

14469


No. _____

Supreme Court of Illinois

~~Eg~~leston

vs.

UC
~~BS~~k

71641  7

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 211

Eggleston
vs
Buck

14169

1863

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D 1863.

LORENZO EGLESTON and
SARAH A MILLS, Administratrix
of the estate of James M. Mills, de-
ceased, *Appellants*,
vs.
CHARLES T. P. BUCK, for use of
Caroline Gates, *Appellee*. } *Appeal from La Salle County
Circuit Court.*

ABSTRACT OF RECORD.

This is an action of debt, brought by appellee against appellants at the June term, 1861, of the La Salle County Circuit Court, upon an appeal bond signed by Lorenzo Egleston, one of the appellants, and James M. Mills, deceased; the appellant, Mills, intestate.

- 1 Summons issued May 28th, 1861.
- 2 Return of summons served May 30th, on Egleston.
- 3 Narr. filed May 31st, 1861.
Counts upon an appeal bond in the penal sum of \$200.00, executed by Lorenzo Egleston and James M. Mills June 16th, 1859, filed in the County Court of La Salle county.
- 6 Copy of instrument sued on filed May 31st, 1861.
- 8 Pleas *non est factum* and *nil debit* filed by Egleston June 11th, 1861.
- 9 *Alias* summons to appellant, Mills, issued October 16th, 1861. Re-
turned October 21st, 1861, not found.
- 10 Rule on Egleston to plead. Case continued by agreement.
- 11 *Pluries* summons issued March 4th, 1862, returned March 6th, served
on appellant, Mills.

- 12 Pleas *non est factum* and *nil debit* filed by appellant, Mills, June 11th, 1862.
- 13 Pleas of payment and release filed by appellant, Mills, June 11, 1862.
- 15 Replications by appellee to appellant, Mills. 3d and 4th pleas filed June 12th, 1862.
- 16 Demurrer by appellant, Mills, to appellee's replications.
- 17 Order of Court overruling demurrer to replication to 3d plea and 1st replication to 4th plea, and sustaining demurrer to 2d replication to 4th plea. Leave of Court to amend the same.
- 18 Trial by jury. Verdict for plaintiff \$1,200.00 debt, and \$827.36 damages. Motion by appellants for new trial.
- 19 Order of Court overruling motion for new trial and rendering judgment for appellee. The judgment is in the words, and figures following, to wit:
- [REDACTED]
- 20 Appeal prayed to Supreme Court; allowed on filing bond in \$1,200.00 within ten days from June 28th, 1862, with Alfred or Darwin Hartshorne as security.
- Appeal bond filed July 7th, 1862.
- 21 Certificate and seal of Clerk.

E. F. BULL,
Appellants' Attorney.

APPELLANTS' POINTS AND AUTHORITIES.

State of Illinois } 80 Third Grand Division, April
Supreme Court } Term A.D. 1863.

Lorenzo Egbert and
Sarah A. Mills admors. of
the est. of Jas. M. Mills
deceased - Appellants

vs:

Chas. L. P. Buck, who
sues for use of Caroline
Gates - Appellee

Appeal from LaSalle
Co. Circuit Court.

Argument for Appellants

The counsel for appellants would respectfully suggest that this court cannot correct the judgment of the court below and render final judgment here for the reason, this action will not lie against the Appellant Egbert and the Appellant Mills, jointly, nor can a joint judgment be rendered against them, because as to Egbert the judgment must be the award of an execution against his own estate, as Mills the judgment must be that she pay the amt. thereof in due course of administration -

~~In speaking on this~~ The Law is laid down in
D. Williams on Executors pag 1482. as follows viz:

"The executor of the deceased contractor on a joint and several bond cannot be sued jointly with the Sureties" because the one is charged *de bonis testatoris*; and the other *de bonis propriis*"

