A. J. L. McTeer
Et. Ux.

vs.

Richard LeBow
Et. Als.

Appeal from
the
Chancery Court
of
Blount Co

In Supreme Court at
Knoxville Tenn.
September Term 1886.

Brief of Cates Hon

Complainant Ruth J. McTeer was a minor and ward of one Joseph Miller. The said Joseph Miller was appointed Guardian for Complainant on or about the 1st day of February 1869, by the County Court of Blount County. The said Guardian gave bond in the penalty of one hundred and fifty dollars, with one M. L. McConnell as his security. At the date of the appointment of said Guardian there was no estate of the ward to go into the Guardian's hands, but he was appointed to prosecute a claim for pension due his ward from the Government, as the minor children of a deceased Federal Soldier. The Guardian afterwards received at different times and in different sums, pension money amounting to several hundred dollars.

After the guardianship of Miller ceased, by reason of the marriage of Compl't. Ruth to Compl't. A. J. L. McTeer, Complainants filed a Bill against said Guardian for an account of his Stewardship as such Guardian, and by the Chancery Court of Blount County, at its June Term 1884, a decree was rendered against said Guardian and his Surety for the sum of $2264.77.

Complainants failed to realize any thing

under said decree, or at least but a small amount.

The Bill in this cause was filed against the defendants as Justices of the Peace, composing the different County Courts of Blount, from and including the Court at the time of the appointment of said Guardians in Feby. 1869 down to and including the January Term 1883.

It is charged by the Bill, that the said Guardian and his surety McConnell, were worthless at the time the bond was given, remained so down to the time of the aforesaid decree, and are still so. It is also charged by the Bill that the defendant Goddard as the Chairman of the County Court of Blount County, at the Feby Session 1869 when said Miller was appointed and gave bond as Guardian, knowingly and negligently failed in the performance of his duty, by accepting a bond in the small penalty of one hundred and fifty dollars with McConnell alone as Surety; and that the other defendants as the several magistrates composing the several subsequent Courts down to the Month of March 1883 wilfully and maliciously failed in the performance of their duty, by their knowingly wilfully and maliciously failing and refusing to remove said Guardian and appointing another in his stead with good and sufficient sureties. It is further charged that during the whole period of Guardianship the Guardian failed to

make any settlement, and that the defendants as Magistrates knowingly failed to require the guardian to renew his bond biennially; and by reason of the alleged conduct of defendants it is charged that a loss to the amount of the aforesaid sum of $2264.77 has been sustained by Complainants.

The Bill in this cause is filed against all of the defendants jointly, as though they were all members of the same County Court possessing at one and the same time, whereas, as the Bill on its face shows, they were not all members of the same Court at any one period.

Defendant Goddard was the Chairman of the County Court at the time the guardian bond was given — Feby. 1869.

At the January Session 1870 of said Court, there was an entirely new Court, of which the defendant Le Bond is the only surviving member. In Oct. 1870 a new Quorum Court was chosen, of which the defendants Geo Snider, James M. Hitch and S. F. Bell are the only members and. At the Jany. Session 1871, the defendants Snider, Hitch and Bell were re-elected as Chairman and Quorum. At the Jany. Session 1872 the defendant James Wales and the defendant E. B. McKeehan with two others were elected as the Chairman and Quorum. At the Jany. Session 1873 the defendant James Wales and the defendants Hackney and Le Bebord were made the Court by election. In 1874, the Sept.

Bell was made Chairman and the defts. Griffith and Arch Hitch of the Quorum. Janz. 1875 - S. H. Bell was re-elected Chairman and defendants James W. Hitch and J. R. Rhea of the Quorum. Janz. 1876 Deft. James W. Hitch was made Chairman without a Quorum; and at the Janz. Session 1878 the defendant S. L. Green was elected Chairman, who was succeeded by the deft: McNatt, and he in turn by the deft: Green.

Here we have an action against members of different Courts at different times, jointly.

