Garesche, Alexander (admr of Grace, Pierce) vs State of Missouri to the use of Brent, Eliza 1856 St. Louis Co. 379/6

Goode, George
Taylor, Isaac

588/17

Scott-

Grace was appointed guardian of Brent

Grace executed a bond w/ Goode & Taylor securities
$205.28

State of Missouri }
County of St. Louis } ss. Be it remembered that heretofore to wit, on the 15th day of September A.D. 1859 there was filed in the Office of the Clerk of the St. Louis Court of Common Pleas, within and for the County aforesaid a certain petition which is in the words and figures following to wit;

(1)

Petition

State of Missouri to the use of Eliza Brent minor by John Garnett guardian plaintiff

vs.

Alexander J. P. Garesche Adm. of Pierce C. Grace, dec.d George W. Goode and Isaac W. Taylor Defendants

In the St. Louis Court of Common Pleas St. Louis County

Plaintiff by Farish his attorney states that said Eliza Brent is a minor that at March Term A.D. 1859 of St. Louis Probate Court Pierce C. Grace was appointed guardian of said Eliza Brent. That pursuant to the provisions of the Statute the said Pierce C. Grace as principal and said George W. Goode and Isaac W. Taylor two of said defendants as securities executed their bond to the State of Missouri for the sum of Eight hundred dollars, conditioned that said Pierce C. Grace should well truly and faithfully discharge the duties of his office as guardian of said Eliza according to law, the original of which bond is not in plaintiff's possession but a copy thereof duly certified is part of Exhibit "A" herewith filed. Plaintiff further states that at September Term 1854 of said St. Louis Probate Court said John Garnett was appointed guardian of said

(2)

Eliza in lieu of Pierce C Grace then deceased as will more fully appear on reference to Exhibit "B" herewith filed

That said Pierce C Grace is deceased and that Alexander J P Garesche has been appointed his administrator,

That the condition of said bond is ~~xx~~ broken in this, that said guardian did not well truly and faithfully discharge the duties of his office of guardian aforesaid in this that upon final settlement of his guardianship with said St. Louis Probate Court there was found to be due and owing by the said Pierce C Grace to the said Eliza a balance of two hundred and five dollars twenty eight cents all of which will more fully appear on reference to a transcript of the proceedings herewith filed & marked Exhibit "A" yet no part of said sum has been paid.

Plaintiff therefore prays judgment for said sum of eight hundred dollars and for the damages by him sustained two hundred and five dollars twenty eight cents interest and costs

Edw. T. Farish
Atty of Plff

John Garnett guardian of above named Eliza Brent makes oath and says that the above petition & matters as therein stated he believes to be true.

Sworn to & Subscribed before me this 15th day of Sept. 1855 } Jno Garnett.

C W Hicks clk

Thereupon issued the following Summons.

County of St. Louis ss

The State of Missouri

(3)

Summons

To the Sheriff of St. Louis County Greeting;
We command you to summon Alexander J. Garesché Admr of Pierce C. Grace dec.d George W Goode & Isaac W Taylor to appear before the Judge of our Court of Common Pleas on the first day of the next term thereof to be held in the City of St. Louis within and for the County of St. Louis on the second Monday of October next then and there to answer the complaint of State of Missouri to the use of Eliza Grant minor by John Garrett guardian as set forth in the amended petition; and have you then and there this writ.

(Seal) Witness Charles W Dicks Clerk of our said Court with the seal thereof hereto affixed at Office in the City of St. Louis this 18th day of September in the year of our Lord eighteen hundred and fifty five

Chas W Dicks Clerk

Thereupon the Sheriff made the following Return

Shff's Return

Executed this writ in the County of St. Louis on the 15th day of September 1855 by delivering a copy of the writ and petition (as furnished by the Clerk) to George W Goode, and by delivering a copy of the writ and offering to read the petition to Alexander J. Garesche Admr of Pierce C. Grace and Isaac W Taylor.

Turner Waddow Sheriff by Jagues E Fleischman Deputy.

And afterwards the following answer was filed by consent 20th March 1856.

Answer of defendants Goode & Taylor.

Answer.

