

*Submitted on Brief*

1878

N. J. Court of Errors & Appeals.

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CHARLES P. BURSCH,

*vs.*

JOSEPH HENSLER.

*On Error  
to  
Supreme Court.*

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C A S E .

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STONE & JACKSON,

*For Plaintiff in Error.*

C. LENTZ,

*For Defendant in Error.*

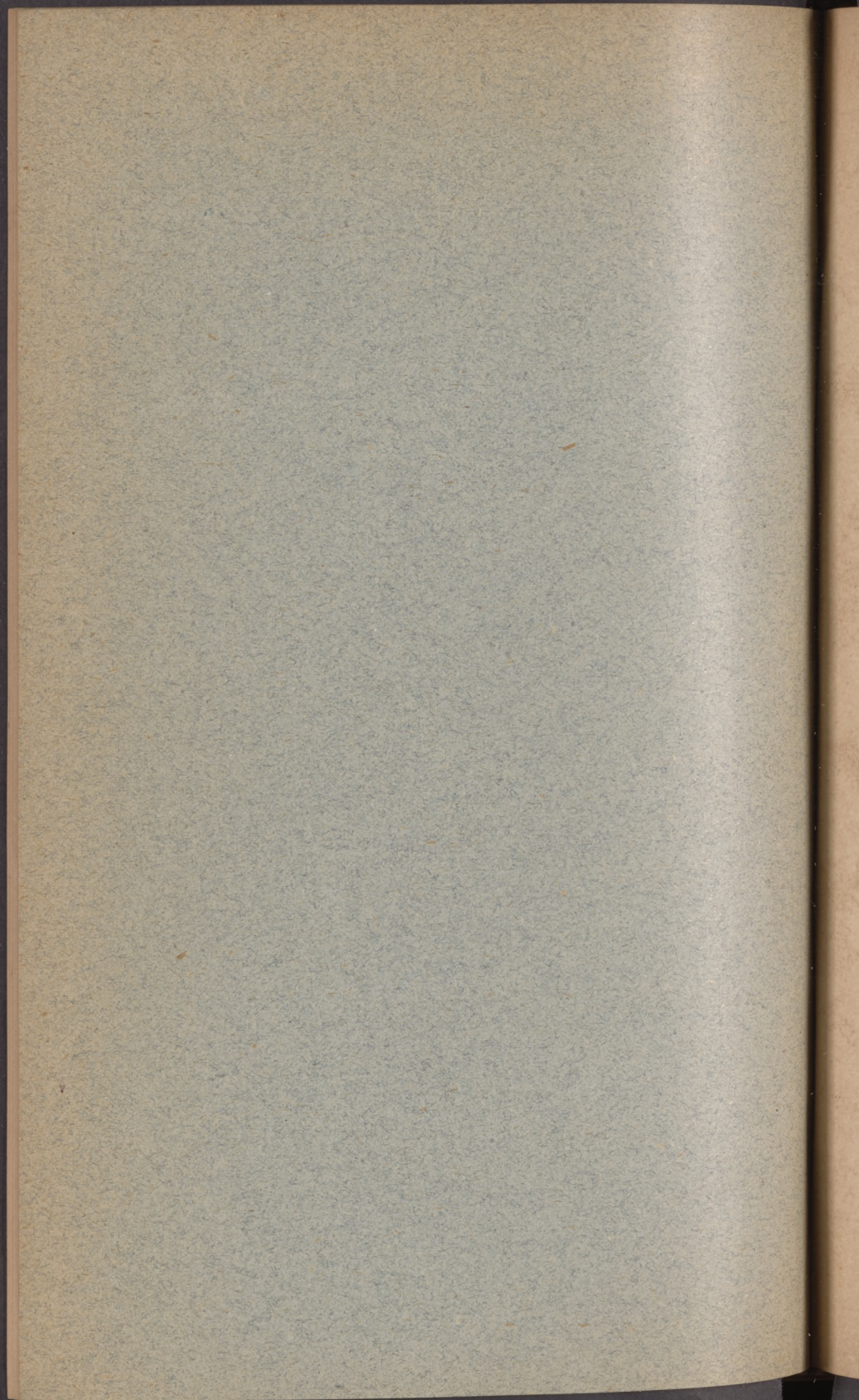
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NEWARK, N. J.:

WARD & TICHENOR, LAW CASE PRINTERS, 832 AND 834 BROAD STREET.

1878.



## N. J. Court of Errors and Appeals.

CHARLES P. BURSCH, <i>Plaintiff in Error,</i>	} <i>On Error</i> 10 <i>to Supreme</i> <i>Court.</i>
<i>vs.</i>	
JOSEPH HENSLER, <i>Defendant in Error.</i>	

### Brief of JOHN P. JACKSON, for Plaintiff in Error.

See assignment of errors, p. 35.

#### I.

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There is no *assumpsit, express or implied*, upon which this action could have been maintained.

It is an attempt on the part of one surety to settle the principal's obligation, regardless of the wishes of his co-surety and contrary to his duty to him and to the State. It appears that Bursch only *agreed* to a scheme by which the defaulter Rumpf should be brought back to justice. Read Tauwalt's *Ev.*, p. 11, l. 10 to 25; Hensler, p. 26, l. 15 to 36; Lentz, p. 29, l. 21 to 35.

Hensler *changed the scheme* to an illegal and disgraceful one and cannot drag his co-surety into any participation therein; Hensler's whole conduct is illegal and cannot serve as a foundation for a suit; see affidavit and warrant, pp. 32, 33; Hauser's *Ev.*, p. 13; Littell, p. 19; Tauwalt, p. 12, l. 20 to 36; if he compromised Rumpf's crime for \$2,200, he might do so for \$1,000 or \$500, or less, and claim contribution as here.

The *agreement* was that *Rumpf should be brought back*.

There was really nothing to show that Rumpf is not solvent and within reach of the Court; he may be able to

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pay to-day; Hauser's Ev., p. 16, l. 1 to 10; Littell, p. 21, l. 29; now if he was a criminal, he should have been brought back to New Jersey by Hensler and his agents, as the chief of the police telegraphed, p. 15, l. 27, p. 12, l. 21; if he was not a criminal, then the whole basis of the negotiations between Bursch and Hensler failed, and Hensler should not have settled as he did.

Bursch was feeble in health, p. 28, l. 8, p. 25, l. 11, l. 36, and unable to cope with adroit adversaries.\*

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AS TO THE LAW ON THIS POINT:

The Maxim "*Qui sentit commodum, &c.*," is subservient to the maxim, "*ex turpi causa, &c.*"

The former is founded on equity or implied assumpsit between the parties.

But the *latter* rests on public policy and overrides the equity or cancels the assumpsit.

No Court can lend its aid in a case founded on an illegal act. The defendant may have the advantage, either by acquiring property or getting relief from burdens, contrary to the real justice, "*by accident, as it were,*" yet the law will not interfere. *Wharton's Legal Maxims*, (N. Y. Ed.) p. 81, 304, 305, 337; *Broom's Maxims*, 572, &c.; 4 Burr, 2300; *Brittin vs. Chegary*; C. J. Hornblower's remarks on page 631 of *Spencer's Reports*; illustrations: printing libels, 4 Esp. 97, *Fores\* vs. Jones*; 1 H. and N. 73, *Clay vs. Yates*; supplying immoral persons with means to aid immorality; *Chitty on Cont.*, 11 Am. Ed., 30 Perkins, 582 and n. 981 and n; on placing money in the hands of another for illegal purposes, even though a partner in the crime; *Story Eq. Jur.*, § 61, 298; *Story, Agency*, § 198; a contract to release a fugitive from justice is against public policy; 2 *Chitty, Contracts*, 992 and n.; *Dixon vs. Olmstead*, 9 Vt., 310; *Plummer vs. Smith*, 5 N. H., 553; *Shaw vs. Spomer*, 9 N. H., 197.

Hauser was Hensler's agent, he held the power of the State, bartered as to its exercise. The inference to be drawn from the admitted facts unquestionably show that  
40 the State's process was used to force the settlement, and

that the money was paid by Rumpf to get out of the clutches of the law.

The action is really for *services rendered, i. e.* for money expended on agents, &c. *Addison, on Contracts*, § 253.

