides we hired done, and bore the expense equally, then our firm split them and retanned and curried them ready for japanning. except he took them from the sumac tub, then he took them and japanned them and delivered them to us, that is we divided them, or divided the proceeds.

Q. Was any rate agreed upon between you and Stiles at which you were to be paid or allowed for what you did, and Stiles was to be paid or allowed for which he did? (Objected to.)

A. We verbally agreed upon a set of prices.

20 Q. How long did this arrangement continue? (Objected to.)

A. It extended into 1860.

Q. Did you make settlements with one another or render bills to one another under this arrangement? (Objected to.)

A. Yes. We always, I think, passed bills between us for the different kinds of work done.

Q. Have you here your books of account, in which are contained your accounts relating to said business? (Objected to.)

A. Yes. (Witness produces a ledger, which I have marked Exhibit No. 3, for the Eames, a day-book which I have marked 30 Exhibit No. 4, for the Eames, and a book containing an account of some hides bought, which I have marked Exhibit No. 5 for the Eames.) Witness says—These are the books.

Q. Were these books used in evidence before the arbitrators? (Objected to.)

A. Yes.

Q. Under what head of account in these books do the matters relating to said business appear?

A. Under the head of E. D. Stiles in all the books.

Witness being shown twenty-seven different bills, purporting 40 to be bills rendered, which I have marked Exhibits Nos. 6 to 32 inclusive, is asked.

Q. Were those bills used in evidence before the arbitrators, and please state what they are?

A. They were used in evidence before the arbitrators; they are bills for retanning stock, splits mostly; they were our bills rendered to Mr. Stiles from time to time during the progress of the business.

Q. Up to the time the business was discontinued, did Mr. Stiles ever object to those bills? (Objected to.)

50 A. No sir.

Q. Please to state the principal prices agreed upon between you and Stiles that you should respectively be allowed for what you respectively did to the hides? (Objected to.)

A. We were to have for what we did to the hides \$1 21 apiece for preparing them; for the splits we were to have 65 cents apiece; Mr. Stiles was to have \$1 17 for his work on the hides or \$1 21 if he prepared them, and for the splits he was to have three cents a foot for the jappanning.

Q. Were or were not settlements frequently made between you and Mr. Stiles on the bases of these prices? (Objected to.) 10

A. Yes. There were; we frequently settled in reference to the work.

Q. What part of this arrangement became a matter of dispute between you? (Objected to.)

A. He claimed at the time the arbitration was commenced, that we should not have charged him but 32½ cents for re-tanning the splits.

Q. Was, or not that the principal matter of difference on the business done between you? (Objected to.)

A. I knew of no such difference until after the commencement of the arbitration; he never had made a claim upon me for this difference until the arbitration commenced. 20

The counsel for Eames now asks the production of Stiles' books of account which were used before the arbitrators pursuant to notice, a copy of which is now produced and marked Exhibit No. 33, on the part of Eames. Mr. Stiles by his counsel admits that a notice of similar import to this Exhibit was served upon him this morning, and says he refuses to produce any of the books or papers referred to therein.

Q. Were Mr. Stiles' books of account relating to this business produced before the arbitrators? 30

A. They were.

Q. Did they contain any and what credit if any, to you, for preparing the splits? (Objected to.)

A. They did. They were credited according to the bills rendered him, which I hold in my hands, that is 65 cents a piece.

(The bills referred to by witness are the bills marked Exhibits No. 6 to 32).

Q. On what account or business did you claim damages from Stiles for badly jappanning leather? (Objected to.) 40

A. Mostly on leather of our own jappanned by him for us, distinct from the joint business above mentioned.

Q. Did you, or not claim compensation for purchasing hides on joint account? (Objected to.)

A. I did. I think it was brought before the arbitrators.

Q. Were there any balances on Stiles' ledger of this joint account, or of that in connection with your other dealings? (Objected to.)

A. Yes sir.

Q. Were any of those balances at any time settled? (Objected to.) 50

A. Yes, settled by note.

Q. Were or not those balances based on the charges for preparing splits, and other charges as above stated by you? (Objected to.)

A. They were.

Cross-examined by Mr. Tuttle.

Q. Are these books which have been marked exhibits, all the books offered by you before the arbitrators?

A. I believe they are. The bills before referred to were rendered part of the time by me and part of the time by my son; mostly by my son; they were sent to Mr. Stiles by his man who did the carting; generally I have delivered bills to Mr. Stiles personally, but whether any of these I cant say; I should think I had. Mr. Stiles' son and my son kept the books, we were altogether. I gave him notes for the balances. I gave the notes to him in two instances certainly, probably more; in other instances they were given to his son. The giving of those notes was in our shop I think twice in our shop. Mr. Stiles' books I think were there, or a statement brought by his son showing the balance; at one time certainly his books were there and the account was looked out, and probably more times; Mr. Stiles was present; I think the statement contained items from the time of the last settlement; at some times it might have been merely the balances; Mr. Stiles' books were mostly in his son's hand writing; his son was his book keeper.

Re-examined by Mr. Bradley.

Q. By which sides were the bills called Exhibits Nos. 6 to 32 produced on the examination before the arbitrators? (Objected to.)

A. By Mr. Stiles, on notice given by us, a verbal demand.

30 Q. Was there any arrangements as to how often settlements should be made between you and Mr. Stiles? (Objected to.)

A. It was understood between me and Mr. Stiles when we commenced the business, that we should settle about once a month, but we did not regularly settle once a month.

Q. Was or not the matter to which you have now testified proved before the arbitrators?

A. They were clearly proved.

HARRIS EAMES.

40 Sworn and subscribed before me, at Newark, this 10th day of September, A. D. 1862.

S. S. MORRIS,

Supreme Court Commissioner.

Adjourned to 3 o'clock P. M.

CORNELIUS WALSH sworn on the part of Harris and Joseph H. Eames, maketh answers as follows: I reside in Newark; I was one of the arbitrators in this case.

Q. Please to state as succinctly as you can what were the matters in difference between the parties which were submitted to the arbitrators? (Objected to.)

50 A. I don't know as I can state all the matters in difference between the parties; it is some time since. One point of differ-

ence was a charge of work done by Mr. Stiles for Eames & Son ; it was a difference in price for work done ; Eames claimed the price to be 65 cents ; I mean work done by Eames & Son for Stiles ; there was quite a list of differences.

Exhibit No. 2 on the part of Eames & Son being shown to witness he is asked.

Q. Was that award ever submitted to you for your consideration ?

A. This award was not.

Q. Did you ever see it before, if so, where ?

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A. I never saw this one before.

Q. Was an award presented to you at or about the date of this award by the other arbitrators, or either of them, for your consideration, and if yea, what did you do with it or in reference to it ?

A. There was an award sent to me by Dr. Lord at my request, at the bottom of which award I appended a note ; I think it read somewhat as follows ; "I object to the above award, believing it to be against the facts and evidence in the case ;" those were the words I think.

Q. Was it signed by the other arbitrators ?

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A. It was.

Q. What disposition did you made of that award ?

A. I returned it to Dr. Lord ; I have not seen it since.

Q. Was any statement made showing the items upon which the other two arbitrators came to their conclusion ? (Objected to.)

A. There was a statement.

Q. Is that the statement ? (Objected to. Counsel here handed to the witness a paper which I have marked Exhibit No. 34 for the Eames.)

A. This exact paper was not made out in my presence ; there were minutes kept by Dr. Lord, whom we appointed our secretary ; this paper was sent to me by Dr. Lord, which I suppose is a copy of the minutes of the doings of the arbitrators ; the hand writing at the beginning is Dr. Lord's ; I can't say whose hand writing the body is ; the end, I think, is Dr. Lord's, containing a statement in figures of the result.

The counsel for Mr. Eames here requests the counsel for Mr. Stiles, or the other arbitrators who are present to produce the said paper that was signed by Mr. Walsh, if they have the same.

The counsel for Mr. Stiles here says, he desires that the request shall not be complied with.

Mr. McLeod says that he has not got it, and never saw it except to read it.

Dr. Lord says he has no counsel here, and at this stage of the proceedings objects to produce it.

Q. (To the witness, who had been requested to read the statement marked Exhibit No. 34 just handed to him.) Have you read that paper ?

A. Yes.

Q. Does that paper or not contain the particulars upon which the other arbitrators made their award ? (Objected to.)

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A. I think it does.

Q. Was it furnished to you as a statement of such particulars ?
(Objected to.)

A. It was.

Q. Two letters from William G. Lord to the witness, bearing date respectively, Newark, February 19, 1862, and Newark, February 21, 1862, which I have marked Exhibits Nos. 35 and 36 for the Eames, being shown to the witness, he is asked—in whose hand writing are those papers ? (Objected to.)

10 A. I believe them to be in Dr. Lord's hand writing ; I received them from him about the time of their dates respectively.

Q. What is referred to in the letter of the 19th of February by the term "minutes of the decision of our arbitration ?" (Objected to.)

A. It referred to the minutes kept of our meetings in this case.

Q. A paper and duplicate are referred to in the postscript of that letter ; do you know what are referred to thereby ? (Objected to.)

A. I suppose them to refer to the award made the arbitrators.

20 Q. What paper is referred to in the letter of the 21st as having been sent to you ? (Objected to.)

A. One of the papers referred to in the letter of the 19th, I presume the one that I signed.

Q. Were the other arbitrators present when you signed the protest to the award to which you refer ?

A. No.

Q. Were you present when they signed any award in this case ?

A. No ; I was not

30 Q. Were you requested to be present at the signature or execution of any award that was signed in this case ?

A. I was not ; at the conclusion of our deliberations, it was agreed that Dr. Lord should make out the award.

Q. Did Dr. Lord have any directions as to the form in which to make out the award ? (Objected to.)

A. He did ; the directions were to give all the particulars or items.

40 Q. Did you learn from either of the other arbitrators whether or not he or they had taken or procured any evidence in the case or information relating to it other than what was given before the arbitrators ? (Objected to.)

