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TITLE OF BRIEF.

WILLIAM WALLACE, ET AL.,
PLAINTIFFS IN ERROR,
AND

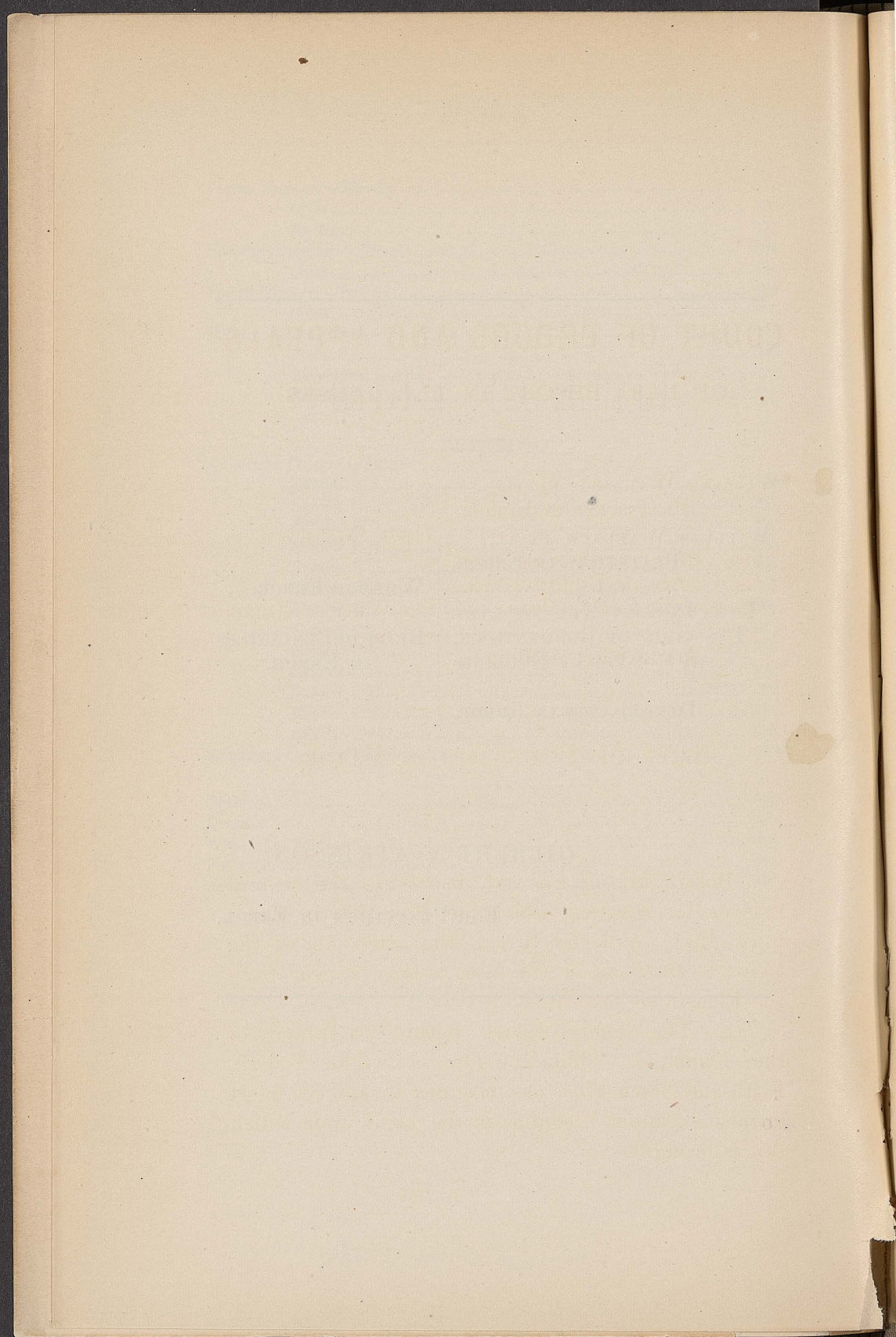
"THE INHABITANTS OF THE
TOWNSHIP OF BORDENTOWN,
IN THE COUNTY OF BURLING-
TON,"
DEFENDANTS IN ERROR.

WRIT OF ERROR.

BRIEF OF PLAINTIFFS
IN ERROR.

GILBERT & ATKINSON,

FOR PLAINTIFFS IN ERROR.



COURT OF ERRORS AND APPEALS

OF LAST RESORT IN ALL CAUSES.

WILLIAM WALLACE, ET AL., PLAINTIFFS IN ERROR, VS. "THE INHABITANTS OF THE TOWNSHIP OF BORDENTOWN, IN THE COUNTY OF BURLING- TON, DEFENDANT IN ERROR.	} UPON CONTRACT. ON WRIT OF ERROR
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BRIEF OF PLAINTIFFS IN ERROR.

I.

Before taking up and discussing the several reasons for reversal, which the Plaintiffs in Error have filed, we desire to call the attention of the Court to the facts of the case, as they appear from the Pleas filed therein.

1. The General Issue. Secondly—Infancy of the Principal. Thirdly—Duress. The Fourth, Fifth and Sixth Pleas are designed to, and we insist to raise statutory illegality in the bond upon which suit is brought.

2. William Wallace, who defends this suit by his guardian ad litem, Charles E. Wallace, is an Infant, under the age of 21 years, and only 19 at the time of making the supposed writing obligatory.

3. This plea shows that the said William Wallace, the principal and the supposed putative father of said bastard child as recited in the bond, and recited in the Plaintiff's Declaration, was, at the time of making the said supposed bond, unlawfully imprisoned, to wit, May 28, 1885, by the Plaintiff and other persons in collusion with it, until by force thereof, the said William Wallace, and his sureties, executed and delivered the said bond.

4. This plea shows, that the said supposed writing obligatory, was made and delivered by the said Defendants, and received and accepted by the said Plaintiffs, and its officers, without the Justice of the Peace named in the Act of the Legislature of this State, that governs the legal proceedings to provide for "the maintenance of Bastard Children," or any two Justices of the Peace, having first before the making and delivering of the said supposed writing obligatory (the time being stated) sat together, immediately after the alleged father, was brought before the Justice of the Peace, who issued the process for the arrest of him. And without giving him an opportunity to deny and traverse the charge of bastardy, so made against him. Though at that time (i. e. the time of making and delivering the bond), he was then and there held and detained by one Justice of the Peace in and for Burlington County. That he was so held till the bond was executed by the Defendants.

5. This plea shows, that the bond was substantially to perform an "order of filiation," of which they had no knowledge or notice, as the law requires.

6. This plea shows, that no "order of filiation" was made by the Court of two Justices (plea 4 shows this inferentially, there was no adjudication) according to the laws and customs of this State. That he was not adjudged guilty of bastardy.

These pleas are duly verified.

1. We submit that the foregoing pleas establish: That the suit is on a bond given to support an alleged Bastard child. That the putative father is an infant under the age of 21 years. That he was arrested and taken before a Justice of the Peace and without any "Order of filiation" or any adjudication, *was held until he and his sureties executed the bond on which suit is brought. He was given no opportunity to demand and have a trial. No other Justice of the Peace was called in. No two Justices fixed the amount of the weekly allowance. He with his sureties present were to execute the bond sued upon, or he was to go to jail.* There is no record of any kind in esse out of which the said bond arose, or to which said bond was in compliance. There was no confession, as there was no court before which he then could make a confession. The recital, alleged in the Plaintiff's Declaration, is open to explanation.

2. We submit, that as there was no order made, no kind of an adjudication of the *quasi-crime*, of which William Wallace stood charged, in the complaint and process, there was nothing from which he could appeal to redress his grievance. There was nothing that could be certioraried, as Justice Scudder intimate in his opinion. The only course was to

resist the payment or illegal exactions upon the void bond.

3. We submit, as the real question in this controversy, and which the defendants sought to raise, and insist upon as raised in defence, is this : Had the Township a legal right to accept the bond in question, executed by an infant, illegally restrained of his liberty, without any adjudication by the statutory tribunal, without further compliance with the provisions of the Statute against Bastardy, than the taking of complaint and issuing process thereon by which William Wallace was arrested and brought before the one Justice of the Peace, who exacted the bond in question ?

II.

1. The first reason assigned by the Plaintiffs in Error is :

Because the Supreme Court decided that the defence of Infancy of one of the defendants contained in the joint plea of all, was informal and bad, and was not a good and legal defence for the Defendants in the said Supreme Court.

1. Bastardy bonds are bound and governed by the same general principles as other bonds. See *Onus Probandi* and *Preparation for Trial*, Bailey, page 39, "Bastardy."

2. This applies to bastardy bonds given in conformity to the statute, and of course with greater force to an alleged voluntary bond. If the bond is void, then the sureties cannot be held, even if they believed it to be valid when they executed the same. *Evans vs. Huly*, 1 *Bav.* 13.

3. The bond in question is a statutory bond

and was so intended, as appears upon its face. It has no common law existence.

4. In *People vs. Meigham*, 1 Hill, 298, it is held that a bond taken before a Justice of the Peace, imposing conditions not required by law is void.

5. In *Byers, et al, vs. The State, ex. rel. Hutchinson*, Ind. Reports, 20 (Kerr), it is held that a bond given to avoid imprisonment for bastardy is without valid consideration and void.

