McManus, James (admin) vs. Sickle, James B 1856 Ripley 372/2

Ponder, Archibald

Crop, Isabel

Burnley, William

Burrels, William

Merrell, John C

Kelly, Charles L

Black, Houston

Lawson, William

585/37

Richardson

reversed

action upon adm bond must be brought in name of state

M was admr of Capp, Valentine M

action on admr bond for damages

SOLEE
MASS

Ripley Circuit Court October Term AD 1855
Wednesday the third day of the Term 24th day of the Month were present Albert Jackson Judge of the 15th Judicial Circuit when among others the following proceedings were had (Viz)

J. B. Sickles. & Co
vs
James. McManus and others } Civil action on adms bond for damages

Now at this time comes the parties in this cause and the defendants files herein their answer and this cause is continued

Ripley County Circuit Court April Term 1856
Tuesday the 2nd day of the Term and 29th day of the Month present the Honorable Albert Jackson Judge when the following proceedings were had (viz)

James B Sickles & Co
vs
James McManus et al } Civil action

now at this time comes up this cause for trial when the death of William Burress is suggested one of the defendants in this cause when when the Plaintiffs dismiss on the part of said Burress. when the parties announce than selves Ready for trial. when the defendants ask a jury which is by the court ordered summoned. then came a jury (to wit) Marshal Stephens. John Lorance. W A Simms. John Shepard. C A Gilaspie. S. N. Stanley. George Hasting. John McDaniel. A C Kinsey. A T Farrow. William G. Shaver James Rollins 12 twelve good

and Lawful Men of the County who after being
Elected and Sworn to try the issue of this Cause

J B Sickles & Co } Civil action on
ag } admrs bond &c
James McManus & Co }

Be it remembered that on the trial of this cause in the Circuit Court of Ripley County Missouri at the April Term 1856 to maintain the issue on their part the Plaintiffs offered to read in Evidence the ~~Copy~~ certified Copy of ~~McManus~~ the bond of McManus as administrator of the Estate of A V M Capp deceased

A

Know all men by these presents that we James McManus as principal and Archibald Ponder. Asahel Cross. William Burnley. William Burress. John C Merrell. Charles L Kelley. Houston Black. William Lawson as his securities are jointly and severally Bound unto the State of Missouri in the sum of seven thousand dollars Lawful money in witness of which ~~In witness~~ we have hereunto signed our names and affixed our seals this the 22nd day of April 1852

The condition of the above bond is such that if James McManus administrator de bonis non of the Estate of Valentine McCapp deceased shall faithfully administer said Estate account for pay and deliver all money and property of said Estate and perform all other things touching said administration required by Law or the order or decree of any Court having Competent jurisdiction then the above bond to be void otherwise to remain in full force

James McManus (seal)
Archibald Ponder (seal)
Asahel Cross (seal)
William Burnley (seal)
William his mark Burress (seal)
John C Merrell (seal)
Charles L Kelly (seal)
Houston Black (seal)
William Lawson (seal)

Taken and approved in vacation of Ripley County Court this 22nd day of April 1852

Anson dearmon Clerk

State of Missouri } ss
County of Ripley } I Willis M Ponder Clerk
of the County Court in and
for the County of Ripley in the State of Missouri
do hereby certify that the within is a true and perfect
Copy of the Original bond of James McManus
Administrator ~~of the~~ de bonis non of the Estate of
Valentine M. Capp deceased as the same remains
on file in my office

Intestimony where of I have here
unto signed my name and affixed
the Seal of said Court at office in the
Town of Doniphan County and State
afore said this the 21st day of April AD 1854

Willis M Ponder Clerk
of the County Court

Ripley County Court transacting probate business June Term AD 1854 Wednesday the third day of the Term and 23rd day of the month James Byrd. Dudley C Cox and William Parker Justices of said Court. before said Court the following proceedings were had (to wit)

Estate of V. M Capp deceased
It is ordered by the Court that James M Manus Bond as adm. de bonis non of said Estate be approved

I Willis M Ponder clerk of the County Court in and for the County of Ripley in the State of Missouri do hereby certify that the foregoing is a true and perfect copy of the approval of James M Manus bond as administrator de bonis non of the Estate of Valentine M Capp deceased as fully as the same appears now remaining on record in my office

In Testimony whereof I have hereunto Signed my name and affixed the seal of said Court at office in the Town of Doniphan on this the 21st day of April AD 1854

Willis M Ponder
Co Clerk

To the admission of which testimony the defendants objected which objection was overruled by the Court to which opinion of the Court the said defendants excepted and prayed the Court to sign and seal this bill of Exceptions which is done accordingly and the same is made apart of the Record

Albert Jackson (Seal)

J. B. Sickles
" vs
James McManus & als

Civil action &c

Be it remembered that on the trial of this cause in the Circuit Court of Ripley County at the April Term 1856 the Plaintiffs offered to read in Evidence a certified Copy of the Judgement of the County Court of Ripley County in favor of the Plaintiffs. wich is as follows (Viz)

