Jones, Robert H et al vs State of MO for use of Blow, Peter G. 1840 1st/CdeCo 118/8

Miller, Philip; Paulsel, Jacob

Failure to return execution

Affirmed; Constable's bond not invalidated by County Court inaction

#2 constable

#3 CO Clerk filing of note sufficient evidence of approval

Pleas before the Honorable, the Cole Circuit Court before William Scott sole and presiding judge thereof, at the court house in the City of Jefferson, at a Circuit court held for said county of Cole, on the sixth day of March in the year of Our Lord one thousand eight hundred and forty, in a certain matter in said court pending, wherein the "The State of Missouri who sues to the use of Peter E. Blow is plaintiff and Robert H. Jones, Philip Miller and Jacob Paulsel are defendants:

Be it remembered that heretofore, to wit on the 13th day of February in the year of Our Lord one thousand eight hundred and forty the said plaintiff filed in the Office of the Clerk of the Cole Circuit Court a transcript of the record and proceedings in the above case had before Jason Hanson Esq. a justice of the peace within and for said County, which said transcript is in the words and figures following to wit, "December 14th 1839. The State of Missouri to the use of Peter E. Blow, vs Robert H. Jones Philip Miller and Jacob Paulsel, for failing to return execution— The summons issued in this cause returned duly executed, and the said parties being present it is ascertained by the justice that said defendants are indebted to said plaintiff in the sum of twenty three dollars and ninety four cents for which

judgment is rendered. costs. To the Justice, 56¢ To the constable 75. And on the same day came again the defendants & prayed an appeal to the Circuit court and entered into and acknowledged bond with sufficient security, according to law and thereupon the appeal was granted. Gason Hainson J.P. State of Miponi. County of Cole. I, Gason Hanison a justice of the peace do certify that the above is a true transcript of the judgment rendered by me in the above cause on the 14th December 1839 Gason Hanson J.P. —

And afterward to wit on the sixth day of March 1840 among the record & proceedings of of said court is the following proceedings to wit:

"The State of Miponi, who sues to the use of Peter E Blow

Robert H. Jones Philip Miller and Jacob Paulsel — ~~Debt~~ Appeal from justice of the peace. Now at this day come the parties aforesaid by their attorneys and neither party requiring a jury the issue herein is submitted to the court, Whereupon all and singular the premises being seen and heard and by the court here fully understood the court doth find that the said defendants do owe the said plaintiffs the sum of twenty three dollars and ninety four cents: Therefore it is considered by the court that the said plaintiff do recover against

the said defendants the sum of twenty three dollars and ninety four cents debt in form aforesaid assessed & also her costs — And thereupon the said defendants filed their motion for a new trial which motion being seen heard and by the court here fully understood and mature deliberation being thereupon had is overruled, to which opinion of the court the said defendants filed their bill of Exceptions and prayed the court that the same be signed, sealed and made a part of this record which is done accordingly — And thereupon the said defendants prayed an appeal to the Supreme Court and together with Benjamin M. Lisle and Charles W Stuart, who are approved by the Court as sufficient securities acknowledged themselves indebted to the State of Missouri for the use of Peter E Blow in the sum of hundred and fifty dollars conditioned that the said Appellants will prosecute their said appeal with due diligence to a decision in the Supreme Court and that if the judgment appealed from be affirmed or their appeal is dismissed they will pay whatever of debt damages and costs have been recovered against them by the judgment of the Circuit Court and that they will also pay the costs and damages that may be adjudged against them in the Supreme Court upon their appeal and thereupon an appeal is granted the said defendants to the Supreme Court." Which said bill of Exceptions above refered to is in the words and figures following to wit —

"R. H. Jones. Jacob Paulsel and Philip Miller
ads The State of Missouri to the use of Peter E Blow
by the Cole Circuit Court
Appeal from a Justice's Court— Be it remem
bered that upon the trial of this cause it was
admitted that the defendant Jones was elected
Constable of Jefferson Township in Cole County
on the 4th day of August 1838— That on the 22nd
day of the same month and year, Jones as prin
cipal and defendants Paulsel and Miller
as securities signed and sealed the follow-
ing instrument of writing " Know all men
by these presents that we Robert H. Jones as
principal and Philip Miller and Jacob
Paulsel as securities are held and firm-
ly bound to the State of Missouri in the sum
of two thousand dollars for which pay-
ment well and truly to be made we
bind ourselves firmly by these presents: signed
sealed and delivered this 22nd day of Au
gust 1838. The condition of the above bond
is that if Robert H. Jones Constable of Jefferson
Township County of Cole and State of
Missouri, shall execute all process to him di
rected and delivered, and pay all money
received by him on the same, and in every
respect discharge all the duties of Constable
according to law then this bond shall be void
else to remain in full force and effect.
In testimony whereof we have hereunto set our
hands and seals. R. H. Jones. Seal. Philip Mil-
ler Seal Jacob Paulsel Seal and on the
same day the said Jones opened the same

