Bartlett, Robert B., Admin. of vs. Hyde, Edmund August 1834 Second Marion 96/10
Garrett, Spillsbury C.

Pleas at our Circuit Court for the County of Marion in the Second Judicial Circuit of the State of Missouri before the honorable Priestley H. McBride Judge of said Court, in an action of Assumpsit wherein Robert B. Bartlett administrator of the Estate of Spillsbury C. Garrett is plaintiff and Edmund Hyde is defendant (Court)

Be it remembered that on the first day of January 1833 the said plaintiff filed in the Office of the Clerk of the said Circuit Court a declaration in the words and figures following to wit

" State of Missouri } Circuit Court for Marion County
" Marion County Sct. } February Term 1833

Declaration

" Robert B. Bartlett administrator of all and singular
" the goods and chattels rights and credits which were of Spillsbury
" C. Garrat deceased at the time of his death who died intestate
" complains of Edmond Hyde in custody &c. of a plea of trespass
" on the case on promises, for that whereas the said Edmond Hyde
" heretofore to wit on the fourth day of September in the year of our
" Lord one thousand eight hundred and thirty two at the Circuit
" Court in the County of Marion was indebted to the said Spillsbury
" C. Garrett for so much money lent for the sum of five
" hundred dollars lawful money of the United States by the
" said Edmond Hyde before that time had and received to and for the
" use of the said Spillsbury C. Garrett and being so indebted he
" the said Edmond Hyde in consideration thereof afterwards
" to wit on the day and year last aforesaid at the Circuit
" Court aforesaid in the County aforesaid undertook & then and
" there faithfully promised the said Spillsbury C. Garrat to pay him
" the said last mentioned sum of money when he the said Edmond
" Hyde should be thereunto afterwards requested, and whereas also afterwards

" tout on the day and year last aforesaid at the Circuit Court
" aforesaid in the County aforesaid the said Edmund Hyde was indeb-
" =ted to the said Robert B. Bartlett as administrator as aforesaid
" for so much money lent the time last above mentioned
" by the said Edmund Hyde before that time had and received
" to and for the use of the said Robert B. Bartlett as admini-
" trator as aforesaid, and being so indebted, he the said
" Edmund Hyde in consideration thereof, afterwards tout
" on the day and year last aforesaid at the Circuit Court
" aforesaid in the County aforesaid, undertook and then
" and there faithfully promised the said Robert B. Bartlett
" as administrator as aforesaid to pay him the said Sum
" of money when he the said Edmund Hyde should be
" thereunto requested so to do — yet the said Edmund
" Hyde not regarding his said promises and undertakings
" as aforesaid, but contriving and intending to deceive &
" defraud the said Spillsbury C. Garratt in his life time
" and the said Robert B. Bartlett as administrator as
" aforesaid, after the death of the said Spillsbury C.
" Garratt (to which said Robert B. Bartlett after the death
" of the said Spillsbury C. Garratt tout on the ninth
" day of November 1832 at the County Court for the County
" of Ralls & State aforesaid administrator of all and singular
" the goods chattels rights and credits which were of the said
" Spillsbury C. Garratt deceased at the time of his death
" who died intestate, by the County Court of Ralls and
" State aforesaid in due form of law was granted in
" this behalf hath not as yet paid the said Sum of
" money or any part thereof to the said Spillsbury C.
" Garratt in his life time or to the said Robert B. Bartlett
" administrator as aforesaid, since the death of the said

9 Nov. 1832

"Spillsbury C. Garrett (although often requested so to do, but he
"so to do hath hitherto wholly refused and still refuses
"to pay the same or any part thereof to the said Robert B.
to the damage of the said Robert B Bartlett as administrator as aforesaid
"Bartlett administrator as aforesaid of five hundred
"dollars, and therefore he brings suit &c.

Uriel Wright p. q."

and on the same day the clerk of said Circuit Court
issued a Summons on said declaration in the words
and figures following to wit

"State of Mississippi
"County of Marion } The State of Mississippi
"To the Sheriff of Marion County greeting
"We command you that you summon Edmund Hyde to
"appear in our Circuit Court, at the Courthouse in the
"Town of Palmyra within and for the said County of Marion
"on the Second Monday of February next, then and there before
"the Judge of our said Court to answer the said Robert B.
"Bartlett, administrator of all and singular the goods &
"Chattels rights and credits which were of Spillsbury C.
"Garrett deceased, at the time of his death, who died intes-
"=tate of a plea of trespass on the case on promises to the
"damage of the said Robert B. Bartlett administrator as
"aforesaid of five hundred dollars, and this he shall in no
"wise omit, and have you then there this writ

"Witness Theodore Jones clerk of our said Circuit
"(S) Court at office in Palmyra, this first day of
"January, in the year of our Lord one thousand eight
"hundred and thirty three

Theodore Jones clerk
by his deputy John P. Hadley

upon which said writ of summons the Sheriff of said County of Marion made a return in the words & figures following (to wit)