Saint Louis August 29th / 51

Mr V M Capp

Doniphan Mo

Bot of J B Sickles & Co

#13					
2	No 6	Plush seat side Saddles		6.50	13.00
2	" 5	" " " "		8.	16.00
2	" 5	Red Hog Skin "		9.	18.00
1	" 4	Spanish "			10.50
1	" 5½	Traveler "			12.00
1/2	doz 3/4 in	Bradoon Bridles		4.50	2.25
1/2	" 7/8 "	" "		5.50	2.75
1/2	" 7/8	2 Rings " "		7.	3.50
1/2	"	S & Halter "		10.50	5.25
1/2	" 1¼ in	Brass ring ~~A~~ Stag Mtgls		3	1.50
1	"	Worsted Girths			2.00
1	" No 4	Cotton " do			1.50
1/4	" " 4	" Girthes		3	1.50
1/2	"	Worsted " do		4	2.00
		Box & Dray			1.75
					93 50

$93.50

State of Missouri }
County of Saint Louis } Personally appeared before the undersigned Justice of the peace within and for the County aforesaid. William V. Kay who being duly sworn deposes and says that he is Salesman in the House of J. B. Sickles and Co in the County aforesaid and was so when the order for the above Goods was filed on a/c of V M Capp that to the best of his Knowledge and belief credit has been given to the Estate of V M Capp for all payments and offsets to which it is entitled and that the ballance of $93.50 above stated are justly due said firm

Sworn to and subscribed before me Wm V. Kay

this 15th May 1852

Fee 50/100 Mann Butler justice of the Peace St Louis County

State of Missouri }
County of Saint Louis } ss. Personally appeared before the undersigned Justice of the peace within and for the County afore said James B Sickles who being duly sworn deposes and says that he is a member of the firm of J. B. Sickles and Co in the County afore said, that said firm is composed of this affiant and Simon V Sickles; that to the best of his knowledge and belief Credit has been given to the Estate of V M Cash for all payments and offsets to which it is entitled and that the ballance of $95.50 stated within is justly due the said firm

Fu 50/100 Paid }

James B Sickles

Sworn to and subscribed before me this 15 th day of May 1852 Mann Butler Justice of the peace St Louis County

I waive the necessity of further notice on the within a/c this the 22 d day of June ~~1853~~ 1852

Jas McManus admrs de bonis non.

Doniphan Mo 23rd June 1850

Ripley Probate Court June Term Court allows the sum of sixty three dollars and fifty Cents in Class fifth of said Estate A Dearmon Clk

Ripley County court transacting probate business
June term AD 1852 on wednesday the 23rd day of
the month and third day of the term were present
Dudley Cox. William Parker and James Byrd.
Justices of said Court. and before said Court
among others the following proceedings were had (to wit)

J B Sickles } On this day comes the plaintiff
vs } and presents their demand for
V M Capp deceased } allowance against said Estate
notice being waived & parties ready for trial
Court hears the proofs in the case and doth order
said Claim allowed for the sum of ninety three
dollars and fifty cents in Class fifth against
said Estate

I Willis M Ponder Clerk of the County
Court in and for the County of Ripley in
the State of Missouri do hereby certify the
foregoing to be a true and perfect copy of the
original Order of allowance in the above said
Claim as fully as the same appears now remain
-ing on record in my office

In testimony of which I have
hereunto signed my name and
affixed the seal of said Court at office
in the Town of Doniphan on this
the 21st day of April AD 1854

Willis M Ponder
Co Clerk

To the admission of which and the reading of the same defendants objection which objection was by the Court over Ruled, to which ~~defendants~~ opinion ~~defendants~~ of the Court the defendants ~~taken~~ excepted and prayed the Court to sign and seal this bill of Exceptions which is done accordingly and made a part of the record

Albert Jackson (Seal)

J. B. Sickles & Co } Civil action &c
ag
Jas McManus & als }

Bit remembered that on the trial of this cause in the Ripley county circuit court at the april term 1856 the Plaintiffs offered to read in Evidence a certified Copy of the first annual settlement of James McManus administrator of ~~the~~ V M Capps Estate. which is as follows (viz)

Doniphan Mo March the 22d 1853
James McManus as the administrator Debonis non of Estate of V M Capp deceased presents this his first annual settlement in said Estate

He charges him self as follows to wit

Amount of Inventory of the notes accounts receipts and evidences of debt made by Juliett Capp administratrix of said Estate	2504	72	
Amount of Sale bill	262	78½	
appraise bill No 2 of horse	25	00	$2792 50½
Collected on the above accounts & notes which is subject to the order of court	$75	00	

He asks ~~the credits~~ the following credits

Voucher No 1 Receipt of Juliett McManus late widow of said V M Capp property in addition to dower at appraisement	200	00	
No 2 Receipt of John C Merrell	3	00	
" 3 Tax Receipt	3	11	
" 4 Lemuel Kittrell a/c unavailable	67	85	
" 5 David Gamblin a/c "		35	
" 6 Sarah Ferrill a/c "		45	
" 7 William Gamblin a/c "		59	
" 8 Samuel Boyles a/c "		25	
" 9 Noah Smith a/c	87	40	