It was argued upon behalf of Respondents that such action could not be maintained because there was no legal privity or connection between these different Courts at the time of the tortious acts complained of or at any other time. They were different and distinct Courts — having a separate and independent existence — and a member of the Court of 1871-2-3 & 4 had no more privity or connection with a member of the Court for the years 1874 5 - & 6 than the Courts did, consequently there is here a misjoinder of parties and this can not be maintained.

This was the second ground of demurrer and we think the same was well taken.

Again the gist of the action against Deft. David Goddard is that he as Chairman of the County Court on Feb 1st 1869, to an insufficient bond of the Guardian Miller

and is therefore liable for Miller's default; the action as to the other defendants is based upon the alleged charge that they failed to compel said Guardian Miller to make settlements and renew his bond biennially and that the Guardian failing in his trust, the Defendants other than Dept Goddard are thereby rendered liable to the extent of said Guardians failure.

Here we have two separate and distinct alleged offenses by different persons made the ground of two separate and distinct causes of action in the same Bill — thereby rendering the Bill clearly multifarious. The Bill was objected to on this ground by demurrer — 4th Trans. p. — and we think the same to have been well taken.

Again it was argued as a 4th ground of demurrer to the Bill, see Trans p. that the alleged tortious acts of the several defendants other than the defendant Goddard, by their alleged failure to cause the Guardian to renew his bond according to the statute, in so far as they represented different and distinct Courts, constituted separate and distinct causes of action against the several different sets of Defendants constituting said several different Courts — and wherein these several different Courts or the several different sets of defendants representing said Courts there being no privity or collusion, therefore the Bill is multifarious. To illustrate

this proposition with the facts of this case, let us ask whether or not if George Smith, J. W. Stitch and S. F. Bell, members of the Court for the Year 1870, and Defts Waters and McKeehan, members of the Court for the year 1872, and James W. Stitch, Chairman for the year 1876, and Deft Trues, Chairman for the year 1878, and Deft. McBath, Chairman for the year 1879, members of the different Courts at the different times stated, should have failed to compel said Guardian Miller to renew his bond in manner & form as alleged in the bill — can an action be maintained against them, jointly? Is it not clearly a joinder of different causes of action against different parties in the same Bill? We think it is and that this grounds of demurrer was well taken.

Again, it was further argued as a ground of demurrer to the Bill, see Trans p — That as no one of the Defendants could be held liable for the tortious acts of the others and in law the defendants constituting any one of the different County Courts are not liable for the tortious acts of any other of said Courts, there is no rule or principle of law or equity by which the liability, if indeed there is any, can be apportioned & by which they can all be held liable jointly, in the same action.

The demurrer was rounded by the Chancellor with leave to rely upon the

came in the answers of Respondents. The demurrer was set up in the answer and the grounds of the same argued at the final hearing of the case when the Bill was dismissed — and, we think, very properly dismissed.

But there are other grounds of defence to the Bill. Complainants charge that Defdt Goddard as Chairman of the County Court on Feb 1st 1869, did knowingly and negligently fail and refuse to take a good bond of Guardian Miller in that he accepted a bond with only one surety. In his answer defendant Goddard denies that he knowingly failed in this and in his deposition says that when he took the bond of Guardian Miller he supposed that the surety McConnell, to have been worth the amount of the penalty of the bond, viz:- $1500 and he gives his reasons for so thinking. He says further that the Clerk reported that there were no funds in the hands of the Guardian at that time and that his attention was never afterwards called to this matter; that his Term of office as chairman expired on Jan. 1st 1870 and he ceased to be a magistrate in August 1870.

See Deposition of D. Goddard Trans p 201-

But if it please the Honorable Court, to maintain this action against this Defendant Goddard, for taking the bond of the said Guardian Miller with only one surety or with an insufficient surety, it is necessary that such failure or action on the part of Goddard

be alleged to have been wilful and malicious and this averment must be supported by proof of conduct from which malice or corrupt motive may be implied

Vide Boyd v Ferris 10 Humph 409
Dyer v Smith 9 Lea 486

There is no such averment in complainants Bill – it is only alleged and charged that Defendant Goddard, knowing the premises negligently failed to take a sufficient bond of said Guardian, Miller &c. This, we take it is not sufficient to hold the Defendant Goddard liable – it does not meet the requirements of the construction placed upon the statute by this Court in the cases above cited.