## II.

The plaintiff below should not be permitted to recover, because his action is premature; as the newly appointed guardian, he has filed no inventory. (See Surrogate's Ev., p. 9, l. 38). 10

He has made no payment except a portion to the widow and to his detectives. A large balance remains under his own control, deposited in a savings bank, which he may draw and use at pleasure, p. 34 D; Hensler, p. 27; Hauser received \$2,200 at Harper's Ferry, p. 16, l. 9; all that Hensler has paid out is at Harper's Ferry, \$200, p. 16; Hauser \$234.90, Orphan's Court \$35, Littell \$250, Lentz \$25, Geissele \$5; total, \$749.90, leaving subject to Hensler's control \$1,450.10.

Nothing is presented to show that Bursch is discharged from future liability on his original bond, p. 34 B. No release or discharge is offered; the savings bank book is no evidence to rely on in any controversy in after years; it is perishable, as also are corporations themselves. 20

JOHN P. JACKSON,  
*Counsel for Plaintiff in Error.*

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## N. J. Court of Errors and Appeals.

CHARLES P. BURSCH

*vs.*

JOSEPH HENSLER.

*On Error to* 10  
*Supreme Court.*

STONE & JACKSON, for plaintiff in error.

CARL LENTZ, for defendant in error.

### *BRIEF FOR DEFENDANT IN ERROR.*

Error is assigned for the refusal of the Court to non- 20  
suit defendant in error.

1. On the ground that the action was premature because the defendant in error has made no payments.

2. That defendant in error is still in funds, and cannot recover on contribution from his co-surety unless he has actually paid the debt.

3. That defendant in error cannot recover, as the services sued for were performed and the charge made in compounding a crime.

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*A.* The proposition that the action was premature because defendant in error had made no payments, is not supported by the proof in the cause. See Tauwalt's testimony, page 13, lines 1 to 15; also, Hauser's testimony, page 14, lines 34, 35, 36 and 37; page 15, lines 36 and 37; page 16, lines 20, 21 and 22, 26 and 27. Littell's testimony, page 20, lines 6, 7, 8 and 9, 11 and 12. Hensler's testimony, page 27, lines 2 to 25. Lentz's testimony, page 30, lines 4 and 5; also, Exhibit 6, page 34 D.

*B.* The proposition that defendant in error is still in 40

funds, is also not supported by the proof in the cause. See Surrogate Moore's testimony, page 9, lines 1 to 10. Hensler's testimony, page 27, lines 14 to 21; also, Exhibit B 1, page 34 C, and Exhibit C, page 34 D. The counsel for plaintiff in error labors under the difficulty in not distinguishing between the defendant in error, Joseph Hensler, *in propria persona*, and Joseph Hensler in his representative capacity as guardian for the minors, Michael Wallmann and Rosa Wallmann. Joseph Hensler has  
 10 brought his suit individually, and having paid the money secured by the bond, (on which Frederick J. D. Rumpf was the principal debtor, and Charles P. Bursch, [the plaintiff in error,] and Joseph Hensler, [the defendant in error,] were sureties,) to Joseph Hensler, the guardian of Michael Wallmann and Rosa Wallmann, is entitled to contribution from his co-surety.

C. The proposition that the plaintiff cannot recover, as the services sued for were performed and the charge made in compounding a crime, is without any foundation  
 20 either in law or in fact.

(1.) No services are sued for. See page 4, lines 20 to 30.

(2.) The proofs in this cause do not even hint at an agreement not to prosecute or in some way to favor or protect Rumpf.

*Brittin vs. Chegary*, Spencer, 625.

(3.) Rumpf was not guilty of any crime. There never was a final account rendered by Rumpf as guardian;  
 30 there was no decree or order of the Court showing a balance in his hands; there was no demand made on him to pay over the balance, until at Harper's Ferry, when he complied; and in fact no one had a legal right to make such demand until the third day of April, A.D., 1877, when Hensler was appointed guardian by the Orphans' Court. The demand was made by Hauser, April 8th, 1877. (See page 15, line 21.)

CARL LENTZ,

*Of Counsel with Defendant in Error.*



The Court of Exchequer and Appeals

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HENRY C. KIRBY, Clerk.  
N. J. Court of Errors and Appeals.

CHARLES P. BURSCH,

*Plaintiff in Error,*

vs.

JOSEPH HENSLER,

*Defendant in Error.*

Writ

of

Error.

NEW JERSEY, ss. :

\*—\* The State of New Jersey to our Justices of our  
{ L.S. } Supreme Court of Judicature, of the State of  
\*—\* New Jersey. Greeting :

For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our Supreme Court before you, between Joseph Hensler, plaintiff, and Charles P. Bursch, defendant, in a plea of trespass on the case upon promises, manifest error hath intervened to the great damage of the said Charles P. Bursch, as by his complaint we are informed, we being willing that the error (if any there be) should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things concerning the same, to our Court of Errors and Appeals in the last resort, on the first Tuesday of December next, together with this writ ; that the record and proceedings aforesaid, being inspected, we may cause to be further done thereupon, for correcting that error, what by right and according to the law and custom of the State of New Jersey ought to be done.

Witness, our Chancellor and President Judge of our said

Court of Errors and Appeals, at Trenton, aforesaid, the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-seven.

HENRY C. KELSEY, *Clerk.*

STONE & JACKSON, *Attorneys.*

The Answer of the Justices of the Supreme Court of New Jersey, within named:

10 The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, [L. s.]  
*Chief Justice.*

## New Jersey Supreme Court.

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JOSEPH HENSLER,

*vs.*

CHARLES P. BURSCH.

---

*In Case.*

*On Postea, &c.*

CARL LENTZ, *Attorney.*

As yet of the fifth day of July, A.D. eighteen hundred and seventy-seven.

Witness :                      MERCER BEASLEY, Esq.,  
*Chief Justice.*

BENJ. F. LEE, *Clerk.*

ESSEX COUNTY, *ss :*

Charles P. Bursch, the defendant in this suit, was summoned to answer Joseph Hensler, the plaintiff therein, of a plea of trespass on the case upon promises, and thereupon the plaintiff, by Carl Lentz his attorney, complains: For that whereas the defendant heretofore, to wit: on the first day of June, in the year of our Lord one thousand eight hundred and seventy-seven, at Newark, in the county of Essex, was indebted to the plaintiff in the sum of one thousand dollars for goods, wares and merchandise before that time sold and delivered by the plaintiff to the defendant at his request; and in one thousand dollars for work and labor before that time done and performed, and materials furnished by the plaintiff for the defendant at his request; and in one thousand dollars for so much money by the plaintiff before that time lent and advanced to the defendant at his request; and in one thousand dollars for so much money by the plaintiff

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before that time paid for the use of the defendant at his request; and in one thousand dollars for so much money by the defendant before that time had and received for the use of the plaintiff; and in one thousand dollars for interest upon and for the forbearance by the plaintiff to the defendant at his request of divers large sums of money before that time due and owing from the defendant to the plaintiff; and in one thousand dollars for so much money then and there found to be due from the defendant to the plaintiff on an account stated between them; and being so indebted the

10 defendant, in consideration thereof, then and there promised the plaintiff to pay him the said several sums of money on request. Yet the defendant hath disregarded his said several promises, and hath not paid the said several sums of money, nor any of them or any part thereof, although often requested so to do, but to do so hath hitherto wholly refused, and still doth refuse, to the damage of the plaintiff one thousand dollars, and therefore he brings his suit, &c.

Notice is hereby given, that this action is brought to recover the sum of four hundred and sixteen dollars, being for

20 so much money by Joseph Hensler paid for the use of the defendant, and at his request, in the matter of the minors, Michael Wallmann and Rose Wallmann, of whose property Frederick J. D. Rumpf was guardian, and on whose bond as such guardian, Joseph Hensler and Charles P. Bursch, the defendant, were sureties, and which Frederick J. D. Rumpf defaulted with the sum of twenty-two hundred and twenty-five dollars, the property of said minors, and was pursued by one Samuel Hauser, as agent of said Joseph Hensler and

30 Charles P. Bursch, and the sum of two thousand dollars recovered. By deducting said sum of two thousand dollars from the amount received by said Frederick J. D. Rumpf, with the interest due thereon, and the charges and expenses of said Hauser and E. Littell, and the other necessary expenses incurred by said Joseph Hensler at the request of said defendant, and a statement of which is hereunto annexed, there remains a deficiency of eight hundred and thirty-two

40 dollars, for the recovery of one-half of which said sum this action is brought.

Statement of Joseph Hensler, surety for Frederick J. D.