Said defendants George W Goode & Isaac W Taylor for answer to said petition state that they

have no knowledge sufficient to form a belief as to whether the condition of said Bond is broken as alleged in the petition in that behalf, or not; nor whether the allegation as stated in said petition that said Grace did not well and truly discharge the duties of his office as guardian as aforesaid, is true or not, and defendants require strict proof of said allegations, Nor do defendants know, nor have they knowledge thereof sufficient to form a belief, whether or not it is true as alleged, that no part of any balance found due (if any) has been paid by said Grace as alleged and require strict proof thereof.

Defendants wholly deny that they are in any manner liable to said plaintiff in any debt or damages claimed in said petition and deny that plaintiff is entitled to receive of them any amount or sum whatever by reason of any matters alleged in said petition and deny that said petition shows any violation of duty as guardian as aforesaid or breach of said bond on the part of said Grace.

Defendants say further that said Grace was appointed guardian at the same time with the said Eliza Brent for Anna Maria Brent, Thomas Brent Margarent Brent Jane Brent John Brent & Robert Brent all, together with said Eliza, heirs of Robert Brent deceased, and that the fund which he received from the estate of the said Robert Brent deceased was a joint and common fund, belonging to said minor heirs of said Robert Brent deceased jointly, and if it be true as claimed by plaintiff, which defendants deny that a balance was found against said Grace in the matter of the said Eliza Brent's estate, Yet

(5)

the said Grace for whom these defendants were also surities as Guardian of said Anna, Maria Thomas, Margaret, Jane, John & Robert, was in advance of to the said Anna M, Margaret, Jane, John & Robert in the sum of about seven hundred & forty two dollars & that even if said Grace was in arrears on the estate of the said Eliza as alleged he as guardian of the other heirs of said Robert Brent deceased was in advance to said common fund in behalf of said other heirs in the sum of about $350 clear surplus as will fully appear by the Records of said Probate Court of St. Louis County And defendants claim that these facts legally bar said plaintiff from recovering of these defendants herein and they claim that the said credits in favor of said Grace for advances to said Anna M. Margaret, Jane, John, & Robert shall be set off against the claim if any of the said plaintiff in this suit, and these defendants plead the same as an offset & full bar to this action and ask judgment in their favor

W L Gray for Deft
J H Taylor
Snead for Deft Goode.

Said defendant George H Goode makes oath & says that he believes that the foregoing answer & the matters therein as stated are true
Sworn to & Subscribed before me this 20th day of March 1856

G H Goode

C A Hicks clk

And afterwards the following further proceedings were had in this cause to wit;

(6)

March Term 1854

Thursday March 27th 1854

Judgment

Now at this day comes the plaintiff by attorney but the defendant Theodore J. P. Garesché administrator of Pierce E. Grace although being duly summoned and solemnly called comes not but makes default wherefore it is ordered that the plaintiffs petition be taken against said defendant as confessed, and the said plaintiff praying a jury submits this cause to the Court for the assessment of damages against said defendant, and the Court being fully advised in the premises doth assess the plaintiffs damages sustained by reason of the premises in the petition mentioned at the sum of two hundred and eleven dollars and forty three cents ($211.43); and thereupon the defendants Goode & Taylor also come and to gether with the plaintiff waive a jury and submit the issues herein joined to the Court, and the Court being fully advised in the premises doth find the said issues in favor of the plaintiff and assess its damages sustained by reason of the premises in its petition mentioned at the sum of two hundred and eleven dollars and forty three cents; therefore it is considered by the Court that the plaintiff recover of the defendants in this cause the damages aforesaid in form aforesaid so assessed and also its costs herein expended and have thereof execution against the defendants Taylor & Goode; Decision of the Court filed:

And afterwards the following further proceedings were had in this cause to wit;

Tuesday April 8th 1854

M^o for Review Overruled

The motions of the defendants Goode & Taylor for a review herein, being heard and by the Court

(7)

fully understood, it is ordered by the Court that said motion be overruled.

And afterwards on the 12th April 1856 the following Bill of Exceptions was filed to wit;

Bill of Exceptions

Be it remembered that on the trial of this cause the Court filed the following decision in the case;

Decision of the Court.