6. The case of *Conroe vs. Birdsall*, 1 Johns. Cas., 127, decides that the bond of an infant is absolutely void at law, and this though he fraudulently represent himself to be of age.

7. We submit, the bond being absolutely void, there is nothing on which any one can be held. If the facts contained in the pleas filed show an original void instrument, how can sureties be bound by it?

9. The Defendant's in Error Counsel, cites some old rules of special pleading to sustain their cause of demurrer in Supreme Court. In our advanced jurisprudence, the rules of pleading are so construed and modified, by this Court, as to give to every suitor an opportunity to place on record every fact he may have, either of complaint or defence.

Again,

1. We submit, the liability of a surety cannot exceed, in any event, that of the principal, though it may be less. His liability is *strictissimi juris*, and cannot be extended. - 10 John, N.Y., 180.

2. In the case of *Leggett vs. Humphreys*, 21, Howard 66, U. S. Supreme Court, the rule is laid down: Sureties are never held responsible beyond the clear and absolute terms and meaning of their

undertakings and presumptions, and equities are never allowed to enlarge, or in any degree to change their legal obligations. 3 Kent's Com., 10th Ed., 183; 5 Hill, N. Y., 635.

3. We submit, the sureties, who are three of the defendants in this case, are such on an absolutely void bond as to the principal, and that in consequence of the rules of law just cited, their undertakings and obligations are nonentities. We are unable to discover how, by the rules of law, it is possible to bind another person to perform what is absolutely void in law, and especially where a statute has not been pursued.

For these reasons, we submit that the Defendants had a legal right to avail themselves of the defence of Infancy, as to their principal.

III.

The second reason assigned by the Plaintiffs in Error is:

“Because the said Court decided that the defence of duress set up in the Defendant's third Plea, was informal and not a good and legal defence to the said Plaintiffs' action.”

1. A fair construction of the opinion of the Supreme Court will show that Justice Scudder, delivering the opinion of the Court, has taken the ground, that it was not illegal to arrest the reputed father by warrant, upon proper complaint, by a Justice of the Peace, having jurisdiction to issue the warrant.

2. We do not contend against the soundness of such a legal proposition. But we insist, that as soon as the Defendant was arrested and brought before a

Justice of the Peace, it was the duty of the Justice of the Peace to call to his aid *another* Justice of the Peace *at once*,—no steps could be taken under *color of law* after the return of the warrant with the prisoner, by one Justice of the Peace, and if any steps were taken, they must be illegal. How can it be argued, that the proceedings were legal when the Justice of the Peace was proceeding illegally, if the statute is to be followed at all? There is but one thing for the Justice of the Peace to do after the return of the warrant with the prisoner, that is, to call to his aid another Justice of the Peace. Any steps taken by him to hold the defendant until he gives bond or goes to jail in default thereof, or any extra-judicial hearing, are by the wording of the statute unequivocally *coram non judice*.

3. What did the one Justice of the Peace do in this case as appears by the pleas filed? Unlawfully imprisoned William Wallace, “until by force of duress and such imprisonment, they made and delivered said supposed writing obligatory.”

Further, in the fourth plea, you find “he was held and detained before one Justice of the Peace in and for the said County of Burlington until the said supposed writing obligatory was made by the said William Wallace, &c., and delivered to the said Plaintiff.” Further, the plea says “that he was deprived of a trial as the statute directs.”

Is not this duress? Would not a person make a bond before he would go to jail? He was deprived of trial; the other Justice of the Peace was not called in; he was detained until he gave the bond.

4. The proceedings assumed to be in compli-

ance with the statute, so far as complaint, arrest and return of the prisoner, but when he was brought before the one Justice of the Peace then they cease to follow the statute and go by the guide of this *self-constituted* and *extra-judicial body*. The Defendant was imprisoned until the bond was delivered. This course was in perversion of constitutional law, as well as statute law.

5. Had the Justice a right to detain William Wallace without calling another Justice of the Peace? He should have followed the statute. If he should have followed the statute and had no right to detain William Wallace, then there was duress, and this is a good defence for principal and surety.

6. We submit duress of the principal is good defence for the surety. *Owen vs. Mynatt & Owen*, 1 Heiskell, 675, (Tenn.); *Brandt on Suretyship*, Sec. 5, Anselm De Colyar, page 11, "Law of Guarantees & Principal & Surety."

7. In this last authority, it is stated on authority of *Cummings vs. Luce*, that "under certain circumstances, duress of a person will avoid the contract of such person, though entered into for him by an agent." So duress of son will avoid father's deed and vice versa. So duress of wife will void husband's deed. Page 10, *Ibid*.

8. The case of *Thompson vs. Lockwood*, 15 Johns., 256, is an authority in point. It is on "all fours" with the case we present. *Spencer, J.*, in delivering the opinion of the Supreme Court, says—"It is clearly settled that where a person is illegally restrained of his liberty, and while under such restraint enters into any obligation to the person

causing the restraint, it is voidable for duress of imprisonment." Co. Lit., 253 ; Jenk. 156, 2 Inst., 482, are cited. Lawrence was the principal and Thompson was the surety in this case. It was insisted, the bond being joint and several and Thompson being surety, he could not avoid the bond for duress as to Lawrence, and the case of *Huscombe vs. Standing Cro. Jac.*, 187, was cited to sustain the insistence. The Court held that such rule (i. e. the rule declared in *Huscombe vs. Standing*) is "applicable to cases depending on common law principles, and where there is no statutory provisions interposed." It was held the Sheriff could take only such bonds as the law required, and such conditions as the law prescribes. The bond had no validity. Sheriff had no right to detain party in custody, and the obligor or surety may avail himself of the defence of duress.

9. The cases of *Mantel vs. Gibbs*, 1 *Brownlow*, 64 ; *Bagley vs. Clare*, 2 *Brownlow*, 275 ; *Mayere vs. Sands*, 1 *Freeman*, 351, are all founded on *Huscombe vs. Standing*. This (*Robinson vs. Gould*) was a very dissimilar case from the one we are arguing. There were no "statutory provisions interposed." There was a valid consideration as the Court declared between the Plaintiff and the Defendant. It was a suit against the surety on a promissory note.

10. The case of *Fisher vs. Shattuck*, 17 *Pickering*, page 252, is in full accord with the case of *Lockwood vs. Thompson*. This is a case under the bastardy act, and the suit was on a bond given by the putative father and surety. The Chief Justice, Shaw, in delivering the opinion of the Court, after noting the fact that by the statute, the party com-

plained of must be brought for examination before the same Justice who issued the warrant, and not another Justice, says that therefore "the order requiring the party to give bond was void; the order to hold the defendant in custody till he gave the bond was erroneous and void; and therefore the bond was given under duress." The Chief Justice further said, "upon consideration the opinion of the Court is that the plea of duress is a good bar for both of the defendants."

11. This Court, we submit, needs no argument to establish the proposition that the cases of Thompson vs. Lockwood, and Fisher vs. Shattuck, conclusively overrule the case of Huscombe vs. Standing, and the subsequent cases based upon it.

12. We submit, further, that the case of Robinson vs. Gould relied upon by the Defendants in Error was a case where there was a suit upon a Promissory Note, and a full and legal consideration existing, but there were no "statutory provisions interposed," and hence it is no precedent in this contest.

1. It is an established rule of law that where a person is illegally restrained of his liberty, and whilst under restraint, enters into any obligation to the person causing the restraint, it is avoidable for duress of imprisonment.

2. Was William Wallace illegally restrained of his liberty when he executed the obligation upon which this suit is brought together with his sureties?

3. The pleas of the defendants show that he was arrested and brought and held before one Justice of the Peace until he executed the bond. That he was to execute the bond with his sureties or go to jail.

4. After the prisoner is brought before the Justice who issued the warrant for his arrest, another Justice of the Peace must be called immediately. "The said two Justices, if the party charged does not demand a trial by jury, shall proceed without unnecessary delay to make examination of the matter; and shall examine the mother of such bastard or the woman so pregnant as aforesaid, on oath, in the presence of the person so charged touching the father of the said child, and shall hear any proof that may be offered in relation thereto." Sec. 7, Rev. Stat., page 71.

5. Personal liberty is imperiled and we submit, this act is in every sense an imperative act. The word "shall" takes away, in this case, all discretion on the part of the officers, and leaves them but one course to pursue. This is a necessary and safe rule when we consider the class of persons who are elected to the office of Justice of the Peace.

6. We contend that where the liberty of the citizen is involved, the statute should be construed in favor of liberty—where there is doubt about the true rule to be established in a case and liberty is involved, this is to be so construed, that the doubt should be resolved in favor of liberty. We simply ask to have this proposition rest upon the best reasoning of which we are capable. If a Justice of the Peace can compel a person to give security or go to jail and such proceedings are upheld by this Court, then the Court of last Resort is making an exceedingly dangerous rule. Here is a complaint made, warrant issued and prisoner brought before the Justice of the Peace who issued the warrant. Instead

of following the statute, he detains the prisoner until a bond in settlement of the affair is given—a bond *such as he requires*. He will not call another Justice to his aid as the statute requires and then proceed to the hearing. Can such a state of affairs have any other epithet, save only that of duress?

