THE STATE OF MISSOURI TO THE USE OF V DRURY, LAWSON G. et al* OCTOBER 1865 MONTGOMERY COUNTY 581/5
** DRURY, ANDREW H.

OLD 660/1

-REVERSED AND CAUSE REMANDED

-INVOLVED.

- GUARDIAN AND WARD
- SECURITIES

* et al
- WATKINS, WILLIAM S.
- NEWLEE, WILLIAM
- HOWARD, MARTIN
- BISHOP, GRANVILLE
- POINDEXTER, EDWIN L.
- VAN CLEAVE, CHARLES A.
- WORLAND, CHARLES B.
- BROWN, H.D.

** MONTGOMERY COUNTY CIRCUIT COURT RECORDS ARE AS FOLLOWS:
THE STATE OF MISSOURI TO THE USE OF DRURY, ANDREW H. BY ADAMS, WILLIAM B. - ADMINISTRATOR OF ANDREW

The State of Missouri, ss.

The State of Missouri, to the Honorable the Judge of the 3rd Judicial Circuit **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Montgomery Circuit Court

wherein The State of Missouri to the use of Wm B. Adams Administrator of Andrew W. Drury was plaintiff and Lawson G. Drury and others were defendants

in a Civil action manifest error hath intervened, to the great damage of said Plaintiff as by his complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the 3rd Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

WITNESS, ~~WILLIAM S. GRANVILLE~~ Andrew W. Mead, Clerk of our said Supreme Court, at office in the City of Saint Louis, the 3rd day of June in the year of our Lord one thousand eight hundred and ~~fifty-~~ sixty four

A W Mead

CLERK.

State of Missouri
Montgomery County } I Jacob L Sharp
Clerk of the Circuit Court of said County
have executed this writ by transmitting
to the Supreme Court a full record
of the proceedings in suit of State of
Missouri to the use of A M Drury
by W B Adams Gdn vs Lawson G
Drury & others - In Witness whereof
I have hereunto set my
hand and official seal
Done at office in the Town
of Danville the 22nd June
A D 1864 - J L Sharp Clk
By Saml T Sharp D C

State to use Drury
vs
Drury & others

Filed 9th June 1864
J L Sharp C
By S. T. Sharp
D. C.

State of Missouri
Montgomery County } ss: Be it remembered that on the 21st day of September 1860, was filed in the Circuit Court of said county the following petition

Petition

" In the Montgomery Cir Co
" October Term 1860
" The State of Missouri
" to the use of Andrew M. Drury
" by William B. Adams Gdn.
" of said Andrew Pltff
" vs
" Lawson G. Drury, William S. Watkins
" William Newlee, Martin Howard
" Granville Bishop, Edwin L. Pinderter
" Charles A Vancleave, Charles B Worland
" and A D Brown defts
" Plaintiff states that
" on the 3rd day of January A D 1853, the defendant
" Lawson G. Drury being appointed by the
" County Court of Montgomery County Curator
" of A M Drury executed his bond to the State
" of Missouri, the said Lawson signing said
" bond as principal and the other defendants
" as securities, said bond being in the penal
" sum of twelve thousand dollars, which
" bond was signed by said defendants

„and sealed with their seals, and conditioned
„that whereas the said Lawson P. Dorry
„has been appointed by the County Court
„of Montgomery County in the State of Mis-
„-souri Curator of the estate of the said
„Andrew M. Dorry; Now if the said Lawson
„shall well and truly discharge his duties
„as such Curator according to law, then
„said bond should be void, else to remain
„in full force and effect, which said bond
„was on the day aforesaid presented to the
„County Court of said County and by said
„Court approved and filed and recorded
„as required by law in such cases, a copy
„of said bond is herewith filed. Plaintiff
„states that after the approval of said
„bond as aforesaid the same Lawson
„became and was the Curator of the estate
„of the said Andrew, and as such received
„from time to time large sums of money
„belonging to said ward and that his settlements
„with the County Court at the February term
„1857 as such Curator, he showed that he was
„indebted to said ward in the sum of Six
„thousand one hundred and twenty one
„dollars, and sixty one cents, which will
„appear by his settlement filed with the

„the County Court at the said February
„term. Plaintiff charges that at said time he
„was indebted to said ward in said sum - that
„at the August term of the County Court 1857
„the said Lawson was ordered by said Court
„to give a new bond as such Curator - And
„at the November Term 1858 of said Court, the
„said L S Denny was removed from his place
„as such Curator, and at the December term
„of said Court in the same year, William B
„Adams was appointed Curator of the estate
„of said Andrew M Denny and then and there
„filed his bond as such as the law directs
„and the same was approved by the Court
„and ordered to be filed and recorded

„ Plaintiff alleges that the said defen
„dants have not kept and complied with
„the conditions of their said bond in this
„First: that the said Lawson did without
„leave of the Court or the consent of his
„sureties retain the money of said
„ward in his hands, and has utterly failed
„and neglected to pay the same over to his
„successor though ordered by the County
„Court of Montgomery County so to do,
„which said sum as shown by the said
„Lawson at a settlement of his accounts
„at the February term 1859 was Six thousand

„ five hundred and ten dollars — Second
„ that after the removal of the said Lawson
„ and the appointment of the said William
„ B. Adams as his successor, the said
„ Lawson failed and refused to pay to the
„ said Adams the amount of money due
„ by him to said ward to wit Six thousand
„ five hundred and ten dollars as aforesaid
„ Third, after the removal of said Lawson
„ and the appointment of said Adams
„ as such Curator the said Lawson
„ failed and refused to pay to the said
„ Adams the amount of money which
„ had come into his hands as such
„ Curator to wit Six thousand five
„ hundred and ten dollars — To wit
„ that the said Lawson prior to the said
„ Seventh day of August 1857 and after
„ the said 3rd day of January 1853, converted
„ the money of the said ward to his own
„ use and benefit without the leave of
„ the Court, and the consent of the securities
„ first had and obtained as the law requires
„ and after the appointment of the said Adams
„ he failed and refused to pay the same over
„ as required by law, and the conditions

" of said bond, which amt was six thousand
" five hundred and ten dollars. Fifth
" that the said Lawson prior to the said 7th
" day of August 1857 and subsequent
" to the 3rd day of January 1853, failed
" and neglected to put the money of his said
" ward at interest on mortgages or other suf-
" ficient security as the law requires by
" fraudulently retained the same in his
" own hands, and converted the said money
" to his own use, and his removal refused
" to pay the same over to his successor, to wit
" the sum of six thousand five hundred
" and ten dollars. Wherefore plaintiffs
" pray judgment for the penalty of said
" bond to wit twelve thousand dollars
" and asks that execution be awarded
" for the sum of six thousand five hundred
" and ten dollars and interest at the
" rate of ten per cent per annum, com-
" pounded annually from the 1st day
" of February AD 1859

" Lovelace & Henderson
" for Pltff

" Walter L. Lovelace for the
" plaintiff says that he believes the
" facts set forth in the foregoing petition
" are true W. L. Lovelace

State of Missouri, Montgomery County ss
Jacob L Sharp Clerk
of the Circuit Court in and for said
County certify that Walter L. Lovelace
this day came before me and took and
subscribed the above Oath — In Witness
whereof, I have hereunto set my hand
and affixed the seal of said Court
(S) at office in the Town of Danville
the 21st day of Sept AD 1860
Jacob L Sharp Clk

And on the 16th day of April 1861
was filed the said defendants Answer as
follows

Answer

In Montgomery Circuit Court
May Term 1861
The State of Missouri
to the use of Andrew M Drury by William B Adams
Guardian of said Andrew Plaintiff
vs
Lawson G. Drury, William S. Watkins
William Newlee, Martin Howard, Granville
Bishop, Edwin L. Poindexter, Charles A Vaneleave
Charles B Morland and Horace D Brown Defts
The defendants William Newlee
Granville Bishop, Edwin Poindexter

7.

„ Charles A. Vaucleave, Charles B Worland
„ and Horace D Brown for answer to plain
„ tiffs petition say that is true that the said
„ Lawson G Dorry was appointed Curator
„ of Andrew M Dorry by the County Court
„ of Montgomery County on the 3rd day of January
„ 1853, that he gave the bond signed by the defendants,
„ with the conditions as stated in said petition, and
„ that said bond was approved by said court; they
„ also admit the he made the settlement with the
„ County court as alleged at the February term
„ thereof in the year 1857, and showed a balance
„ due the estate of the said Andrew of Six thous-
„ and one hundred and twenty one dollars and
„ Sixty cents. Defendants also admit the said
„ Lawson G Dorry was ordered by the County
„ court at the August term thereof in the year
„ 1857 to give a new bond as curator of the said
„ Andrew - and they aver that he did file with
„ the County Court a new bond herewith filed
„ on the day of 185 with
„ as securities
„ which said bond was approved by said
„ Court, thereby releasing defendants from
„ any further liabilities as securities of said
„ Lawson. Defendants also admit that the
„ Lawson was removed from his place as
„ Curator at the Nov term of said court 1858

"and at the December term thereof in the same year
"William B. Adams was appointed Guardian of
"the said Andrew, and his bond was approved
"as alleged. Defendant for further answer
"say they have not sufficient information to
"form an opinion as to the fact whether
"the said Lawson did as alleged, without
"leave of the Court or consent of his secur-
"-ties retain the money of said ward in his
"hands, and they require strict proof of
"the fact, so far as it relates to the time they
"were bound as his securities. Defendants
"say that they do not know whether after
"the settlement made with the County Court
"February term thereof in the year 1859, show-
"-ing a balance against him as alleged
"of Six thousand five hundred and ten
"dollars, he said Lawson G. Drury failed
"and refused to pay over, to his successor
"the amount due by him and they require
"strict proof as to this allegation. Defen-
"-dants however aver that if this be the case
"it was long after the said Lawson had
"given a new bond, and defendants were
"not then his securities and are not legally
"liable for such defalcation. Defendants

" deny that prior to the 7th day of August 1857
" the said Lawson failed and neglected to put
" the money of his said ward at interest as
" charged secured by good and sufficient
" security, and fraudulently retained
" the same in his own hands, and con
" verted the same to his own use
" Defendants therefore say they do not
" owe plaintiff the penalty of the bond
" mentioned in plaintiffs petition
" or any other sum whatever, and that judgment
" should not be awarded the plaintiff
" And having fully answered they ask
" to be dismissed with their costs

" B Sharp atty for Defts

" Horace D Brown being duly
" sworn says he believes the above
" answer and the statements therein
" contained are true

" H D Brown

" Sworn to & Subscribed
" before me April 16th 1861
" D Bruner J P

And afterwards to wit
on the 2nd day of June A D 1864
in the Circuit Court of said County the follow=
=ing proceedings were had in said cause

10.

