

8810

No. _____

Supreme Court of Illinois

Nathan Adams, et al,

vs.

James Marshall

71641  7

State of Illinois }
Marion County } Sch. March Term, circuit Court. 1848.

Plas. Holam at the Court House in the town of
Salem at the said term of said court in and for the county and
State of Illinois. Before the Honorable William A. Lanning one
of the Justices of the Supreme Court of said State. The Being also
present Mr. T. P. Parry, Clerk Samuel Wallace Esq. Sheriff thereof.
And the Plaintiff in a certain action at Law having filed his
process and Declaration in the figures and words following
to wit,

State of Illinois }
Marion County } Sch. Of the ~~March~~^{August} Term of the Marion Circuit.
Court 1848.

Nathan Adams the plaintiff in this suit. For the use
of John W. Oglesby. Complains of James Marshall who has
been summoned &c. of a plea that he owes unto the said
Nathan for the use of said John the sum of eight hundred dollars.
Lawful money of the United States which he owes to and unjustly
obtains from him. For that whereas the said defendant Heretofore
to wit, on the fourth day of February 1840. at the County of Marion
and State of Illinois at the Circuit of said Marion together with one
John W. Poach. who has since departed this life his certain pro-
-viding note in writing signed and sealed by the said defendant and
the said John W. Poach since deceased respectively and now
brought to the court shown, the date whereof is the very same year last
of said year. And then came there before the said note to the said
Nathan. Whereby the said defendant and the said John W. Poach
did then and there promise to pay two years after the date thereof
unto the said plaintiff by the name and description of Nathan
Adams. Guardian for the minor heirs of James Blair deceased
the sum of one hundred dollars for value Received by means
whereof and by force of the Statute in such case made and

provision the said defendant then and there became liable to
pay to the said plaintiff the said sum of money in the said promissory
note mentioned according to the tenor and effect of the said
promissory note. And although the said sum of money in the
said promissory note hath been long since due and payable
according to the tenor and effect of said promissory note. Yet the
said plaintiff in fact saith, that the said defendant although
often requested so to do, has not nor would pay the said sum of
one American dollar, in the said note specified, or any part
thereof to the said plaintiff in manner aforesaid or otherwise how-
soever nor did the said John W. Roach in his lifetime or
or any one since his death pay the said sum in the said note specified
or any part thereof in manner aforesaid. But that said defendant and
the said John W. Roach both hitherto wholly neglected and refused
so to do, whereby an action hath accrued to the said plaintiff to
recover and have of and from the said defendant for the use
aforesaid the sum of one American dollar in the said note specified
principal of the said sum above aforesaid to the damage of the
said plaintiff for the use aforesaid of one American dollar.
And therefore he sues for the use aforesaid.

2nd Count

And whereas also the said defendant hitherto to wit on the
fourth day of February 1840, together with on John W. Roach
who has since departed this life. At the County of Marion State of Illinois
to wit at the Circuit aforesaid made their certain other promissory note
in writing signed with their hands and sealed ~~and~~ with the
~~seals of~~ seals of, the said defendant and the said John W. Roach
now deceased, which said last mentioned note is now due to
the Count shown, the date whereof is the day one year last aforesaid,
and then and there delivered the said last mentioned note
to the said plaintiff by which said last mentioned promissory note
the said ~~defendant~~ defendant and the said John W. Roach
now deceased, then & there promised to pay two years after
the date thereof, to the said plaintiff, by the name and