Voucher No 10 W M P 9/c	"	6 61	
" " 11 Prince 9/c	"	1 50	
" " 12 Harvey Prince 9/c	"	1 07	
" " 13 Alonzo Potter 9/c	"	50	
" " 14 Nathan Prince 9/c		40	
" " 15 receipt on Joseph S White	"	299 49	
" " 16 John Hoot unavailable	"	15 59	
" " 17 Owen Holmes	"	5 00	
" " 18 Richard Kingo $55.50	5	28 50	
" " 19 A Vincen $9	3	3 00	724 46
Ballance unadministered			$2068 04
			$2068 04

I Willis M Ponder Clerk of the County Court in and for the county of Ripley in the state of Missouri do hereby certify that the within is a true and perfect copy of the first annual settlement of James McManus administrator de bonis non of the Estate of Valentine M Cape deceased as fully as the same apears now remaining on file in my office In testimony whereof I have hereunto signed my name and affixed the seal of said Court at office in the Town of Doniphan on this the 21st day of April AD 1854

Willis M Ponder

Co Clerk

To the admission ~~of which~~ and reading of the same the defendants objection which objection was overruled by the Court to which opinion of the Court the defendants Excepted and prayed the Court to sign and seal this Bill of exceptions which is done accordingly and the same is made apart of the record

Albert Jackson

(Seal)

J. B. Sickles & Co
vs } Civil action
Jas McManus & als

Be it remembered that on the trial of this cause in the Ripley County Circuit Court at the April term 1856 after the Evidence on both sides had been given in. the defendants asked the Court to give the following Instructions

James B Sickles & Co
against
James McManus et al

The defendants in the above case asks the court to give the following instructions

1st before the Jury can find for the plaintiffs they must believe from the evidence that assets was in the hands of the administrator which was subject to the payment of plaintiffs Claim

2nd Evidence that property or assets had come to the hands of the administrator does not warrant the Jury in finding for the plaintiff

Fox & Ritchey
for defendants

which were refused or not given by the court to the refusal of giving said instructions by the Court the defendants Excepted and prayed the Court to sign and seal this bill of Exceptions which is done accordingly and the same is made apart of the record

(Seal)

I refuse to sign the above bill of exceptions for the reason that defendants did not except to the decision of the Court refusing to give the instructions

Albert Jackson. Judge

(and the proof and allegations of the parties being heard they) retired to consider of their verdict when after due deliberation, they returned in to open court the following Verdict (to wit)

J B Sickles & Co vs J McManus et al

we the jury in this cause find that the Estate of Valentine McCapp is indebted to plaintiffs in the sum of $95.50/100

we the jury find find that McManus was the administrator of V McCapp dec and the defendants are his securities on his administration Bond

we the jury find that the amount of assets belonging to the Estate of Valentine McCapp which came to the hands of J. McManus and which he has failed to account for as administrator amount to the sum of twenty nine hundred and sixty Eight dollars and four cents

J B Sickles & Co
vs
James McManus & als } Civil action

Be it remembered that upon the trial of this cause in the Ripley County Circuit court at the april term 1856 and after the rendition of the Verdict by the jury the defendants moved the court to set aside the verdict and grant a new trial

J B Sickles & Co
ag
James McManus & als } Civil action on adm^rs Bond

This day comes the defendants and move the court to set aside the verdict of the jury herein

& and grant a new trial for the following Reasons (to wit)

1st Because the Court his directed the jury in this. the Court directed the jury in writing to find the facts one way and allowed the jury to take the directions with them in their retirement when truth it was the province of the jury to find a general or special Verdict in their discretion

2nd Because the Court Erred in admitting the certified Copy of the administrators bond when by the pleading the Execution of the original bond was denied under oath

3rd Because the Court Erred in refusing the testimony of Witnesses on the part of the defendants to prove the Erasure of one of the defendants names on the allegia bond before the approval thereof by the Clerk in Vaction or the County Court

4th Because the Court Erred in not permitting defendants to apply for a subpoena <u>duces tecum</u> on the Clerk of the County Court to produce the original Bond in his office

5th Because the Verdict is against the Law and the Evidence

6th Because since the trial of this Cause the defendants have discovered a new and material fact which might Change the Verdict in this there is in the possession of James. McManus a receipt from William Pinega present administrator de bonis non of the Estate of V. M. Capp dec amounting to one thousand dollars and more

7th Because the verdict is against all the defendants though the Plaintiffs discontinued as to some of the defendants

8th Because the court erred in refusing the instructions asked for by the defendants

Fitchen & Fox for defts

which motion was over ruled by the Court to which opinion of the court over ruling said motion the defendants Excepted and prayed the court to sign this bill of Exceptions which is done accordingly and the same is made part of of the record

Albert Jackson

Clerk

James B Sickles & bro
vs
James McManus Abner Ponder administrator
of the Estate of Archibald Ponder deceased
Asahel Croft William Burnley John C Merrell
Charles L. Kelley. Houston Black and
William Lawson defendants

