

No. 13096

Supreme Court of Illinois

People

vs.

Randolph

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 234.

1860

211
People

475

~~Rogers~~

Russell

~~People~~

13096

1
Pleas to a Term of the Circuit
Court within and for the
County of Tazewell and State
of Illinois begun and held
at the Court-House in the City
of Pekin on the first Monday
of the Month of September in
the Year of our Lord Eight-
teen Hundred and fifty Nine
Present, the Honorable James
Harnott Judge of the Tenth
just-judicial Circuit, composed
of Tazewell Mason &c

Be it remembered that on the 22nd day
of July a Bond and Praecipe was filed
in the words and figures following to wit

State of Illinois } Circuit Court
Tazewell County } ⁸⁵⁴ To the September Term A.D. 1859

The People of the State of Illinois }
who sue for the use of Ruben }
Burgstesser & William S. }
Rankins = }

=vs.=

Geo. O. Randolph
Benjamin Priddy }

2

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this State
 Dated at Pekin the 22nd day of July
 A.D. 1859. R. Burgettsner.

State of Illinois } Circuit Court
 Tazewell County } To September Term 1859

The People of the State }
 of Illinois to the use }
 of Rubin Burgettsner }
 & William S. Rankin }
 parties under name }
 & style of- }
 R. Burgettsner & Co }
 =vs= }

In Debt \$1000.
 Damages 200.

John Q. Randolph }
 & Benjamin Priddy }

The clerk will
 please issue as above

S.D. Ruterbaugh
 Atty for Plffs

to them the sum of One Thousand Dollars which they owe to and unjustly detain from them.

For that whereas hereofore to-wit on the 18th day of December A.D. 1855 at said Tazewell County, the said defendant John O. Randolph was by the County Court of said County, duly appointed administrator of the estate of Jonathan B. Hildes, late of said County deceased, intestate, and letters of Administration in due form of law, were then and there issued to the said John O. Randolph by said Court, and the plaintiffs are that said John O. Randolph then and there accepted of his appointment as such administrator and assumed and took upon himself the burden and duties of said office of administering said estate, and then and there with the said defendant Benjamin Bridgely made and filed in the Office of said County Court their bond as such administrators conditioned for the faithful performance of the duties of the said office by the said John O. Randolph, and which said writing obligatory sealed with their seals and dated a certain day and therein named to-wit the day and year aforesaid, and now

6
her shown to this court as duly-approv-
ed by the Judge of said County Court, and
and is in the words, and figures as to wit

Know all Men by these Presents That
we John O Randolph and Benjamin
Brady of the County of Tazewell and
State of Illinois, are held, and firmly
bound unto the people of the State of
Illinois in the penal sum of One Thousand
Dollars current money of the United
States which payment well and truly
to be made and performed. We and each
of us bind ourselves our heirs executors
administrators and assigns jointly
severally, and firmly by these presents
Witness our hand and seal this 18th day
of December A. D. 1855=

The condition of the above obligation
is such that if the said John O. Randolph
Administrator of all and singular the goods
and Chattels rights and credits of Jonathan B
Willdy, deceased, do make or cause to be made
a true and perfect inventory of all and singular
the goods and Chattels rights and Credits of
the said deceased, which shall come to the hands
possession or knowledge of him the said John
O. Randolph as such administrator or to the
hands of any person for him, and the same

so made, do exhibit or cause to be exhibited in
 the County Court of the said County of
 Fajrwall, agreeable to law, and such goods
 and chattels, rights and credits, do will
 and truly administer according to Law
 and all the rest of the said goods and
 chattels rights and credits which shall
 be found remaining upon the account
 of the said administrator, the same being first
 examined, and allowed by the County Court
 shall deliver and pay unto such person or
 persons respectively, as may be legally entitled
 thereto, and further do make a just and
 true account of all his actings and doings
 therein when thereunto required by the
 said court, and if it shall hereafter ap-
 pear that any last will and Testament, was
 made by the deceased, and the same be
 proved in court, and letters testamentary
 or of administration be obtained thereon
 and the said John O. Randolph, do in such
 case on being required thereto, order
 and deliver up the letters of Administration
 granted to him as aforesaid, and shall
 in general do and perform all other acts
 which may at any time be required of
 him by law, then this obligation to be void
 otherwise to remain in full force and virtue.

