

ROBERTS vs. MADDOX.

Where an infant sues by guardian, upon a contract made by defendant with the infant for the hire of a slave, the breach must allege non-payment to the guardian. He is the only person legally authorized to receive payment.

THIS was an action of assumpsit, determined in the Van Buren Circuit Court in May, 1843, before the Hon. THOMAS JOHNSON, one of the circuit judges. *Oba Roberts*, an infant, by his guardian, *George Counts*, sued "John Maddox, administrator," &c. of Duke H. Griggs. The declaration stated that *Griggs* in his life time was indebted to *Roberts* in \$1,000 for hire of a negro man belonging to *Roberts*; and in another like sum, for so much money by the said Duke H. in his life time &c. with promise and assumpsit to *Roberts*, by *Griggs*—with breach of non-payment by *Griggs* or *Maddox* as administrator, to *Roberts*. Demurrer to declaration overruled, final judgment against defendant, and appeal.

The case was argued here by *Fowler* for the appellant, and *Linton & Batson* for the appellee.

By the Court, LACY, J. The declaration is defective in not alleging the proper breaches. It declares that neither the intestate in his life time, nor his administrator, since his death, has paid hire to the infant; but it wholly omits to aver that they have not paid it to the guardian, who is the only person legally authorized to receive it. An infant, who has a guardian regularly appointed, can only act by or through such guardian; and therefore it is necessary to aver a non-performance to the guardian. The demurrer was rightfully taken. Judgment reversed.
