

Riddle Vs. Moss

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Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 206

Appellant : Riddle

Respondent : Moss

Judgement :

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11 U.S. 206

ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF COLUMBIA

SYLLABUS

Decided: that the principal obligor in a bond is not a competent witness for the surety; in an action upon the bond; the principal being liable to the surety for costs in case the judgment should be against him.

This was an action of debt on a joint bond given by John Welch as principal obligor and the defendant Moss as his surety. The suit abated as to Welch by the return of the marshal that he was no inhabitant of the district. The defendant, Moss, pleaded specially certain facts in avoidance of the bond as to him alone, upon which issue was joined, and upon the trial the defendant, Moss, offered as a witness the said John Welch, the principal obligor, who was permitted by the court below to testify for the defendant, and upon his cross-examination confessed that he had made over to Moss all his property as security to indemnify him against the event of this suit.

The plaintiff took a bill of exceptions, and the verdict and judgment being against him, brought his writ of error to this Court.

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

The Court is of opinion that Welch, the co-obligor, was interested, and was therefore an incompetent witness.

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It was a consideration of some importance that he had given Moss a deed of trust of his effects to indemnify him against this suit, but the principal circumstance was that Welch's liability would be increased to the extent of the costs of this suit if the judgment should be against Moss.

Judgment reversed.