In the 10 Humph. case the declaration was held bad, upon demurrer, for failing to charge that the conduct of the Justice taking the bond was wilful & malicious. But if there was a sufficient averment, there is no proof to support it.

In regard to the Defendants Snider J.N. Hitch Bell Hatton, McClellan, Hackney Griffith Arch. Hitch, Rhea, Greer and McBath. The Bill does charge that they maliciously, wilfully & knowingly failed and refused to require the said Guardian Miller to renew his bond biennially – thereby rendering themselves liable for the said Guardian's default. This allegation, these defendants all deny in their answer

and in their depositions state that they had no knowledge of the existence of any such Guardian as Miller or his ward, Ruth J. McTeer or of their relations to each other before the institution of this suit. Hence their failure to require said Guardian to renew his bond could not have been malicious, knowing & wilful and it must be so before any liability attaches. In this Defendants stand uncontradicted.

In Dep. of Geo. Snider Trans p 195
" " " J. W. Stitch " " 199
" " " W. S. Griffitts " " 203
" " " James Waters " " 205
" " " S. B. Bell " " 208
" " " S. L. Gurr " " 210
" " " St. L. W. Hackney " " 212
" " " E. B. McKuhan " " 214
" " " A. R. McBath " " 215
" " " J. P. Rhea " " 216
" " " Arch Stitch " " 217

The cases of Boyd v Ferris 10 Humph. 406 and Sears v Smith 9 Lea 486, above cited apply also to these last Defendants and under the proof release them from any liability to Complainants.

And now, if it please the Hon. Court, both for the reasons assigned and argued upon demurrer to the Bill and the defences made by answer and sustained by the proof, we think the Chancellor

did right in dismissing Complainants Bill and that the decree to that effect should be affirmed.

Respect submitted
Cates & Son
Solicitors for Defendants

McLeer
v
Le Bow

McLeer et ux
v
Le Bow et al

Brief of Cates & Son for Defendants

A. J. L. McTeer et ux

v.

Richard Le Bow et al

Brief submitted by
Will A. McTeer,
Sol. for Complainants.

Andrew J. L. McTeer
and wife Ruth J. McTeer
v
Richard LeBoutetal

Brief submitted by Will A. McTeer, Solicitor for Complainants.

William M. Jeffries was a soldier in the war of 1861, and died while in the service. He left a widow and the Complainant Ruth J. McTeer, then an infant of very tender ~~years~~ age, surviving him. Said Complainant was entitled to pension from the United States, until she should arrive at sixteen years of age. (Revised U. S. Statutes, Sec. 4702.)

Soon after the close of the war, and of the death of said Jeffries, his widow, the mother of Complainant, intermarried with one Joseph Miller. On the first day of February, 1869, Miller was appointed Guardian for Complainant by the County

Court of Blount County, and entered into a bond in the penalty of one hundred and fifty dollars, conditioned to perform all the duties required of him by law. He gave only one security, W. L. McConnell on said bond. This bond was received by the County Court, with defendant David Haddard presiding as chairman, and Justices W. C. Comer, W. A. Kinder and S. C. Kinnon, sitting with him as associates. Comer being a non resident of the County, and the other two dead, they are not parties to the bill. On making this bond, letters of guardianship were issued to said Miller, and he took charge of the funds of his ward. At the time of this appointment, said ward was very young, and wholly incapable of knowing her rights or transacting her business, and said Miller being her step-father she had no one to look after her business or care for her estate other than said Miller, and she was without any one to protect

her against any misappropriation of her funds, or the failure to care for her estate by said Guardian, except the Cundy Court, until she intermarried with Cmplt. A. J. L. McTeer.