The Court finds the facts to be as follows; That said Eliza Brent is a minor; That at the March Term of the St. Louis Probate Court in 1850 Pierce C Grace was appointed by said Court guardian of said Eliza. That said Pierce as principal and said George W Goode and Isaac N Taylor as sureties executed the bond set out in the plaintiffs petition. That said Pierce died before September 1854, that on the 19th of said September John Garrett was duly appointed by said Court guardian of said Eliza; That Alexander F Garesche was afterwards duly appointed Administrator of said Pierce

That on the final settlement of the guardianship of said Pierce at the June term 1855 of said Probate Court, there was found to be due and owing by the said Pierce as guardian as aforesaid to the said Eliza, a balance of Two hundred and five dollars and twenty eight cents. The said sum so found to be due and owing has not been paid, nor any part thereof said Probate Court has never made an order on said Pierce or his sureties, nor upon the Administrator of said Pierce to pay over said balance, nor was the payment thereof ever demanded of said Administrator nor of these defendants before the institution of this suit

(8)

That said Percy was also appointed guardian as alleged in the answer of Anne Maria Brent Thomas Brent Jane Brent John Brent and Robert Brent who together with said Eliza were heirs of Robert Brent deceased, and they the funds which came to the hands of said Pierce became a common fund for all of said minor heirs; That the defendants Goode and Taylor were also sureties of said Pierce on all his bonds as guardian of all said minor heirs; That said Pierce was in advance to the said Anna Maria, Thomas, Margaret, Jane, John & Robert as in the answer alleged.

Whereupon the Court declares that the plaintiffs are entitled to recover of the defendants the sum of two hundred and Eleven $\frac{43}{100}$ dollars.

Defendants excepted to the law as declared therein & thereafter & with proper time the defendants filed their motion for a review of the decision as follows to wit;

Motion for Review.

And now comes said Goode & Taylor and move the Court for a rehearing & review of the facts and law as found & declared by the Court herein & for a new trial herein, and on such review to render judgment for defendants.

Because the Court should have found that the final settlement made at the June Term 1859 of the said Probate Court was made by the administrator of said Grace.

Because on the facts as found by the Court no legal cause of action is shown against said defendants and on the facts as found Defts were entitled to judgment.

Because the facts as found by the Court show

(9)

no breach of said Bond on the part of said Grace for whom said Defts were securities.
Because these defendants being securities for said Grace are not liable for & cannot legally be held responsible for the acts of other persons & therefor are not liable for any settlement or balance on a settlement made in June 1855 after the death of said Grace
Because the facts plead by said Defts and found by the Court entitled Defts to judgment
W L Gray for Taylor
Snead for Woods.

Which the Court overruled. to which overruling of their said motion the defendants there at the time excepted & pray the Court to sign & seal this their Bill of Exceptions & make the same a part of the record herein which is accordingly done.
Samuel Treat, Judge Seal
And afterwards in Vacation on the 25th day of September AD 1856 the following application for Appeal & Bond was filed

Application for Appeal

"The defendants in the above entitled cause pray an Appeal to the Supreme Court next Term according to law & tender an appeal bond
Sept. 19th 1856 W L Gray atty for Deft

Upon the foregoing application hereby grant an appeal to the Supreme Court whereupon said defendants file an appeal Bond which is approved
Sept. 25th 1856 C H Hicks clerk Court Common Pleas
Which Bond is in the words and figures following

(10)
Appeal
Bond

to wit;

Know all men by these Presents, that we Isaac W Taylor as principal and Melvin L Gray as surety are held and firmly bound unto State of Missouri to the use of Eliza Brent minor by John Garnett guardian in the sum of Three hundred dollars, for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators, jointly and severally firmly by these presents, sealed with our seals and dated at St. Louis this 23d. day of September AD 1856

The condition of the above obligation is such that whereas George W Goode & Isaac W Taylor impleaded with Alexander J P Garesche admr. of Pierce & Grace have appealed from the judgment rendered against them and in favor of State of Missouri to the use of Eliza Brent minor by John Garnett guardian, in the St. Louis Court of Common Pleas for the sum of two hundred and Eleven dollars and forty three cents together with costs Now if the said appellants will pay all costs and damages that may be awarded against them occasioned by such appeal; and shall prosecute their appeal and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Court of Common Pleas to give; and shall if the judgment, or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against them by the Supreme Court then this obligation shall be void otherwise it shall remain in full force and effect,

I. W. Taylor (Seal)
M. L. Gray (Seal)

(11)

Approved attest
C W Hicks
clk

In the St. Louis Court of Common Pleas In Vacation.