Rumpf, in the matter of Michael Wallmann and Rose Wallman, minors, in account with

CHARLES P. BURSCH, Co-surety.

1876, December 9th, amount received by Frederick J. D. Rumpf, as guardian of Michael Wallmann and Rosa Wallmann,	-	-	-	\$2,225 00	
Interest on \$2,225 00 from December 9th, A.D. 1876, to April 21st, 1877, (day when money was deposited in savings bank,)	-	-	-	57 10	10
Cash paid to Samuel Hauser, services, traveling expenses, &c.,	-	-	-	234 90	
Cash paid for Orphans' Court expenses and expenses to New York,	-	-	-	35 00	
Cash paid to E. Littell, for services	-	-	-	250 00	
Cash paid to C. Lentz, (counsel fee)	-	-	-	25 00	
Cash paid to C. Geissele,	-	-	-	5 00	
				<u>\$2,832 00</u>	
Amount carried forward	-	-	-	\$2,832 00	
Amount received by Samuel Hauser from Frederick J. D. Rumpf, at Harper's Ferry,	-	-	-	2,000 00	20
				<u>\$832 00</u>	
Total amount of loss,	-	-	-	\$832 00	
One-half loss to Joseph Hensler,	-	-	-	\$416 00	
"    "    C. P. Bursch,	-	-	-	416 00	
				<u>\$832 00</u>	<u>\$832 00</u>

Judgment will be claimed for four hundred and sixteen dollars, with interest from April 22d, A.D. 1877, besides costs of suit to be taxed.

And the said defendant, by Stone & Jackson, his attorneys, comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise, in manner and form, as the said plaintiff has above thereof complained against him, and of this he puts himself upon the country, and the said defendant doth the like. 30

Therefore, let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at

Newark, in and for the county of Essex, on the first Tuesday of September, in the year of our Lord one thousand eight hundred and seventy-seven, by whom, &c., and the same day is given to the parties aforesaid there, &c.

And now at this day, to wit: the seventh day of November, A.D. eighteen hundred and seventy-seven, before our said Supreme Court, at Trenton, comes the said plaintiff, by his attorney aforesaid, and the Justice before whom, &c., having sent hither his record had before him in these words,  
10 to wit:

Afterwards, to wit: At a Circuit Court holden at Newark, in and for the county of Essex, before David A. Depue, Esquire, one of the Justices of the Supreme Court, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and seventy-seven, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant by their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid in the plea aforesaid, being  
20 also summoned, come who to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath, that the said defendant, Charles P. Bursch, did undertake and promise, in manner and form, as the said plaintiff, Joseph Hensler, hath in his said declaration alleged, and they assess the damages of the said plaintiff by reason of the not performing said promises and undertakings, over and above the costs and charges by him about his suit in this behalf expended, at the sum of four hundred and sixteen dollars and five cents, and for those costs and  
30 charges —

Therefore, it is considered that the said plaintiff do recover against the said defendant his said damages by the jurors in form aforesaid found to four hundred and sixteen dollars and five cents, and also fifty-nine dollars and ten cents for his costs and charges by the Court now here adjudged to the said plaintiff, and with his assent, which said damages, costs and charges in the whole amount to four hundred and seventy-five dollars and fifteen cents.

Judgment signed, this seventh day of November, A.D. eighteen hundred and seventy-seven.

M. BEASLEY,  
*Chief Justice.*

I, BENJ. F. LEE, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment in above stated cause, as the same remains of record in my office.

{ L.S. } In testimony whereof, I have hereto set my hand  
and the seal of said Court, at Trenton, this 10  
twenty-fourth day of November, A.D. eighteen  
hundred and seventy-seven. BENJ. F. LEE,

*Clerk.*

# New Jersey Supreme Court.

ESSEX CIRCUIT.

SEPTEMBER TERM, 1877.

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JOSEPH HENSLER,

vs.

CHARLES P. BURSCH.

---

} *In Assumpsit.*

Be it remembered, that on this —— day of September, 1877, before the Supreme Court held at Newark, in the county of Essex, come on to be tried the above stated cause, upon the pleadings and issue joined therein, (*pro ut* the same), at which day comes before the said Court the said plaintiff and defendant, and the said jurors of the jury in this Court summoned likewise came, and were sworn to try the said issue joined, and upon said trial the said plaintiff produced the following testimony :

- 10 A petition to the Essex County Orphans' Court, for the appointment of a Guardian for Michael and Rosa Wallmann.

The order of the Orphans' Court appointing Frederick J. D. Rumpf such Guardian.

Also the Bond dated July 13, 1876, in the sum of \$6,000, signed by said Rumpf as principal, and said plaintiff and defendant as sureties.

Plaintiff's counsel opened the case.

Offered in evidence Petition.

Also Bond, 13th July, 1876, in the sum of \$6,000.

- 20 Whereupon plaintiff's counsel called—

GEORGE D. G. MOORE, sworn :

Q You are the Surrogate of Essex County ?

A I am.

Q Look at these papers?

A That is the appointment of Rumpf as guardian. This other paper is the bond.

[Execution admitted.]

Q Why is the affidavit dated July, and the bond dated September?

A The application was made in July.

Witness: There was a removal on the 3d April, 1877, and at the same time Mr. Hensler was appointed by the same order. 10

Q Have you the inventory?

A I suppose I have. Rumpf never presented an account. I think he presented an inventory, and also made sale under order of the Court and reported.

Q There was a sale of the real estate ordered when?

A September 12, 1876. It was for the support and maintenance of the minors under the statute. No new bond was given then, from the fact that at the time of the application made for guardianship that was to be the purpose, and the bond was taken to be sufficient to cover it. 20

Q Was there an inventory?

A Yes.

Q Give the date and amount of the sale?

A September, 12, 1876, and consisted of a tract of land, Wall street, Newark; there was no personal estate.

Q Was there a report of the sale?

A Yes; \$3,500 net. There was of that \$935 $\frac{76}{100}$  allotted to the widow in lieu of her dower.

Q What were the expenses?

A The expenses of the sale I can only approximate. 30  
There was an advertisement which might be perhaps \$12. I don't know whether they had an auctioneer or not; I guess Mr. Post did it; probably \$5. The expenses were perhaps \$35 or \$40 in all.

Q That would not include commissions?

A By statute no commissions can be allowed where the guardian or administrator has removed.

Q Has Hensler filed an inventory?

A No, sir; I think not.

*Q* You cannot tell exactly what would be the amount that would go to the credit of the minors?

*A* I don't know whether he paid the widow something for board of the minors; I have no account. I should say the whole expenses that he paid might run up to \$50.

*Cross-examined :*

I think Hensler paid the costs of Rumpf being removed and the new appointment.

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Plaintiff's counsel also called—

10 GUSTA WALLMANN, sworn :

I am the widow of Michael Wallmann, deceased. Michael and Rosa Wallmann are my children. I made the petition to have Rumpf removed and to have a new guardian appointed. I got my share.

*Q* Was anything paid to you by Rumpf for board of your minor children?

*A* No.

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The Court recalled—

GEORGE D. G. MOORE :

20 *Q*  $\$935\frac{76}{100}$  is the widow's third?

*A* Yes.

*Q* In arriving at that, did you deduct expenses?

*A* Deducting expenses, I think.

*Q*  $\$935\frac{76}{100}$  is not net?

*A* No.

*Q* The act required—the bond required it shall be according to the amount and value of the estate?

*A* Yes.

Plaintiff's counsel recalled—

30 GUSTA WALLMANN :

*A* Rumpf held \$3,500.

*Q* How much had Rumpf left after paying every thing?

*A* Between \$2,240.

Q Do you know what was paid out of that?

A No, Rumpf told me he had that left down at his office ; that is the only way I know.

Q Is Rumpf in town now ?

A I don't know, I have not seen him yet.

Plaintiff's counsel also called—

JOHN TAUWALT, sworn :

Q I am superintendent of Hensler's brewery ; I know Bursch the defendant.

Q Did you ever go to see him with reference to the 10 matter of which he and Hensler are liable in the matter of Rumpf ?