Now at this time comes the parties in this cause
and defendants submit their motion for new trial
in this cause and the Court after hearing
the arguments on Each side overrules the
motion for a new trial and on motion
of Plaintiffs it is considered decreed and adjudged by
the court in accordance with the finding of the jury
in this cause that defendants pay (that is to say James
McManus Abner Ponder administrator of the Estate
of Archibald Ponder dec. Asahel Croft William
William Burnley John C. Merrell Charles L Kelley
Houston Black and William Lawson the plaintiffs
having dismissed on the part of William Burnley)
the sum of Twenty nine Hundred and Sixty Eight
dollars and four cents and that Plaintiffs
have and recover the sum of ninety three dollars
and fifty cents to be deducted from the said sum of
twenty nine Hundred and sixty Eight dollars
and four cents and his costs and charges in
this behalf Laid out and Expended and that
he have an Execution there for
Whereupon, the defendants ask an appeal to the
Supreme Court. and having filed affidavit and
sufficient Bond the appeal is Granted and it is
further ordered that all further proceedings herein be
stayed until the decision of Supreme Court shal have

been received or further orders on herein made and that the Clerk of this court make out and certify a transcript of the record and proceedings had in this cause under seal to the Clerk of the Supreme court at St Louis

State of Missouri } S.S.
County of Ripley } I Willis M. Ponder Clerk of the Circuit Court in and for the County of Ripley in the State of Missouri do hereby certify that the annexed and fore going is a full true and perfect transcript of the Record and Proceedings had in the foregoing entitled cause had in the Ripley County Circuit Court as fully and as completely as the same ~~[illegible]~~ now remains of record and on file in my office

In testimony whereof I have hereto signed my name and affixed the seal of said circuit court at office on this the 19th day of August AD 1856

Willis M. Ponder clerk
By Sain Law Dpty Clerk

Clerks fees Copying 545 7 words & figures		$5.45
Certificate & seal	25	50
for Co Court Seals	25	1.00
Postage		9
		$5.14

53 ~~42~~ 50

(37)

Oct. Term. 1856

James B. Sickles
& Co. respondents.

v.

James McManus,
& al. appellants.

Appeal Replevy Civ. Court
15 Civ.

Filed 1st September 1856
Wm. S. Glanville
Clk.

53 ~~42~~ 50

Fil. & dock 28, appearance 30, Contin 25, ent. & fil. mo. 66, order 50, writ. civ. 1.50, fort. 6,
Cur. 50, redocketing 28, appidavit 5, postage 6

J. B. Sickles & Co. Resp.
vs
James McManus & others. appts

Appeal from Ripley Circuit Court

And now comes the appellants and suggests a diminution of the record in this Cause in this to wit. The Clerk of the Circuit has not copied into the record the petition of plaintiffs or answer of Defendants which will appear to this Court by inspection. Wherefore they ask a writ of Certiorari to said Clerk to certify the record. Geo W Stovall for appts

53 ~~42~~

J. B. Sickles & Co

v

Jas McManus & others

Motion for Certiorari

Filed 18 March 1857
Wm S Glanville
Ck.

The State of Missouri ss.

The State of Missouri to the Honorable the Circuit Court held in and for the County of Ripley in said State, Greeting:-

Whereas it has been suggested to our Honorable Supreme Court of the State of Missouri, that in the transcript of the record and proceedings of a certain cause lately pending before your Honorable Court, wherein James B. Sickles & Company were plaintiffs and James McMannus was defendant, that there is in the said record and proceedings diminution and defect in this, to wit;- that "the petition of the plaintiffs and the answer of the defendant are not set forth in said transcript," And whereas our said Supreme Court is not satisfied that said transcript as now filed in said Supreme Court contains a full and perfect transcript of the record and proceedings aforesaid but that the same is imperfect and diminished; These are therefore to command you that you send up to our said Supreme Court certified under your seal, a full true and complete transcript of the record & proceedings aforesaid, and that you have the same before our said Supreme Court, ~~on or before the~~ to be held at the Court House in the City of St Louis, on or before the Third Monday in October next, to the end that our said Supreme Court may proceed to administer speedy justice in the premises as the law directs, And have you then there this writ.

Witness my hand and the Seal of said Court at Office in the City of St. Louis, this 18th day of September 1857.

Wm. S. Carroll,
Clerk.

with by sending Certified Copy
of the within named record
and proceedings this October the
14th 1857 Willis M Powder
Clk