E. F. Bull Atty for Appls

No. 211 - 74

Lorenzo Epkeston and
Sarah A. Mills admt &c

Appellants

Charles L. P. Buck
for us &c appellee

Argument for Appell-
ants

Filed May 1st 1872

L. Leland
Att

E. F. Bull
for appt -

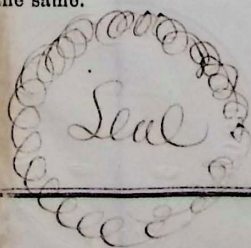
1
 State of Illinois } Pleas before the Honorable
 La Salle County } Madison E. Hollister the
 Judge of the ninth Judicial District
 of the State of Illinois and the presiding Judge
 of the La Salle County Circuit Court, in said State,
 at a term of said Court, commenced and held at
 the Court House in Ottawa in said County and
 State on the second Monday in the month of
 June, the same being the Tenth day of June in
 the year of our Lord one thousand eight Hundred
 and Sixty one, and of the Independence of the
 United States of America the Eighty fourth.
 Present, The Honorable Madison E. Hollister Presiding Judge
 Absalom B. Moore Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
 LA SALLE COUNTY, } TO THE SHERIFF OF SAID COUNTY, GREETING:

WE COMMAND YOU THAT YOU SUMMON Lorenzo Eggleston and Sarah A. Wells
 administrators of the estate of James Mc. Wells deceased
 if they shall be found in your County, personally to be and appear before the Circuit Court of said County
 on the first day of the next term thereof, to be holden at the Court House in Ottawa, in said County, on the
 second Monday in the month of June next, to answer unto Charles
 T. P. Buck for the use of Caroline Gates in a plea of debt
 for the amount of Twelve Hundred dollars which they owe to, and unjustly
 detain from the said Charles T. P. Buck for the use of
 Caroline Gates
 to the damage of said Plaintiff as he says in the sum of Twelve Hundred
 dollars. And have you then and there this writ, with an endorsement thereon in what manner you execute
 the same.

WITNESS, ABSALOM B. MOORE, Clerk of our said Court, and the seal
 thereof, at Ottawa, this 28th day of May A. D. 1861

A. B. Moore Clerk.



defendants, in a plea of debt, for that whereas, hitherto, to wit, on the 16th day of June A.D. 1859, at La Salle County aforesaid, by their certain writing obligatory, sealed with their respective seals, and now to the Court here shown, the said Lorenzo Eggleston, and said James W. Mills, in his lifetime, acknowledged themselves, their heirs, executors and administrators ~~and~~ to be held and firmly bound, jointly and severally, to the said Charles T. P. Buck, for the use of said Caroline Gates, in the sum of Twelve Hundred dollars, to be paid to the said Charles T. P. Buck, for the said Caroline Gates; which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect following, that whereas at the June Term of the County Court for the County of La Salle, in the State of Illinois, the said Charles T. P. Buck, who sued for the use of Caroline Gates, Plaintiff, recovered a judgment against the said Lorenzo Eggleston, for the sum of Six Hundred and Sixty three dollars and ninety two cents, damages, in a certain action of assumpsit, and whereas the said Lorenzo Eggleston had prayed an appeal from the said judgment to the Supreme Court of the State of Illinois, and whereas said Appeal had been granted by said County Court, it was provided in and by the said condition, that if the said Lorenzo Eggleston should pay the full amount of said judgment, interest and costs and damages, in case said judgment should be affirmed by said Supreme Court, and should also prosecute said appeal

