United States Vs. Linn

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SooperKanoon Citation : sooperkanoon.com/79754

Court : US Supreme Court

Decided On : 1841

Appeal No. : 40 U.S. 290

Appellant : United States

Respondent : Linn

Judgement :

United States v. Linn - 40 U.S. 290 (1841)
U.S. Supreme Court United States v. Linn, 40 U.S. 15 Pet. 290 290 (1841)

United States v. Linn

40 U.S. (15 Pet.) 290

ON CERTIFICATE OF DIVISION FROM

THE CIRCUIT COURT OF ILLINOIS

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William Linn, one of the defendants, was appointed, on 12 February, 1835, a receiver of public moneys at the land office, in the District of Vandalia, which was

established by the Act of Congress of 11 May, 1820, 3 Stat. 571. By that act, he was to

"give security in the same manner, in the same sums, and his compensation, emoluments, duties and authorities were to be in every respect the same as were or might be by law provided in relation to the registers and receivers of public moneys in the several land offices established for the sale of the public lands."

These provisions were stated more particularly in the Act of 10 May, 1800, 2 Stat. 73, which directed that a "receiver of public moneys should give bond, with approved security in the sum of $10,000, for the faithful discharge of his trust." At June term, 1838, the United States brought this suit against the defendant, William Linn and the other defendants.

In the first count of that declaration, the United States, as plaintiffs, set out the execution by the defendants, on 1 August, 1836, of a certain writing obligatory, sealed with their seals, and to the court shown, the date whereof was the same day and year aforesaid, by the names, contractions, abbreviations, and descriptions of "William Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Walters, Asabel Lee, Wm. L. D. Ewing, A. P. Field and Joseph Duncan," by which they acknowledged themselves to be

"held and firmly bound unto the

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said plaintiffs in the full and just sum of $100,000, to be paid to the said plaintiffs when they, the said defendants, should be thereunto afterwards requested, and the said plaintiffs, according to the statute in such case made and provided, averred that the said writing obligatory was subject to a certain condition thereunder written whereby, after reciting to the effect following, that is to say that the President of the United States had, pursuant to law, appointed the said William Linn, receiver of public moneys, for the district of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years, from 12 January, 1835, by commission bearing date 12 February 1835, it was provided, that if the said

William Linn should faithfully execute and discharge the duties of this office, meaning the office of receiver as aforesaid, then the said obligation was to be void and of none effect, otherwise, it should abide and remain in full force and virtue. Nevertheless, the said plaintiffs in fact said that after the making of the said writing obligatory, and after the appointment of the said William Linn to be receiver of public moneys as aforesaid, to-wit, on 22 November, in the year of our Lord 1837, at Vandalia aforesaid, he, the said William Linn, did not faithfully execute and discharge the duties of his said office, in this, to-wit, that there came into and was then and there in the hands of him the said William Linn, as receiver of public moneys as aforesaid, while he was receiver as aforesaid, and within four years from the said 12 January in the year last aforesaid, a large sum of money belonging to the said plaintiffs, received by him, the said William Linn, as receiver as aforesaid, and in virtue of his said office, for lands sold by the said plaintiffs, of the public lands subject to sale at Vandalia aforesaid, to-wit, the sum of $4,000,000, which money it was the duty of the said William Linn, as such receiver as aforesaid, to pay to and account for, to the said plaintiffs when requested so to do. Yet the said William Linn did not nor would he pay to, or account for, to the said plaintiffs, the said last-mentioned sum of money belonging to the said plaintiffs as aforesaid, and which came into and was

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in the hands of him, the said William Linn, as receiver of public moneys as aforesaid, or any part thereof, although often requested so to do, but he, the said William Linn, hitherto wholly refused to pay to the said plaintiffs the said last-mentioned sum of money or any part thereof, to the great damage of the said plaintiffs."

