6443

JULY 1847 # 27

STATE OF OHIO
vs
Parker Dudley
Pike COUNTY

} Debt

Estate of Daniel Adams
2 diff Admin -- One Missouri
One KY

KY
Wills
Estates

State of Missouri
County of Pike ss. Pleas, and proceedings heretofore had in the Pike Circuit Court before Ezra Hunt Judge of said Court, in a certain action of Debt, wherein The State of Missouri (who sues to the use of Nancy J. Adams, and Elizabeth Adams, Nancy J. Adams, Sarah Adams, Josephine Adams, George Adams and William A. Adams) was plaintiff and James W. Campbell Benjamin T. Hawkins ~~and~~ Parker Dudley & Jesse G. Rodgers ~~are~~ Defendants.

Among the files of said Court, in said cause is the plaintiffs declaration in words and figures following to wit;

"State of Missouri Pike Circuit Court
"County of Pike ss.
" The State of Missouri (who
"sues to the use and at the relation of
"Nancy J. Adams and Elizabeth Adams,
"Nancy J. Adams, Sarah Adams, Josephine
"Adams, George Adams, and William A
"Adams, minors under ~~the age of~~ 21 Years
"of age by their guardian Nancy J. Adams)
"plaintiff complains of Parker Dudley, Ben
"jamin T. Hawkins, James W. Campbell and
"Jesse G. Rodgers defts of a plea that they
"render unto said plff the sum of forty
"six hundred dollars, which they owe
"and unjustly detain from said plff.
"For that whereas heretofore to wit at the

"County of Pike & in the State of Missouri, and
"on the second day of January 1839 the said
"defts executed their certain writing obligatory
"sealed with their seals, and now to the Court
"here ready to be shewn, the date whereof
"is the day and year last aforesaid by which
"the said defendants, they & their acknowledged themselves
"to be held and firmly bound unto the State
"of Missouri in the sum of 4600 dollars law
"ful money of the United States, to the payment
"whereof well & truly to be made they then
"& thereby bound themselves their heirs, ex
"ecutors, and administrators which said
"writing obligatory was and is subject to a
"certain condition thereto underwritten to wit
"that if Thomas Bland Administrator of the Estate
"of Daniel Adams deceased shall faithfully
"administer said Estate, account for pay & deliver
"all money and property of said Estate, and
"perform all other things touching said admin
"istration required by law or the order of any
"Court having Jurisdiction then said writing
"obligatory should be void, otherwise it should
"remain in full force. And the plaintiff
"in fact says that the said Thomas Bland
"did not faithfully administer the said Estate
"of Daniel Adams deceased nor account for
"all money and property of said Estate, and
"for breach of said writing obligatory the
"plff says,

"Breach 1st. The said Thomas Bland as administrator
"of said Daniel Adams, received a large

"sum of money to wit the sum of one thousand
"dollars from the sale of slaves belonging to said
"Estate, for which the said Administrator did
"not account.

"2nd Breach, "The said Thomas Bland Administrator as
"aforesaid received a large sum of money
"to wit the sum of five hundred dollars, the
"proceeds of the sale of a slave named
"Lucinda belonging to the Estate of said
"Daniel Adams deceased, which said sum
"of money the said Thomas Bland Admini-
"trator as aforesaid did not account for.

"3 "And for assigning a further breach plaintiff
"says said Administrator sold a large
"amount of personal Estate, consisting of
"slaves, horses, cattle, which was worth the
"sum of 2000 dollars, and received the pro-
"ceeds of the same, and for which the said
"Administrator did not account.

"4 "And for assigning a further breach plaintiff
"says the said Thomas Bland by virtue of
"Letters of Administration granted in the State
"of Kentucky to the said Bland on the
"Estate of Daniel Adams deceased, which
"said administration was ancillary to the
"administration granted in the State of
"Missouri received a large sum of money
"to wit the sum of eight hundred dollars,
"proceeds of property belonging to said Estate
"of Daniel Adams deceased, for which said
"sum of money the said administrator
"did not account.