to the Clerk of the Cole County Court in his Office, as his official bond as constable. That the Clerk received the same, made the following endorsement thereon Filed August 22nd 1838 E. S. Edwards and filed the same in his office where it has ever since and now remains. That the Clerk at the time of receiving said instrument was acquainted with the sureties but he does not recollect having exercised his judgment upon their sufficiency or the sufficiency of the bond. That the first term of the County Court of Cole County held after said Election was held in November in the Year 1838 & that neither at that or any subsequent Term of the said Court was said instrument approved of or rejected by the court or presented to the court for its rejection or approval nor has said Court ever taken any action upon said instrument. That the Clerk never made any writing or entry rejecting or approving of said instrument nor did any act approving or rejecting said instrument except as aforesaid It was further admitted that Blow obtained a judgment sued out execution & delivered the execution to the defendant Jones as stated in the plaintiffs complaint & that Jones failed & neglected to return said execution as charged by the plaintiffs. This was all the evidence in the cause and thereupon the defendants Miller & Paulsell objected that the said instrument was not binding or obligatory as their bond or if obligatory at all was not obligatory against

the securities, but the Court overruled the objection & decided that upon the facts the said instrument was obligatory upon all the defendants as the official bond of said Constable to which Opinion of the Court the Defendants excepted and afterwards & after the finding of the issues in the cause the Defendants moved the Court for a new trial & filed a motion therefor in writing which was as follows Jones, Paulsell & Miller ads. The State of Missouri who sues to the use of P Blow - In the Cole Circuit Court March Term 1840 On appeal from a Justices Court. The Defendants move the Court for a new trial in the above cause for the following reasons 1, The finding is against law 2. The finding is against evidence 3. The Court erred in relation to the law of the case. Leonard for defendants Which motion the Court overruled & the Defendants excepted to said decission all which exceptions the Defendants prays may be allowed them & signed sealed and made a part of the record which is now done accordingly

William Scott

State of Missouri }
County of Cole } ss.

I E L Edwards clerk of the Cole Circuit Court do hereby certify that the above and forgoing is a perfect transcript of the record and proceedings in case.

In testimony whereof I have hereunto set my hand and seal Office this 14th day of April AD 1840.

E L Edwards Clerk

No 23 (2)
pring Term 1840
Peter E Blow
vs
Jones & others

Transcript

filed 14th April
1840
Robt P Clark
Clk

At a circuit Court begun and held at the Court House in the City of Jefferson for the County of Cole and State of Missouri on Monday the second day of March 1840 Present the Honorable William Scott Cole and presiding Judge

among others were the following proceeding to wit;

The State of Missouri Who sues for the use of
Peter L Blow
against } Debt
Robert H Jones Phillip Miller & Jacob Pansell now at this day come the parties aforesaid by their attorneys and neither party requiring a jury the matter in controversy is submitted to the Court; whereupon all and singular the premises being seen heard & by the Court here fully understood the Court doth find that the defendant Robert H Jones did not make return of the execution according to the command thereof, and assess the plaintiffs damages by occasion of said breach of the condition of said bond to the sum of twenty three dollars and ninety four cents Therefore it is considered by the Court that the plaintiff recover against the said defendants Robert H Jones Phillip Miller and Jacob Pansell the sum of two thousand dollars together with the costs of this suit and it is further considered by the Court that the plaintiff have execution for the said sum of twenty three dollars and ninety four cents the damages in manner and form aforesaid assessed and the costs of this suit and thereupon the said defendants by their attorney move the Court to grant them a new trial in said cause, which motion being seen heard and by the Court here fully understood is overruled, to which opinion of the Court the defendants except & file their exceptions and pray the same may be signed sealed and made a part of this record which is done accordingly

and the said defendants prayed an appeal to the supreme Court and filed affidavit and together with Charles W. Stuart and Benjamin M Lisle who are approved by the Court as sufficient securities in open Court acknowledged themselves indebted to the State of Missouri for the use of Peter E Blow in the sum of one hundred & fifty dollars conditioned that the said appellants will prosecute their appeal with due diligence to a decision in the supreme court & that if the Judgement appealed from is affirmed or their appeal dismissed they will pay whatever of debt damages and costs have been recovered against them by the Judgement of the Circuit court & that they will also pay the costs and damages that may be adjudged against them upon their appeal & thereupon an appeal is granted them to the supreme court