John O Randolph *Seal*
 Benjamin Priddy *Seal*

Taken signed and sealed

before me this 18th day of
 December A.D. 1857-

Ino Gndley Clerk-

And plaintiffs arr that after making
 said writing obligatory to-wit on the 8th day
 of May A.D. 1856. to-wit at Tazewell County
 aforesaid. the said Ruben Bergstrasser and
 William S. Rankin, partners under the
 name and style of Bergstrasser & Co
 exhibited their claim against the Estate of
 said Jonathan B. Willdey deceased for the
 sum of thirty five $\frac{9}{100}$ dollars due to them
 from said estate before the County Judge of
 said County, which said claim said plain-
 tiffs arr was then and then regularly admitted
 and allowed by said court. against the said
 estate as a debt of the fourth class, and by
 said court ordered to be paid to said claim-
 ant by said John O. Randolph. as such admin-
 istrator in the due course of Administration
 of said Estate. But the plaintiffs arr that
 said John O. Randolph has not duly admin-
 istered said Estate but has received and
 wasted the same, and has not paid the said
 Bergstrasser & Co. or to any person for their use

the said sum of thirty five $\frac{7}{100}$ dollars and interest due thereon, so allowed to them against said estate, or any part thereof in the due course of administration of said estate, or otherwise by law and the order of said court; the said John O. Randolph, as administrator was required to do, but to pay the same the said Randolph has neglected and refused, and still neglects and refuses to do so.

And for assigning a further breach of the condition of said writing obligatory Plaintiff say that said John O. Randolph, did not within three months after the date of his said letters of Administration return to the Office of the County Court of Tazewell County aforesaid a true and perfect inventory of all and singular the goods and chattels rights and credits of the said Jonathan B. Willdey deceased, nor did, nor has he from time to time filed in said office a true and perfect statement of all moneys, judgments bonds, notes, open accounts, or other evidences of debts due said Estate. Nor has he filed in said office a true and perfect statement and list of titles, to estate real and personal, legal and equitable belonging to said intestate at the time of his decease. But said John O. Randolph has

received and taken possession of said Real and personal estate, and has sold and disposed of the same, and received and wasted the proceeds thereof and failed and refused to pay said Burgstrasser & Co the amount so due and allowed them as aforesaid although often requested so to do.

And for assigning a further branch of the contention aforesaid plaintiffs say that said John C. Randolph as administrator as aforesaid did not exhibit to said County Court at the first term thereof after the expiration of one year from the date of the said letters of Administration a just and true account of his actings, and doings, as said administrator, and then and there proceed to settle the business and affairs of said Estate, and pay over the moneys in his hands, as such administrator, to those entitled to receive the same, as by law and said writing obligatory he was bound to do nor has he from time to time thereafter when therunto requested by said County Court exhibited and settled as administrator with said Estate in said County Court, and paid over the money in his hands. But on the contrary said John C. Randolph has neglected, and refused to settle and adjudge

the said accounts as such administrator, when so required as aforesaid, and has refused and neglected to those entitled to receive the same, the money of said estate in his hands and has otherwise greatly wasted, misapplied and devastated said estate, and has not paid to the said Burgstrasser & Co the amount of their said debt so due to them, and allowed as aforesaid although often requested so to do.

And for assigning a further breach Plaintiffs arr that said John O. Randolph has not at the end of each and every year since the date of said letters of Administration exhibited accounts of his administration for settlement to said Court according to the form and effect of the Statute in such case made and provided, and the tenor and effect of the writing obligatory aforesaid, but from time to time failed and neglected so to do.

