

Broome Vs. United States

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Appellant : Broome

Respondent : United States

Judgement :

Broome v. United States - 56 U.S. 143 (1853)

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Broome v. United States

56 U.S. (15 How.) 143

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF FLORIDA

SYLLABUS

The Act of Congress, passed on 2 March, 1799, 1 Stat. 705, requires the bond given by a collector of the customs to be approved by the Comptroller of the Treasury.

But the date of such approval is not conclusive evidence of the commencement of the period when the bond began to run. On the contrary, it begins to be effective from moment when the collector and his sureties part with it in the course of transmission.

Hence, where the surety upon the bond of a collector in Florida died upon the 24th of July, and the approval of the Comptroller was not written upon the bond until the 31st of July, it was properly left to the jury to ascertain the time when the collector and his sureties parted with the bond to be sent to Washington, and they were instructed that before they could find a verdict for the surety, they must be satisfied from the evidence that the bond remained in the hands of the collector or the sureties until after the 24th of July.

Collectors are often disbursing officers, and they and their sureties are responsible for the money which a collector receives from his predecessor in office, and also for money transmitted to him by another collector upon his representation and requisition that it was necessary to defray the current expenses of his office, and advanced for that purpose.

The facts are stated in the opinion of the court.

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MR. JUSTICE WAYNE delivered the opinion of the Court.

Ambrose Crane was appointed collector of customs for St. Mark's, in Florida, and signed, with his sureties, Swain and Macon, what was meant by them to be an official bond. The form of the bond is given in the statute. This conforms to it in every particular. 1 Stat. 705. Crane, the collector, became a defaulter. This suit was brought to recover the amount of the defalcation from the administrator of Macon, one of the sureties of Crane. The bond is dated on 2, 1837. Two endorsements are upon it. One of them was made by the district Attorney of the United States for Florida.

"Office of the United States Attorney, Middle district of Florida, July 4, 1837. I hereby certify, that Peter H. Swain and Arthur Macon, Esqrs., who appear to have executed the within bond as securities, are generally esteemed to be, and in my opinion undoubtedly are, good for the amount of this bond. They reside in Leon County, and I would take either of them, without hesitation, as security for a private debt of that amount. The signatures appear to be genuine."

"CHARLES S. SIBLEY, *District Attorney* "

The other endorsement is as follows:

"Comptroller's Office, July 31, 1837. Approved in the above certificate."

"GEORGE WOLFE, *Comptroller* "

Macon died on the 24th July, seven days before the date of the Comptroller's approval, and twenty-four days after the date of the district attorney's endorsement. The evidence in the case shows that, in the year 1837, the mail time between Tallahassee and Washington was from eight to ten days. The distance might have been traveled by an individual in less time, but not in less than seven or eight days. This testimony was introduced by the plaintiff to prove that the bond, if it had not been delivered before the 24th of July, the day of Macon's death, that it must have been in the course of transmission from the obligors before that day, as the Comptroller's approval is

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dated the 31st of the month. The act directing bond to be taken from collectors, with sureties, to be approved by the Comptroller of the Treasury of the United States, will be found in 1 Stat. 705. It is that every collector, naval officer, and surveyor, employed in the collection of the duties upon imports and tonnage shall, within three months after he enters upon the duties of his office, give bond, with one or more sureties, to be approved by the Comptroller of the Treasury of the United States, and payable to the United States, with condition for the true and faithful performance of the duties of his office, according to law. The condition of

the bond is that whereas the President of the United States hath, pursuant to law, appointed the said _____ to the office of _____, in the State of _____. Now therefore, if the said _____ has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge all the duties of said office, according to law, then the above obligation is to be void and of none effect, otherwise it shall abide, and remain in full force and virtue.

In this state of the case, a recovery upon this bond is resisted by an objection that it never had a legal existence as to Macon, the intestate of the appellant, because he died before it was approved by the Comptroller. It is not denied -- or, if it be, the evidence makes it altogether probable -- that the bond had been delivered before Macon died. We cannot admit that the date of the approval can be taken absolutely as the time when the bond was accepted, without any relation to the time when it was delivered. A bond may not be a complete contract until it has been accepted by the obligee; but if it be delivered to him to be accepted if he should choose to do so, that is not a conditional delivery, which will postpone the obligor's undertaking to the time of its acceptance, but an admission that the bond is then binding upon him, and will be so from that time, if it shall be accepted. When accepted, it is not only binding from that time forward, but it becomes so upon both from the time of the delivery. That is the offer which the obligor makes, when he hands the bond to the obligee, and in that sense the obligee received it. Such is just the case before us. The act requires the collector to give a bond, "with sureties to be approved by the Comptroller;" it must be done in three months after he has entered upon the duties of his office; it must be retrospective to that time, and be for the future also. The Comptroller may accept the sureties or reject them. He may call at any future time for other sureties, if circumstances shall occur, or information shall be received, which make it necessary that the United States should have a more responsible security.