Be it remembered that on this 23d day of September 1854 personally appeared Isaac W Taylor the principal and Melvin L Gray the security in the foregoing bond and acknowledge that they executed the same for the purposes therein expressed.

Seal. In witness whereof I hereto set my hand and affix the seal of said Court at Office in St. Louis the day and year last aforesaid

C W Hicks clerk

State of Missouri
County of St. Louis } ss. I Charles W Hicks clerk of the St. Louis Court of Common Pleas within and for the County aforesaid certify the above and foregoing to be a full true and complete transcript of the record and proceedings in the above entitled cause as fully as the Same remains in my office,

In Testimony whereof I hereto set my hand and affix the seal of said Court at Office in the City of St. Louis this 29th day of September AD 1854

C. W. Hicks. clerk

(12)

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84 ~~85~~ ~~82~~

(17)

Oct. Term. 1857.

State of Missouri to the use of Eliza Brent respondent.

[illegible]

Alexander J. P. Garesché Admr of Pierce C. Grace Decd George W. Goodet Isaac W. Taylor. Apt.

Appeal from St. Louis Court of Common Pleas.

Filed 8th October 1856.

Wm. S. Glanville Ck.

M. L. Gray

Exd

$3 50/100 paid by atty Gray

84 ~~85~~ ~~82~~

31st March 1860. Respondent's Brief with Mr Paul Pfaunke

State to the use of
Eliza Brent &c
v
Alex J. P. Gausche Admr
Goode & Taylor

In Supreme Court
of Missouri
Oct Term 1856

And now come said Defendants, Goode & Taylor & allege for Error in said proceedings, as follows
1st The Court of Common Pleas erred in giving judgments in favor of Plaintiff & against these Defts,
2nd In over-ruling Defts motion for review & rehearing, filed in the case.
3rd The Court erred, in giving judgment against Defts, on the facts found by the Court but should have given judgment for Defts & against Plff
for which errors in the matters aforesaid committed by the Court aforesaid, Defts pray that said judgment may be reversed & that they may be restored, & all they have lost by said judgment.

T L Snead &
M. L. Gray for
appellants.

Now comes Plaintiff by Attorney and denying all errors in the proceedings of the court below — prays the affirmance of the judgment

Edw. T. Farish
Atty. of Plff

No 182
Supreme Court
Oct Term 1856

State &c

vs

Geo W. Goode &
J. W. Taylor

assignment of errors
by appellants

Snead & Gray
for appellants

Filed 1 Nov. 1856
Wm L Glanville
Cl.

State of Missouri
To the use of Eliza Brent
Respondent
vs
George W Goode
Isaac W Taylor et al
appellants

In the Supreme Court
of the State of Missouri
March Term 1857

Appellants Brief —

All the points in this case arise on the finding of the Court, and the facts stated therein Appellants contend that the facts found do not authorise a judgment against them.

The facts found show that P. C. Grace was Guardian of Eliza Brent, & that the Defendants Goode & Taylor were his sureties. - that Grace died before Sept 1854 - that on the 19th of said Sept John Garnett was appointed Guardian of said Eliza - that afterwards A. J. P. Garesche was appointed Admr of said Grace, and that at the June Term 1855 a final settlement of Grace's guardianship was made showing a balance in favor of said Eliza of $205 $\frac{28}{100}$, which sum, nor any part thereof, had been paid — The Probate Court had made no order on said Grace nor his sureties, nor his Admr to pay this sum or any sum, nor had any demand been made for it before suit brought.

Appellants contend that no breach of the condition of the bond was shown by Grace or his legal representatives.