In the second count of their declaration, the United States, as plaintiffs, set out the execution by the defendants, on 1 April, 1836, of a certain

"instrument in writing bearing date the same day and year first aforesaid, and that they then and there delivered the said instrument in writing to the said plaintiffs, and therein and thereby, reciting that the President of the United States had,

pursuant to law, appointed the said William Linn to be receiver of public moneys, for the District of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years from 12 January in the year our Lord 1835, by commission bearing date of 12 February in the year last aforesaid, the said defendants did then and there, in and by said instrument in writing by the names, contractions, abbreviations and descriptions of 'Wm. Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Walters, Asabel Lee, Wm. L. D. Ewing, A. P. Field and Joseph Duncan,' acknowledge themselves to be held and firmly bound unto the said plaintiffs in the sum, and promised to pay unto the said plaintiffs the sum of $100,000 of money of the United States, to which payment well and truly to be made, they, the said defendants, bound themselves, jointly and severally, their joint and several heirs, executors and administrators, by the said instrument in writing, which said instrument in writing was, however, to be void and of none effect in case and upon the condition that the said William Linn should faithfully execute and discharge the duties of his office, meaning the said office of receiver of public moneys as aforesaid, otherwise, the said instrument in writing should abide and remain in full force and virtue, and the said plaintiffs in fact said that after the making and delivery of the said instrument in writing and after the appointment of him, the said William Linn, to be receiver of public moneys as aforesaid, he, the said William Linn, did not faithfully execute

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and discharge, and hath not faithfully executed and discharged the duties of his said office as aforesaid."

They then set forth the breach of the contract, to the same effect as in the preceding count.

In the third count of their declaration, the United States, as plaintiffs, set out the execution by the defendants of a certain "other instrument of writing, bearing date the same day and year first aforesaid, their own proper hands being thereunto subscribed," and that they

"then and there delivered the same instrument in writing to the said plaintiffs, and thereby, by the names, contractions, abbreviations and descriptions of 'Wm. Linn, D. B. Waterman, Lemuel Lee, J. W. Duncan, Wm. Alters, Asabel Lee, Wm. L. D. Ewing, A. P. Field and Joseph Duncan,' reciting in said instrument, that the President of the United States had, pursuant to law, appointed the said William Linn to be receiver of public moneys for the district of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years from 12 January, 1835, by commission bearing date 12 February in the year last aforesaid, did acknowledge themselves to be held and firmly bound unto the said plaintiffs in the full and just sum of $100,000 of money of the United States, which said sum of money, they, the said defendants, bound themselves, their joint and several heirs, executors and administrators, jointly and severally, by said instrument in writing, and promised well and truly to pay to the said plaintiffs if the said William Linn, so appointed receiver as aforesaid, and to act as such receiver, and in such office of receiver as aforesaid, should not faithfully execute and discharge the duties of his said office, and the said plaintiffs in fact said, that after the making and delivering of the said instrument in writing and after the appointment of the said William Linn to be receiver of public moneys as aforesaid, he, the said William Linn did not faithfully execute and discharge the duties of his said office."

They then set forth the breach of the contract to the same effect as before, and concluded with a general averment of the neglect and refusal of the defendant, Linn, to comply with its conditions, whereby an action had accrued to them against all the defendants.

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To the second and third counts of the declaration the defendants demurred as sufficient in law to sustain the plaintiffs' action, and the United States joined in the demurrer.

On the argument of the demurrer, the opinions of the judges were opposed on the points 1st, whether the obligation set out in the second and third counts in the

declaration, being without seal, was a bond within the act of Congress; 2d, whether such an instrument was good at common law. And on application of the plaintiffs by their counsel, the above points were ordered to be certified agreeable to the act of Congress.

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THOMPSON, JUSTICE, delivered the opinion of the Court.

This case comes from the Circuit Court of the United States for the State of Illinois on a certificate of division of opinion upon the following points: 1st, whether the obligation set out in the second and third counts in the declaration, being without seal, is a bond within the act of Congress, 2d, whether such instrument is good at common law.

