

United States Vs. Le Baron

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 642

Appellant : United States

Respondent : Le Baron

Judgement :

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U.S. Supreme Court United States v. Le Baron, 71 U.S. 4 Wall. 642 642 (1866)

United States v. Le Baron

71 U.S. (4 Wall.) 642

ERROR TO THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF ALABAMA

SYLLABUS

1. When a contract is alleged by the pleadings to have been made on a certain day, it is no variance to offer in evidence a written contract which took effect on a different day.

2. If it be proved that a bond bearing date the first day of the month, did not become obligatory until the fifteenth, this is no variance, although the bond is counted on in the pleadings as a contract made on the first day of the month and bearing that date.

This was an action of debt brought by the United States against Le Baron, surety of Beers, deputy postmaster at Mobile, on an official bond, dated *the first of July, 1850*.

The declaration set out:

"For that whereas heretofore, to-wit, *on the first day of July, A.D. 1850*, at Mobile, to-wit, in the state aforesaid and within

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the jurisdiction of this Court, the said Le Baron, by his certain writing obligatory sealed with his seal &c.;, *acknowledged himself* to be held and firmly bound to the United States in the sum of \$20,000."

The assignments of the breaches were laid in these words:

"That while the said Beers was deputy postmaster as aforesaid under *said* writing obligatory, and after the making and delivery thereof, to-wit, on the 10th day of July aforesaid, and divers other days before the commencement of the suit,"

&c.;

The case had been already before this Court at December Term 1856, and is reported in 19 Howard. [*](#) The facts then thus appeared:

Beers was appointed deputy postmaster at Mobile by the President during the recess of the Senate, and received a commission bearing date in April, 1849, to continue in force until the end of the next session of the Senate, that is to say until the 30th of September, 1850.

In April, 1850, before the old term had expired, he was nominated by the President to the Senate for the same office, and the nomination having been confirmed, a commission was made out and signed by President Taylor, but the President dying, it had not been transmitted to him at the date of the bond, July 1. The condition of the bond was simply that whereas Beers was "deputy postmaster at Mobile, . . . now if he should well and truly execute the duties of the said office," the bond should be void. There was nothing, therefore, in the bond to show to which term of office it meant to apply -- whether to the earlier one which underlay the second or to the second which overlapped partially the first. The default assigned as a breach of the bond was admitted to have occurred under the second appointment, and the principal question on the writ of error then before this Court was whether the bond secured the faithful performance of the duties of the office under the first or under the second appointment.

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The third plea of the defendant alleged that from the 1st July until the 30th September, Beers was deputy postmaster under an executive appointment made by the President during the recess of Congress, and that the bond sued on was intended to apply to that appointment and to that term alone, and that during that term no default had occurred. The replication was "that on and after the delivery by the defendant of the bond aforesaid, to-wit, on the 1st day of July," and from thenceforward for four years, Beers held under the appointment confirmed by the Senate, and that the bond was made for the faithful discharge of duty under this appointment -- the last one. The rejoinder was that "at the time of the execution of the bond," Beers was not postmaster under the appointment set forth in the replication, but under the Executive appointment -- and that the bond secured the performance of duty only during the time mentioned in the plea. Issue was joined on this rejoinder of the defendant.

The court held that the bond being an official and statutory bond, spoke not like ordinary bonds from its date, but from the time when it reached the Postmaster General and was accepted by him. The judgment was reversed and a *venire de*

novo awarded.

On a subsequent trial it was proved that the bond was accepted July 15. Thereupon circuit court instructed the jury that if the bond given in evidence was not approved until July 15, 1850, there was a variance between the allegation and the proof. And a verdict having gone accordingly for the defendant, the instruction just mentioned was the chief matter now assigned as error. A few exceptions to the admission of evidence also appeared upon the record.

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MR. JUSTICE MILLER delivered the opinion of the Court.