Assignment of Nathan Adams Guaranty for the sum of
Dimes & Cents because the sum of One Hundred Dollars for
Value received by means whereof come by force of the statute
in such cases made and promissory the said defendant there
upon then became liable to pay to the said plaintiff the said
last mentioned sum of money in the said last mentioned promiss-
sory note specified according to the tenor and effect of the
said last mentioned promissory note. And although the said
sum of money in the said last mentioned promissory note specified
hath been long since due and payable, according to the tenor
and effect of the said last mentioned note, yet the said plaintiff
in fact sueth that the said defendant although often requested so
to do, and the said John W. Roach now deceased in his life time, did
not ever intend pay the said last mentioned sum of One hundred
Dollars in the said last mentioned note. Specified nor any part
thereof to the said plaintiff nor hath any one paid the same, or any
part thereof for the said John W. Roach since his death in pursu-
ance of said or otherwise howsoever, but the said defendant &
the said John W. Roach in his life time was very ^{for him} person, since
his death, hath hitherto wholly neglected and refused to do so,
whereby an action hath accrued to the said plaintiff to demand
and have of & from the said ~~James~~ Marshall, for the use of said
said the said sum of One Hundred Dollars in the said last men-
tioned note specified. ~~Sum of~~ of the said sum above mentioned
to the damage of the said plaintiff for the use of said &
other One Hundred Dollars. And therefore he prays his
suit for the use of said.

3rd Claim

And for that whereas also Veritification to wit on the fourth day of
February 1840. at the County of Marion and State of Illinois at the Court
of said, the said James Marshall together with one John
W. Roach who has since departed this life. Made then certain
other promissory note in writing. Signed with the Name
and sealed with the seals of the said defendant, under the

Since John W. Roach (now deceased) which said last mentioned
promissory note, is now here to the Court shown, the date whereof is
the day and year last offoresaid, and then and there deliv-
ered the said last mentioned promissory note, to the said plaintiff.
-iff by which said last mentioned promissory note the said
James ~~Roach~~ the said John W. Roach, now deceased
promised to pay, two years after the date thereof, to the said
plaintiff by the name of Nathan Adams, the sum of one
hundred dollars for value received, by means whereof
and by force of the statute in such cases made and provided
the said defendant then and there became liable, to pay to the
said plaintiff the said sum of money in the said last
mentioned note specified, according to the tenor & effect of,
the said last mentioned promissory note, and although
the said sum of money in the said last mentioned promiss-
ory note specified hath long since become due and
payable, according to the tenor and effect of the said last
mentioned promissory note, yet the said plaintiff in fact,
with that ~~that~~ said defendant although often requested so
to do, and the said John W. Roach in his life time, nor any one for
him since his death, did not nor would pay, the said sum
of one hundred dollars, in the said last mentioned note
specified, or any part thereof to the said plaintiff in
manners offoresaid or otherwise howsoever, but the said
defendant and the said John W. Roach in his life
time and all persons for him since his death, hath
hitherto wholly neglected & refused so to do, whereby an action
hath accrued to the said plaintiff to demand and have
of and from the said defendant James the ^{said} sum of one hundred
dollars, in the said last mentioned ~~the~~ specified parcel of the
said sum above announced To the damage of the said plaintiff
for the use offoresaid of one hundred dollars, and therefore he brings his suit
for the use offoresaid.

4th Count.

And for that whereas also hasten to wit. On the fourth day of February 1840, at the County of Marion and State of Illinois at the Circuit of said the said James Marshall. Together with one John W. Poach who has since departed this life made this certain other promissory note in writing, signed with the hands & sealed with the seals of the said James and John W. Poach. Now declared which said last mentioned promissory note is now here to the Court shown. the note whereof is the very one year last of said said and then and there delivered the said last mentioned promissory note to the said plaintiff by which said last mentioned promissory note the said James and the said John W. Poach now deceased promised to pay, two years after the date thereof, to the said plaintiff by the name of ^{& description} Nathan Adams. Guerdan for the sum of James Blair and the sum of forty eight dollars for Value Received, by means whereof and by force of the Statute in such cases made and provided the said Defendant then and there became liable, to pay to the said plaintiff the said sum of money in the said last mentioned note specified according to the tenor and effect of the said last mentioned promissory note. And although the said sum of money in the said last mentioned promissory note specified hath ~~been~~ long since become due and payable according to the tenor and effect of the said last mentioned promissory note. Yet the said plaintiff is first sworn that the said Defendant although often requested so to do, and the said John W. Poach in his life time nor any one for him since his death. did not nor would pay the said sum of forty eight dollars in the said last mentioned note specified or any part thereof to the said plaintiff in manner aforesaid or otherwise howsoever, but the said Defendant and the said John W. Poach in his life time and all persons for him since his death, hath hitherto wholly neglected and refused so to do. whereby an action hath accrued to the said plaintiff to demand and have of and from the said James Marshall per

the use of said sum. the said sum of forty eight dollars in the
said last mentioned note specific part of the said
sum above annexed. To the damage of the said plaintiff is
the use of said sum of On & an and dollars and therefore he
brings his suit to the use of said sum.