A. Dr. Lord stated that he had seen John W. Simpson and inquired as to the prices for tanning and currying ; that he had Mr. Simpson's figures in a drawer ; he referred to this fact two or three times ; Mr. Simpson had been sworn in the case before the arbitrators and had given his evidence ; Mr. Lord found fault with Mr. Simpson's testimony as given before the arbitrators, saying that his testimony did not agree with the statement given to him, Mr. Lord, by Mr. Simpson.

50 Q. At what time did you understand that these statements were given to him ?

A. During the pending of the arbitration, before Mr. Simpson gave his evidence before the arbitrators.

Q. Did the arbitrators consider and pass upon a claim made by H. Eames & Co. against Stiles for allowance of a bill of goods sold Samuel B. Pierce, Boston, the amount of which had been credited to Stiles but not paid by Pierce? (Objected to.)

A. They did not?

Q. Was not such a claim made by the Eames before the arbitrators?

A. There was; but it did not appear in the memorandum furnished us by the attorneys; we had a memorandum from each of them.

Adjourned to to-morrow evening at 7 o'clock.

Thursday evening parties appeared, and proceeded with the examination of Mr. Walsh.

The witness here wishes to correct his testimony as given yesterday in relation to the Pierce bill as contained in the two last questions and answers. He says, at one time during our deliberations the Pierce bill was referred to; Mr. McLeod on examining the memorandum of counsel said the Pierce bill was not on the memorandum, but on closer examination of the memorandum we found it at the foot of the memorandum in brackets; from this announcement I was impressed yesterday when I gave in my testimony that the Pierce bill was not on the memorandum. In regard to the action of the arbitrators on that bill I cannot say positively that it was passed upon.

Cross-examined by Mr. Tuttle.

Q. Exhibit No. 2 being shown to the witness he is asked—Have you read that award through at any time?

A. I have not read this.

The witness here is requested to read Exhibit 2, which being done, he says, I have.

Q. How does that award differ from the one to which you appended your note? (Question objected to because Mr. Stiles has it in his power to have the other produced.)

A. I don't know that there is any difference; I have not read the other award to which I appended the note, since about the 21st day of February last.

Q. Was that the time you so appended it?

A. About the 21st; I think it was on the 21st.

Q. Did you meet with the arbitrators regularly in the hearing of the cause, and the deliberations of the arbitrators thereon?

A. I did in the hearing of the cause; Dr. Lord and Mr. McLeod met once or twice in my absence at my request to examine books, for the purpose of collecting certain particulars to aid us in our deliberations when all together.

Q. Were those all the exceptions?

A. I think they were, as far as I know.

Q. Were those meetings in your absence, meetings for determi-

nations on the merits or simply for such preparations and examinations as you have mentioned solely?

A. As far as I know, they were simply as far as my understanding, for preparations and examinations.

Q. At the last meeting of the arbitrators which you attended, was or not the award finally determined upon and the amount thereof settled by the arbitrators or two of them?

A. It was.

10 Q. Was not the amount of the award fixed and the determination to award in favor of Mr. Stiles that amount, settled at the last meeting of the arbitrators you attended by a majority of the arbitrators?

A. With the exception of the interest which I am not certain, sure about, I think it was.

Q. Did not Mr. Lord, one of the arbitrators at that meeting, produce a paper purporting to be an award, and read it in the presence of all the arbitrators awarding the same amount as contained in Exhibit No. 2; the same in form substantially, and did not both he and McLeod agree to it and say they would sign it?

20 A. My answer is *no*.

Q. At that last meeting did not the arbitrators adjourn to noon of the next day to sign the award, and were you not notified to be present at that time?

A. I have no recollection of such an adjournment, and the only notice I received was contained in one of these letters; the one marked Exhibit No. 35.

Q. When was the award to which you appended your note, sent to you?

A. I received it on the 21st of February, I think.

30 Q. How many days was that after your last meeting with the other arbitrators?

A. Our last meeting was on the 18th.

Q. You say in your direct examination that you were not requested to be present at the signature or execution of any award in this case. What is referred to in this letter?

40 A. The postscript of this note reads thus: "I have a paper and duplicate as prepared by Mr. Tuttle, and will retain it until say to-morrow noon; if I do not hear from you by that time I suppose that I may take it for granted that you still decline to sign such a paper when Mr. McLeod and myself will sign it, and report the award when we get the hundred dollars." One thing referred to is this. I refused at the last meeting of the arbitrators to sign the award, unless the particulars were stated in that award, but to my knowledge no time was fixed when we should all meet to sign it.

Q. Who gave the directions to Dr. Lord of which you spoke in your direct examination, as to the particulars or items of the award?

50 A. There were differences of opinion in regard to the form, but

after some considerable conversation, it was agreed that the particulars should be stated in the award.

Q. Did Mr. McLeod agree to any such thing?

A. He objected at first, but afterwards I think he did.

Q. Did Dr. Lord agree to any such thing?

A. I think he did.

Q. Can't you be positive one way or the other on those points, and if so state?

A. I left the meeting fully impressed that the particulars would be given in the award, and when I received Dr. Lord's note, 10 dated February 19, I was surprised to find that he did not intend to give the particulars.

Q. The last question repeated?

A. I am positive in what I state then.

Q. I think the last answer is not responsive directly to my question and I repeat it, and request a categorical answer.

A. I can answer your question sir, in connection with the above answer; I am positive.

Q. Are you positive that they both did so agree?

A. I am. 20

Q. When did Dr. Lord tell you that he had talked with Simpson as to the prices; was it at a meeting of the arbitrators for deliberation on the cause or not?

A. It was.

Q. Was Mr. McLeod present at that time?

A. I think he was.

Q. Did Dr. Lord speak to you or in your presence of his having spoken to Simpson about prices at any other time, or in any other place than in a meeting of the arbitrators during the progress of the arbitration? 30

A. He stated to me in substance the same thing at a meeting of the arbitrators in the office of Mr. Mills, during the arbitration, that is during the trying of the cause. At one time when the Doctor referred to Mr. Simpson's testimony, he showed considerable feeling, and said if Mr. Simpson was put upon the stand again, he would give his, Simpson's, testimony, a thorough sifting that his, Simpson's, statements to him did not agree with his testimony before the arbitrators. I am giving the substance of what he said without giving the exact words.

Q. You said the Dr. spoke of his having talked with Simpson 40 in the meetings of the arbitrators for deliberation two or three times, did you not? if not, what did you say about that?

A. You already have my answer as I understand the question.

Q. Did Dr. Lord, in the meetings of the arbitrators for deliberation, say more than once that he had talked with Simpson about prices, and if so how many times?

A. He did more than once, the exact number of times I cannot say, when the Dr. referred to Simpson's statement at one time in his house, I replied, we must decide these questions on the testimony taken before us, and not by statements made out 50 side.

Q. Did he speak of it there more than three times ?

A. I cannot say.

Q. You said in your direct examination that Dr. Lord said he had Mr. Simpson's figures in a drawer ; was that in a meeting of the arbitrators at Dr. Lord's house ?

A. I cant say positive, but I think it was.

Q. Are you not mistaken about Dr. Lord having spoken to you, or in your presence ; was it not Mr. Simpson that told you ?

A. I am not mistaken.

10 Q. Did you never talk to Mr. Simpson on that subject ?

A. I did.

Q. When ?

A. I cannot say.

Q. Was it before the award was made ?

A. I confess I can't say whether it was before or after.

Q. Why did you mark the award as you did ; did you suppose that was right for you to do ?

A. To the first question I answer, because I believed it to be unjust ; to the second question I answer, I most certainly thought
20 it was right.

Q. Then I understand you that if you don't think a paper right it is your province to thus deface it. (Objected to as improper.)

A. I dont believe I did deface it.

Q. If you did not think it right you were not required to sign it, were you ? (Objected to.)

A. I suppose not, neither did I think it right that such a paper without an expression of my views in relation to it should go forth to the parties.

30 Q. Was it necessary that all the arbitrators should join in the award, or could two of them make the award ?

A. Two of them did make the award in the main.

Q. Was it necessary to that paper's validity at all that you should sign it ?

A. Not being fully read in law, I could not say ; it covers a good deal of ground.

Re-examined by Mr. Bradley.

Q. When you received the letter of the 19th of February did you make any request to have the paper maintained in the post-
40 script sent to you ?

A. I did. I sent a note requesting Dr. Lord to forward to me the paper or papers, I can't say which.

Q. Did he send one or both to you ?

A. He sent one only.

Q. Was that the one to which you appended your protest and signature as mentioned in your direct examination ?

A. It was.

CORNELIUS WALSH.

Sworn and subscribed before me at Newark, this 11th day of September, A.D. 1862.

S. S. MORRIS,

Supreme Court Commissioner.

JOHN W. SIMPSON sworn on the part of Harris and Joseph H Eames, maketh answers as follows :

Q. Where do you reside and what is your occupation ?

A. I reside at Elizabeth, formerly in Newark, and was engaged in the latter place in the patent leather business for several years.

Q. Were you examined as a witness before the arbitrators William G. Lord, Cornelius Walsh and John W. McLeod in the matter of difference between the parties in this case ?

A. I was.

Q. How many times were you examined before the arbitrators ? 10

A. Once.

Q. At whose request did you attend as a witness before them ?

A. Mr. Eames.

Q. Were you examined in relation to any of the matters submitted to said arbitrators by either of the arbitrators at any time, other than when you were examined before them all as a witness ? If so, please state the particulars ?

A. I didn't know that I was examined, I was asked by one of the arbitrators at different times questions in reference to the matters in dispute and which were being arbitrated upon. 20

Q. Which one of the arbitrators asked you these questions ?

A. Dr. Lord.

Q. Did he ask these questions whilst the arbitration was pending ?

A. Yes.

Q. Was it before or after your examination as a witness as before mentioned ?

A. Before.

Q. What persons were present besides Dr. Lord and yourself when these questions were asked by him ? 30

A. None that I recollect.

Q. Where did he ask these questions ?

A. At his own door.

Q. Did you answer the questions which he then asked you ?

A. Yes ; I think I did.

Q. Did he in your presence make any memorandum in writing of the answers which you thus made ?

A. None whatever.

Q. Were you applied to by either of the arbitrators to know if you could give evidence in the case before you had been examined ? 40

A. Yes, I was, by Dr. Lord.

Q. In what manner was the application made ?

A. It was made in one of those conversations which we had, when he asked me if I would give evidence for Mr. Stiles.

Q. Did either of the other arbitrators ever question you (except on your examination as a witness) relating to the matters in dispute before them pending the arbitration.