then said obligation should be void, else to be and re-
 main in full force and effect. And the plaintiff
 avers, that afterwards, to wit, at the April Term A.D. 1860,
 of the said Supreme Court in and for said County,
 by the consideration and judgment of the said Supreme
 Court in said Cause, appealed as aforesaid, the judgment
 aforesaid was affirmed in all things, and stood in
 full force and effect, and that the plaintiff, appellee
 as aforesaid, was to recover of and from the said Lorenzo
 Eggleston, appellant, his costs in that behalf expended,
 and that he have execution therefor, as by the record
 of said Court will more fully appear. And the
 said plaintiff further avers, that afterwards,
 to wit, on the 26th day of October A.D. 1860, at said
 County, the said County Court then and there ordered
 an alias execution to issue thereupon, and the said
 plaintiff avers, that afterwards, to wit, on the day
 and year last aforesaid, at the County aforesaid,
 a writ of alias execution, commonly called an alias
fieri et levare facias, sealed with the seal of said
 County Court, was duly issued by and from said County
 Court, upon said judgment of the said Supreme
 Court, in pursuance thereof, directed to the Sheriff
 of said County, and afterwards, to wit, on the 26th
 day of October A.D. 1860, at said County, there came
 into the hands of said Sheriff, to be executed, said alias
 writ of execution, which said alias writ of execution
 in the name of the People of the State of Illinois
 commanded said Sheriff, that of the goods, chattels

5-

lands and tenements and real estate of said Lorenzo Eggleston, in said County, he cause to be made the said sum of Six Hundred and Sixty three dollars and ninety two cents, which said Charles F. P. Buck for the use of Caroline Gates, lately in said County Court, before the Judge thereof, on the sixteenth day of June A.D. 1859, recovered against said Lorenzo Eggleston, and which by said County Court was adjudged to the Plaintiff for his damages, and also the further sum of thirty eight dollars, and thirty five cents, which, in said County Court was adjudged to said Plaintiff for his costs and charges by him about his said suit in that behalf expended, and that said Sheriff have the said moneys ready to render to the said Plaintiff, and make return of this writ, and the manner in which he shall have executed the same, in ninety days after the date thereof, and such proceedings were had upon and under said writ, in the 25th day of January A.D. 1861, returned said writ, and made his return thereupon to said Court in the words and figures following, to wit, "Personal demand made of Defendant. No property found, Jan'y 25th 1861. F. Warner Shff." Whereby, it appears that the said Lorenzo Eggleston had not goods and chattels, lands and tenements, sufficient to satisfy said Execution. And the Plaintiff avers, that a large amount of increase costs, to wit, the sum of five hundred dollars, have accrued upon said

judgment of the said Supreme Court; and said Defendants have not, nor have either of them, nor hath the said James M. Wells in his lifetime, nor hath the said Sarah A. Wells, administratrix of the goods and Estate of said James M. Wells, since the death of said James M. Wells, paid the said judgment of the said Supreme Court, interest, cost, and damages, or any part of either of them; whereby an action hath accrued to the plaintiff to demand and have of the said defendants the said sum of Twelve Hundred dollars above mentioned;

Yet the defendant, the said Lorenzo Eggleston, nor the said James R. Wells in his lifetime, nor the other said defendant, Sarah A. Wells as administratrix as aforesaid, since the death of said James M. Wells have not, nor have either of them, paid the same or any part thereof: To the plaintiff damage of Twelve Hundred dollars; and therefore he brings suit by
 Gray, Avery & Bushnell
 His attorneys.


Copy of Instrument declared upon.

Know all men, by these presents that we Lorenzo Eggleston, and James M. Wells, are held and firmly bound unto Charles S. P. Buck for the use of Caroline State in the penal sum of Twelve Hundred Dollars for the payment of which well and truly to be

made, we do hereby bind ourselves our heirs executors and administrators jointly and severally firmly by these presents, Sealed with our Seals and dated this Sixteenth day of June A.D. 1859.

The condition of the above obligation is such that whereas at the June Term of the County Court for the County of La Salle in the State of Illinois, the above named Charles J. P. Buck, who sued for the use of Caroline Gates, Plaintiff recovered a judgment against the above bounden Lorenzo Eggleston, defendant for the sum of Six Hundred and Sixty three ^{92/100} dollars, in an action of assumpsit, and whereas the said Lorenzo Eggleston has prayed an appeal from the said judgment to the Supreme Court of the State of Illinois. And whereas said appeal has been granted by said Court. Now Therefore if the above bounden Lorenzo Eggleston shall pay the judgment interest and costs and damages in the case the said judgment shall be affirmed, and shall also duly prosecute his said appeal, then this obligation to be void, else to be and remain in full force and effect.

