No. 8593

Supreme Court of Illinois

People, who sue

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vs.

H.A.Organ et al

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

THE PEOPLE, &c.,
vs.
H. A. ORGAN, et al.
} Error to Clay.

BRIEF OF DEFENDANTS IN ERROR.

The only question presented by this record is this— The bond sued on being blank as to the amount when signed by the securities, and no authority shown to fill it up, is it therefore void as to them?

The law once was that after a deed was executed no change could be made, even with the consent of the obligor, without a re-acknowledgement where an acknowledgment was requisite; or if the change was made by another than the obligor, it must be by authority of as high a character as the deed itself. 1 Greel. Ev. Sec. 568 a.

But this strictness is not now required. We assert, however, that the law still is, that no material alteration can be made in a deed, either by filling blanks or otherwise, without the direct assent of the party to be affected by it. It will be found by an examination of the cases, that wherever such alterations have been held not to invalidate a sealed instrument, it was under the following circumstances: 1st. That the alteration was an immaterial one. 2d. That the consent of the party was shown; or 3d, that the instrument was of the character of commercial paper: a distinction having frequently been taken between such paper, although under seal, and deeds or obligations containing conditions. *Bank, &c., v. Smith, et al*, 5 O. R., 222, *Spencer v. Buchanan*, Wright's Rep. 583, and cases cited.

In support of the proposition that if the change is material, the bond is void unless assented to by the obligors, we refer to the following authorities:

In *Gilbert v. Anthony*, 1 Yerger, 69, it was held that "A paper signed and sealed in blank with verbal authority (given at the time) to fill it up as a prison bounds-bond, which is afterwards done, is void as to the party so signing and sealing, unless re-delivered, or acknowledged after it had been filled up."

Wynne, et al, v. Governor, id. 149, was a bond executed by one of the defendants as collector, and the same principal was held by the Court as in the last case.

[8593-1]

In *Perminter v. McDaniel*, 1 Hill S. C. Rep. 267, (side paging), which was an action on an attachment bond, Johnson, Justice, who delivered the opinion of the Court, said: "According to *Boyd v. Boyd*, 2 N. and McC. 125, if a blank be signed, sealed and delivered, and afterwards written, it is no deed, and so, indeed are all the cases." The case of *Boyd v. Boyd*, referred to, was also the case of an attachment bond.

In *Harrison v. Tiernans*, 4 Randolph, 177, a bail bond did not contain any amount. The Court held it void, and added: "Nor can this defect be supplied by the recital in the condition. The condition forms no part of the obligation or bond. It is entirely for the benefit of the obligor, stating matter by which the obligation or bond may be discharged. He may, or he may not comply with it, at his election. If he be unwilling or unable to comply with the condition, the law intends that the bond shall charge him. But how can this be when the bond is itself a nullity?"

Lane, J. in *Spencer v. Buchanan*, Wright's O. Rep., 583, said: "An alteration of a bond with the consent of the parties to it, does not vitiate it, (9 Cranch, 37.) In this State it has been decided that a blank with a signature, seal, and authority to fill up, is void. *Ayres v. Harness*, 1 O. R. 372.) But mere money bonds, executed with blanks, filled up before negotiated, and received in good faith, are to be treated as commercial or business paper, and the delivery in blank to a party, as an authority to fill up. This bond is still in blank, not filled up, and the real question is, can you enlarge the substance of it by mere *inuendo?* We think you cannot." In this case the bond or recognizance recited that the defendant "appeared in open Court and acknowledged to owe unto Wade H. Spencer the sum of three hundred and fifty , to be levied, &c."

In every good bond there must be an obligor and an obligee, and a sum in which the former is bound. *Graham v. Holt*, 3 Iredell's Law Rep. 300. *Davenport v. Speight*, 2 Dev. and Batt. 38. *McKee v. Hicks*, 2 Dev. 379.

In a late case decided in Maryland, *Edelin v. Sanders*, 8 Maryland Rep. 118, the Court held that the name of the obligee is a material part of a bond, and as a general principle, delivery in *blank* is an insufficient delivery unless recognized after the blank is filled up.

Parsons on Contracts, vol. 2, p. 229, says: "If there are blanks left in a deed, affecting its meaning and operation in a material way, and they are filled up after execution, there should be a re-execution and a new acknowledgment."

In *United States v. Nelson*, 2 Brock. 64, Chief Justice Marshall acknowledged this to be the law, and so held in that case, but expressed a regret in that case that it was so settled.

Such is the current of American decisions. Wherever any deviations from this rule have occurred they have come within one of the three exceptions stated, and even then have usually been based on the authority of *Texira v. Evans*, cited in 1 Aust. 228, which was but a *nisi prius* decision, was a bond executed to raise money upon, and has in a recent case been expressly overruled by the English Courts. *Hibblewhite v. M'Morine*, 6 Meeson and Welsby, 213.