"Executed the within writ & declaration on the within named "Edmund Hyde by reading the same to him in the Township "of Liberty in the County of Marion, in the State of Missouri "on the first day of January in the year 1833

Daul. Bradley S. M. C.
by his dept.
John H. Curd

And afterwards, to wit on the 16th day of February 1833 it being the 16th day of the February term of said Court, for said year before the Honorable Priestley H. McBride Judge of said Court the following proceedings were had in said suit to wit

"This day came the parties by their attorneys and thereupon the "defendant filed a plea herein to which the plaintiff filed "a joinder, whereupon on the motion of the defendant and "for reasons appearing to the Court leave is granted him to "file a special plea herein, at the next term of this Court to which "time this cause is continued"

which said plea and joinder are in the words and figures following to wit

"Hide
" ats } Feby Term 1833
" Bartlett admr. of H.

"And the said defendant by his attorney comes "& defends the wrong & injury when H. & says that he did not "undertake or promise in manner and form as the said plaintiff

" has alon thereof confessed against him & of this he puts
" himself upon the Country &c.

Ezra Hunt, atty. for Deft.

" And the plff. doth the like

A. Wright
atto. for plff."

And at the June term for said year 1833, the clerk of said Court made an entry in the record of said Court in the words and figures following to wit

"State of Mississippi
" County of Marion Set } June Term 1833 of the Marion Circuit Court

" Be it remembered that on Monday the 17th day of
" June, it being the third Monday in June, in the year of our
" Lord 1833 Daniel Bradley sheriff of the County of Marion
" in the State of Mississippi by order of the Honorable Priestly
" H. McBride judge of the 2nd Judicial Circuit in & for
" said State and Judge of the Court aforesaid adjourned the said
" Court by making public proclamation thereof, at the door
" of the place appointed to hold Courts in Marion County until
" the 29th day of July 1833 as appears by the written order of the
" Judge aforesaid and the said Sheriff's return thereon filed
" in my Office Test Theoden James clerk"

And on the 29th day of July 1833. the said Clerk made an entry in the record of said Court in the words & figures following to wit

" State of Mississippi } At the adjourned term July 29th 1833 of the
" County of Marion Set } Circuit Court in & for the said County of Marion

" Be it remembered that the honorable Priestly H.

" McBride judge of the 2nd Judicial Circuit in and for the
" State of Missouri aforesaid failing to appear & hold the
" said Circuit Court in and for said County on the 29th day
" of July in the year of our Lord 1833 on the first day of
" said Court, the Court stood adjourned from day to day
" by reason of the absence of said Judge until the morning
" of the third day of said term, at which time said Judge
" Still failing to attend and hold Court in and for said
" County at said term said Court stands adjourned
" until the next regular term of said Court, pursuant to
" the Statute in such Case made & provided

Teste

Theodore Jones ck.

and on the 26th day of October 1833 it being the 6th day
of the October Term of said Court for said year before the
Honorable Priestley H. McBride judge of said Court the
following proceedings were had in said suit towit

" This day came the parties by their attorneys & thereupon
[redacted] on the motion of the defendant who filed
" an affidavit herein and for reasons appearing to the Court
" this cause is continued until the next term of this Court
" at the costs of the said defendant. Therefore it is considered
" by the Court, that the plaintiff recover against the defendant
" his costs by him herein at the present term of this Court
" expended, and that he have thereof his writ of Execution

which said affidavit is in the words & figures following

towit

" Bartlett admr. H. } Oct. Term 1833
" Hide } action of ass. Edmund Hide the defendant

" in the above Cause personally appears in open Court & on oath
" says, that there are witnesses living in the State of Kentucky, which he
" is advised and believes are material for him to have in his defence
" in the above cause, that he was not apprised of their materiality
" till today or he would have taken steps to have procured their
" evidence at the present time, that there is no person within the
" reach of the Court at this time by whom he can prove the same
" facts by as he knows ~~off believes~~ that he cannot go to trial
" without safety without their evidence as he is advised & believes
" & further that he believes he can procure their evidence, by the
" next term of this Court, & that this application is not made
" for delay, but because he believes their evidence of the above
" witnesses are material for him

Edmund Hyde

" Sworn to & Subscribed
" in open Court, October
" 26th 1833

Theoden James Clk.
by his deputy
John P. Butler "

And afterwards Court on the 19th day of February 1834, it being the 3d day of the February Term of said Court for said year before the Honorable Priestly H. McBride judge of said Court, the following proceedings were had in said cause Court

" This day came the parties by their attorneys & thereupon
" on the motion of the said defendant and for reasons appearing
" to the Court this cause is continued until the next term of this
" Court at the costs of the said defendant, therefore it is consid-
" ered by the Court that the plaintiff recover against the defen-
" dant his costs by him herein at the present term of this
" Court expended, and that he have thereof his writ of Execution "