State of Missouri } In the 14th
County of Ripley } Judicial Circuit

James B Sickles and
Simon V Sickles Traders doing
Business under the name firm
title and Description of
J B Sickles & Co.
Plaintiffs, against
James McManus Abner J
Ponder the administrator
of Archibald Ponder Deceased
Asahel Cross, William Burnly
William Burrows, John C
Merrell, Charles L Kelly,
Houston Black and William
Lawson, Defendants.
{ In the circuit Court of Ripley
County To the September term
AD 1834
Plaintiff who are creditors and
Distributees of the Estate of Ann
Valentine M Capp Deceased
State that Defendants or at
least the following Defendants
(to wit) James McManus
Archibald Ponder (the intestate
of the said Abner J Ponder)
Asahel Cross William burnly
William Burrows, John C
Merrell, Charles L Kelly, Houston
Black and William Lawson
on or about the twenty second
day of April in the year of

our Lord One thousand Eight hund and fifty two at the county of Ripley in the state of Missouri, Executed their Bond to the said State of Missouri for ~~the~~ seven Thousand Dollars Conditioned that the said James McManus ~~[illegible]~~ ~~[illegible]~~ administrator Debonis non of the Estate of Valentine McCapp Deceased Would faithfully administer said Estate account for pay and Deliver all money and property of said Estate and perform all other things touching said administration Required by Law or the Order or Decree of any court having Competent Jurisdiction a certified copy of which said Bond is hereto annexed and made part of this petition Marked (A)

Plaintiffs further state that on the Twenty third day of June in the year of our Lord Eighteen Hundred and fifty two they obtained in the Ripley County court in the state of Missouri judgment against said Estate for the sum of ninety three Dollars and fifty cents ($93 $\frac{50}{100}$) which is hereto annexed and marked (B) by the means of which said

Judgement they became Distributes of said Estate

Plaintiffs further state that James McManus administrator Debonis non aforesaid has senally failed to comply with the conditions of the said Bond, because

first, he failed to Inventory the Goods Chattels Money and Effects of the said Valentine McCapp Deceased

second, he took possession of three negroes to wit, One negro woman Slave for life worth about Eight hundred Dollars, One negro Girl, named Caroline slave for life worth about five hundred Dollars and One nego Girl slave for life named adline worth about five hundred Dollars which were assets in his hands belonging to the Estate of Valentine McCapp Deceased and after having taken possession of the above Discribed negroes fraudulently conveyed them out of this state and and beyond the Jurisdiction of the County Court of Ripley County the County having

Jurisdiction of said Estate neglecting failing and Refusing to account for the same to the Damage of Plaintiffs ninety three Dollars and fifty cents for which and the Interest they ask Judgement

J B Sickles & Co
By Philand & Woodside

I J R Woodside attorney for Plaintiffs makes oath and says that the above petition and matters therein as stated are true

J R Woodside

Sworn to and subscribed before me this 22nd day of April 1854
Willis McPonder Clerk

— A —

Know all men by these presents — that we James McManus as principle and Archibald Ponder, Asahel Crop, William Burnley, William Burrows, John C Merrill, Charles L Kelly, Houston Black and William Lawson, as his securities are jointly and severally bound, unto the State of Missouri, in the sum of Seven thousand Dollars, lawful money of ~~the~~ ~~United States~~ In witness of which we have hereunto signed our names and affixed our seals this the 22d day of April 1852,

The Condition of the above bond is such that if James McManus administrator debonis non, of the Estate of Valentine M Capp, deceased, shall faithfully administer said estate account for pay and deliver all money and property of said estate and perform all other things touching said administration required by law or the order or decree of any Court having Competent Jurisdiction then the above bond to be void otherwise to remain in full force

James McManus Seal
Archibald Ponder Seal
Asahel Crop Seal
William Burnley Seal
William his x mark Burrows Seal
John C Merrill Seal
Charles L Kelly Seal
Houston Black Seal
William Lawson Seal
Seal

Taken and approved in ~~open Court~~ vacation of the Ripley County Court this 22d day of April 1852

Amson Dearman
Clerk

State of Missouri } ss
County of Ripley } I Willis M Pander Clerk of the County Court in and for the County of Ripley in the State of Missouri do hereby Certify that the within is a true and perfect Copy of the original Bond of James McManus, administrator debonis non of the Estate of Valentine M Capp Deceased as the same remains on file in my office

In testimony whereof I have hereunto signed my name and affixed the seal of said Court at office in the Town of Doniphan in the County and State aforesaid on this the 21st day of April A D 1854.

L S

Willis M Pander
Clerk

filed June 21st 1852
A. Dearman
Clerk

Approved in open Court this 23d day of June 1852
A Dearman
Clerk

Estate of V M Capp
James McManus
Admr

-B-

Ripley County Court transacting probate business, June Term A D 1852 on wednesday the 23d day of the month and third day of the term, were present Dudley C. Cox, William Parker, and James Byrd, Judges of said Court, and before said Court and before said, amoung others the following proceeding were had to wit,

James B Sickles
vs
V M Capp decd,

On this day comes the plaintiffs and present their demand for allowance against said Estate, noticed being waived and the parties ready for trial the Court hearing the proof in the Cause, and doth Order said Claim be allowed for the sum of Ninety three Dollars and fifty Cents in Class fifth against said Estate,

I Willis M Ponder Clerk of the County Court in and for the County of Ripley in the State of Missouri do hereby Certify the foregoing to be a true and perfect Copy of the Original order of allowance in the aforesaid Cause as fully as the same appears now remaining on record in my office

In testimony whereof I have hereunto
L S signed my name and affixed the the seal of said Court at office in the Town of Doniphan on this the 21st day of April A D 1854

