

Case No. 971

BARBOUR V. RUSSELL.

{3 Cranch, C. C. 47.}<sup>1</sup>

Circuit Court, District of Columbia.

Dec. Term, 1826.

DEBT—BOND WITH COLLATERAL CONDITION—SPECIAL BAIL.

Bail will not to be required in an action upon a bond with a collateral condition.

BARBOUR v. RUSSELL.

[At law. Action of debt on a bond by James Barbour, secretary of war, to the use of Roland Clapp, against Gilbert C. Russell. Heard on defendant's motion for leave to enter an appearance without special bail. Leave granted.]

Debt for 8120,000, the penalty of a bond given by Nimrod Farrow, and the defendant, one of his sureties, under the act of congress of the 3d of March, 1825, "for the relief of Nimrod Farrow and Richard Harris," with condition that Farrow should appropriate the proceeds of the property in the act mentioned, towards the payment of the debts contracted by Farrow and Harris, in the erection of a fortification on Dauphin Island. The declaration alleged the breach of the condition to be in the non-payment of \$6000 due by Farrow and Harris to one Roland Clapp, for supplies, &c, in and about the erection of the said fortification.

Upon the return of the writ, Mr. Jones moved for leave to enter his appearance for the defendant without special bail. 1 Petersd. Bail, 405, 411; *Edwards, v. Williams*, 5 Taunt, 247; *Bosanquet v. Fillis*, 4 Maule & S. 330.

Mr. R. S. Coxe, for the plaintiff, objected and produced the affidavit of the said Roland Clapp, stating that the defendant, Russell, is indebted to him in \$6000 due on a bond dated 19th April, 1825, entered into by the defendant to James Barbour, secretary of war, "for the use and benefit of this deponent and others in the penal sum of \$120,000, conditioned for the performance of divers covenants, and for the payment of the said sum of \$6000;" and cited *Hobson v. Campbell*, 1 H. Bl. 245.

The name of the said Roland Clapp is not mentioned in the bond or its condition, nor is any sum of money therein stated to be due to him.

THE COURT (THRUSTON, Circuit Judge, absent) permitted the defendant to appear without special bail.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]