A. No.

Q. You spoke of Dr. Lord putting questions to you at different times ; did this always occur at his door or at different places ?

A. I am not certain ; once it occurred whilst we were standing together at his door, and once when we were sitting within the hall of his house.

Cross-examined by Mr. Tuttle.

Q. How many different times did Dr. Lord speak to you about those matters as you have stated ?

A. Twice I am certain of.

10 Q. Did he more than twice ?

A. I am not certain.

Q. Are you sure he made no memoranda ?

A. I didn't see him make any.

Q. Did you make any ?

A. Certainly not.

Q. Did you ask him to make any ?

A. Certainly not.

Q. Did you ask him to make any figures ?

A. I did not.

20 Q. Did you tell him to take his pencil and put down the amounts you said, or anything to that effect ?

A. Nothing of the kind ; nor did I dream that he was intending anything of the kind.

Q. Did not Dr. Lord ask you if you was going to be examined in the Stiles and Eames matter, instead of asking you if you would give evidence for Mr. Stiles, or something to that effect ?

A. No.

30 Q. Did Mr. Walsh speak to you pending the arbitration, relative to your giving testimony in that cause, or ask you any questions relative to prices for such work as was being considered by the arbitrators ?

A. To the first I answer no ; to the second I answer no.

Q. One conversation you say was at Dr. Lord's door, and one in his hall ; how long an interval was there between them ?

A. I cannot say.

Q. Was it all the same day ?

A. No.

Adjourned till to-morrow morning at 9 o'clock.

40 Friday, September 12, 1862, parties appeared and continued the examination of Mr. Simpson.

Mr. Bradley, the counsel for the Eames, put the following question, which he inadvertently omitted as he states.

Q. What were the questions or some of them, which Dr. Lord asked you as stated in your direct examination ?

50 A. He asked me respecting the manner in which leather might be damaged ; whether that damage might be caused by the preparation of the leather for japanning, or in japanning itself ; he asked me what was the cost of re-tanning splits, and afterwards he asked me what was the cost of re-tanning splits and preparing them for japanning ; he asked me some questions respect-

ing some of the witnesses that had been examined touching their competency to testify on that subject.

Cross-examined by Mr. Tuttle.

Q. Who were those witnesses he asked you about ?

A. One of them was James Perry ; another was David Crocket, who he said had been examined.

The examination being here read over to the witness, when the following question and answer in the direct examination was read to him, to wit : (Did either of the other arbitrators ever question you (except on your examination as a witness) relating 10 to the matters in dispute before them pending the arbitration ? A. No.) He said in explanation, when I made that answer, I did not forget what Mr. Walsh had stated on his examination ; the answer is right as it stands, but Mr. Walsh did speak to me, in the following manner : He said Dr. Lord has been speaking to you in reference to the matter being arbitrated upon between Mr. Eames and Stiles ; I asked him how he knew that ; he said Dr. Lord had told him so, and that he told him he had it in black and white, what I had said ; I told him he had no black and white from me, nor did I know that he had ; I added that I had men- 20 tioned the conversation to no one, and I did not think that Dr. Lord had been so foolish to do so ; that is all the conversation I had with Mr. Walsh.

Cross-examination resumed by Mr. Tuttle.

Q. When was this conversation between you and Mr. Walsh ?

A. It was shortly after I had been examined ; I think it was not more than a week after.

Q. Did you give Dr. Lord any estimate in reply to his questions about the price of work ?

A. Yes ; I think I did. 30

Q. What was the amount you gave him as the price for retanning and preparing splits ? (Objected to.)

A. I do not remember.

JOHN W. SIMPSON.

Sworn and subscribed before me, at Newark, this 12th day of September, A. D. 1862.

S. S. MORRIS,

Supreme Court Commissioner.

HENRY J. MILLS sworn on the part of Harris and Joseph H. Eames, maketh answers as follows :

Q. Did you take any, and what part in the arbitration in this 40 case ?

A. I was counsel, and tried the cause for Harris Eames and Joseph H. Eames.

Q. State what matters in difference between the parties were presented for the consideration of the arbitrators ? (Objected to.)

A. On the part of Mr. Stiles (he had the initiative) a balance of account was claimed due from Messrs. Eames to him on a business or adventure which Mr. Stiles and Messrs. Eames had had between them during the years 1858-59 and extending into 1860 ; I think also accounts of Mr. Stiles against the Eames outside of 50

that mutual adventure; the adventure consisted in both Mr. Stiles and Messrs. Eames purchasing hides for the purpose of making japanned or patent leather, Messrs. Eames retanning and preparing the hides for japanning, and Mr. Stiles japanning the same, and afterwards mutually dividing the stock; they both furnishing the capital equally for the purchase of the stock, the Messrs. Eames to receive or be allowed a certain price for their part of the work, and Mr. Stiles to be allowed a certain price for his part of the work; on the part of the Messrs. Eames, was claimed
 10 the amount due on their books of account, also damages against Mr. Stiles for imperfect japanning of leather furnished by the Messrs. Eames to him to be japanned, for the most part outside of the adventure; also loss and damage by reason of the delay of Mr. Stiles in japanning said leather; also allowance for purchasing hides by Mr. Eames during the adventure, the same being purchased by Mr. Eames alone; also allowance for the amount of a bill of goods bought by Mr. Eames of Mr. Stiles, and afterwards sold to Mr. Pierce, of Boston, Mr. Eames claiming that it was agreed between Mr. Stiles and himself that he should not
 20 receive the pay for said goods until they got it, or Mr. Pierce, to whom the goods were sold, should pay for them.

Also items charged in Mr. Stiles' books were excepted to by Mr. Eames as being improper and charged out of time in his books; also other items on the books which Messrs. Eames claimed they had never had.

On the part of Mr. Stiles a general charge running through the adventure, and contained in Messrs. Eames books of account of 65 cents apiece for retanning and preparing splits, and $32\frac{1}{2}$ cents for half splits, or side splits were objected to as being wrong; he
 30 claiming it should be $32\frac{1}{2}$ cents for the splits, and the half of that for the side splits.

Counsel for Mr. Stiles objects to the entire answer last made by the witness because it is improper in subject matter upon the rule to show cause in this case.

Q. What difference in the result did the last mentioned difference in price make? (Objected to.)

A. \$271 31.

Q. How did those prices appear on Mr. Stiles own books? (Objected to.)

40 A. At the same price and rate that they appeared on the Messrs. Eames books, and as claimed by them.

Q. During the proceedings in arbitration, did anything occur, and if so, state what, showing that either of the arbitrators and which of them received private communications or information from Mr. Stiles relating to the matters under submission in the case?

A. Yes; on one occasion at a meeting at my office of the arbitrators during the trial of this cause; but at what precise date I am unable to state; but I think in the month of July, 1861, and
 50 a short time before the date of the second continuation of the

arbitration endorsed upon the bond; that continuation which authorises either party to make the award a rule of court; I saw Mr. Stiles hand Dr. Lord a small book apparently a memorandum book, and also look over the book with him; my attention was attracted to it and I supposed at the moment, that it related to some church matters, as they belonged to the same church, and church matters were sometimes talked about during the arbitration; but something induced me to find out more about it, and I got up from my chair in front of the Dr. and moved around so that I could see the book; I then suspected that it related to the 10 cause, and without saying anything to Dr. Lord (by Dr. Lord I mean William G. Lord, one of the arbitrators,) I called Mr. Tuttle, the counsel on the other side, into the back room and stated to him what I had seen, and expressed to him my doubts about the propriety of my going on further with the arbitration; Mr. Tuttle disclaimed any knowledge of what was in the book, and after some little conversation between us, we both returned to the front office; when Mr. Tuttle took the book from Dr. Lord, I asked to see it; I found it contained in Mr. Stiles hand writing remarks upon the evidence given by the Messrs. Eames in the 20 cause and answers thereto; the precise words I can't now state; the book was surrendered up to Mr. Stiles; then, after that occurred, I had a private interview with Mr. Tuttle in the back office and stated to him that I would only consent to go on with the arbitration upon the conditions of a clause being inserted in the next continuance making it within the power of either party to make the award a rule of court, so that I could have the advantage of the misconduct of Dr. Lord on a rule to show cause; at any rate I know that it was understood between us that I should have the benefit of the objection notwithstanding the con- 30 tinuance of the arbitration.

Cross-examined by Mr. Tuttle.

Q. At the time of this book of which you have spoken as being in Dr. Lord's hands, were not all the parties to the arbitration, their counsel and all the arbitrators present.

A. I think all were there with the exception perhaps of one of the Eames's.

Q. At that time were we not discussing the making of a continuance of the arbitration, and the time to which it should be continued? 40

A. It may have been, although now I don't recollect.

Q. Had not at that time a continuance of the arbitration been endorsed upon the arbitration bonds by the counsel for Mr. Stiles, leaving only the time blank?

A. I do not recollect that circumstance. The continuances on the arbitration bonds were all drawn by M. Tuttle, and with the exception of the first was executed before him, without my being present.

Q. Who is the subscribing witness to the execution of the first continuance? 50

A. I am.

Q. Where was that continuance executed ?

A. I do not now recollect.

Q. Were all the parties to the arbitration present and signing that first continuance at one and the same time ?

A. I do not recollect that, for sometimes Mr. Harris Eames was present alone at the arbitration, and sometimes his son Joseph H. Eames.

Q. Was there any concealment of the matter by Dr. Lord ?

10 A. No sir.

Q. Did not Dr. Lord say when he was spoken to about it, that he hoped he had done nothing wrong ?

A. I don't recollect those words Dr. Lord disclaimed any intentional misconduct.

Q. Did he not say then, that that would produce no effect whatever on his judgment in favor of Mr. Stiles ?

A. He said something to that effect.

Q. Can you tell what kind of a book that was ?

A. It was a small book ; a pass book, or of that size.

20 Q. Can you tell anything which was in that book, whether it was in the form of questions to be propounded to witness who should be called before the arbitrators, or of assertions ?

