

## Andrew Jackson, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.

### NOTES TAKEN WHILE PRESIDING AS JUDGE.1

1 It has been said that no decision by Jackson when he was supreme court judge in Tennessee has been preserved. These notes however give some idea of his service in the office. They are preserved in the Jackson MSS., vol. 118, p. 91.

[1804.]

McGuffin and son vs Acklin and others motion for Execution

2 points 1<sup>st</sup>. bond taken before bounds laid off—2 discharged from bounds by order, of the Justices under the insolvent Debtors act—in support, it is urged, that the law with respect of notice was not complied with, therefore illegal and cannot exonerate Securities from their bond.

To the first point Mr Miller did not say any thing. Mr. Miller, in favour of the motion—urged that notice is a substantial part, to give Jurisdiction therefore, without notice it

4 Beacon 6412 —must be considered, coram non Judice—

2 The references are to Matthew Bacon's *Abridgement of the Law* (1736 *et seq.*), Salkeld's *King's Bench Reports*, Justice James Iredell's *Laws of the State of North Carolina* (Edenton, 1791), Haywood's *North Carolina Reports*, of which only vol. I. had at this time been published, Blackstone's *Commentaries*, and Espinasse's *Digest of the Law of Actions and Trials at Nisi Prius* (London, 1789; Philadelphia, 1791).

2 Salkuld 475 Beacon says that the authority must be Persued.

## Library of Congress

Iredal 83—The courts power to mark out P. bounds and record them—The amendatory act P. 189. The bond to be assigned, and Judgt to be entered, in case the condition thereof should be broke. Bond read—a true prisoner—untill regularly discharged.

the word regular—must mean discharged agreeable to law—and not agreeable to the oppinion of the court—quere.

Page 262 and 3—rules prescribed to be persued, before oath administred—summons must issue before, the court can proceed—but suppose they do—can the Gaoller, enquire into the regularity of the proceeding.

will shew this the only mode and this the only court, that relief can be had—cites, Haywood 414.

Plea—liberated under the act—presumed to be regular, if contra does not appear.

1 Salkd. 202—escape—coram non Judice—T.2 lies against the officer.

2 Trespass.

1 Salkud 273—Escape warrent—often a discharge by a court not having Jurisdiction will lies [?]  
—4 Beacon—451.

Mr. Scott—This bond not known at commonlaw, but formed by particular statute.

1—no such Judgt. as set forth in the bond—reads the bond copies and record—a difference in bond and record of 40/100.

2—at the time bond taken, no prison bound—consequently the securities not bound untill bounds laid off, the Glr [Gaoler] must keep him in the public gaol.

3 Black. 415—Escape— act of assembly P. 83— on Escape, Espinasse 203.

## Library of Congress

3. point—as to the discharge etc. 4. Beacon 641—read by M.—2 Salk 475—and 1-202-2-273—Haywood 414.

Iredal 189—concluded by saying this court has no such controlling power over the acts of the Justices as to reverse their Judgt. and grant Judgt. on mere motion.

Mr. Dade—1. the bond Void, no bounds laid off etc. conditions impossible Void 2 Beacon P. 772.

Espinass 191.

Mr. Campbel—bond Void ab onitia [initio]—the Variance fatal—and the discharge a Judgt of the Justices still in force and securities discharged by the Judgt. which is binding untill reversed.

*Mr. Whitesides* —contended that if there was not Legal notice it could not be a regular discharge.

1 contends that the bond is fair in the face of it, and the[y] are Estopt to say that there is a Variance—and exonerate themselves, on that ground.

2 This court cannot say that the bounds were not laid off—The court cannot say that the bond is Void—agreed—but if the condition is broken the court cannot award execution. reads Iredal P. 93 to shew that the bond is the Judgt., and not necessary to set out the Precise sum—P 189 the bond to be assigned filed in the office for safe Keeping—and in case the Prisoner Escapes, the court authorised to enter up Judgt. as Principle and his securities.

3 point—the case comes on between a Just and fair creditor—and securities who placed confidence in Deftd.—

## Library of Congress

The discharge must exonerate all or none.

the act gives an extraordinary Jurisdiction—not known in ordinary cases—and it must be performed, in strict conformity with the provisions otherwise their acts cannot have the effect contended for.

reads Iredall 262—

case in iredal, Judgt. as Excrs. Execution vs the real Property, without sci. fa. vs the heirs, Ejectment brought insisted, on the Judgt. and sale and the heirs bound—ruled that the [y] were not Estoped—why sci fa—was necessary to make the land liable.

McGuffin and son vs Acklin Perrin and Combs motion for Exct. vs them for breach of the Prison bounds

no Judgt such as mentioned in the bond—etc. against the motion—1rst point, that the bond was taken and executed before Prison bounds were laid off—therefore Void, and a voluntary escape by the sheriff—2—that the Deftd. was admitted by a competent authority to the benefit of the insolvent Debtors act, and legally discharged by his order, which exonerated the Bail—and if that authority did not strictly persue the law—they were not under the controul of the securities—and they cannot and ought not to be answerable for any illegality in their proceedings—and the securities being once exonerated by a competent authority never can be made liable on their bond.

In support of the motion it was argued, as every requisite of the law was not complied with, Previous to the oath being administered and Deftd. discharged that the securities and principle are still bound.