

Humphreys Vs. Leggett

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Court : US Supreme Court

Decided On : 1850

Appeal No. : 50 U.S. 297

Appellant : Humphreys

Respondent : Leggett

Judgement :

Humphreys v. Leggett - 50 U.S. 297 (1850)

U.S. Supreme Court Humphreys v. Leggett, 50 U.S. 9 How. 297 297 (1850)

Humphreys v. Leggett

50 U.S. (9 How.) 297

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

The laws of Mississippi limit the liability of the sureties in the official bond of a sheriff to the amount of the penalty.

Where the surety had been compelled to pay the whole amount of his bond before a third party recovered judgment, the surety ought to have been relieved against an execution by this third party.

Not having been allowed to plead *puis darrein continuance* and protect himself in this way by showing that he had paid the full amount of his bond, the surety ought to have been relieved in equity where he had filed a bill for relief.

The facts were these.

On 6 November, 1837, Richard J. Bland was elected Sheriff of the County of Claiborne in the State of Mississippi for the term of two years prescribed in the constitution of that state.

On 10 November, 1837, Richard J. Bland Benjamin G. Humphreys, and John Grissom, all of that county and state, executed a penal bond in the sum of \$15,000, to Charles Lynch, Governor of the state, conditioned for the faithful execution by Bland of the duties of his office.

On 30 December, 1837, a writ of *capias ad satisfaciendum* was issued at the suit of Leggett, Smith, and Lawrence on a judgment obtained by them, as they allege, in the Circuit Court of the United States for Mississippi against George W. McNider, for \$3,910.78, on 17 November, 1837, and the said writ was placed in the hands of the Marshal of the United States for Mississippi, who took McNider into custody by virtue thereof, and delivered him for safekeeping to Bland as the Sheriff of Claiborne County.

On 12 December, 1838, an execution was issued, at the suit of the Planters' Bank of Mississippi, on a judgment obtained by the bank in the Circuit Court of Mississippi for Claiborne County, against Hoopes, Moore and Carpenter, for

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\$10,524.44, on 4 December, 1838, and the said execution was placed in the hands of Bland as the Sheriff of Claiborne County.

On 21 January, 1839, an execution was issued, at the suit of the Planters' Bank of Mississippi, on a judgment obtained by the bank in the Circuit Court of Mississippi for Claiborne County, against Campbell Pierson, and Moore for \$3,718.78, on 29 November, 1836, and the said execution was placed in the hands of Bland as the Sheriff of Claiborne County.

On 28 March, 1839, a suit was instituted and declaration filed in the Circuit Court of the United States for Mississippi, in the name of Alexander G. McNutt, Governor of the State of Mississippi, to the use of Leggett, Smith, and Lawrence, against Bland Humphreys, and Grissom, to recover damages for an alleged breach by Bland of his official bond, in setting McNider at liberty without lawful authority, while their judgment was in full force against him and unsatisfied.

On the same day a summons, in that suit, was issued against Bland Humphreys, and Grissom, to which the marshal made return -- "Executed on R. J. Bland personally, on 5 April, 1839"; no return being made as to Humphreys and Grissom.

On 20 June, 1839, an alias summons, in the same suit, was issued against the same persons, with directions to be executed on Humphreys and Grissom only, to which the marshal made return --

"Executed this writ on B. G. Humphreys, personally, on 14 October, 1839; J. Grissom not found in my district. [Signed] W. M. Gwin, Marshal, per John Hunter, D.M."

At November term, 1839, a plea was filed in the names of the defendants, Bland and Humphreys, in the same suit, denying the plaintiff's right of action, because Leggett, Smith, and Lawrence had failed to comply, in their proceedings against McNider, with the act of Mississippi, which required them to pay or give security for jail fees, and to appoint an agent in the county of Claiborne to receive notice of matters touching the execution, in default of which the prisoner was to be discharged; and further, because, after his commitment, he was regularly discharged therefrom, by a warrant from the judge of probate, under the insolvent laws of the State of Mississippi.

At the same term a replication was filed by Leggett, Smith, and Lawrence, alleging that they had an agent in the County of Warren; that no application was made to them for jail fees, or security therefor; that no notice was given to them of any

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intention or application to discharge McNider; and, further, that McNider, being in custody under process from the circuit court of the United States, was not legally discharged.

At the same term a demurrer to this replication was filed, in the names of the defendants.

On 26 November, 1839, a discontinuance was ordered, as to the defendant Grissom; the demurrer on behalf of the other defendants was sustained; and judgment was entered in their favor, with costs.

On 28 November, 1839, a writ of error to the Supreme Court of the United States was issued by the Clerk of the Circuit Court of Mississippi, at the suit of Leggett, Smith, and Lawrence.

On the same day a citation, addressed to "Richard Bland and Benjamin G. Humphreys, or Messrs. Winchester, Black & Chaplain, Attorneys of Record," was issued, signed by "S. J. Gholson," one of the judges of the circuit court.