~~On the first day of March, a just one months after Miller's appointment, he received $27.00, of the funds of his wards~~ The funds due her, were at the rates of eight dollars per month, commencing from the 19th day of November, 1866, and ending on the 6th day of March, 1876. So, at the date of the appointment of said Miller, there was due to his ward the pension of $8.00 per month from Nov. 19, 1866. to Feb. 1, 1869, which is 26 months and 12 days, amounting at that date, to $211.20, while the penalty of his bond was only $150.

Miller made no reports of his receipts neither did he make any settlement of his guardianship; and after his ward was married and after she

arrived at majority, on the 29th day of March, 1883, Complainants filed their bill against said Miller and his security, M. L. McConnell, to compel Miller to settle. This bill was filed in the Chancery Court for Blount County. (See Record, page 221, et seq.) Miller came in with his answer, and under the orders of the Court an account was had and taken, in which Miller was allowed credit for every item he claimed, without voucher or paper to show its correctness. The report of the Master was confirmed, and on the 11th day of June, 1884, a decree was rendered in favor of Complainants and against Miller for $2264.77, and for $150.00 of this amount decree was rendered against Miller and his surety, McConnell, jointly, being for the amount of the penalty of said bond. (Record, p. 372)

Execution was issued on said decree on the 18th of June, 1884, (Record, p. 375, 376) and was levied on 120 bushels of wheat

as the property of Joseph Miller, on the 12th of August, 1884, and the wheat was replevied by Hugh Cox, (The case was tried and determined by the Circuit Court, in favor of the Sheriff. This judgment paid $60.00 on Complainants decree, of which amount $45.10 were applied to the costs of the cause.)

The Sheriff returned said execution with his endorsement that there was no other goods or chattels, lands or tenements of either of the defendants to be found subject to execution. (Record, page 378)

Having now exhausted every means of collecting the money intrusted to her guardians custody for safe keeping, Complainants filed the bill now before the Court, against the defendants as presiding magistrates at the time of appointment of said Guardians, and their successors down to the time of the majority of said wards, seeking a recovery from them because of their failure to take a

good and solvent bonds at the time of the appointment, with two good sureties, and in a penalty sufficient to cover the funds, and in their failure to cause the guardian to settle and renew his bonds as required by the statutes; and because of failure to discharge their duty, Complainant, Ruth J. Moore, who was an infant and utterly helpless, whose protection was in their hands, has lost all that was paid for her use and benefit, which has been squandered by her step father and guardian.

The defendants David Goddard, D. L. Greer, J. W. Hitch, A. R. McBath, Samuel F. Bell, John P. Rhea, James Wades, E. B. McKeehan, H. L. W. Haehney and W. S. Griffitts came in regularly with their answers, and Richard Le Baron, Jr. J. J. Robinson, Jr. George Snider and Archie Hitch. failed to answer as required by law, judgment pro confesso was taken as to them (Record, page 380) At the Dec Term, 1885, the cause was tried before his Honor, Chancellor Staley, the cause dismissed and Complainants taxed with the costs, from which decree

Complainants appealed to the Supreme Court.

Section 3364 of the Code, is as follows:-
"Every guardian appointed by Court shall, before acting, give bond with two or more sufficient sureties, in a penalty of double the value of the wards estate, payable to the State, conditioned for the faithful discharge of his duty, which condition shall include every default which a guardian can commit in his office."
On this statute, the Supreme Court has said, "The statute contemplates an inquiry into the estate of the ward with a view to determine the penalty of the bond, and call the attention of the sureties to the probable extent of their liability. Pearson v Dailey, 7 Lea, 678-

Section 3366 of the Code, provides:-
"If any guardian so appointed fail to appear and give bond with surety, the Court, upon application, shall issue a notice to him to appear before its next term and give the security"

§3367. Upon service of said notice upon the guardian five days before the term of the Court, if he fail to appear, the Court shall appoint a guardian in his stead, and take the usual guardian bond from said appointee.