"5 "And for further breach the plaintiff
"says that the said Daniel Adams was
"at the time of his death living in the
"said County of Pike, in which said
"County Administration was granted to the
"said Thomas Bland, and the said Daniel
"Adams having estate in the State of Ken
"tucky administration was also taken out
"in the State of Kentucky by the said Thomas
"Bland, and by virtue of said last men
"tioned administration the said Bland
"sold a certain slave belonging to said
"Estate of great value to wit of the value
"of six hundred dollars, and also by
"virtue of said administration from Ken
"tucky said Adm. received a large
"sum of money to wit 100 dollars for
"the hire of slaves belonging to said Estate
"and the plaintiff says that the said Admini
"trator in the State of Illinois did not
"account for the said last mentioned
"sums of money, or either of them, which
"said sums of money were & are subject
"to distribution among the distributees of
"said Daniel Adams deceased

"6 "And for further breach the plaintiff says
"that the said Daniel Adams died in the
"said County of Pike, where administration
"was granted to the said Thomas Bland,
"and the said Thomas Bland also took
"out letters of Administration on said
"Estate in the State of Kentucky, and the

"said Bland by virtue of his administration in
"Kentucky received a large sum of money viz. the
"sum of six hundred dollars, belonging to said
"Estate and which said sum of money remained
"in his hands as Administrator in the State
"of Kentucky after the payment of all debts
"due in the State of Kentucky by the said
"Daniel Adams, at the time of his death,
"which said sum of money the said Ad-
"ministrator in the State of Missouri, did
"not account for.

"7 "And for further breach the said plff says
"that the said Thomas Bland as Adm. as
"aforesaid received the further sum of
"five hundred dollars, for the hire of slaves
"belonging to said Estate of Daniel Adams
"which said sum of money the said Admini=
"trator did not account for.

"Nevertheless the said deft has not paid to
"the plaintiff the said sum of money or any
"part thereof although often requested
"so to do, but to pay the same the said
"deft have hitherto wholly neglected
"and refused to the damage of plff of
"5000 dollars, & therefore he sues &c

"A. H. Buckner atty for

"which said declaration is endorsed as follows
"Filed 9th April 1846
"J. P. Robinson Clerk."

"And the Demurrer in words & figures
following to wit,
James W. Campbell & others

"ads
"The State to the use of Adams & also set;
" And the said defendants
"come & defend the wrong & Injury when &c
"& say that they ought not be charged by
"reason of any thing in the said declaration
"alledged because they say the said declaration
"& the matters & things therein alledged
"are not sufficient in Law to enable
"the said plff to have & maintain their
"said action against them & that they
"are not bound by law to answer the
"same & this they are ready to verify
"&c wherefore the pray Judgment
" C. Wells & G. Porter
" pr Defts.
And on the records of said Court is
an entry in said cause, made at the
April Term thereof in the year 1846.
to wit on the 9th day of April 1846.
in words & figures following to wit;
"State of Missouri to use of Nancy J. Adams & others
"vs } Action of Debt
"Parker Dudley & others
" The declaration
"in this cause having been lost, by
"consent of parties, a declaration is
"filed nunc pro tunc & demurrer
"filed by defendants."
And also the following entry in said
cause made at said April Term 1846.
to wit, on the 11th April 1846, in words

& figures following to wit;
"State of Missouri County of Nancy J. Adams and
"Elizabeth Adams, Nancy J. Adams, Sarah
"Adams, Josephine Adams, George Adams,
"& William A. Adams by their Guardian
"Nancy J. Adams
"vs
"Parker Dudley, Benjamin T. Hawkins
"James W. Campbell & Jesse G. Rodgers"
"Now here comes said parties by their
"Attorneys, and on argument of Counsel
"it appears to the satisfaction of the Court
"that the matters and things in said
"plaintiffs declaration are not sufficient
"in law for her to maintain her action afore
"said against said defendants. It is therefore
"considered by the Court that said plaintiff
"take nothing by her declaration - and that
"said defendants go hence without day and
"recover of said plaintiff their costs & charges
"in this behalf incurred, to be taxed accord
"ing to law - and that they have execution
"therefor. —

State of Missouri
County of Pike } I Simeon P. Robinson Clerk of
the Circuit Court for said county, certify
that the foregoing writing is a true &
perfect copy of the record & proceedings
in said cause as fully as the same
remains on the files & records of said
Court

In testimony whereof I

hereto set my hand & affix the
Seal of said Court at office
in Bowling Green in said
County this the 3d day of
June A.D. 1846.

S. P. Robinson Clerk

STATE OF MISSOURI----Sct.