There was no evidence to show that Grace was properly charged with any sum whatever - No inventory or settlement made by him, in his lifetime, was introduced, proven or found by the Court to charge him - no act of his, to show that he had any funds in his hands.

The only evidence showing, or tending to show there had been funds in his hands, was a settlement made at the June Term 1855 by some person unknown.

As Grace died before Sept 1854, it is clear that the settlement made at June Term 1855 was no act of the principal for whose acts the Defts Goode & Taylor stood responsible.

The finding of the Court does not show who made this settlement in June 1855, nor why it should bind Goode & Taylor.

They were only responsible for the delinquencies of Grace, for whose faithful discharge of the duty of Guardian, they bound themselves.

If Grace had made a settlement in his lifetime or filed an Inventory charging himself with any sum & he or his legal representative had failed to pay it over on demand of his successor, then perhaps Goode & Taylor might have been made liable, but I claim that Goode & Taylor who bound themselves only for Grace's acts, cannot be made liable for the acts of some unknown person who makes a settlement, nearly a year after Grace's death, charging him with $205 $\frac{28}{100}$

This settlement of June 1855, was the act of an out-sider - was not within the letter nor spirit of Defts bond & could not bind them.

Again suppose that the settlement made in June 1855 was the act of Grace's Admr. which however does not appear by the finding of the Court. Even if this were so I contend that it would not bind Goode & Taylor on their bond. It was not Grace's act & could not bind his sureties on their bond

I hold the law to be, that if Grace died with funds of his ward in his hands, ~~the~~ his Admr could not by his own act bind either Grace's Estate or his sureties – It would be simply a debt in favor of the minor against the Guardian's Estate, which would have to be proven up against the Estate, in the Probate Court like any other creditor's debt, & if the estate did not pay it on demand then the sureties of the Guardian would be liable.

What right had the Admr of Grace, on his own motion to make a settlement, & charge his intestate with a debt in favor of Grace's ward, any more than he would have a right to admit any other claim against the Estate without due presentment & proof? The statute requires all claims & demands against an Estate to be sworn to & proved up.

If then the settlement made in June 1855 was made by Grace's Admr, (of which however there is no evidence) it was no legal evidence to bind either Grace's estate or his sureties.

Again no default on the part of Grace or his Admr, to pay over is found by the Court on the contrary the Court expressly finds that the Probate Court had made no order to pay over

& finds that no demand had been made of Defts before suit brought. This was Essential to make Defts liable & give Plff a right of action.

The death of Grace was no fault, or dereliction of duty. Therefore there should have been a demand on Grace's Admr or an order of Court to pay over, before there was a liability established.

The case is different from the case of a revocation of an appointment by the Court for some delinquency or default of the Guardian.

The matter set up by Defts. showing that Grace was in advance to other heirs of the common fund was, at an equitable defence.

M L Gray
for appellants

No 115
Supreme Court
March Term 1857

State to the use &c
vs
A J P Sanders et al

Appellants brief

M. L. Gray
for appellants

Filed 10 April 1857
Wm J Lawrence
Clk

State of Missouri to the use &c
Respondent

A. J. P. Garesche Admr of P. C. Grace
Geo W Goode & I W Taylor
appellants

In Supreme Court
of Missouri
March Term 1857

Appellants Statement.

This was a suit brought in the name of the State of Missouri, to recover of the appellants the sum of $205 $\frac{28}{100}$.

The Petition states that Pierce C Grace, at the March Term 1850, was by the Probate Court of St Louis County appointed Guardian of Eliza Brent, a minor, & that he & the Defts Goode & Taylor, entered into bond to the State in the sum of $ Dollars, conditioned that said Pierce C. Grace should well and truly & faithfully discharge the duties of his office of Guardian of said Eliza according to law — that on or about the day of ~~Dept A J P Garesche was appointed his Admr~~ said Grace died — & that on the 19th Sept 1854 John Garrett was appointed Guardian of said Eliza & that afterward the Dept A. J. P. Garesché was appointed Admr of said Grace.