Lorenzo Eggleston
 James H. Kelly



Be it also remembered that on the 11th day of June 1861. a plea was filed in said Cause by the def^t. Eggleston which is in the words & figures following to wit;

"State of Illinois } Circuit Court for said County
La Salle County }²⁰ June Term thereof A.D. 1861

Charles T. P. Buck who sues for the use of
Caroline Gates }
vs } Debt,
Lorenzo Eggleston and }
Sarah A. Mills administratrix of the Estate of James W. }
Mills deceased.

And now comes the said defendant
Lorenzo Eggleston by E. F. Bull, his attorney, and says
that the said writing obligatory in the said declaration
mentioned is not his deed and of this he puts himself
upon the country &c and plaintiff doth the like

E. F. Bull

Atty for Eggleston

And for a further plea in that behalf by leave &c
said defendant Eggleston says actis non, because
he says that he does not owe and is not indebted
to said plaintiff in manner and form as set forth
in said plaintiff's declaration and of this he
puts himself upon the country &c and the plain-
tiff doth the like

E. F. Bull

Atty for Eggleston.

On the 18th day of October A.D. 1861 an alias
Summons issued out of and under the seal of said
Court, in the words & figures following to wit;

STATE OF ILLINOIS, }
LA SALLE COUNTY, }

The People of the State of Illinois,

To THE SHERIFF OF SAID COUNTY, GREETING:

as we have heretofore commanded you
WE COMMAND YOU THAT YOU SUMMON

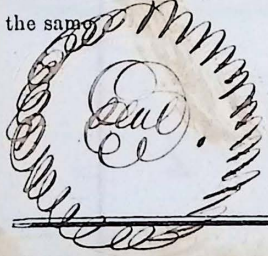
Sarah A. Mills, administratrix

of the estate of James Mc. Mills deceased, impleaded with Lorenzo
Eggleston

if she shall be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Ottawa, in said County, on the first Monday in the month of November next, to answer unto Charles J. P. Buck

for the use of Caroline Gates, in a plea of debt, to the amount of Twelve Hundred Dollars, which they owe to and unjustly detain in a plea from the use of Charles J. P. Buck for the use of Caroline Gates

to the damage of said Plaintiff as she says in the sum of Twelve Hundred dollars. And have you then and there this writ, with an endorsement thereon in what manner you execute the same



WITNESS, ABSALOM B. MOORE, Clerk of our said Court, and the seal thereof, at Ottawa, this 18th day of October A. D. 1861


A. B. Moore Clerk.

which ~~execution~~^{summons} was on 1st day of November 1861, returned by the Sheriff of said County, with a return thereon, in the words and figures following to wit;

" Sarah A. Mills not found in this County, Oct 21, 1861, Fees = Ret 10.

E. L. Waterman Shff.
pr Geo Dptj. "


On the 6th day of November 1861, the same being one of the days of the November Term of said Court for the year 1861, an order was entered of record in said cause in the words and figures following, to wit;

" Charles T. P. Buck for the use of
Caroline Gates  Debt,

167 vs
Lorenzo Eggleston and
Sarah A. Mills, administratrix of the estate of
James M. Mills deceased.

Continuation of the plaintiff
by Gray, Avery and Bushnell His attorneys the defendant
Eggleston is ruled to plead Verin, on or before the
coming in of the Court on Friday morning next.,,

On Monday, March 3^d 1862, the same being one
of the days of the February Term of said Court for
the year AD 1862, an order was entered of record in
said cause, in the words and figures following
to wit;

" Charles T. P. Buck for the use
of Caroline Gates  Debt
vs
Lorenzo Eggleston,
+ Sarah A. Mills, administratrix
of the estate of James M. Mills deceased.