Judgment

"The State of Missouri to the use of Andrew
"M Drury by William B Adams Gdn
" vs
"Lawson G Drury, William S Watkins
"William Newlee, Martin Howard, Granville
"Bishop, Edwin L Poindexter, Charles A
"Vancleave, Charles B Worland and
"H D Brown

" Now at this day appeared the
"said parties by their attorneys, and
"on motion of said plaintiff William B
"Adams statutory admr of Andrew M, Dru
"-ry is substituted; and the said plaintiff
"dismisses his action as to the said William
"S Watkins, Martin Howard and Granville
"Bishop, and neither party requiring a
"Jury all and singular the premises were
"submitted to the court; whereupon the court
"setting as a Jury finds for the said defen-
"-dants; whereupon it is considered by
"the court that the said defendants recover
"of the said plaintiff their costs about their
"suit expended, and that they have thereof
"execution

" Same

" vs
Same } Motion for new trial filed
"

" Same
" vs } On motion for new trial
" Same

" Now at this day all and
" singular the matters and things con-
" tained in said motion were submitted
" to the court; whereupon it is considered
" by the court that said motion be overruled
" Same
" vs } Bill of exceptions filed
" Same

Said Bill of exceptions is here
copied as follows

Bill of Exceptions

" State of Missouri to the use of William
" B Adams adm of the estate of A M
" Drury dec'd Plff
" vs
" Lawson G. Drury, William S Watkins
" William Newlee, Martin Howard, Gran-
" ville Bishop, Edwin L. Pounderter
" Charles A Vancleave, Charles B
" Norland, and H D Brown
" Be it remembered that on
" the first day of June A D 1864, the
" above entitled cause coming on for
" trial the case was submitted to

" the Court sitting as a Jury. The plain-
" -tiff then offered the record of Lawson
" G Drury's settlements in County
" Court from 1854 to 1859 inclusive

Settlement of Drury 1854

" L G Drury curator of Andrew M Drury
" in ap mth said ward
" To amt moneys on hand as per
" Inventory this day filed $4580.34
" 1852 Aug 26 Cr By amt paid G S Tuttle
" Voucher No 1 filed Aug 53 for R B Drury $17.25
" Amt paid Boyce & co (No 2) 5.38
" Board from January 15 1852
" to June 1st 1853 19 week @ 1.25 23.75
" 1853 Jan 25 Clerks fees (filed Aug /53 for S B D &c .24
" " do No 3 2.75
" " do No 4 1.90
" Aug 1 Pd Watkins & Drury No 5 52.43
" Nov 24 Cash furnished Jas Wiseman 8.58
" 28 1/2 Recording Mortgage .50
" Dec 24 1/2 Recording do .50
" 1854 Jan 6 Tax receipt No 6 5.20
" " " do No 7 7.70
" Feb 6 " Pd Watkins & Drury No 8 10.35
" " " " 12 days Services 12.00 148.53
" $4431.81
" Feb 6th 1854 L G Drury Curator of A M Drury

4

13.

" Sworn to & Subscribed in open court
" 8th Feby 1854
" Jacob L Sharp clerk

" Lawson G Drury Curator & Guardn
" of Andrew M Drury in ap with said ward
" 1855 Feb 6 To balance hand last settlement $4431.81
" " Amt Recd as per Inventory this day filed 1239.50
" " Interest due on above amts from the time
" they were loaned up to date 273.90
" $5945.21
" 1854 Mch 3 By cash furnished $1.00
" " May 31 Pd for tuition '1' 7.25
" July 10 furnished to go to Boone Co 5.85
" Aug 9 Clerks fees No 2 1.95
" Nov 9 Cash sent to Boone Co 17.75
" 10 " " Bayce & Co No 2 10.00
" Dec 19 Serving writ in Boone Co .50
" 27 Paid for serving 1.60
" 2 days services 2.00
" 30 furnished 24.75
" 1855 Jan 2 " 5.15
" 6 Pd Jno Linn '3' 2.50
" " 2 days services 2.00
" 15 taxes '4' 17.60
" Feb 6 Pd Watkins & Drury '5' 23.61 123.51
" Bal on hand Feb 6th 1855 $5821.70
" Feb 6th 1855 Lawson G. Drury Curator & Gdn A M Drury

Settlement of Drury 1855

14.

" Sworn to & Subscribed in open court
" 7th Feby 1855
" J A Sharpe

" Lawson G. Drury Guardian of
" Andrew M Drury in ac with said ward
" 1856 To amt on hands last settlement $5821.70
" February " " Inventory this day filed 349.30
" $6171.00

Settlement of Drury 1856

" April Cr By cash furnished $6.00
" June 16 Pd J A Patton No 1 9.70
" " Do Jas Wseman '2' 5.65
" " Do M R Brooks '3' 3.00
" " " P E & A Nichols '4' 2.15
" " " Sarah Lanham '5' 6.70
" " " Jm Shock '6' 4.00
" " " do '7' 4.00
" " " Jas T Wseman '8' 5.00
" " " P E & A Nichols '9' .49
" " " do do '10' 2.30
" " " do do '11' 1.15
" " " for Mcham, United States .70
" " " R C Braham '13' 7.17
" 20 furnished at different times 4.00
" 5 days Services 5.00
" July 1 Cash furnished at different times 3.00
" 13 Do for Lemon & 3.75

15.

" Oct 13 Pd R C Branham (14) 2.25
" 30 " for mending shoes & boots .90
" Dec 15 " for Sewing 5.00
" 1856 Jan 18 for tax recpt '15' 20.37
" " do '16' 34.92
" Feb 1 Pd for Watkins & Dury '17' 40.11
" Boarding from June 12
" 1855 to Feb 5 1856, 34 weeks
" @ 1.50 51.00 228.31
" Balce hands of Gdn $5942.69
" Feby Term 1856. Lawson G. Dury

Settlement following 1857

" Lawson G. Dury Guardian of
" Andrew M. Dury in account with said
" ward
" To amt Bal on hand last settlement $5942.69
" " Inventory this day filed 427.56
" 6370.25
" 1856
" Feb 4 Cr By amt pd tuition (1) $3.75
" 14 " Mrs E Bryant '2' 1.75
" 28 " for Sewing 1.50
" 1st 1/6 amt Pd for Grave stones 16.67
" Decem 30 " Recpt for fee bill '3' 6.37
" 1857, Feb 1 Pd Watkins & Dury '4' 127.60
" " Boarding 52 weeks @ 1.75 91.00 2218.64
" Bal on hand Feby 5 Co Ct 1857 6121.61
" Feb 4 1857 Lawson G. Dury Gdn. A M Dury

" Sworn to & Subscribed in open court
" 5 Feby 1859 — J L Sharp clk

" Lawson G. Drury Guardian & Cura
" tor of Andrew M Drury in ac with said
" ward

Settlement of Drury 1859

" To amt on hand last settlement $6121.61
" Inventory this day filed 440.50
" 1857 6562.11
" Feb 6 — Cr by cash taxes (1) 15.79
" do do (2) 38.61
" Apl 11 Pd Mrs Bryan (3) 3.75
" May 6 for coat 1.65
" June 8 Cash furnished 5.00
" July 15 do pd for sewing 2.50
" Oct 14 " " Chinn (4) .50
" 26 " " Watkins & Drury (5) 44.96
" Dec 21 " " Arnold & Franklin (6) 4.50
" 25 " Taxes (7) 16.32
" " do (8) 42.84
" 1858 Jan 5 " furnished to go to Fayette 35.00
" 8 Pd A M Shode & Co (9) 10.00
" 4 Boarding 48 weeks @ 2 96.00
" Feb 1 Cash Pd S E Watkins (10) 60.85

5

17.