On 20 May, 1840, a motion was made in the Supreme Court of Claiborne County, Mississippi, on behalf of the Planters Bank of Mississippi for a judgment against Bland as sheriff and Humphreys and Grissom as his securities on the allegation that Bland had failed to return the execution issued at the suit of the bank against Hoopes, Moore and Carpenter, and the judgment was granted for the sum of \$11,775, with \$526.22 damages.

On 25 May, 1840, a similar motion was made in the same court on behalf of the same bank against the same defendants on the allegation that Bland had failed to return the execution issued at the suit of the bank against Campbell Pierson, and Moore and the judgment was granted against Bland and Humphreys for

\$2,674.75, "the balance," it was stated, "of the said official bond" of Bland.

On 15 July, 1840, writs of *fiери facias* under each of these judgments were delivered to the coroner against Bland and Humphreys; that in the first case being endorsed, "No security of any kind is to be taken." Under these writs, the estate, real and personal, of Humphreys was levied upon and sold, and the sum of \$15,160.39, the proceeds thereof, was paid over by the coroner to the Planters Bank.

On 11 December, 1840, the record in the case of *McNutt to the use of Leggett, Smith, and Lawrence, against Bland and Humphreys* was brought into the Supreme Court of the United States from the Circuit Court of the United States for Mississippi, January term, 1841, No. 43. It consists only of the record of the circuit court in the case of *Leggett,*

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Smith, and Lawrence v. Bland and Humphreys, together with the writ of error and citation. The citation is endorsed, "Service on the defendants, accepted, Nov. 28, 1839. Geo. Winchester, for defendants."

The appearance is general -- for defendants -- "Walker,"

Nothing appears to have been done at that term with the case.

At January term, 1842, the case was reached, and ordered to the foot of the docket.

At January term, 1843, on motion of Mr. Jones, for the plaintiff in error, the court granted leave to submit it on printed arguments.

At January term, 1844, the case was argued.

On 30 January, 1844, it was adjudged to be reversed, with costs, and remanded, with directions to enter judgment for the plaintiff.

On 31 January, 1844, Mr. Jones suggested the death of R. J. Bland and moved that the writ of error stand against the survivor.

On 12 March, 1844, it was ordered that the mandate should direct judgment to be entered against the survivor. See [43 U. S. 2](#) How. 28.

On the 1 _____, 1844, a mandate was issued reciting the judgment; and also that, "whereas in the present term of January, 1844, the death of Richard J. Bland having been suggested, it was ordered by this Court that this cause stand against Benjamin G. Humphreys alone, as the survivor,"

on consideration thereof, it was

"ordered and adjudged by this Court, that the judgment of the said circuit court in this cause be, and the same is hereby, reversed, with costs, and that the said plaintiff recover against the said defendant, Benjamin G. Humphreys, \$64.85, for his costs therein expended, and have execution therefor,"

and it was further

"Ordered and adjudged that this cause be, and the same is hereby, remanded to the said circuit court with directions to that court to enter judgment for the plaintiff against Benjamin G. Humphreys alone as the survivor."

On 2 November, 1844, the mandate of the supreme court having been filed in the Circuit Court of the United States in Mississippi, the defendant, Humphreys, asked leave to file a plea, *puis darrein continuance*, in which he set forth the judgments obtained against him in the Circuit Court of Claiborne County on account of the failure of Bland to execute the writs in the cases of the *Planters Bank v. Hoopes*, *Moore and Carpenter*, and *Planters Bank v. Campbell Pierson, and Moore*, and his own payment thereof, to the full amount

of his bond, as surety for Bland under executions issued by virtue of those judgments. The court, however, refused to admit the plea on the ground that it was not competent for it to do anything in that action but obey the mandate of the supreme court.

On 17 May, 1845, Humphreys filed a bill in equity in the Circuit Court of the United States in Mississippi against Leggett, Smith, and Lawrence, exhibiting the foregoing facts, and further averring that from the commencement of the suit in the circuit court by Leggett, Smith, and Lawrence in the name of McNutt as Governor of Mississippi on the official bond of Bland until the judgment of reversal by the Supreme Court of the United States, he had no notice or knowledge whatever thereof, or of the proceedings therein; that no process was ever served, or, to his knowledge, attempted to be served, on him; that although the deputy marshal makes return to the summons, that it was "executed on B. G. Humphreys personally on 14 October, 1839," this is absolutely untrue; that he can prove that the return was so made, at the instance of Bland who wished the fact of the suit to be kept a secret from him, Humphreys; and that he never employed counsel, and never authorized any person to enter an appearance for him. He therefore prayed for an injunction to restrain proceedings at law under the judgment, and, upon final hearing, that the injunction might be made perpetual.

On 8 July, 1845, Humphreys gave bond in the sum of \$12,880.12, and the injunction issued.

On 11 November, 1845, Leggett, Smith, and Lawrence filed a general demurrer to the bill, as exhibiting no case for equitable relief.

On 17 November, 1846, judgment was given on the demurrer against the complainant, Humphreys, and a decree entered dismissing his bill.

On the same day, the appeal was prayed for, and allowed.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The appellant, Humphreys, who was complainant below, filed his bill against the defendants, praying an injunction against the issuing of an execution on a judgment they had obtained against him at law.