7. We submit then, that unless another Justice is called to the aid of the Justice who has taken the complaint, and issued the process on which the putative father is arrested, immediately after such arrest and return, then the father is illegally held. He is under duress. The next legal step is calling the second Justice, for the accomplishment of the purposes set out in the statute. *Fisher vs. Shattuck*. 17 Pickering.

8. The one Justice held the Defendant to give a bond (the one sued upon) or go to jail. How can this be other than clearly illegal?

9. In the case of *The State vs. Joslin*, 1 J. S. Green, 267, it is held that the power given to Justices by the act for the maintenance of bastard children must be exercised jointly. It appears from the case that Edmund Sheppard and Ebenezer Westcott, Esquires, made an order of filiation, which was drawn up by Edmund Sheppard, at his own house, in the presence of one of the Overseers of the Poor, but not in the presence of Ebenezer Westcott, and that the Justices were not together when the order was signed. The Court held as above stated, and “said, the *Justices must unite in deliberation, and unite in action. This has been long settled in the English Courts, and repeatedly recognized in this Court.*” Per

curiam—"The law is well settled as stated. Let the order be quashed."

10. The statute imperatively requires the two Justices to meet together, immediately, on the return of the process with the accused, besides their act being judicial, the common law requires their association. The case just cited is authority for this proposition, as well as the case of Moore vs. Ewing and Bowen, Executors of Moore, Coxe's Reports, page 147. C. J. Kinsey, in delivering the opinion of the Court says, "I take it to be a principle of law, that whenever a power or jurisdiction is delegated to two or more, it must be executed jointly and not separately. The judges must meet together, they ought to confer together, their decision ought to be the result of joint conference, and should itself be a joint act. If they inquire separately, or decide *separately it is altogether void.*" *Several cases cited, among them a Bastardy case in 2 Salkeld 478, where the order is held ill and quashed for the same reason.*

11. The case of State vs. Brall, 5 Hals., 161, is in full accord with the last cited cases. In this case the sum was agreed upon when the Justices were together, but signed in each others' absence. The order was quashed. C. J. Ewing in delivering the opinion of the Court says, "The statute has authorized two Justices to take examinations and make orders of filiations and maintenance. The authority given by the statute must be strictly pursued. The *making of the order is a judicial act*, and must be executed by the Justices *jointly*, and *not separately* as the cases referred to fully proved. Although the Justices met and agreed upon the sum, yet it was necessary they

should be together and act jointly in every part of the duty assigned them, *until they had completely executed their authority, by signing the order.*

12. In the case of *Rheel vs. Hicks*, 25 N. Y., (the latest edition by Banks Bros.) page 289, The liability of a putative father for the support of his bastard child is created wholly by statute (he not being liable at common law), and the remedy there prescribed must be pursued. Their statute authorizes a compromise, but ours does not.

13. There are a number of cases, which hold, that where an officer takes an obligation under color of office, and while defendant is under duress, the obligation is void. *Kelly vs. McCormick*, 28 N. Y., 318, 321; 1 Black. Com. Marg., p. 136, 344; *Smith vs. McFall*, 18, Wend., 523; *Wilson vs. Williams*, id. 585; *McDonald vs. Neilson*, 2 Cow. 139, 183; *Silvernail vs. Cole*, 12 Barb., 685; *Partridge vs. Com. Fire Ins. Co.*, 17 Hun., 95; 1 Bouv. Law Dict., 244; *Wharton's Law Lex.*, 177; *Tomlin's Law Diet*, *Burrall vs. Acker*, 23 Wend., 606, 608; *Decker vs. Judson*, 16 N. Y., 439, 442; *Shaw vs. Tobias*, 3 id., 188; 192; *King vs. Gibbs*, 26 Wend., 502; *Winter vs. Kinney*, 1 N. Y., 365; *Richardson vs. Crandall*, 48 id., 348; *Morton vs. Campbell*, 37 Barb., 179, 184; *People vs. Chalmers*, 1 Hun., 683; *Dale vs. Bull*, 2 John. cas., 239, 245; *Love vs. Palmer*, 7 Johns., 159; *Strong vs. Tompkins*, 8, id. 98, 100; *Sherman vs. Boyce*, 15 id. 443; *Reed vs. Pruyn*, 7 id. 426; *Sullivan vs. Alexander*, 19 id. 233; *Millard vs. Canfield*, 5 Wend. 61; *Webber's Executors vs. Blunt*, 19 id. 188; *Bank of Buffalo vs. Boughton*, 21 id. 57; *Barnard vs. Viele*, id. 88; *People vs. Meighan*, 1 Hill,

298; *Webb vs. Albertson*, 4 Barb. 51, 52; *Cook vs. Freudenthal*, 80 N.Y., 202; 7 Weekly Digest, 268; *Cook vs. Horwitz*, 14 Hun. 542; *Clapp vs. Schutt*, 44, N.Y., 104; *Douglass vs. Warren*, 19 Hun. 1.

14. We submit to the Court, such being the law in these cases, with all its particularity in its requirements as to details, that the act of the one Justice in holding William Wallace, and ordering him to give a bond to support the alleged bastard, was without the shadow of legality, the restraint was clearly illegal, and the requirement that the bond be given is absolutely void. Hence the duress under which he and his uncle, brother and brother-in-law executed the bond.

15. We again submit the bond is void, and that duress is a good plea for all the defendants.

16. The case of *DaCosta and Davis vs. Davis and Hatch*, 4 Zab. 319, the question as to duress is not in the suit. Nor is the question of infancy passed upon by the Court as will be seen by reading the opinion of the Court. If these questions were raised and decided it is a mere commercial suit in which "no statutory provisions interposed," as in bastardy suits.

17. There is no question as to the principal of law that where the Court is without jurisdiction, or the officer who demanded and received the bond as security acted without jurisdiction, the plea of duress is good for both principal and surety.—*Thompson vs. Lockwood*, 15 Johns. 256; *Fisher vs. Shattuck*, 17 Pick. 252, and cases above cited to this point. If there is no jurisdiction, the bond has no legal existence, and the defence is available to both

the principal and the surety. The opinion of the Supreme Court goes to the point, that this defence is available under the plea of non est factum, and therefore it is not necessary or permissible to give the Defendants relief under a special plea, like the one pleaded in this case.

We submit that this is drawing distinctions without substantial differences. If it is a defence at all, the defendants have a right to plead it. By statute in our State, defendants can plead as many matters as they deem necessary. See Sec. 118, Prac. Act, Rev., p. 867. Further perusal of the opinion of the Supreme Court will show, that the Court has fallen in error, by assuming that the pleas do not aver want of jurisdiction in the Court or officer to whom the bond was given.

The plea does aver, that defendant was unlawfully imprisoned by the Plaintiffs until by force of such imprisonment and duress the bond was given. This is the *usual plea of duress* of imprisonment. If the Court had jurisdiction, then the imprisonment was lawful. If it had not jurisdiction, *then the imprisonment was unlawful*. If the imprisonment by the Court is averred to be unlawful, *then the Court was without jurisdiction*. The matter of averment in the plea is that the imprisonment was unlawful. 2 Inst. 482.

We can find no precedents under pleas of duress where the defendant allege matter of law, to wit, that the Court acted without jurisdiction. 3 Chitty 965.

The Plaintiffs have however spread upon the record in the fourth and fifth pleas all the facts

which show that the Justice of the Peace acted without jurisdiction.

Duress avoids a contract and the surety may avail himself of the defence. *Osborn vs. Robbins*, 36 N. Y. 365; *Eadie vs. Slimmons*, 26 id. 9; *Strong vs. Grannis*, 26 Barb. 122; *Richards vs. Vanderpoel*, 1 Daly 71; *Foshay vs. Ferguson*, 5 Hill 154; *Watkins vs. Baird*, 6 Mass. 506; *Wheaton vs. Fay*, 62 N. Y. 275, 283.

Again, we submit to the Court, that upon the general principles of law, that a surety may avail himself of any defence, which would be good for the principal, is good legal support of the proposition, that infancy and duress are good defences for surety as well as for the principal.

IV.

The third reason assigned by the Plaintiff in Error is :

“Because the said Court decided that the matters contained in the Fourth, Fifth and Sixth Pleas of the Defendants in the said Supreme Court, were irrelevant and immaterial as defences to the said Plaintiff’s Action.”

1. To the Fourth plea, the insistent is, that it is uncertain and impertinent.

1. We submit that our plea makes the writing obligatory definite, because it refers to the one mentioned in the Plaintiff’s Declaration. We are pleading in this, and the following pleas, illegality which arises out of statutory enactment. When the plea is read with reference to the statute, out of which the illegality arises, we find sufficient certainty to inform the plaintiffs, and the Court, and jury what our de-

fence is. We state the Justice of the Peace named in the act, &c., &c. When you so read this plea, you find it clear, concise, certain, complete and definite.

2. The plea alleges, that he was brought before the Justice of the Peace, who issued the process, on which the arrest was made. He was, as is alleged, a Justice of the Peace in and for the County of Burlington. There was no record made of any proceedings had before this Justice, and one of the matters of proof under our plea is to find out this Justice. As matter of defence his name is immaterial. The law deals with his office, not his name. The statute is directed to every Justice of the Peace in the State, in his judicial capacity.

