UNITED STATES v. ALLSBURY.

If a judgment is obtained against a surety, the amount of it being fixed by a judgment previously obtained against his principal, the former judgment cannot be reversed on error as for an amount too small, though the latter should be afterwards reversed as having so been.

ERROR to the District Court of the United States for the Western District of Texas.

Allsbury had become bound as surety in the official bond of Dashiel, paymaster. Suit having been brought on this bond against Dashiel, and Paschall, one of the sureties, to recover what the United States alleged was due, to wit, $20,085, a defence was set up to part of the claim; and the defence being sustained by the court below, the United States had verdict and judgment for but $10,318.22. Error was taken to that judgment, and the judgment reversed. The case next preceding gives report of the matter.

The present suit was brought on the same official bond of Dashiel, against the personal representatives of Allsbury, another of the sureties. The case came on for trial after the trial, verdict, and judgment, just mentioned, against the principal, and Paschall, the other surety, for $10,318.22.

The judgment was pleaded *puis darrein continuance*, in this suit, for the purpose of reducing the recovery to that amount.

It was admitted by the court, and instructions given accordingly, and the jury found a verdict for the above sum.

The correctness of what was thus done was the question now here.

Mr. Stanbery, *A. G.*, submitted the case in behalf of the United States. *Mr. Paschall*, *contra.*

Mr. Justice NELSON delivered the opinion of the court.

It is unnecessary to refer to authorities to show that the liability of the surety cannot exceed that of his principal; and that amount having been fixed by a judgment at law,

it formed the rule to determine the sum to be recovered in this suit. The verdict and judgment were competent evidence on behalf of the surety for this purpose; indeed, the highest evidence of the fact. Other questions would have arisen if this judgment had been offered against the surety. The counsel for the government, if desirous of recovering a greater amount, should have postponed the trial of this case till the error had been corrected which was committed in the case against the principal. Then he would have been in a situation to avoid the effect of the erroneous judgment. This is the only question presented on the record.

JUDGMENT AFFIRMED.

LEFTWITCH *v.* LECANU.

1. When a paper which is to constitute a part of a bill of exceptions is not incorporated into the body of the bill, it must be annexed to it, or so marked by letter, number, or other means of identification mentioned in the bill, as to leave no doubt, when found in the record, that it is the one referred to in the bill of exceptions, otherwise it will be disregarded.
2. That a copy of a paper is attached to a pleading in the case, which purports to be the same as the paper mentioned in the bill of exceptions, does not make it a part of that bill, nor can this court presume that it is the same paper read in evidence and excepted to.

A STATUTE of Louisiana* enacts "that notaries shall keep a book, in which they shall transcribe all the protests by them made, with mention made of the notices which they shall have given to drawers and indorsers, &c.; which declaration, duly recorded *under the signature* of the notary public *and two witnesses*, shall be received as a legal proof of the notices."

With this statute in force, Lecanu sued Leftwitch and others in the Circuit Court of the United States for the Eastern District of Louisiana, as indorsers of a promissory note. The suit was in the form usual in Louisiana, that is to say, by petition, and the plea was a general denial.

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* Stat. of 1855, p. 48, § 7.