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Or he may call, under the direction of the Secretary of the Treasury, for a new bond. He may decide upon the sufficiency of the sureties before they have made themselves so, or after they have signed the collector's bond. The first course is

not the usual practice. The bond is commonly sent to the collector with such sureties as he can get. The Comptroller receives it under the law, to be afterwards approved, upon such information as he has or may procure, concerning the responsibility of the sureties. The time is not limited for the use of his discretion for that purpose. He knows, and the collector knows, that the bond ought to be given in three months after the collector has begun to discharge the duties of his office. It is his duty to give the bond. It is the Comptroller's to see that it is done. It is not necessary that it should be handed to the Comptroller. It may be handed to an agent appointed by the Comptroller to receive it, or it may be put into the possession of any person to deliver it, or it may be transmitted by mail. If done in anyone of these ways, it is a delivery from the moment that the collector and his sureties part with it. It is from that moment in the course of transmission, with the intention that the law may act upon it through the Comptroller's agency, and his subsequent approval is an acceptance with relation to the time beginning the transmission. The statute does not require the approval to be in writing. It may be so, and may be done verbally; or it may not be done in either way. Receiving the bond and retaining it for a considerable time without objection will be sufficient evidence of acceptance to complete the delivery, especially when the exception is taken by the party who had done all he could to complete it. *Postmaster General v. Norvell*, 1 Gilpin 106-121. And we add that the retention of such a bond by the Comptroller without objection for a longer time than the statute require it to be given would be presumptive evidence of its approval and acceptance.

This presumption of acceptance has been ruled by this Court, in the case of the [*United States Bank v. Dandridge*](#), 12 Wheat. 64. In that case, an objection was taken in the circuit court to the admissibility of evidence to show a presumptive acceptance of a cashier's bond because the charter of the bank required a bond to be given satisfactory to the directors. The circuit court sustained the objection and ruled that the approval must be in writing to bind the cashier's sureties. This Court ruled otherwise. Presumptive evidence, then, being admissible to prove the acceptance of a bond -- such as its being in the possession of the obligee -- having been retained without objection, and the obligor continuing to act under it without having called for a more formal acceptance -- it follows that a written

acceptance, dated after a delivery, as was done in this case, is not to be taken as the time from which the completeness of the contract is to be computed; but that such an acceptance has a relation to the time of delivery, making that time the beginning of its obligation upon the parties to the bond. We remark also that there is no rule which can be applied to determine what constitutes the approval of official bonds. Every case must depend upon the laws directing such an approval. The purpose for which such a bond is required must be looked to. The character of the office and its duties must be examined. The time within which such a bond must be given and approved, and whether it is to be retrospective or for the future only, must be considered before it can be determined how and when the approval must be made. The differences suggested may be seen by comparing the terms of the statute of 1825, requiring bonds to be given by postmasters directly to the Postmaster General, and not to the United States, with the phraseology of the section of the act directing bonds to be taken from the collectors to the United States.

The case of *Bruce v. State of Maryland*, in 11 Gill & Johnson 382, which was supposed to have a bearing upon the case, will illustrate fully, the differences of which we have spoken.

The 42d article of the Constitution of Maryland requires bonds from the sheriff of that state, with sureties before they can be sworn in to act as such. The act of Maryland carrying that article into operation, 2 Laws of Maryland, November, 1794, fixes the time within which sheriffs shall give bonds, and the manner of taking them is prescribed. It must be done in a county court, or before the Chief Justice, or two associate Justices &c.;, but by whomsoever approved, the act directs that the official doing so shall immediately transmit it to the county court to be recorded. The case came before the

Court of Appeals from a county court which had decided that the bond of the sheriff operated from its date, that bond having been given without the approval in the manner prescribed. The Court of Appeals overruled the court below, saying

that the bond had been irregularly taken and that a sheriff's bond was only obligatory from the time of its approval. Under that statute, the question when a sheriff's bond became operative could not properly occur, it having made the delivery and approval of the bond simultaneous, that there might be a compliance with the Constitution, which declared that no sheriff should act until he had given bond. The act which we have been considering, does not require the Comptroller's approval to be in writing. A collector may be permitted to

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discharge the duties of his office for three months before he gives a bond if the Secretary of the Treasury shall think it safe to be done. But if otherwise, he may require a bond before the collector enters upon the duties of the office. The statute means that the three months allowed for a bond to be given is an indulgence to the collector, and not a rule binding upon the government, when its proper functionary shall determine that a bond shall be given earlier. We think too that the approval by the Comptroller is directory, and not a condition precedent to give validity to the bond. The doctrine that deeds and bonds take effect by relation to the time they are delivered is well understood. The cases cited by the Attorney General in support of it are sufficient for the occasion. We need not add to them. It applies to this case. Macon was bound as the surety of Crane by the delivery of the bond before his death. The evidence in support of such a delivery was fairly put to the jury.