By agreement of parties
it is ordered by the Court that this cause be continued
and that an alias summons issue Verin to the defendant
Sarah A. Mills.,,

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On the 4th day of March A.D. 1862, a Summons issued out of and under the Seal of Said Court in the words and figures following, to wit;

STATE OF ILLINOIS, }
LA SALLE COUNTY, }

The People of the State of Illinois,

TO THE SHERIFF OF SAID COUNTY, GREETING:

WE COMMAND YOU THAT YOU SUMMON

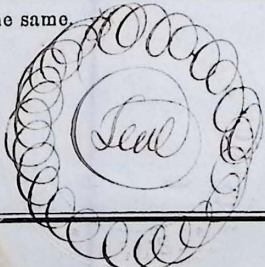
Sarah A. Mills, administratrix of the Estate of James M. Mills deceased, vs. Lorenzo Eggleston

if *she* shall be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in Ottawa, in said County, on the

Second Monday in the month of *June* next, to answer unto *Charles J. P. Buckle*

for the use of Caroline Gates, in a plea of debt, in the sum of Twelve hundred dollars, which they owe to and are in a plea - justly detain from the said Plaintiff

to the damage of said Plaintiff as *he* says in the sum of *Twelve hundred* dollars. And have you then and there this writ, with an endorsement thereon in what manner you execute the same



WITNESS, ABSALOM B. MOORE, Clerk of our said Court, and the seal thereof, at Ottawa, this *4th* day of *March* A. D. 1862

A. B. Moore Clerk.

which said Summons was returned by the Sheriff of said County, on the 7th day of June 1862, with a return thereon, in the words and figures following thereon, to wit;

"Executed this Summons by reading the same to the within named Sarah A. Mills this 6th day of March 1862. Sheriff fees & not 60.
3 miles paid 75
1.35

C. L. Wetmore Sheriff

By *J. C. Bartlett* opt.

On the 11th day of June 1862. the same being one of the days of the June Term of said Court for said year certain pleas were filed in said cause, in the words and figures following, to wit

"State of Illinois } Circuit Court June Term
La Salle County } A.D 1862

Charles T. P. Powers for act &c
v
Lorenzo Eggleston and
Sarah A. Mills admx

Debt

And now comes said defendant Sarah A. Mills, administratrix of the estate of James Mills deceased by E. F. Bull her attorney, and defends &c, and says that the said supposed writing obligatory in said declaration mentioned is not the deed of her said intestate James M. Mills and of this she puts herself upon the country &c, and the plaintiff doth the like

E. F. Bull

Atty for Sarah A. Mills

And for a further plea in that behalf by leave &c said defendant Mills says adis non because she says that she as administratrix aforesaid does not owe and is not indebted to said plaintiff in manner and form as set forth in said plaintiffs declaration and of this she puts herself on the country and the plaintiff doth the like By E. F. Bull her atty

And for a further plea in that behalf said defendant Sarah A. Mcills administrator as aforesaid Says acted wrong because she says that since the last term of this court, now to wit; the first day of April A.D. 1862, at, to wit; said County of La Salle said defendant paid to said Caroline Gates the person for whose use this suit is brought, by and with the consent of said plaintiff a large amount of money, to wit; the sum of One thousand dollars which said sum of money was then and there received by said Caroline Gates with the consent of said plaintiff in full satisfaction and discharge of all liability from this defendant as administratrix &c upon said bond or writing obligatory, and in full satisfaction and discharge of the same and this, said defendant is ready to verify wherefore she prays just &c

By E. T. Bull her atty.