The State of Missouri....To the Judge of the third Judicial Circuit in said State....**GREETING:**

WHEREAS, *In the record and proceedings in a certain cause lately pending in the Circuit Court within and for the County of* Pike *in said circuit, wherein* the State of Missouri (suing to the use of Nancy I. Adams & others is plaintiff, & Parker Dudley, James W. Campbell, Benjamin T. Hawkins & Jesse G. Rodgers are *defendants manifest error, hath intervened, to the great damage of the said* plaintiff 3 *as by* her *complaint, we are informed;*

Now, we being willing that the error, *if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf,* **command you,** *that you send to us certified under your* **seal,** *the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the County of Cole, in said State, on the* First *Monday in* July *next, so that our Judges of our Supreme Court on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.*

WITNESS, Hampton L. Boon, *Clerk of our said Supreme Court, at office, in the City of Jefferson, the* 20th *day of* April *in the year of our Lord, one thousand eight hundred and forty-* six

H. L. Boon

(27.)

State of Missouri
(use of Adams & others)
vs { copy Record & proceedings
Campbell & others

Clerk's fee
Copy 1.25
certif & seal .50
$1.75

Filed June 13. 1846.
A. L. Born clk

Pike

The State
To the use of
Nancy J Adams & others
vs
Parker Dudley & others } Sup Court - July Term 1847

And the said plaintiff in Error Comes & Says that in the record & proceedings in the above Cause and in the giving of judgment therein there is manifest error in this to wit

First In sustaining the demurrer of the said defendants

Second In giving judgment for said defendants

All which she is ready to verify &c

Buckner for pltff in error

The defts join in error
Porter & Wells for defts

State
To use of
Adams
vs
Dudley & others

Trover

Filed July 9. 1847
H. L. Bond Clk

State of Missouri who sues to the use &c.
vs.
Jas. W. Campbell & al

Error to the Pike Circuit Court.

This was an action of debt on an admr. bond instituted at the instance of Nancy Adams guardian of the infant children of Danl Adams & for her & their use. The defendants were the sureties of Thos. Bland the admr. of D. Adams. There was but one count in the declaration containing seven breaches of the condition of the bond. The first three breaches alleged in substance that the admr. Bland had received several sums of money for which he had failed to account. The remaining breaches allege substantially, that Bland the admr. in this state took out letters of admr. on the estate of Adams in the State of Kentucky and as such he had recd large sums of money for which he failed to account. One of these last counts states moreover that the moneys recd by the admr. in Kentucky are subject to distribution among the heirs of D. Adams the intestate.

There was a general demurrer to the declaration, which was sustained and the plaintiff sued out this writ of error.

Then being but one count in the declaration alleging several breaches of the condition of the bond, if any one of those breaches is sufficient the demurrer must be overruled. The 18th sec of the 3rd Art. of the act concerning practice at law does not affect this case. By the common law if a declaration contained several counts one of which was good and the others faulty, if a general demurrer was put in to the whole declaration, the demurrer must have been overruled; for the good count being sufficient to sustain the plaintiffs right to a recovery, it could not be said that the declaration was insufficient in law.

The section above referred to was introduced to remedy this, by making it operate as though it was ~~only~~ put in only ~~the~~ to the bad counts, sustaining it as to those which are bad and overruling it as to the good ones. Here there is but one count in the declaration and numerous breaches of the condition of the bond assigned in it, now it is evident, that if there was one good breach assigned, that the plaintiff is entitled to recover, if it is sustained by proof. There being but one count in the declaration, the section above referred to does not apply, that was only intended when there were two or more counts, some of which were bad. It has been formerly suggested by this court, that in cases like the present the proper practice was on the trial to move to exclude all evidence under the faulty breaches. Williams vs. Madden 7. Wen. 240.

There is no foundation for the assumption that this suit should have been brought by ~~the~~ administrator de ~~bon~~ bonis non, of David Adams. The suit could only have been brought as it was in the name of the State of Missouri the bond being made payable to her, ~~would depend~~ and whether it could have been brought for the use of the heirs and distributees would depend upon the nature of the breach of the condition assigned in the declaration. The statute gives an action on the bond "at the instance of any party injured, for any breach of the condition. ~~of the bond~~. So the question is not in whose name the suit should be brought, but whether those for whose benefit it is ~~brought~~ instituted have shown that they are injured by any of the breaches set forth in the declaration.