A. I don't remember any questions being in it, to be propounded ; from what I saw of the contents of the book, it appeared to be as I have stated replies to Mr. Eames evidence and remarks thereon.

Q. Can you say how long the books was in Dr. Lord's hands ?

A. Somé little time, before I took Mr. Tuttle into the back room, and during the time that Mr. Tuttle and I were there, and
30 until the book was taken from him by Mr. Tuttle ; long enough to have read a considerable portion of it.

Q. Was it in his hand two minutes in all ?

A. Yes, and more.

Q. How much more ?

A. I think it was in his hands three minutes before I went into the back office with Mr. Tuttle, because I think my suspicions were excited somewhat by the length of time he appeared to be consulting the book ; Mr. Tuttle and I were in the back office for a little while ; I cant now state how long before we came back
40 into the room, so that the whole transaction must have taken more than two minutes ; I cant state how long altogether.

Q. Was not the door between the two rooms open all the time we were in the back room ?

A. Perhaps so ; I dont recollect about that.

Q. After thinking more particularly of the circumstances did this occur before the first continuance was executed or before the second ?

A. I still think it was before the second.

Q. Do you think that at that time you insisted that the con-
50 tinuance should contain a clause as you have stated for making

the award a rule of court as a condition of making such continuance, or did that proposition come at some time first from the counsel of Mr. Stiles?

A. I know that at that time the putting in a clause in the continuance making the award a rule of court was discussed and insisted upon by me; I do not recollect that the suggestion came first from Mr. Tuttle.

Adjourned to to-morrow morning at 10 o'clock.

Saturday, September 13, 1862; parties appeared and having closed the testimony of the witness, Henry J. Mills, it was signed 10 by him.

HENRY J. MILLS.

Sworn and subscribed before me at Newark this 13 day of September, A. D. 1862.

S. S. MORRIS,

Supreme Court Commissioner.

Adjourned to Monday morning next at 10 o'clock.

Monday September 15, 1862; parties appeared and proceeded with the taking of depositions

JOHN W. McLEOD sworn on the part of Ethan D. Stiles maketh answers as follows:

Q. Were you one of the arbitrators between Ethan D. Stiles 20 of the one part, and Harris Eames and Joseph H. Eames of the other part, upon the award in which case this rule is taken?

A. I was.

Q. Were Harris Eames and Ethan D. Stiles and Charles H. Stiles sworn before you in that arbitration, and did they give testimony before you?

A. They were sworn and gave evidence before the arbitrators.

Q. Mr. Harris Eames has testified before the commission upon this rule that Mr. Stiles never claimed that the price for preparing splits would be $32\frac{1}{2}$ cents each until the commencement of the 30 arbitration; what was Mr. Eames testimony before the arbitrators upon that point? (Objected to.)

A. Mr. Eames testified before us in his direct examination that about the time of the January meeting, [which meeting was a meeting between the parties to try to settle their accounts we called the January meeting] he heard of Mr. Stiles' claim that the price should be $32\frac{1}{2}$ cents instead of 65 cents. On his cross examination he said it was some time, it might be about a month before that meeting that he first heard of it.

Q. In what year was that January meeting?

40

A. In 1860.

Q. Did Mr. Ethan D. Stiles and Charles H. Stiles testify upon that point?

A. They did.

Q. What did they testify as to Mr. Stiles complaining about the 65 cent items? (Objected to.)

A. Mr. Ethan Stiles testified that the price agreed upon between the parties was $32\frac{1}{2}$ cents for splits and not 65, that the first time he saw the bill rendered at that price, 65 cents, which was some time after the commencement of their arrangement, he 50

told his son that it was wrong. He afterwards spoke to Mr. Eames upon the subject, and the result of the conversation was, although I cannot give the exact words, that Mr. Eames would make right what was wrong on the final settlement. Mr. Charles Stiles testified that the first bill that he knew of his father seeing, his father objected to the price.

Q. Did the arbitrators appoint Dr. Lord Secretary of their meeting?

A. There was no particular appointment that I know of. The
10 meetings were in his house.

Q. Did you and Dr. Lord meet at any time in the arbitrations without Mr. Walsh being present?

A. We never did any business except in his presence; we have met to hold a meeting, Mr. Walsh being unavoidably detained I suppose, he did not come, we adjourned without doing any thing.

Q. Mr. Walsh has testified that Dr. Lord and yourself met one or twice in his absence, at his request to examine books for the purpose of collecting certain particulars to aid in your deliberations when all together; what is the fact upon that point?
20

A. I was requested by them, that is the other arbitrators, or offered to do it myself, I forget which, to take home some of the books and look over them to see what information I could get on a certain point we were discussing. I took the books home and brought them back at the next meeting and reported that I could make nothing more out of them, than what we had before. Dr. Lord was not with me during that interval of time, and that is the only business I undertook to do alone during the discussion between the arbitrators, that I recollect of. I dont recollect of any
30 meeting between the Dr. and I upon the arbitration, when any business was done, except when Mr. Walsh was present.

Q. Did Dr. Lord have any directions as to the form of the award and putting in the particulars or items, or did he not? State what took place in regard to that.

A. On the 18th of February, I think in the evening, our meetings were in the evening, I figured up in pencil a statement of the account between the parties, the balance of the account to be the amount of the award, to which I added the interest. Dr. Lord had a blank form of the award, which I think he read;
40 reading the amount of this footing up of mine in the blank, which would be the award to be delivered to the parties; Dr. Lord asked Mr. Walsh if he would sign that, Mr. Walsh said no; Dr. Lord said he would sign it himself, and asked me if I would sign it, I said I would; Mr. Walsh wished a statement in items made to the parties; the Dr. objected as not being the proper form; at first I was rather inclined to give the items myself, but not in the award; I wished the amount put in the award as it now is, in one sum. Dr. Lord was to have two copies made of that award to be signed by whoever would sign it, the next day as I think.

It was to be ready as soon as possible. There were no directions further than that; it was a voluntary act, what either of us done.

Q. Did you or Dr. Lord agree as Mr. Walsh has stated that the particulars or items should be set out in the award?

A. No, we did not.

Q. Mr. Walsh was at that meeting?

A. Yes.

Q. Did you hear Dr. Lord say to Mr. Walsh that he had seen John W. Simpson, and inquired as to prices for preparing splits, &c., in any meeting of the arbitrators for deliberation upon the 10 evidence, as Mr. Walsh has stated in his testimony?

A. I have no recollection of anything of the kind; once or twice when I went, I found Mr. Walsh there before me; I have left him there when I went away; any conversation they might have had before I came there and after I went away, I don't know anything about; I think I should have recollected such conversation if it had taken place in my presence.

The last clause of this answer objected to as a volunteer, by counsel for Mr. Eames.

The counsel for Mr. Stiles denies that such is the fact.

20

Q. Are you sure on that point, that no such conversation occurred in your presence?

A. I do feel sure about it.

Q. Were you at every meeting of the arbitrators from the time appointed for the meeting until the business before the arbitrators was finished for such meeting?

A. I expect so; I don't know of any meeting I was not present at, or of anything being done when I was not there.

Q. I mean to ask you, if you stayed at each meeting until the business of that meeting or occasion was closed?

30

A. Yes; I did.

Q. Did the arbitrators consider and determine in reference to the Pierce bill, so-called?

A. We did.

Q. Did the form of award read by Dr. Lord at the meeting of February 18th, agree in form and substantially with the award marked Exhibit No. 2? (Objected to.)

A. Yes, I think it does.

Q. Did Dr. Lord at any time in your presence say he had Simpson's figures in a drawer, or any thing to that effect?

40

A. No.

Cross-examined by Mr. Bradley.

Q. Did not Harris Eames and Joseph H. Eames both positively deny before the arbitrators that there was any agreement to prepare the splits for 32½ cents apiece? (Objected to.)

A. Yes; both denied it in their testimony.

Q. Who did Dr. Lord say had prepared the blank award which he procured on the evening of the 18th of February?

A. I understood him, Mr. Tuttle.

50

Q. Was Mr. Walsh present when the award was signed by you and Dr. Lord?

A. No; he was not.

Q. Where was the award signed, and in how many parts?

A. Two copies of the award were signed at William K. McDonald's office, on the 20th of February, and towards night on the 21st Dr. Lord showed me one of those copies with Mr. Walsh's protest on it, and which we thought invalidated it in our ignorance of law perhaps; the Dr. was to make another copy or
10 get it drawn, and he did so, and we signed that copy at William K. McDonald's house, on the evening of the 21st.

Q. Did you see Mr. Walsh that day or night?

A. I did not.

Q. Is the paper marked Exhibit 2 on the part of the Eames' the one which was made and executed on the evening of the 21st of February?

A. I can't say; they were both in the Dr.'s writing, and which he gave to either of the parties, I don't know.

Q. Does not Exhibit No. 3 contain all the items adjudicated
20 on, or that constituted the award?

A. I don't know; the paper I have never seen before; there is one item so called Pierce bill I don't see on it; that we had canvassed and voted upon.

Q. Does not that statement at the end of Exhibit No. 3 contain the items and figures which made up the award?

A. They agree in sum; the so-called Pierce claim, as it amounted to nothing in our records—that is, the Dr.'s and my own—was not put in my pencil memorandum, of which I presume this is a copy, because it was not allowed; I think there is no
30 doubt that this is a copy of my statement and of the figures on which the award was made up.

Q. Did not you and Dr. Lord frequently converse on the subject of this arbitration prior to the award being made, and in the absence of Mr. Walsh?

A. The only conversation I have had with the Dr. upon the subject was when we met at the door of our place of meeting, going in or coming out; and the purport of that conversation was mostly of the extreme length of the business; it had been drawn out so long—we wished it could be brought to a conclusion—and
40 if I had been as equally well acquainted with Mr. Walsh as I was with the Dr., and met him on the same circumstances, I should have talked with him just as I did with the Dr.