And particularly plaintiffs arr that said John O. Randolph has further wasted, mismanaged, and devastated said Estate, in this that after making the said writing obligatory and the issuing of said letters of administration, he the said John O. Randolph as administrator as aforesaid, took on the 1st day of January 1856

at Tazewell County aforesaid received ninety one Bushels of Wheat belonging to said estate and disposed of the same and never accounted for the same as administrator aforesaid, nor made any inventory of the same, nor paid over the money to those entitled thereto, nor accounted for the same in any way as part of the effects of said estate

And for assigning a further breach Plaintiffs aver that said John O. Randolph has further wasted mismanaged and derelicted said estate, in this that after making said writing obligatory and the issuing of the letters of administration aforesaid he the said John O. Randolph as administrator as aforesaid to wit on the day and year last aforesaid written at Tazewell County of aforesaid collected of William Conley One Hundred Dollars on the rent of the Land belonging to said Estate, and which said rent was owing to said estate, and never accounted for the same, nor made a statement or inventory of the same and exhibited the same to the County Court, nor paid over any of the proceeds thereof to those legally entitled thereto.

And for further assignment

of Breach plaintiff says that afterwards to wit on the day and year last aforesaid, the said John O. Randolph at Tazewell County aforesaid as administrator aforesaid sold a large amount of corn to wit one thousand bushels to divers persons said corn belonging to said estate and failed to account for the same to said Estate, or to pay the money over to the parties legally entitled to the same, And for further assignment of Breach plaintiff and that the said John O. Randolph afterwards to wit on the day and year last aforesaid at Tazewell County aforesaid as administrator as aforesaid allowed a large quantity of corn to wit one thousand bushels belonging to said estate to go without proper care until the same became wasted and destroyed so that the same was wholly or in part lost to said estate when if properly taken care of would have sold for a large amount to wit five hundred dollars. And for further assignment of Breach Plaintiff and that the said John O. Randolph afterwards to wit on the 2nd day of February in the year A.D. 1856. at Tazewell County, aforesaid as administrator aforesaid collected of one William Frant a large sum

to wit fifty Dollars on account of his indebtedness to said estate which was in the inventory of the notes and accounts belonging to said estate and afterwards to wit on the 6th day of November A.D. 1856 at Tazewell County aforesaid the said John O'Haudolph returned said claim with others to the County Court aforesaid and filed the same for the benefit of creditors and heirs stating that he had used all due diligence to collect the same and got a credit for the said claim returned as aforesaid. when in fact he had collected the same.

And for assigning a further branch plaintiffs Avr that the said John O'Haudolph afterwards to wit on the day and year last aforesaid at the County of Tazewell aforesaid as administrator aforesaid collected of One Timothy Clark a large sum of money to wit Sixteen Dollars belonging to said estate. and which and which has been inventoried to said as part of the assets of said estate and afterwards to wit on the 6th day of November A.D. 1857 returned the said claim with others to the office of said County Court for the benefit of creditors and

heirs as not being able to collect the same, and the said John O. Randolph received a credit for said sum then entered, when in fact he had collected said money. And for assigning a further branch Plaintiffs aver that the said John O. Randolph afterwards to wit on the day and year last aforesaid at Taywell County aforesaid as administrator aforesaid collected of one Henry Howell a large sum of money to wit: the sum of fourteen dollars belonging to the said Estate and which said claim was unrecorded and filed in the said County Court as part of the assets of said Estate. And afterwards to wit on the 6th day of November A.D. 1887 the said John O. Randolph returned said claim with others and filed the same in the office of the said County Court: as not being able to collect the same, for the use of the creditors and heirs of said Estate. And for assigning a further branch plaintiffs aver that the said John O. Randolph afterwards to wit on the day and year last aforesaid at Taywell County aforesaid as administrator aforesaid collected of one William Butcherfield a large large sum of money to wit the sum of eight

dollars belonging to said estate and which had been inventoried and filed in the Office of the County Court of said County as part of the assets of said estate, and the said John O. Randolph afterwards to wit on the day and year last aforesaid returned said claim to the said County Court as not being paid for the use of the creditors, and heirs of said estate. when in fact he had collected them =

And for assigning a further branch Plaintiffs are that the said John O. Randolph afterwards to wit. on the day and year last aforesaid at the County and State aforesaid as administrator aforesaid collected of one John Williams a large sum of Money to wit ten dollars belonging to the said estate and which amount was in the inventory of the notes and accounts filed in the County Court of said County as part of the assets of said estate and the said John Randolph afterwards to wit on the day and year last aforesaid at the County and State aforesaid returned the said claim to the said County Court, as not being paid, for the use of the creditors and heirs of said estate. when he had in fact actually collected the same =

