

**Martin Vs. Thomas**

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**Court :** US Supreme Court

**Decided On :** 1860

**Appeal No. :** 65 U.S. 315

**Appellant :** Martin

**Respondent :** Thomas

**Judgement :**

Martin v. Thomas - 65 U.S. 315 (1860)

U.S. Supreme Court Martin v. Thomas, 65 U.S. 24 How. 315 315 (1860)

**Martin v. Thomas**

**5 U.S. (24 How.) 315**

*ERROR TO THE DISTRICT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF WISCONSIN*

## **SYLLABUS**

Where there was an action of replevin in Wisconsin by virtue of which the property was seized by the marshal and a bond was given by the defendant in replevin, together with sureties, the object of which was to obtain the return of the property

to the defendant, which bond was afterwards altered by the principal defendant's erasing his name from the bond, with the knowledge and consent of the marshal but without the knowledge or consent of the sureties, the bond was thereby rendered invalid against the sureties.

The facts of the case are stated in the opinion of the Court.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The action was replevin; the pleadings being filed, a jury was called, who rendered a verdict in damages for nine thousand seven hundred and eighty dollars and ninety-six cents, with costs.

In the course of the trial, a bill of exceptions was filed on which the questions of law were raised.

"Be it remembered that at the trial of the above-entitled action, the plaintiff produced an instrument in writing in the words and figures, and with interlineations and erasures following, to-wit:"

" Know all men by these presents, that we and John T. Martin and John Keefe, and Andrew Proudfit, are held and firmly bound unto Major J. Thomas, Marshal of the United States for the Wisconsin District, in the sum of twenty thousand dollars, to be paid &c.;"

" Whereas the defendants have required the return of property replevied by the marshal at the suit of George T. Rogers against Henry M. Remington and John T. Martin, Jun.; now

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the condition of this obligation is such that if the said defendants in said suit shall deliver to the marshal said property, if such delivery be adjudged, and shall pay to him such sum as may for any cause be recovered against the defendants, then

this obligation to be void."

The bond upon which judgment was recovered was void as against the defendants because after the same was executed by them as sureties, Remington, their principal, without their knowledge or consent, and with the consent of the marshal, erased his name from the bond.

In [Miller v. Stuart](#), 9 Wheat. 702, Mr. justice Story said

"Nothing can be clearer, both upon principle and authority, than the doctrine that the liability of a surety is not to be extended by implication, beyond the terms of his contract. To the extent and in the manner and under the circumstances pointed out in the obligation, he is bound, and no further. It is not sufficient that he may sustain no injury by a change in the contract, or that it may be for his benefit. He has a right to stand upon the very terms of his contract, and if he does not assent to any variation of it and an alteration of it is made, it is fatal."

*Hunt's Adm. v. Adams*, 6 Mass. 521.

2. After the execution of the bond by the defendants, to be delivered to the marshal, it was refused and disagreed to by him, and it thereby became void. Any subsequent alteration would require a new deed or positive assent to the same, to make it valid against the defendants.

Sheppard's Touchstone, 70, 394.

*The judgment is reversed.*

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