Willis M Ponder, Clerk

James B Sickles & Co
against
James McManus Et al

Civil action on bond in the Circuit Court of Ripley Co Mo at the October term thereof 1855

The defendants Alexander J Pondon adm of A Pondon dec'd, Asahel Cross, William Bunnly, William Burrows and Charles L Kelly, for joint and several answer to the declaration in this cause, State that they did not make and execute abond to the State of Missouri such as is set forth in plaintiffs petition. that they have not sufficient knowledge to form a belief, as to whether the said James McManus, failed to make and file an inventory of the assets that came to his hands nor whether he took possession of the negroes mentioned in said petition, nor have said defendants sufficient knowledge to form a belief that the said James McManus failed to Inventory said negroes, mentioned in said plaintiffs petition or that said James McManus removed

said negroes out of the State of Missouri
beyond the Jurisdiction of the County Court
of Ripley County, the County having
Jurisdiction of said estate, neglecting
failing and refusing to account for
the same and require proof thereof
defendants further states that "they" have not suffic-
-ient knowledge to form a belief whether or not
that by the acts and violations of the said
bond as well as wasts committed by said
James McManus plaintiffs are injured
to the amount of Ninety three Dollars
and fifty Cents as stated in plaintiffs
petition therefore require proof thereof
Ketchen & Fox for defts

J C Merrill one of the defendants makes
oath & says he believes the foregoing
answer & matters therein contained
are true.

sworn to and subscribed J C Merrill
before me this 24th of
October 1855. W M Ponder
Clerk

filed October the 24th 1855
W M Ponder
Clerk

State of Missouri } ss
County of Ripley } I Willis M Pandon
Clerk of the Circuit Court in and
for the County of Ripley aforesaid,
hereby Certify that the within and
foregoing is a true and perfect copy
of the record and proceedings in the
Case of J B Seckles & Co vs James McMaines Et al Except such as is already
been Certified by me to Supreme Court
as fully as the same appears now
remaining on file and of record
in my office

In testimony whereof I have hereunto
signed my name and affixed
the seal of said Court at office
in the Town of Doniphan on this
October the 14th 1857. Willis M Pandon
Clerk

Sickles

vs.

McNairs

Petition & Answer returned with writ of Certiorari.

Filed 19 Oct. 1857.
Wm. S. Glanville
Ck

James B. Sickles & others Resp
vs
James McManus et al apllts

Appeal from Ripley Circuit Court

The appellants come and say that in the record and proceedings and judgment of the Court below there is manifest error in this

1. The Court erred in the admission of improper Evidence on part of plffs

2 The Court erred in refusing instructions asked by Defendants

3. The Court in overruling motion for new trial

4 The Court erred in the judgment rendered

5 The Court should have given judgment for Defendant on the facts found by the Jury

For these and other errors apparent on the record appellants pray the judgment may be reversed

Jno W Noell for
applts

Joinder in Error

Bay for Respondents

~~42~~ 53

J. B. Lickles & Co

vs

J. McManus et al

Assignment of errors

Filed 20 Oct. 1857
Wm S Glanville
Cpk

Noell

James B Sickles & others Respondts
vs
James McManus & others Appellants

Appeal from the Circuit Court of Ripley County

Statement of the Case by appellants Counsel

It is to be regretted that Counsel & Clerks do not pay more attention to the form & mode of getting a record into this Court In this Case the record is in a very awkward Condition. but I will endeavor to State the Case as intelligibly as I can from what appears from the Transcript

This was a civil action on the Administrators bond of James McManus Admr De bonis non of the Estate of Valentine McCapp deceased. The suit was instituted April 22nd 1854 in the Name of the plaintiffs and not in the name of the State to plaintiffs use. The Plaintiffs allege in their petition that they obtained Judgment against the Estate of Capp on the 23rd day of June 1852 for $93. 50 cents They further allege that McManus failed to Inventory the goods and Chattels monies & effects of the deceased without any specification as to what goods chattels monies & effects he failed to inventory. The 2nd Breach alleged is as follows. "He took possession of three negroes to wit One negro woman Slave for life worth about 800$ and negro girl Caroline worth about 500$ and one negro girl slave for life named Adaline worth about 500$ which were assetts in his hands belonging to the Estate of Valentine McCapp deceased. And after having taken possession of above described negroes fraudulently Conveyed them out of this State and beyond the Jurisdiction of the County Court of Ripley County the County having Jurisdiction of said Estate neglecting failing and refusing to account for the Same &c There is no

allegation in the petition either that there are not other assets sufficient to pay plaintiffs Claim or that it is in danger of being lost or that he has obtained any order of payment or taken any other Steps to collect the Same and failed so to do

The answer of the Defendants the Securities of the Administrator denies the execution of the bond Sued, and deny all knowledge of the other facts alleged Sufficient to form a belief