The alleged breach of the condition of said bond is that the said Guardian Grace did not well truly & faithfully discharge the duties of his office as Guardian, in this, that upon final settlement of said Grace's Guardianship with said Probate Court there was found to be due & owing by said Grace to said Eliza a balance of $205 $\frac{28}{100}$

Defts Goode & Taylor in their answer denied that the condition of said bond had been broken as alleged & denied that said Grace had failed to discharge his duties of Guardian as alleged & denied any liability to Plff. or that Plff was entitled to recover by reason of any thing alleged in said Petition ~~& that for judgment~~

Defts also alleged, that the said Grace was at the same time that he was appointed Guardian for said Eliza, appointed Guardian of Anne Maria Brent, Thomas Brent, Margaret Brent, Thomas Brent, Jane Brent, John Brent & Robert Brent, who together with said Eliza, were heirs of Robert Brent deceased, & that the funds that came to the hands of said Grace as Guardian of each of said heirs, was a common fund belonging to all of said Minors. that said Goode & Taylor were also securities for said Grace ~~for~~ as Guardian for each of said Minors - that said Grace was in advance to ~~said Anne Maria, Thomas, Margaret, Jane, John & Robert~~ the others of said heirs in the sum of $350. & Defts set up this as a defence and off-set to any claim if any, the Plff may have.

The case was tried by the Court below which found the following facts

That said Eliza was a Minor, that at the March Term 1850 of the St Louis Probate Court Prince L. Grace was appointed Guardian of said Eliza - that said Grace as principal and George W Goode & Isaac W. Taylor

as sureties executed the bond set out in the Petition of Plff. - that said Grace died before Sept 1854 - that on the 19th of said Sept John Garnett was duly appointed by said Court - Guardian of said Eliza - that A. J. P. Garesché was afterwards duly appointed Admr of said Grace - that on the final settlement of the Guardianship of said Grace, at June Term 1855 of said Probate Court there was found to be due & owing by said Grace as Guardian to said Eliza a balance of $205 $\frac{28}{100}$ - that said sum has not been paid, nor any part thereof. - said Probate Court has never made an order on said Grace or his sureties nor upon the Admr of said Grace to pay over said balance, nor was the payment thereof ever demanded of Defts before this suit was brought.

That said Grace was also appointed Guardian as alleged in the answer of Anne Maria Brent, Margaret Brent, Thomas Brent, Jane Brent, John Brent & Robert Brent, who together with said Eliza were heirs of Robert Brent deceased, & that the funds that came to the hands of said Grace, so came as a common fund for all of said minor heirs - that Defts Goode & Taylor were also sureties of said Grace on all of his bonds as Guardian of all of said minors, that said Grace was in advance to said Anne Maria, Thomas, Margaret, Jane, John and Robert as is in the answer alleged

Whereupon the Court declares the law to be that Plff is entitled to recover of Defts $211 $\frac{43}{100}$ & judgment accordingly

To which declaration of the law by the Court the Defts then & there Excepted.

In due time & within 4 days. Defts moved for a review by the court.

Because the Court should have found that the final settlement, at Jun Term 1855 was made by the Admr of said Grace.

Because on the facts as found by the Court, no legal cause of action is shown against Defts & on the facts as found Defts are entitled to judgment.

Because the facts as found by the Court show no breach of said bond on the part of said Grace, for whom said Defts were sureties.

Because said Defts being sureties for said Grace are not liable for & cannot legally be held responsible for the acts of other persons than said Grace & therefore they are not liable for any settlement or balance on a settlement made in June 1855 after the death of said Grace &

Because the facts plead by Defts & found by the Court entitled Defts to a judgment

This motion was overruled by the Court & Defts then & there excepted & bring the case here by appeal.

Stead & Gray

No 110

Sup A Mch T 1857

State of Missouri

~~Ex~~ Vo S

George W. Goode
& Isaac W. Taylor

Statement of
Case by appellants

M. L. Gray

Filed 10 April 1857.
Wm. S. Glannie
Cl.

State of Mo. use of Elija Brent Plaintiff } In Supreme
vs. } Court of the
Grace's Admr. & als — Defendants } State of Mo.