A Yes, April 9th, 1877, I made a memorandum of it; Mr. Hensler sent me ; I met him in his place—at his business place in Market st., corner of Canal ; Mr. Hensler sent me to tell Mr. Bursch it would cost considerable money to arrest Rumpf ; I told Mr. Bursch this matter was going to cost considerable money, and that gentleman asked me to ask whether he would pay one-half of the expenses of getting Rumpf arrested; he said he would be very glad to do it ; I think Bursch and 20 another gentleman was there when I had that conversation ; I told him we had employed three parties, I think that day ; I told him we had parties employed for his arrest ; I think I told him that day, Mr. Hauser and a gentleman of the name of Littell were employed ; I was directly specified to pay one-half of the expenses, whatever it would cost.

Q Was anything said what it would be ?

A. We could not tell, and he did not inquire.

Q. Did you see Mr. Bursch again, or go to the brewery ?

A. He went to see Hensler afterward, to the brewery ; 30 I think I saw him the same day or the next day ; I did not hear the conversation between him and Hensler.

Q. After that did you ever see Bursch again ?

A. Yes, I was sent to his place, to have him come to sign a new bond in the Surrogate's office.

Q. After February 9 did you go ahead with the attempt to find Rumpf ?

*A.* Yes, a dispatch was sent to Harper's Ferry to Samuel Hauser.

*Q.* When had you conversation again, afterward?

*A.* I think the time the new bonds were to be made.

*Q.* What did you go to see him for?

*A.* To ask him to come to the Court House.

*Q.* What did he say?

*A.* He was not at home; his son said he was not at home.

20 *Q.* Did you see Bursch again, after that?

*A.* Not in relation to this matter.

*Cross-examined :*

*Q.* What was the dispatch sent to Harper's Ferry?

*A.* There was a bill of items made up; I have got a messenger dispatch of Hensler—

(Witness read dispatch.)

I sent the dispatch; this Harper's Ferry dispatch was sent the same day of the conversation—right off.

*Further cross-examined :*

20 *Hauser sent a dispatch that he had seen his man at Harper's Ferry; I went to see Chief of Police Mills in regard to it; he sent a dispatch "arrest Rumpf, a German, for fraud;" the Chief did: he received a dispatch in reply "have arrested our man, please telegraph instructions."*

*Q.* What did you send?

*A.* We telegraphed him to hold him, and I went to Mills after that; he said he would have to find out; to see Jessup, and another dispatch was received from Hauser, whether he should settle for money, and I think he said if  
30 he could get a good price he was to settle, and he telegraphed to say he had settled and the money would come in a few days; I have not charged for the dispatches.

*Q.* What was the condition of Bursch's health 9th April?

*A.* He was round his store; it was on the morning of 9th of April; he was in the store; I think his health was good; he did not say his health was feeble.

*Q.* At subsequent time did you notice his feeble health?

*A.* No; I heard general reports he did not feel well.

*Re-examined :*

Q. Did you pay any of those expenses yourself?

A. I did.

Q. To Hauser and Littell?

A. Different amounts; once \$100, that was in the morning.

*By the Court :*

Q. To whom?

A. Samuel Hauser; and I paid \$150 to Littell, and there are memorandums on the cash book of expenses paid, but I cannot recollect them; I paid \$5 or \$10 for dispatches, I took no account of. 10

Q. Did Littell receive additionally \$150, afterwards?

A. He received \$250 by check, once \$100, and once \$150.

Q. How much was paid Hauser?

A. There were different amounts paid.

*Re-cross-examined :*

Q. Did not Hensler instruct Hauser to require the whole of this sum from Rumpf? 20

A. I think there was a certain amount set; a dispatch was sent to settle for \$2,000, if he could receive it.

Plaintiff's counsel also called—

SAMUEL HAUSER, sworn :

I am a resident of Newark; I know the defendant, Mr. Bursch, and also the plaintiff, Mr. Hensler.

Q. Were you ever employed by Mr. Hensler in the matter of pursuing Mr. Rumpf?

A. Yes.

Q. State the circumstances; how long were you about it; where were you employed? 30

A. I was sent for; that Mr. Hensler wanted to see me at my office; that was about the forepart of the month of March; in fact I was about three weeks at it altogether; I believe Rumpf left on the 17th of March; I had conversa-

tion with Mr. Hensler; we met here in the Surrogate's office; Mr. Bursch, Mr. Hensler and myself were all in, and after the Surrogate giving instructions, we went down street and stopped at Geiber's house, and there was a general conversation about expenses, and Mr. Hensler said Mr. Bursch, I don't know how to arrange it; Mr. Bursch said, I am bondsman as well as you are, and we will share it equal; and it is better to use some money to get Rumpf than lose all the amount; I went to New York—once Mr. Bursch  
 10 went with me; one Friday I received a clue to Rumpf's  
 01 whereabouts.

*Q.* At the meeting of the three together, was there ascertained the amount of money in the hands of Rumpf?

*A.* Merely in the same manner as the Surrogate here testified; the proceeds of the sale and the amount paid the widow in lieu of her right of dower.

*Q.* Was there any amount fixed as being in the hands of Rumpf?

*A.* Yes, the amount was stated, generally, at \$2,200.

20 *Q.* In the presence of Bursch?

*A.* Yes.

01 *Q.* Relate about the clue?

*A.* When I ascertained about Rumpf, as to his probable whereabouts, I wished to ferret out all I could, and made an appointment with Littell, from whom I heard it; and on that Friday, I believe the 6th of April, I made another appointment for the evening, and then another appointment for the morning, 6 o'clock; we met and went to Hensler's brewery, and there made a statement that I had a clue to the  
 30 whereabouts of Rumpf; a general conversation took place with regard to it, whether I sincerely believed I would find him, and we went before Justice Geissele to have papers prepared; the paper was drawn up and a warrant issued; Mr. Hensler returned with us to the brewery and advanced  
 02 \$100, which was paid to me for necessary traveling expenses.

*Q.* Is that the receipt you gave him for that money?

*A.* Yes.

[Plaintiff's counsel read in evidence receipt for \$100, dated April 7th, 1877.]

*Witness* : Mr. Littell and another gentleman—another young man, I believe his name is Joseph Rothschild—he went with us ; Littell understood Rothschild was going, as he knew facts not known to Littell, and Littell knew facts not known to Rothschild ; they insisted on going along together ; we took the 9:05 train on Saturday and went direct to Baltimore ; we looked around and ascertained that Rumpf had left for Frederick City ; we arrived in Frederick City in the evening, after dark, and in the register of the first hotel I went to I found his name as Frederick Ricord ; I knew his hand-writing ; and under the name of Frederick Ricord he was placarded as exposing spiritualism ; he went under the name of Frederick Ricord ; I made inquiries at that hotel and other places, and found at last that such a man went from the depot with full paraphernalia addressed Harper's Ferry, West Virginia. I induced a livery-stable keeper to hitch up and take us to Frederick's Junction, as it was necessary to reach Harper's Ferry by night ; I telegraphed ahead to stop there on signal, and an answer came back, if I would assume all expenses they were willing ; I arrived at Harper's Ferry on Sunday morning, the 8th of April ; in the baggage room of the station I found the baggage of Rumpf, addressed Harper's Ferry, West Virginia. In the morning I stopped at Mountain View, kept by a man named Green, who appears to be the Mayor of the city ; after seeing Rumpf, but he not seeing me, I telegraphed to Newark I had seen Rumpf, and for instructions. An answer came back, and also from Chief Mills to have the man arrested. I had a long interview with the Mayor, who said it was impossible to hold him as there was no charge before him, and the Mayor said if an affidavit was made that Rumpf had absconded and had some money belonging an estate, he would have Rumpf arrested and probably in the meanwhile a requisition would be obtained ; that was done ; and an officer, the town sergeant, arrested him ; at first Rumpf denied his identity, and then afterwards he admitted it. I employed a lawyer of the name of Charles Davis, to whom I paid \$100, April 8th ; I have the receipt here.

[Witness read receipt.]

It took several hours, during which time direct dispatches were sent by me to Mr. Hensler, and one or two to the chief of police here, and I received a number from Hensler, and two more from the chief of police. Finally an offer was made of settlement, and I telegraphed to Hensler to ask if I might settle so \$2,000 would be left; an answer came "I authorize you to settle for \$2,000, or I will be satisfied with the \$2,000;" upon receipt of that the matter was settled; Rumpf paid the sum of \$2,200, out of which I paid that \$100, and also I

10 paid expenses charged there at Harper's Ferry.

Q The amount you received from Rumpf was \$2,200?

A Yes.

Q That money was paid to you by Rumpf?

A Yes, which money, after I came back to Newark—I left there about after midnight, and in the morning I believe by 7 o'clock, Mr. Hensler had the money from me.