§3368. Every guardian appointed by deed, will or any writing, shall make annual settlements with the clerk of the county court, in the same manner as other guardians; and for failure, shall be liable to the same penalties

§3369. Every guardian, at the time of exhibiting his biennial list or statement of his wards estate, shall renew his bond in a penalty of double the value of the estate, with the same conditions as the original bond.

§3370. Should any guardian fail to renew his bond, as required in the preceding section, the Court shall remove him, and appoint another in his stead, from whom bond shall

be taken as already prescribed.

§3371. If any Court knowingly shall fail in the performance of its duty in regard to the renewal of guardian bonds, the justices present shall be liable themselves, both in law and equity, to the ward, for any damage sustained thereby.

§3372. If one or more of the sureties of a guardian be dead, insolvent or removed out of the State, the Court shall, by an order, direct him to be given ten days' notice to appear and give other sufficient or counter sureties, to be approved by the Court, or deliver up the estate of the ward into the hands of such other guardian as the Court may appoint.

Complainants charge in their bill that the defendants "acting and being present and presiding as the Court having cognizance over the Guardianship herein above, for the times and

during the period stated respectively
× × did knowingly, wilfully and ma-
liciously fail in the performance of
their duties in their refusal and fail-
ure to cause said Guardian to render
his accounts of his wards estate and
renew his bonds in a penalty of double
the value of said wards estate, and in
knowingly, wilfully and maliciously
failing and refusing to remove said
guardian and appoint another in
his stead requiring good and suf-
ficient sureties as required by law.
for the preservation and protec-
tion of the estate and effects of
said ward, so that Complain-
ant Ruth J. Meller has sustained
a loss to the amount of said decree
against said Joseph Meller and M.
L. McConnell, with interest and costs."
(Record, page 14 and 15)

The bill also charges that the security
taken on said Guardians bond was

insolvent and the bond was insufficient and grossly inadequate in the amount of the penalty fixed therein. (Record, page 4.)

The defendant, David Goddard, in answer, admits that he was Chairman of the Court, presiding at the time the bond was taken, but "he denies that at the time of the qualification of said Guardian there was any funds in the hands of said Guardian," and he denies on information that either the penalty of the bond was insufficient or that the personal security of the Guardian was insolvent." (Record, page 21.)

On this point, the Statutes of the United States, with which the Court was or should be familiar, especially in regard to pensions to minors, over which the law gave him an oversight, provided for a pension of eight dollars per month, commence-

ing from the date of the marriage of the child's mother. The records of the Court showed the date of the marriage - i. e., Nov. 18, 1866 - (See also, Deposition of Dinah Miller, Ans. to Quest. 2, on Cross Examination, page 335-)

From Nov. 18, 1866 to Feb 1, 1869, the date the bond was given, was 26 months and 12 days, leaving the amount due the ward at that date, to be $211.20; yet they took a bond in the penalty of $150.00! The answer of the defendant for this neglect is that he "denies that at the time of the qualification of said Guardian there was any funds in the hands of said Guardian." Of course not. There could not legally be any funds in his hands at that time. The Statute, §3364, says, "before acting" every guardian shall "give bond with two or more sufficient sureties, in a penalty of double the value of the wards estate," &c.

The value of the wards estate at that date was $211.20; ~~and~~ the penalty of the bond therefore should have been at least $422.40, instead of $150.00 as taken.

David Goddard in his deposition (Record, page 202) says, that M. L. McConnell, the security had served as a Captain in the army, and had been elected Sheriff of Blount County which was a good paying office and had been elected to the Legislature, are the reasons he considered him good, and his recollection is that the clerk, or it may have been one of his associates stated that he was good for the penalty of the bond. It is not in proof that he took any legal steps to ascertain the solvency of the surety; it does not appear that he made any inquiry whatever, for in answer to Interro-

1, on Cross examination, he says:-
"I knew nothing of McConnell's property or his private matters."
Yet, McConnell was taken as a good and solvent surety on the bond, and taken alone without an additional security as required by law, when in fact he was insolvent and in debt at the time.
(See deposition of M. L. McConnell, page 220 of the record.)
For this failure on the part of the Court, in taking a bond of insufficient penalty, and taking security wholly insolvent at the time, and in taking only one security when the statute plainly requires two or more, and in failing to require the ~~security~~ guardian to make settlements and renew his bonds as the funds of the helpless ward accumulated in his hands, on account of which the Complain-

has lost all her money, this suit is brought.