And for assigning a further branch plaintiffs are that the said John O. Randolph afterwards

to wit on the day and year last aforesaid at the
 County and State aforesaid as administrator
 as aforesaid collected other claims belonging
 to said estate, which had been committed as
 part of the assets of said estate, and afterwards
 on the day and year last aforesaid returned them
 to the said County Court as being unpaid
 worthless for the use of the creditors, and heirs
 of the said Estate when in fact he had collected the
 same. And for assigning a further breach
 Plaintiffs aver that the said John O Randolph
 afterwards to wit on the day and year last aforesaid
 at the County and State aforesaid as administrator
 aforesaid, collected of one John C.
 Bancroft a large sum of Money to wit
 the sum of Twenty five Dollars belonging to
 said estate, and which account the said
 John O Randolph had never filed an inven-
 tory of, and never accounted to said estate
 for the same, nor paid the same to any
 one legally entitled to the same. And for
 further breach the Plaintiffs assign that the
 said John O Randolph has not used due
 diligence to collect the indebtedness due the
 said Estate, but has suffered many of the
 debtors to become insolvent, when he might
 have collected the amount due from them
 by using ordinary diligence, and some of the

debtors of said estate have never been called upon for the amount due from them to the estate, and through the negligence and carelessness of the said John O. Randolph large amounts of money to wit. the sum of One Thousand dollars has been lost to the said estate, and the said defendant neglected and refused to collect the said notes and accounts but returned the same as worthless. and the said John O. Randolph neglects and refuses to pay the said Burgstrasser & Co. the amount due them on their said claim against said estate so due and allowed to them and directed to be paid as aforesaid, although often requested so to do.

And so the plaintiffs say that the said John O. Randolph has further broken the conditions of the said writing obligatory and wasted the said Estate. And the said plaintiffs protesting that the said John O. Randolph has not kept fulfilled or performed any thing in the said bond, and obligation, or by the laws of this State he was bound to do. And that the said demand of the said Burgstrasser & Co remains in arrears and unpaid and that the said John O. Randolph has in other things broken the conditions of the said bond and failed

19

and neglected to perform his duties as such Administrator as required by law and has further greatly wasted, mismanaged and devastated the said estate to wit at Tazewell County Illinois.

By reason of which said several breaches said writing obligatory became forfeited, and thereby an action accrued to the said plaintiffs (for the use of the said Bergstroms & Co) to have of and from the said defendants the said sum of One Thousand Dollars. Yet the said defendants have not although often requested paid the said sum of money as or demanded or any part thereof to the said plaintiffs but have hitherto wholly refused and neglected, and still do neglect and refuse to pay the same or any part thereof to the said plaintiffs. To the damage of the said plaintiffs of Three hundred Dollars and therefore they bring suit &c &c

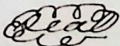
S. D. Puterbaugh
Plffs Atty

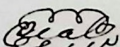
Copy of Bond

Know all men by these presents that we John O. Randolph and Benjamin Bridgely of the County of Tazewell and State of Illinois

20 are held and firmly bound unto the people
of the state of Illinois in the penal sum of One thou-
sand Dollars current money of the United States
which payment well and truly to be made and
performed. we and each of us bind ourselves our
heirs. executors. administrators and assigns jointly
severally and firmly by these presents. Witness
our hands and seals this 18th day of December
A.D. 1855. The condition of the above obligation
is such that if the said John O Randolph Admin-
istrator of all and singular the goods and
chattels rights and credits of Jonathan B. Uddy
deceased do make or cause to be made. a true
and perfect inventory of all and singular the
goods and chattels rights and credits of the
said deceased which shall come to the hands
possession or knowledge of him the said John
O Randolph as such administrator or to the
hands of any person or persons for him. and
the same so made do exhibit or cause to be exhib-
-ted in the County Court of the said County
of Taylor well agreeably to law. and such goods
and chattels. do well and truly. administer
according to law. and all the net of said goods
and chattels. rights and credits which shall
be found remaining upon the account of the
said administrator the same bring first-
examined and allowed by the County Court

shall deliver and pay unto such person or persons respectively as may be legally entitled thereto, and further do make a just and true account of all his actings and doings therein when therunto required by the said Court and if it shall hereafter appear that any last will and testament was made by the said and the same be proved in Court and letters testamentary or of Administration be obtained thereon and the said John O Randolph do in such case, on being required thereto render and deliver up the letters of Administration granted to him as aforesaid, and shall in general do and perform all other acts which may at any time be required of him by law then this obligation to be void otherwise to remain in full force and virtue