1. To the fifth plea, the Defendants in Error have assigned the same causes as to the fourth, and also as a cause of demurrer that the Defendants have therein alleged a waiver of the defence.

2. This cause upon reading the plea will be found to be untrue. The plea alleges positively that "no notice of which said order of filiation, was or ever has been brought to the knowledge of William Wallace, &c." The Court will understand that defendants insist that "no order of filiation" was ever made, and of course in the eye of the law, no person could have knowledge of that which is not in existence. We also call particular attention to the fact, that the bond in question is one substantially, to comply with an "order of filiation."

3. We therefore submit, that the plea does not waive our defence. Grant that it did, why should

demurrants complain of an advantage thus given them?

1. As to the cause of demurrer, charging that the pleas are impertinent, we have only to say, that they are a statement of facts and circumstances showing that the bond is not legal, but void by reason of its not having been made to the Township in conformity with and under the authority and power conferred by statute. That the officer ordered it without having jurisdiction so to do. They are much like the pleas in the case of *Hudson vs. The Inhabitants of Winslow*, 6 Vroom, 437.

2. These circumstances show that in law it is not the deed of the party.

3. On demurrer in the case just cited, Ch. J. Beasley held such pleas to be a legal answer, i. e., such as show circumstances which render void, the instrument sued upon.

4. If these circumstances show that the bond is void, it has no existence in law. What is void is the same as if it did not exist, in law.

5. Demurrants argue, that such pleas are pertinent and responsive only when the bond is the result of some legal proceedings to establish liability. Our pleas show there were some legal proceedings taken to establish liability, but that they fell short in gross illegality. They (Demurrants) set up a confessed paternity. We answer, if there was one, it was by virtue of duress.

6. The bond on its face, and the Demurrant's Declaration show the bond is and was intended to be a Bastardy bond. The pleas show all the circumstances under which the bond was made and thus

precludes the idea that the bond is a voluntary bond, made independently of the statute regulating bastardy cases.

7. Again, the defendants have pleaded non est factum, (the three special pleas last pleaded amount to this) and in the case of Hudson vs. The Inhabitants of Winslow just cited, it is held, "That admissions in a deed which the defendants offer to show is not, in law, their deed, cannot in any respect prejudice their rights." Further (same case), "The doctrine that a party is estopped from contradicting the recitals of his own deed, is applicable only where the deed, as the act of such party is admitted."

8. Suppose then the bond has a confessed liability as demurrants and plaintiffs claim, it cannot estop prejudice the defendants. Hence, the only safe rule *is to pursue the statute strictly—have an adjudication, "order of filiation," and bond made to comply therewith.* Confessed liability when the accused is *under duress*, and the statute *is not being pursued strictly*, is a legal absurdity and nonentity.

V.

1. To the three pleas lastly pleaded by the defendants the demurrants allege as causes of demurrer, that the pleas so pleaded are insufficient in law.

2. The defendants insist that the pleas are sufficient in law, and form a complete bar to Plaintiff's recovery.

These pleas (fourth, fifth and sixth) though somewhat different from the others in form and substance, in effect set up facts showing that the bond sued upon is not legal, but void by reason of its not having been made to the Township in conformity

with, and under the authority, and power conferred by statute. It could not be voluntary, because it was made under duress.

2. The Township is a municipal body incorporated by statute with certain powers conferred upon it and its officers by the various statutes of the State. Beyond these powers so declared and limited, it or its officers cannot go.

3. Certainly more latitude would be allowed in giving effect to official bonds made to a municipal corporation than to bonds of this character, given in a *quasi-criminal* proceeding, and in reference to the former, it is settled law, that to be valid the condition must comply substantially with the requirements of the Statute. 1 Dillon Municip. Corp., p. 242.

4. The only exception cited by that authority seems to be in case of bonds not required by law, when executed voluntarily, and with proper conditions to secure the performance of official duty.

5. But there is nothing analagous in principle between a bond to secure the performance of official duty by an officer created by law, with his duties prescribed by statute, and a bond like the one in question made and executed contrary to the provisions of a statute, under which ample provisions has been made for the execution of a proper legal bond, under order of a magistrate given *coram non judice*, and with a condition annexed to pay money *without any limit as to duration of time* except as limited to the time that a certain bastard might continue chargeable to the Township.

6. Where a bond or recognizance is taken by

an officer or Court acting simply under statutory power, the instrument must be authorized by statute or it will be void; and the complaint upon such statement must affirmatively show that it was taken in a case where the law authorized it. *Byers, et al, vs. The State ex. rel. Hutchinson (Ind. Re.)*, 20 (Kerr).

Further, Perkins, J., in this case says, "In many cases it must appear that it was taken exactly or substantially, in accordance with statutory powers." 15 cases cited in support of the doctrine. "Such a bond is without a valid consideration, and that fact is bar to an action upon it." "The obligation in question was considered a bond."

7. Again, in the case of *Benedict vs. Bray*, Supreme Court of Cal., 2 Cal. 251, (Hepburn) the Court directly decides the point that a bond exacted by an officer when he has no authority to require it, is void. Cites *Thompson vs. Lockwood*. See several cases to the same point above cited. This case held, "the bond was taken without authority and was void ab initio," p. 265.

8. The case of *Layton vs. Cooper*, Penn. 65, (N. J.) was a suit for board and clothing of an alleged bastard child.

The fifth reason, and one of the reasons on which the Court reversed the judgment given below, was the following: "That the action was brought in part for the maintenance and clothing of a certain bastard child of the Plaintiff's daughter, of which child the defendant was alleged to be the father; whereas *no order of filiation had ever been made*, or was given in evidence." This reason strikes at the ground of the action itself—"no reasoning can be

made use of to legalize the one or support the other." In my opinion, the judgment should be reversed. Kirkpatrick, Ch. J., Rossell, J. concurred.

This case certainly decides, that without an "order of filiation" having been first made, an action for support of a bastard cannot be sustained against the alleged father.

The opinion of Justice Pennington in this case, only goes to the point, that a putative father can contract for board of his child with private individuals, without any legal proceedings having been taken. The other two judges do not concur in this view.

The contract of a person to pay the board of his child is in no way dissimilar from any other contract. But when a municipal corporation seeks to compel the putative father by process of law, and *under a statute, which the Courts hold must be pursued strictly, then there is no voluntary action upon the part of the father, and hence the absence of the most essential element of the contract, to wit, free consent.*

Justice Pennington suggests that a request of the alleged father would create a liability. *A voluntary request on the part of the father wholly independent of the statute, is quite different from a forced, restrained and compulsory assumption of liability under color of law.*

Layton vs. Cooper never decided, that an action could be maintained without an "order of filiation" had been first made but on the contrary expressly decides "that no reasoning can be made use of to legalize the action, without such order of filiation having been first made."

9. If an action, in the absence of a request on

the part of the alleged father, cannot be sustained against him for support of his alleged bastard child, without an "order of filiation" being first made, how then can a bond be good in law, which is a bond to perform an order of filiation, when in fact no such order has been made?

10. We submit, such bond as is held in other States by the Superior Courts thereof is void.

11. Most certainly is this so, when defendant's pleas disclose the illegal acts on part of the plaintiffs, and show how, under the statute, which must be pursued strictly, the plaintiffs failed to comply.

12. Indeed, it is expressly decided in the case of *Simmons vs. Ball*, 21 Ala. 501, that "in the absence of statutory regulations the father is under no legal obligations to support his illegitimate child. *The statute prescribes the only legal mode in which the support can be obtained.*" *Such is sound law, when we consider, as the text-writers say, that one of the primary objects of marriage is to fix the maintenance and protection of children on certain and ascertained persons.* See 1 Blackstone, 447, and the just observation of Baron Montesquieu there cited.

13. Even the case of *Mayer vs. Hoffman*, 67 Wis. 279, where a settlement of a bastardy case was upheld, we find the Court think necessary to state, "*that the plaintiff used no threats, menaces or imprisonment to induce the plaintiff to pay money.* He the defendant had nothing to do with the settlement. The two points the Court regard as established are, (1) *There was no evidence to show the money was extorted.* (2) *That the evidence clearly shows the money was voluntarily paid in settlement of the case.*

This case is entirely in accord with the doctrine for which we contend.

14. Hence, we submit, there are two modes of fixing liability for the support of a child. 1. *By marriage.* 2. *By the statute.* If the second mode is adopted then *the statute must be pursued strictly*, because the liberty of the citizen is involved.

15. We submit, that any argument based on liability voluntarily assumed in this case, is fallacious, as the pleas positively state facts and circumstances in the proceedings, which prove that the bond was executed under duress, and that it is a void instrument for want of conformity to the statute, and that the Township had no legal right under the circumstances to accept the bond. *The fact of the arrest and illegal detention until bond was executed, and threats of imprisonment at once, immediately preceding such execution, negative the defendants of any voluntary action in the premises.*

Again.

1. The bond on its face demands \$2.50 per week for support, &c. This assumes that such sum has been fixed. By whom could it have been done? There is no "order of filiation," consequently, two Justices of the Peace did not fix the amount, as the statute requires. William Wallace was an infant, his contract, if he made one, was void. He was under duress, this voids it. Hence the pleas show the bond clearly illegal in this respect.