Q. Did you meet the Dr. frequently?

A. No.

Q. Were you not in the habit of meeting him in the street?

A. Occasionally.

Q. Was it not your habit to converse with him when you so met him?

A. Not always.

50 Q. Was not the Pierce claim talked over or referred to by Dr.

Lord and yourself on one occasion when Mr. Walsh was not present?

A. I don't recollect particularly; if it was talked over, it was at his house when we met for this business, and before Mr. Walsh arrived; if it was talked over at all.

Q. Are you willing to swear that it was not so talked over or referred to by Dr. Lord and yourself, when Mr. Walsh was not present?

A. I have no recollection, except it may have happened under the circumstances mentioned in my last answer. 10

Q. May not the same thing also have happened with regard to the charge of 65 cents apiece for preparing splits?

A. It may; yes.

Q. May not the same thing also have happened with regard to the question of damage claimed by Mr. Eames for bad japanning?

A. It may, and it may also upon all the different items.

Q. Was not Mr. Walsh sometimes absent from the deliberations of the arbitrators from sickness or other causes?

A. We have appointed a time for meetings at which Mr. Walsh did not appear; the meeting was then adjourned without doing 20 any business.

Q. Was that done during the hearing of the parties, or after the hearing of the parties had closed, or both?

A. On both; while we were hearing and while we were deliberating.

Direct examination resumed.

Q. Were you present at the time when Dr. Lord received a book from Mr. Stiles, as testified by Mr. Mills, and if so, how long were counsel of the parties absent from the room as testified by him? 30

A. I was present; my recollection is, that it was no longer than it would take two men to walk to the front of this building and say half a dozen words together and come back.

Q. On the evening of February 18, was there an adjournment to any time for the purpose of signing the award as agreed upon? (Objected to, as leading, highly so.)

A. I left the meeting that evening with the understanding that Dr. Lord would have the awards drawn up the next day if possible, ready for the signatures of those who would sign it; we knew that Mr. Walsh would not sign it; he said he wouldn't. 40

Q. Who delivered the awards to the parties?

A. Dr. Lord was to; I don't know that he did; I did not.

JOHN W. McLEOD.

Sworn and subscribed before me, at Newark, this 15th day of September, A. D 1862.

S. S. MORRIS,

Supreme Court Commissioner.

Adjourned to three o'clock P. M.

3 P. M.—The witness, John W. McLeod, here wishes to make a correction to his evidence given in this morning, and now says: I wish to make a correction as to the time I first saw the third 50

copy of the award, which was made to take the place of the one that had Mr. Walsh's protest on. Dr. Lord sent me word on the 21st of February that he wished to see me as we would have to sign the award over again, Mr. Walsh having sent a copy of it back with a protest on it. I went down to his house, met him at his own door, he explained the matter to me as we went together from there to Mr. McDonald's house. There I first saw the third copy of the award. Dr. and I executed it there together. This was about seven o'clock in the evening.

10

JOHN MCLEOD.
Subscribed before me, at Newark, this 15th day of September,
A. D., 1862.

S. S. MORRIS,

Supreme Court Commissioner.

GEORGE F. TUTTLE, sworn on the part of Ethan D. Stiles,
maketh answers as follows :

Q. Did you draw an award or the form of an award in the matter of arbitration between Ethan D. Stiles of the one part, and Harris Eames and Joseph H. Eames of the other part, if so, at whose suggestion, and was it before or after the award had
20 been settled, and to whom did you deliver it? State fully what you know respecting these matters.

A. I drew a form of an award leaving blanks for the names of the arbitrators, the party in whose favor the award should be and the amount of the award; I did so at my own suggestion in the first place, made by me at the summing up of the cause before the arbitrators, stating at that time inasmuch as the parties had spent a great deal of time and incurred considerable expense, in the progress of that arbitration we were all interested in having the award a finality, so far at least as related to the form. Dr.
30 Lord spoke to me about the form just previous to my drawing it, the time I cant say, but it was written three or four days next prior to the time when he delivered me a copy, which I think was the 20th day of February as the counsel for Mr. Stiles. At the time I drew that form I knew nothing of their decision as to the amount, or in whose favor; whether the award had been agreed on at that time is more than I know. As I carefully abstained from any remarks on that point. I delivered that form to Dr. Lord.

Q. Mr. Mills has spoken in his deposition of a book shown to
40 Dr. Lord by Mr. Stiles, were you present when this was done?

A. I was present.

Q. State when and where it was, who were present; how long the examination of the book lasted, and what was said, if any thing, as fully as you can recollect?

A. It was at a meeting of the arbitrators in the office of Mr. Mills, I could not say the day, it was early in the progress of the arbitration, I think, and my impression is at the time we were discussing a continuation of the time to the arbitrators for the making of their award; I am not positive whether it was the first
50 continuation or the second; I think it was the first. My attention

was first called to it by Mr. Mills asking me to step into the back-room with him ; when we got there, he stated that Mr. Stiles had given to Dr. Lord a book containing memoranda in regard to the suit. After perhaps a half a dozen words we returned to the front office. (The door between the two rooms being open all the while.) I spoke to Dr. Lord and asked him to give the book to Mr. Stiles, he did so immediately, at the same time saying, he hoped he had done nothing wrong ; that he certainly did not intend to do anything wrong ; and that that book would make no difference whatever in his determination. The time we were absent from the 10 room, I should say would not certainly exceed one minute ; how long prior to our going there, into the backroom, the Dr. had had the book I know nothing about ; the first I saw was when Mr. Mills called my attention to it ; the arbitrators were all present at that time ; Mr. Stiles were present and I think both of the Eames', but certainly Mr. Harris Eames.

Q. How long had these parties or most of them been present together when Mr. Mills called you out ?

A. I am really unable to state. I can only state that this incident occurred in the afternoon, and I am of the impression that 20 we had taken some testimony at that meeting and were about through for the day.

GEORGE F. TUTTLE.

Sworn and subscribed before me at Newark, this 15th day of September, A. D. 1862.

S. S. MORRIS,

Supreme Court Commissioner.

WILLIAM G. LORD, sworn on the part of Ethan D. Stiles, maketh answer as follows :

Q. Were you one of the arbitrators in the arbitration between the parties mentioned in this examination ?

A. I was

30

Q. Did Mr. Ethan D. Stiles at any time during the progress of the arbitration hand you a memorandum book ?

A. He did.

Q. What did you do with it ?

A. I took it into my hand, he pointing to some particular point in the book, without saying anything, but I did not have the book long enough before I discovered from Mr. Mills' actions that he seemed to be disturbed on account of my having the book ; therefore I did not get the point nor the idea as to what the point, for I did not read a word in it ; I handed it back to Mr. 40 Stiles.

Q. What were you doing with the book while counsel for the parties were leaving and absent from the room ?

A. I held it in my hand until they returned.

Q. Did you read it at all during the time they were absent, or at any other time ?

A. I did not.

Q. Why not ?

A. As I have stated, I discovered from Mr. Mills' manner that he was dissatisfied with my having the book, and I retained it 50

until counsel returned, to hear their report on the book ; I had not stolen the book, nor had I received it by any previous arrangement between Mr. Stiles and myself.

Q. At what time in the day and at what part of the meeting did this occur ?

A. It was in the afternoon, and I think in the early part of the meeting.

Q. Who were present ?

A. All the arbitrators were present, Mr. Stiles, Mr. Harris
10 Eames, and my impression is, that Mr. Joseph Eames was present ; it is only an impression.

Q. Was the Pierce bill so called, considered by and passed upon by the arbitrators in their deliberations in making their award ?

A. It was considered and passed upon.

Q. After the hearing of the parties and their counsel, was there any meeting of the arbitrators for deliberation at which Mr. Walsh was not present ?

A. None, at which there was any business transacted pertaining to the arbitration.
20

Q. Did you ever tell Mr. Walsh in those meetings for deliberations, that you had talked with Simpson about the matters in dispute between the parties or any of them ?

A. I did not.

Q. Did you ever tell him that you had Simpson's figures in a drawer ?

A. I did not.

Q. Exhibit No. 3 being shown witness, he is asked—in whose hand writing is that paper ?

A. The first part of it is in my hand writing, and also the latter
30 part of it ; the body of it is in the hand writing of my son, whom I directed to copy it from the minutes.

Q. Who delivered the awards to the parties ?

A. I delivered the award to Mr. Stiles to his counsel, Mr. Tuttle ; and I delivered the one for Mr. Eames to himself, Mr. Harris Eames.

Q. Were they both delivered the same day ?

A. I think the one for Mr. Stiles was delivered on the 20th ; the other, I think, was delivered on the 21st at evening.

40 Q. Was one copy sent to Mr. Walsh ?

A. Yes.

Q. Was the copy delivered to the counsel of Mr. Stiles before or after a copy was sent to Mr. Walsh ?

A. The two copies were executed together, and I delivered the one to Mr. Tuttle for Mr. Stiles, and I think I sent the other one immediately down to Mr. Walsh's office as a matter of courtesy, because he had so desired me to do after Mr. McLeod and myself had signed it ; he desiring to examine it, as he so expressed himself ; I expected that he would be able to do so very

50 soon, and requested my son to bring it back immediately ; he did

return me the paper, and reported to me that Mr. Walsh had gone home—had left the office; it being nearly night, my son having an engagement as he stated, and I myself being engaged and being still desirous to gratify Mr. Walsh, I retained the paper until the next day.

Q. What did you do with it next?

A. I think I received a note from Mr. Walsh the next morning, to the effect I think, that he understood my son was at his office desiring to see me—something to that effect; that he was sick at home, and would like to have me send the paper down to his house; that was about the purport of the note; I have not the note with me; I sent the paper down to his house in the forenoon, or about noon; he was met at his dwelling house door by some person who stated that Mr. Walsh was sick, and he came back with the paper again; Mr. Walsh got the paper finally; I sent it down to him at his request, directing my son to say to whoever came to the door, that he had a paper for Mr. Walsh, and also to say that I wished Mr. Walsh to return it to me by him at that time; he came back without the paper, to my surprise; but the paper was sent up that evening by Mr. Walsh with a note accompanying it.