State of Missouri
County of Cole } I Edward L. Edwards clerk of the Cole Circuit Court do hereby certify that the above and foregoing is a true copy of the record in the case of the State of Missouri who sues for the use of Peter E Blow against Robert H Lowe Phillip Miller and Jacob Paulsen

In Witness whereof I Edward L Edwards clerk of said Court have hereunto set my hand and seal of office this fourteenth day of August 1840

E. L Edwards clk
by G H Parsons D C

Jones & others - appellants vs The State of Missouri. to the use of Blow - Supreme court.
April Term 1840

It is agreed in this cause that this cause specially continued at the Fall Term 1840 & if at the next succeeding Term the counsel for the parties, (Plaintiff & Defendant) cannot agree upon an amendment to the record then in that case the appeal shall be dismissed or the judgement affirmed at the Election of the appellee -

Jno. F. Miller atty for appellees
A. Leonard
for appellant

Jones et al

vs } agreement for continuance

Blow

filed 22nd August 1840

Robt Pleasants clk

STATE OF MISSOURI, } *SCT.*
FIRST JUDICIAL DISTRICT. }

THE STATE OF MISSOURI:

TO THE SHERIFF of the County of Cole *GREETING:*

Whereas, James H Bennet

on the twenty fourth day of August in the year of our Lord eighteen hundred and forty hath recovered against

James M Martin

at our Supreme Court for the District aforesaid, before the Judges thereof his costs and charges in a certain action ten pending in said court between the said parties, and which costs will be found endorsed on this writ

which to the said James H Bennet

were adjudged as appears to us of record. These are therefore to command you, that of the goods and chattles, lands and tenements of the said James M Martin

in your bailiwick, you cause to be made the aforesaid ~~debt, damages and~~ costs, and that you have the same before the Judges of our said court on the first day of our next term of said court to render to the said James H Bennet

the ~~debt, damages and~~ costs aforesaid. And for want of sufficient goods and chattles, lands and tenements whereon to levy, and make the same, we command you to take the said James M Martin

if he be found in your bailiwick and him safely keep so that you have his body before the said Judges on the said first day of the next term of said court to satisfy the said James H Bennet

of the aforesaid ~~debt, damages and~~ costs, and that you certify to our said Judges how you executed this writ, and have you then and there this writ. Witness ROBERT P. CLARK, Clerk of our said court of office in the City of Boonville this 17th day of November eighteen hundred and Forty.

Robert P. Clark CMC
By Bennett C. Clark Sc

I return this execution Satisfied
July 25th 1842
J. P. Martin Sheriff
C.C.

Jams H Bennet
Vs Execution
Case
James M Martin
No. 1.
Judgt rend for costs viz
To Robert P Clark CMC $10.51
fee for this writ 1.00
$11.51
To Sheriff Cole County
Return Spring Term 1841.
Rec $5.00
J. P. Martin Sheriff

This execution Came to hand on the
11th day of April 1841.
J. P. Martin Sheriff
of Cole County

Satisfied By James M. Martin.
Nov. 12th 1841
J. P. Martin
Sheriff of Cole County

Robert H. Jones
& others
vs
The State of Missouri
to use of P. C. Bloom

In the Supreme
Court —
August Term 1841

And the said Appellee by Bay
her Attorney comes and says that,
neither in the said record and process,
nor in giving the said judgment, is there
any error, and she prays that the Court
here may proceed to the examination, as
well of the said record and process, as
of the said matters above assigned for
error, and that the said judgment
may be in all things affirmed

S. M. Bay
Atty. for Appellee

R. H. Jones &
others
vs
State of Missouri
to use of P. E. Bloss

On Appeal

Joinder in Error

Bay Atty for
Appellee

filed 25th August 1841.
B Clelarke clk

Robert H. Jones and others appellants vs the State of Missouri to the use of Peter E Blow appellee

Appeal from the Circuit court of of Cole County

This was an action instituted in the name of the State of Missouri to the use of Blow in a justice's court against Jones, Miller, and Paulsel on a writing alledged to be Jones's official bond, as constable, for his failing to make return of an execution delivered to him as constable to be executed.