2. We submit, the only safe rule *is to follow the statute strictly before the statutory tribunal*, if the Townships are to be securely indemnified against loss.

For these reasons, we submit that the cause of demurrer against the three pleas lastly pleaded is not good, and that the pleas are sufficient in law.

Lastly:—

We submit that if there are any formal defects in the pleas, there should be amendment, in order that justice may be done the parties to this suit.

In conclusion, we call the attention of the Court to the rule: that special pleas are very various according to the circumstances of the defendant's case; as in personal actions the defendant may plead any special matter in denial, avoidance, discharge, excuse or justification of the matter alleged in the declaration which destroys or bars the plaintiff's action. Stephen on Pleading, 115 & 116.

We ask that the demurrers be overruled and the judgment of the Supreme Court be reversed, with costs.

Respectfully Submitted by

GILBERT & ATKINSON,

FOR PLAINTIFFS IN ERROR.

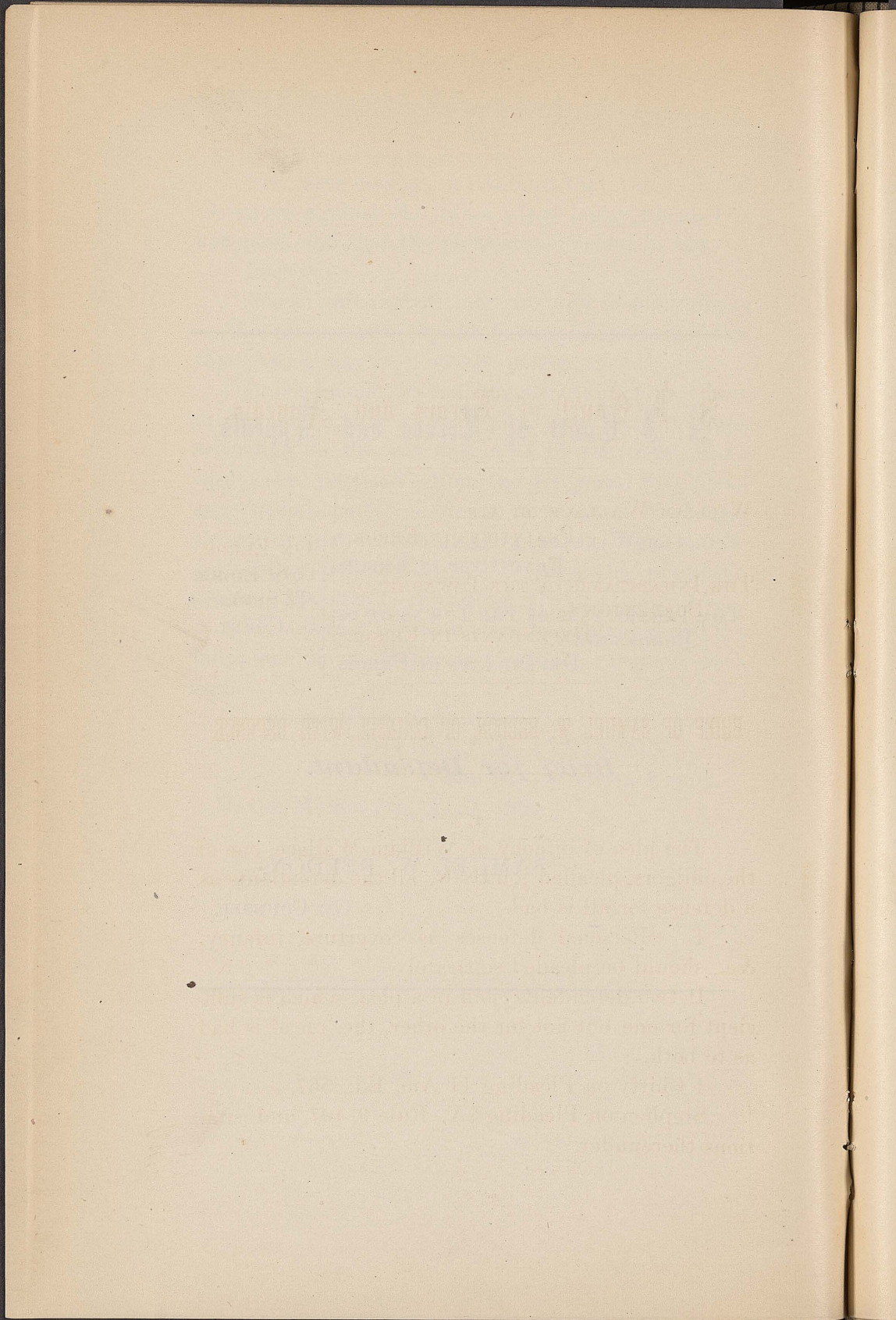
DATED MARCH 5th, A. D. 1889.

N. J. Court of Errors and Appeals.

WILLIAM WALLACE, ET ALS.,	}	ON ERROR TO SUPREME COURT.
PLAINTIFFS IN ERROR,		
v.		
THE INHABITANTS OF THE TOWNSHIP OF BORDENTOWN,		
DEFENDANTS IN ERROR.		

Brief for Defendant.

SAMUEL W. BELDON,
OF COUNSEL.



N. J. Court of Errors and Appeals.

WILLIAM WALLACE, ET ALS.,	} ON ERROR TO SUPREME COURT.
PLAINTIFFS IN ERROR,	
V.	
THE INHABITANTS OF THE TOWNSHIP OF BORDENTOWN, DEFENDANTS IN ERROR.	

BRIEF OF SAMUEL W. BELDON, OF COUNSEL WITH DEFENCE.

I.

The plea of infancy of William Wallace, one of the obligors, pleaded jointly by all the defendants as a defense for all is bad.

1. "Personal defenses as coverture, infancy, &c., should be pleaded separately * * * *

If two defendants join in a plea, which is sufficient for one but not for the other, the plead is bad as to both."

1 Chitty on Pleading 11 Am. Ed., 567.

Stephen on Pleading § V. Rule 9, 407, and citations thereunder.

2. Infancy is a good defense only for the infant.
- 1 Chitty on pleading, 567.
- 1 Chitty on Contracts, 11 Am. Ed. 222 ^Hote.
- Schouler's ~~Down~~ Rel. § 402.
- Tyler on Infancy Ch. iv § 19.
- Brandt on Suretyship, § 128.

II.

The plea of Duress is bad for the same reason.

1. 1 Chitty on Pleading, 11 Am. Ed. 567.
- Stephen on Pleading §v. Rule 9, 407.

2. Duress is a good defence only for the person under duress—unless some near relationship be shown.

The obligors to this bond are all bound as principals. The obligation of the bond is joint and several and the condition is for performance by all. True it is as said in the opinion below, it appears in the condition that one of the obligors is the father of the bastard child, and that might affect it, if we were standing on a state of facts existing prior to the execution of the bond, but we are not ; it is the *bond* sued on and all enter into that as principals.

Persons not bound by the mere form of a transaction can make themselves by their contracts, liable primarily.

The distinction made in applying the statute of Frauds furnishes an example.

This is what has been done in this case.

Nor is this status changed by the plea.

There is no averment in any plea that any one of the obligors is principal and the others sureties.

The only suggestion of such a thing is in this plea under discussion, where William Wallace is described by way of recital as the principal.

It is submitted that any supposed fact to be taken advantage of, by a plea or to become a proper part of a plea, must be averred and not recited.

1 Chitty 237.

Stephen 388.

Comyns Digest. Title Pleader E. 3.

And a plea is to be taken most strongly against the defendant.

Comyns Digest. Title Pleader E. 6.

And particularly should this be so where oyer is craved, and the deed shows the fact to be different from the *suggestion* of the plea.

There can be no doubt that a co-principal is not discharged by duress of another co-principal. The cases hereinafter cited will apply to this.

But even were William Wallace the principal and the other obligors sureties, duress of the principal, no relationship being shown, is no defense to the sureties.

Bacon's Ab. "Duress" B.

Huscombe v. Standing Cro. Jac. 187.

Moutal v Woolington Roll. Abr. 687, pl. 7.

Shep. Touchstone, 62.

Mantel v. Gibbs, 1 Brownl. 64.
 Wayne v. Sands. Freem. 351.
 Bagley v. Clare, 2 Brownl. 275.
 Robinson v. Gould, 11 Cushing, 55, 57.
 Bowman v. Hillier, 130 Mass. 153-4.
 Spaulding v. Crawford, 27 Tex. 155.
 Plummer v. The People, 16 Ill. 358.
 Higgins v. People, 39 Ill. 242.
 McClintock v. Cummins, 3 McLean 158.
 Hazard v. Griswold, 21 Fed. Rep. 178.

*In this plea, the
 bond is not al-
 -leged to have
 been extorted
 by the Justice,
 but by the
 obligee; hence
 no statutory
 provision
 intervenes.*

There are cases which hold that where a statute is violated, or where a person is before a court without jurisdiction, or where that which the principal engages to do is something which he is under no obligation to do, the bond is absolutely void to all parties, but the authorities holding a surety always discharged by duress of principal are very few; in fact

Strong v. Grannis, 26 Barb. 122

is the only one which has come under my notice and it is decided upon the strength of a former N. Y. decision where the point involved was distinguished from the general rule, and the views of the Court on the general rule such as should have, had the Earlier Case been really followed, decided the later case differently.