Q Who was with you all this time?

A Mr. Littell and Mr. Rothschild.

Q Look at this receipt?

20 A When I paid this money over to Hensler, he handed me \$100, on account of services rendered in Rumpf's case; I received \$100 for traveling expenses, and \$100 for services for the three of us.

Q After that did you obtain any more money from Hensler?

A Yes,  $\$34\frac{90}{100}$  for money expended by me irrespective of fee to me of \$100; my bill of expenses I rendered was  $\$134\frac{90}{100}$ —\$100 I had received, and this  $\$34\frac{90}{100}$  is the balance; it amounted to  $\$134\frac{90}{100}$ .

30 Q For all three of you?

A Yes.

Q Have you received more than  $\$234\frac{90}{100}$ ?

A  $\$134\frac{90}{100}$  was the full amount of the expenses, and \$100 my fees, I think with the exception of one \$10, for which he has not receipted—I think that is all.

Q Was it not \$16.

A That was before I went to Harper's Ferry; Hensler was with me in New York; Monday, Tuesday, Wednesday, Thursday and Saturday I was in New York; I think it was

40 about \$19.

*By the Court :*

Q \$100 before you left, \$100 on your return, \$34  $\frac{90}{100}$  making up expenses, and about \$16 you received for expenses in New York before you went to Harper's Ferry ?

A Yes ; going to New York on five different occasions.

*Further examined :*

Q After your return had you conversation with Bursch ?

A I had ; the day I handed the money to Hensler or the day after ; I think the day after—after he read it in the paper that I had returned ; it was two or three doors below 10 my office ; Bursch met me in conversation with Justice Volz, and two or three other gentlemen ; Bursch said he was glad we succeeded, and was sorry he did not go along ; and he said, Did you make a big bill and expenses ? I said, not very ; he said it costs money anyhow ; I have got to pay half of the expenses ; Hensler don't pay everything ; I have got to pay half of everything ; I said that was the agreement in the first place.

Q Have you seen him since that conversation ?

A I think not, except once, either the same day or day 20 following ; I was requested to see him by Mr. Hensler, and bring him down to the brewery to settle, and he said he would go down ; I think I met him ; I went to his store on one occasion when he was not to be seen, as his son told me ; Bursch told me he was hard up for money ; he had lost money on Rumpf's endorsed notes, and that Hensler would not be hard upon him ; he was a rich man, and he would secure it with his note.

Q Did he make inquiry as to expenses ?

A No.

*Cross-examined :*

He made no inquiry as to expenses ; I think one day when I went, his son said his father was sick and could not be disturbed ; I have been acquainted with Mr. Bursch a number of years ; I did not know he had been ill the last two or three months.

Q You say \$100 was paid to counsellor Davis ?

A It was for urging Rumpf to get this matter settled.

He said if through his influence the money was received, and through his urging, he was to receive that \$100; he would not do it any other way; Rumpf wanted to see him, too.

Q You gave a larger fee?

A I found out Rumpf had already engaged him. The keeper of the hotel was a justice of the peace. He drew up the papers, and had his office open all day.

10 Q Was Davis instrumental in procuring the arrest of Rumpf? did Davis draw the paper on which he was arrested?

A No; I drew the papers, and I drew the papers at Harper's Ferry. Rumpf was in custody of the town sergeant. Davis went to see the chief magistrate of the place, and they had a private conversation, and he had to use influence with Rumpf, Rumpf having stated at last he would return to New Jersey, and I had no papers to hold him. I was afraid he would get from there, and I telegraphed for requisition, and we could not get it in time, and I had to do all I could, and it was on the express terms if the money was received Davis was to receive \$100, though I had only  
20 received \$100 for the three of us and expenses.

Q How did the other \$100 go?

A I had to use money, as I have already intimated, for influencing the Mayor of the city, Mr. ———; he told me motion would be made to discharge him and he would discharge him—he could not hold him; and he cited another case where he had trouble, and he was going to let the man go, and I had to take up with what he demanded; I gave him \$50 out of that, and \$25 to the town sergeant.

30 Q Did you have Justice Geissele's warrant with you?

A Yes.

Q Did you show it to Rumpf?

A No; after Rumpf was held I told him how I was situated, and was sent on to find him, and had my complaint; and he said he was advised he could get an examination and thought we could not hold him at Harper's Ferry, and I showed him the dispatch that a requisition would come tomorrow; I believe that dispatch was from Hensler; I received but two dispatches from Chief Mills, one for the arrest,  
40 "have Rumpf arrested," and the other was "hold him by all

means;" and the dispatch was directed to the Chief that the requisition would be received to-morrow. Hensler's dispatches were first "have him arrested;" next "have you had Rumpf arrested, inform me immediately?" another, "Detective will be sent, hold him;" the last one, "I am satisfied," or "you may settle with the \$2,000." Rumpf paid in cash in the evening of the first day I saw him; he was taking a little exercise outside the hotel.

Q Did you go through the form of arresting him yourself?

10

A No, merely to identify him; I said this is Mr. Rumpf of Newark, New Jersey; I told Rumpf of the petition of removal, and of Hensler's appointment.

Q And of Hensler's application to Judge Geissele, for warrant?

A No.

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Plaintiff's counsel also called—

EDGAR S. LITTELL, sworn:

Q Were you employed in the matter of discovering the whereabouts of Rumpf?

20

A Yes.

Q By whom?

A Hauser.

Q Did you succeed in obtaining the particulars of the whereabouts of Rumpf?

A Yes.

Q And you so informed Hauser?

A Yes.

Q What was agreed upon when the information was furnished as to the price you were to receive for that?

30

A One hundred dollars on the procuring of Rumpf, and \$150 more, provided he paid \$2,200.

Q Mr. Littell, did you leave with Hauser that morning?

A Yes.

Q And Rothschild?

A Yes.

Q And proceeded to Harper's Ferry?

A Yes.

*By the Court :*

Q You went to Baltimore and Frederick City, and afterwards to Harper's Ferry ?

A Yes.

*Further examined :*

Q After you returned did you receive any money ?

A Yes; \$250.

Q Did you give a receipt ?

A Yes; my receipt is there.

10 *By the Court :*

Q You received all that money ?

A Yes.

*Further examined :*

Q You were the only party that had a clue to the whereabouts of Rumpf ?

A Yes.

Q And the understanding was you were to receive that price ?

A Yes; I made a bargain with Hauser.

20 *By the Court :*

Q When was it you first told Hauser you knew about Rumpf ?

A I think it was on the 6th of April.

Q When did you make your bargain ?

A It was on Saturday morning, the 7th. I will contradict what I said about the 6th of April.

Q Is that the paper ?

A Yes.

[Plaintiff's counsel read paper in evidence.]

30 *Cross-examined :*

Q Why was it necessary for Rothschild to go with you ?

A Because I would not go without him.

Q Was any bargain made ?

A All the bargain was, I would not go without he went.

Q Was Rothschild to receive pay ?

A No.

Q How long were you gone altogether ?

A From Saturday morning until the following Thursday morning, to Thursday night; I stopped at Baltimore myself; I had some friends there I wanted to see again. This agreement was made on the 7th, Saturday morning.

Q How long were you kept at Harper's Ferry, what time did you go back to Baltimore ?

A I left Harper's Ferry Saturday night and got to Baltimore the next day; we did not like the town for a cent; he had a pile of money and did not like the looks of people there, and sooner we got out the better it was; Rothschild, my friend, saw Rumpf first; I don't know what Rumpf said to him; I did not see Rumpf until I saw him in the room of the hotel with the town sergeant; the Mayor of the town said he would not hold him until somebody identified him first off; he would not attempt it, and I showed Rumpf something in my pocket and Rumpf said, "Aint you all smart with me?" and finally he said, "yes, I know you." 20

Q After the Mayor received \$50 he was willing to hold Rumpf?

A That I cannot swear, whether he received \$50.

*By the Court :*

Q Do you know anything about the settlement with Rumpf, as to what was done ?

A Yes; I see \$2,000 myself when he moved out of town.

*Further examined :*

I did not see it when Rumpf turned it over. I saw \$2,000 in Hauser's hands. I did not count but Hauser told me, and I took his word. 30

Plaintiff's counsel also called—

FREDERICK FAUST, sworn :

I am Justice of the Peace of this community.

Q Do you remember being present at a conversation between Bursch and Hauser, in reference to the Rumpf matter ?

