

Pawling Vs. United States

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Court : US Supreme Court

Decided On : 1808

Appeal No. : 8 U.S. 219

Appellant : Pawling

Respondent : United States

Judgement :

Pawling v. United States - 8 U.S. 219 (1808)

U.S. Supreme Court Pawling v. United States, 8 U.S. 4 Cranch 219 219 (1808)

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ERROR TO THE DISTRICT COURT

FOR THE DISTRICT OF KENTUCKY

SYLLABUS

Upon a demurrer to evidence, the testimony is to be taken most strongly against him who demurs, and such conclusions as a jury might justifiably draw the court ought to draw.

A bond may be delivered as an escrow by the surety to the principal obligor.

The bond upon its face purports to be delivered absolutely, and it is not to be doubted the obligees would be more secure against fraud if the evidence that the writing was delivered as an escrow appeared upon its face than by admitting parol testimony of that fact. But the law is settled otherwise, and is not to be disturbed by this Court.

If one of the obligors, at the time of executing the bond, in the presence of some of the other obligors, says "we acknowledge this instrument, but others are to sign it," this is evidence from which the jury may infer a delivery as an escrow by all the obligors who were then present.

When words are to be proved by witnesses who depend on their memory alone, the precise terms employed by the parties will seldom be recollected, and courts and juries must form their opinions upon the substance and upon all the circumstances.

Error to the District Court for the District of Kentucky in an action of debt upon an official bond given by Ballinger as collector of the revenue and signed and sealed by Pawling, Todd, Adair, and Kennedy as his sureties, who pleaded that they delivered the same as an escrow to one Joseph Ballinger, to be safely kept upon condition that, if Simon Ingleman, and William Patton, named on the face of the bond, should execute the same as co-sureties, then the bond should be delivered to James Morrison, supervisor on behalf of the United States as their deed, and not otherwise, and that the same never was executed by Ingleman and Patton; yet Ballinger delivered it to Morrison, on behalf of the United States, and so not their deed. The delivery as an escrow being traversed by the United States, issue was thereupon joined, in the trial of which the United States demurred to the evidence produced on the part of the defendants, which consisted of the depositions of T. T. Davis, W. G. Bryant, one of the subscribing witnesses, Elijah Stapp, another subscribing witness, John P. Wagon, another subscribing witness, and a letter from Morrison, the supervisor, to Ballinger. The deposition of Davis states a conversation, between Ballinger and Pawling, sometime before the signing of the

bond, in which the former told the latter that Todd, Kennedy, Shelby, Knox, Ingleman, Logan, Lewis, and Adair had agreed to be security for him, upon which Pawling also agreed to become his surety, but upon the express condition that the other persons also should join in the bond. It also states a subsequent conversation between the deponent and Todd, before signing the bond, in which the latter denied that he had agreed to become Ballinger's surety, but said that he should not be apprehensive of danger if all the men whom Davis had named would join in the bond.

The deposition of Bryant states that he saw Pawling, in the presence of Ballinger, sign the bond on condition

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that Kennedy, Todd, Adair, Davis, and others, whom the witness did not recollect, should also sign the bond, and he understood that Pawling was to be exonerated if they did not. The deposition of Elijah Stapp states that he saw Pawling, in the hearing of Ballinger, acknowledge the bond as his act and deed upon condition that others mentioned should also sign it. The deposition of Wagon states that when Todd, Adair, and Kennedy signed the bond, Todd, in the presence of the other two, after inserting in the bond the names of other persons who he said were to sign it, called upon the witness to take notice that others were to sign it, and said, "We acknowledge this instrument of writing, but others are to sign it." The letter from Morrison to Ballinger says

"I have received your favor by Mr. Davidson, who carries back your bond; not that I require more securities, but that you appeared anxious to have more; those who have already signed are very sufficient."

It was admitted by the attorney for the United States that the names of Thomas Kennedy, John Adair, Simon Ingleman, and William Patton, inserted in the body of the bond as obligors, were in the handwriting of the defendant Todd. This evidence, upon the demurrer, was by the court below adjudged insufficient. The defendants, the sureties, took a bill of exceptions to the refusal of the court to

suffer Ballinger, the principal obligor, to be examined as a witness for them, they having severed in their pleas. But as that question was not decided by this Court, it is deemed unnecessary to state the arguments of counsel on that point.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

In this case, two points are made for the consideration of the Court.