And afterwards Court on the 19th day of June 1834 it being the 4th day of the June Term of said Circuit Court for said year before the Honorable Priestly H. McBride judge of said Court the following proceedings were had in said Cause Court

" This day came the parties by their attorneys and thereupon

" came a jury to wit Claiborn Chandler, David Gentry, Merryman
" C. Bradshaw, Stanton Buckner, John F. Safford, Francis Loring
" Joseph Hayden, Edward Searcy, Joshua Gentry, John Burch
" Thomas Cobbs and William Buckner Jr who being elected tried
" and sworn the truth to speak upon the issue joined upon
" their oath do say that the plaintiff hath sustained damages
" by occasion of the defendants' non performance of the
" undertakings and promises in the declaration mentioned to
" three hundred and seventy six dollars and ninety one cents
" besides his costs. Therefore it is considered by the Court that
" the plaintiff recover against the defendant his damages afore-
" -said in form aforesaid assessed, and his costs by him about his
" suit in this behalf expended, and that he have thereof his writ
" of Execution"

And afterwards to wit on the 20th day of June 1834
it being the 5th day of the term, before the same Judge the
following proceedings were had in said cause to wit

" This day came the parties by their attorneys and
" thereupon the plaintiff agreably to leave granted him
" during the trial herein on yesterday tendered a bill of
" exceptions to the opinion & decision of the Court excluding
" certain evidence offered by the defendant, on the trial of
" the cause herein which bill was received signed and sealed
" by the Court and ordered to be made part of the record
" in this cause"

which said bill of exceptions is in the words & figures
following to wit

Barthell adm. &c. } June Term 1834
V. } action of assumpsit
Hide

" Be it remembered that on the trial of the above
" issue, the plaintiff proved by one Ferguson & himself that the

" intestate was a stranger and traveller from Ky. who was taken
" sick at the house of the defendant & in a few days after died
" there, that plaintiff attended him as his physician, & was
" present at his death, — that the deceased had a travelling
" companion with him who was also sick at the time
" but afterwards recovered, that the defendant in laying
" out said deceased & on examining his clothes after his
" death found the sum of three hundred and forty five
" dollars and called said Bartlett & Ferguson to see it, &
" that said Ferguson counted it twice that said defendant
" then said he would keep it for the use of said deceased
" the plaintiff then produced his letters of administration duly
" authenticated and recorded, which were of the date stated
" in the declaration & granted by the County Court of Rally
" Here the plaintiff closed his evidence, The defendant then
" offered to prove that letters of administration was applied
" for on said estate in the County Court of Ky. on the 29th
" of Oct. 1832, & granted bearing date on the 12th day of Nov.
" 1832, and that said defendant had paid said money to said
" admr. at the County of Rally on the first day of December
" 1832. To this evidence of payment to said admr. from
" Ky. the pltff objected and the Court decided that any payment
" before the grant of letters in Mississippi would be good evidence
" for the defendant, but that this being evidence of payment
" after the date of the grant of letters in Mississippi, although
" before demand or suit was not legal evidence for the
" defendant in this cause & therefore refused to view the
" same, to this decision of the Court the defendant excepted
" The defendant also offered to prove that all the expenses of the
" last sickness of said deceased at the house of said defendant
" were paid and settled to this evidence the pltff. objected & his
" objections sustained by the Court, and all such evidence offered
" was ~~sustained~~ by the Court excluded ~~by the Court~~, and the defendant then & there excepted
" to this opinion & decision of the Court, & now here tenders this

" as his bill of exceptions to the decisions & opinions of the Court
" aforesaid & prays that the same may be signed, allowed & filed as
" a part of the record in the above cause which is done

P. H. McBride (Seal)"

And afterwards towit on the 21st day of June 1834, it being the 6th day of said June term, before the honorable Priestley H. McBride judge of said Court the following proceedings were had in said cause towit

" Thursday came the parties by their attorneys & thereupon the defendant
" prays for an appeal herein to the supreme Court, and filed an affida-
" vit according to the Statute in such case made and provided, whereupon
" the said defendant with Samuel C. Sloan and Francis H. Commodore
" his Securities here in Court acknowledge themselves to be indebted to
" Robert B. Bartlett admr. of Spillsbury C. Garrett in the sum of
" one thousand dollars each of their respective lands and tenements
" goods and chattels to be levied and to the said Robert B. Bartlett admr.
" of the Estate of Spillsbury C. Garrett rendered yet upon this condition
" that if the said appellant shall prosecute his appeal herein with
" effect, and pay and satisfy the condemnation money and all costs
" or otherwise abide the judgment of the supreme Court in the appeal
" herein, then this recognizance shall be void & thereupon the Court being
" satisfied with the Securities aforesaid grant the said appeal accordingly

which said Affidavit is in the words and figures following towit

" Robert B. Bartlett admr. } Circuit Court
" of S. C. Garrett deceased } June Term 1834
" vs } Action assumpsit
" Edward Hide }