" 2 Pd Stewart & Bush (11) 14.50
" Jan 25 Pd Jno R Williams '12' 5.50 398.29
" Bal in hands of Gdn $6163.84
" Feby Term 1858
" Lawson G. Drury Curator
" of Andrew M. Drury
" Sworn to & Subscribed in open court
" 21 Feby 1858
" J L Sharp clk

" Lawson G. Drury Guardian
" & curator of Andrew M Drury in account
" and ward
" 1859 To amt Bal on hand last settlement $6163.84
" Feb Inventory this day filed 523.56
" 6687.40

" 1858 Cr By cash Pd Jno Chenn '1' 1.75
" Feb 18 " do furnished 3.45
" Apl 17 " " Jackson & Irving 2 3.93
" " Expenses to from Fayette 9.50
" 28 " furnished 1.50
" Aug 6 " sent to Prior Jackson boarding 35.00
" 7 " Jno Williams (3) 3.50
" 7 " furnished 5.00
" 14 " do 1.75
" Sep 13 " do 10.00
" Oct 28 " do 3.25
" Nov 6 " J H Goodrich '4' 6.00

Settlement of Drury 1859

18,

" " Jno B Henderson '8' 8.34
" " Mrs F Davis '5' 54.00
" " Taxes '6' 16.42
" Dec 22 furnished 5.00 167.39
" Bal $6510.01
" Feby term of County Court 1859
" Lawson G Dury Guardn & Curator of A M Dury
" Sworn to & Subscribed in open
" Court 7th Feby 1859
" J. X. Sharp clk

" The plaintiff then introduced
" the deposition of Lawson G
" Dury taken by the Co defendants
" of the said Dury in another cause
" as an admission against these defen
" dants

" State of Missouri to the use of Andrew M Dury
" by Wm B Adams Curator of said A M Dury
" vs
" Lawson G. Dury. Wm S Watkins, Wm Newlee
" John S. Filzhugh, Wilford Hayden, Wm E Grace
" Oscar S Brown, Jno Scott & defendants
" Deposition of witness, produced

Deposition of Dury

"produced, Sworn & examined on the
"27th day of April in the year of our Lord
"1860 between the hours of eight Oclock
"in the forenoon, and Six Oclock in the
"afternoon of that day at the Court House
"in the City of Booneville in the County
"of Cooper in the State of Missouri before
"me, Wm Simpson a Justice of the peace
"for Booneville Township in the County
"of Cooper in a certain cause now pen-
"-ding in the Circuit Court of the County
"of Montgomery in the State of Missouri
"between Wm B Adams Curator of Andrew
"M Drury Plaintiff and Lawson G Drury
"Wm S Watkins, Wm Newlee, John S Fitzhugh
"Milford Hayden, Wm E Grace, Oscar S Brown
"& Thos Scott defendants on the part of the
"defendants -- Lawson G. Drury
"of lawful age being produced Sworn
"and examined on the part of the defen
"-dants deposeth and Saith - In day
"book No 1 of the second partnership
"of Watkins & Drury page 14 will be found
"a charge against said firm under the
"title of Stock a/c Dr to Lawson G. Drury
"Guardian and Curator of Andrew M
"Drury and Mary E Drury for eight thous-
"-and ninety five & 25/100 dollars (say $8095 25/100

"This entry was made by me on the 13th
"day of March 1854, and the sum of
"eight thousand ninety five & 25/100
"dollars (say $8095 25/100) the money of
"said wards was loaned to and car
"-ried into the firm of Walkins & Drury
"on the said 13th day of March 1854 to the
"best of my recollection; or the money
"may have been paid in a day or two
"before that time — On the 7th day of
"August 1857, the date of the Execution
"of my last official bond as Guardian
"and Curator of Andrew M Drury
"the firm of Walkins & Drury was
"still indebted to me as Guardian
"and Curator of said wards for the
"said sum of eight thousand ninety five
"& 25/100 (say 8095 25/100) loaned to said firm
"aforesaid, and interest thereon com-
"-pounded annually from the 13th day
"of March 1854. At the time of the Exe-
"-cution of my last bond, I had no money
"in my hands belonging to said Andrew
"M Drury; His means being loaned
"to said firm, and that amount has
"been paid only in part by notes and
"accounts due said firm, which notes

" and accounts are now placed in the hands of Wm B
" Adams present Curator of said Andrew M Drury
" In making my settlements with the County
" Court in ac with said ward Andrew M Drury
" I charged myself with about 10 per cent interest
" per annum on all balances as per former
" settlement even though no interest had been received
" by me on ac of said moneys of said wards so invested
" The credits as they appear on my settle
" ments with the County Court of Montgomery
" County Missouri is all the money that I have
" received since the execution of my last said
" bond, on ac of moneys of my said ward
" invested as aforesaid
" Watkins & Drury turned over to me notes
" and accounts to secure in part their indebtedness
" to me as Curator of said Andrew M Drury, all of which
" have since been turned over to Wm B Adams, present
" curator of said Andrew M Drury, to secure and pay off as far
" as possible my indebtedness to said Andrew M Drury
" The notes and accounts received by
" said William B Adams as said Curator were
" received by him as collateral and not in discharge
" of my indebtedness to said ward as per last settlement
" The firm of Watkins & Drury are still indebt
" ed to me on ac of the Original loan to said firm
" on the 13th day of March 1854.
" Since the execution of my said last

" bond, I think I have faithfully discharged the
" duties of guardian and curator of said Andrew
" M Drury; and regard no breach of trust as having
" taken place since the execution of said last
" bond, having faithfully paid out all sums
" of money that came into my hand after the
" execution of said last bond, for the benefit
" of said ward as will appear by the credits
" in settlements with said County Court in ac
" with my said ward, and as per amounts turned
" over to Wm B, Adams curator of said Andrew
" M Drury

" Although in my settlements with said
" County Court of Montgomery County, it appeared
" that the balance due upon each settlement
" was in my hand; yet it was not in my hand
" as money but it was loaned as aforesaid
" and I was chargeable, with it, and charged
" myself with it in each settlement, and all the amounts
" that I received since the execution of said last bond
" were paid out for benefit of said ward as per
" settlements in Montgomery County Court, or turned
" over to Wm B, Adams present curator of said
" Andrew M Drury

" In a certain attachment suit in which
" Doan, King & Co were plaintiffs and Watkins
" & Drury were defendants, I paid Walter & Lovelace

" a note or notes for the defense of the suit
" that note or notes to the best of my recollection
" was my individual note & Watkins & Drury
" were defendants in said suit but Andrew
" M Drury and Mary E Drury were the bene-
" -ficiaries from the fact that if the
" defendants Watkins & Drury gained said
" suit, then said wards would be paid
" certain notes due said wards from Thos.
" E Watkins. But if plaintiff gained said
" suit, the note of Thos E Watkins would
" be void for want of consideration
" I think said wards were chargeable
" with said expenses of said suit, and I am
" entitled to a credit of say about two
" hundred and fifty dollars on each
" last settlement for Andrew M Drury
" and Mary E. Drury. But if said note given
" to Walter L Lovelace was due said wards
" and said wards were not bound to pay the
" expense of the defense of said attachment
" suit of Doan King & Co vs Watkins & Drury
" then I have since the execution of my
" last official bond in August 1857, used say
" about two hundred & fifty dollars of the estate
" of said Andrew M Drury. If said note given
" to Walter L Lovelace was my individual note
" then I have used no money belonging to

" Andrew M Drury Lawson G. Drury
"
" Subscribed and sworn to before me on the
" day, at the place, and within the hours
" first aforesaid -
" Wm Simpson Justice of the peace
" I Wm Simpson a Justice of the peace
" within and for Cooper County and State of
" Missouri, do certify in pursuance of the
" within notice, came before me Lawson G
" Drury, at the Court House in the City of
" Booneville Cooper County Missouri
" who was duly sworn to testify the whole truth
" of his knowledge touching the matter in contro
" versy aforesaid, that he was examined and
" his examination reduced to writing, and
" subscribed by him in my presence, on the
" day, between the hours, at the place in that
" behalf first aforesaid, and his said depositions
" is now herewith returned. And I further certify
" that the said Lawson G, Drury is a resident
" of the City of Booneville Cooper County in
" said State of Missouri ~ Given at the Court
" House in Booneville County of Cooper
" and State of Missouri this 27 day of April
" AD 1860 - Wm Simpson Justice of the peace

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Answer of part of defendants in another cause (suit on 2nd bond)

" The plaintiff then offered to read and
" did read the answer of a part of these de-
"-fendants with others in another cause

" The State of Missouri to the use of Andrew
" M Drury by Wm B Adams his Guardian
" vs) In Montgomery Circuit Court May 7 1860
" Lawson G. Drury, Wm S. Watkins, William Newlee
" John S Fitzhugh, Wilford Hayden, William E Grace
" Oscar S. Brown & Thomas A Scott
" The above named
" defendants, Watkins, Newlee, Fitzhugh, Hayden
" Grace, Brown & Scott for amended answer to the
" amended petition of the plaintiffs say that they
" admit the execution of the bond in the petition men
"-tioned under date of August 7 1857. But they
" further answering say that prior thereto to wit
" on the 3rd day of January 1853 the said Lawson
" G. Drury was appointed Guardian of the estate of
" Mary E. Drury and said Andrew M Drury by the
" County Court of Montgomery County, that on
" said last mentioned day he the said Lawson G
" Drury as such guardian executed to the State
" of Missouri his bond with William S. Watkins
" Wm Newley, Martin Howard, Granville Bishop
" Edwin L. Pondexter, Samuel G Alfrey, Charles
" A Vaneleave, Charles B Worland, Horace D
" Brown & George C Parsons as his securities