III.

The demurrers to the fourth, fifth and sixth pleas rest on the ground that those pleas are not pertinent and applicable to this suit and are insufficient. The bond upon which suit is brought is not the statutory bond; is not the bond required by the statute; does not purport to be.

It is not drawn to the State of New Jersey ; it is not drawn to comply with and obey an order of filiation ; it makes no mention of legal proceedings taken to establish liability, nor is it set up in these pleas that there were any.

It is drawn to the "Inhabitants of the Township;" it recognizes and confesses a certain liability or responsibility of one obligor because of an (also admitted) obligation or liability of the Township ; it is drawn to indemnify the Township because of this liability—and it is submitted that any plea setting up failure to comply with statutory regulations, is no more applicable or pertinent in this case, than would be setting the same up in a cause upon a bond indemnifying the Township against loss by reason of something totally disconnected from any statute (as this bond really is).

Not being a statutory bond, if the third plea is *good and true* and no good replication thereto can be sustained, the bond is void because of the duress ; *otherwise* it is a *voluntary* bond.

As the question of duress is thus raised by that plea, plaintiff insists that for the purposes of these pleas it is a voluntary bond entirely outside of statutory proceedings and obligations, given for the performance of that which is lawful upon a lawful consideration (confessed paternity), and therefore is good at law.

Sooy et al. vs. State, 9 Vr. 324.

As affirmed, 12 Vr. 394.

This bastard child is charged by the declaration to be a Township charge ; the bond admits the same ;

it is fully within the powers of the Township to accept *anything*, whether money or a voluntary bond *to relieve it* from the burden of such support, and suit can be maintained upon such a bond.

Dillon on Mun. Corp., 3rd Ed. § 458.

If such a bond voluntarily given should be held invalid, it would be equivalent to saying that a township could not compromise a case—but compromises are favored by the law, and have been so held in bastardy cases.

Mayer v. Hoffman, 67 Wis. 279.

Hook v. Batt, 78 N. Y. 371.

Heops v. Dunham, 95 Ill. 583.

The fifth plea is also bad, because it sets up that which would be a defense only against arrest.

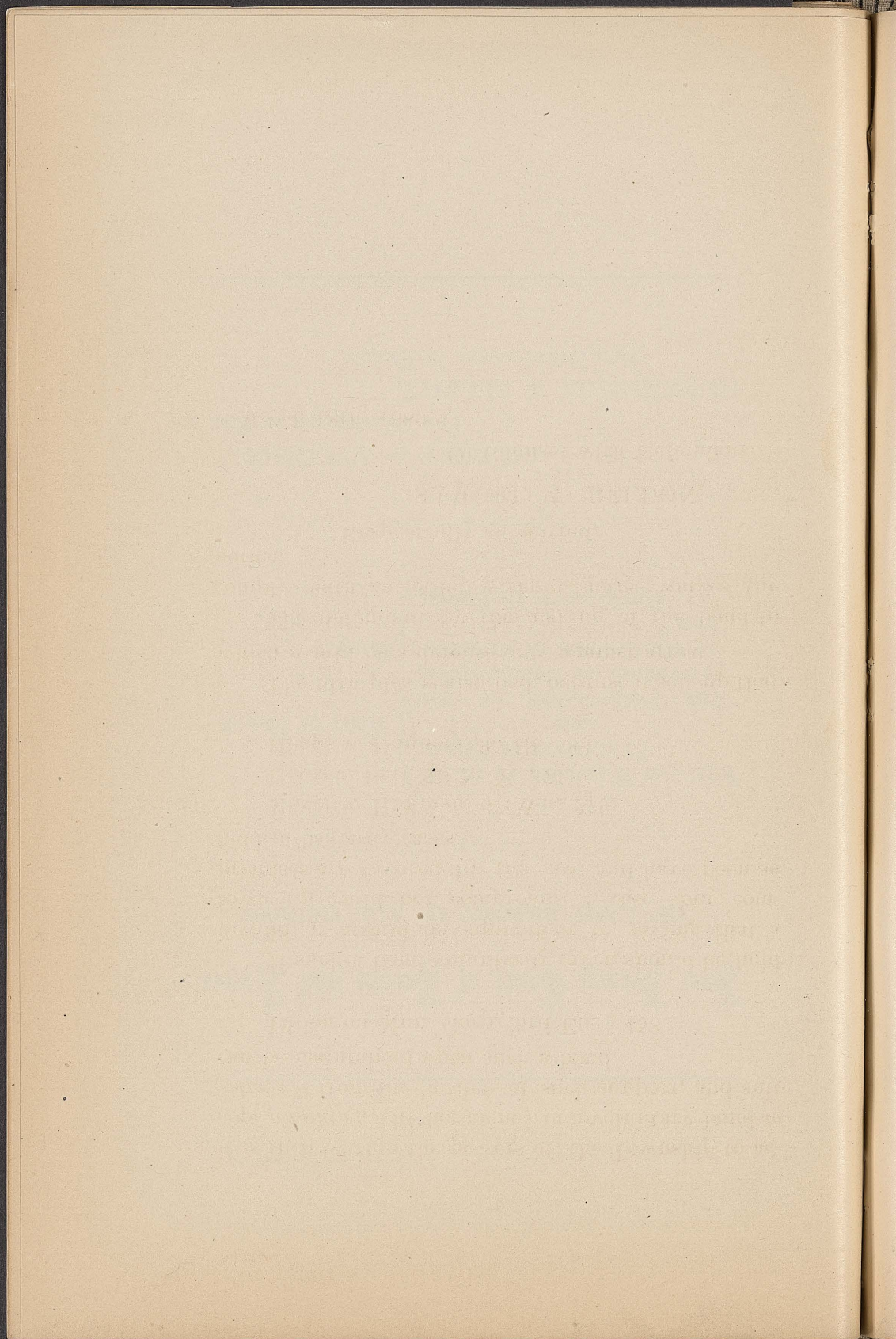
The defendant by the making of the bond to comply with an order without notice waives the notice.

Respectfully submitted,

SAMUEL W. BELDON,

Of Counsel with Defendant.

March 18th, 1889.



New Jersey Court of Errors and Appeals

OF LAST RESORT IN ALL CAUSES.

WILLIAM WALLACE, ET AL.,
PLAINTIFFS IN ERROR,
AND

"THE INHABITANTS OF THE
TOWNSHIP OF BORDENTOWN,
IN THE COUNTY OF BURLING-
TON,"

DEFENDANTS IN ERROR.

WRIT OF ERROR.

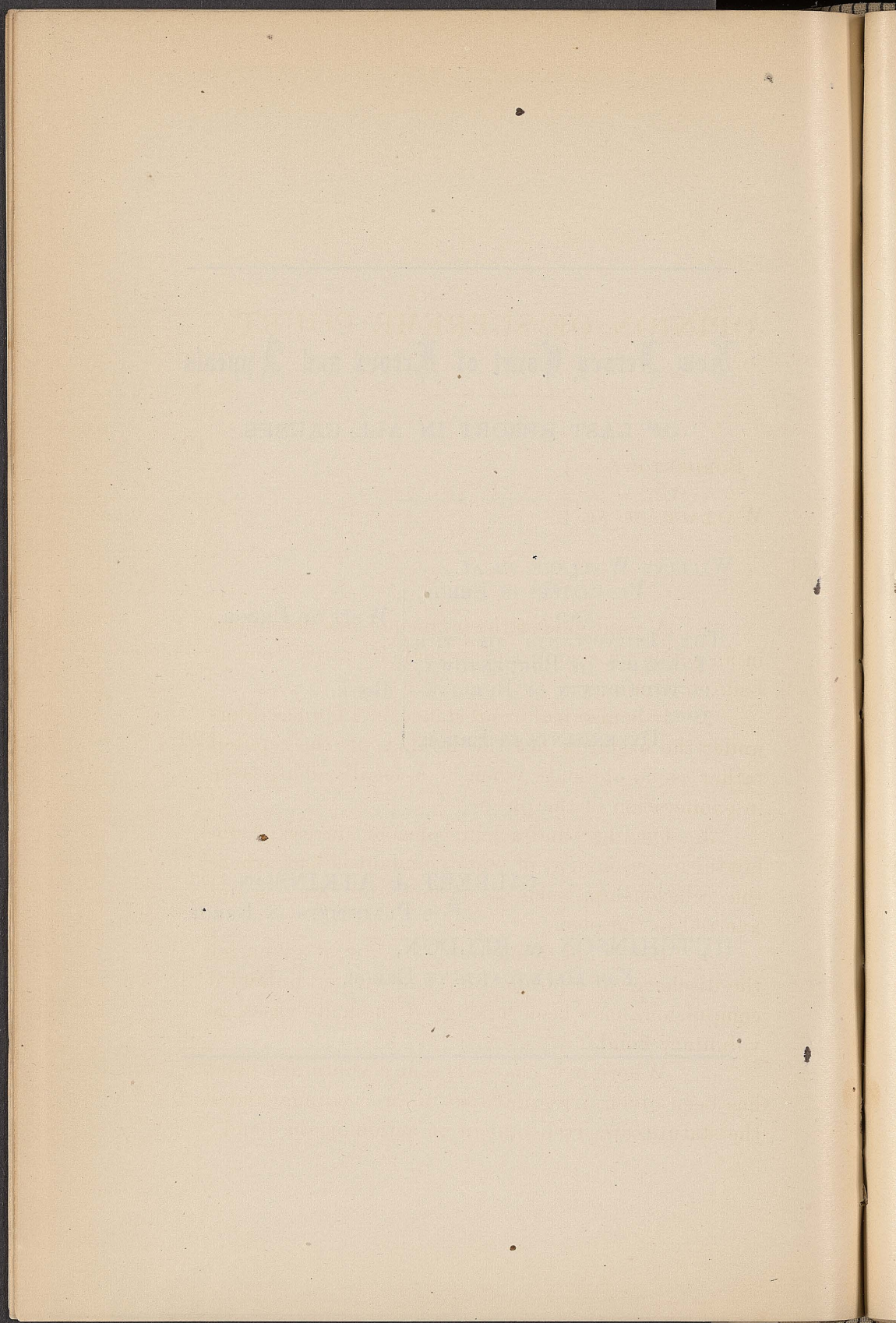
BOOK.