" The aforesaid defendant on oath says that he
" prays for an appeal to the Supreme Court from the judgment

" of this Court in the above cause not for the purpose of vexation
" or delay but because he verily believes that he is agrieved by
" the judgement of this Court in said Cause

" Sworn to and Subscribed Edmund Hyde "
" in Open Court, June 21st
" 1834
" Theodore Jones clerk "

Plaintiffs costs

Tax	" 62½
Theodore Jones (clerk)	$6.53¾
Daniel Bradley (Shf)	— 2.58¾
Dabney Jones (Shf Ralls)	— 11.50
Same (witness)	— 5.50
James Neal (Ditto)	— 4.00
B. S. Hollingsworth (Ditto)	— 4.00
James Emerson (Ditto)	— 3.90
Joshua C. Ferguson (Ditto)	— 4.00
Walter Calwell (Ditto)	— 3.90
	$46.55

Defendants, costs

Theodore Jones clerk	— $3.83¾
Daniel Bradley Sheriff	— .32½
Dabney Jones Shf	— 1.00
Temple H. Davis (a witness)	4.00
James Neal Jr. (do)	— 2.20
	$11.36¼

Costs of this Transcript
For Copying certificate & Seal & tax } $4.42½

State of Missouri
County of Marion Sct } I Theodore Jones clerk of the Circuit Court in and for said County do certify that the foregoing is a true and correct transcript of the record and proceedings had in said Court, in a certain cause wherein Robert B. Barthell adm. of Spillsbury C. Garrett is plaintiff, and Edmund Hyde is defendant as fully as the same were had therein, as appears from the record and files remaining in said Office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, this first day of August, in the year of our Lord, one thousand eight hundred and thirty four

Theodore Jones, clerk
by his deputy
John P. Ralls

Robert B. Bartlett Admr.
of Spillsbury C. Garrett Dec.
(42) Plaintiff & Appellee
vs
Edmund Hyde Defendant &
Appellant

Filed in Clerks Office of Su-
-preme Court 2nd Judicial
District August 7th 1834
Levi Pettibone Clerk

Supreme Court Aug 7. 1834

Slide
v.
Bartlett } On Appeal from Marion Cirt Court

And now the said Slide by his attorney comes here into Court & says that in the Record & proceeding aforesaid & also in the giving the judgment aforesaid there is manifest Error in this — That the declaration & the matters & things therein contained are not sufficient in Law to for the said Bartlett to have & maintain his aforesaid action against him — There is also Error in this The Court rejected evidence offered by the defendant as set out in the Bill of Exceptions whereas by the Law of the Land he ought to have admitted it — There is also Error in this — the Court refused to grant a new trial whereas by the Law of the Land he ought for the reason assigned to have granted it — The judgment is also for the pltff whereas by the Law of the Land it ought to have been given for the defendant

whereof for these & other Error in said Record & proceeding the deft prays that said judgment may be Reversed &c —

Hunt & Chamb
Attys for Slide

Lander in Error by Bartlett Applee
Wright & Anderson
Attys for Applee

Slide
v
Bartlett
—
Error
—

Filed August 18th A.D.
1834 Levi Pettibone
Clerk

Hide
vs
Bartlett Admr. } On Appeal from Marion Circuit Court.

This was an action brought by Bartlett the defendant in error, against Hide the plaintiff in error in the Marion Circuit Court in which Bartlett got judgment to reverse which Hide has appeated to this court. The testimony is preserved by a bill of exceptions; from which we collect, that on the 9th day of November 1832 Bartlett the defendant in error, applied for & obtained from the County Court of Ralls letters of administration on the estate of one Spillsbury C Garrate, who came as a traveller & a stranger to the house of Hide the plaintiff in error where he (Garrate) was taken sick & died after a few days, leaving three hundred & ~~forty~~ forty five dollars, which came into the [illegible] of Hide that on the 12th day of Novr. 1832 some person (not named in the record) obtained letters of administration upon the estate of Garrate in Kentucky & that Hide paid said money to said administrator from Kentucky at the county of Ralls on the first day of December 1832. "That the defendant (Hide) also offered to prove that all the expences of the last sickness of said deceased at the house of said defendant were paid & settled." By whom, to whom or when they were paid is not shewn. The circuit court excluded the evidence of payment to the Kentucky Admr. as also the evidence offered to

proof payment of the expenses of the last sickness. The plaintiff in error excepted to the decision of the circuit court in excluding the evidence & now assigns it for error.

It seems to us clear that the circuit court decided correctly in excluding the evidence. The property of every person who dies in Missouri, whether domiciled or not, citizen or stranger, becomes subject at his death to the course of administration provided by our statutes & is organized as in the custody of the law for the benefit of all persons interested. His equally the right & duty of the administrator to collect & account for the assets, to the creditors & others entitled to distribution. To dispose of property before administration would constitute an ~~administrator~~ executor de son tort & render the party liable to an action. If this course were permitted, it is clear that the provision ~~of the~~ of the law which accures to the state the property of a ~~deceased~~ dying person without heirs, might be almost probably would be entirely defeated.