Upon the first point no doubt can exist. There being no seal to the instrument, it is not a bond. This point was abandoned by the attorney general, on the argument, and the question must, of course, be answered in the negative. And as the act of Congress directs the security to be taken by bond, this answer necessarily implies that the instrument now in question is not in form the instrument required by the act of Congress.

The second point presents the broad question whether the instrument is good and binding at common law, independent of the statute, as to the mere form of the security. If this is a contract entered into by competent parties and for a lawful purpose not prohibited by law and is founded upon a sufficient consideration, it is a valid contract at common law. In the case of *United States v. Tingey,* 5 Pet. 115, it was held by this Court that the United States, being a body politic, has a capacity to enter into contracts and take bonds or securities within the sphere of its constitutional powers and appropriate to the just exercise of those powers through the instrumentality of the proper department to which those powers are entrusted whenever such bonds or contracts are not prohibited by law, although the making such contracts or taking such bonds may not have been prescribed by any preexisting legislative act. From this it follows that a voluntary contract or security

taken by the United States for a lawful purpose and upon a good consideration, although not prescribed by any law, is not utterly void. That the instrument in question was taken for a lawful purpose cannot be questioned. It was taken to secure the faithful performance of duties imposed by law upon a receiver of public money.

Although the question came up in the circuit court upon a

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demurrer to the declaration, the point certified does not involve any inquiry respecting the sufficiency of the declaration. The declaration is referred to merely for a description of the instrument upon which the question arose. And if the instrument can be made valid and binding at common law by any averments and legal evidence, the question must be answered in the affirmative.

This instrument, as set out in the second and third counts in the declaration, bears date on the first day of April in the year 1837, reciting that the President of the United States had, pursuant to law, appointed the said William Linn to be receiver of public moneys for the district of lands subject to sale at Vandalia, in the State of Illinois, for the term of four years from the 12 January, 1835, by commission bearing date on 12 February, 1835; that the said defendants did then and there, in and by said instrument in writing, by the names, contractions, abbreviations and descriptions, &c.; (naming all the defendants), acknowledge themselves to be held and firmly bound unto the said plaintiff in the sum of, and promised to pay unto the said plaintiff, $100,000 of money of the United States, to which payment well and truly to be made they, the said defendants, bound themselves jointly and severally, their joint and several heirs, executors and administrators, by the said instrument in writing, which said instrument in writing was, however, to be void and of no effect in case and upon the condition that the said William Linn should faithfully execute and discharge the duties of his office of receiver of public moneys as aforesaid; otherwise the said instrument in writing should abide and remain in full force and virtue. And the question is whether this instrument is binding at common law as a security for the faithful discharge of the duties of receiver of public

moneys by William Linn.

The argument urged to the Court against the validity of this instrument has been presented under the following heads:

1. That the writing is without consideration.

2. If not without consideration, it was a past and executed consideration.

3. That it is contrary to the policy of the act of Congress, and so void.

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1. The recital in the instrument is that the President of the United States, pursuant to law, had appointed the said William Linn receiver of the public money for the district of land subject to sale at Vandalia, in the State of Illinois, for the term of four years from 12 January, 1835, and who was duly commissioned for that purpose, and he was accordingly, by the laws of the United States, entitled to receive the same compensation and emoluments, and subject to the same duties in every respect, in relation to the lands to be disposed of at his office, as are or may be by law provided in relation to the receivers of public money in other offices established for the sale of public lands, and was by law required to give security in the same manner and sum as other receivers of public moneys for the sale of public lands. 4 Stat. 686; Act 26 June 1834. These emoluments were the considerations allowed him for the execution of the duties of his office, and his appointment and commission entitled him to receive this compensation whether he gave any security or not. His official rights and duties attached upon his appointment. This was so held by this Court in the case of *United States v. Bradley,* 10 Pet. 364. The Court there said

"It has been objected that Hall was not entitled to act as paymaster until he had given the bond required by the act of 1816, in the form therein prescribed, and that not having given any such bond, he is not accountable as paymaster for any moneys received by him. We are [said the Court] of a different opinion. Hall's appointment as a paymaster was complete when his appointment was duly made

by the President and confirmed by the Senate. The giving the bond was a mere ministerial act for the security of the government, and not a condition precedent to his authority to act as a paymaster. Having received the public moneys as paymaster, he must account for such money."