And for a further plea in that behalf said defendant says acted wrong, because she says that since the execution of said writing obligatory in said declaration mentioned by this defendant intestate and before the commencement of this suit, Caroline Gates the person for whose use this suit is brought and said bond was given, for a valuable consideration to wit; for the sum of Seven hundred dollars to her in hand paid released all her interest in said bond to said plaintiff Buck, and that although this suit is brought nominally for the use

of said Caroline Gates that it is in reality for the only and sole use benefit and behoof of said Buck and for no other person whatever, and this defendant avers that since the execution of said bond and before the commencement of this suit said plaintiff Buck became and now is justly indebted to said defendant in a large sum of money, to wit in the sum of one thousand dollars which said sum of money said Buck agreed should be applied on and should be in full satisfaction and discharge of all indebtedness from said defendant intestate upon said bond, and this, said defendant is ready to verify wherefore he prays judgment &c

E. F. Ball wth atty

On the 12th day of June 1862. the same being one of the days of the June Term of said Court for said year the plaintiff files in said Cause, double replication to the defendant's fourth plea, and by leave of said Court said double replications were filed as amended and are in the words & figures following, to wit;

"State of Illinois } Circuit Court
 La Salle County } June Term A.D. 1862

Charles T. P. Buck's for use &c }
 vs } Debt
 Lorenzo Eggleston Etal }

And now comes the said plaintiff and for replication to the third plea of the defendant, Sarah A. Mills administratrix as aforesaid, says *precludi non* &c because he says, the said defendant did not pay to said Caroline Gates, by and with the consent of the plaintiff, said sum of one thousand dollars in full satisfaction and discharge of all liability of said defendant, upon said bond or writing obligatory, and in full satisfaction and discharge of said bond, as is by the said plea supposed, and of this he puts himself upon the country.

Gray, Avery & Bushnell
attys pro pliff.

And for replication to said defendant's fourth plea, the plaintiff says *precludi non* &c because he says that said Caroline Gates did not release to said Charles J. B. Buck all her interest in said bonds as is by said plea alleged and of this he puts himself upon the country.

Gray, Avery & Bushnell
attys pro pliff.

And for further replication to said defendant's fourth plea, by leave of the court &c the plaintiff says *precludi non* &c because he says, that said Buck was not and is not indebted to the said defendant as is by the said plea alleged, and of this he puts himself upon the country.

Gray, Avery & Bushnell
attys pro pliff "

On the 12th day of June 1862, the same being one of the days of the June term of said Court for said year, the defendant Bull by her atty files a demurrer to the plaintiffs replication to said depts 3^d + 4th pleas which demurrer is in the words and figures following, to wit;

"State of Illinois } Circuit Court La Salle County
 La Salle County } June Term 1862

Chas. T. P. Burt for use + c }
 vs } Debt
 Sovereign Eggleston, and Sarah A. }
 Mills admx &c of Est of Jas. }
 Wb. Wells decd. }

And now comes said defendant Sarah A. Mills admx &c as aforesaid and says that said Plaintiff said replications to said defendants said third and fourth pleas and each and every of them are insufficient in law for this defendant to make answer unto wherefore she prays judgment &c

And for special cause of demurrer said defendant assigns the following, viz;

1st Said replications and each and every of them are double containing two or more separate answers to the pleas, -

2nd They are in other respects informal and insufficient

E. J. Bull
 Atty for S. A. Mills

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On Thursday, June 12th 1862, the same being one of the days of the June Term of said Court for said year an order was entered of record in said cause in the words and figures following to wit;

Charles J. P. Dwork for the use
of Caroline Gates
62 vs
Lorenzo Eggleston &
Sarah A. Mills administratrix of the estate of James M. Mills
dec'd.

This day came the plaintiff by O. C. Gray his attorney, and by leave of the Court, files double replications to the 4th plea of the Defendants. Thereupon come the defendants by E. F. Bull their attorney, and demurs to the replications to the third and fourth pleas of Sarah A. Mills. And after hearing the arguments of counsel, the Court overrules the Demurrer, to the replication to third plea, and first replication to fourth plea, and sustains the demurrer to second replication to fourth plea, and now on motion of plaintiff attorneys it is ordered by the Court that they have leave to amend plaintiff's second replication to defendant's 4th plea,

On Friday June 13th 1862, the same being one of the days of the June Term of said Court for said year an order was entered of record in said Cause in the words and figures following, to wit;