The hardship of the case which was so much pressed in the argument of the Appellants counsel, is no where to be found in the record. Hide may have been negligent in paying over the money ~~without~~ to the Kentucky Administrator without an indemnity properly secured & if so will have to bear the loss; but neither laws nor courts can shield a man from the consequences of willful negligence or folly. For aught that appears on the record or this court can know, there may be creditors or distributees in Missouri who would be put to much trouble & expense & might suffer great injury & entire

loss by having to resort to the Kentucky Administrator. The question however is not of hardships on one side or the other but of law & we think the clear & positive enactments of the statute as well as the reason & justice of the case, are with the Appellee. The judgment of the circuit court is therefore affirmed with costs.

A. C. McGirk

George Tompkins

N Wash

Bartlett. Admnr of
Garrett –
vs } Opinion
Hyde —
Judge Wash delivers

Filed in Court by Judges
August 25th A.D. 1834 –
Levi Pettibone Clerk

~~Hyde~~
~~vs~~
~~Bartlett~~
vs
Hyde

The Clerk will issue an execution against the appellant Hyde in the above cause, directed to ~~Marion~~ Rales County - and Tax allowing fees

N Wright
for appellee -

Robt. B. Bartlett
vs Praecipe & atty Cert
Edmund Hyde Defendt

Filed in Clerks Office of Supreme Court August 26th 1834.

Levi Pettibone Clerk

Supreme Court April 7 1835

Bartlett Admr. of S. Garrett decand — v Hide —

Jud — Aug 7 1834 & Ex. returnable to this —

To the Honourable the Supreme Court of the 2d Judicial District — Richard Boyer by his attorney comes here into Court & Suggests & gives the Court here fully to be informed That since the last term of this Court — the County Court of Ralls County have Revoked the Letters of administration ~~on the estate of said~~ by them heretofore granted on said estate to said Bartlett — & have granted Letter on said estate to him ~~the~~ said Boyer — a Copy of which duly Certified ~~are here now produced~~

That an Execution on said Judgment had been previously issued & was in the hands of the Sheriff of Ralls County unsatisfied ~~but Levied on property~~ — that on the Letters of administration on said estate being granted to him as above — he gave the Sheriff notice of the above facts by delivering him a Copy of the Record & proceeding of said Court Court duly Certified — & directed him to stop all further proceeding on said writ & to return the same unsatisfied by order of ~~the~~ him the said Boyer as admr & plff in said writ — on the said defendants first paying to him the costs accrued & taxed on said writ — The said Richard further states that

to prove said Order said defendant has given him Additional Security — ample & sufficient to meet the ~~wants~~ of exigencies of said estate — & has also paid said costs as he is informed — but that said Sheriff is yet at a loss to know whether he has a right to obey said directions or not — Wherefore the said Richard moves the Court & prays that he may be entered on the Record of this Court in said cause as admr. of said Garrett & pltff in said Judgment & Execution & that said Sheriff may be directed to obey his instructions as such —

Ezra Hunt Atty
for Boyce —

R. B. Bartlett Adjunct
Reg. No. of K. Boyce
Ed. Hyde
To be admitted to record
as Admr. de bonis non

Filed in Supreme Court
20. April 1835.
Levi Pettibone Clerk

Bartlett &
v
Hider —
Motion &

Filed in Supreme
Court 20. April 1835
Levi Pettibone Clerk

State of Missouri }
County of Ralls } In the County Court in and for Said County and State August Term A.D. 1834 - (Court August 11th A.D. 1834)

"William B. Garrett by his attornies Adam B. Chambers & Thomas L. Anderson filed a motion in writing to set aside the letters of Administration granted to Robert B. Bartlett on the Estate of Spillesberry C. Garrett decd and filed four affidavits in support of his motion -"

Which motion is in words & figures following Court, State of Missouri County of Ralls ss. County Court August Term - William B. Garret the brother of Spilsberry Garret decd and interested in Said estate complains to the County Court of Ralls County that Robert B. Bartlet who on the 9th day of November A.D. 1832 obtained letters of Administration on Said estate has failed to discharge the duties enjoined on him by law in the Administration of Said estate The Said William further complains that the Said Robert B. Bartlet has as he beleives obtained the administration of Said estate by fraud upon this County Court in this that he the Said Bartlet represented that he was at the time of granting Said letters a creditor of Said estate for medical services rendered the Said Spilsberry whereas in truth the Said Bartlet before that time was wholy paid & discharged and was not a creditor of Said estate The Said William further represents & complains that by the false representations made by the Said Bartlet as aforesaid he the Said Bartlet committed a fraud upon the estate of the Said Spilsberry & putting the Same to unnecessary costs & trouble wherefore he prays for the reasons aforesaid that the letters granted to the Said Bartlet may be revoked upon the final hearing of this cause William B. Garret on oath states that the facts set forth in this complaint are to the best of his knowledge & belief true. Wm B. Garret.