Certainly the interests of all those who are in any way concerned in the estate of deceased persons, require that such estate should be brought to a final settlement with as little delay as possible. It is obvious that heirs and distributees may be in

jured by the delay, neglect or refusal of admrs to account for moneys recd. Whether the estate will be insolvent or not is not generally ascertained until there is an account. A want of knowledge of the condition of their decd parents estate may distract the views of ~~his distributes~~ his children and prevent them from adopting that course course of life which its situation may ultimately require. ~~Lands~~ Whether three years have elapsed from the date of the letters is a matter of utter indifference. Lands may descend, there is a contingent right in the admr to sell those lands. The existence of this right may seriously affect their sale by the heir. Suits on administration bonds can only be brought against the securities within seven years from the death of the principal. If admrs de bonis non and creditors fail to bring suit, must those rights which are postponed to theirs be sacrificed by their neglect. These considerations are sufficient to show that heirs and distributees may be injured by the failure of an admr to account for moneys recd by him. The law therefore notices that heirs and distributees may be injured by the neglect of an admr to account for money recd ~~by him~~. This injury accrues as soon as the neglect ~~equally~~ has occurred, whether it is within three years or not. The amt of the injury is a question for the jury, to be determined by the facts in evidence before them. If the heirs and distributees should recover from the admr moneys or property not accounted for, if creditors should afterwards appear, they could by bill in equity compel them to refund.

The breaches in relation to the administration in Kentucky are insufficient. It has been held that when there is a primary and ancillary administration, that a court of equity has jurisdiction to decree an account and distribution according to the Lex domicilii of the estate of a deceased

person domiciliated abroad which has been collected under that administration. But whether it will proceed to decree such account & distribution or direct such assets to be remitted, to be distributed by a foreign tribunal depends upon the circumstances of the case Harvey vs Richards 1 Mason 381. This principle has been incorporated into our code & is declaratory of what seems to have been the law on the subject. Sections 21. 2. 3. 4. 5. 6. of the 6th Art. of the act concerning administration. Storey's conflict sec 413. 414. 415. If the tribunals within the jurisdiction of an ancillary administration can distribute or remit the assets found there as ~~ma~~ circumstances may require, it will follow that the Courts of the primary administration ~~could~~ can not interfere with the assets within the limits of the ancillary administration

The other judges concurring the judgment will be reversed & the cause remanded

W. Scott

State of Md to the
Use &c.
vs.
Campbell Dudley
& al
Opinion
Scott

Filed Oct 14. 1847.
H. L. Boon CR.

33.

Supreme Court
July Term 1847

State to the use of Nancy J. Adams
and others plff
vs } Error to Pike Circuit Court
Parker Dudley, James W Campbell
Benjn T Hawkins and Jesse G Rodgers Defts

Statement of points & authorities by Defendants

This was an action of Debt brought in the Pike Circuit Court, by Plff on Error against the securities in the administration Bond given by Thomas Bland as administrator of the Estate of Daniel Adams dec^d. The Defendants put in a general Demurrer to the Plaintiffs declaration which was sustained by the Court; in support of which judgment the Defendants insist: First, that the Plffs Declaration is substantially defective in all its breaches in this, that it does not state either that Blands administration in Missouri on the Estate of Adams had ever been finally settled and distribution of the residuum after payment of debts ordered, or that the three years from the grant of letters had elapsed and the debts of Adams been paid or discharged; and consequently, it does not appear that the persons to whose use the suit is brought are in a situation to be "injured" by the omissions or misfeasances of Bland in his administration vide Sec^n 8. of Art 7. Rev. Stats. also Secn 3. Art 6 "Tit. Administration"

