

Bevins Vs. Ramsey

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Court : US Supreme Court

Decided On : 1853

Appeal No. : 56 U.S. 179

Appellant : Bevins

Respondent : Ramsey

Judgement :

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Bevins v. Ramsey

56 U.S. (15 How.) 179

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF EAST TENNESSEE

SYLLABUS

Where a clerk of a court was sued upon his official bond, and the breach alleged was that he had surrendered certain goods without taking a bond with good and sufficient securities, and the plea was that the bond which had been taken was

assigned to the plaintiffs, who had brought suit, and received large sums of money in discharge of the bond, this plea was sufficient, and a demurrer to it was properly overruled.

Ramsey was clerk of the chancery court held at Knoxville, Tennessee. Bevins and Earle were citizens, the former of Arkansas, and the latter of South Carolina.

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The action was one of debt upon the official bond of Ramsey and his securities.

The declaration states that Ramsey was appointed clerk and master of the chancery court, in the declaration mentioned, and, on the 11th April, 1836, delivered to Newton Cannon, Governor of Tennessee, his bond, with the other defendants, his sureties, in the penalty of \$10,000, conditioned to discharge the duties of the office of clerk and master, according to law.

That Ramsey failed to discharge the duties of that office:

1. That upon the dissolution of an injunction, awarded on a bill attaching certain property brought by the plaintiffs against Chase & Bowen, which property had been put in the hands of Ramsey, clerk and master, as receiver, he was ordered to surrender the property attached on Chase & Bowen, giving bond and security to abide the decree; that it was the duty of Ramsey, as clerk and master, to take that bond; that he did not take their bond with sufficient securities, but, on the contrary, took the bond of Chase, with Thornburg and others, as sureties, who were then wholly insufficient for the performance of the judgment and decree; that plaintiffs finally got a decree for \$6,303.64, which is still unpaid.

2. That in the suit of *Bevins v. Chase & Bowen*, the property attached in, which had been placed in the hands of Ramsey, clerk and master of the court, as receiver, he was ordered to surrender the property attached to Chase & Bowen, on their giving bond and security to abide by and perform the decree, and under that order it was the duty of Ramsey, as clerk and master, before surrendering the goods, to take a bond from Chase & Bowen, with sufficient security conditioned

according to the order. But Ramsey did not take such bond with sufficient security, but wholly neglected and failed so to do, and gave up the property without so doing. And plaintiffs afterwards obtained a decree against Chase & Bowen, for \$6,303.64, which is still unpaid by said Chase & Bowen.

3. That in the suit, and under the order above prescribed, it was the duty of Ramsey, as clerk and master, to take such bond as the order directed to be taken before surrendering the property; yet Ramsey did not take bond and security from Chase & Bowen to abide and perform the decree, but surrendered the property without taking bond and security, and a decree was afterwards rendered for \$6,303.64 in favor of the plaintiffs.

4. That in the suit, and under the order aforesaid, it was the duty of Ramsey, as clerk and master, to take from Chase & Bowen, bond and sufficient security to abide and perform the decree; yet he wholly failed and neglected to take bond and sufficient security, but surrendered the property held by him as

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receiver, without taking bond and security as required by the order, and afterwards a decree for \$6,303.64 was in that suit rendered in favor of plaintiffs, which Chase & Bowen have failed to perform, and which yet remains due.

By reason of the premises, the bond of Ramsey, as clerk and master, became forfeited, and was assigned by the successor of the obligee, Governor of Tennessee, by his written assignment, on a copy of the bond, to plaintiffs, on the 22d July, 1847.

The defendants appeared and pleaded:

1st. That they had performed the condition of the bond.

2d. That it was no part of the right or duty of Ramsey, as clerk and master, to take the bond of Chase & Bowen with good and sufficient security or otherwise, but it was the duty of the receiver.

On these pleas there is an issue of fact.

3d. That the filing the bill of the plaintiffs against Chase & Bowen, the attachment awarded, and the appointing the receiver, the order requiring the bond and the final decree, were null and void for want of jurisdiction in the court of chancery, the remedy being properly at law.

4th. That after the order on the declaration mentioned, and before the surrender of the property, Ramsey did take a bond conditioned as required by the order, which bond was, on application of Bevins, Earle & Co., by the court, ordered to be surrendered, and was accepted, and under it they have recovered \$2,000.

5th. That the defendants do not owe the debt.

7th. That at the date of the bond, the obligors and obligees were citizens of Tennessee, and the obligors and the obligee and his successors, have all continued to be citizens of Tennessee.

8th. That at the time of the cause of action the plaintiffs and defendants were citizens of Tennessee.

To these pleas the plaintiffs demurred.

To the 6th plea: that before surrendering the property, Ramsey took bond conditioned as required by the order, and in so doing, and judging of the sufficiency of the sureties, he acted *bona fide* in the exercise of his best judgment.