Sworn & subscribed to this 11th day

of August A.D. 1834. Charles Glascock Clerk Cty ct.
By his deputy Harrison Glascock."
Upon the back of said motion is the following endorsement
"Filed August 11th 1834. Charles Glascock Clerk by his deputy
Harrison Glascock."

And afterwards Towit, At a County court begun and held at the court house in the town of Newtonden in and for said County of Ralls in the State of Missouri but adjourned to and held at the house of Spencer Glascock in said town of New London on the third day day of November [redacted] it being the first Monday in said Month A.D. 1834 on the 3rd day of said Court the following entry were made of Record, Towit,

" William B. Garret
vs
Robert B. Bartlet Admr. of the Estate of Spillsberry C. Garrett decd

Motion to set aside letters of Administration on the Estate of Spillsberry C. Garret decd.

Now at this day comes the parties aforesaid by their attornies and the attorney for the defendant moves the court to set aside the motion filed in the above cause at the last term of this court and after argument of the counsel aforesaid the court overruled said motion and the attorney for the defendant pray the court for a continuance of the above cause and it is ordered by the court that the same be continued at the costs of said defendant Robert B. Bartlett Admr. of the Estate of Spillsberry C. Garrett deceased and be set for trial on the first day of the next Term of this court by consent of parties and the counsel for the defendant tenders & files his bill of Exception in accordance with the opinion of the Court and pray that the same may be signed & sealed by the court and made a part of the record which is accordingly done."

And afterwards Towit, At a County court begun

and held at the Courthouse in the town of New London in and for Said County of Ralls in the State of Missouri but adjourned to and held at the Clerk's Office in Said Town of New London on the 4th day of February it being the first monday in Said Month A.D. 1835 on the 3rd day of Said Term the following entry were made of record Court,

" William B. Garret
vs
Robert B. Bartlet Adm.r of the Estate of Spilsberry C. Garret decd.

Motion to set aside letters of Administration on the Estate of Spilsberry C. Garret decd.-

The motion of the Said William B. Garret to revoke the letters of Administration heretofore granted to the Said Robert B. Bartlet upon the estate of Spilsberry C. Garret deceased Comeing on to heard and both parties by their counsel appearing in court the evidence in the cause having been heard by the Court and the argument of counsel having been had the court do find that the Said Robert B. Bartlet has failed to discharge the duties enjoined on him by law in the administration of the Estate of the Said Spilsberry C. Garret decd. And the court do further find the letters of Administration granted to the Said Robert B. Bartlet on the ninth day of November A.D. 1832 upon the estate of Said Spilsberry C. Garret deceased was obtained by the Said Bartlet by reason of the false & fraudulent representations of the Said Bartlet in manner and form as the Said William B. Garret hath above thereof complained against him the Said Bartlet. It is therefore Ordered & adjudged by the court that the Said letters of Administration granted to the Said Robert B. Bartlet on the ninth day of November A.D. 1832 on the Said Estate of Spilsberry C. Garret deceased be revoked and repealed & entirely

held for nought and that the Said William B. Garret do have & recover of the Said Barttet his costs in this behalf laid out and expended –"

And afterwards Towit, at the Same Term last aforesaid on the 4th day of Said court the following proceedings were had Towit, (February 5th day 1835)

" Ordered by the court that Richard Boyce be appointed Administrator of the Estate of Spilsberry C. Garret deceased, and thereupon the Said Richard Boyce come into court and entered into bond to the State of Missouri in the Sum of five hundred dollars with Oney Carstarphen, David O. Glascock & Edmund Hyde as his Securties which bond & Security is approved by the court & the Said Boyce takes the oath prescribed by Law as Administrator of Spilsberry C. Garret decd it is therefore Ordered by the court that letters of Administration issue to Said Boyce by the Clerk of this court –"

State of Missouri County of Ralls } Set I Charles Glascock Clerk of the County Court in and for Said County and State Certify that the above is a true copy of the record and proceedings in the case of William B. Garrett against Robert B. Barttet Admr of the Estate of Spillsberry C. Garret decd and the order appointing Richard Boyce Administrator of Said decd as the Same now remains in my office –

Witness Charles Glascock Clerk of the County court in and for Ralls County and State of Missouri have hereunto Set my hand and Seal office this 24th day of April A.D. 1835 =

Charles Glascock Clerk
By his deputy Harrison Glascock

Filed in Supreme court 27 April 1835
Levi Pettibone Clerk

STATE OF MISSOURI,
County of Ralls. } SS

In the County Court, within and for the aforesaid County.