The Cause was tried by a Jury at the April term 1856. On the trial the only evidence given was the bond of the Administrator McManus (and the Execution of which does not appear to have been proved) and also the proceedings in the County Court upon the allowance of plaintiffs Claim against the Estate. To the admission of the Bond and also the Said proceedings in the County Court the Defendants objected which being overruled Excepted as will be seen by a seperate bill of exceptions on Each point (which I am told is required by the Judge of that Circuit in every Case). The plaintiff also read a Copy of the first annual Settlement of Said Administrator against the objections of Defendants, which Settlement was made March 22nd 1853 and Shows a balance of $2068-04 cents in the Administrators Subject as Stated in the Settlement to the order of the Court

The Defendants it appears asked the following instructions

1 Before the Jury Can find for the plaintiffs they must believe from the Evidence that assets was in the hands of the Administrator which was Subject to the payment of the plaintiffs Claim

2 Evidence that property or assets had Come to

the hands of the administrator does not warrant the Jury in finding for the plaintiff. These instructions were refused but the judge endorses at the bottom of the bill of exceptions that he refuses to sign it because the Defendant did not except to the decision of the Court refusing to give the instructions. This being all the Evidence the jury returned the following verdict

" J. B. Sickles & Co
" v
" J McManus et al } We the Jury find that
" McManus was the Administrator of V M Capp
" decd And the Defendants are his Securities on his Admin
" istrators bond"
" We the Jury find that the amount of assets be
" longing to the Estate of Valentine M Capp which
" Came to the ~~possession~~ hands of J McManus
" and which he has failed to account for as ad-
" ministrator amount to the sum of twenty
" nine hundred & sixty eight Dollars and four
" Cents

The Defendants moved to set aside the verdict of the Jury assigning therefor the following reasons
1st Because the Court misdirected the Jury in this, The Court directed the jury in writing to find the facts one way and allowed the Jury to take the directions with them in their retirement when (in) truth it was the province of the Jury to find a general or Special verdict in their discretion
2nd Because the Court erred in admitting the Certified Copy of the Administrators bond when by the pleading the execution of the original bond was denied under oath
3 Because the Court erred in refusing the testimony of witnesses on the part of Defendants to prove the erasure of one of the Defendants names on the alleged bond before the approval thereof

4 Because the Court erred in not permitting the Defendants to apply for a Subpoena Duces Tecum on the Clerk of the County Court to produce the original bond in his office

5 Because the verdict is against the law and the Evidence

6. Because since the trial of this Cause the defendants have discovered a new and material fact which might have Changed the verdict in this there is in the possession of James McManus a receipt from William Pinega present Admr de bonis non of the Estate of V M Capp dud amounting to One thousand Dollars and more

7 Because the verdict is against all the Defendants though the plaintiffs discontinued as to some of the Defendants

8 because the Court erred in refusing the instructions asked for by Defendants

This motion was overruled and Defendants excepted.

Thereupon the Court rendered a Judgement as follows

" On motion of plaintiffs it is Considered and
" adjudged by the Court in accordance with the finding
" of the Jury in this Cause that Defendants pay
(" that is to say James McManus Abner J Ponder admr
" of the Estate of Archibald Ponder decd Asabel Cross
" Wm Barnley John C Merrill Charles L Kelly Hous-
" ton Black and Wm Lawson, the plaintiffs having
" dismissed on the part of Wm Burrows, the sum
" of twenty nine hundred & sixty eight Dollars
" and four Cents And that plaintiffs have and
" recover the sum of Ninety three Dollars and

"fifty cents to be deducted from the said sum of
"twenty nine hundred & sixty eight dollars and
"four cents and his costs and charges in this
"behalf laid out and expended and that he
"have an execution therefor"

The Defendants having excepted to the various decisions of the Court took an appeal to this Court

John W Stoell for appellants

John W Stoell for appellants insists

1. That upon the Petition & bond as presented by plaintiffs in their own statement they are not entitled to recover. First because the suit is not brought in the name of the State who is in this matter a trustee of an express trust within the meaning of the Practice act of 1849. Second because there is no allegation in the Petition which entitles the plaintiffs to a recovery against the sureties on the bond; to entitle them to such a recovery they must show that the Breaches alleged have damaged them. This cannot be shown unless by a state of facts that subjects them to the loss of their debt. Third they do not show that they have taken the steps provided for in the administration law of 1845 to enable creditors, for their own protection and for the protection of the sureties on admrs bonds to enforce the collection of claims allowed. No order of payment & no refusal to pay is alleged

We insist that in order to support a verdict

and judgement the material facts which alone entitles a plaintiff to a recovery must be stated in the petition

2 We hold that the Court erred in permitting the bond to be read on two grounds: first its execution was denied and the plaintiff was to put to the proof of the original. To read a copy without any proof was manifest error. Second the bond being made payable to the State Could not be read in a suit in favor of J B Sickles & Co To entitle the plaintiff to read the bond it was essential that the suit should have been instituted in the name of the Obligee therein