This is a suit instituted by John Garnett, as Guardian of Elija Brent against the Estate & Sureties of Pierce C. Grace his predecessor in the guardianship —
After the death of Grace, his Administrator made a final settlement of his said guardianship up to the time of the death of Grace —
Grace's Estate being insolvent, this suit was brought against Grace's Admr. and the Sureties of Grace in the guardian bond for the balance found to be due the minor on said final settlement.
Grace was at the time of his appointment as guardian of Elija Brent, also appointed guardian of the other minor heirs of her father, Robert Brent, deceased — and was at time of his, Grace's death in advance to the other heirs. The monies received by him were the funds of their fathers Estate, Robert Brent, and he credited to each of the heirs its proper portion —
Dispensing with all the flummery of Defendants about the final settlement being made by outsiders & likely therefore to work injustice — and taking as a basis that the final settlement was made by the Administrator which is the fact — & for which see Appellants motion for a review page 8 of trans script & the case resolves itself:
1st Whether it was the right of the Administrator to make this settlement.
2d — Was a motion to pay over or a demand necessary
3d — was the amount due by the other wards to Graces Estate an offset.

Edw. D. Ewing
Atty. of Respondents.

State to use of Brent
vs.
Grace's Admr. & als

Respondent's State
=ment —

Filed 17 Decr. 1859
Wm. L. Glanville
Cl.

State of Missouri to the use of Eliza ~~Brent~~ John Garnett vs A. J. P. Garesche admr. of P. Grace dec'd & al } appeal from the St. Louis Circuit Court

It is true, that there is no privity between Garesche the admr. of Grace who was guardian of the minor Eliza Brent and the plaintiff who is the successor of Grace as guardian. The admr. of Grace as such has no control over the estate which Grace held as guardian. If Grace converted the trust funds in his hands or incurred a liability to his ward by the mismanagement of her estate, a claim for such misconduct might be preferred against his admr. and proceeded with like other demands against a decedents estate. But the act of March 3rd 1851 Sess acts 211 provides that when a guardian or curator dies, the County Court may ascertain in any practicable way the amount in his hands and his successor may have such proceedings against his securities, as are authorized in cases, where an admr. fails when ordered to pay demands allowed against an estate. We do not regard this act as retroactive to the remedies provided in the 13th & 14th sections of the 5th Art. of the

administration law of 1845. There is no reason for so restricting the language of the act. ~~It~~ A ward should be entitled to the same remedies for a breach of the condition of the bond given to secure the management of his estate, that those have, who are interested in the estate of a decedent. The 8th sec. of the 7th art. of the administration law gives a remedy by an action on the bond to any party injured for ~~any~~ breach of any of its conditions ~~of the bond~~. We have seen, that the act of 1851 to which reference has been made authorized the County Court in any practicable way to ascertain the amount in the hands of the deceased guardian. It is no objection that the Court made use of the adm^r of Grace for this purpose. No one was more likely to know the situation of his accounts than his adm^r who had access to all his books and papers. The settlement of the accts of Grace the guardian thus made cannot be regarded as the exhibition and allowance of a demand against his estate. The balance thus ascertained ~~is~~ was binding on the estate of Grace and created a prima facie liability on the part of his sureties who might have shown the settle

ment to be erroneous. Nolley vs Callaway County Court. 11 Mo. 445. ~~an~~ sum being found in the hands of the guardian due to his ward, by the provision of the administration law to which we have already referred a suit was authorized on the bond. The petition has been examined and we find it like the declaration in the case of Finney & al vs The State of Missouri 9 Mo. Rep. 624. No demand was averred, and though the declaration was closely scrutinized it does not appear that any such objection as the omission of a demand was taken: When parties have resisted a claim on other grounds, ~~and~~ have failed, it is with a bad grace that they come into this court & object that no demand was made on them, when every thing in the record shows, that if one had been made it would have been to no purpose.

As the evidence is not preserved in the record, and as no review of the finding of the facts was asked for, we cannot go ~~into~~ into the question of the sufficiency of the proof to support the finding.

There is no foundation in law for the claim to a setoff made by the defendants, as there was a separate & distinct curatorship for each child & a separate bond for the management of each estate: Judgment affirmed: The other judges concur

Wm Scott

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State of Missouri
vs
Goode & Taylor
opinion

Filed 24 Decr. 1857
Wm. F. Glanville
Cl.