It is clear that the bond in question would, if the blank had not been filled, have been void. *Church v. Noble*, 24 Ill. Rep. 291. If then it is filled up by some one without authority it can be in no better condition than if it still remained a blank. The evidence expressly shows that no authority was given to fill it up, and the case negatives any such presumption; for when it was presented to the County Court for approval, the County Judge says the tax books were not made out and they could not tell in what amount it ought to be taken—the Court insisting that it ought to be larger than it was finally filled up for. Besides both witnesses testify that they notified the Collector then that the bond was void, for the very reason that we are now insisting it is void. They finally consented to receive it, not because they believed it valid, but because they had had no trouble with the Collector the year before, and supposed they would have none then. How can they now insist the bond is valid when they insisted at the time it was taken that it was not? If there is blame anywhere it is with the County Court and they are the ones who should be held responsible for it.

EDWIN BEECHER,

For Defendants in Error.

Guardian Office print, Mt. Vernon.

42

The People.

vs.

N. A. Organ et al.

Brief for Defts.

Filed Nov. 14 - 1864.

E. Johnston Clk

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

THE PEOPLE WHO SUE, &c.

vs.

H. A. ORGAN, *et al.*

} Error to Clay.

ABSTRACT.

This was an action of debt brought by plaintiffs against defendants in the Wayne Circuit Court, and changed to Clay county on the official bond of defendant Organ, as Collector of Wayne county for the year 1859.

1] The declaration is in the usual form against Organ as principal, and the other defendants as his securities, and alleges the non-payment of certain moneys belonging to the school fund.

The plea of all but two of the defendants denies the execution of the bond, and is verified by the affidavits of the defendants.

6] A certified copy of the bond sued on was read on trial, and contains the usual conditions. This bond purports to be in the sum of forty thousand dollars.

11] The bill of exceptions was in the following words: "Be it remembered that on the trial of this cause it was agreed by the parties, that the plea denying the execution of the bond sued on should be considered on file for all the defendants."

S. J. R. Wilson being sworn said, that at the date of the bond sued on he was Judge of the County Court of Wayne county, Illinois. That said defendant Organ, as collector of said county for the year 1859, presented to said County Court, at its November term, 1859, the bond sued on in the case, for approval. That when said bond was presented to said Court there was no amount stated as the penalty therein, but it was, as to the amount for which the bond was given, *a blank*. That he, as one of the Court, insisted that the bond was invalid, unless the securities would appear and acknowledge their signatures after the blank was filled up; but as they had no trouble the former year with said Organ as collector, they finally agreed to receive it. That the sum of forty thousand dollars was then inserted in said bond as the penalty. That none of the securities to said bond were present when the same was filled up, nor was any authority produced authorizing any one to fill it up, nor does he know of any such autho-

rity having been given to any one. That at that time the tax books had not been made out, and they could not ascertain the amount for which it ought to be taken, but insisted that it ought to be for more than the amount for which it was finally filled up.

Thomas M. Scott being sworn, said: He was also a member of said Court. He confirms the foregoing statement of Judge Wilson. He further says that he also objected to receiving said bond, but finally consented to accept it for the reason stated.

It was admitted by the parties defendants, that the signatures to the bond were genuine, but insisted that when such signatures were written the bond was blank.

The plaintiffs also introduced a certificate of the Clerk of the County Court of said county of Wayne, showing that there was due from said collector to said township, (for whose use this suit is brought,) the sum of $25 belonging to district No. 3, and $60 to district No. 2.

It was also agreed by the parties that all objections which could have been legally taken to the introduction of any of the foregoing evidence, should be considered as having been made at the time, and that the parties should be entitled to the same benefit therefrom as if the same had been formally objected to, and objections overruled by the Court and exceptions taken thereto.

This was all the evidence in the cause; and the Court thereupon, (a jury having been waived by the parties,) gave judgment for the defendants for costs. To which opinion of the Court the plaintiffs at the time, by their counsel, excepted, and pray that this their bill of exceptions may be signed and sealed by the Court, which is done.

October 30, 1861. J. C. ALLEN, [L. S.]"

Guardian Office print, Mt. Vernon.

42

The People.

v.

H. A. Agan et al.

Abstract.

Filed Nov. 14 - 1861 -

A. Johnston Clk

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[95936]

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42

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July Nov. 14 - 1861 -

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42

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Abstract.

Offer

Filed Nov. 14-1861—
A. Johnston Clk

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People – use &c

vs

H. A. Organ et al

Error to Clay

1861

Cost bill on 499

8593