The plaintiffs replied, that Ramsey did not take bond from Chase & Bowen with sufficient surety, as was his duty.

To this replication the defendants demurred.

The court overruled the demurrers of the plaintiffs and sustained the demurrer of the defendants to the replication to the sixth plea and to the declaration, and gave judgment for the defendant on the whole record.

In this state of things, the record was brought up to this Court.

MR. JUSTICE CATRON delivered the opinion of the Court.

The defendant, William B. A. Ramsey, and his sureties, were sued on an official bond given by Ramsey as clerk of the Chancery Court held at Knoxville, Tennessee. The condition of the bond declares that the clerk shall "truly and honestly keep the records of said court, and discharge the duties of said office, according to law," and the declaration alleges that said Ramsey did not truly and lawfully discharge the duties of his office, in this that Bevins, Earle & Co. filed their bill in equity in the Chancery Court at Knoxville against Chase & Bowen, and that certain goods of theirs were attached, and put into the hands of said Ramsey, as receiver, and that by an order of court the injunction was dissolved, and the receiver, Ramsey, was directed to surrender the goods to Chase & Bowen "upon their entering into bond with security to abide by and perform the judgment and decree of the court upon final hearing of the cause, if made against them," and that by virtue of the order it became the duty of Ramsey, as clerk and master of said court, to take a bond as above prescribed. Nevertheless he did not take from Chase & Bowen their bond, with sufficient sureties thereto, but on the contrary, he took certain sureties, five in number, who were wholly insufficient to perform the decree of the court, and on said insufficient bond and security surrendered the goods to Chase & Bowen; and that afterwards, on a final hearing, a decree was rendered against Chase & Bowen in favor of Bevins, Earle & Co., for the sum of \$6,303.64, with interest thereon, which remained unpaid.

The second and third breaches aver that Ramsey surrendered the goods without taking any bond, "with good and sufficient sureties," from Chase & Bowen, and,

The fourth breach avers that no bond whatever was taken from Chase & Bowen, on the delivery of the goods to them.

The defendant relied on several pleas in defense, only two of which, the fourth and sixth, it is deemed necessary to notice. The fourth plea sets out the order dissolving the injunction, and the bond taken by Ramsey from Chase & Bowen, and their five sureties, and avers that, after the final decree was made against Chase & Bowen, the bond was, on the application of Bevins, Earle & Co., by order of the court, surrendered to them by the clerk and master, and was accepted by them, and under and by virtue of said bond, Bevins, Earle & Co. have demanded and brought suit against and received of the sureties in said bond large sums of money, to-wit, two thousand dollars, part and parcel of the penalty and condition of said bond,

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which were demanded, and received on and in discharge of said bond.

The sixth plea avers that the bond taken by Ramsey, as clerk and master, was for ten thousand dollars, and was in due form, and that in judging as to the sufficiency of the sureties, and in surrendering the property, said Ramsey acted *bona fide* and in the exercise of his best judgment.

To this plea the plaintiffs replied, reaffirming that said Ramsey had not taken bond with good and sufficient security, as was his duty, and to the replication there was a demurrer.

As the declaration did not charge the clerk with bad faith, and the presumption of good faith being *prima facie* in his favor, from the face of the bond, taken by him, neither the plea or replication could be of any force, because in their legal effect they are the same as that of the declaration, and so the court below held, and, going back to the declaration, declared it bad; and secondly overruled the demurrer to the defendant's fourth plea. The plaintiffs were offered the liberty to amend their declaration and pleadings, but this they declined doing, and final judgment was rendered against them. Whether it was necessary to aver in the declaration that insufficient security was taken wittingly and knowingly, and consequently in bad faith, we do not propose to discuss, as it is a question more

appropriately belonging to the state courts than to this Court. But as judgment was given against the plaintiffs on the fourth plea, and as that judgment is conclusive, if the plea is good, we will consider that plea. The demurrer admits that Bevins, Earle & Co. obtained the bond of Chase & Bowen and their sureties; that they sued the sureties on it, and received of them two thousand dollars, part of the penalty; and which sum was received in discharge of the bond; whether the money was obtained by judgment or compromise does not appear, nor is it material.

Chase & Bowen were principals to Ramsey, if he was in default for neglect of official duty, and so were the sureties to the bond responsible to him should he be compelled to pay in their stead. The clerk was the last and most favored surety, and if forced to pay the debt, he was entitled to all the securities Bevins, Earle & Co. had, to remunerate his loss, and, in such event, he would have been entitled to the bond on Chase & Bowen, and their sureties. And in the next place it is manifest that Ramsey cannot be in a worse situation than if he had been a party to the bond, in common with the other sureties, and in such case it must be admitted that he would stand discharged.

We concur with the circuit court that the fourth plea was a good defense, and order the judgment to be

Affirmed.

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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 East Tennessee, 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.