It is contended by the plaintiffs in error

1st. That judgment on the demurrers to evidence should have been rendered for the defendants in the court below.

2d. That Joseph Ballinger ought to have been admitted as a witness.

The general doctrine on a demurrer to evidence has been correctly stated at the bar. The party demurring admits the truth of the testimony to which he demurs

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and also those conclusions of fact which a jury may fairly draw from that testimony. Forced and violent inferences he does not admit, but the testimony is to be taken most strongly against him, and such conclusions as a jury might justifiably draw the court ought to draw.

The point in issue between the parties was the delivery of the instrument on which the suit was instituted. The plaintiffs below contending that it was delivered absolutely, the defendants that it was delivered as an escrow.

The bond, upon its face, purports to be delivered absolutely, and it is not to be doubted that obligees would be much more secure against fraud if the evidence that the writing was delivered as an escrow appeared upon its face than by admitting parol testimony of that fact. But the law is settled otherwise, and is not to be disturbed by this Court.

The subscribing witnesses to the bond were examined to prove its delivery. Henry Pawling executed it at one time, the other defendants, Kennedy, Todd, and Adair, at a different time. With respect to Pawling, the testimony is as complete as can be required. William G. Bryant deposes that Pawling signed the bond on condition that other persons, whom he named, should also sign it. The witness understood that if those other persons should not sign it, Pawling should be exonerated. Elijah Stapp, the other subscribing witness to the signature of Pawling, deposed that "he saw Pawling acknowledge it as his act and deed upon condition that others, whom he mentioned, should also sign it."

These are the subscribing witnesses to the bond, and certainly a jury believing them could not have avoided declaring by its verdict that the bond was delivered on condition. That condition not having been performed, the bond, as to Pawling, remains an escrow.

The testimony with respect to the other defendants is less positive. The witness, John P. Wagon, was

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called in to attest the bond. Thomas Todd, one of the defendants, then sat down and inserted in the body of the bond the names of other persons who, he said, were also to execute the instrument which he then held in his hand.

Some distinction was taken at the bar between the case of Todd and that of the other defendants. But the Court is of opinion that no such distinction exists. The other defendants said nothing. They did not even acknowledge their signatures. Todd, holding the instrument in his hands, called upon the witness to take notice that "we" (in the plural) "acknowledge this instrument, but others are to sign it." The two other obligors being present, and making no other acknowledgment, are clearly to be considered as speaking through Todd and executing the bond on the terms on which he executed it. Their condition, then, is the same. It is either an escrow or a writing obligatory with respect to all of them.

A jury might certainly have found the issue in favor of the plaintiffs below, and a court would have been well satisfied with their verdict. But might they not, without going against evidence, have found the issue in favor of the defendants below?

When words are to be proved by witnesses who depend on their memory alone, the precise terms employed by the parties will seldom be recollected, and courts and juries must form their opinions upon the substance and upon all the circumstances. Now to what purpose did the defendants call upon the subscribing witness to take notice that others, as well as themselves, were to execute the writing? To what purpose did they qualify their acknowledgment with this declaration? It could not be in order to show that they depended on Ballinger to procure additional securities, for that was an affair between him and them, of which it was perfectly unnecessary to call on the witness to take notice, if it was to have no influence on the particular fact he was required to attest. There is certainly strong reason for believing that the obligors considered that declaration as

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explaining and affecting the act with which they connected it.

It is also of some importance that the defendant Todd had previously declared that he should not be apprehensive of becoming a security for Ballinger, provided others, whom he named, should also become securities and that he inserted the names of others in the bond in the presence of the witness.

Although the judges who compose this Court might not, perhaps, as jurors, be perfectly satisfied with this testimony, they cannot say that a verdict would not be received or ought not to be received which should find the issue in favor of the defendants below. They cannot say that such a verdict would be against evidence. Thinking so, the Court is of opinion that the judgment on the demurrer ought to have been in favor of the defendants below.

It is unnecessary to give any opinion on the second point. The judgment of the Court for the District of Kentucky is to be reversed.

Judgment reversed.

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