

Case No. 1,258.

BELL V. NIMMO ET AL.

{5 McLean, 109.}¹

Circuit Court, D. Indiana.

May Term, 1850.

BONDS—CONSIDERATION—FRAUD—DEFENSES—ASSIGNEE.

[1. Action cannot be maintained on a bond obtained by falsely representing to the obligors that the obligee had a requisition to take them to another state, to answer a charge of larceny.]

[2. An obligor may set up any defense to a bond, as against the assignee thereof, which he had against the obligee, although bonds are assignable by the Indiana statute.]

[See *Scott v. Schreeve*, 12 Wheat. (25 U. S.) 605.]

{At law. Action by the assignee of Bell against Nimmo and others upon a bond given to the assignor. Plaintiff demurred to defendants' plea. Plea sustained.}

Mr. Cooper, for plaintiff.

Mr. Breckenridge, for defendant.

OPINION OF THE COURT. This is an action of debt for eight hundred and forty-three dollars. The defendants pleaded that the obligee represented to them, that he had a requisition on them from the governor of Ohio to the governor of Indiana, to surrender them to answer a charge of larceny in Ohio, which was false, but in consequence of which representation, the bond was given on which this action was brought, to settle the same and for no other consideration. That it was fraudulently obtained, &c. To which plea there was a demurrer.

In Indiana, bonds are made assignable by statute, but the obligor may set up any defense which he had against the obligee. The demurrer admits the fraud alleged in the plea, it is sustained. {Demurrer overruled.}

¹ [Reported by Hon. John Mclean, Circuit Justice.]