„1854, the said Lawson G. Drury loaned
„to and carried into the said firm the sum
„of $8095.25 cts being money in his hands
„belonging to his said wards Mary E &
„Andrew M Drury the sum of $4431.81 in the
„hands of said Lawson as Guardian of
„said Andrew M being part of said sum of
„$8095.25. Said defendants say that in so
„placing the said sum in said firm the said
„Lawson G. Drury thereby converted the whole
„of the funds then in his hands belonging
„to his said ward Andrew M Drury to his own
„use and wasted the same. And said defen-
„dants say that from thence hitherto the
„said funds of said ward have not been
„in the hands or under the control of said
„Lawson G. Drury as such Guardian
„but the same have been appropriated
„to his own use and wasted and disposed
„of by him. Afterwards at the February
„term of said County Court 1855, the said
„Lawson G Drury made another settlement
„of his Guardianship of said ward with
„said Court in which he caused himself
„to be charged with the sum of $4431.81 cts
„balance on hand at his last settlement

" in the penal sum of
" dollars, conditioned that he
" would faithfully and well and truly discharge
" his duties as such guardian of said wards
" and that said bond was approved by the
" said County Court of Montgomery County
" And the said Lawson G Drury thereupon
" entered upon the discharge of his duties
" as such Guardian. They further say
" that at the February term of said County
" Court 1854, the said Lawson G Drury made
" a settlement of his guardianship with said
" Court of the estate of said Andrew M Drury
" in which he caused himself to be charged with
" the sum of $4580.34 as being the amount of
" monies on hand as per Inventory this day
" (the 6th February 1854) filed, on said settlement
" said Lawson G. Drury obtained credit for
" the sum of $148.53 cts being for monies
" expended by him on account of his said
" ward, leaving a balance in his hands on
" the said 6th February 1854 of $4431.81 cts
" They further say that said Lawson
" G Drury was then a merchant doing business
" in the Town of Danville in said County of
" Montgomery in copartnership with one Wm
" S. Watkins under the name & style of Watkins
" & Drury. And that on the 13th day of March

, and also with $1239.50, 'ant received as per
, inventory that day (Feb 6 1855) filed, also with
, $273.90 which he alledges in said settlement
, is interest on the above sums 'from the time
, they were loaned out up to date making in
, all charged at said term the sum of $5945.21
, at the same time he obtains credits for mo-
, -neys paid out for his ward $123.51 leaving
, a balance in his hands at that date February
, 6 1855 of $5821,70 - Defendants say that
, said sums of money were not nor was
, any part thereof loaned out by said Drury
, as guardian as the law required, and as by
, his said bond he was bound to do, but the
, said sum of $1239.50 obtained by him since
, his last settlement was by said Drury con
, -verted to his own use and wasted, nor was
, said sums or either of them reloaned by him
, by the order or consent of the court or the
, consent of his securities, but without
, the consent of either. Nor did the said
, Drury in fact receive said sum of $273.90
, interest but merely charged himself with
, the same as so much then due - That at
, the February term of said County Court
, 1856, the said Lawson G. Drury as Guardian

" of said Andrew M Dowy, made settlement of his
" accounts with said ward in which he charges
" himself with the sum of $5821,70 balance on
" his last settlement and further charges himself
" with the sum of $349.30, as interest then due
" on said balance amounting in total to the
" sum of $6171.00; that at the same settlement
" the said Lawson G. Dowy as such guardian
" filed credits amounting to the sum of $228.31
" leaving balance on hand of $5942,69. Defen
" dants say that no portion of said sum
" of $5821.70 balance on former settlement
" was loaned out by said Lawson G Dowy
" as such guardian as the law directs, nei=
" ther was the said sum of $349.30 received
" by said Lawson G. Dowy as such Guardian
" or any part thereof, nor were said sums or ei-
" ther of them retained by him by consent
" of the court, or his said securities, but the
" whole of the same was still appropriated
" to his own use and wasted by him in
" violation of the condition of his said
" bond. At the February term of said
" court 1857, said Lawson made another
" settlement in which he charges himself
" with the sum of $5942.69 balance on
" hand at his last settlement, and with
" the sum of $427.56 interest on said amount

" in all $6370.25, at same term he obtained
" credits amounting to $248.64 leaving a
" balance of $6121.61, neither of said sums
" or any part thereof were loaned out by
" said Drury as required by law, nor was
" the same retained by the consent of the
" court or his securities but without the
" consent of either in violation of his
" said bond, and said sums were still
" appropriated to his own use & wasted
" Defendants further say that at the
" term of said court 1857, some of
" the said securities of the said Drury, moved
" said court to be discharged from further
" liability on said bond; and on the 17th
" day of August 1857, the said Lawson
" G Drury and the said defendants
" executed the bond sued on; They
" further say that no money or property
" came into the hands of said Lawson
" after the 15th day of Nov 1854 at which
" period he received the above mentioned
" sum of $1239.50. That he received
" into his hands no money or property
" after the date of the said bond sued
" on. And for answer to the several
" breaches in the plaintiffs petition

"set out defendants say as to the first
"breach they say that the said Lawson
"G has not after the appointment of
"the said William B Adams as guar
"-dian of said ward any money or prop
"-erty in his hands belonging to his
"said ward, and in said failure to pay
"over said sum to said Adams was
"no breach of the bond sued on: as to
"the second breach they say, said Lawson
"did not after the appointment of said
"Adams refuse to pay over to him the
"amount of money then others in his
"hands as in said breach is alleged
"As to the third breach they say, that
"said Drury did not after the appoint
"-ment of said Adams fail or refuse
"to deliver to said Adams, the amount
"of money effects and credits then
"others in his hands and belonging
"to said ward as in said breach is stated
"And as to the 4th breach they say that
"said Lawson G Drury did not refuse
"to pay to said Wm B Adams after he
"was appointed Guardian as aforesaid
"nor did he fail to deliver to said Ad
"-ams the moneys credits & effects
"then others in his hands belonging

" to his said ward — They further say that
" at the time of the execution of the bond
" sued on by plaintiff, that the said
" Lawson G Drury as guardian of the
" said Andrew M Drury was possessed
" of no property or money whatever the
" property of his said ward, and that
" the said Lawson G. Drury has received
" no property or money since the execution
" of the bond sued on; that the condition
" of the bond sued on is not broken
" as alleged in plaintiffs petition. That
" the balance shown by the settlements
" of said Lawson G. Drury as guardian
" of the said Andrew M Drury since the
" execution of the bond sued on is
" a fraud as to the securities on the bond
" sued on. Said defendants further state
" that since the execution of the bond
" sued on the said Lawson G. Drury
" has not filed in the said County Court
" in settlement of his accounts with his
" said ward any inventories or invento-
-ry of any amount of money or property
" whatever received by him as such Gdn
" as from the fact that no property or money had

"come to his possession; that the balance
"accounted for in his settlements since
"the execution of the bond sued on is
"merely accounted for as amount due
"on former guardianship, with the
"interest due thereon — They further
"say that at the time of the execution of
"said bond sued on the said Drury was
"greatly embarrassed & in insolvent
"circumstances, and that shortly there
"after he failed and still is totally
"insolvent. And they having fully
"answered to be discharged & with
"costs of this suit

" Wells, Jones & Terrell for
" defendants

" John S. Fitzhugh one of the
"above defendants makes oath and
"says in the P that the facts as stated
"in the foregoing answer are true

" Sworn to & Subscribed in open
"court 31st May 1860

" Jacob L. Sharpe clk

" Plaintiff then introduced
"a book of the late firm of Watkins
"& Drury of which Drury was a member

" and introduced William D Bush
" who stated that he had frequently
" seen the hand writing of Lawson
" G Drury, that he had been better
" acquainted with the hand writing
" of Drury than at present, and after
" examining an entry marked 44
" page 14 of said book he said that
" he thought the entry was in the
" hand writing of Lawson G. Drury
" which entry is in words following
" to wit

Entry on day book of Watkins & Drury

" Stock a/c Dr for amt furnished by L G
" Drury Guard and curator of Andrew M Drury
" Mary E Drury $8095, 24

Page headed "Danville Mo March 13 1854"

" The plaintiff here
" closed his case

" The defendant
" then offered the whole record of another
" suit and judgment in the case of State
" of Missouri to the use of William B
" Adams adm of Ann Drury against
" Lawson G. Drury & others

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Petition on D. v. bond in another cause

" State of Missouri to the use of Andrew
" M Drury by Wm B. Adams Gdn of said Andrew
" M Drury Plff

" Against

" Lawson G Drury, William S Watkins
" William Newlee, John S. Fitzhugh
" Wilford Hayden, William E Grace
" Oscar S. Brown & Tho A Scott Defts

In the Circuit Court Montgomery County May Term 1859

" Plaintiff
" states that heretofore to wit on the 7th day
" of August A D 1857, Defts bound them-
"-selves to the State of Missouri for the
" use and benefit of Andrew M Drury
" in the penal sum of twelve thousand dollars
" That the conditions of said bond were that
" Lawson G Drury Curator of the estate
" of the said Andrew M Drury shall well
" and truly discharge his duties as such
" Curator according to law, that a copy
" of said bond is hereto annexed, that said
" Drury received as such Curator prior
" the 2nd of February 1859 the sum of Six
" thousand five hundred and ten dollars
" and one cent, that at said last mentioned
" time he made his final settlement
" as such guardian with the County
" Court of Montgomery County, by
" which said settlement the said Drury