Q. Were these two copies alike?

A. They were intended so to be, and I believe they were precisely alike.

Q. What was the condition of this copy sent back by Mr. Walsh, when you received it back again?

A. He had appended a note below our signatures, Mr. McLeod's and my own, to which he had signed his name.

Q. What did you then do?

A. I believe I showed it to Mr. Tuttle; I went to his office with the paper first, *and remarked to him that I felt indignant* (this remarked objected to,) and inquired of him if the appending of that note did not make the paper illegal, or vitiate it—(objected to)—he informed me it did; I then went to my house and sent for Mr. McLeod to come down, and re-copied the papers, and finished the the re-writing of it, and as I was going out of my door, I met Mr. McLeod on the door steps I said to him—we went to Mr. McDonald's house and had it executed over again.

Counsel for Messrs. Eames objected to the above answer from the word "remarked" in the third line of the answer making his objections as the evidence was given.

Q. Did you compare the copy you signed at Mr. McDonald's house, with the one you sent to Mr. Walsh?

A. I think I did.

Q. Was it the same as that except the note appended to it by Mr. Walsh? (Objected to.)

A. It was intended to be, and I believe it was precisely.

Q. When was this award fixed and decided upon by the arbitrators, or a majority of them?

A. On the evening of the 18th of February.

Q. Were all the arbitrators then present ?

A. They were.

Q. On that evening was there an adjournment to any future time, and if so, for what purpose ?

A. I think I remarked that I would have the papers copied, by twelve o'clock the next day, for signing ; I addressed Mr. Walsh and Mr. McLeod ; that was the understanding that we adjourned over to 12 o'clock the next day, I believe.

Q. Did the other arbitrators, or either of them, give any directions as to putting into the award the particulars or items ?

A. They gave me no directions ; Mr. Walsh spoke of it, and rather insisted on its being done, and I as strongly objected to it.

Q. Did Mr. McLeod agree to do so ?

A. I think he rather assented at first, but afterwards stated as I had stated, that it was usual to put the amount of the award in gross.

Q. Did you have any conversation with John W. Simpson pending the arbitration concerning the matters in dispute ?

A. I did.

20 Q. At whose instance—who introduced the conversation ?

A. John W. Simpson.

Q. Did you have more than one ?

A. Yes.

Q. Did he introduce the subject both times ?

A. I think he did.

Q. Did you ask him to come and testify for Mr. Stiles ?

A. I did not.

Q. When was it ?

A. The first conversation occurred on my front door stoop ; the 30 second one in my hall—the lower hall of my house.

Q. Did you have any meetings in the absence of Mr. McLeod ?

A. I don't think we did, not for business ; I know we did not, not any meeting at which business was transacted.

Q. At that meeting of February 18th, did you produce and read a form of award in the hearing of Mr. Walsh, reading in the amount of Mr. McLeod's figures, the same in form as the awards subsequently executed ? (Question objected to as highly leading.)

A. I believe I did.

Q. At the meeting on the 18th of February when you read 40 the form of award, as you have stated, what did Mr. Walsh say, and what occurred thereupon ?

A. He said he would sign no such paper as that ; I replied that I would sign it ; I then inquired of Mr. McLeod, what he would do ; he said he would sign it.

Q. Is what you have stated with regard to Mr. Simpson all that passed between you and him pending the arbitration or not ? (Question objected to.)

A. No.

Q. State what else ? (Objected to)

50 A. I inquired of him whether he was coming on the stand or

not as witness ; he said he did not intend to do so ; I then asked him what it was worth to re-tan splits and prepare them for japaning, to which question he gave me an answer, giving the sum or amount.

Q. This was before he testified, was it not ?

A. It was.

Q. Did he tell you to take a pencil and put down the figures he should give you or not ?

A. He did.

Q. Did you do so ?

10

A. I did.

Q. What did you do with those figures and when ?

A. I merely used them on that occasion, and know what became of them afterwards ; I showed them to no one and made no further use of them.

Q. How did you use them on that occasion ?

A. I set them down as he gave them to me one under the other and so made an addition of a sum total.

Q. Is that all the use you made of them ? (Objected to.)

A. It was.

20

Cross-examined by Mr. Bradley.

Q. How long have you been acquainted with Mr Stiles ?

A. Some considerable length of time ; I couldn't say how many years ; I think a dozen or more.

Q. Were you in the same religious society with him ? (Objected to.)

A. I was.

Q. In what society ? (Objected to.)

A. In the Central Methodist Episcopal Church organization.

Q. Were you not in the same class with him also in that society ? (Objected to.)

30

A. No sir.

Q. How often had he spoken to you about this difficulty with the Messrs. Eames before the arbitration paper was drawn up ? (Objected to.)

A. Not more than once I think, possibly twice, I have no recollection of but once.

Q. Did Mr. Eames belong to the same society, either father or son ? (Objected to.)

A. He did ; the father did ; I believe he attended there ; I believe he is a member.

40

Q. Had Mr. Stiles been told that he should prepare a statement or memorandum in answer to Messrs. Eames or either of them ? (Objected to.)

A. Not by me, or to my knowledge.

Q. Had not Mr. Stiles showed you that book before the occasion he showed it to you at the meeting referred to ?

A. Never.

Q. Had he not told you he had made a memorandum ?

50

A. I have no knowledge of his having so told me, nor impression that he did.

Q. What had he said to you in relation to the subject, previous to his handing that book to you on that occasion?

A. Not a word.

Q. How much fees did Mr. Stiles pay to the arbitrators or either of them? (Objected to.)

A. We agreed to charge the parties \$100 at the last meeting when the arbitrators were all together; Mr. Stiles paid one half
10 of that amount.

Q. To whom did he pay it? (Objected to.)

A. He paid it to me.

Q. Was any part of it returned to him?

A. Not a penny.

Q. Does the statement at the end of Exhibit No. 3 contain the items which made up the award?

A. I think it does.

Q. When was Mr. McLeod chosen as one of the arbitrators?

A. I cant give the exact date.

20 Q. Did you speak to Mr. McLeod about the matter before he was selected?

A. No sir; I think I did not.

Q. Did you not ask him, whether he would serve? (Objected to.)

A. It is barely possible, but I have no recollection of it.

WM. G. LORD.

Sworn and subscribed before me, at Newark, this 15th day of September, A. D., 1862.

S. S. MORRIS,

Supreme Court Commissioner.

30 I certify that the foregoing to be the original examinations taken in the above stated cause pursuant to the notice mentioned in the caption hereof before me, the same having been written down by me, and the witnesses duly sworn as stated in the finals annexed to the several depositions. Dated Nov. 11, 1862.

S. S. MORRIS,

Supreme Court Commissioner.

40 It is agreed between the attorneys of the respective parties that the testimony of Harris Eames before the arbitrators relative to the price to be paid to said Harris and Joseph H. Eames for retanning splits, and any difference between said parties as to said price, and complaint by said Stiles relative thereto was as follows: "I never heard a word of complaint about 65 cents until I claimed damage on leather. At the January meeting was the first. I never heard any complaint until we ceased buying hides together."

And upon Cross-examination he said, "Never heard any complaint until about the 'January meeting.' It might have been a few days before, not more than a month.

50

HENRY J. MILLS, *Attorney of H. E. and Son.*

GEORGE F. TUTTLE, *Attorney of E. D. Stiles.*

EXHIBITS Nos. 6 TO 32 INCLUSIVE.

10

EXHIBIT No. 6.

E. D. STILES,	Newark, May 20, 1859.
To $\frac{1}{2}$ bill work on 58 splits, 65	To H. EAMES & CO., Dr. \$18 85

EXHIBIT No. 7.

E. D. STILES,	Newark, N. J., June 15.
To tanning $\frac{1}{2}$ 61 splits, 65c.	To H. EAMES & CO., Dr. \$19 83.
The last of the Company's Leather.	20

EXHIBIT No. 8.

E. D. STILES,	Newark, May 7.
To tanning $\frac{1}{2}$ 64 splits, 65c.	To H. EAMES & CO., Dr. \$20 80

EXHIBIT No. 9.

Mr. E. D. STILES,	Newark, April 18, 1859.
To half bill work on 65 splits, 65c.	To H. EAMES & CO., Dr. 21 31

30

EXHIBIT No. 10.

Mr. E. D. STILES,	Newark, April 14, 1859.
To $\frac{1}{2}$ bill work on 39 hides, 121	To H. EAMES & CO., Dr. 23 59
To $\frac{1}{2}$ " " 38 splits, 65	 12 35
	\$35 94

EXHIBIT No. 11.

Mr. E. D. STILES,	Newark, N. J., April 8, '59.
To tanning half of 95 splits, at 65c.	To H. EAMES & CO., Dr. \$30 88

40

EXHIBIT No. 12.

Mr. E. D. STILES,	Newark, March 25, 1859.
To $\frac{1}{2}$ bill work on 39 hides, 121	To H. EAMES & CO., Dr. 23 60
To $\frac{1}{2}$ " " 40 splits, 65	 13 00

\$36 60 50

EXHIBIT No. 13.

Newark, March 19, 1859.
 Mr E. D. STILES, To H. EAMES & CO., Dr.
 To half bill work on 52 hide splits, 65 \$16 90

EXHIBIT No. 14.

Newark, March 5.
 E. D. STILES, To H. EAMES & CO., Dr.
 To $\frac{1}{2}$ bill work on 70 splits, 65 \$22 75

10

EXHIBIT No. 15.

Newark, Feb. 23, 1859.
 E. D. STILES, To H. EAMES & CO., Dr.
 70 sides for dash, 60 $\frac{1}{2}$ 21 17
 70 side splits, 32 $\frac{1}{2}$ 11 38

 Company's Leather. \$32 55

EXHIBIT No. 16.

Newark, N. J., Feb. 16, 1859.
 20 Mr. E. D. STILES, To H. EAMES & CO., Dr.
 To $\frac{1}{2}$ bill work on 24 hides, 121 14 52
 To $\frac{1}{2}$ " " 21 splits, 65 6 83

 \$21 35

We sent up 19 sides and 9 side splits belong to H. Eames & Co.
 24 hides.

21 " splits, H. E. & Co. and Stiles.

19 sides.

9 sides splits, H. E. & Co.