5th Count

6

And for that Whereas Blew Bentford to wit. On the 1st day of May
1841 at the county of Marion in the state of Illinois at the circuit, aforesaid
the said James Means here together with one John W. Roach who hath since
deceased this life, made their certain promissory note in writing signed
with the hands and seals with the seals of the said defendants and the
said John W. Roach now deceased. which said last mentioned note is
now here to the court shown. the said whereof is the day and year last aforesaid
and then came there and delivered the said last mentioned note to the
said plaintiff by which said last mentioned note. the said James &
the said John W. Roach now deceased, promised to pay after
the date thereof to the said plaintiff by the name and description of
Nathan Adams Guarantia of the minor heirs of James Blair dec'd.
the sum of _____ dollars for value received. by means
whereof and by force of the statute in such cases made & approved
aided the said defendants then and there became liable to pay to the said
plaintiff the said sum of money in the said last mentioned note spe-
cific according to the tenor and effect of the said last mentioned
promissory note, And although the said sum of money in the said
last mentioned note specific hath been long since and often paid
according to the tenor and effect of the said last mentioned note. Yet
the said plaintiff in fact saith that the said defendants although
often requested so to do. and the said John W. Roach in his
life time nor any one for him since his death have not nor
would pay the said sum of _____ dollars in the said
last mentioned note specific or any part thereof to the said
plaintiff in manner aforesaid or otherwise howsoever but
the said James and the said John W. Roach in his life

time and all persons for him since his death hath hitherto
wholly neglected and refused ~~to~~ to do. Whereby an action
hath accrued to the said plaintiff to ~~be~~ sue and recover
of from him the said ~~James~~ for the use aforesaid the said
sum of ~~one~~ dollars. in the said last mentioned note
specifically. A part of the said sum above mentioned to the
damage of the said plaintiff to the use aforesaid of other
on ~~James~~ dollars. and therefore he brings his suit for
the use aforesaid.

6th Camd.

And for that, whereas also, hitherto to wit. On the fourth day of
February 1848. the said defendant together with one John W Poach
who hath since departed this life at the County of Marion in the State of
Illinois at the circuit. aforesaid, made their certain other promissory
note in writing signed with the hands & seals with the seals of the
said James and the said John W Poach now deceased, which
said last mentioned note is now here shown to the Court, the date
whereof is the day and year last aforesaid and since then and there
delivered the said last mentioned note to the said plaintiff. by
which said last mentioned note the said defendant and the said
John W Poach now deceased promised to pay two years after
the date thereof to the said plaintiff by the name and assign-
ment of Nathan Adams. Guardian for the minor heirs of James
W Blair &c. the sum of forty eight dollars for value received
By means whereof and by force of the Statute in such cases
made and provided, the said defendant then and there became
liable to pay to the said plaintiff the last mentioned sum of money.
in the said last mentioned note specifically according to the tenor
and effect of the said last mentioned promissory note. And
although, the said last mentioned sum of money in the said
last mentioned promissory note specifically hath been long since
due and payable. according to the tenor and effect of the said last
mentioned note. Yet the said plaintiff is yet so with, that
the said James although often Requested so to do, and the said

John W. Roach now deceased in his lifetime or any one for
him did not nor would pay. The said last mentioned
sum of forty eight dollars in the said last mentioned note
specific. nor any part thereof to the said plaintiff in
maner of or for use or otherwise however. but the said
defendant since the said John W. Roach now dead in his
lifetime and all persons for him since his death hath
hitherto wholly neglected and refused so to do. Whereby an
action hath accrued to the said plaintiff to demand
and have of and from the said James for the use
of or for use. The said last mentioned sum of forty eight
dollars in the said last mentioned note specific
perce of the said sum do be due and owing. To the
advantage of the said plaintiff to the use of or for use
of other one Hermana dollars and therefore he brings
his suit for the use of or for use