John O. Randolph 

Benjamin Priddy 

Taken, signed and read

before me this 18th day of

December A.D. 1855

John Gridley Clerk

Filed Dec 18th 1855-

John Gridley Clk

And now afterwards to wit at a Term of the Circuit Court begun and held at the Court

House in the city of Peoria within and for the County of Tazewell and State of Illinois on the first Monday of the month of September in the year of our Lord Eighteen Hundred and fifty nine Present the Honorable James Hammett Judge Hugh Fullerton Esq Prosecuting Attorney J. C. Reers Sheriff and Merrill C. Young Clerk The following proceedings were had in said cause to wit:-

7th day Monday September 12th A.D. 1859

The People for the use of Burgetresser & Co

=vs=

John O. Randolph & Benj^r Priddy } Debt

And now comes the parties by their attorneys, and on motion this cause is continued at the defendants costs. It is therefore ordered and adjudged by the court that the plaintiffs recover of said defendants the costs and charges by them expended about their suit at this term and that execution issue therefor.

And now afterwards to wit at a Term of the Circuit Court begun and held at the Court House in the city of Peoria within and for the County of Tazewell and State of Illinois on the first Monday of the month of February in the year A.D. 1860 Present the Honorable James Hammett Judge Hugh

Fullerton Esq Prosecuting Attorney J. L.
Reems Sheriff and Merrill L Young Clerks
The following proceedings were had in this
cause

Be it remembered that on the 7th
day of February AD 1860 a plea was filed
in the words and figures following to wit
The people of the State of } In the Lazonell Circuit
Illinois who sue for the } Court, to the Febry
use of Ruben Bergsma } Term 1860.

-vs-

John O Randolph and
Benjamin Priddy }

And the said defendants
come and defend the wrong and injury
when &c. say Actis Non Because they say
that before the issuing of the in this present
action to wit on the 22nd day of August 1859
in the said Lazonell Circuit Court the said
plaintiff impleaded the said defendants
in a plea of Debt of and upon the same
identical writing obligatory in the said dec-
laration in this present suit mentioned as by
the record and proceedings thereof remaining
in the said court to wit at the County of said
more fully appears. and the said former suit
so brought and prosecuted against them
the said defendants by the said plaintiff

24 as aforesaid, is still pending in the said Court and not discontinued or determined and thus they are ready to verify wherein they claim judgment. the said writ be Quashed

B. S. Priddyman

Pro = de-

And now afterwards to wit on the day and year aforesaid a demurrer was filed in the words and figures following to wit =

And the plaintiff comes & says that the plea last ^{above} pleaded is not sufficient in law Ruterbaugh for Plff

And now afterwards to wit on the ~~of~~ day of February A.D. 1860 a replication was filed in the words and figures following to wit

State of Illinois } Circuit Court
Logan County } February Term 1860 .

The People &c use of }
Burgess &c }
- vs - }

John O. Randolph }
Benjamin Priddy }

And the said plaintiffs by S. D. Ruterbaugh their attorney come and says that by any thing in said plea of said defen-

dants above pleaded, the plaintiffs unit &
 declaration ought not to be quashed because
 they say that the said actions in said plea
 mentioned in which plaintiffs impleaded
 the said defendants in a plea of Debt of and
 upon the same uniting obligation in the declar-
 ation in this cause mentioned is brought by
 plaintiffs for the use of Margaret Keagerty who
 claims also to be injured by reason of the neg-
 lect & improper conduct of said Administrator
 and not by plaintiffs for the use of Bergstrasser
 also as in this action alleged against
 defendants and this they are ready to verify
 &c wherefore they pray judgment &c

S.D. Puterbaugh

Atty

And now afterwards to wit on the day and
 year last aforesaid a Dmurr was filed
 in the words and figures following to wit

People use of Bergstrasser &c of the City of
 =VS= } A.D. 1860 of the
 Randolph & Priddy } 207 Ct. Ct.