" Shows a balance against him as
" such curator of the said sum of
" Six thousand five hundred and
" ten dollars and one cent, a copy
" of which said settlement is herewith
" filed and made part of this petition
" That at the ~ term of said court
" William B. Adams was appointed
" Guardian of the said Andrew McDuffy
" a copy of which said order of appoint-
" ment order approving the bond
" of said Adams is herewith filed
" That the said Duffy has utterly and
" entirely failed to pay over to the said
" Adams the said sum of six thousand
" five hundred and ten dollars and
" one cent or any part thereof, though
" often requested so to do and bound
" so to do in the legal discharge of his duties
" as curator as aforesaid. Plaintiff
" therefore prays judgment against
" said defendants for the amount
" aforesaid and interest thereon from
" the 2nd February 1859

W. L. Lovelace for Pltff

" Walter L. Lovelace for the plaintiff
" says upon oath that he believes

" the above petition are to be true
" Walter L Lovelace
" Sworn to & subscribed before me the under
" signed clerk of the Circuit Court of
" Montgomery County in the State of
" Missouri the 21st day of March A.D.
" 1859. Witness my hand and official
" seal. Done at office in the Town of
" Danville Jacob L Sharp clk
" By Saml T Sharp Dep

" State of Missouri to the use of Andrew
" M Drury by William B Adams his Gdn
" against
" Lawson G Drury, William S. Watkins
" William Newlee, John S Fitzhugh
" Milford Hayden, William E Grace
" Oscar S Brown & Tho Scott
" In the Montgomery Circuit Court
" May term A.D. 1859
" William S Watkins, William Newlee
" John S. Fitzhugh, Milford Hayden, Oscar
" S. Brown, Thomas Scott & William E
" Grace (Securities) for answer to
" plaintiff's amended petition admit
" that they executed the bond referred

Answer on 2nd bond

"to in plaintiffs petition as security thereto
"that William H Adams was appointed and
"regularly qualified as Guardian of the
"said Andrew McDonny as stated in plaintiffs
"petition. But for further answer to
"plaintiffs petition they deny that the
"condition of the bond referred to in
"plaintiffs petition is broken; they further
"deny that the said Lawson G. Donny as
"Guardian of the said Andrew M received
"prior to the 2nd day of February 1859
"the sum of Six thousand five hundred
"and dollars, the property of
"his said ward, or that he received
"such sum at any other time. They
"further deny that at the time of the exe
"-cution of the said bond referred to
"in plaintiffs petition that the said
"Lawson G Donny was possessed of
"property or money of the value of
"Six thousand and five hundred
"or dollars, the property of his said
"ward, or in any other sum whatever
"They further state that at the
"term of the Montgomery County
"Court A.D. 1854, the said Lawson
"G Donny was appointed by said

" County Court Guardian of the said Andrew
" M, that said Lawson G Drury gave bond
" with security as such Guardian which bond
" was approved by said County Court, a
" copy of which is herewith filed marked A
" They further state that said Lawson G
" Drury as Guardian of the said Andrew M
" filed inventories of money & property received
" as such Guardian at the February term
" of said County Court AD 1854 and at that
" time made settlement with said County
" Court in which he stands charged with the
" sum of $4431.81 as balance due his said
" ward. That on the 13 day of March AD
" 1854 said Lawson G. Drury without the consent
" of the securities on his Original bond herewith
" filed and marked A, and without the knowl
" -edge or consent of the said County Court loan
" -ed or carried into the Capital stock of a Mer
" cantile from doing business in the Town
" of Danville in said County composed of
" William S Watkins and the said Lawson G
" Drury the sum of $8095.24 the property of
" the said Andrew M & Mary E Drury as will
" appear from the book accounts of said firm
" that of the said sum of $8095.24 the sum of
" $4431.81 was the property or money of the
" said Andrew M. That the said Lawson G

„ Drury after carrying the said sum into
„ the capital stock of said firm of Watkins
„ & Drury merely continued to charge himself
„ at his annual settlements with said County
„ Court in a/c with his said ward, with in
„ terest on the balances found in his hands
„ as such Guardian at the rate of ten per cent
„ per annum without really having received
„ the annual interest on said balances or any
„ part thereof. They further state that the said
„ sum of $4431.81 with interest thereon as
„ aforesaid composed the whole of the sum
„ sued for in plaintiffs petition: that at the
„ term of said County Court A.D. 185
„ some one or more of the securities on
„ the Original bond of the said Lawson G
„ Drury as Guardian of the said Andrew
„ M petitioned the said County Court
„ to be released from further obligation
„ as such security: that the said County
„ Court ordered that new bond be given
„ which bond plaintiff refers to in his petition
„ They further state that at the time of the execu
„ tion of the bond sued on by plaintiff
„ that the said Lawson G Drury as Guardian
„ of the said Andrew M was possessed of
„ no property or money whatever the property

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" of the said Andrew M & that the said Lawson
" G Drury as such Guardian has received
" no property or money since the execution
" of the bond sued on: that the condition
" of the bond sued on is not broken as
" alledged in plaintiffs petition ~ That the
" balance shown by the settlements of the
" said Lawson G. Drury as Guardian
" of the said Andrew M, since the Execution
" of the bond sued is a fraud as to the sureties
" on said bond; they therefore ask to be
" released and for judgment for costs

" Wells & Terrell attys
" for defendants

" R P Terrell atty for deft makes
" Oath and says that the facts set forth
" in the above Answer he believes to
" be true. R P Terrell

" Sworn to & Subscribed
" 18 Augt 1859 ~ J R Sharp C
" By S T Sharp D C

" The State of Missouri to the use of Andrew
" M Drury by William B Adams his guardian
" vs
" Lawson G. Drury, William S. Watkins
" William Newlee, John S. Fitzhugh

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Amended Petition on 2nd bond

„ Wilford Hayden, William E Grace, Oscar
„ S. Brown & Thomas A Scott

„ The plaintiff
„ by leave of the court files this his amen
„ ded petition in the above entitled cause
„ and says that on the 7th day of August
„ AD 1867, the defendants Lawson G
„ Drury having been by the County Court
„ of Montgomery County appointed Cura
„ tor of the estate of Andrew M Drury
„ executed his bond to the State of Missouri
„ as principal with the other defendants
„ above named as securities in the penal
„ sum of twelve thousand dollars which
„ bond was under the hand and seal
„ of said parties defendants, and condi=
„ tioned that whereas the said Lawson
„ G Drury has been appointed Curator
„ of the estate of said Andrew M Drury
„ Now if the said Lawson G. Drury shall
„ well and truly discharge his duties as
„ Curator aforesaid according to law
„ then said bond was to be null and
„ void, else to remain in full force
„ and effect, which bond was on the day
„ aforesaid presented to the County
„ Court of said County of Montgomery

„ and by said Court approved and filed and
„ recorded as required by law in such case
„ a copy of which bond is herewith filed
„ and marked A – That at the time of the
„ execution of said bond, the said Lawson
„ G Drury as curator aforesaid, was in-
„ debted to said ward in the sum of
„ Six thousand one hundred and twenty
„ one and 61/00 dollars as will appear
„ by his settlement of his accounts with
„ said County Court as such curator
„ at the February term of said Court
„ in the year 1857 – that afterwards
„ at the February term of the County
„ Court in the year 1858, the said Lawson
„ G Drury made a statement of his accounts
„ as such curator to the County Court afore
„ said, from which it appeared that he
„ was indebted to said ward in the sum of
„ Six thousand one hundred and sixty
„ three dollars and eighty four cents
„ and Plaintiff charges that at that time
„ the said L G Drury was indebted in such
„ sum to said Ward. That at the November
„ term 1858 of said County Court the said L
„ G Drury was removed from his place
„ as such curator, and at the December
„ term of said Court in the same year

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„William B Adams was appointed Curator
„of the estate of said Andrew M Drury
„and then and there filed his bond
„as such as requires by law and the
„same was approved by the court
„and ordered to be recorded and filed
„Afterwards at the February term
„1859 of said court, the said Drury
„former curator files in said court
„an account of money in his hands
„belonging to said Ward amounting
„to Six thousand five hundred and ten
„and 0/100 dollars, and the said court
„then and there ordered the said Lawson
„G Drury to pay over to the said William
„B Adams the succeeding curator
„the said sum of money and all sums
„in his hands belonging to said Andrew
„M, and to deliver to him all money
„property, effects &c belonging to said
„Ward. The plaintiff alleges that defen
„-dants have not kept and complied with
„the conditions of their said bond in this
„to wit – First the said Lawson G Drury
„upon his removal as curator aforesaid
„and the appointment of the said Williams
„B Adams as his successor failed

„ and refuses to pay to the said William
„ B Adams the amount of money due
„ by him to said Ward to wit Six thous
„ and five hundred and ten dollars
„ as aforesaid – Second, after the
„ removal of said Lawson G and the
„ appointment of said William B Adams
„ as such curator the said Lawson
„ failed and refused to pay to the
„ said William B Adams the amount
„ of money then and there in his hands
„ belonging to the said Andrew McDuffy
„ to wit Six thousand five hundred
„ and ten dollars – 3rd that upon
„ the appointment of his successor
„ the said William B Adams, the said
„ Lawson G. Duffy, although fully
„ advised of the action of the said Court
„ in removing him and appointing his
„ said Successor failed and refused, though
„ requested so to do, to deliver to the said
„ William B Adams, the amount of money
„ effects and credits then and there in
„ his hands and due to and belonging
„ to said Ward, amounting to the sum
„ of Six thousand five hundred and ten
„ dollars – 4th that after the removal
„ of said Lawson, and the appointment