GILBERT & ATKINSON,

FOR PLAINTIFFS IN ERROR.

HUTCHINSON & BELDON,

FOR DEFENDANTS IN ERROR.



OPINION OF SUPREME COURT.

BORDENTOWN,
v.
WALLACE, ET. AL. }

10

1. A joint plea of the infancy of one defendant in an action on a joint and several bastardy bond is bad, on demurrer.

2. It is also bad in substance, as in proceedings under the bastardy act the infancy of the reputed father is no defence, when he is legally chargeable in exoneration of the public.

3. On like bond a joint plea of duress of unlawful imprisonment of one defendant is bad, where the relationship, such as father, son, &c., is not averred in the plea.

4. Bonds not demandable by law, if given for the discharge of a public duty, and without unlawful compulsion, have been held good in many cases, as voluntary bonds.

5. Where it is charged, that a voluntary bond has been given, irregularities in proceedings under the statute, are irrelevant in an action on the bond.

30

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1887.

10

INHABITANTS OF THE TOWNSHIP OF BORDENTOWN, }
vs. }
WILLIAM WALLACE, ET. AL. }

On Demurrer to Defendants' Pleas.

Argued at June Term, 1887, before the Chief
20 Justice and Justices Scudder, Dixon and Reed.

HUTCHINSON & BELDON for Plaintiffs.
GILBERT & ATKINSON for Defendants.

This action is brought on a joint and several
bond given by the defendants to the plaintiff in the
penal sum of twenty-five hundred dollars, with the
condition, that if the defendants "shall pay unto the
said The Inhabitants of the Township of Borden-
30 town or to its successors and assigns, the sum of two
and a half dollars each and every week, to the
Overseer of the Poor for the time being of the said
Township of Bordentown, to be applied to and for

the support of a certain female bastard child, of whom William Wallace, one of the parties hereby bound, is the father, for and during such period of time as the said bastard child shall or may be chargeable to the said Township, then the said obligation is to be void, otherwise to remain in full force and virtue."

The declaration is in the usual form. After praying Oyer and setting out the bond, the defendants plead jointly six several pleas. 1. Non est factum. 2. Infancy of William Wallace. 3. Duress of imprisonment of William Wallace. 4. Bond given before and without hearing of two Justices, and when held before one Justice of the Peace until the bond was given. 5. Bond given to comply with order of filiation when no notice was given of such order. 6. That no order of filiation was made by two Justices of the Peace, according to law.

The plaintiff joins issue on the first plea, and files a demurrer to each of the five succeeding pleas. 20

The opinion of the Court was delivered by Scudder, J. The defence of the infancy of one of the defendants contained in the joint plea of all, is informal and bad. Infancy is a personal privilege of which no one can take advantage but himself. *Voorhees v. Wait*, 3 Green 343; *Patterson v. Lippincott*, 18th Vr. 457.

It is also a rule of pleading that personal defences, as coverture, infancy, &c., shall be pleaded separately; that only when the defence is in its 30 nature joint may several defendants join in the same plea; and that where a plea is bad in part it is bad in toto; if, therefore, two or more defendants join

in a plea which is sufficient but for one and not for the other, the plea is bad as to both. *1st Ch. Pl.* 565-567. But it must not be conceded, that in a proper case under our statute for the maintenance of bastard children, the father of a bastard child can escape his obligation, or liability to indemnify the Township or municipal body for the support of such child, if it become chargeable, by a plea of infancy, however formally it may be pleaded. *Co. Litt.* 172, 10 d, gives the rule of an infant's general liability as follows: "An infant may bind himself to pay for his necessary meat, drink, apparel, necessary physic, and such other necessaries, and likewise for his good teaching or instruction, whereby he may profit himself afterward, but if he bind himself in an obligation or other writing with a penalty, for the payment of any of these, that obligation shall not bind him;" He adds "and generally whatsoever an infant is bound to do by law, the same shall bind him., albeit 20 he doth it without any suit at law." Lord Mansfield quotes and applies this last expression in *Zouch v. Parsons*, 31 *Burr*, 1794, and adds "if an infant does a right act which he ought to do,, which he was compellable to do, it shall bind him." This general principle has been used in bastardy cases to bind infants under statutes passed to protect the public against the support of bastard children that may become chargeable. *People v. Moores*, 4 *Denio* 518; *McCall v. Parker*, 13 *Met.* 372. In this latter case 30 in an action on a bond, given under the statute, for appearance, &c., it was decided that the infancy of the accused is no defence either for him or his surety. Prof. Parsons in 1 *Pars. Cont.* 334, says that there is

no principle of law that binds infants when they enter into contracts which owe their validity, and the means of their enforcement, to statutes, because in all statutes containing general words, there is an implied or virtual exception in favor of persons whose liability the common law recognizes. He proceeds to illustrate this position by referring to cases where infants have been held exempt from liability to pay calls to shares in incorporated companies, wherein it has been held, that there are implied 10 exceptions in favor of infants in statutes containing general words. . . But the words in our bastardy statute requiring the reputed father of a bastard child, who may in some cases be an infant, to give a bond for security, are not so general as to exempt infants from its operation. They are fairly within the words of the act, and its purpose to protect the public against those who would impose the support of their illegitimate offsprings on others.

Tyler on infancy, Ch. IX., page 139, cites the 20 above principle of liability in its application to bastardy cases, with approval.

This second plea is defective in form, being a joint plea of the infancy of one defendant; it is also bad in substance, as in proceedings under the bastardy act the infancy of the reputed father is no defence when he is legally chargeable in exoneration of the public.

The third plea is, that the defendant, William Wallace was unlawfully imprisoned, and he and the 30 other defendants made and delivered the bond by duress of imprisonment of the said William Wallace. This is also in the same form of pleading as the former

plea. A defence which is personal to one defendant is pleaded by all, as if all were equally under duress at the time of making the bond. It is said that the imprisonment was unlawful, and this is well averred, for where he is imprisoned or held under process of a court that has jurisdiction to grant such process, there is no duress, the constraint put upon him must be tortuous and unlawful. The same rule is found in the Civil law. "The violence which leads to the rescission
 10 of a contract should be an unjust violation, *adversus bonos mores*, and the exercise of a legal right can never be allowed as a violence of this description; therefore a debtor can have no redress against a contract which he enters into with his creditor, upon the mere pretext that he was intimidated by the threat of being arrested, or even of his being actually under arrest, when he made the contract, provided the creditor had the right to arrest him." 1 *Pothier Ob.* 26.

20 But can one defendant to an action on a joint and several bond plead that his co-defendant signed the bond by duress, and therefore he, who is bound with him, is discharged?

2 Bacon's *Ab. Duress* (b) gives this statement of the law; "The duress that will avoid a deed must be done to the party himself; therefore, if A and B enter into an obligation by reason of duress done to A, B shall not avoid this obligation, though A may, because he shall not avoid it by duress to a stranger.

30 But a son shall avoid his deed by duress to his father; so shall the father his deed, by reason of duress to his son." This plea does not show the relationship, if any exist between the parties, therefore on this

demurrer they must stand as strangers to each other, and not entitled to the joint defence of duress to one of the joint and several obligors. There is no express recital on the face of the bond that William Wallace is principal and the other defendants sureties, but it appears in the condition, that he is the father of the bastard child, and it is averred in the third plea that he is the principal in the writing obligatory. Admitting that the relation of principal and sureties between the parties sufficiently appears on the face 10 of the pleading, yet in cases depending on the rules of common law the plea of duress, in an action on a joint and several bond may be good for the principal, while it is not any plea as to the surety. *Huscombe v. Standing Croke, James 187.*

In some cases a plea of duress as to all the defendants has been used, when it has been made to appear that there was no jurisdiction in the court, or officer to demand, or receive a bond as security, and it has been held that both principal and sureties were 20 discharged. *Thompson v Lockwood, 15 John 256; Fisher v Shattuck, 17 Pick 252.*

This result is undoubtedly sound in principle, for where there is no jurisdiction the bond cannot have a legal existence; it is voidable by all, and in such cases the defence is available to both the principal and the surety under the plea of *non est factum*, according to our rules of pleading. It is not therefore necessary or permissible to alter what appears to have been so long established, to give the defendants 30 any relief to which they may be legally entitled, by giving another effect to the special plea of duress as to one defendant, which like infancy and coverture

is a personal defence. This plea does not aver a want of jurisdiction in the court, or officer to whom the bond was given, in avoidance of the bond as to all the defendants. Duress is a matter of strict defence, and is carefully treated in our Courts. Bonds not demandable by law, if given for the discharge of a public duty, and without illegal compulsion, have been held good in many cases as voluntary bonds. *Sooy v State*, 9 Vr. 324; *Smillie v Smith*, 5 Stew. 51.
 10 *and Notes of Reporter.*

It was not illegal to arrest the reputed father by warrant issued on a proper complaint, by a Justice of the Peace having jurisdiction to issue such warrant.