According to this doctrine, which is undoubtedly sound, Linn was a receiver *de jure* as well as *de facto* when the instrument in question was given. And although the law requiring security was directory to the officers entrusted with taking such security, Linn was under a legal as well as a moral obligation to give the security required by law, and being entitled to the compensation and emoluments attached to the office, which by his commission was to continue for four

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years from 14 January, 1835; this was a sufficient consideration appearing on the face of the instrument to support the promise. A benefit to the promisor or damage to the promisee constitutes a good consideration. 9 U. S. 5 Cranch 150; 27 U. S. 2 Pet. 182. If Linn received a sufficient consideration to uphold the promise on his part, it was sufficient to bind the sureties. There was no necessity for any consideration passing directly between the plaintiffs and the sureties. It was one entire and original transaction, and the consideration which supported the contract of Linn supported that of his sureties. If the contract between the plaintiffs and Linn had been executed and perfectly past before the other defendants became sureties, so that their promise and undertaking could not connect itself with the original contract, it would have required a distinct consideration. But the whole being one entire and original contract, and not collateral on the part of the sureties, the consideration received by Linn was sufficient to support the contract on the part of his sureties. 8 Johns. 37; Cro.Eliz. 137; 3 Burr. 1886.

2. This was not a past and executed consideration. The mere appointment of Linn as a receiver of public moneys was not the consideration of the contract, but the emoluments and benefit resulting from the appointment formed the consideration. It was a continuing consideration, running with his continuance in office, and existed in full force at the time the instrument in question was signed. This appears

from the recitals in the contract. The term of office was four years from 12 January, 1835.

3. But it has been very strongly pressed upon the Court that it is against the policy of the act of Congress to allow security to be taken otherwise than by a bond. It may be well questioned whether this objection comes properly under consideration in the question certified to this Court, which is simply whether this instrument is good at common law. This, in strictness, presents the question entirely independent of the statute and as if no statute had ever been passed on the subject. But we do not wish to confine ourselves to this narrow view of the question. The act of Congress, under which this instrument was taken (2 Stat. 73, 6) directs that a receiver of public moneys shall, before

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he enters upon the duties of his office, give bond with approved security in the sum of $10,000 for the faithful discharge of his trust. The statute does not profess to give the precise form of the bond. It is only a general direction to give a bond for the faithful discharge of the trust. There are no negative words in the act, nor anything by implication or otherwise to make void a security taken in any other form, nor is there anything in reason or sound principle that should lead to such a conclusion. Had it been deemed by Congress of such importance as is now attached to it, it is reasonable to suppose that securities taken otherwise than by bond would have been declared void.

The only objection urged against the validity of this instrument is that it has no seals annexed to the names of the signers. In every other respect, it is not pretended but that it conforms precisely to the requirements of the statute. And what is the real difference between an instrument under seal and one not under seal? The only material difference is that in the one case the seal imports a consideration, and in the other it must be proved. There ought to be some very strong grounds to authorize a court to declare an instrument absolutely void which has been voluntarily made upon a good consideration and delivered to the party for whose benefit it was intended. There is in this case no principle of public policy

or morality violated, but. on the contrary, the object and purpose for which the instrument was given was in furtherance of the provisions of the statute and in compliance with the legal and moral obligations imposed upon the receiver of public moneys. The act of Congress directs a bond to be taken in the penalty of $10,000. Suppose, a bond should be taken in the penalty of $20,000 -- would it on that account be void? If it must pursue the precise directions of the act, it certainly would be void. The authority given to the President to increase the amount of the bonds was not passed until the year 1820, 3 Stat. 571, and if any departure from the precise form of the security directed by the statute would make void the bond, an increase of the penalty would have had that effect before the act of 1820. The act directs a bond to be given with approved security. The nature of this security is not prescribed. A mortgage or any other approved security voluntarily given would no doubt be

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valid, and it would be no very forced interpretation of this act to consider this instrument as such security. It will be seen from the recital compared with the date of this instrument, that it was given long after the appointment of Linn. Why and under what circumstances it was given do not appear, nor is it important here to inquire. Should that become necessary, the proper time to inquire into that matter will be upon the trial of the cause.