It was decided when this case was in this Court before that the bond which is the foundation of the suit was obligatory from the time of its acceptance by the Postmaster General, and not from its date, and also that the term of office of Beers commenced, under his appointment by and with the advice and consent of the Senate, on the day of that acceptance.

The case having been remitted to the circuit court for a new trial, that court directed a verdict for the defendant on the ground that there was a variance between the bond offered in evidence and the one set out in the pleadings. The variance is supposed to have reference to the time the bond took effect. It is claimed that the bond is described as being dated and taking effect on the 1st day of July, 1850, whereas the evidence showed that while it bore that date on its face, it was not approved by the Postmaster General until the fifteenth day of that month, and therefore, under the decision in 19th Howard, did not become the bond of defendant until the last-mentioned date.

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Upon an examination of the declaration, it will be seen that the plaintiff declares on the bond according to its legal effect -- namely that on July 1, 1850, the defendant by his certain writing obligatory acknowledged himself indebted to the plaintiff in

the sum of \$20,000. This manner of declaring gives no date to the bond, and merely gives the time when defendant became bound by it to the plaintiff. The rule that allegations of time, quantity, value &c., need not be proved with precision, but that a very large departure from the time, quantity &c., alleged, is allowable, is so well understood and is so much a matter of everyday practice that no citation of authority to sustain it is necessary. An indictment charging a prisoner with murder on the first day of July would be sustained by proving a murder committed on the fifteenth of that month. How much more reasonable that a contract alleged to have been made on the first may be supported by evidence of the same contract made on the fifteenth of the month?

But it is also a rule of evidence that when words used in a declaration are *descriptive* of the instrument declared on, it must, when offered in evidence, conform strictly to that description, and we concede that if it is alleged as part of the description of such an instrument that it bears such a date or is dated of such a day, that no instrument will be admissible which does not bear that date.

It is said by counsel that this declaration gives such a description of the date of the bond. A careful examination of it, however, shows no attempt at such description, and merely the usual necessary allegation of the time when the contract was made. If, however, counsel are correct in their construction of the declaration, still there is no variance, because the bond read in evidence actually bears the date which it is claimed that the declaration ascribes to it, and it therefore conforms to the supposed description.

It is no variance, however, from the substance of the issue to show that though dated the first of July, it took effect only on the fifteenth, because, as we have already shown,

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the precise time when the contract became obligatory need not be proved on trial.

The attempt to show that by the pleadings subsequent to the declaration it became necessary to prove that the contract became obligatory on the very day alleged is

equally unsuccessful.

The defendant, by his third plea, alleges that from July 1 to September 30, his principal was deputy postmaster under an appointment not confirmed by the Senate, and that the bond sued on was applicable to this appointment and to this period alone and that during that time no default or breach of its condition occurred. The replication is that on the day of the date of the bond and from thenceforward for four years, Beers, the deputy postmaster, held under the appointment confirmed by the Senate, and that the bond covered his transactions during that time. To this defendant rejoined that Beers was not postmaster under the appointment set forth in the replication, but under the first -- a Presidential appointment -- and that the bond covered only the time mentioned in the plea.

As it was proved on the trial that the bond was accepted on the 15th July, 1850, it follows under the former decision of this Court that from that time forth the bond covered his liability, and that it was under the last appointment. The plea of the defendant fails, therefore, except as to the time between the first and fifteenth of July. It is not perceived how the precise day when the bond took effect is material otherwise than this, and the court, by refusing to permit any breach to be proved within those fifteen days, would have fully protected the defendant.

All these pleas have relation to the legal effect of the bond, and none of them *describes* a bond different from the one offered in evidence. After the day had been fixed by proof at which the contract became binding, it was material that no breach should be proved before that time; but the proof which fixed that date was no variance from any pleading of the plaintiff, nor from the substance of any issue made in the case.

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As these principles require a reversal of the case, it is not deemed necessary to notice the other exceptions which are unimportant and may not arise on a new trial.

Judgment reversed.

* Page [60 U. S. 73](#) .

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