Upon the trial in the justice's court, judgment was given against the defendants and they removed the cause by appeal into the circuit court of Cole county. In that court, the following case was agreed on by the parties viz. That Jones was elected constable of the township of Jefferson on the 4th day of August 1838, and that on the 22nd day of the same month he as principal, with Miller and Paulsel as securities, signed and sealed an instrument of writing set out in the record, and purporting to be the official bond of Jones as constable; that on the said day of the date of that bond it was offered to the clerk of the Circuit court, as Jones's official bond, and that the clerk received the same and indorsed it as filed, and to such indorsement subscribed his name, and filed it in his office where it has ever since remained, and now still remains; that the clerk, at the time of receiving such instrument, was acquainted with the securities, but did not recollect that he exercised his judgment upon their sufficiency, or upon the sufficiency of the bond. That the next succeeding term of the county court of Cole County was held in Cole county, and that neither at that, nor at any subsequent term of said court, was the said instrument of writing either approved or rejected by that

court, nor was it ever presented to said court for any action thereon; that the clerk never made any ~~other~~ writing or entry either approving or rejecting such instrument, nor did any act approving or rejecting said instrument except as aforesaid. It was also admitted that Blow obtained a judgment, sued out execution, and delivered it to Jones the defendant as stated in the complaint, and that Jones failed & neglected to return the said execution as charged in the plaintiffs complaint. It was further agreed that if upon these facts the court should be of opinion that the writing was obligatory upon the defendants Miller and Paulhil as their bond, then judgment should be given against all the defendants, otherwise it should be given for them. The circuit court decided that the instrument of writing was obligatory on all the defendants as the official bond of Jones.

To reverse the decision of the court on this point this appeal is prosecuted

The act respecting constables provides that the bond shall be approved of by the court or clerk in vacation, and if taken by the clerk in vacation shall be approved of or rejected by the court at the next term. The delivery of the bond by the defendants is admitted; the clerk received the bond from their hands and marked it "filed" and placed on his files, which he had no authority in law to do unless he had previously exercised his judgment on the sufficiency of of the bond and approved it. This act of the clerk then appears to me to be conclusive evidence that he did approve the bond: for the law no where declares in what manner his approbation shall be expressed, see the act at page 116 of the digest of 1835. But neither at the next term nor at any subsequent term did the county court express any will either to approve or to reject the bond. By this neglect

of the county court the public might be sufferers in case the securities were insufficient, and it is not contended that the instrument of writing is not expressed in apt terms) ~~but certainly the action of the county court in approving on~~ but certainly the failure of the county court to act on this instrument of writing at the first or any subsequent term could do Jones and his securities no injury. He wanted the emoluments of office, and he injoyed them: the action of the court on the bond was required by law only to secure more effectually the interests of the rest of the community. It seems then to me that this bond ought to be held good against Jones and his security.

In the district courts of the United States it has been decided that the reception and detention of an official bond by the post master general for a considerable time without objection is sufficient evidence of its acceptance. See 1st Peters digest 383 On this authority then as well as on the reasonableness of the thing we may rest an opinion that the Clerk of the county court of Cole county accepted and approved the bond in the sense of the statute. In the United States vs Tingy the Supreme court of the United States held that a voluntary bond given to the United States and not prescribed by law is a valid instrument. The bond of Jones then is good; because he voluntarily with his securities executed it, and its obligatory character is not invalidated because the act of the legislature required him to execute one although it has not been approved by the court. As before observed the omission of the county court to approve this bond could not possibly injure him and his security, and ought not to impair the the security which sureties were intended to ~~det~~ derive from the action of the county court.

For the reasons above given the judgment of the circuit court ought to be affirmed and in this opinion each member of the court concurs: and it is accordingly affirmed.

We concur G Tompkins

W. B. Mepton
W Scott

Jones & al
vs
Opinion
The State

filed 30th August 1841.
P. Blelaw
CMC

STATE OF MISSOURI, } SCT.
FIRST JUDICIAL DISTRICT.