Second If the moneys charged to have been received by Bland and "not accounted" for are permitted to be recovered by the distributees of Adam's Estate, instead of by an administrator de bonis non, the rights of Adam's Creditors may be impaired thereby, for aught that appears in the declaration and they cite the case of The State to the use of Ingram vs. Rankin and others 4 vol. Mo. Decisions p 427. also Craslin & al vs. Baker 8 vol. Mo. Dec^s the latter case to shew that the legal right to personal assets is in the

administrator. where administration has been granted —

Third The 4. 5. and 6th breaches seeking to hold the defendants liable for the proceeds of property received by Bland by virtue of administration granted to him in Kentucky are clearly defective in this, that the securities for the administration granted to Bland in Missouri are not primarily liable for assets or funds of Adams' Estate received by virtue of an administration in Kentucky, and the said securities are only liable after the Court in Kentucky having jurisdiction of the administration there — administration having been settled or debts paid — shall have ordered the said assets or funds rec'd in Kentucky to be remitted to Missouri for Distribution. In support of which position they rely upon "Story's conflict of Laws" Secns. 512, 513, 514 & 515 also Secns. 517 & 518 Second edition of Same work, And it is not averred in said Declaration that any such order was made or said funds so remitted."

Fourth The fact of Bland having been appointed to administer on the Estate in Kentucky as well as that in Missouri does not make his Missouri securities any more liable than they would have been if some one else had administered on Adams Estate in Kentucky; and they cite "Story's conflict" Secns. 520 & 521.

Fifth. The 7th breach is further defective in not specifying whether the sum of money therein charged to have been received by Bland was rec'd by him by virtue of his administration in Kentucky, or his administration in Missouri.

Carty Wells and Gilchrist
Porter for Defts in Error

State to the use of
Nancy J Adams & als.
vs B Error to Pike
Parker Dudley & als.

Defts. Brief

Auths -
Rev. Stats. Art 7 Sec 8
" " 6. " 3
State use of Ingram vs
Rankin & others 4 vol Mo Dec
p 427 Sturg's Conflict of Ls 512-513
514. 515. 517-518. 520-21
Mason's Reports. p 381.

C. Wells & G Porter

State (use of Nancy Adams appllts
vs
James W. Campbell
B. T. Hawkins & others appellees

In Sup. Court
Error from Pike

Points of Counsel for appellant

The Circuit Court erred in sustaining the demurrer to the declaration

First - Because the declaration is substantially good - and if technically defective could only be reached by a special demurrer

Second - The 4. 5. & 6th breaches are well assigned. After a payment of debts by a foreign Administrator, the balance in his hands, is subject to distribution according to the Laws of the place of the intestates residence at the time of his death, and ought to be transmitted to the domestic Adner. for that purpose - Story Con. § 513. 514. 518. Dawes vs Head 3. Pick. 128 Bland was Adner in both Jurisdictions. and having a balance in his hands after payment of debts due in Kentucky it was his duty to bring this balance into the home administration to be disposed of according to our Laws - and for this neglect. he and his securities on his bond here. are liable -

Third - But if ~~this is not~~ breaches are not well assigned (viz 4.5 & 6) the 1st 2nd & 3rd are good & sufficient, - and the Court erred in sustaining the demurrer to the whole declaration - State use of Darland vs Porter & others 9. M.R. 356. Rev. Stat. 1835. Sect 14. art 3. Practice at Law.

Fourth. The suit is brought the proper parties. Rev. Stat. p. 62

A. H. Buckner Atty for appellants

State Case Adams
+ others
vs
Campbell, Hawkins
+ others

Points of Appellants
Counsel

A. H. Buckner

State of Missouri (to the use of Nancy Adams & others) plff & Appellant vs Jas. W. Campbell Benj. T. Hawkins Parker Dudley & J. G. Rodgers defts

Error to the Pike Circuit Court.

The counsel for the appellant respectfully submits to the Court the following argument in support of the declaration, and for reversing of the Circuit Court.

The material point presented for the adjudication of this Court is, whether an Administrator in this State is liable on his bond for money collected or proceeds of property received by him, in virtue of his authority as Admr. under a foreign Jurisdiction - after all debts within the foreign Jurisdiction have been satisfied by him. This question is presented in the 4. 5. & 6th breaches of the declaration - which for my present purpose, I assume to be well assigned.