We have compared the charge of the judge with the instructions which were asked by the counsel of the defendant upon the point we have been considering, and we think that it covers all of them correctly.

Another objection against a recovery upon this bond remains to be disposed of.

It is said that Crane, the collector, received money belonging to the United States out of the line of his duty which has been improperly charged to make up the amount of the defalcation which his sureties are now called upon to pay.

The duties of collectors have been much multiplied by other acts, since the act of 1799 was passed. Scarcely an act, and no general act has been passed since concerning the collection of duties upon imports and tonnage without some addition having been made to the collector's duties. They are suggested from experience. The collector, too, has always been a disbursing officer for the payment of the expenses of his office, and may pay them out of any money in hand, whether received from duties or from remittances to him for that purpose, where the expenses are not unofficial, have been sanctioned by law, and have been incurred by the direction of the Secretary of the Treasury. For such payments, he may credit himself in his general account against the sums which may have been received for duties. He may retain his own salary or fees and commissions; pay the salaries of inspectors and other officers attached to the office; make disbursements for the revenue boats, lighthouse buoys &c.;, and apply money collected for duties, to all expenses lawfully incurred by himself or by his predecessors. For such as may have been incurred by his predecessor, he may

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receive from him any money in his hands, when he is going out of office, belonging to the United States, and which have been retained by him for the payment of such expenses.

When so turned over to a successor, he receives it officially, to be applied by him to the purposes for which it had been retained. Himself and his sureties are as much responsible for the faithful application of it as they are for his fidelity to his trust for duties received by himself or for other sums which may have been remitted to him by the order of the government. It has often been the case, and must be so again, as it now is that the convenience of the government and the interest of its citizens, require collection districts to be established, which do not and are not expected at first to pay expenses. Remittances then must be made for such purposes. They are made to the collector, because it is under his personal supervision that the work is done, or the goods are furnished for the government, at the point of his office where the law requires him to reside. What we have said

covers all of the remittances which were made to Crane by Breedlove, the collector of Mississippi, and also the payment of \$1,279.92 received by him from Willis, his predecessor, when he was going out of office, and when Crane was coming in. It appears from the accounts that he received it as collector. It cannot be denied that there was then a debt due by the government, on account of the expenses of the office, to which that sum ought to have been applied. Had it been so, he would have been credited with the sum in his next quarterly settlement. And if it was not so applied, it cannot be said that there was fidelity to his official trust in withholding it and applying other money of the government subsequently collected or received to the payment of its antecedent debt. In this instance, there is less reason for not exempting the securities of Crane from responsibility for the sum received by the collector from his predecessor, because the evidence in the case shows it was afterwards sanctioned by the government, and that it might have been applied by the collector to the liquidation of an official debt, as far as it would go, due by this government to himself. What has been said covers every instruction which the court below was asked to give upon this point. We do not think that the judge erred in his general charge upon them to the jury, or that in making the charge which he did there is any error of which the defendant can complain.

We

Affirm the judgment below and direct a mandate to issue accordingly.

MR. JUSTICE CAMPBELL.

I dissent from the judgment of the court in this case.

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The certificate of the Comptroller of the Treasury of his approval of a bond which it is made his duty to accept on behalf of the government is the best evidence of the time of its delivery as a valid and operative obligation. If another date is asserted by the government, the burden of sustaining it by clear proof devolves upon it.

The instruction to the jury by the district Judge "that the time of the approval of the bond at the Treasury Department is not to be taken as the time of delivery" was, in my opinion, too general and is erroneous.

The district Judge further instructed the jury that although the bond "may not have come to the hands of the officers of the government" till after the death of one of the obligors, yet "if they had parted with it for the purpose of sending it or having it sent to Washington City before that time," that would charge the legal representative of the person who had died.

The delivery of a bond is only complete when it has been accepted by the obligee or a third person "for and in his behalf, and to his use."

The terms I have quoted from the Touchstone imply a cession of the title to the paper in the act of delivery.

The third person, who thus represents the obligee, is not subject to the mandate of the obligor nor amenable to his control.

The instructions of the district judge would be satisfied by any surrender of the custody of the paper, if for the purpose of having it sent to Washington City; whether it be to the agent or servant of the obligors, who would be subject to their orders, or by its enclosure in a letter, the delivery of which might be countermanded -- in other words, by acts which did not amount to a surrender of the property or legal right to control the paper. This, in my opinion, was erroneous. With respect for the opinion of this Court, I enter, therefore, my dissent to the judgment which affirms these instructions.

ORDER

This cause came on to be heard on the transcript of the record, from the Circuit Court of the United States for the Northern District of Florida, 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 interest until paid at the same rate per annum that similar

judgments bear in the courts of the State of Florida.

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