THE STATE OF MISSOURI:

TO THE SHERIFF of the County of Cole *GREETING:*

Whereas, The State of Missouri to the use of Peter E. Blow

on the thirtieth day of August in the year of our Lord eighteen hundred and forty one hath recovered against Robert H. Jones Phillip Miller & Jacob Paulsel

at our Supreme Court for the District aforesaid, before the Judges thereof her costs and charges in and about a certain suit lately pending in said Court between the said parties

(and which will be found endorsed on this writ)

which to the said State, to the use aforesaid

were adjudged as appears to us of record. These are therefore to command you, that of the goods and chattles, lands and tenements of the said Jones, Miller and Paulsel

in your bailiwick, you cause to be made the aforesaid ~~debt, damages and~~ costs, and that you have the same before the Judges of our said court on the first day of our next term of said court to render to the said State to the use as aforesaid,

the ~~debt, damages and~~ costs aforesaid. And for want of sufficient goods and chattles, lands and tenements whereon to levy, and make the same, we command you to take the said Jones Miller and Paulsel if they be found in your bailiwick and them safely keep so that you have their bodies before the said Judges on the said first day of the next term of said court to satisfy the said State of Missouri

of the aforesaid ~~debt, damages and~~ costs, and that you certify to our said Judges how you executed this writ, and have you then and there this writ. Witness ~~ROBERT P.~~ Bennett C. CLARK, Clerk of our said court of office in the City of Boonville this 4th day of September eighteen hundred and forty one.

Bennett C. Clark Clerk

This Execution came to hand on the 17th day of Sept. 1841

J. P. Martin Sheriff

I return this execution satisfied Oct. 26th 1841

J. P. Martin

The State of Missouri to the name of Peter E Blow

vs. Execution

Robert H. Jones & others

No. 1

Judgt for Costs viz:

To Bennett C. Clarke. $4.57

fee for this writ. 1.00

$6.57

To Sheriff of Cole County

Return to Spring Term 1842.

R. H. Jones, P. Miller & J. Paulsel – appellants
vs. The State of Missouri – to the use of P. E.
Blow – appellees

In the Supreme court – First Judicial
District – April Term 1840.

Appeal from a judgement at Law
of the Cole Circuit court –

This was an action instituted in the name
of the State of Missouri to the use of P. E. Blow
in a Justices court in Jefferson Township
in Cole county against R. H. Jones, P. Mil-
-ler & J. Paulsel upon a writing alleged
to be Mr Jone's official bond as constable
for his failure to make return of an exe-
cution delivered to him in that capacity to
be executed –

Upon the trial in the Justices court jud
-gement was given against the Defendants
upon which they removed the cause by ap
peal into the Cole Circuit court – where
in a trial at the last February Term 1840
the following facts were agreed between
the parties –

Jones was elected constable of
Jefferson Township on the 4th day of August
1838 and on the 22d of the same month he
as principal, with Miller & Paulsel as
sureties signed & sealed an instrument
of writing (set out in the record & purport-
ing to be the official bond of Jones) ~~which~~

and offered the same as his official bond to the clerk of the Cole county court in his office - the clerk received it - endorsed thereon the words "filed 22d August 1838. E. L. Edwards" and filed it in his office where it has ever since remained - at the time of receiving the writing the clerk was acquainted with the sureties - but he has no recollection of having exercised his judgement upon their sufficiency - or upon the sufficiency of the bond - the first term of the Cole county court held after the election was in November 1838 and neither then or at any subsequent term of the court was the proposed bond approved of or rejected by court or presented to the court for its rejection or approval nor did the clerk ever make any entry or writing approving of or rejecting the bond except as before stated - Blow obtained a judgement & delivered an execution thereon to W. Jones as constable to be executed, which he failed to return -

It was further agreed, that if upon these facts the court should be of opinion that the writing was obligatory upon the Defendants Miller & Paulsel as their bond, judgement should be given against all the defendants, otherwise judgement should be given for them -

The court found the instrument to be obligatory upon all the Defendants as Jones' official bond - which finding

the defendants moved to set aside on account that it was against law & evidence.

This motion was overruled & judgment being rendered against all the Defendants they have appealed to this court.