It is a well settled principle that an Admr. as such, has no authority over the property of his intestate within any other Jurisdiction, than the one from which he derives his authority - and if there be property in more than one Jurisdiction, new Letters of Admn: must be taken out, in the foreign country

before the same can be rightfully claimed by such Admr. and then his power over such property is derived exclusively from the foreign tribunal, granting Admin istration. Both Administrations are to a limited extent, one and the same. The foreign administration is ancillary and subordinate, to the domestic administration, and after the payment of debts due within the jurisdiction of the foreign Admr. the residuum is transmissible to the Home Admr. for the purposes of distribution among those entitled thereto. (Story Conf Laws. Sect 513. 2nd Edition) In the case before the Court both Administrations were granted to the same person, but the subject may be divested of some little difficulty by considering the case, as if the Administrator in Kentucky were a different person from the Admr in Missouri. Let it be supposed that the Admr. in Ky. had closed his Administration by paying all debts and charges against his intestate within his jurisdiction, and that upon a final settlement of his accounts of Administration, the Court exercising jurisdiction in that State had ordered the balance in his hands to be transmitted and paid over to the Domestic Admr. in this State. This would be the decree of any of the Courts of our sister States on being satisfied, that the distributees

of the Estate were residents of this State and all claims held against the intestate by its own citizens had been fully discharged. Distribution is made according to the Law of the Domicile. The money is paid over to the Admr. here - and the question arises, would he be liable for the amount thus coming to his hands in a Suit on his official bond. It seems to me that there can be but one answer to this question - and that must be in the affirmative. What creates the liability of the Admr. in a case of this character. and upon what principle does it arise Is his receipt of the money, or the order of the Court. Settling the Estate in Kentucky the test of his legal responsibility here. If he is not liable here, until the order of the Court having Jurisdiction decrees the residuum to be transmitted here, a rule would be established of injurious tendency to the rights of the distributees - and destitute of every recommendation, but the barren, unsubstantial one, of its being a "by authority" proceeding - The distributees being residents here - at a distance from the place where the property or estate happens to be, would be unable to give the conduct of Admr. in the foreign Jurisdiction, that vigilant superintendance, often times necessary and never unless to secure their Just rights - and the settlement of the Estate would most usually be left to his own time and convenience

But what propriety is there in adopting a rule, which renders a decree of the foreign tribunal in all cases necessary even though the money may have been already received by the Admr. here. The decree of the foreign court ought to be looked to as evidence of the liability of the Admr. here - but it certainly ought not to be made a sine qua non to his responsibility. If ~~the two~~ all debts in Kentucky have been paid, & the Kentucky Admr. has paid over to the Admr. here, this should fix the liability of the home Admr. The payment of the debts in Kentucky & the receipt of the money here by the Missouri Admr. ought to be the test - and not the order of the Court of Ky. to transmit & pay over. If the Administrator in Kentucky, should on his own responsibility, and without the order of his Court having Jurisdiction, pay over the money to the Domestic Admr. Would it not be his duty to bring the same into the Estate here & for failing to do so, would not he and his securities be liable on their bond here. I respectfully submit that on this point, there cannot be a doubt. This then is the case substantially presented by the 4, 5. & 6. th breaches of the declaration. Bland Admr. in Mo. received from Bland Admr in Ky. ~~money~~ a sum of

of money, which was left in his hands after paying all debts due Citizens in Ky and failed to account for the same in the Courts of this State. It is no valid objection to the liability of the securities here that we have our remedy against the Kentucky securities. The remedies are cumulative, and it is no answer to the action vs Mo. securities that we have a good cause of action against the securities in Kentucky. I admit that a recovery in Kentucky or an accounting to the Courts there would be a good plea in bar to the action here in like manner. I conceive a plea in bar by the Sureties in Ky. that their principal had accounted for this money as Admr in Mo. would be a good answer to an action brought agst them by those claiming as distributees. Nor is it a good objection to this action that the Sureties here would be entrapped by making them responsible, for estate not within the Jurisdiction of the Court granting Administration, at the time of their entering into their obligation as sureties on the Admr's Bond. The Statute requires that the bond given by an Admr. shall be at least in double the amount of the real & personal estate of the intestate (R. S. 1835 page 65 Sect 15). One object of this provision, was no doubt to hold him responsible, not only for the due Administration of the property within his Jurisdiction - and in being, or known

to the Admr, but for all estate that
might by any means come to his hands
as Admr. The obligation of a surety has
not more reference to the amount
of the bond or estate than to the honest
& faithful discharge of his duties as
Admr. The surety endorses for his hones
ty & faithfulness, more than for the
pecuniary ability of the Administrator.
The argument that the sureties ought not
to be bound in any case, for any other
property, than that of which was
within the Jurisdiction of the princi
pal, or within the Knowledge of the Admr
at the time of the grant, has no foun
dation in Justice or reason. If property
not within his Jurisdiction should afte
wards be found within it - and the
Admr should take possession of it
and appropriate it to his own use
it seems to me that there can be no
question of his liability for the value
of it. The same appears to me would
be true, if an Admr, should collect
money in another Jurisdiction, with
out taking out letters in the latter
Jurisdiction, and bring the same here
and not account for it. The condi
tion of his bond, is that he will account
for pay and deliver all money and
property of said estate, &c and his
affidavit is, that he will account for
& pay ~~and deliver~~ all assets which