To all who shall see these presents---GREETING;

KNOW YE, *that whereas* Spilsberry C. Garret *late of said County deceased, died intestate as it is said; and* Richard Boyce *the said court having given sufficient security, and complied with the other requisitions of law; therefore do by these presents, give and grant unto the said* Richard Boyce *full power and authority to administer all and singular the goods, chattels, monies, credits and effects of the said* Spilsberry C. Garret *wheresoever the same may be found, within the State aforesaid; and to ask, demand, and in a legal manner, to require and receive all, and all manner of debts and demands, due and owing said deceased, and well and faithfully to dispose of the same according to law. And lastly, the said Court do by these presents, constitute and appoint the said* Richard Boyce *Administrator of all and singular the goods, chattles, lands, tenements, monies, credits and effects of the aforesaid* Spilsberry C. Garret.

In testimony whereof, *I have hereunto set my hand, and affixed the SEAL of said County Court, at the office of said Court, in said County, this* fifth *day of* February *in the year of our Lord. eighteen hundred and* Thirty five *and in the* 59 th *year of the Independence of the United States.*

Charles Glascock CLERK.
By his deputy
Harrison Glascock

Recorded Feby 5th A.D. 1835

Exd.

Charles Glascock Clerk
By his deputy
Harrison Glascock

State of Missouri } Ss.
County of Ralls }

I Charles Glascock Clerk of the County court in and for said county and State certify that the within is a true copy of Recorded letters of Administration Granted to Richard Boyce on the Estate of Spilsberry C. Garret decd as the same now remains of Record in my office in Administration Book A page 100-

In Testimony whereof I have hereunto set my hand and seal of office this 20th day of March A.D. 1835

Charles Glascock clerk
By his deputy
Harrison Glascock

Filed in Supreme Court 27 April 1835.
Lewis Pettibone Clerk

Filed
Bartlett

The State of Missouri, } ss
Second Judicial District . . . } The State of Missouri **To the Sheriff of the County of** ~~Pike~~ Ralls —GREETING.

WHEREAS, Robert B. Bartlett administrator of Spilsbury C. Garrett decd Plaintiff - at our ~~Circuit~~ Supreme Court, before our Judges thereof, recovered against Edmund Hyde Defendant - on the twenty fifth day of August instant, the sum of Three hundred and Seventy Six dollars and Ninety one cents Damages, and said Plaintiffs costs laid out in that behalf in the Circuit Court of Marion County, taxed by the Clerk of said Circuit Court, at Forty Six dollars and fifty five cents, which had be been recovered in said Circuit Court on the nineteenth day of June last - and also said Plaintiffs costs and charges laid out and expended in this Court -

which to the said Robert B. Bartlett Administrator as aforesaid were adjudged, as appears to us of record:

These are therefore to command you, that of the goods and chattels, lands and tenements, of the said Edmund Hyde - in your bailiwick, you cause to be made the aforesaid Damages and . . . costs; that you have the same before the Judges of our said Court, on the third Monday of April next, to render to the said Plaintiff the Damages and [redacted] costs aforesaid.

And for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same, we command you to take the said Edmund Hyde if he be found in your bailiwick, and him safely keep, so that you have his body before the same Judges on the said Third Monday of April next to satisfy the said Plaintiff of the aforesaid Damages and . . . costs, and that you certify to our said Judge how you execute this writ; and have you then there this writ.

(the words "Ralls" & "Supreme" interlined above erasures)

Witness, LEVI PETTIBONE, Clerk of our said Court, at Bowling Green, this twenty sixth day of August in the year of our Lord one thousand eight hundred and thirty four - and the Seal of said Court hereunto affixed

Levi Pettibone — CLERK. Supreme Court

Came to hand the 20th day of September 1834

C. Carstarphen Sheriff

Recieved on the within Sixty dollars Febr. 5th 1835 it being in full of the costs on said Execution which money I have here in Court.

C. Carstarphen, Shff Ralls Cty

Robt. B. Bartlett Admr.
Spillsbury C Garret Decd.
vs ∫ Exn. to Apl. 1835
Edmund Hyde Defendt.

Damages - $376.91
Costs Circuit Court taxed 46.55
Costs this Court
Levi Pettibone Clerk 2,23½
State Tax on Exn. 62½
U Wright Atty 3.00
T. Jones Clerk Crct. Court on Transcript 4 42½ 10 28½
$433.74½

Int on Judgt. from 19th June 1834.
Returned Spild 21st April A.D. 1835.
Levi Pettibone Clerk

Clerks fees for this writ included in aleder one Dollar -

As to the amount of damages I have not made them but as to that I return it unsattisfied by Order of Richard Boyce the preant Administrator de bonos non of the goods and Chattles &c. of Spillsberry C. Garret decd. April the 21st A.D. 1835.

Chapel Carstarphen
Sheriff Ralls County

Mr Johnson will please call at the clerks office of the Supreme court and get a copy of the Judgement obtained against Edmund Hyde in favor of the administrator of the estate of S Garrel Deceased

Richard Boyce Adm.

