

Ives Vs. Merchants' Bank of Boston

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Court : US Supreme Court

Decided On : 1851

Appeal No. : 53 U.S. 159

Appellant : Ives

Respondent : Merchants' Bank of Boston

Judgement :

Ives v. Merchants' Bank of Boston - 53 U.S. 159 (1851)

U.S. Supreme Court Ives v. Merchants' Bank of Boston, 53 U.S. 12 How. 159 159 (1851)

Ives v. Merchants' Bank of Boston

53 U.S. (12 How.) 159

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF RHODE ISLAND

SYLLABUS

The surety for the appellants from a decree in admiralty gave bond to pay all costs and damages which might be adjudged by this Court.

This Court having affirmed the decree of the circuit court with costs and six percent damages, judgment was entered upon the receipt of the mandate by the circuit court for the amount of the original judgment together with the amount of costs and damages calculated up to that day, and execution was awarded.

Under this execution, the vessel, which had been attached under the libel, was sold for less than this aggregate amount.

The surety is not entitled to have a relative proportion of the proceeds of sale applied to the reduction of his bond, but is responsible upon it to the entire amount.

By the 26th section of the Judiciary Act, the courts have power to assess damages upon bonds &c.;, and to render judgment for so much as is due according to equity, in cases of default or confession or demurrer. This section does not apply to a case heard on agreed facts.

But then when the case heard on agreed facts was the case of an appeal bond, it was proper for the court to give judgment for the penalty of the bond (being less than the judgment under the mandate) and allow interest from the date of the institution of the suit, although the amount to be paid in this way would exceed the penalty of the bond.

Page 53 U. S. 160

This case was a consequence of the case of [*New Jersey Steam Navigation Company v. Merchants' Bank of Boston*](#), 6 How. 344.

The Merchants' Bank of Boston was the plaintiffs in the circuit court, and the cause of action is thus stated in the brief of the counsel for the plaintiff in error in this Court. There was a special declaration in the circuit court, to which the defendant demurred:

The facts set forth in the declaration and admitted by the demurrer, upon which the questions here presented arise, are shortly these:

The suit in admiralty -- New Jersey Steam Navigation Company, Appellant and Libellee v. Merchants' Bank of Boston, Libellant and Appellee, lately decided by the Supreme Court of the United States and commonly called the *Lexington Case*, was commenced in the District Court of the District of Rhode Island by attachment of the steamer *Massachusetts*, then belonging to the Navigation Company. The suit coming by appeal to the Circuit Court of the United States for the District of Rhode Island, a decree therein was rendered against the Navigation Company at the November Term 1843, whereupon an appeal was taken by the company to the Supreme Court of the United States, and Moses B. Ives, the plaintiff in error, entered into appeal bond as surety for the company, of which he was a member, in the penal sum of \$2,500, with the following condition:

"Now therefore if the said New Jersey Steam Navigation Company shall prosecute their said appeal before the said Supreme Court of the United States with effect and shall well and truly pay all such costs and damages as shall be adjudged for them to pay by said Supreme Court or by said circuit court by reason of said appeal, then the before-written obligation to be void and of no effect, otherwise it shall remain in full force and effect."

The suit terminated in the Supreme Court in a decree in favor of the libellant and appellee, and execution finally issued against the Navigation Company for the sum of \$28,302.26 debt, and costs taxed at \$680.50, which, together with the sum of 75 cents for the execution, made the whole amount of the execution \$28,983.51, the debt drawing interest from 19 June, 1848.

Of the debt, so called, embraced in the above execution the sum of \$6,228.78, consisted of the costs and damages of the

Page 53 U. S. 161

appeal decreed by the Supreme Court -- that is to say, \$6,078.26 of it was interest on the amount decreed accruing during the pendency of the appeal, given by way of damages of the appeal, and the balance, \$150.52, were the costs of the appeal. This sum, \$6,228.78, drawing interest from 19 June, 1848, is the sum for which

Mr. Ives would have been liable, to the extent of the penalty of the appeal bond, had the execution remained wholly unsatisfied. But the above execution was levied by the marshal upon the steamer *Massachusetts*, attached as aforesaid on the original process in the suit, and on 26 July, 1848, the *Massachusetts* was sold by the marshal under the levy for the sum of \$25,000, and, deducting therefrom the sum of \$883.38, the marshal's fees and expenses, the sum of \$24,116.62 was paid over by the marshal to the Merchants' Bank, and the execution thereupon returned satisfied for that amount, and unsatisfied for the balance -- that is to say between four and five thousand dollars of the execution remained unpaid.

The present action is an action by the Merchants' Bank against Mr. Ives, the surety on the above appeal bond, to recover the costs and damages of appeal, and the plaintiff and defendant in error claimed below that he was entitled to apply the \$24,116.62, not proceeds of the *Massachusetts*, first to that portion of his execution not protected by the appeal bond, and was compelled to apply the balance only to that portion of the execution protected by the appeal bond, treating the sum made upon the execution in the same manner as if it had been a voluntary payment without direction by the payor, in which case the right of appropriation remains with the payee. To this result the learned judge who tried the case below for various reasons came, and rendered judgment against Mr. Ives for the penalty of the bond with interest from the day of demand by action brought.

Page 53 U. S. 163

MR. JUSTICE CATRON delivered the opinion of the Court.