"Charles J. P. Buck for the use of
Caroline Gate

vs

vs

Debt

Lorenzo Eggleston + 3

Sarah W. Mills administrator of the estate of James W. Mills dec'd

This day again comes the plaintiff
by Gray, Avery and Bushnell their attorney and the defend-
ants by E. F. Bull their attorney and thereupon comes
the following jurors of a jury to wit; J. D. Abrams,
Cyrus Coltrin, James White, George Robinson, Jason
P. Wiswall, J. J. White, E. Reynolds, Charles G. Miller
Wm Robinson, Sylvanus Crook, W. H. Rockwood,
and James Doolittle, who are duly elected, tried
and sworn to well and truly try the issues herein
and a true verdict render according to the evidence,
and after hearing the testimony and arguments
of counsel the jury retire to consider of their ver-
dict, and after due deliberation thereon had, return
into open court the following verdict, to wit; "We the
jury find the issues joined in favor of the plaintiff,
that the defendant ~~obtain~~ owe to and unjustly detain
from the plaintiff the sum of Twelve hundred dollars
debt, and assess the plaintiff damages at the sum
of Eight hundred dollars and twenty seven dollars
and thirty six cents."

The defendant by their attorney now move
the Court for a new trial herein:

This day again come the said defendants by their attorney and move the Court for an appeal herein to the Supreme Court of this State which is allowed upon conditions that said defendants do within ten days from this date prepare, tender & file a bill of exceptions herein, together with bond payable to the plaintiff in the penal sum of Twelve hundred dollars, with Alfred Hartshorn or Darwin Hartshorn, or both as security,"

Be it remembered that on the 7th day of July ¹⁸⁶² the defendant filed his appeal bond herein, in the words and figures following to wit.

" Know all men by the presents that we Simeon Eggleston and Sarah A. Mills, administrators of the estate of James M. Mills deceased as Principal and Alfred S. Hartshorn as Security are held and firmly bound unto Charles T. P. Buck for the use of Caroline Gale in the penal sum of twelve hundred dollars, for the payment of which well and truly to be made we do hereby bind ourselves our heirs, executors and administrators, jointly and severally; firmly by these presents - Sealed with our seals and dated this thirtieth day of June A.D. 1862.

The condition of this obligation is such that whereas at the June Term of the Circuit Court within and for the county of La Salle in the State of Illinois for the year A.D. 1862, the said Charles T. P. Buck who sued for the use of Caroline Gale recovered a judgment against the above bounden Simeon Eggleston and Sarah A. Mills administrators of the estate of James M. Mills deceased for the sum of Eight hundred and twenty seven dollars and seventy six cents, from which judgment said Eggleston and Mills have prayed an appeal to the Supreme Court of the State of Illinois, which appeal has been granted by said court.

Now if the above bounden Eggleston and Mills shall pay the judgment's costs, interest and damages in case the said judgment shall be affirmed and shall also duly prosecute his said appeal, then this obligation

to be void, else to be and remain in full force, virtue and effect. Witness
my hand and seal the day and year first above written. L. Eggleston

Sarah A. Mills
Administratrix of est of James H. Mills deceased
A. S. Hartshorn

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State of Illinois

La Salle County

Absalom B. Moore clerk of the
Circuit Court in and for said County

do hereby certify that the foregoing comprises a full and
complete copy of the record of proceedings had in
the above entitled cause, also full and complete
copies of the declaration, the several summons issued
in said cause, with the several returns of the sheriff
thereon, ^{also the appeal bond} and pleas replications and demurrers that
are amongst the files in said case.

Witness my hand
and the seal of said Court at Ottawa, this 18th day
of April A.D. 1863.