His bill sets forth, that he was one of the sureties of Richard Bland late sheriff of Claiborne County, in his official bond. That in March, 1839, the present defendants instituted a suit on the bond against Bland and his sureties, on which the circuit court rendered a judgment in favor of the defendants. The cause was removed to this Court by writ of error, where the judgment of the circuit court was reversed, and the case

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remanded to the circuit court, with directions to enter judgment against Humphreys, the surviving surety. This was in February, 1845. In the mean while, at May term, 1840, judgments were entered in the state circuit court of Claiborne County against the sheriff and his sureties on the same bond, and the whole amount of the penalty collected, by levy and sale of complainant's property.

The bill, moreover, avers that complainant had no notice or knowledge whatsoever of the suit and proceedings against him by these defendants, till after the case was remanded by this Court; that the sheriff's return of service of the writ on him was false, and made at the request of Bland for the purpose of keeping the complainant in ignorance of the pendency of the suit; that when the cause was remanded to the circuit court, he offered to plead his payment of the bond *puis darrein continuance*; but the court refused to receive the plea, on the ground, that the mandate of the supreme court was imperative on them to enter a judgment for the plaintiff.

The defendants demurred to this bill for want of equity, and the court below sustained the demurrer, and dismissed the bill, and the complainant has appealed to this Court.

Do the facts set forth in the bill, and admitted by the demurrer, entitle the complainant to the injunction prayed for?

According to the view entertained by the court of the true merits of this case, it will be unnecessary to examine the question so much mooted on the argument, as to the conclusiveness of the sheriff's return, or whether equity would interfere, where a false return has been made by the sheriff in collusion with a co-defendant, without any fraud or fault of the plaintiff. We shall, therefore, consider the case as if the complainant had full notice of the suit at law, and the summons had been duly served on him.

The laws of Mississippi limit the liability of the sureties in the official bond of the sheriff to the amount of the penalty. Any person injured by a default of the sheriff in paying over money collected by him may have a judgment entered on the bond for the amount due to him, on motion, without service of process, or stay of execution. This judgment is a lien on all the personal and real property of the defendants, and has a priority over all judgments subsequently obtained.

As the officer is liable to the extent of his defaults, and the surety only to the extent of the bond, difficulties will, no doubt, often occur as to the mode in which sureties may defend themselves, when judgments are demanded exceeding the amount of the penalty. If the prior judgments should be paid

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out of the property of the sheriff, the sureties might wrongfully escape, if the amount of prior judgments might be pleaded against subsequent demands. On the contrary, if it could not, the surety might be compelled to pay more than the amount of his bond, unless the court should protect him in some way.

In some states, where a similar law prevails as to suits on sheriffs' bonds, each suitor is permitted to take a judgment on the bond for the amount of his claim, and when the sureties have paid in the whole amount of the penalty, all further executions are stayed by the court, and the money apportioned to the claimants according to their respective priorities. But, whatever may be the practice of the courts of Mississippi in such cases, it is clear, that, when the surety has paid the whole penalty of his bond, he should, at some stage of the proceedings, be

suffered to plead this defense to further exactions. If he has had no such opportunity before judgment, the court, on motion, should permit it to be done after judgment, and order a stay of execution. Formerly, courts of law gave a remedy in such cases, by a writ of *audita querela* -- "a writ," it is said,

"of a most remedial nature, and invented lest in any case there should be an oppressive defect of justice, where a party who has a good defense is too late in making it in the ordinary forms of law,"

and although it is said to be in its nature a bill in equity, yet in modern practice, courts of law usually afford the same remedy on motion in a summary way. The practice in Mississippi seems to prefer a bill in equity for the same purpose.

And courts of equity usually grant a remedy by injunction against a judgment at law, upon the same principles. In [*Truly v. Wanzer*](#), 5 How. 142, this Court said:

"It may be stated as a general principle with regard to injunctions after a judgment at law that any fact which proves it to be against conscience to execute such judgment, and of which the party could not have availed himself in a court of law, or of which he might have availed himself at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will authorize a court of equity to interfere by injunction to restrain the adverse party from availing himself of such judgment."

See *also* Story Eq.Jur. 887.

In the case before us, the surety had been compelled to pay the whole amount of his bond by process from the state courts, before the present defendants obtained their judgment against him, but after the institution of their suit. This would have been a good defense to the action if pleaded *puis darrein continuance*. The complainant tendered this plea at the proper

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time, and was refused the benefit of it, not because it was adjudged insufficient as a defense, but because the court considered they had no discretion to allow it. The

mandate from this Court was probably made without reference to the possible consequences that might flow from it. At all events, it operated unjustly, by precluding the complainant from an opportunity of making a just and legal defense to the action. The payment was made while the cause was pending here. The party was guilty of no laches, but lost the benefit of his defense, by an accident over which he had no control. He is therefore in the same condition as if the defense had arisen after judgment, which would entitle him to relief by *audita querela*, or a bill in equity for an injunction.

We are of opinion, therefore, that the complainant was entitled to the relief prayed for in his bill, and that the decree of the court below should be

Reversed.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said circuit court in this cause be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded to the said circuit court, for further proceedings to be had therein, in conformity to the opinion of this Court.

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