30

EXHIBIT No. 17.

Newark, N. J., Feb. 2, 1859.
 E. D. STILES, To H. EAMES & CO., Dr.
 To half bill work on 81 side splits and 3 hide splits at 32 $\frac{1}{2}$ cts.
 and 65 cts., \$14 14

EXHIBIT No. 18.

Newark, N. J., Feb. 1, 1859.
 E. D. STILES, To H. EAMES & CO., Dr.
 40 To half bill work on 64 splits, at 65 cts., \$20 80

EXHIBIT No. 19.

Newark, Jan. 24, 1859.
 E. D. STILES, To H. EAMES & CO., Dr.
 To 45 hide splits, half bill, 65 cts. . . . 14 63
 " Carting 3 loads by Ross team, 62

 To 8 splits, half, 65 cts. . . . 2 60

50 50 hide splits in all sent to-day.

\$17 85

CR.

By half the splits from 68 hides sold	Pedie & Morrison, cash,	31 50
" " of 87 sides splits, 50cts.		21 75
		\$53 25

EXHIBIT No. 20.

	Newark, N. J., Jan. 14, 1859.	
E. D. STILES,	To H. EAMES & CO.,	Dr.
To half bill work on 75 splits, 65cts.		\$24 38
"Entered" written across the face of this exhibit.		

10

EXHIBIT No. 21.

	Newark, N. J., Jan. 12, 1859.	
Mr. E. D. STILES,	To H. EAMES & CO.,	Dr.
To half bill work on 70 splits, 65cts.		\$22 75

EXHIBIT No. 22.

	Newark, N. J., Jan. 5, 1858.	20
E. D. STILES,	To H. EAMES & CO.,	Dr.
To $\frac{1}{2}$ bill work on 49 side splits and 1 hide split, at 32 $\frac{1}{2}$ c. pr side,		\$8 29

EXHIBIT No. 23.

	Newark, N. J., Dec. 30, 1858.	
Mr. E. D. STILES,	To H. EAMES & CO.,	Dr.
To half the bill work on 71 hide splits, 65cts.		\$23 08
N. B.—I do not think I can come up to night.	J. H. EAMES.	

30

EXHIBIT No. 24.

	Newark, N. J., Nov. 20.	
E. D. STILES,	To H. EAMES & CO.,	Dr.
To half the bill work 67 splits, 65cts.		\$21 78

EXHIBIT No. 25.

	Newark, N. J., Nov. 15, 1858.	
E. D. STILES,	To H. EAMES & CO.,	Dr.
To bill work half 60 splits, 65cts.		\$19 50

40

EXHIBIT No. 26.

	Newark, N. J., Nov. 11, 1858.	
E. D. STILES,	To H. EAMES & CO.,	Dr.
To half the bill work 64 splits, 65		\$20 80

EXHIBIT No. 27.

	Newark, N. J., Oct. 15, 1858.	
E. D. STILES,	To H. EAMES & CO.,	Dr.
To half the work on 92 sides splits, at 32 $\frac{1}{2}$		\$14 95 50

EXHIBIT No. 28.

Newark, Oct. 7, 1858.

Mr. E. D. STILES,	To H. EAMES & CO.,	Dr.	
To bill work on half of 19 hides, 121			11 50
To bill work on " of 38 splits, 65			12 35
			\$23 85

EXHIBIT No. 29.

Newark, N. J., Sept. 18, 1858.

10	Mr. E. D. STILES,	Bought of H. EAMES & CO.	
	Half the bill on 62 splits, 65cts.		20 15
	Carting trunk splits, Pedie & Morrison,		13 \$20 28
	Sept. 18th. The above splits were returned for retanning.		
	Received again at pt. leather factory 20th.		E. D. STILES.
	I sent up 63 splits, it makes the last bill of splits right.		
	E. D. STILES, Cr.		
	By half of 19 sets splits, 17 00		\$8 50
		Dr.	
20	To five per cent. off two bills, \$45 50		2 27
	Carting,		12
			\$23 39

EXHIBIT No. 30.

Newark, N. J., Aug. 12, 1858.

	Mr. E. D. STILES,	Bought of H. EAMES & CO.	
	60 splits, sent up work on 30, at 65		\$19 50
30	We will send up those 24 to-morrow morning.		

EXHIBIT No. 31.

Newark, N. J., Aug. 7, 1858.

	Mr. E. D. STILES,	Bought of H. EAMES & CO.	
	Tanning 27 hides splits, 65cts.		\$17 55
	Sent up 54 splits.		

EXHIBIT No. 32.

Newark, N. J. July 31, 1858.

40	Mr. E. D. STILES,	Bought of H. EAMES & CO.	
	To tanning 15 splits, 65		9 75
30.	To one gallon oil,		75
			\$10 50
	30 hides splits sent up.		

EXHIBIT No. 33.

ESSEX CIRCUIT COURT.

10

IN MATTER OF ARBITRATION BETWEEN ETHAN D.
 STILES OF THE ONE PART,
 AND
 HARRIS EAMES AND JOSEPH H. EAMES OF THE
 OTHER PART.

On Rule.
 To show
 Cause.

ETHAN D. STILES,

Sir: You are hereby requested and required to produce before Staats S. Morris, Esq., Commissioner of the Supreme Court, at his office 194 Broad street, in the city of Newark, on Wednesday the tenth day of September inst., at ten o'clock, A. M., the books of account, day-books and ledgers, and all bills, notes, memoranda, or other books or papers offered in evidence upon the trial of the above stated cause before the arbitrators therein, and now in your possession, for the purpose of being made exhibits upon said examination. And you are also requested and required to produce at the time and place aforesaid a certain memorandum book by you showed to William G. Lord, one of said arbitrators, wherein were entries and remarks upon the evidence given in said cause by the witnesses on the part of said Harris Eames and Joseph H. Eames.

Yours, respectfully,

HENRY J. MILLS,

Atty. of Harris Eames and Joseph H. Eames.

EXHIBIT No. 34.

40

The arbitrators, viz: William G. Lord, Cornelius Walsh and John W. McLeod, in the matters of dispute between Ethan D. Stiles and Harris Eames & Co., met at the residence of Wm. G. Lord for consideration and decision on the points of dispute, January 2d, 1862, and after several meetings in which the points referred to were duly considered and examined, they have come to the following conclusions, viz:

Point 1st. The charge made by Stiles for puling out 128 splits at 12 cents—\$15 36-100 is not allowed—(see note made by Charles Stiles—E. Stiles' book, page 17.)

50

Point 2d. The charge Feb. 7th, 1860, (Stiles' books) japaning $2\frac{1}{2}$ hides, \$3 82-100, there being no dispute, is allowed.

Point 3d. The charge of Feb. 8th, 1860, (Stiles' books) 35 hides at \$1 17-100 is allowed.

Point 4th. The charge of Feb. 27, 1860, \$31 62-100 (Stiles' book) is erased and not allowed Stiles.

Point 5th. The charge April 2, 1860, as made by Stiles for packing 50 splits at 2 cents each, \$2, is allowed. The charge of \$2 50-100 for extra work is not allowed Stiles.

10 *Point 6th.* The charge May 4, 1860, being the difference in quality of splits, \$4 50-100, as charged by Stiles, is reduced \$2.

Point 7th. The charges of Aug. 10, 1860, (Stiles' books) in which he claims the $\frac{1}{2}$ of 36 splits at \$1 each, \$18; he is allowed \$14 instead of \$18, he being charged \$4 on damaged splits.

Point 8th. The $\frac{1}{2}$ of difference on bills of Oct. 1858, being \$5 75 100, is allowed Stiles.

Point 9th. The charge of Aug. 10, 1860, refinishing one enameled hide, \$1, is allowed; the work for separating splits \$1, is erased; Aug. 10, 1860, debit Eames \$78 88-100, and \$3 51-100 20 allowed Stiles; entered May 4, 1860, \$31 22-100; balance in favor of Stiles \$33 92-100.

Point 10th. The charge from April 2, 1859, to Feb. 2, 1860, (Eames' book) \$5 15-100, is allowed Eames.

Point 11th. The charge made by Eames for purchasing hides is reduced, allowing him \$40.

Point 12th. The 40 hide question was decided in favor of their delivery by Stiles, Lord and McLeod voting in favor and Mr. Walsh against the delivery.

30 *Point 13th.* The charge of 65 cents as made by Eames for retaining splits, is reduced to $32\frac{1}{2}$ cents, Lord and McLeod voting for said reduction and Mr. Walsh against it.

Point 14th. The charge of damages as made by Eames & Co. is not allowed, Lord and McLeod voting against it and Mr. Walsh for it.

Point 15th. The charge of \$96 as made by Eames & Co. for interest, carrying over \$1,600 capital stock, is not allowed; vote the same as on point 14th. (See above.)

40 Note.—The arbitrators decide to charge \$100 for their services, \$50 to be paid by each party.

Mr. McLEOD's figures.		Cr.	
Balance from Stiles' book,	\$473 14	By Nov. 5 not allowed,	\$15 36
Allowing $33\frac{1}{2}$ on 835 splits,	271 31	" Dec. 16 diff. bill,	3 51
		" April 2 extra work,	2 50
	\$744 45	" May 4	2 00
	74 12	" 16 d. or $\frac{1}{2}$ of 36 splits,	4 00
		" Work done,	1 00
Interest from 18 May 1860,	670 33	" $\frac{1}{2}$ diff. in bill,	5 75
4 mo.—18 Sept. 1860, 17 mos.,	58 06	" Allow for furn. hides,	40 00
			\$74 12
	\$728 39		

EXHIBIT No. 35.

NEWARK, Feb. 19, '62,

Dear Sir: I called on Mr. Tuttle this morning, as I was desired last evening with the papers or minutes of the decisions of our deliberations in the case of E D. Stiles and H. Eames & Co., and stated to him that you wished a paper drawn up showing where we differed in our conclusions, &c. He remarked that it was the usual way, and I think I understood him to say the legal, was to report the award in gross and not item by item. To this course I understood you to say that you could not assent to, so I herewith send you a copy of the minutes referred to.

Very respectfully, &c.,

WM. G. LORD.