It has been held that, "To sustain an action against justices of the County Court for accepting a guardians bond with only one surety instead of requiring two or more sureties as required by statute, there must be proof of actual loss by reason of the act or omission, otherwise the recovery would only be for nominal damages." Spears v. Smith, 9 Lea, 483

In the case before the Court, the proof shows most clearly, that the bond was insufficient in penalty; and that Complainant has lost all by reason of the insufficient and insolvent bond. It is shown by the testimony of the surety himself, that he was insolvent and in debt at the time of ~~signing~~ the bond, and it is shown by the testimony of Dan

Goddard that he "knew nothing of McConnell's property or his private matters."

It has been held that when a clerk neglects or fails to take a proper bond on the issuance of a leading process, he is liable to the party injured by the issuance of the process to the amount the surety in the proper bond would be liable.

Pass v. Dibrell, 8 Yer. 470

In taking the guardians bond, the justices of the place are acting in a ministerial capacity, and are placed in precisely the same attitude in that respect as the clerk taking bond for leading process. The responsibility is greater, for he who renders a suit can be sued to other security by his adversary, who is generally able to make defense, and is sui juris, while the ward whose money goes into the hands of the guardian is helpless and incapacitated from suing their rights, and the Courts are closed against their demands

except through the very guardian who holds their funds or a next friend; and in this instance, the man who married the mother and took the place of the helpless childs father.

It has been held by this Honorable Court, that the duties prescribed in Sections 3369 and 3370 of the Code, (Sections one and two of the Acts of 1841-2, Chap. 117) are to be regarded as ministerial rather than judicial; and consequently that an action will lie for their violation -

Byrd v. Ferriss et al, 10 Gump. 410.

The same opinion says further:- "But, to maintain such action, the conduct of the justices must be alleged to have been wilful and malicious, either in terms or language of similar import. But in support of such averment, it is not required that there shall be express proof of malice or corrupt motive on the part of of the justices. It is sufficient if it may be implied from their conduct. 1 East. 562, 3, in the

case of Drew v Boulton, cited in note a. And a stronger case for the application of this principle cannot well be supposed than the failure or refusal of the justices of the County Court to obey the plain, but peremptory Commands of the act of 1842."

Respondents in their answer, (except David Goddard,) deny that they had any Knowledge of the Guardianship. So. they all testify in their depositions; but they also swear on cross examination, that they never examined the records as to the Guardianship, as to the solvency of the bond, as to whether Miller had made settlements or renewed his bonds, or reported his receipts. There, the record was before them, the law made it their duty to see that the funds of the ward were secure and that the Guardian make report and settlements; but they come in and deny a Knowledge of the record made by themselves and over which they have exclusive control.

If such is a defence to this action, and Respondents are allowed to show in this way that they acted without knowledge, then any one signing an obligation of any kind can come and defend, on the grounds that they did not examine the paper signed by them, and therefore did not know the contents, and are therefore not liable, although great damages may have fallen on others. Such must be in direct conflict with the ruling in the case of Boyd v Ferriss, above quoted.

Had a good and solvent bond been taken in the first instance in the proper penalty, the estate of the ward would have been protected. Therefore we respectfully insist that an action properly lies against the ~~Court~~ magistrate taking the bond for the damages suffered by the ward. Then, had the successors called the guardian to account, and required him to renew his bond as provided by law, the estate of

the ward would have been protected. Therefore, we insist that suit will lie against the successors from the first to the time she arrived at her majority; that so far as Complainant is concerned, the wrong was continuous from first to last, in which all the respondents participated and all are liable to her, to the amount of her loss as shown by the decree against Miller, with interest and costs.