At November term, 1843, in the Circuit Court of Rhode Island, the Merchants' Bank of Boston recovered against the New Jersey Steam Navigation Company, by decree in an admiralty suit, the sum of \$22,224 and costs of suit. From which decree the respondents appealed to this Court, and on December 14, 1843, Moses B. Ives, the present plaintiff in error, became bound as surety for the appellants in a penal bond of \$2,500, with a condition

"that the said Navigation Company should prosecute their appeal with effect, and should well and truly pay all such costs and damages as should be adjudged for them to pay by said Supreme Court or by said circuit court by reason of said appeal in case of failure."

At December term, 1847, the appeal was heard before the Supreme Court, and the decree affirmed, with costs and six percent damages. On return of the mandate, a judgment was entered in the circuit court against the Navigation Company for the original amount, and also for \$6,078.20 damages, arising by reason of the appeal, and for \$529.98, being costs covered by the appeal bond. The entire sum for principal, damages, and costs, being \$28,452.78. Execution issued for the aggregate sum, and the steamboat Massachusetts was sold 20 July, 1848, for \$25,000, by virtue of the writ. The vessel had been attached when the proceeding was commenced, and continued subject to a lien until sold, but, not bringing a sum equal to the final decree, Ives was sued on his appeal bond, and the circuit court gave judgment against him for the amount of the penalty, and also for six percent interest on the \$2,500 from October 10, 1848, being the time when he was served with the writ, the penalty and interest amounting to \$2,605.80, for which judgment was rendered at the June term, 1849. To bring up this judgment, Ives sued out the present writ of error.

First it is insisted and assigned for error that the \$25,000 made by a sale of the vessel covered about eighty percent of the amount included in the execution, and ought to have been proportioned to every part of the demand, and if thus applied to damages and costs, would have reduced them to about \$1,200, and that plaintiff in error was responsible for no more.

Ives was bound to pay such damages as might be awarded by the Supreme Court and costs, and could have been sued and a judgment had against him had no execution issued. He was positively bound to the amount of his bond, and could not be heard to allege an extinguishment of it in part because of a payment made by his principals, leaving an amount due equal to the bond.

This is the plain equity of the case. If the appeal had not

been taken and the property attached had been sold in due time after the first decree for \$25,000, no damages would have been sustained by the plaintiffs below, and as the surety was instrumental in delaying satisfaction, it is equitable that he should respond to such damage as his act occasioned, and which enlarged the amount. The second ground relied on to reverse is that by uniform practice, costs are deducted from the first proceeds collected on an execution including them, and that a surety for costs is never held liable when an amount sufficient to cover costs is made of the principal.

It is not necessary at present to decide this matter of practice, nor shall we do so, as the unsatisfied damages, exclusive of costs, far exceeded the judgment rendered by the circuit court.

The third and remaining question is one of general importance and some difficulty. The surety was bound in a penal bond, and this penalty the circuit court exceeded by allowing interest on it from the time of demand by suit, and it is insisted that in this there was error. The action was debt, with an allegation of damages sustained by its detention. The parties came to a hearing on an agreed case which set forth the facts, and submitted the law arising on them to the court, and as the 26th section of the Judiciary Act of 1789 only gives the courts power to assess damages and to render judgment for so much as is due according to equity, in cases of default or confession or on demurrer, it does not apply in cases heard on agreed facts or tried upon pleadings and proofs. This Court so held in [Farrar & Brown v. United States](#), 5 Pet. 385, and which construction we follow. In the same cause it was adjudged that in an action of debt against the sureties of a surveyor who had received moneys of the United States to disburse and given bond with sureties to account for them, the practice was to render judgment in debt for the penalty, to be discharged by the amount actually due, and that this amount could not exceed the penalty.

In cases where unascertained damages are claimed about which there is a contest, the foregoing is the proper rule, although it was departed from in the case

of *McGill v. Bank of the United States*, 12 Wheat. 514, where payments had been made by the sureties after a defalcation, and an account was taken between the parties, and interest calculated on both sides and a balance struck, which, when added to previous payments, exceeded the penalty of the bond. But these cases widely differ from the present. Here, the surety was bound to pay damages that might be adjudged against his principal in the Supreme Court. They were established and settled at \$6,078.26, and this judgment bore six percent interest from

Page 53 U. S. 165

its date. It was conclusive as against the principal, and equally conclusive of the fact that the surety was bound to pay it to the extent of \$2,500. Then this amount was due by the bond, which could have been at once enforced by suit, and if the Supreme Court had been vested with power to render judgment against the surety on the appeal bond, as is the case in some of the states, no reason would seem to exist why the bond should not bear interest from the date of judgment in the Supreme Court against the surety as well as against the principal. But as Ives only guaranteed the payment of damages, and it was a duty imposed on the principal to pay the entire judgment, the moderate rule has been applied of requiring interest from the time that demand of payment was made by suit -- a rule now so generally established in similar cases by state courts of high authority that this Court could not violate it without manifest impropriety.

Of course we are dealing with an appeal bond, and do not intend to go beyond the case before us. It is therefore ordered that the judgment rendered by the circuit court be

Affirmed.

ORDER

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 Rhode Island, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this

Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs and damages at the rate of six percentum per annum.

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