For the reversal of the judgment the counsel for the appellants will insist in argument upon the following points and authorities

1st In order to give validity to a bond or other deed there must be a delivery & acceptance thereof

2d This is a statute bond & the acceptance thereof, can only be in the mode prescribed by the statute. and ~~if~~ if there be no such acceptance, the bond is void

3d The Statute concerning Constables requires ~~the~~ bonds of this description when given in vacation to ~~shall~~ be approved or rejected by the clerk and ~~at the first term of the county court~~ when taken by the clerk to be ~~thereafter shall be~~ approved or rejected by the court at its first Term thereafter. Rev. Laws. Mo 116.

4. The present bond was never ap-

-proved by the court. The tribunal appointed by law for that purpose has never accepted this bond. & therefore it is void.

Leonard
for appellee

Supreme court.
R. H. Jones
P. Miller &
J. Paulsel
appellants
vs E Brief
The State of Missouri
appellee
Brief for
appellants
Leonard
counsel

The State of Missouri
to use of P. E. Blow
vs
R. H. Jones & Others

1. The Statute requiring the County Court to approve of or reject the bond of the Constable taken by the Clerk in Vacation, is directory, and intended for the security of the public and not for the benefit of the Constable and his Securities. Therefore the Omission of the Court to obey the Command of the Statute, in this respect, cannot invalidate the bond, and thereby release the Constable and his Securities from their obligation

The parties here seek to avoid their bond on account of the omission of certain Acts, to be performed subsequent to the delivery of the bond, by the omission of which they are not injured. Neither the Statute nor the Common law declare a bond of this character void for the reasons assigned by the defendants below. The bond was entered into voluntarily and for a laudable purpose, and the Public goods requires that such bonds should be held valid, unless expressly rendered invalid by law.

See R. C. 1835. Title "Constables" p. 116.

Post vs. Caulk 3d Mo. R. 35

U. S vs Bradley	10. Peters	343
Morse " Hodson & Others	5. Mass.	313
	3 "	86
	14 "	167

The People vs Collins 7 John. 549
Wise v Blackley & others 1 John. Ch. R. 607

2. That even if the bond was not good as a statutory bond, it would be good as at common law

Hamilton vs. Commonwealth 3 Munf. 213
Salter vs. Richardson " " 204
Cooper & others vs. Hatter & others 1. J. J. Marshall. 357
Thompson vs. Buchanan 2. " 416
Stratton vs Rowan 2 Bibb 199
Cobb vs Curtis 4 Littel 235
Stephenson vs Miller 2 " 306.

B

1st That there was a valid delivery of the bond to the proper officer, and herein it is contended.

1st That a deed may be delivered without any words passing. "If a man deliver a deed without saying anything, it is a good delivery." 1st Inst. 49 b.
"The delivery is sufficient without speaking any words" ib. 36 a.

"And as a deed may be delivered to the party ~~without words~~ without words, so may a deed be delivered by words without any act of delivery." 1st Inst. 36 a
The assent of a party to a deed ~~an act~~ made for his own benefit is always presumed.

2d The obligors had done all that was necessary on their part to make ~~the~~ a complete and valid delivery. They executed the bond in the form prescribed by the statute, and placed it in the custody of the proper officer, without any condition or limitation, and having thereby parted with all power and control over the bond, the delivery was complete.

3d Delivery of a deed is a mixed question of law and fact, and in this instance both law and fact were submitted to the court sitting as a jury, and

in such case, this Court will not reverse the judgment of the Circuit Court, on the ground that its verdict was against evidence, unless the evidence greatly preponderate against the verdict.

Martin v Withington 4. Mo. R. 518. { Stewart v Small 5 Mo. R. p. 525. Craig v Hankin 6 " " " 250. Campbell & Mason v Hood 6. " " 211.

5. Barnes & Cress 671. reported in Eng. Com. Law cases. 12 Vol. p. 351.

4. That the bond being delivered to the proper officer, and there being nothing to show that the obligors did not intend it to operate immediately, and being delivered without condition or qualification, by the proper party, it necessarily follows that there was a complete and valid delivery of the ~~deed~~ bond.
4 Kents' Com. p. 455. Cases there cited. 11 East. 623.

5. The authorities go ~~much further than~~ far beyond the positions here assumed.
Lord Coke says "If a man deliver a writing sealed, to the party to whom it is made, as an escrow to be his deed upon certain conditions, &c, this is an absolute delivery of the deed, being made to the party himself; for the delivery is sufficient without

Speaking of any words". "When the words are contrary to the act which is the delivery, the words are of no effect, non quod dictum, sed quod factum est, inspicitur." 1st Inst 36 a.