The point now presented to this Court is a single and abstract question: whether this instrument is good at common law. It is argued that this instrument is absolutely void on the ground that it is against the policy of the act to permit security to be taken in any other form than is prescribed by the act. In a certain sense this may be true. It is the duty of all public officers entrusted with the execution of powers delegated to them to pursue the directions of the law conferring the power. But to construe all such laws as a special delegation of authority, to be strictly and literally pursued, and to consider every departure from it as done without authority and absolutely void would frequently be defeating the very object and purchase for which the law is made, and ought not to receive such a construction unless the statute itself declares all such acts void. But if the mere

omission to put seals to the instrument shall make it void, every other departure from a strict and literal compliance with the direction of the act would make void the security.

This has not been the light in which this Court has viewed analogous cases. In the case of the *United States v. Bradley,* already referred to, the Court said,

"It has been urged that the Act of 1816, ch. 69, does by necessary implication prohibit the taking of any bonds from paymasters other than those in the form presented by the 6th section of the act, and therefore that bonds taken in any other form are utterly void. We do not think so. The act merely prescribes the form and purport of the bond to be taken of paymasters by the war department. It is in this respect directory to that department, and doubtless it would be illegal for that department to insist upon a bond containing other provisions and conditions differing from those prescribed or required by law. But the act has nowhere declared that all other bonds not taken in the prescribed form shall be

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utterly void. Nor does such an implication arise from any of the terms contained in the act or from any principles of public policy which it is designed to promote. A bond may, by mutual mistake or accident and wholly without design, be taken in a form not prescribed by the act. It would be a very mischievous interpretation of the act to suppose that under such circumstances it was the intendment of the act that the bond should be utterly void. Nothing, we think, but very strong and express language should induce a court of justice to adopt such an interpretation. Where the act speaks out, it would be our duty to follow it. Where it is silent, it is a sufficient compliance with the policy of the act to declare the bond void as to any conditions which are imposed upon a party beyond what the law requires. This is not only the dictate of the common law, but of common sense."

The act under which the security, in that case, was taken is substantially the same as the one under which the instrument now in question was taken. 3 Stat. 298. It requires the paymaster to give good and sufficient bond to the United States fully

to account for all moneys and public property which he may receive in such sums as the Secretary of War shall direct. All the reasons urged in favor of the validity of the bond in that case apply with equal force to the one now before the Court. The only departure of the instrument from the directions of the act is the want of a seal, and this, as is said in the case against Bradley, may have been omitted by mutual mistake or accident, and wholly without design. We think that the mere want of seals is not such a departure from the act as to warrant the Court, upon any supposed principles of public policy, to pronounce this instrument utterly void, it being good at common law and given in furtherance of the great object of the statute, and as security for the faithful discharge of the duties required of the office. We are accordingly of opinion that the second question must be answered in the affirmative.

STORY, Mc LEAN and BALDWIN, JUSTICES, dissented.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of

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Illinois and on the points and questions on which the judges of the said circuit court were opposed in opinion and which were certified to this Court for its opinion, agreeable to the act of Congress in such case made and provided, and was argued by counsel, on consideration whereof it is the opinion of this Court, 1st, that the obligation set out in the second and third counts in the declaration, being without seal, is not a bond within the act of Congress, and 2d, that such an instrument is good at common law, whereupon it is now here ordered and adjudged by this Court that it be so certified to the said circuit court.