1111

$$\begin{array}{r} 40 \\ 3 \\ \hline 43 \\ 50 \\ \hline 93 \end{array}$$

Hyde
vs
Barlett, admrs of Garrett decd

appeal from
Marion circuit
Court —

This was an action of assumpsit brought by Barlett as administrator of Garrett vs Hyde in the Marion Circuit Court — The declaration contained two counts — one charged a promise to the intestate, and the other to the administrator.

On the trial of the cause the Deft offered to introduce evidence to prove that he had paid the money in the declaration mentioned to an administrator of the decd who took out letters in Kentucky after the date and record of the letters of administration granted to the said Barlett in this state — which the court refused — and also to shew by evidence that the funeral expenses of the decd were paid — which the court also overruled —

The Deft excepted to the opinion & decision of the court on these points — and spread the evidence upon the record — but made no motion for a new trial. —

The questions presented are.

1st. Did the court err in refusing the introduction of the evidence to prove payment to the Kentucky administrator —

The point has been argued as the payment was made without notice & without demand — but there is nothing in the record to present the question in that light — It is simply a question whether a payment to the Kentucky administrator was a good payment after Barlett took out letters here —

The answer we think is decisive — that the

letters granted in a foreign state have no force here — and that when Bartletts letters were granted he was exclusively authorised to receive & collect the assets of the Decd —

2nd As to the second point the evidence sought to be introduced was not that the defendant had paid out of the fund declared upon, the funeral expences of the deceased — or that he had paid any thing — but that the funeral expences of the decd were paid — or else its object was to impeach indirectly Bartletts letters of administration, he being a physician —

In either aspect it was improper and irrelevant —

3rd As to the question of interest in cannot arise — upon the record — not having been made a point in the court below —

Wright & Anderson
for appellee.

Hyde Dep & appellee
vs
Bartlett adm. appellants
of Garrett.

Brief of
Wright & Anderson.

Supreme Court Aug. 2. 1834

Hide
v.
Bartlett admr. &c. } On appeal from the Marion Circuit Court —

This was an Action of Assumpsit for money had & received — commenced by Bartlett as admr. of Garret v Hide — The declaration was filed Jany 1st 1833 — & contains two counts — the first charges that indebtedness & promise to Garret in his life time & the other to Bartlett as admr — The ~~evidence~~ plea in non assumpsit — The evidence given & offered is contained in a Bill of Exceptions & is briefly this —

Garret was a travelling from Ky & as such was taken sick at Hides where after a few days died — on laying him out Hide found in his cloaths $345 — which he shew Bartlett the attendant ~~[illegible]~~ physician & one Surgeon & said he would keep it for the decard, — Bartlett then produced his Letters bearing date Nov. 9 1832 — from the County Court of Rails in Missouri where the intestate died — & here the pff closed his case — The defendant then offered to prove that Letters of Admr on said estate was applied for on the 29th of Oct 1832 & granted on the 12th of Nov. 1832 in Ky and that said defendant had paid said $345 dollars to the Ky Admr at the County of Rails on the first day of Dec 1832 — to the reception of this the ~~[illegible]~~ pff objected & the Court decided — That the payment being after the grant of Letters in Missouri — although before demand or suit agent Hide — was not legal evidence the defendant also offered to prove that all the expenses of the sickness had been paid — this was also refused and the defendant excepted to these deeds of the Court — ~~and the only question in this case [illegible]~~

And the points relyed on are whether the Court erred in so deciding & excluding the above evidence —

The plaintiff in Error contends that the defendant held the money in trust for the first person who should call for it having a legal right to receive — & that this was the Ex Admr — for although he could not compell payment by suit in Missouri yet by virtue of his Letters he was authorized to receive & having received is bound to pay account for it in his Admn of Ex — & that his receipt is a good defence against a suit afterwards commenced by an Admr. of Missouri — The money was thrown into his hands by the Act of God & he was not bound to hold it longer that he had an ~~fair~~ opportunity to deliver it over to the proper owners —

See Tollers Ex. p 56 note (2) — Stephens Admr — v Gaylord 11 Mass R p 256 — Tid 134 note also Toller p 134 — 4 Serg & Rawls p 392 Swerengen & Pendleton —

Bends the defendant had no interest in the money — it came into his hands by accident & finding & of course no cause of Action, till demand made & he had refused to pay it over — If the bringing the action be the demand he had not the money at that time, he had paid it over as an Agent —

2 Stob p 113

~~The ex~~ This is an Equitable Action — we ought therefore to have been permitted — to show that all expenses & agent the demand had been paid & that Slide paid over this money in good faith to the Ex Admr — & not in fraud of the Missouri Admr.

1 Chitty p 343 in note — Rose v Barker 3 Cairns R p 266

2 Starks p 108

Hunt & Chamberlain
for Appellant

The Court Erred in the account of Interest

2 Starks p 108 —

(42) Aug 1864

Hiler

v

Bartlett

Appellants Brief