3 The Court erred in refusing the instructions asked by Defendants, they lay down the law correctly It is true the Judge refuses to sign the bill of exceptions on that point because he says no exception was taken at the time. But he admits they were ~~given~~ refused and that is enough The Courts Cannot preclude a party from the benefit of objections to the giving instructions or refusal of others because at the moment the exception is not made. It is presumed in all Cases that exceptions are taken against all that is wrong And here I take the liberty of expressing my dissatisfaction with the practice of the Judge of the 15th Judicial Circuit in requiring a seperate bill of exceptions to be taken upon every point at the time. instead of embracing all in one general bill of exceptions at the

end of the trial. It is oppressive on Counsel presents the record in this Court in a ragged and disjointed form, and does not promote the ends of Justice. The objections to the refusal of the instructions are also preserved in the motion for a new trial

4 The verdict of the Jury is not responsive to the allegations in the petition and decides nothing. That verdict does not find any breach of the bond. The fact that the plaintiffs have a claim against the Estate, that the administrator has in his hands assets unaccounted for. does not constitute a breach of the bond. Every administrator in the State is perhaps at some period of time in the same condition It does not follow however that the conditions of the bond are broken so as to render the securities liable. This verdict is not sufficient to support a Judgement

5 The Judgement itself is an incomprehensible riddle What has been recovered and from whom. we are not able to determine on its face. It is not supported by the verdict and should be reversed

6 The breaches alleged are failing to inventory ~~and~~ property &c and for making with certain slaves. The proof is assets on hand accounted for to the Court. This proof dont support the allegations. See settlement

See Code 1845 page 98 Sections 11-12. 13-14. 15. Art V. administrator

53

Jas B. Sickles & Co
vs
J McManus et al

Statement & Brief
of appellants

Filed 20 Oct. 1857
Wm J Glanville Cl

This Case submitted
on this Brief

Snell

James B Sickles
et al
vs
James McAdams
et al

In Sup. Court
Oct T. 1857 -

1st It is admitted that the proceedings in the Court below were very irregular and defective but this Court will not reverse the judgment on that account unless the errors and defects are of such a character as to affect the substantial rights of the adverse party -
See Section 6 Art 11 of Practice Act of 1849 -

2d: The Court below very properly admitted in Evidence a Certified Copy of the Administration Bond as it was competent under the state of the pleadings
There was no such denial of the Execution as required the plffs to produce proof thereof. Only one of the defendants made affidavit to the answer, and he only swore to his belief of its truth -
The paper was unquestionably Evidence against the other defendants who have not denied the Execution under oath -

3d: The record does not profess to give all the Evidence in the cause and for aught that appears therein, Evidence

may have gone to the jury tending to prove the execution of the bond.

4th The plaintiffs were the real parties in interest, and if the court should be of the opinion that notwithstanding the 1st sec of the 3d article of the code of 1849 the suit ought to have been brought in the name of the State to the use of the pltffs, then we say that the defendants should have availed themselves of the error in the court below by demurrer to the petition, or motion in arrest of judgment. The only motion filed in the cause was for a new trial.

5th This court will not inquire into the propriety of the refusal of the court below to give the instructions asked for by defendants as no exception was taken to the action of the court in so doing.

6th As the record does not profess to give all the evidence in the cause, and as no motion in arrest of judgment was filed in the court below we submit whether the appellants in the present condition of the case avail themselves

of the Errors Complained of —

Pray for Respondents

53

In Sup Court
Oct T. 1857

Sickles et al
v
McManus et al

Brief of Respondents

Bay for
Respondents

Filed 28 Oct. 1857
Wm L Glanville
Ck

Sickles et al
v
McMeans et al

In sup. cont.
Oct T. 1857

The statement filed by appellant is in most particulars correct & is adopted by appellant with the following modifications.

The answer of Defts states that said defendant did not make and execute a bond to the State of Missouri such as is set forth in the plaintiffs petition. The only affidavit made to the answer is that of I C Merrill one of the defendants who swears that he believes the answer to be true.

The statement of appellant alledges that on the trial the only evidence given was the bond of the Admrs & the execution of which was not proved and the proceedings in the County Court upon plaintiffs allowance. It is respectfully submitted that there is nothing in the record which shews that that was the only evidence given by plffs. For aught that the record shews the original bond may have been in evidence and proof of the execution made.

The statement of appellants also alledge that the defendants excepted to the various decisions of the court below. The record shows that defendants excepted to the introduction of the bond & the proceedings in the County Court. The defendants asked two instructions

which the court refused to give but no Exception was taken to the opinion of the court in so doing. The only remaining Exception taken by the defendants was to the opinion of the court in overruling the motion for a new trial —

Ray for Respondents

No 53

Sickles et al

vs

McClellan et al

Statement by Respondents

Bay for Respondents

Filed 28 Oct. 1857

Wm S Glanville Clk.

1053 J B Sickles &c

vs

Wm Manuel

This record abounds in errors, but it is unnecessary to notice them. The judgment must be reversed though the execution of the bond had been proved or even admitted on the trial, because the action on the administrators bond in which the State was the obligee, cannot be maintained in the name of the plaintiffs. This point has been expressly decided in the case of the State to the use vs Moore 19 Mo. 369

Judgment reversed. The other Judge concurring

Jno C Richardson

1053

Sickles &c

v

Wm Manuel

Opinion

reversed

Filed 14 December 1857
Wm S Glanville Ck.

Richardson