C. WALSH, Esq.

N. B.—I have a paper and duplicate as prepared by Mr. Tuttle, and will retain it for your signature until say tomorrow noon, if I do not hear from you by that time I suppose that I may take it for granted that you still decline to sign such a paper, when Mr. McLeod and myself will sign it and so report the award when we get the \$100.

WM. G. L.

EXHIBIT No. 36.

NEWARK, Feb. 21, '62.

Dear Sir: Yours of to-day has just come to hand, (1½ P. M.,) and yours of yesterday was also rec'd, when I immediately sent my son with the paper you desired to your office. He reported to me that you was not there; I then sent him in the afternoon as you mentioned in yours of to-day, with the paper referred to down to your house, from which point he reported that you were sick, as you state, which fact I was sorry to hear. He ought to have stated his business, but you could not have perused the papers, and I herewith by him send it again, as you may perhaps wish to look over it, as you so expressed yourself in your note of yesterday. If you do not wish to retain it, please return it by the bearer.

Very respectfully, &c

WM. G. LORD.

C. WALSH, Esq.

P. S.—Will you please inform me whether you were able to any thing to propose about our indebtedness at the Tract Repository in New York.

W. G. L.

OPINION OF JUDGE HAINES.

10

ESSEX CIRCUIT COURT, Jan'y, 1864.

HARRIS EAMES AND JOSEPH H. EAMES,
adsum
 ETHAN D. STILES.

} *In matter of*
Arbitration and
Award.

The submission to arbitration in this case having by the agreement of the parties been made a rule of court, a motion is now made to set aside the award.

- 20 The grounds for setting aside an award are expressed by the statute to be misbehavior of the arbitrators, or the procuring of the award by corruption or other undue means.

Under this statute a court of law will set aside an award for mistakes in law, or for mistakes in fact. But the mistake in law must appear to have been such as arose from an intention of the arbitrators to decide according to a legal rule and a clear mistake of the rule. "If they meant to decide according to law, but mistake the rule in some palpable material point, the court will set aside the award as not conformable to their real judgment and
 30 intention. But unless they intended to be bound by the legal rule courts will not withdraw the matter from the tribunal which the parties themselves have selected, nor will the court undertake to inquire whether the conclusion was right or not, unless they can see that professing to decide according to law the arbitrators had decided contrary to law.

So mistakes of fact to be taken advantage of in this mode of proceeding are comprised within very narrow limit, and must appear on the face of the award or in some authentic shape. It must be such as the arbitrators would admit, as a miscalculation
 40 in an account, or the like, or such as is made out to *their* satisfaction. In such case it is not the award which the arbitrators intended, not the result of their judgment." *Bell v. Price*, 2 Zab. 590.

If the mistake be so palpable and the carelessness of the arbitrators so gross as to merit the epithet of misconduct on their part, the court may set the award aside.

The court will not look into the evidence to determine whether the arbitrators gave it due weight and drew from it a proper conclusion. If they intended to decide in accordance with the award
 50 it is conclusive as to this head.

But the ground for the motion in this case is *actual misconduct* of one of the arbitrators.

1st. It is said that William G. Lord, one of the arbitrators consulted with a witness in the absence of his fellows and of the parties.

From the depositions taken under the rule, it appears that Dr. Lord had one or more conversations with Mr. Simpson respecting the subject matter of the controversy before the witness was sworn. But it also appears that when the witness delivered his testimony it differed so much from what Dr. Lord understood him 10 to state in the conversation between them, that he questioned the accuracy of his testimony, and complained of it. The conversation could not have misled the arbitrator, for it was corrected by the testimony; and it does not appear that the testimony was rejected or that it did not receive its full weight. At least two of the arbitrators concurred in the conclusion as to the amount of the award.

I can see in this no such misconduct as will justify the setting aside of the award.

Another reason is misconduct of one of the arbitrators in receiving communications from one of the parties in the absence of 20 the other.

This reason is based upon the fact shown by the depositions taken under the rule, that Mr. Stiles handed to Dr. Lord a small book containing comments upon the testimony.

This would seem to be very improper conduct on the part of Mr. Stiles, and to savor of an attempt to procure an award by undue means. It was also indiscreet on the part of the arbitrator to allow any such paper or book to be submitted to him. It appears further that this was done not privately but openly in the 30 presence of the parties and their counsel and before all the arbitrators. The book was in the hands of Dr. Lord but a few moments only while the counsel of Messrs. Eames, who discovered it, could call the opposite counsel into the other room and inform him of the offensive act and hold a short conversation concerning it. There was but little time given to read any remark contained in the book, and Dr. Lord in deposition says he did not read a word contained in the book. He immediately disclaimed any intentional wrong in taking the book.

Whatever may have been the motive of Mr. Stiles in giving 40 the book to Dr. Lord, there would be great injustice to that arbitrator to say that he was guilty of intentional misconduct, and it is difficult to discover how he could have been in any wise influenced by the contents of the book.

Another ground of complaint is that two of the arbitrators deliberated upon the subject in controversy in the absence of the third, and signed the award in his absence without giving him an opportunity to be present. The facts disclosed by the deposition are, that the arbitrators while together, all or at least a majority, it is not quite clear which, agreed upon the sum of 50

money to be awarded to be paid by Messrs. Earnes to Mr. Stiles, but they differed as to the form of the award. Mr. Walsh desired that the particulars should be stated in the award, and refused to sign it unless they were stated. Dr Lord thought it sufficient to express simply the amount to be paid. Afterwards a copy of the proposed award was sent to Mr. Walsh for his signature. He protested against signing it, and wrote upon it that he objected to signing the award, believing it to be against the facts and the evidence in the case. A new copy was then made out and signed
 10 by the other arbitrators. Previously to this Dr. Lord had written to Mr. Walsh that Mr. Tuttle had prepared the form of an award at the request of the arbitrators, and that the award and a duplicate copy according to that form was ready and would be retained till noon of the next day for Mr. Walsh's signature.

The condition of the arbitration bond is that the parties submit to the award of William G. Lord and Cornelius Walsh, and some third person to be selected by them, the said Lord and Walsh, or any two of them.

It was not necessary that the award be signed by all; provision
 20 was made for the absence or dissent of one of them, and an award signed by two is *prima facie* sufficient.

We examine the circumstances attending the execution of the award to see if there was any such misconduct as should affect its validity. But the facts disclose no such misconduct. Mr. Walsh was present when the result was reached, and agreed with the others that Mr. Tuttle be requested to furnish the form. He objected to the form, desiring the particulars to be stated. He was informed when the other arbitrators would meet to execute. Failing to attend he was waited upon with a copy which he re-
 30 fused to sign, giving his reasons in writing on the award. The other arbitrators believing that the protest so written would invalidate the award, had a new copy made, then signed two copies and delivered them to the parties. I can see in this no such misconduct, no such partiality or bias as will justify the setting aside of the award.

It is said that there is evidence of bias and misconduct in the allowance made in the price for retanning and preparing splits, one party insisting that it should have been at the rate of 65 cents per split, the other only thirty-two and a half cents. The
 40 latter sum seems by the statement exhibited to have been allowed but what evidence induced that result is not shown, and if it were shown it appears that the two arbitrators at least intended to adopt that price, and it is not for this court to say that they had not reason to do so, nor can we weigh the testimony and declare that their conclusion was against the weight of evidence. The subject was fully before the arbitrators; conflicting testimony on the point was given and their determination of its weight is final.

So with regard to the omission to allow for damages for delay
 50 in tanning some of the leather. What the testimony on that

subject was is not shown, and I cannot say that there was any mistake then.

The same remarks will apply to the claim for money due for goods sold to Mr. Pierce of Boston. There is no proof to show that it was not properly rejected.

On careful consideration of the whole case, I can find no reason for setting aside the award. The motion must therefore be denied with costs.

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ESSEX CIRCUIT COURT.

IN MATTER OF ARBITRATION BETWEEN ETHAN D.
STILES OF THE ONE PART,
AND
HARRIS EAMES AND JOSEPH H. EAMES OF THE
OTHER PART.

20

*In Error.
Assignment
of Errors.*

Harris Eames and Joseph H. Eames, plaintiffs in error, by Henry J. Mills, their attorney, come and say that in the record and proceedings aforesaid, and also in making and confirming the award in the matter of arbitration aforesaid, and in the rule for 30 confirming the same there is manifest error. And the said plaintiffs hereby assign the following causes of error:

First.—Because the said award is unjust and partial, and contrary to the evidence given in said cause.

Second.—Because the said William G. Lord and John W. McLeod misbehaved themselves and acted in a partial manner in the conduct of the said arbitration, by receiving testimony and taking evidence when the other arbitrator was not present, and when the said Harris Eames and Joseph H. Eames or either of 40 them or any person in their behalf were not present, and in other respects manifesting great partiality and unfairness.

Third.—Because William G. Lord one of the said arbitrators took and received testimony and information relative to the matter submitted to said arbitrators from the said Ethan D. Stiles and others privately and unknown to the said Harris Eames and Joseph H. Eames and the other arbitrators, and in their absence.

Fourth.—Because the said award was determined upon by the said William G. Lord and John W. McLeod in the absence of Cornelius Walsh the other arbitrator. 50

Fifth.—Because the said award was not made in the presence of all the arbitrators.

Sixth.—Because the award given to said Harris Eames and Joseph H. Eames was not submitted to the said Cornelius Walsh for his signature or approval, nor signed in his presence.

Seventh.—Because the award actually signed by the said Cornelius Walsh was suppressed by the said William G. Lord and John W. McLeod.

10 *Eighth.*—Because a certain award was made by the said William G. Lord and John W. McLeod and submitted to the said Cornelius Walsh, to which award the said Walsh annexed his protest and signed the same, and which award was afterwards suppressed by said William G. Lord and John W. McLeod, and a new award was made by them without consultation with or submission to said Cornelius Walsh, to wit, the award now in question.

Ninth.—Because the said award was procured by undue means.

20 *Tenth.*—Because the order of the Court below upon the matter aforesaid was for the reasons aforesaid erroneous and improper.

HENRY J. MILLS,

Atty. of Plaintiffs in Error.