Nathan B. Scates atty for plff

Inclosure upon which is the following receipt to wit:

The clerk will issue a summons in debt:

Demand \$800.00

Demages 600.00

N. B. Scates P. D.

Copy of sales Decree upon:

\$ 100.00. Two Years after date we John W. Roach and
James Marshall promise to pay Nathan Adams
Guarantee for the minor heirs of James Blair decd.
the sum of one Hermana dollars current money for
value received witness our Hands and Seals
this 4th day of February 1840.

John W. Roach *Seal*
James Marshall *Seal*

\$100.00 Two Years after date We John W. Roach
and James Meers have promised to pay Nathan
Adams Quasian for the minor heirs of James Blair
Seed the sum of One Hundred Dollars Current Money for
Value Received Witness our hands and seals this 4th
day of February 1840.

John W Roach Seal
James Meers Seal

\$100.00 Two Years after date We John W Roach
and James Marshall have promised to pay Nathan Adams
the sum of One Hundred Dollars Current Money for Value
Received Witness our hands and seals this 4th day of
February 1840.

John W Roach Seal
James Meers Seal

\$100.00 Two years after date we John W Roach and
James Marshall promised to pay Nathan Adams
Quasian for the minor heirs of James Blair Seed
the sum of forty eight dollars Current Money for Value
Received Witness our hands and seals this 4th day of February 1840

John W Roach Seal
James Marshall Seal

\$48.00 Two Years after date We John W Roach and
James Marshall, promised to pay Nathan Adams Quasian
for the minor heirs of James Blair Seed the sum
of forty eight dollars for Value Received
Witness our hands and seals this 4th day of February
1840.

John W Roach Seal
James Marshall Seal

Upon which Receipt and Declaration the Clerk of said
Court on the 1st day of March 1848 issued a ^{Writ of} Summons
per the exigencies in the records and figures as follows
to wit,

State of Illinois }
Madison County } To the Sheriff of said County Greeting

We Command you to summon James
Marshall to be and appear before the Hon. Circuit Court
in and for said County on the first day of the next
term thereof to be held at the Court House in Salem
on the second Monday in March next To answer
Nathan Adams for the use of John M. Oglesby and
Nathan Adams Guardian of the Minor heirs of James
Blair because for the use of John M. Oglesby Guardian
Minor Heir of James Blair because on his plea of
Oath of Right Humane dollars To his damage of
six Humane dollars as he saith and have
You then there this writ.

Witness the Court of our said Court
L.S. and sent thereof at office this 1st
day of March 1848.

W. W. Pace Clerk

On which the Sheriff here made the following return.
To wit: Executed by reading to James Marshall Feb 3rd
1848

Levi Marshall Shff M.C. Ill.

Afterwards to wit on the second day of the Term of said
Court the Defendants By Bone his attorney. came and
enter his motion to quash the summons in said suit
for a misjoinder of action. And thereupon the Court gave the
following decision to wit.

March 15th 1848.

Nathan Adams et al }
vs }
James Marshall } Sub.

And now at this day comes the Defendant
by Bona his attorney and enters his motion herein to quash
the Summons in this writ for a Multiplication of actions
and upon argument being heard and the Court fully
advised in the premises it is considered that said motion
be allowed and that leave be granted to said Plaintiff
to amend his declaration and that this cause be continued
until the next Term of this Court. And the Plaintiff pay
the costs herein &c.