„ of said Adams as his successor the said
„ Lawson was ordered by the said court
„ at the Feby term 1859 to pay over the amount
„ due by him as aforesaid to the said Adams
„ as his successor, and to deliver to him
„ all assets, effects and credits belon
„ -ging to said Ward and due by him
„ as aforesaid of which order the said
„ Lawson had due notice, and the said
„ Lawson failed and refused to pay to
„ said Adams the amount of money
„ due by him as aforesaid, though reques
„ -ted so to do and failed to deliver to him
„ the said William B, the moneys effects
„ and credits then and there in his hands
„ or due by him to the said Andrew M
„ Dury, amounting in all to the sum of
„ Six thousand five hundred and ten
„ dollars and interest thereon. Wherefore
„ plaintiff prays judgment for the penalty
„ contained in said bond to wit twelve
„ thousand dollars, and that execution
„ may be awarded against defendants
„ for the said sum of Six thousand
„ five hundred and ten dollars and
„ interest from the first day of Febu
„ -ary 1859 at ten per cent per annum

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" the amount of damages sustained
" by reason of said breaches
" Lovelace & Henderson
" for Pl'ff
" Walter S. Lovelace attorney
" on oath says that he believes the
" above petition, and the matters and
" things therein as stated are true
" W L Lovelace
" Subscribed and sworn to
" before me on this the 25th
" day of May 1859
" J P Sharpeck

Amended Answer to Amended Pet on 2nd bond copied page 25

The amended Answer to the fore-going amended petition is before copied page 25 as introduced by the plaintiff in evidence

In the Circuit Court 27th May 1864
" The State of Missouri
" to the use of Andrew M Drury by William B
" Adams his Guardian
" " Suit on Gdns bond
" Lawson G. Drury, William Newbe, John
" S Fitzhugh, Wilford Hayden, Wm E Grace, Oscar S Brown
" and Thomas A Scott — Now at this day appeared

Judgment on 2nd bond in another cause

" the said parties by their said attorneys
" and the death of Andrew M Drury being
" suggested, on motion William B
" Adams his statutory adm is substituted

" Same
" vs } On motion to strike out part of
" Same } defendants Answer
" Now at this
" day all and singular the matters and
" things contained in said motion were
" submitted to the court; whereupon
" it is considered by the court that said
" motion be sustained

" Same
" vs
" Same } R G Drury one of the said
" defendants, appears in court
" by his attorney, and says he has no
" defense to make to the action, and
" consents that a progment be entered
" against him

" Same
" vs
" Same } Now at this day appeared the

" said parties by their attorneys, and
" the cause coming on for trial and
" neither party requiring a Jury
" all and singular the premises were
" submitted to the court; Whereupon
" the court finds that the said plaintiff
" has sustained damages by reason of
" the breaches of the bond mentioned
" in said plaintiffs petition in the sum
" of nine thousand nine hundred
" and seventy four dollars and
" seventy five cents. Whereupon
" it is considered and adjudged by the
" court that the said plaintiff recover
" of the said defendants the sum of
" twelve thousand dollars, the amount
" of the bond aforesaid mentioned
" in said plaintiffs petition, together with
" his costs of suit, and that execution
" issue against said defendants
" for the sum of nine thousand nine
" hundred and seventy four dollars
" and seventy five cents, the amount
" of damages aforesaid by the court found
" together with his costs of suit.

" The plaintiff then
" and there objected and his objection

" being overruled by the Court
" he excepted. The defendants then
" offered in evidence the record of
" the County Court ordering Drury
" to give a new bond, and the record
" of the County Court approving of
" the new bond given by Drury

" State of Missouri } In the County Court
" Montgomery County } 7th August 1857

Lawson G. Drury

" Curator of Andrew M Drury, came into Court
" and presented a bond, the penalty of which is
" twelve thousand dollars with William S.
" Watkins, William Newlee, John S. Fitz-
" hugh, Welford Hayden, William E.
" Grace Oscar S. Brown, and
" Thomas A Scott securities thereto
" whereupon said bond and securities
" are approved by the Court. Ordered
" that a copy of this ~~bo~~ Order
" be certified on said bond, and that
" said bond be recorded

Order of County Court approving 2nd bond

" This was all the
" evidence in the case
" The plaintiff asked the
" Court to declare the law as follows

Plaintiffs Instructions

Refused

" Plaintiff asks the court to declare
" the law

" If Drury was a member of
" the firm of Watkins & Drury and
" die in the year 1854, carry the money
" of his ward A M Drury into said firm
" either as a loan, or as a part of the
" capital stock of said firm, then that
" was a conversion of the funds in his
" hands as guardian, and a breach of
" his bond

" If Drury put the money
" in the firm of Watkins & Drury, a firm
" of which Drury was a member o that
" there was no special contract with
" the other member of said firm to pay
" interest and said firm in fact did not
" pay interest on said money, then that was
" a breach of his bond

Refused

" If Drury in the year 1854
" used or appropriated the money of his ward
" Andrew to his own use, without first
" obtaining the leave of the County Court
" of Montgomery County and the assent of
" his securities, then that was a breach
" of his bond, and the plaintiff is entitled
" to recover the damages sustained by reason

Refused

" of said unlawful Conversion
" which were refused
" by the court, to which refusal the
" plaintiff excepted. The court then
" upon the motion of defendants gave
" the following instruction

Defendants Instructions

" To the giving of which the
" plaintiff excepted. The court sitting
" as a Jury found a verdict for the defen
" dants. The plaintiff then moved the
" court to set aside the verdict for the

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Motion for New trial

" following reasons to wit.

" State to use Dmry

" L G Dmry et al of Plaintiff

" moves the court to set aside the verdict
" in the above cause and grant a new
" trial for the following reasons
" 1st The court erred in declaring
" the law in the case
" 2nd The court erred in refusing to
" declare the law as asked by the Pltff
" 3rd The verdict is against the evidence
" and all the evidence
" 4th The verdict is against the law
" 5th The court admitted improper evi-
" -dence on the part of Defts
" Lovelace & Sharp for Pltff

" Which said motion was over
" -ruled by the court, to which ruling
" the plaintiff excepted, and nowhere
" tenders his bill of exceptions, which
" he prays may be signed, sealed, and
" made a part of the record, which is
" accordingly done
" Thomas J. C. Fagg (seal)
" Judge

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State of Missouri
County ss:
I Jacob L.
Sharp Clerk of the Circuit
Court of said County certify that
the foregoing is a true copy of the
Record & proceedings in the suit
of "State of Missouri to the use
of A M Drury by W B Adams Gdn
vs Lawson G Drury & others

In Witness whereof, I
have hereunto set my
hand and official
seal. Done at office
in the Town of Danville
the 22nd June A D 1864
Jacob L. Sharp clk
By Saml T Sharp D.C.

I L S
22
June
1864

(1) Oct T. 1865
No 5

State to the use of Andrew M Drury by Wm B Adams Gen P.E

vs

Lawson G. Drury & others D.E

Error to Montgomery Circuit

Filed Sept 30. 1864
A.W. Mead
Clk

Lovelace & Henderson

B. Sharp

$10. due

1863 March 26 Agt. of [illegible]
1864 Dec 5. Continued by consent
1865. Oct Submitted. 30th R & R D. p 350

State of Missouri to the use of Andrew M. Drury By Wm B. Adams Gen Pl
vs
Jackson G. Drury & others

IN SUPREME COURT,
TERM, 18

AND now come the said Plaintiff and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said assign the following, to wit:

1. That said Court admitted improper and illegal testimony offered by Defendants
2. That said Court rejected proper and legal testimony offered by Plaintiff
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by Plaintiff
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Defendants when it should have been rendered for the Plaintiff
10. That said Court overruled the motion for a new trial, made by Plaintiff

W L Lowlan
atty for P.E.

And now come the and for joinder in error say, that there is no error in the record and proceedings of said in said cause, as assigned by said

State to use of A
M Drury by W.B.
Adams Gdn P.E.
vs
Larsan G Drury
& others D.E.

Assynment of
Error

Filed March 25. 1865
A.W.McCad
Clk

State to the use of
A. M. Drury P.E. } Error to Montgomery Circuit Court.
vs
Lawson G. Drury
and others D.E.

1. The plaintiff will not be permitted to go behind the settlements of the County Court to show that there was no money in the hands of the Guardian, at the time the second bond was given.
The settlements in the County Court are judgements and are binding upon the securities. ~~34 Mo Reports p~~ Taylor vs Hunts Exr and others, 34 Mo p 205. State to the use of Griffith vs Holt 27 Mo p 340 and authorities there cited, Mitchell vs Williams 27 Mo 399 and authorities there cited.

2 The court below rendered a judgement against the principal and his securities on the second bond, for the amount of money and for the same

breaches that they seek to recover on in this case. The plaintiff is entitled to but one judgement.

3. The record shows that the amount ascertained to be due the ward in the settlement of the Guardian in 1857 at the time and before the first bondsmen were released was carried forward by the Guardian in his subsequent settlements (and after the execution of the second bond and the release of the securities of the first) as so much on hand and was by the County Court in its judgements found correct.

4. If the law is good against the securities on the second bond it is certainly good in favor of the securities on the first bond

State to use
of A. M. Drum
P. E.
vs
Lawson G. Drum
& others. D. E.

Brief
of D. E.

D. P. Dyer.
atty for D. E.
Filed Oct 17. 1855
J. A. Willis
Clerk

The State of Missouri
To the use of
A M Drury &c.
P. C.

vs
Lawson G. Dury
& others —
D. E.