A I heard a conversation; I cannot recollect the date; it was in spring; it was the day after Hauser returned; I read a paper that he returned, and able to pay \$2,000, and Bursch happened to pass by, and he stood alongside of us, and two, three or more friends of mine listened to the story Hauser told us, and he said all was settled; Bursch asked how much the expenses were; Hauser did not say anything particular, but said they made it pretty reasonable, and Bursch replied he could not make it too high; Hauser said 10 they had an agreement for Bursch to pay part, and Bursch said I have to pay half of it, and I went off and I don't know what they said after that.

*Cross-examined:*

Houser said they had an agreement together, but I don't know particularly, but he was to pay a share of it.

Plaintiff's counsel also called—

JOSEPH HENSLER, sworn:

I am the plaintiff; I remember the time Rumpf left the city; I remember going down to Bursch's store.

20 Q Who went down with you?

A Mr. Lentz himself.

Q Where did you go to—what place?

A In the store and then Mr. Bursch took us to the back there.

Q In the office?

A Yes.

Q Be kind enough to relate to the jury, what took place in that office?

30 A We went in to see Mr. Bursch, and Mr. Bursch said that it was hard of Rumpf going and taking the money, and I think Mr. Lentz said, now Mr. Bursch how is your standing, have you got property, if you have to pay half the bond; he said yes, it belongs all to me.

Q What was said afterwards about looking after Rumpf; employing men to send after Rumpf?

*A* Yes, we had an understanding that Hauser must go and seek him that very day; but that was the understanding.

*Q* Did Bursch say anything with reference to the expenses?

*A* That Bursch had got to pay half share of the expenses, that is what I understood.

*Q* Was anything said about the expenses to be incurred in seeking Rumpf?

*A* That I cannot recollect; we were not over ten minutes in Mr. Bursch's place. 10

*Q* Was anybody else there?

*A* I guess his son was in the store, but not in the back office.

*Q* Had you subsequent conversation after that?

*A* Yes.

*Q* When?

*A* One day up to the Orphans' Court room, with Hauser and Mrs. Wallmann.

*Q* What took place?

*A* He inquired of Mr. Moore what the amounts were; 20 how much he had got to pay, and Mr. Moore said there was a bond for \$3,000; \$6,000.

*Q* What was said as to the amount of money being in the office of Rumpf?

*A* I could not say exactly for sure how much Mr. Bursch said—he first inquired the amount of the penalty on the bond, and Mrs. Wallmann—I don't know whether she was that day or not—Mrs. Wallmann, in the Court House, stated she had received money of Mr. Rumpf, and had left a balance due her of \$2,235. 30

*By the Court :*

*Q* It was said by Mrs. Wallmann in the presence of the defendant?

*A* Yes.

*The Court :* I exclude that.

*Further examined :*

*Q* At that time was anything said about employing any one to go after Rumpf?

*A* I could not say that we made an employment to send after Rumpf that day.

*Q* Was anything said that day about sending anybody after Rumpf; employing a detective or any one?

*A* The first I met Mr. Hauser.

*Q* Did you go to Mr. Geissele?

*A* That is all three of us.

*Q* Was anything said about sending after Rumpf?

*A* Yes; Hauser had charges against us for \$15 for 10 going to New York, and the Surrogate's office, and I held out this \$15 and Bursch said he would pay off part some times.

*Q* What was said about sending to Harper's Ferry to find Rumpf?

*A* I sent Francis Kergau to Delaware Water Gap, and gave him \$20.

*Q* What was it you and defendant agreed upon?

*A* We never had an understanding that we should send some one after that day.

20 Adjourned.

*Q* Did Mr. Bursch ever come out to your brewery?

*A* Yes.

*Q* What did he do there, and what was done there; in the first place when was it?

*A* I could not say exactly the day, but Mr. Bursch came to me in my office; it was after Rumpf had left.

*By the Court:*

*Q* Was it after Tauwalt sent up to Bursch?

*A* Yes.

30 *Q* How soon after?

*A* I could not tell how soon after; I think the next day.

*Further examined:*

I think Tauwalt and his brother was present; I said to Bursch, we have got to stand the whole expenses; we had got to agree together, and Bursch said yes, we have got to do so.

*Q* Was there any arrangement between you and Bursch as to how it should be settled?

*A* The arrangement was made between us; we had to stand all expenses sending Mr. Littell, and Hauser and Rothschild to Harper's Ferry; I told Bursch we must stand the whole expenses; Bursch said yes, we have to do so; that was our agreement together.

*Q* Previous to that time Bursch came and you had conversation, had you seen Bursch and had conversation about the matter? 10

*A* I went one day to his office and saw Bursch, and he said, I am sick to-day, I cannot do anything; but at the same time he was behind his counter in the store; he was not so very sick, I believe.

*Q* Did Bursch after that time come to your brewery?

*A* Yes, he came once over.

*Q* What for?

*A* To see me on account of this matter of Rumpf.

*Q* What took place then?

*A* He met us down in the yard of the brewery—not in the office—myself and Bursch; I told Bursch there was no other help, we got to pay the whole expenses, and Mr. Bursch said yes. 20

*Q* The whole expenses of what?

*A* The deficiency to the Orphans' Court and the expenses of different services sending out to Rumpf.

*Q* Give the words, as near as you can?

*A* Mr. Bursch said he would do so; then we have to pay we must pay that together; that is all the talk we had together; I gave Bursch a glass of beer and then he went off; another time I went to his store and he was down, and he did not give any answer at all, and I went out—that was four or five weeks after that—his son and Mr. Bursch was there. 30

*Q* Did Bursch ever tell you the manner in which he would pay?

*A* He did not say that, he always said, one time that was the time before the last, he said I am sick, I cannot do anything now.

*Q* Before that, when he was at your brewery, did he 30

ever tell you he would pay by cash, or mortgage, or how?

*A* He did not say that.

*Q* What did he say?

*A* Only that we must pay together the whole amount.

*Q* Did you tell him what amount it was?

*A* I cannot say.

*Q* Did you give him a statement prepared by me?

*A* I guess I did not.

*By the Court :*

10 I told him what I had paid out, but cannot recollect what the amount was.

*Q* What did he say about that?

*A* I don't recollect what he said.

*Further examined :*

*Q* When you had your first conversation with Bursch about this matter, was anything said that you were to take charge of the matter—that you were to manage it?

*A* Yes.

*Q* What?

20 *A* The time I met Bursch at his place we had conversation together, and Bursch said himself he would have to pay a-half part and I would have to pay a-half part of the whole amount.

*Q* What was said about who was to look after the matter, were you to do it?

*A* Yes—Bursch said he wished he could catch Mr. Rumpf, and I said we will try the best we can.

*Q* Mr. Hensler, was there anything said prior to that time as to your taking the charge of catching Rumpf?

30 *A* Mr. Bursch said so, yes.

*By the Court :*

*Q* What did he say?

*A* He said somebody would be sent for Mr. Rumpf, and so I did.

*Q* Who did he say was to do it?

*A* He could not say who until Hauser and Littell came to me one morning.

*Further examined :*

Q You paid these moneys out to Hauser and Littell ?

A Yes.

Q Did you pay any sum of interest to Mrs. Wallmann to support the children ?

A \$657.10.

*By the Court :*

Q When ?

A That was about, I think, in May.

*Further examined :*

10

Q That was interest to the time you deposited the money in the bank ?

A Yes.

Q Look at that bank book, is that yours ?

A Yes.

Q The Germania Bank ?

A Yes.

[Plaintiff's counsel read items in bank book in evidence.]

Q That money is in the bank there now for this minor child ?

20

A Yes.

Q Did you pay any sum of money to Geissele ?

A Yes.

Q For what ?

A For some writing.

*Cross-examined :*

Q Is this your affidavit, prepared—see if your name is at the foot of that ?

A Yes, that is my name.

Q Did you see the warrant issued by Squire Geissele ?

30

A I think I did.

Q See if this is it ?

A Yes.

Q Did you receive that from the Squire, or did you from Mr. Hauser ?

A Mr. Hauser.

(Defendant's counsel offered warrant issued by said Geissele, and affidavit of said plaintiff in evidence; the warrant being to arrest Frederick J. D. Rumpf for embezzlement of the moneys of said minor.)

Q Did you see them after the warrant was brought back from Maryland?

A No.

Q When you had this conversation with Bursch you say sometimes he was sick, feeble?

