

Case No. 15,875. UNITED STATES v. NICHOLLS.
[4 Cranch, C. C. 191.]¹

Circuit Court, District of Columbia.

Dec. Term, 1831.

GUARDIAN—ACTION ON BOND—LIABILITY FOR MONEY RECEIVED IN
ANOTHER JURISDICTION—DECLARATION.

1. A guardian appointed by the orphans' court of the county of Washington, D. C., is

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liable, upon his bond given here, for money received by him in Maryland, for the use of his ward.

2. In an action upon a guardian's bond for not delivering up the property of the ward agreeably to an order of the orphans' court, it is not necessary to set forth in the breach all the grounds and reasons of that court for making the order; nor all the facts which would justify such an order.

This was an action of debt against the defendant as surety for John H. Beale, in his bond as guardian of Anne Lee Beale.

The declaration recited the bond with its condition, and assigned two breaches: (1) In not paying over to David Butler, Jr., who had been appointed guardian in his place, the sum of \$288.87 due by him to his ward upon the settlement of his guardianship account to that time, the orphans' court having revoked his letters of guardianship and appointed the said Butler in his place. (2) In not delivering up and paying over to the said Butler \$150 received by the said Beale for rent of the said Anne L. Beale's share of the rent of land in Calvert county in Maryland, according to a like order of the said orphans' court.

At the trial of the cause on the 24th of December, 1831, the defendant took a bill of exceptions, which stated that the plaintiffs, to support the issue on their part, offered in evidence to the jury an account of the said J. H. Beale, as guardian of the said Anne L. Beale, showing a balance of \$288.87 due by him to his ward, and one of the items charged to him was the sum of \$151.88 for "his ward's proportion of the interest on \$12,656.09 (being an undivided legacy from the late Dr. William Potts in the hands of his executor,) for one year." Whereupon the defendant's counsel offered evidence to show that the said Dr. William Potts died in Frederick county, in the state of Maryland, and that Richard Potts of the said county and state, is the executor referred to in the said account; and also produced the will of the said Dr. William Potts. And thereupon prayed the court to instruct the jury that the defendant was not liable upon this bond on account of any moneys received by the said J. H. Beale, unless the same was received by him as guardian of his said ward on account of lands of the said ward lying in Washington county in this district, or from a personal estate of a deceased intestate or testator, of which estate administration hath been granted in the same county.

But THE COURT (CRANCH, Chief Judge, absent) refused to give the instruction, and the jury found a verdict for the plaintiffs, for the \$288.87, with interest.

Key & Dunlop, for defendant, then moved for a new trial and in arrest of judgment; and contended that the said J. H. Beale, the guardian, was not liable here for money received in Maryland. That he had no right to receive his ward's money in Maryland, and Dr. Potts' executor had no authority to pay it to him, and is still liable to her for the same. That he could only discharge himself by payment to a guardian appointed in Maryland. That the first breach assigned is bad. It ought to have shown that the money was received on account of lands or estate in this county. That the bond only covers what he had a right to receive; and that he had no right to receive money out of this district That the

breach assigned ought to show the authority of the orphans' court to remove Beale from the guardianship, and to appoint Butler in his place. The only case in which the orphans' court can remove a guardian, is where he refuses to give new security when required by the court. Neither breach shows any such refusal, or any other ground for his removal. That court is of limited and special jurisdiction, and all the circumstances which will justify the removal ought to appear upon the face of the proceedings.

Mr. Hellen, in reply, was stopped by THE COURT, who said they would hear him if they should think it necessary.

THE COURT (MORSELL, Circuit Judge, contra), overruled both motions.

MORSELL, Circuit Judge, thought the breach bad in not averring that Beale had refused to give new security.

{See Case No. 15,876.}

¹ [Reported by Hon. William Cranch, Chief Judge.]