Now comes the Plaintiff in error and assigns the following errors committed in the Court —

1 The Court sitting as a Jury erred in finding for Dependants —

2 The Court erred in giving Judgment for Defts.

3. The Court erred in refusing the instructions asked by Plaintiff

4. The Court erred in the declarations of law asked by Defts.

J. P. Henderson
for P. C.

No 6

State of Missouri
use of A. M. Drury
P. E.
vs.

Lawson G. Drury
Rothers
D. E.

Assignment of
errors

J. P. Henderson
for P. E.

Error Joined –

Filed Oct 18. 1865
J. A. Willis
Clerk

The State of Missouri
Estate of Andrew M Drury
vs.
Lawson G. Drury & others.

Statement of case

On 3rd day of January 1853 Lawson G. Drury having been appointed Curator of the Estate of Andrew M Drury by the County Court of Montgomery County Missouri, executed his bond as such with his Co defendants as his securities, in the sum of twelve thousand Dollars, conditioned that he would discharge his duties as such Curator according to law. The bond was approved and filed as required. Drury the Curator received large sums of money belonging to his ward and filed several settlements in the County Court charging himself with said sums. At the February Term of said Court in 1857 he filed a statement of his accounts showing himself indebted to his ward in the sum of Six thousand one hundred and twenty one and 61/100 Dollars

At the August Term of said County Court in the year 1857, the Curator was ordered to give an additional bond and at the August Term of that year the new bond was approved and filed. At the November Term 1858, Drury was removed from his Curatorship and Wm B. Adams appointed in his stead, in December afterwards. ~~and~~ Adams demanded ~~the~~ of Drury the amount of money due his ward and Drury having failed to pay, he brings this suit on the first bond to enforce payment thereof.

The Plaintiff alleges that Drury ~~after~~ between the time of giving his bond and his removal in 1857, received large sums of money belonging to his ward and converted them to his own use without consent of the Court, first had and obtained.

To this the sureties answer that Drury had not converted the funds belonging to his ward in

1857, when he gave the new bond, but that he had said funds on hand and whatever the liability, ~~for~~ on account of a failure to pay, it rests on the sureties in the new bond.

The only question in the case then is, whether Drury at the time of giving the new bond, had already misapplied the money previously coming into his hands - whether he had then given it such improper direction or investment as to occasion its loss.

On the trial of the case the Plaintiff introduced in evidence the several settlements of Drury as Curator from 1854 to 1859, including the statement filed by him in 1859, after his removal. These settlements show an indebtedness of between Six and Seven thousand Dollars.

The depositions of Drury taken by his Codefendants in the other Cause, some of them being the same as in this, were read, from which it appeared that Drury on the

13th day of March 1854, having entered into a mercantile Copartnership with one Wm. S. Watkins, designing to sell goods, wares and merchandise in the Town of Danville Missouri, made an entry on the day book or Journal of said firm in the following words towit

"Stock a/c Dr. for amt furnished by L. G. Drury Guard. and Curator of Andrew M. Drury and Mary E. Drury $8095.24

In his ~~testimony~~ deposition aforesaid Drury says, that "the money of said Wards was loaned to and carried into the firm of Watkins and Drury"; and further "On the 7th day of August 1857 the date of the execution of my last official bond as Guardian and Curator of Andrew M. Drury, the firm of Watkins & Drury was still indebted to me as guardian and Curator of said Wards for the said sum of $8095.25, loaned to said firm aforesaid & interest thereon compounded annually from the 13th day of March 1854. At the time of the execution of my

last band I had no money in my hands belonging to said "Andrew M. Drury." And he says further that said firm never paid the amount due. He got some notes from the wreck of its failure from which there might have been a partial satisfaction which he turned over to Adams as collateral without attempting to collect them himself.

In reference to the settlement of 1858, and the statement of 1859 made after his removal he says, "although in my settlements with said County Court of Montgomery County, it appeared that the balance due upon each settlement was in my hand, yet it was not in my hand as money, but was loaned as aforesaid and I was chargeable with it and charged myself with it in each settlement & all the amounts that I received since the execution of said last bond were paid out for the benefit of said Wards" &c.

Other evidence offered tended

to show the same facts.

The Defendants offered in evidence the record and proceedings in the suit on the second bond, but they were excluded by the Court

The Plaintiff asked the following declarations of law, to wit

1 If Drury was a member of the firm of Watkins and Drury and did in the year 1851 carry the money of his ward A. M. Drury into said firm either as a loan or as a part of the capital stock of said firm, then that was a conversion of the funds in his hands as Guardian and a breach of his bond

2d If Drury put the money in the firm of Watkins and Drury, a firm of which Drury was a member and there was no special contract with the other member of said firm to pay interest and said firm in fact did not pay interest on said money then that was a breach of his bond

3. If Drury in the year 1854 used or appropriated the money of his ward to his own use without first obtaining the leave of the County Court of Montgomery County and the assent of his sureties, then that was a breach of his bond and the Plaintiff is entitled to recover the damages sustained by reason of his said unlawful conversion.

These instructions were refused by the Court and a verdict having been rendered for Defendants, Plaintiff moved to set it aside. His motion was refused and Judgment entered on the verdict. A bill of exceptions ~~was~~ is presented and the case is here on writ of error.

(over)

Points & authorities

1. The bond sued on is conditioned that the Defendant Lawson G. Drury shall faithfully discharge his duties as Curator. What are those duties? A Curator shall put the moneys of his ward at interest on mortgage security, if loaned in sums of over five hundred dollars. If loaned in sums of less than five hundred dollars he may take personal security, but in either event, the security must be approved by the Court. If he retains the money in his own hands, paying interest, he must have the leave of the Court, and the assent of the securities. He cannot legally retain such moneys in his own hands, without consent of the Court, except in cases where he cannot procure a borrower.

Revised Stat. 1845. p 551 §. 23
1. Rev. Stat. 1855 p. 827 §. 30

In this case, did the Curator loan the money? If so, the loan was made in a sum exceeding five hundred Dollars in amount and there

being no mortgage security taken, the condition of the bond is broken. If it be said, that it was not a loan but a use of the ~~money~~ Ward's money by the Curator, then ~~it was~~ it is answered, that such retention and use were without leave of the Bank or the assent of the sureties, and in such event the bond is equally broken.

Rev. Stat. 1845. p 551 § 23

The law ~~prohibiting~~ forbidding Guardians and Curators to retain the money of their wards, in their own hands, without special leave of the Bank and consent of sureties, was not changed until the revision of 1855. ~~approved~~ Such change in the language of the act was made December 1. 1855, but this investment whatever it may be termed, was made March 13th. 1854 and was made not "according to law" but against the law ~~in~~ then in force.

2. If the act putting the money into the firm of Mathews & Denny, without secur-

ty and without leave of the Court, ~~violated~~ was an act not sanctioned by the law as it then stood, the Condition of the bond was broken at the moment of investment and a right of action accrued: and if through the consequences of this act, the money thus invested was ultimately lost, the Plaintiff is entitled to recover the amount of damages sustained by ~~the~~ such wrongful investment. Rev Stat 1845. p 68 § 35 § 36 § 37
do do do p. 550 § 17. 18. & p 120 § 39
1 Rev. St. 1855. p. 825 §.

3rd The pendency of ~~another~~ a suit on the second bond is no bar or obstacle ~~in~~ to the prosecution of this suit, for a right of action may well exist on both bonds. The Curator may have broken the condition of both. ~~bonds~~.

4th If the act of March 13, 1854, loaning the money to or investing it in the firm of Mathews & Drury, was an act of misconduct on the part of the Curator, one not in accordance to the law regulating the disposition of such funds, then no settlements made by the

Curator after giving the second bond can affect the right of the ward to sue on such original breach and recover the damages sustained in consequence thereof. ~~In such~~ If such were the case, the curator would enjoy the advantage of making evidence in his own behalf and thus curing a violation of his contract by a false statement of his own. The cases, therefore, cited by Defendants Counsel in 27 and 34 Missouri Reports were never intended to sustain such a position. ~~It is~~ The error of the Counsel consists in supposing that if a recovery can be had against the securities on the second bond, none can be had against those on the former. This is a mistake. The conduct of the guardian may be such as to make his securities liable on both bonds. The Plaintiff may have his judgment on both, but that he can have but one satisfaction the Defendant may urge with better reason.

5. There is but one question in the case, and that is, whether the disposition of the funds made by Drury in 1854 was strictly in accordance with the law, as it then existed. If it was not there was a breach of the conditions of the bond and the Plaintiff should have had ~~the~~ a judgment for some amount.

It is unnecessary to cite authorities in support of the points here presented, as the whole law of trusts sustains them and the provisions of our statutes are plain —.

J. P. Henderson
for P. C.

No 6.

State of Mo
use of A. M. Drury
P.E.

vs.

L. G. Drury Jr.
others
D.E.

Statement of Case
& Brief
for Plaintiff
in error.

J. P. Henderson
atty.

Filed Oct 18. 1885
J. A. Willis
Clerk

State to the use of
Andrew M. Drury,
vs. Plff. in Err.
Lawson G. Drury et al.
Defts. in Err.

In the Supreme Court.

Oct. T. 1845.

Opinion of the Court.