10 A One day.

Q He was not in good health?

A No, not in good health.

Q When you went to Geissele's office you had no plan by which to arrest Rumpf?

A Not at that time.

Q The language used, can you tell what you said and what Bursch said?

A I could not give an account of what Bursch said, but I only said we had to pay just the amount together.

20 Q And did not speak of Littell and Sam to him?

A No.

Q Nor Rothschild?

A No, he had no pay from me at all.

Q You did not mention Hauser's expenses?

A We had to pay his expenses together.

Q You did not mention what the expenses of Hauser would be.

A No, the time was too short; the conversation was at 7 o'clock, and we went on the train by 8 o'clock—half-past 8.

30 Plaintiff also called—

CARL LENTZ, sworn:

Shortly after—a few days after Rumpf had left the city—Mr. Hensler came to me and requested me to go with him to Bursch's place of business, Railroad avenue, at the corner of Commerce street; I went with him and found Mr. Bursch in the store, and his son; Mr. Bursch took us into the back room, and I explained to Mr. Bursch that Rumpf had left

the city, and that he and Mr. Hensler had signed the bond for the orphan children of Michael Wallmann, and that there ought to be some steps taken to see if they could get the money Rumpf had in his hands, or for making provision about payment; and he told me he had lost other moneys by Rumpf on endorsed notes, and it would come hard on him to pay his share of the bond, but he would have to do it; and he asked if Mr. Hensler would advance the money, and he would secure it to him by mortgage; I asked him if the property was in his own name; he said yes; he also said he could not give a first mortgage because of mortgage already on it; I said steps ought to be taken to recover the money of Rumpf, and both Hensler and Bursch told me to look after the money. 10

I went to the Court House and searched the records; I found he had conveyed all his property, except some property in West street, Bursch and him had bought together, and in Chancery suit *lis pendens* were filed; I went back and informed Mr. Bursch of that fact; I went to the Academy of Music and met Bursch again; he asked what steps had been taken; I told him I had heard nothing; it was understood if I had clues to send after Rumpf, and when I heard anything I would inform him; I didn't hear anything of the matter until Saturday when I met Mr. Hensler at the State Trust Company's, and Mr. Hensler informed me Hauser had been sent after Rumpf; I told Hensler I had great doubts of his action in sending Hauser after Rumpf, and suggested the idea of sending a detective afterwards. 20

Steps were then taken at the chief of police office procuring warrant and requisition and sending out detective; the whole day passed away and on Sunday morning Tauwalt came and said a telegraph dispatch had been received from Hauser, that he had the money and all was right; I then still insisted on a detective being sent, but did not want to incur additional expense. 30

On Tuesday or Wednesday Hensler came in and said that money, \$2,000, had been recovered; I immediately prepared a statement of expenses account and wrote Mr. Bursch a letter, asking him to contribute to the expenses, or for settlement of it; I never heard from Mr. Bursch; Mr. Hensler 40

came to my office several times; I told him to go to Mr. Bursch; after that I never saw Mr. Bursch again; and Mr. Hensler against my advice got appointed guardian through the instrumentality of Mr. Hauser and Mrs. Wallmann; Mr. Hensler paid me \$20 for my services in the whole matter.

*By the Court :*

*Q* Were you paid for services to arrest Rumpf?

*A* No more so than altogether; I did not know it until after Hauser had started, and the papers were prepared  
10 without me; at the first meeting I was authorized to obtain the money if I could; I searched the records and found the property all conveyed, except property in West street, and I found *lis pendens* in a Chancery suit; I also tried to see parties and ascertain whether they had clues of the whereabouts of Rumpf; and I received \$25 on the whole account; I considered myself instructed to act for both bondsmen to secure the payment of the money.

*Cross-examined :*

I also attended the Orphans' Court.

20 *Q* Would not part of that fee be properly chargeable for services to the estate? could not they be allowed out of the estate?

*A* I don't know; I did not render services in the removal of Rumpf, for the reason Mr. Hensler was appointed, and I did not know he had been appointed until he told me.

*Q* What was your objection to Mr. Hensler being appointed guardian?

*A* So long as not contributed share of bond and not settled.

30 *Q* What objection had you to Hauser acting without a detective?

*A* I don't know as I like to answer that question; I simply thought it advisable.

*Q* In your statement given to Mr. Bursch, you did not give the items, you merely said \$420?

*A* I prepared a statement of the expenses; I mailed it to him with a letter.

(Plaintiff's counsel read in evidence letter, dated June 13th, 1877.)

Q You are general counsel for Mr. Hensler.

A Yes.

Q But not for Mr. Bursch?

A I have not been employed for Bursch.

(Defendant's counsel read in evidence affidavit and warrant. See schedule.)

Plaintiff's counsel called also—

JOHN R. SCATTERGOOD, sworn :

10

I am Assistant Surrogate of this county ; I was present at the time of the settlement with respect to the minor children of Michael Wallmann, deceased.

Q Do you remember how the sum of \$2,225 was ascertained?

A There was widow's dower, and expenses of sale out of it, and my recollection is after the sale the purchaser discovered there were taxes; I think between \$200 and \$300.

Q Who was present when it was ascertained to be \$2,225?

20

A The purchaser, Mr. Rumpf and myself.

Q Was Mr. Jackson present?

A No.

Plaintiff rests.

Defendant's counsel moved to non-suit the plaintiff, on the ground that the action was premature, because the plaintiff has made no payment; is still in funds and cannot recover on contribution from his co-surety, unless he has actually paid the debt; also for that plaintiff cannot recover, as the services sued for was performed and the charge made in 30 compounding a crime. Cites *Brittan vs. Chegary*.

The Court refused to non-suit and defendant prays exception, and same granted.

The defendant by his counsel excepted to the ruling of

the Court as above recited, in refusing to non-suit the plaintiff, and prayed that this his bill of exception might be sealed, and it is sealed accordingly.

DAVID A. DEPUE, J. S. C.

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SCHEDULE.

The following are copies of the affidavit and warrant above referred to :

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX, } ss.

- 10 Joseph Hensler, of the city of Newark, county and State aforesaid, being duly sworn according to law, on his oath saith, that on the fifth day of September, eighteen hundred and seventy-six, one Frederick J. D. Rumpf was by the Orphans' Court, of the county of Essex aforesaid, appointed guardian of Michael Wallmann and Rosa Wallmann, minor orphans. That deponent and one Charles P. Bursch, of said city of Newark, became bondsmen for said Rumpf that he would faithfully perform his duties as such guardian. Deponent saith that on or about the seventeenth day of
- 20 March last past, the said Frederick J. D. Rumpf absconded, and did take and carry away with him, as has been sworn to in a petition presented by the mother of said minor orphans to the Orphans' Court aforesaid, the sum of no less than twenty-two hundred dollars belonging to said children, and which was entrusted to said Rumpf. Deponent charges, that as said Rumpf did not faithfully perform his duty as guardian as aforesaid, but did embezzle the money entrusted to him, and did appropriate the same to his own use, therefore deponent and said Bursch are responsible for the
- 30 amount so embezzled and obliged to pay the same. Deponent saith, that on Tuesday, April third, last past, said Rumpf was, by the order of the Orphans' Court of the said county of Essex, removed as the guardian of said minor

orphans. Deponent prays that a warrant may issue, that the said Frederick J. D. Rumpf be apprehended and dealt with as law and justice may require.

Sworn and subscribed before me, }  
 at Newark, N. J., April 7th, } JOSEPH HENSLER.  
 A.D. 1877, }

CHARLES F. GEISSELE,  
*Justice of the Peace.*

STATE WARRANT.

STATE OF NEW JERSEY, } ss.  
 ESSEX COUNTY, }

[L. s.] To any Constable of said County. Greeting:

Whereas, Joseph Hensler, residing at number 73 Ham. 10  
 burg place, hath this day made complaint on oath before  
 me, that on the seventeenth day of March, 1877, one  
 Frederick J. D. Rumpf did abscond and embezzle the sum  
 of twenty-two hundred dollars, you are therefore commanded  
 to apprehend the said Frederick J. D. Rumpf, if to be found  
 in your county, and him forthwith bring before me, or some  
 other justice of the peace of said county, to answer the said  
 complaint. Hereof fail not. Given under my hand and  
 seal, this seventh day of April, 1877.