~~which~~ shall come to his possession or knowledge - and any assets, whether collected here, or elsewhere, in being before & that have come into existence since his grant of Administration, of which he obtains possession during his administration, will subject him to responsibility therefor (See Story Conflict. Sect 513. 514. 518. & Dawes v Head 3. Pick R. 128. on the points embraced in the foregoing)

2. The court below intimated that the 4. 5 & 6. breaches were technically defective - On a general demurrer they were sufficient - But if they are not good - the 1. 2. & 3rd breaches are well assigned - and the demurrer ought not to have been sustained to the whole declaration - when a part of the breaches are good. (State ex of Dalland v Porter q. M R. 356)

3. It was said by the Court below that the suit ought to have been instituted by an Adm. de bonis non. I can see no force in this objection the Statute 1835. page 42. says that the bond of any executor or Admr may be sued on, at the instance of any party injured, for the waste or mismanagement of the Estate. The question whether the parties are distributees or not is a matter of proof, and need not be

stand on the Record - and if they are distributees, they are an <u>injured party</u> in contemplation of the Statute, if there be any waste, or mismanagement of the Estate by the Admr. If an Admr <u>de bonis</u> be the only person that can properly institute a suit in this case. I cannot imagine a case where a distributee or creditor, (although an injured party) can sue, ~~unless~~ for a breach of the bond, unless when an order of distribution or payment has been made in their favor, & payment refused. Suppose that Bland had made a final settlement (and distribution had been ordered, and during his lifetime, it was discovered that he had committed waste. Will it be said that the distributees could not sue upon his bond? If they cannot sue - who can institute suit in such a case? Must the Admr be removed, and an Admr. <u>de bonis</u> be appointed for this special purpose. Such a course of proceeding seems to me to be unsupported either by reason or authority, or a just regard to the rights of creditors or distributees

In conclusion I have to say, if it be not inconsistent with the practice of the court, it would accord with the wishes of the parties interested to decide the question presented on the 4. 5. & 6th breaches - although the court may be of

the opinion, that there is informality in the manner in which the suit is brought. The authorities on the main question are by no means numerous - as far as I have examined, and it is a matter of some importance to the parties, that some expression of the views of the Court, should be made, on the main question.

A. H. Buckner for
Apptt & Pltff

State (use of Adams)
vs
Campbell Hawkins
& others, defts

Argument of Counsel for Appellant

A. H. Buckner

Supreme Court

State to the use of
Nancy F. Adams and
others plff
v. Error to Pike
Parker Dudley and others

Statement of points by Defendants. This was an action of Debt brought by the Plff in Error against defendants in Error as securities in the official bond of Thomas Bland as Administrator (appointed by the County Court of Pike) of the Estate of Daniel Adams Deceased. The Defendants demurred generally to the Declaration, and their Demurrer was sustained by the Court.

In support of the decision of the Circuit Court the Defendants make the following points

First The Declaration is defective substantially in all its breaches - in this, that the declaration does not state that there ever was any final settlement by Bland of his said administration, nor any order of distribution or payment ~~in~~ of said money sued for in favor of the plffs, nor that Adams' debts had been paid - consequently it does not appear from the Declaration that the persons to whose use suit is brought are in a situation to be "injured" by reason of the premises therein set forth - as is required by Section 8th Art 7th of Rev Statutes of 1845

Second. It is not alledged in said Declaration that the administration of said estate had been finally settled and if distributees are allowed to recover the money sought to be recovered in this action instead of its being recovered by an administrator de bonis non of ~~Bland's~~ Adams' Estate the rights of Adams' creditors might be affected and they cite Sec 3. Art 6. of Administration law concerning "Distribution of Estates by order of the County Court.