Thoroughgood's Case Coke R. 9. p. 137.

It is now even held — and the authorities are numerous — "that if a deed be signed, sealed, and declared, by the grantor, in the presence of the attesting witnesses, to be delivered as his deed; it is an effectual delivery if there be nothing to qualify the delivery, notwithstanding the grantee was not present, nor any person in his behalf, and the deed remained under the control of the grantor.

4th Kent's Com. p. 455.

5 Barnw & Cress. 671.

Prec. Cha. 211. 235. 2 Vern. 473

It is no where held that any particular words, or, indeed, any words, or, any particular forms, are necessary to constitute a valid delivery of a deed.

4 Cruise's digest. title deed. p. 30.

6. From the authorities here ~~cited~~ cited, as well as from reason and principle, it follows, that a delivery in fact of the deed by the grantor or obligor either to the party to whom the deed is made, or to his agent, or to a stranger in his behalf, without qualification or condition, is a valid delivery in law.

The State of Missouri
to use of P. E. Blow

vs

R. A. Jones & others

Points & Authorities
by Counsel for
Appellee

L. M. Bay
~~Counsel~~
Atty. for Appellee

In the Supreme Court
August Term 1841.

The State of Missouri
to the use of Peter E. Blow
vs.
R. H. Jones. J. Paukel & P. Miller

Appeal from
The Cole Circuit
Court.

This was an action of debt upon a Constable's bond, brought in the name of the State of Missouri to the use of Peter E. Blow, against Robert H. Jones, Philip Miller and Jacob Paukel before Saton Harrison, a Justice of the Peace in and for the County of Cole, upon a failure on the part of said Jones, as Constable of Jefferson Township in said County to return an execution in favor of said Blow.

Upon the trial of the cause, before the Justice, judgment was rendered against the defendants, from which judgment they appealed to the Circuit Court.

Upon the trial of the cause in the Circuit Court it was admitted by the defendants, that Jones, one of the defendants, was duly elected Constable of said Township on the 4th day of August A.D. 1838: that on the 22 day of the same month and year, Jones, as Principal, and Miller and Paukel, as Securities, signed and sealed the bond set forth in the bill of exceptions, and on the same day the said Jones offered the same bond to the Clerk of the County Court of Cole County, in his Office,

as his Official bond: That the said Clerk received the same and filed it in his Office, where it has ever since remained and now remains: That the Clerk, at the time of receiving said bond was personally acquainted with the securities, but did not, on the trial of this cause, recollect having exercised his judgment upon the sufficiency or insufficiency of the securities to the bond: That the first term of the County Court of Cole County, held after said election, was held in November following: That at that term of said Court, nor at any other term was the said bond approved or rejected. It was also admitted that said Blow obtained a judgment, sued out execution, and delivered the same to said Jones as Constable of said Township, and that said Jones failed to return said execution as stated in the declaration. This was all the evidence in the cause: And thereupon the said defendants Miller and Paukel objected that said instrument was not binding on them as their bond, or if obligatory at all was not obligatory against them as the securities of said Jones

The objection was overruled - judgment rendered against all the defendants, and the cause brought to this Court by appeal.

The only point in this case is the sufficiency of the bond. And herein two objections are raised by the defendants - viz

1st That the bond was not taken and approved as the Statute requires -

2 That there was no delivery of the bond and approval by the Clerk as the Statute requires.

The Plaintiff here refers the Court to his Points and Authorities, with the remark that both Parties are very anxious to have the opinion of the Court upon the Points presented by them, in order to prevent further litigation in other cases.

N. W. Bay
Atty. for Plaintiff

The State of Illinois
to use of Peter E. Blow
vs
R. H. Ames & others

Plaintiffs Brief

Statement of the
Case.

R. R. Jones & others
vs
The State to use
of P. E. Bloom

Appeal from the
Circuit Court

It is agreed between the parties to this Cause that all objections to the sufficiency or insufficiency of the record proceedings shall be waived, and that the matter in controversy shall be confined to the sufficiency or insufficiency of the bond and that the plea of non est factum with affidavit shall be considered as having been filed in the Cause.

A. M. Bay for Appellee
Leonard for
Appellant

Imes & others

vs

The State of
Missouri
to use of
P. E. Blow

Agreement
of Parties