altered in a foreign port, but before her arrival and entry, had resumed the form and dimensions mentioned in her old register, would it be pretended that a new register was necessary? What would such new register be but a copy of the old one? It is believed, that in such a case, it would not be suspected, that any forfeiture of the old register, or any necessity for a new one, was produced, and between the two cases there appears to be no difference made by the letter or the spirit of the act.

The court is, therefore, unanimously of opinion, that sentence of the circuit court be affirmed.

Judgment affirmed.

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*O'Neale *v.* Long. [*60

Bond.—Alteration.—Surety.

If a bond be executed by O., as a surety for S., to obtain an appeal from the judgment of a justice of the peace, in Maryland, and the bond is rejected by the justice, and afterwards, without the knowledge of O., the name of W. be interlined as an obligor, who executes the bond, and the justice then accepts it, it is void as to O.[1]

Long *v.* O'Neale, 1 Cr. C. C. 233, reversed.

Error to the Circuit Court of the district of Columbia, sitting in Washington, in an action of debt upon four joint and several bonds, signed and sealed by Mary Sweeny, as principal, and William O'Neale, I. T. Frost and Lund Washington, as sureties, conditioned that she should prosecute her appeal upon four several judgments rendered against her by a justice of peace, in Maryland. William O'Neale, the defendant below, pleaded *non est factum*, and upon the trial of that issue, took a bill of exceptions, because the court below (two judges only being present, and divided in opinion) did not, at his request, instruct the jury, "that if they should be satisfied by the evidence, that the bonds were signed, sealed and delivered by Mary Sweeny, as principal, and I. T. Frost and the defendant, as her sureties, and were afterwards presented to C. C. (the justice who had rendered the judgments) for his approbation and acceptance of the securities, and were by him refused and rejected, and after such rejection, were interlined, without the license, privity and knowledge of the defendant, by inserting the name of Lund Washington, as a co-obligor, who, on the succeeding day, without the privity, knowledge and consent of the defendant, signed, sealed and delivered the bonds, which were afterwards approved of by the justice, that then such interlineation and execution of said bonds, by Lund Washington, rendered them void as to the defendant, and the plaintiff cannot recover in this suit."

By the act of Maryland, 1791, c. 68, § 5, no execution upon a judgment of a justice of peace shall be stayed by an appeal, unless the person appealing, or some other in his behalf, "shall, immediately upon making such appeal, enter into bond, with sufficient sureties, such as the justice by whom

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[1] Harper *v.* State, 7 Blackf. (Ind.) 61. The law has been held to be the same as to negotiable instruments. Gardner *v.* Walsh, 5 Ellis & Bl. 83; Chappell *v.* Spencer, 23 Barb. 584; Barton *v.* Baker, 31 Id. 241; McVean *v.* Scott, 46 Id. 379; Lunt *v.* Silver, 5 Mo. App. 186. But the decisions on this question are not harmonious. See McCaughey *v.* Smith, 27 N. Y. 39; Brownell *v.* Winnie, 29 Id. 400; Bingham *v.* Reddy, 5 Ben. 266.

judgment shall be given shall approve of, in double the sum recovered, with condition," &c.

*61] *P. B. Key*, for the plaintiff in error, contended, that the deeds were void, 1st. By reason of the interlineation. 2d. By the rejection of them by the magistrate.

1. The alteration of the deeds, by the interlineation, was in a matter essential; it made them the deeds of four, when they were only the deeds of three persons. It is immaterial, whether the alteration is for the benefit of the obligor; the only question is, whether it substantially vary the deeds. Esp. N. P. 223, 224; *Markham* v. *Gonaston*, Cro. Eliz. 626–7; Moore 28, pl. 89; Shep. Touch. 68.

2. After the rejection of the bonds by the justice, they could never be set up again, without a new delivery by the defendant. *Whelpdale's Case*, 5 Co. 19 *b*. The justice was substituted by the law for the obligee, and his rejection is equally fatal, as if the bonds had been tendered to, and refused by, the obligee himself. Shep. Touch. 70. It might have been, that the defendant held a counter-security, which he released upon the rejection of the bond.

Mason, contrà, contended, that the interlineation was not material; and being made by a third person, without the privity of the obligee, did not vacate the deeds, especially, as it was for the benefit of the defendant. *Henry Pigot's Case*, 11 Co. 27; Esp. N. P. 224; Shep. Touch. 68. They were not less the deeds of the defendant, because they became also the deeds of another. This is in the nature of a judicial proceeding, and not a mere matter of contract between man and man. It is a security required by law in a civil action. It does not appear, that the defendant was present when the bonds were rejected.

*62] It is to be presumed, that he intrusted Mrs. Sweeny, the principal, to deliver them for him, and she had a *right to redeliver them, in his name, after the interlineation. If the defendant had given up any counter-security, it was his own folly so to do, until his name had been erased from the bonds.

February 14th, 1807. Marshall, Ch. J., delivered the opinion of the court, that there was error in this, that the court below did not instruct the jury as prayed by the defendant. He observed, that the judges did not all agree upon the same grounds, some being of opinion, that the bonds were void, by reason of the interlineation, and others, that they were vacated by the rejection of them by the magistrate, and could not be set up again, without a new delivery.

Judgment reversed, with costs.