

Riddle v. Mandeville.

able. With this decision the court not only feels no inclination to interfere, but thinks it a fair and just exposition of the acts which had then been passed on this subject. The bonds intended by the legislature were most clearly such as were to become void on the payment of a sum certain, and where no intervention or assessment of a jury was necessary. Bonds which require particular breaches to be assigned, damages on which were to be estimated or liquidated by a jury, do not appear to have been contemplated.

It being then settled, that bonds with collateral conditions were not assignable under the laws in force at the time of the making of this assignment, it only remains to ascertain the true character of the condition of the bond on which this action is brought.

Although, by payment of 3000%. on or before a certain day, the obligor might have discharged himself from the penalty, it was part of the condition that, on the application of the obligee, by a certain day, a payment in certain certificates which were not money, might be substituted. This created an alternative by which the penalty might be discharged, either by money or officers' certificates; and although the consent of both parties might be necessary to a payment in the latter way, still, as it made part of the written contract, the court cannot but perceive that, on a certain contingency, it was to be considered as a bond on which it might, as it did, become necessary to assign breaches and call in a jury to assess damages. If we look at the record, we shall find the *parties, their counsel and the jury treating [*86 it as a bond of this description.

It is the opinion, therefore, of the court, that this bond was not assignable, under the laws of Virginia, and that the judgment of the circuit court for the district of Virginia must be reversed, and judgment on the verdict be arrested.

Judgment reversed.

RIDDLE & Co. v. MANDEVILLE & JAMESSON.

Mandate.—Costs in error.

The court below, upon a mandate, on reversal of its judgment, may award execution for the costs of the appellant in that court.

A MANDATE had been issued upon the reversal of the decree in this case at the last term, in which, "this court, proceeding to give such decree as the said circuit court ought to have given, doth decree and order, that the defendants pay to the plaintiffs the sum of \$1500, that being the amount of the note in the bill mentioned, together with interest thereon from the time the same became due, you are hereby commanded that such execution and proceedings be had on the said decree of the said supreme court, as, according to equity and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding." Nothing having been said respecting the costs, the court below had not issued execution for the costs of the appellant.

E. J. Lee moved the court for a further mandate to the court below, to award the costs of that court.

MARSHALL, Ch. J.—The court below is always competent to award costs in a chancery suit, in that court, and in case of a mandate, may issue execution therefor.