Afterwards to wit. at the August Term of said court.
in the Year 1848. comes the Plaintiff vs. Walker & Scott
his attorney and the Defendant by Butler & Bona his attor-
neys and thereupon the Defendant files his Summons to the
Declaration in the words and figures as follows to wit:

In Marion Circuit Court

James Marsh has

vs -

Nathan Adams for the

use of John M. Oglesby } And the said Defendant James Marsh states
By Butler Bona & Allen his attorneys comes and alleges
the wrong & injury when &c. and craves relief of the said several
promissory notes, Bonds or instruments in writing severally
specified in the said several counts of the said Plaintiff
declaration and as to each of said counts the said Defen-
dant says that the said Plaintiff his action of assumpsit ought
not to have or maintain because he says that the matters &
things ~~in each of them~~ ^{in each of them} severally contained in manner of form
as the same are set forth in each of said counts are not
sufficient for the said Plaintiff to have or maintain his as-
sumpsit actions against him and this he the said Defendant
is ready to verify Wherefore he prays Judgment or discharge
any of the ^{said} counts in said declaration &c. Bona Butler & Allen
Attys for Defendant

Causus of Demerits

1st Declaration. intellie of a time apppoint from that of the return of the writ.

2nd Such shanen have been lost by the guardian of the Heirs of James Blair Sec. On these notes given to Nathan Adams as such Guar agent.

Causus
2nd

3rd There is a misjoinder of causes of action

4th Important blanks in several counts of said Declaration remain to be filled.

Demerits in Demerits W-13 Secs. P. 2.

Upon which said Demerits the court gave the following decision
August 15th 1848.

Nathan Adams for }
Thence of John W. Agleyby } Sec.

James Marshall } And now at this day comes the plaintiff

By Walter. W. Secs. his attorney, and the defendant By Robert
his attorneys Whompon the said Defendant files his Demerits
to the ^{plaintiffs} Declaration which said Demerits is over Ruled by the Court.

decision a
demerits

and ~~James Marshall~~ ^{James Marshall} upon the ~~plaintiffs~~ ^{plaintiffs} ~~declaration~~ ^{declaration}
and the defendant having filed his papers in the words & figures
as follows to wit:

James Marshall }
etc.

Nathan Adams for the } And the said Defendant by Robert
and of John W. Agleyby } Sec. his attorneys. Comes & says the wrong saying

1st
plea

When &c. & says that the said plaintiff ~~ought~~ ^{ought} ~~to~~ ^{to} ~~have~~ ^{have} ~~and~~ ^{and} ~~maintain~~ ^{maintain} because he says that before
the commencement of this suit and before any transfer of
the said promissory notes or instruments in writing in the
said several counts of the said Declaration mentioned
or any interest in and to the same or either of said notes
and after the money in said notes specified became due and payable
the said John W. Roach in his life time well and truly paid

more satisfactory to the said Nathan Adams, than being the
 legal endowment of said notes and having the legal rights
 in case of the same the several sums of money in each &
 every of the said notes. Specified and all damages occasioned
 by the extinction of said several sums of money. Touch
 on the day of in the year of
 and this the said defendant is ready to verify whereupon
 he prays Judgment &c. Baker Bone & Allen
Atty for ptiff

24th to
 when
 The plaintiff says "nolo contendere" because he says that the
 said John W. Pack and not in his life time pay said sum
 of money or any or either of them. or any part thereof to the said
 plaintiff or any other for him. and this he prays may be enjoined
 by the court (whereupon he prays Judgment &c.)

W.B. Stearns for ptiff

And the defendant with the like

Baker Bone & Allen

Atty for deft.

Upon which the defendant files his appearance for the
 continuance of this cause. until the next term of this court in the
 next figures as follows to wit:

State of Illinois }
 Marion County }
 Nathan Adams for the use }
 of John M. Oglesby }
 vs } D. C. Ct.

24th to
 James Marshall } James Marshall being sworn
 deposes and says that Matthew W. Hall of Snow Rock in the State of
 Missouri is a material witness for the said plaintiff (Carpenter
 Adair). That the summons in this cause was not served on
 this plaintiff until on the 21st day of July 1848. at
 a period when it was too late for this plaintiff to send out a
 summons & take the deposition of said Hall which was the only man

by which. Offendant Cullen have procured the testimony of Saver
Huell to be read in this suit. Offendant further state that he
has placed his plea of payment herein and that he expects to be
able to prove by Saver Mathew. W. Cullen that the said instru-
ments upon which this suit was instituted was found by the said
Watkins in the possession of one among the private papers of
one John. W. Reach. at the time of his death. who was a joint signor
and obligor with this offendant. to said instruments this offendant
having signed said instruments as a surety of John
W. Reach & further this offendant expects to show by said Huell
that since the death of said Reach the instruments said on
have been taken from the private papers of said Reach one
of the said Mathews this offendant further says that he knows
of no other witness by whom he can prove the facts before
stated &c.