And the said defendant
 comes and defends when &c and says Actio
 non because the matters and things in said
 plaintiffs implication set forth in manner and
 form alleged are not sufficient wherefore to

enable said plaintiff to recover. And of
this they pray judgment of the Court &c

Fullerton & Brattyman
for Deft-

And defendants assign the following special
causes for Verdict-

1st the Replication sets up new matter

2nd The replication does not traverse the facts
as set forth in the plea

3rd The replication concludes with a verification, when as if designed to traverse the Plea it
should conclude to the Country,

4th The replication is otherwise uncertain
& insufficient

Brattyman

And afterwards, to wit:

At a Term of the Circuit Court begun
and held at the Court House within
and for the County of Sagewell & State of
Illinois, at Pekin, in the Year of our Lord
one thousand eight hundred & Sixty it
being the sixth day of said Month of February,
Present, The Honorable James Harriott,
Judge of the 21st Judicial Circuit of the
State of Illinois.

Lough Fullerton, Prosecuting Attorney
Thomas C. Reeves Sheriff &
Merrill C. Young Clerk. to wit:

Wednesday February 8th 1860

27

The People for the use
of Bergstresser & Co

v
John O. Randolph
& Benjamin Priddy

3
3
3
3
3
3
3

Debt

now on this day came as
well the Plaintiffs, by their Attorney, S. D. Putnam
as the Defendants, by their Attorney, B. S. Prettyman
and the Plaintiffs having entered their Demurrer
to Defendants Plea, by leave of Court, with-
draw the same, & by like leave, filed
their Replication to said Defendants
Plea. Whereupon the Defendants entered
their demurrer to Plaintiffs Replication.
And this cause coming on to be heard
upon the Demurrer to Plaintiffs repli-
cation, and the Court having heard the
argument of Counsel thereon, & being
fully advised in the premises, is of
the opinion said Demurrer be sustained.
And the Plaintiffs stand by their Replication.
It is therefore ordered and adjudged by the
Court, that the Defendants recover of said
Plaintiffs the costs and Charges by them
about their defence expended, & that
execution issue therefor.

afterwards to wit

on the 22nd day of February
A D 1860 An agreement is filed
in the words of figures following, to wit:

State of Illinois } Circuit Court
Sagewell County } February Term 1860

The People of the State of Illinois, vs Bergstresser & Co

John O. Randolph et al

It is hereby
agreed between the parties to this suit
that this cause may be taken to the
Supreme Court & be heard at the April
Term 1860 at Ottawa & the said de-
fendants hereby Waive service of process
from the Supreme Court.

B. S. Pettynan, for the Defendants
S. D. Puterbaugh, for the Plffs.

State of Illinois } ss.
Jagervell County }

I Merrill C. Young
Clerk of the Circuit Court in & for said
County & State do hereby certify that
the foregoing twenty eight pages contain
a full true & complete copy of the
Record of the Proceedings had in the Cause
therein named, as the same appears
of Record in my Office.

In Witness whereof I have hereunto
set my hand and affixed the Seal
of said Circuit Court hereunto,
this 5th day of March AD 1860
Merrill C. Young Clerk

And now come the Plaintiffs by S. D.
Puterbaugh their atty and say that in
the record aforesaid manifest error
has intervened in this to wit:

- 1st The Court erred in sustaining demurrer
to Plaintiff replication -
- 2 The Court erred in giving judgment for Defs
S. D. Puterbaugh
for Defs.

And the said defendants by their
attorneys come and say that there
is no error, either in the record
and proceedings aforesaid, or in
the matters aforesaid, above assigned
for error, and pray that the judgment
aforesaid, in form aforesaid
given, may be in all things
affirmed &c.

Charles C. Bonney
with Benj. D. Pettyman
attorneys for defendants
in error

234

People use of
Bergstresser & Co.
vs Peff in Error

John O. Randolph
et al
vs

Transcript
vs

Filed Apr. 18, 1860
S. Ireland
Clk.

\$5.00 Clk.

S. D. Puterbaugh
for Peff in Error

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

THE PEOPLE, for the use of Bergstresser & Co.,
vs.
JOHN O. RANDOLPH et. al.