CHARLES F. GEISSELE, 20  
*Justice of the Peace.*

Endorsed: Public justice requiring that the within pro-  
 cess to arrest Frederick J. D. Rumpf should be executed  
 immediately, and no constable being at hand in time, I do  
 hereby appoint Samuel Hauser, a citizen of this State, to  
 execute the same. Witness my hand and seal, this 7th day  
 of April, A.D. 1877.

CHARLES F. GEISSELE, [L. s.]  
*Justice of the Peace.*



*Exhibits on part of Defendant in Error.*

## EXHIBIT A, 1.

*To the Judges of the Orphans' Court of the County of Essex :*

The petition of Augusta Wallmann, of the county of Essex, respectfully showeth that Michael Wallmann, late of said county, lately died leaving Michael Wallmann and Rosa Wallmann his children, minors, now under the age of fourteen years, and without having disposed of the guardianship of said children; that the said minors are possessed of and entitled to property requiring the care and attention of a guardian; which property, as nearly as your petitioner can judge, is of the value of about three thousand dollars, being real estate which has a rental value of about two hundred and fifty dollars per year. 10

Your petitioner, who is the mother of said minors, therefore prays that the guardianship of said minors may be granted to Frederick J. D. Rumpf, until they shall attain the age of fourteen, and shall choose another person; said guardian offering sureties in a bond given according to law. 20

Dated this July 8th, 1876.

AUGUSTA WALLMANN.

ESSEX COUNTY, ss :

Augusta Wallmann, the within-named petitioner, on her oath says that the statements in the foregoing petition made are true.

Sworn and subscribed before } AUGUSTA WALLMANN.  
me this July 8th, 1876,

GEO. D. G. MOORE,  
*Surrogate.*

Filed July 8th, 1876.

GEO. D. G. MOORE, *Surrogate.* 30

The Court grant the within petition, September 5th, 1876.

C. S. TITSWORTH,  
F. W. RICORD,  
RUFUS F. HARRISON.

## EXHIBIT A, 2.

STATE OF NEW JERSEY, }  
 ESSEX COUNTY, } ss :

Charles P. Bursch and Joseph Hensler, the sureties named in the annexed bond, being duly sworn on their oaths, do say that they are residents of the county of Essex, and that they are severally worth six thousand dollars in real estate in their own right, in fee over and above all just debts and liabilities existing against them, and over and above all in-  
 10 cumbrances on said real estate.

Sworn to and subscribed before } CHARLES P. BURSCH,  
 me, this 13th day of July, }  
 A. D. 1876, } JOSEPH HENSLER.

JNO. R. SCATTERGOOD,

*M. C. C. of N. Jersey.*

Know all men by these presents, that we, Frederick J. D. Rumpf, Charles P. Bursch and Joseph Hensler, are held and firmly bound unto the Ordinary of the State of New Jersey, in the sum of six thousand dollars, to be paid to the  
 20 said Ordinary, his successors and assigns; to which payment, well and truly to be made, we bind ourselves, and each of us for himself jointly and severally, our and each of our heirs, executors and administrators. Sealed with our seals, and dated this fifth day of September, in the year of our Lord one thousand eight hundred and seventy-six.

The conditions is, that whereas the Orphans' Court of the county of Essex, hath this day appointed the said Frederick J. D. Rumpf, to be guardian of the persons and estate of Michael Wallmann and Rosa Wallmann, orphan minors,  
 30 under the age of fourteen years:

Now, therefore, if the said Frederick J. D. Rumpf, shall faithfully execute his said office of guardian, then this obligation to be void, or else to remain in full force and virtue.

Signed and delivered in } FRED'K J. D. RUMPF, [L. S.]  
 the presence of } CHARLES P. BURSCH, [L. S.]  
 JNO. R. SCATTERGOOD. } JOSEPH HENSLER, [L. S.]

Recorded in book C of Guardians' Bonds, on page 116.

GEO. D. G. MOORE, *Surrogate.*

## EXHIBIT B, 1.

To the Honorable Judges of "The Orphans' Court" of the  
County of Essex :

Your petitioner, Augusta Wallmann, mother of Michael Wallmann and Rosa Wallmann, orphan minors, under the age of fourteen years, (the said Michael being seven and Rosa five years of age,) respectfully showeth, that on the fifth day of September, eighteen hundred and seventy-six, Frederick J. D. Rumpf was appointed guardian of said minors. That on the seventeenth day of March last past, the said Frederick J. D. Rumpf absconded, and that his whereabouts are unknown; that he the said Frederick J. D. Rumpf, as guardian of said orphan minors, had in his possession the sum of twenty-two hundred dollars in money belonging to said orphan minors.

Your petitioner therefore prays that the said Frederick J. D. Rumpf, may be removed as the guardian of said orphan minors by the order of the Court, and that Joseph Hensler, Esq., of the city of Newark, county of Essex, and State of New Jersey, be appointed such guardian in his stead.

Dated Newark, N. J., March 28th, A. D. 1877.

AUGUSTA WALLMANN.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss :

Augusta Wallmann, of full age, being duly sworn according to law, on her oath saith, that the matters and things in the foregoing petition set forth are true in every respect.

Sworn to and subscribed before  
me, at Newark, N. J., } AUGUSTA WALLMANN.  
March 28, A. D. 1877,

FRED LUM, *Master in Chancery of N. J.*

Filed April 3d, 1877.

GEO. D. G. MOORE, *Surrogate.*

The Court grant the within petition and appoint Joseph Hensler guardian of said minors, he first entering into bonds in the sum of forty-four hundred dollars, with Adolph Hensler and Adam Reibold as sureties.

April 3d, 1877.

C. S. TITSWORTH,  
AMZI CONDIT,  
F. W. RICORD,  
JOHN H. MEEKER.

## EXHIBIT B, 2.

Know all men by these presents, that we, Joseph Hensler, Adolph Hensler and Adam Reibold, all of the city of Newark, in the county of Essex, are held and firmly bound unto the Ordinary of the State of New Jersey, in the sum of forty-four hundred dollars, to be paid to the said Ordinary, his successors and assigns; to which payment, well and truly to be made, we bind ourselves, and each of us for himself jointly and severally, our and each of our heirs, executors  
 10 and administrators. Sealed with our seals, and dated this third day of April, in the year of our Lord one thousand eight hundred and seventy-seven.

The condition is, that whereas the Orphans' Court of the county of Essex, hath this day appointed the said Joseph Hensler to be guardian of the persons and estate of Michael Wallmann and Rosa Wallmann, orphan minors, under the age of fourteen years :

Now, therefore, if the said Joseph Hensler shall faithfully execute his said office of guardian, then this obligation to be  
 20 void, or else to remain in full force and virtue.

Signed and delivered in the presence of Geo. D. G. Moore. }	JOSEPH HENSLER,	[L. S.]
	ADAM REIBOLD,	[L. S.]
	ADOLPH HENSLER,	[L. S.]

Filed April 3d, 1877.

Recorded in book C of Guardians' Bonds, on page 143.

GEO. D. G. MOORE, *Surrogate.*

## EXHIBIT C.

*The German Savings Bank, in account with*

JOSEPH HENSLER, guardian for  
 Michael Wallmann and Rosa Wallmann.

30

Dr.

Cr.

1877.	
Apl. 23. Twenty two Hun-	\$2225 00
dred and twenty-	
five Dollars,	
(Int. Apl. 1, '77.)	

## N. J. Court of Errors and Appeals.

NOVEMBER TERM, 1877.

CHARLES P. BURSCH, <i>Plaintiff in Error,</i> <i>vs.</i> JOSEPH HENSLER, <i>Defendant in Error.</i>	}	<i>In Error          from Su-          preme Court.          Assignment          of          Errors.</i>
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Afterwards, that is to say, on the third Tuesday of November, eighteen hundred and seventy-seven, before the Court of Errors and Appeals of New Jersey, at Trenton, came the said Charles P. Bursch, by Stone & Jackson, his attorneys, and says, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit:

1. Because the Justice of the Supreme Court Circuit in and for the County of Essex, at which the issue joined in the Court below was tried, after the plaintiff had offered his evidence to the Court and Jury, and rested his case, refused to grant the motion made by the defendant to non-suit the plaintiff. 10
2. Because the said judgment is in other respects erroneous and contrary to law.
3. Because, by the record aforesaid, it appears that the judgment aforesaid was given against the said Charles P. Bursch, whereas it ought to have been given in favor of the said Charles P. Bursch.

And the said Charles P. Bursch prays that the judgment 20