A. J. L. McLeer et ux
v
Richard Lebow et al

The Complainants seek by this bill to recover from the defendants, who were members of the County Court, $2264.47, the amount of a decree of the Chancery Court rendered in their favor against Joseph Millen, former Guardian of Compt. Ruth J., and W. L. McConnell his security. The grounds upon which they seek this recovery are, that Goddard, Chairman of the County Court in 1869 failed to take from the Guardian Millen a sufficient bond, the bond being deficient in penalty and number and solvency of security; that the other defendants, who were members of the County Court for different periods from 1870 to 1883, failed to require said Guardian to renew his bond as required by Statute.

To this bill the defendants demurred. See record pp 17 & 18.

The grounds of demurrer relied upon are that the bill is multifarious, and misjoinder of parties.
No stronger exemplification of what constitutes a multifarious bill need be wanted than is furnished by this case. See 1 Daniel's Ch Pr & Pl 334, Story's Eq. Pl. sec 271, 4 Cowen 682, 6 John Ch. 139 9 Paige 188, 6 Paige 22, 10 Yerger 383, 4 Hum 623, 9 Dayton 101, 3 Hum 640, 2 Tenn. Ch 704, 5 Hum 263
And the same might be said of a misjoinder - See Daniel's Ch Pr. & Pl. 335 Story Eq. Pl. secs 271, 279, 57 Maine 118, 5 Paige 79. Daniel's Ch. Pr. & Pl. p 341

The alleged liability of Goddard is for failure as Chairman of the County Court to take a sufficient bond from the Guardian Millen, while the alleged tortious acts of the others defendants are for failure to require a renewal of the bond of the said Guardian. The alleged conduct of Goddard and that of the others de-

fendants constitute different offenses and done at different times, and there is no legal privity between said acts. The liability of each, if there is any, is separate and distinct from the other and can not be joined, nor is there any rule or principle by which such liability can be apportioned.

This demurrer, we insist, should have been sustained, but the Chancellor overruled the same with permission to rely upon and "raise the question as to the bill being multifarious, and misjoinder in this answer, so that the same may be passed upon on the hearing". The defendants answered relying upon the grounds of demurrer and putting in issue the allegations of the bill.

To maintain such action the conduct of the Justices must be alleged to have been wilful and malicious, and the averment must be supported by proof

of conduct from which malice or corrupt motive may be implied, and to sustain such action against a Justice for accepting a guardian bond with only one security instead of two or more as required by Statute there must be, in addition to malice, proof of actual loss by reason of the act or omission. 10 Heisk 406, 9 Lea 483

The complainants allege that the security taken was insolvent and the bond insufficient and grossly inadequate in the amount of the penalty fixed therein, and with only one surety, and it further alleged "that the defendants acting and being present and presiding as the Court having cognizance over the guardianship herein therein for the times and during the period stated respectively hereinbefore did wilfully, maliciously and knowingly fail in the performance of their duties in their refusal and failure to cause said

guardian to render his accounts of his wards estate and renew his bond &c."
These allegations are all expressly denied by the defendants in their answer, and there is no proof to sustain them. ##

The defendant Goddard testifies that at the time of the appointment of the guardian Miller there was no fund on hand to go into his hand as such guardian, that he was appointed guardian in order to make application for pension for his ward. That he thought McConnell was absent and good for the penalty of the bond; that he went out of office at the end of the year. See record pp 201, 202 & 203

The depositions of the other defendants were taken and they say they never heard of this guardianship until the bringing of this suit, there attention never having been called to it. See record pp 195 to 217.

There is no allegation of malice or corruption charged against Goddard in talking an unsufficient bond nor any facts alleged from which malice or corruption could be implied

can malice be inferred from the mere failure of the Justice to require more than one security or to require the Guardian to renew his bond. We insist that it can not. This question was substantially settled in the case already referred to. 9 Lea 487.

Hence we insist that there was no error in the decree of the Chancellor and the same should be affirmed.

Sam P. Rowan
Sol for Defendants