Brief, Points, &c., of Plaintiff in Error.

The court will find upon examination that the only material point in this case is, whether more than one suit can be brought upon an administrator's bond for the use of different parties injured. In this case the defendants are sued in debt upon their bond, setting out numerous breaches; among others a failure to pay Bergstresser & Co. the amount of their claim against the estate. The defendants plead another suit pending on same bond. The plaintiffs demurred; which was overruled, and plaintiffs by leave of court filed their replication, that the suit referred to in defendants' plea was brought by the people for the use of Margaret Hagerty for other wrongs of defendants, and not for use of Bergstresser & Co. as in this case. To this replication the defendant demurred; which the court sustained. The special causes of demurrer have no foundation. The court sustained the demurrer on the ground that two suits could not be brought on the same bond.

By the Statutes of Illinois, administrators' bonds "shall not become void on the first recovery thereon, but may be sued upon from time to time until the whole penalty shall be recovered." Scates, Treat and Blackwell's Statutes, 1195, sec. 69. There is a clear distinction made by our statutes between suits on bonds given by administrators and guardians, and ordinary official bonds. The language of the statutes above quoted is too plain to require an argument. The defendants contended below that after a judgment had been once obtained on a bond, the only way to recover for other breaches was by *scire facias* and assigning new breaches. This is correct in regard to ordinary bonds, but the issuing of *scire facias* and assigning new breaches is not a distinct suit, but is a part of the original; 14 Illinois, 447; hence the legislature, in saying that administrators' bonds "may be sued upon from time to time," did not refer to assigning new breaches, but to distinct suits.

The demurrer should have been carried back to defendants' plea.

S. D. PUTERBAUGH, for Plaintiff in Error.

254-111
People for use of
Bergstresser Co.

²
John O Randolph
et al

Brief Points re
for Plaintiffs

Filed Apr 19, 1860

A. Selmon
Clerk

Brief Points, et al. of Plaintiff in Error.

JOHN O. RANDOLPH et al.

THE KNIGHTS OF THE HOC OF BERGSTRESSER & CO.

SUPREME COURT,)
STATE OF ILLINOIS,) THIRD GRAND DIVISION.
APRIL TERM, A. D. 1860.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JOHN O RANDOLPH and
BENJAMIN PRIDDY,

at the suit of

THE PEOPLE OF THE STATE OF ILLINOIS,

who sue for the use of

BERGERSTRESSER & Co.

} *Error to Tazewell.*

BRIEF OF CHARLES C. BONNEY, FOR THE DEFENDANTS
IN ERROR.

(1.) Section 18 of the Practice Act, and the case of *The People, &c. v. Compher*, 14 Ill. R. 447, 454, and cases cited, are conclusive against Plaintiff in Error. After one recovery, "no action can be maintained on the obligation, for it is merged in the judgment."

(2.) Laws in *pari materia* are to be construed together. The 69th section of the Statute of Wills is to be construed with the 18th section of the Practice Act, according to the case of *The People v. Compher*.

254 - 111

SUPREME COURT AT OTTAWA,

APRIL TERM, 1860.

RANDOLPH et al.,
ats.
PEOPLE, for use of
BERGERSTRESSER & Co.

DEFENDANT'S BRIEF.

Filed May 2. 1860
L. Leland
clerk

CHARLES C. BONNEY.

State of Illinois } In the Supreme Court
Ottawa Term A.D. 1860

Randolph & al
vs
People use of
Bergensstesser & Co. } Error to
Jagard -

Additional points made
by Charles C. Bonney
upon the argument for
the defendants in error.

1. The construction given in *People v. Coupher*, affords an ample, convenient, and uniform remedy; and the court will not create a new, unnecessary, and irregular remedy, by mere implication from a statute which can as well be construed in harmony with the usual course of the law.
2. The plaintiffs in error ask the reversal of the judgment below not for any matter of sub-

= stance, but upon a mere question of form in the proceedings. Of course the bond may be put in suit for subsequent breaches; there is no question as to that; but the question is, how put in suit? We say by scire facias according to the usual course of the law, — they say, by a new action, like the first upon the ~~judgment~~ bond.

