

United States Vs. Arthur

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Court : US Supreme Court

Decided On : 1809

Appeal No. : 9 U.S. 257

Appellant : United States

Respondent : Arthur

Judgement :

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United States v. Arthur

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ERROR TO THE KENTUCKY

DISTRICT COURT

SYLLABUS

In this case it was decided the want of oyez of the condition of a bond in plea of performance is fatal. Upon demurrer, the judgment of the court must be against the party who commits the first error.

Error to the Kentucky District Court of the United States in an action of debt on a bond for \$6,000.

The *capias ad respondendum* issued on 28 June, 1803, returnable to the first Monday of July in the same year, and was served on 30 June.

The declaration was in the usual form of an action of debt for the penalty of the bond with a profert, but without setting forth its condition or any breach thereof.

The defendants, without praying oyer, pleaded as follows:

"And the defendants, by their attorneys, come and defend the wrong and injury when and where, &c.;, and for plea say they have well and truly kept and performed, and have faithfully executed and discharged, all and singular the duties enjoined on them by the laws of the United States, and the conditions in the writing obligatory in the declaration mentioned, and this they are ready to verify,"

&c.;

The plaintiffs replied that they ought not to be barred, &c.;, because they say

"That the said defendants have not well and truly kept the several conditions in the said writing obligatory as they in pleading have alleged, but have broken the same in this, to-wit, that the said John Arthur, although duly appointed to the office of collector of the revenue for the first division of the first survey of the District of Ohio, as stated in the said condition, had not, at the time of executing the said writing obligatory, executed and discharged, nor after the execution

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thereof did he continue to execute and discharge faithfully all the duties of said office, and also failed to settle his accounts with the proper officer according to law for more than six months previous to the institution of this suit, and also failed to pay over to the proper officer the duties which were collected or the duties which by law and the accounts rendered by the said John he was bound to collect and pay over, and is in arrear to the said United States in the sum of \$16,181.15 due

from and unpaid by him in his said office of collector as aforesaid, and this the said plaintiffs pray may be inquired of by the country."

To this replication the defendants demurred specially

"Because this suit is prosecuted under the 14th section of the Act of Congress passed in the month of July, 1798, c. 88. entitled, 'An act to regulate and fix the compensation of the officers employed in collecting the internal revenues of the United States, and to ensure more effectually the settlement of their accounts,' which section is in the following words, to-wit:"

" The bond of any supervisor or other officer of the revenue who shall neglect or refuse for more than six months to make up and render to the proper officer his accounts of all duties collected or secured pursuant to such forms and regulations as have been or shall be, prescribed according to law, or to verify such accounts on oath or affirmation, if thereto required, or to pay over the moneys which shall have been collected, shall be deemed forfeited, and judgment thereon shall and may be taken at the return term on motion, to be made in open court by the attorney of the United States unless sufficient cause to the contrary be shown to and allowed by the court, provided always that the writ or process in such case shall have been executed at least fourteen days before the return day thereof;"

"And the plaintiffs, in assigning the breach in the following words, to-wit,"

" And also failed to pay

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over to the proper officer the duties which were collected, or the duties which by law, and by the accounts rendered by the said John, he was bound to collect and pay over,"

"have assigned the said breach neither within the letter nor the meaning of the said section of the said act of Congress; but the same is calculated to charge the said defendants with the amount of the duties due within the said first division of the first survey of the District of Ohio, whether the same is collected or secured or

not or whether they could or might have been collected or not."

This demurrer being joined, the judgment of the court below was in favor of the defendants, and the United States brought its writ of error.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court to the following effect:

If this case depended upon the replication, the judgment of the Court must be in favor of the defendants. It is certainly bad, inasmuch as it charges the defendants with moneys not collected. But upon a demurrer, the judgment is to be against the party who committed the first error in pleading.

The want of oyer is a fatal defect in the plea of the defendants, and the Court cannot look at any subsequent proceeding. The plea was bad when pleaded. The judgment must be reversed and the cause remanded for further proceedings.

Judgment reversed.

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