J. P. Marshall

Sworn to & subscribed
before me this 11th day of
August A.D. 1848.
W. W. Rice, clerk

The contents of which affidavits are admitted to be true ^{by the plaintiff}
and proper to be taken as testimony in this cause
When "Issue being joined" the Court ordered that "a Jury
come" and thereupon came the Jurors of the Jury to wit,
Daniel S. Sabin Powell Hinnes. Salthus. Chittenden
James Malcom. George Sawelson. Samuel W. Cunningham
James Adams Martin Meador. Willis B. Jones. Samuel
Sanierson Abner Wilkins & Samuel Lister Taylor
Good and Lawful men. who being selected. have come
Sworn well and truly to try the Issue joined return
to Court of their verdict after which they returned into
Court the following Verdict: "We the Jury find for the
plaintiff the sum of three thousand and ninety six dollars
A.D. and one hundred & fifty four dollars & ninety two

cents damage making in all the sum of five hundred
and fifty dollars & ninety two cents It is therefore Consider-
ed by the Court. that the said plaintiff receive from the
said Defendant the said sum of five hundred and
fifty dollars and ninety two cents together with his
Costs & Charges by him in and about his said expense
and may have execution ~~thereon~~ "

During the progress of said trial, the plaintiffs Counsel
asked the following instructions of the Court to wit:

1st The Court is requested to instruct the Jury that after
the Guardian has settled with the Court of Probate, and
resigned his Guardianship he cannot no longer bring said
or have Control of the effects of the infants or to Callish
satisfy or to Receive Money or them after he have delivered them
up to the Probate Court, in settlement of his Liabilities.
Although they may have been given to him = for plff

2^d That the Commission of an Administrator

That the Allegations of an Administrator are Compulsory
to Bind the Estate of his intestate. for plff

Also the following instructions were asked of the
Court by the Counsel for Defendants to wit:

1st If the Jury believe from the evidence that the sealed Notes
said upon were found in possession of John W. Roach one of the
Parties thereof and among his private papers at the time of his
death, then such possession is evidence for the evidence
affords evidence that the same were paid by said Roach
in his life time and being paid were delivered up to Roach
one of the parties.

2nd The facts stated in the affidavits of James Marshall
are admitted to be true and cannot be contradicted and
the inferences & conclusions justly deducible from them.

facts are to be drawn and acted on by the Jury.

3rd

That the note payable to Nathan Adams without
describing him as guarantor of the Acts of James Blair
Secd. does not of itself afford any evidence that this
note belonged to Adams as guarantor
4th

If the Jury believe from the evidence that the sealed
notes since upon were found in possession of John W. Roach
one of the makers thereof, and among his private papers
at the time of his death then such possession unaccounted
for by other evidence affords presumptive evidence that
the same were paid by said Roach in his lifetime

Which said instructions as asked by the plaintiffs and instru-
ctions No 2 & 4 as asked by the defendants were given by the
Court. And instructions No 1 & 3 as asked by the
defendants were refused to be given to the Jury.

And therefore the defendants caused exception to the opinion
of the Court and asked that his Bill of exceptions be signed
& sealed and made a part of the record of the trial of
this cause which is done in the figures and words
as follows to wit,

Nathan Adams for the

use of John W. Roach

as
James Marshall

Be it remembered that on the trial of this
cause the plaintiff by his counsel offered to read in evidence
to the jury from the books belonging to the office of the
Probate Justice of the peace for Marion County, certain Entries & Memoranda
for the purpose as advised by the counsel for plaintiff of proving
the admission of the defendants in this cause as follows