- 3 After judgment in the first action, there is in contemplation of law, no bond in existence to be sued. The administrator is bound thereafter by the judgment, as he was therefore bound by the 'bond'.
- 

234 — 111

People vs Bergerstein
& co.

✓
Randolph & Priddy

Additional points
for defendants
in error.

Filed May 9. 1860
L. Adams
Clerk

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

THE PEOPLE, for the use of Bergstresser & Co.,
vs.
JOHN O. RANDOLPH et. al.

Brief, Points, &c., of Plaintiff in Error.

The court will find upon examination that the only material point in this case is, whether more than one suit can be brought upon an administrator's bond for the use of different parties injured. In this case the defendants are sued in debt upon their bond, setting out numerous breaches; among others a failure to pay Bergstresser & Co. the amount of their claim against the estate. The defendants plead another suit pending on same bond. The plaintiffs demurred; which was overruled, and plaintiffs by leave of court filed their replication, that the suit referred to in defendants' plea was brought by the people for the use of Margaret Hagerty for other wrongs of defendants, and not for use of Bergstresser & Co. as in this case. To this replication the defendant demurred; which the court sustained. The special causes of demurrer have no foundation. The court sustained the demurrer on the ground that two suits could not be brought on the same bond.

By the Statutes of Illinois, administrators' bonds "shall not become void on the first recovery thereon, but may be sued upon from time to time until the whole penalty shall be recovered." Scates, Treat and Blackwell's Statutes, 1195, sec. 69. There is a clear distinction made by our statutes between suits on bonds given by administrators and guardians, and ordinary official bonds. The language of the statutes above quoted is too plain to require an argument. The defendants contended below that after a judgment had been once obtained on a bond, the only way to recover for other breaches was by *scire facias* and assigning new breaches. This is correct in regard to ordinary bonds, but the issuing of *scire facias* and assigning new breaches is not a distinct suit, but is a part of the original; 14 Illinois, 447; hence the legislature, in saying that administrators' bonds "may be sued upon from time to time," did not refer to assigning new breaches, but to distinct suits.

The demurrer should have been carried back to defendants' plea.

S. D. PUTERBAUGH, for Plaintiff in Error.

People for the use of
Bergstrasser & Co
v 284

John O. Randolph
et al,

Brief Points re
for Plff in Error.

Filed Apr 19, 1860

L. Deland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JOHN O RANDOLPH and
BENJAMIN PRIDDY,

at the suit of

THE PEOPLE OF THE STATE OF ILLINOIS,

who sue for the use of

BERGERSTRESSER & Co.

} *Error to Tazewell.*

BRIEF OF CHARLES C. BONNEY, FOR THE DEFENDANTS
IN ERROR.

(1.) Section 18 of the Practice Act, and the case of *The People, &c. v. Compher*, 14 Ill. R. 447, 454, and cases cited, are conclusive against Plaintiff in Error. After one recovery, "no action can be maintained on the obligation, for it is merged in the judgment."

(2.) Laws in *pari materia* are to be construed together. The 69th section of the Statute of Wills is to be construed with the 18th section of the Practice Act, according to the case of *The People v. Compher*.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JOHN O RANDOLPH and
BENJAMIN PRIDDY,

at the suit of

THE PEOPLE OF THE STATE OF ILLINOIS,

who sue for the use of

BERGERSTRESSER & Co.

} *Error to Tazewell.*

BRIEF OF CHARLES C. BONNEY, FOR THE DEFENDANTS
IN ERROR.

(1.) Section 18 of the Practice Act, and the case of *The People, &c. v. Compher*, 14 Ill. R. 447, 454, and cases cited, are conclusive against Plaintiff in Error. After one recovery, "no action can be maintained on the obligation, for it is merged in the judgment."

(2.) Laws in *pari materia* are to be construed together. The 69th section of the Statute of Wills is to be construed with the 18th section of the Practice Act, according to the case of *The People v. Compher*.

204

SUPREME COURT AT OTTAWA,

APRIL TERM, 1860.

RANDOLPH et al.,
 ats.
PEOPLE, for use of
BERGERSTRESSER & Co.

DEFENDANT'S BRIEF.

13096
Filed May 2. 1860
L. Delamater
Clerk

CHARLES C. BONNEY.