Absalom B. Moore Clerk
C. H. Hooks Deputy



State of Illinois } ss Third Grand Division
Supreme Court } April Term A.D. 1863

Lorenzo Egerton, and
Sarah A. Mills, admsrs
vs. Appellants

vs.
Charles L. P. Bush for use of } Appellants
Appellee } Laballe County

And now come said Appellants
by E. F. Bull their Attorney and assign
the following causes of error on the
above and foregoing record viz:

1st The Court erred in overruling motion
for new trial -

2nd The Court erred in rendering
judgment for appellee

3rd The judgment is erroneous in
form -

4th The Court erred in awarding
execution against Appellant
Mills -

5th The judgment is for too much

~~E. F. Bull~~
E. F. Bull

App'ts atty

And now comes the said Charles J. P. Buck, who sues for the use of Caroline Giles, defendant in error, and for joinder in error, says, that in the Record and proceedings aforesaid there is no error. &c.

Grey, Avery & Bushnell
Atty. Geo. Defot. in error.

Charles J. P. Buck for the use
of Caroline Giles

20

Sergey Colston & Sarah A. Mills
Attys. of Est. of James M. Mills ad.

Certified copy of record

Fees \$5.00
Paid Clerk by
C. J. Buck Bull Esq
Apr 21. 1863

Supreme Court

Sergey Colston &

Sarah A. Mills adverse
Appts. - P.S.
Charles J. P. Buck for use

Appellee

Record and Assigty
Errors

Filed April 23 1863.
S. Leland
Clerk

C. J. Buck
for Applt

Supreme Court, 3^d Grand Division

April Term A.D. 1863.

Lorenzo Eggleston et al.

vs.

Charles J. P. Buck, for use &c.

} Appeal from

} LaSalle County.

Argument of Appellee.

The two points made by the appellants both go to the form of the judgment. They object to the form of the judgment, because first, it should have been for the amount of the penalty of the bond, \$1200., to be discharged on the payment of the damages found by the Jury, \$827.36 and costs; and secondly, because, that as to the appellant, Mills, the judgment should have been, that she pay the same in due course of administration.

Upon these points, the appellants ask this court to reverse the judgment.

While we admit, that the form of the judgment is wrong for both the reasons assigned, yet we insist, that these errors in the form of the judgment, afford no ground for reversal, in this case, but that this Court will correct the form of the judgment.

without reversing the judgment, or remanding the case back to the Circuit Court.

This Court has never reversed, and never will reverse a judgment upon such grounds, where the verdict is good, but will correct the form of the judgment without remand. It is only where the verdict is wrong, and the form of the judgment is right, or where the verdict and judgment are both wrong, that this Court will reverse and remand: for, in such cases, it is not in the power of this Court, to go back of the verdict, and correct it.

In this case, the verdict is correct in every respect. It is as follows, viz:

"We the Jury find the issues joined, in favor of the plaintiff, that the defendants owe to and unjustly detain from the plaintiff, the sum of Twelve Hundred Dollars, debt, and assess the plaintiff's damages at the sum of Eight Hundred and twenty seven dollars and thirty six cents" See Record p. 18.

In an action of debt on a penal bond, the Jury are bound to find both debt and damages, as this Court has repeatedly held, and a failure to find the debt, makes

a vicious verdict, and no good judgment can be rendered upon it.

When the Jury have found by their verdict, a specific debt, and damages, they have found all that the issues joined allow them to find. It will hardly be seriously claimed, that the Jury must go further, and state in their verdict, that the debt or penalty of the bond is to be discharged upon payment of the damages, or that, as to a defendant, who is administratrix, she is to pay the judgment in due course of administration. These are legal consequences, with which the Jury have nothing to do. These are matters to be endorsed on the execution, and the Court in rendering the judgment, should therein direct that these matters be endorsed on the execution, as a guide and order to the Clerk.

We have carefully examined all the cases cited by the appellants, in their brief, and we find every one of them to be cases where no debt, but only damages were found in the verdict of the Jury -

The verdict in this case being right, and the judgment being only erroneous in form, this Court will, we know, correct the form, and affirm the judgment.

Gray, Avery & Bushnell
Attys for Appellee!

No. 211.
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Argument for
Appellee.

Filed Apl. 29, 1863.
Held and
Ct.

Gray, Avery & Bushnell
Atty for Appellee.