Probate Records Marion County Illinois Official Term August 25th 1892

Bill of
exceptions

cents damage making in all the sum of five hundred and fifty dollars & ninety two cents. It is therefore considered by the Court that the said plaintiff receive from the said Defendant the said sum of five hundred and fifty dollars and ninety two cents together with his Costs & Charges by him in and about his said expense and may have execution ~~thereon~~ " miff

During the progress of said trial, the plaintiffs Counsel asked the following instructions of the Court to wit:

1st The Court is requested to instruct the Jury that after the Guaradian has settled with the Court of Probate, and resigned his Guardianship he cannot no longer bring said or have Control of the effects of the infants or to Collect Satisfies to Receive Money or them after he have delivered them up to the Probate Court, in settlement of his Liabilities. Although they may have been given to him = for plff wffs
instructions

2nd That the Administrator are Compulsory

That the Allegations of the Administrator are Compulsory to Bind the Estate of his intestate. for plff

Also the following instructions were asked of the Court by the Counsel for Defendants to wit:

1st If the Jury believe from the evidence that the sealed Notes and upon were found in possession of John W. Roach one of the Masters thereof and among his private papers at the time of his death, then such possession accounts for by evidence affords evidence that the same were paid by said Roach in his life time and being paid were delivered up to Roach one of the Masters.

2nd The facts stated in the affidavits of James Marshall are admitted to be true and cannot be contradicted and the inferences & conclusions justly deducible from them.

And now at this day Come Nathan Adams, and make proof
by the testimony of James Marshall, that he did on or about
the 20th of September 1840 Resign his Guardianship as Guardian
of the Person Thomas Blair Heir of James Blair Mary
Ann Blair Etancy Blair Minors Heirs of James Blair
and as such Grant that the Resignation of Nathan
Adams be entered of Record, which is done in the Words
and figures following to viz

Be it known that the aforesaid Nathan Adams, is
declared to be free of all Guardianship of said Minors
from the date above mentioned.

James Chance Probate J.P.

To the reading of which entry or Return or decree, in said book
the Defendant at the time objected - which objection the
Court overruled and permitted said entry or Return to
be read to the jury as evidence & the same was then accept-
ed.

The counsel for the plaintiff also during the progress of the
trial in this cause proposed further to Read from the said books
the Appointment of Seth Hall to be the Administrator of John
W. Roach and then to prove to the jury the Admission
of Seth Hall after being appointed ^{said} Administrator that the
Notes said on in this case have not been paid by the
said Roach in his life time to the admission of which
evidence & proof of said Admissions the Defendant objected
which objection the Court overruled and permitted said
evidence to be given to the jury and it was given accor-
dingly.

The Court also instructed the Jury at the Request of the
plaintiff, that the Admission of an Administrator are
Competent to Read the Estate of his intestate
And that after the Guardian has settled with the
Court of probate and Resigned his Guardianship
he cannot no longer Bring Suits, or have Control
of the Effects of the infants or to collect or receive

And the said plaintiff in error James Marshall by David J. Baker his attorney comes and says that in the proceedings aforesaid and the records of the judgment aforesaid as well as in the record of proceedings aforesaid there is manifest error in this behalf.

1 In the reading in evidence to the jury the entry or memorandums of James Chace the probate justice of the peace to prove the admission of the said James Marshall

2 In admitting and receiving proof of the admissions of Doct. Hall the administrator of John W. Reach decedent as to the non payment of the notes or bonds used on, by the said Reach in his lifetime

3 In giving the wrong instruction by the court, as asked for by the said plaintiff in the court below.

4 In refusing to give ~~to give~~ the instruction asked by the defendant as set forth in the bill of exceptions

5 In refusing to give the fourth & third instruction asked by the plaintiff in the court below.

for which ~~errors~~ and others more apparent in the record & proceedings aforesaid the said James Marshall prays that the judgment in this case rendered may be set aside and for nothing entered &c

David Baker atty for
plaintiff in error

Ex nulla est veritas

Walter B. Seaton for Defendant

Nathan Adams et al
vs.
James M. ershull

Filed Dec 5. 1848.
John Willbards, Clerk
for Lewis & Leary, De.

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