This was a suit upon a curator's bond against the principal and his securities, founded upon breaches which occurred, during the period of their liability, and before the securities were discharged from any further liability for the failure or misconduct of their principal, in consequence of a new bond, additional bond, with new securities, having been ordered and given to the satisfaction of the Court bond. There was ample evidence tending to establish several of the breaches alleged, during the period of the liability of the defendants. It appeared that the curator had converted the funds of his ward to his own use by investing them in the business of a mercantile partnership of which he was a member, without taking security of any kind, and without the leave of the court, or the consent of the securities; but that he had made annual settlements with the county

court, having jurisdiction of such matters; that when he was required by the court to give a supplemental bond, and at the time when the new bond was given, his last settlement showed a balance in his hands amounting to $4121.61; and that, at the next term after the new bond was given, another settlement was made, showing a balance of $4510.01 against him. This balance was demanded by his successor, who had been duly appointed, and payment was refused. The correctness of the accounts thus settled was not disputed.

It further appears that a suit had been brought by the successor, in the name of the State to the use of his ward, against the principal and his securities in the second bond, grounded upon breaches alleged to have taken place after the second bond was given, and chiefly upon the failure of the removed curator to pay over the balance ascertained to be due by his last settlement, and that a judgment had been obtained against them for the amount. The defence had been set up in the suit, that the money shown by the last settlement to be due was not then actually in the hands of the curator, but that the whole amount had been wasted, during the period

of the first bond. This defence appears to have proved unavailing.

At the close of the evidence on the trial of the cause, instructions were asked by the plaintiff to the effect that the investment of the funds in the partnership business, with or without a special contract to pay interest, or an appropriation of the funds by the curator to his own use, without the leave of the court and the assent of the sureties, was a conversion of the funds and a breach of the bond, which made the defendants liable. These instructions were refused, and the verdict being for the defendants, there was a motion for a new trial, and the case comes up by writ of error.

His contended, on the part of the defendants, that the settlements of the curator were improvident and conclusive in exoneration of the securities on the first bond, and that the plaintiff here, having obtained one judgment upon the second bond, is not now entitled to have another upon the first bond for the same breaches.

His to be observed, first, that it clearly appears by the record, that the breaches

assigned in the two suits are not entirely the same. Those alleged in the former suit consisted merely in the refusal, or failure, of the removed curator to account for and pay over to his successor the balance in his hands as ascertained by his last settlement. In this suit, the first two breaches assigned are indeed essentially the same as before; but the last three allege a commission of the frauds, during the period of the first bond, in such manner as to show gross misconduct and a clear breach of trust, and, in consequence thereof, a failure and refusal to pay over to his successor the balance of his last settlement. The instructions which were refused may be considered as having been predicated upon these last breaches; and the plaintiff was entitled to recover, if he established either one of them, unless some valid defence were shown.

The bond of the curator was conditioned for the faithful discharge of his duties according to law, as the statute required (Rev. Stat. 1845 p. 550, § 17); and the same statute gave the court power "to order supplementary security to be given, for the same

causes, in the same manner, and with the effect" as in cases of administrators (917); and the act concerning Administrators (Rev. Stat. 1845, p. 68, 937) provides, that "such additional bond, when given and approved, shall discharge the former securities from any liability arising from any misconduct of the principal, after filing the same, and such former securities shall only be liable for such misconduct as happened prior to the giving of such new bond." The plain intent of these acts was, that the security should be accumulative, and not an entire substitution of the one bond for the other. It is not a novation, which is either a necessary or a voluntary and intentional substitution of the one obligation for the other, whereby the former would become wholly extinguished. (Burge on Sur. 167). This matter is not left open to construction; for the act expressly declares that the new bond shall not discharge the securities in the former bond from any liability arising from the misconduct of their principal, prior to the giving of such new bond: they are discharged only from ~~any~~ liability arising from any misconduct or failure of the principal after the new bond is given. Now, in so far as the

failure of the curator to pay over the balance of his last settlement to his successor alone constituted the breach and the failure to perform his duty according to law, it may be truly said to have taken place wholly under the second bond; and for that alone the securities in that bond were clearly liable. On the other hand, it is equally clear that for any breach predicated upon misconduct occurring during the period of the first bond, and before the giving of the second, or upon any failure to discharge his duties according to law, during that time, whereby a loss was occasioned, the securities on the first bond can alone be held liable. But in order that such a breach should be available to the plaintiff, and entitle him to recover, it was necessary that he should make it appear that the misconduct complained of had resulted in actual loss to his ward; and therefore, it was entirely proper that he should, at the same time, allege as a part of the breach, that the curator had also failed to pay over to his successor, after his removal, the amount of funds in his hands as ascertained by his last previous

settlement. His cause of action against the defendants did not accrue until the curator had failed, or refused, to account for and pay over to his successor the balance found due by his settlement, and his default had become complete. (Burge on Sur., 322).

It might be seriously questioned, whether under the first two breaches here assigned, evidence would have been admissible to show a loss arising from any other misconduct, or any other failure of duty, than that occurred in those breaches, namely, the failure to pay over the balance of the last settlement; but the evidence which was offered was clearly admissible on the three last breaches, and it furnishes a sufficient basis for the instructions which were asked by the plaintiff. Indeed, it could seem to be clear that the two first breaches were grounded upon a failure of duty which occurred wholly during the time of the second bond, and that on them alone, the defendants in this case could not be held liable;

for the statute declares that they shall not be liable for any misconduct of the principal occurring after the giving of the new bond. And it appears to have been precisely on this breach and failure of duty that the recovery was had on the second bond, in the former suit.

The other breaches were proved as alleged in this case, beyond any doubt; and the evidence showed a case of gross misconduct, during the period of the first bond, which finally resulted in actual loss to the ward. The affirmative of the issue was fully established. By the express term of the bond, the securities had undertaken to be responsible for any loss that should occur, during the period of their liability, by reason of any failure on the part of their principal to discharge his duties according to law. The case of the State to the use of Smith v. Paul's Adm'r. (21 Mo. 51) was in many respects very much like this. The bond of the curator was exhibited as a demand in the Probate Court against Paul's estate, and similar breaches were relied upon. Paul, the surety, had died, and a new bond had been given, after his death,

and the settlement of the curator had been carried forward into the time of the new bond, showing a balance due the ward. The plaintiff had to rebut the presumption that would have arisen against the security in the second bond from the fact of a settlement ~~and failure to pay~~, that the money still remained in the hands of the curator, and proceeded at once against the sureties in the first bond, basing her demand on the misconduct of the principal in converting the money to his own use in fact during the time when Paul was security; and it was held that, in order to establish her demand against Paul, the surety in the first bond, the burden of proof lay upon her to show that the money had been actually spent or converted, while Paul was security. And it was averred as a part of the breach alleged, not only that the money had been wasted, but that the curator had failed to pay over to his successor on demand, the balance ascertained to be due by the last settlement, which had been made under the second bond. The decision

distinctly recognizes the position here taken, that, if a conversion of the funds took place during the time of the first bond, whereby a loss occurred, the defendants must be held liable, notwithstanding there may have been a breach and a liability under the second bond also.

It is insisted for the defendants that the last settlement of the curator was a judgment of a court of competent jurisdiction, and conclusive at law upon all parties. It is not to be questioned that settlements of this kind are equivalent to judgments, and conclusive at law between the parties as to the existence of the debt and the correctness of the account thus settled and adjudicated; and they can be re-examined only in a court of equity on the ground of fraud, or under some other head of equitable jurisdiction. (Jones v. Brinker, 20 Mo. 87; State v. Roland, 23 Mo. 95; State v. Grace, 26 Mo. 87; Mitchell v. Williams, 27 Mo. 399); and they are held to be equally conclusive to the same effect and for the same purposes against the securities on official

bonds of this nature, depending on the express terms of their engagement, and not merely upon the simple relation of principal and surety. (State v. Holt, 27 Mo. 341; Taylor v. Hunt, 34 Mo. 207).

But here, the correctness of the account thus settled and the validity of the settlement as a proper mode which ascertains the fact and amount of the indebtedness of the curator are not at all called in question. The inquiry here is only concerning the misconduct of the curator and his failure to discharge his duties according to law, during the period of the first bond, whereby he has rendered himself unable to pay the debt so conclusively ascertained, thus occasioning a loss to his ward, which is the very thing for which the securities undertook to be liable on their bond. In such case, the obligation of the securities does not expire, when the period of time for which they became responsible has expired, either by the terms of the instrument or by force of the statute, unless there has been no act or default by the principal

during that period, whereby a loss occurred. (Burge on Sur., 113).

Nor can it make any difference, that there may be, at the same time, two judgments against different sets of securities on distinct bonds; for, as we have seen, the intent of the statute is, that the security shall be supplementary, additional, and cumulative. The debt or cause of action on the first bond was merged in the judgment; but the judgment is still only a security for the original cause of action, and until full satisfaction be made, it cannot operate to change, or extinguish, any other collateral and concurrent remedy which the plaintiff may have. (Burge on Sur., 178; Drake vs. Mitchell, 3 East 258). Of course, there can be but one satisfaction; but the plaintiff has the right to pursue his remedies against all parties who have become responsible to him, until he has been fully paid.

To what extent, or in what cases, there might be ground for contribution among the securities on the two distinct bonds, after pay-

ment, we are not now called upon to decide.

We are of the opinion that the instructions asked by the plaintiff should have been given, and that a new trial should be granted.

Judgment reversed and cause remanded.

~~The other judges con~~

Judge Wagner concurs.

Judge Lovelace not sitting, having been of counsel.

N. Holmes

6 C

State to use of
Andrew M. Drury
Deft in Err.
v.
Lawson G. Drury et al.
Deft in Err.

Opinion.

Reversed & remanded.

Filed Oct 30. 1865
J. A. Miller
Clerk

Holmes.