My conclusion is that this third plea of duress by imprisonment of one of the defendants is bad.

The fourth, fifth and sixth pleas relate to the forms of procedure and tend to show that they were erroneous, and reviewable by certiorari, if the bond
 20 was intended to be one strictly within the statute, although it does not purport to have been founded on an order of filiation. (See *McCall v. Parker*, 13 Met. 372, above cited); but if it was given on the original warrant, arrest and appearance before a single Justice of the Peace, as appears on the face of some of the pleadings, and a recovery is claimed on it as a voluntary bond given by the parties to indemnify the Township, without suit, then the matters
 30 contained in these pleas are irrelevant and immaterial.

All of the pleas will be overruled as illegally pleaded in this action, excepting the plea of *non est factum*, in answer to which a replication has been

filed on admission of liability and bond of indemnity might be given without further proof or proceedings in the case if there was no illegal compulsion used to obtain it.

A true copy.

BENJ. F. LEE, Clerk.

THE WRIT OF ERROR.

New Jersey, ss.:

10

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting.

Whereas, in the record and proceedings, and also in the giving of judgment, on a certain demurrer, wherein The Inhabitants of the Township of Bordentown, in the County of Burlington, are Demurrants, and William Wallace and others are defendants, in which the pleas two, three, &c., filed by the said defendants were overruled; and whereas, as is said, 20 manifest error hath intervened to the great damage of the said defendants, as by their complaint, we have been informed, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid, in their behalf do command you that if judgment be thereupon given and affirmed there, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things the same, to our Judges of our Court of Errors and Ap- 30 peals in the last resort in all causes, at Trenton, on the second day of October next, together with this writ, that the record and proceedings aforesaid be

inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and president Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the thirteenth day of September, the year of our Lord one thousand eight hundred and eighty-eight.

10

HENRY C. KELSEY, Clerk.

GILBERT & ATKINSON, Attorneys.

The answer of the Justices of the Supreme Court of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within we are commanded.

20

M. BEASLEY, C. J. [L.S.]

NEW JERSEY SUPREME COURT—NOVEMBER TERM, 1887.

30	WILLIAM WALLACE ET ALS., ADS. THE INHABITANTS OF THE TOWNSHIP OF BORDENTOWN.	}	ON CONTRACT. ON DEMURRER TO PLEAS.
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The Court having heard the argument of Counsel, and inspected the pleadings in the cause,

It is ordered that the Demurrer to the Pleas filed in the cause be and the same is hereby sustained, and that judgment be and the same is hereby entered accordingly with costs.

Entered November 15, 1887.

On motion of

HUTCHINSON & BELDON, Attorneys.

I, Benj. F. Lee, Clerk of the Supreme-Court of the State of New Jersey, do certify that the foregoing 10 is a true copy of an order made in above stated cause by said Court and entered in the minutes of the Court.

In testimony whereof I have hereto set my hand and the seal of said Court, at Trenton, this twenty-eighth day of September, A. D. eighteen hundred and eighty-eight.

BENJ. F. LEE, Clerk.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

WILLIAM WALLACE, ET AL.,
PLAINTIFFS IN ERROR,
AND

"THE INHABITANTS OF THE
TOWNSHIP OF BORDENTOWN,
IN THE COUNTY OF BURLING-
TON,"
DEFENDANTS IN ERROR.

IN ERROR.

ASSIGNMENT OF
ERROR.

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And now at this day the Plaintiffs in Error assign the following causes of Error. First: Because

the Supreme Court decided that the defence of Infancy of one of the defendants contained in the joint Plea of all, was informal and bad, and was not a good and legal defence for the defendants in the said Supreme Court. Second: Because the said court decided that the defence of duress, set up in the defendants third plea, was informal and not a good and legal defence to the said Plaintiffs Action. Third: Because the said Court decided that the
 10 matters contained in the Fourth, Fifth and Sixth pleas of the defendants in the said Supreme Court were irrelevant and immaterial as defences to the said Plaintiffs Action. Fourth: Because the said Court overruled as illegally pleaded in the said action all the pleas of the defendants in the said Supreme Court, except the First plea of "non est factum."

And the said William Wallace by Charles E. Wallace, his Guardian, to defend said William Wallace, who is an infant under the age of Twenty-one
 20 years, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, Defendants in the said Court, and Plaintiffs in Error aforesaid, pray that the said judgment overruling the aforesaid Pleas may be reversed, annuled and altogether holden for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

GILBERT & ATKINSON,

ATTORNEYS FOR PLAINTIFFS IN ERROR.

NEW JERSEY SUPREME COURT.

THE INHABITANTS OF THE TOWNSHIP OF BORDENTOWN, VS. WILLIAM WALLACE, Et. Als.	}	ACTION UPON CONTRACT. ON DEMURRERS TO PLEAS.
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DECLARATION.

New Jersey Supreme Court of the thirtieth day of July, in the year of our Lord one thousand eight hundred and eighty-six. 10

Burlington County, ss. :

William Wallace, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, the Defendants in this suit, William Wallace of the Defendants returned by the Sheriff of the County of Burlington as not found in his County, were summoned to answer unto "The Inhabitants of the Township of Bordentown in the County of Burlington," the Plaintiffs 20 therein, in an action upon contract, and thereupon the said Plaintiffs, by Hutchinson & Beldon, their Attorneys, complain, for that whereas the said Defendants heretofore, to wit: on the twenty-eight day of May, in the year of our Lord one thousand eight hundred and eighty-five, at Bordentown, in said County, and within the jurisdiction of this Court, by their certain writing obligatory, sealed with their seals, and now shown to the Honorable Court now here, the date whereof is a certain day 30 and year therein mentioned, to-wit: the day and year aforesaid, acknowledged themselves to be held and bound unto "The Inhabitants of the Township of

Bordentown," in the sum of twenty-five hundred dollars, lawful money of the United States of America, to be paid by the said Defendants to the said "The Inhabitants of the Township of Bordentown," its successors and assigns, to which payment the said Defendants thereby bound themselves jointly and severally. And the said, "The Inhabitants of the Township of Bordentown in the County of Burlington," do aver and in fact say that they are
10 one and the same body politic and corporate as is described and mentioned in the said writing obligatory, and that no other body, politic and corporate, is therein described and mentioned, which said writing obligatory was and is subject to a certain condition thereunder written, whereby it was conditioned that if the said Defendant should pay unto the said
20 Plaintiffs, or their successors or assigns, the sum of two and-a-half dollars each and every week, to the Overseer of the Poor for the time being of the said Township, to be applied to and for the support of a certain bastard child, of whom, as it is therein recited, "William Wallace, one of the parties hereby bound is the father," for and during such period of time as the said bastard child shall be chargeable to the said Township, then the said obligation to be void; otherwise of force, as by the said writing obligatory, and the condition thereof will more fully and at large appear, and although the said bastard child is still
30 living and has continued to be, and now is, chargeable to and a charge upon the said Township, yet the said Defendants have not, nor have any, nor has any of them, paid unto the said Plaintiff the said sum of two and-a-half dollars each and every week to the

Overseer of the Poor of the said Township of Borden-
town, or to said Plaintiffs themselves, or to any
one of them ; but the said Defendants have each and
all hitherto wholly neglected and refused, and still
neglect and refuse so to do. And the said Plaintiffs,
for assigning a further breach of the said condition
of the said writing obligatory, say that after the
making of the said writing obligatory, and while the
said bastard child in said writing obligatory men-
tioned, has continually been and still is chargeable to 10
and is a charge upon the said Township of Borden-
town, a large sum of money, to-wit: the sum of three
hundred dollars of the said sums to be paid each and
every week as mentioned in said writings obligatory
became and was due and owing from said Defend-
ants to said Plaintiffs, and still is arrear and unpaid,
contrary to form and effect of said writing obligatory
and of the said condition thereof, by reason of which
said breaches the said writing obligatory has become
forfeited, and whereby an action hath accrued to the 20
said Plaintiffs to demand and have of the said De-
fendants the sum of twenty-five hundred dollars
above mentioned. Yet the said Defendants and each
and all of them (although often requested so to do),
have not as yet paid the said sum of money above
demanded, or any part thereof, to the said Plaintiffs
or to any one of them, but to pay the same or any
part thereof have hitherto wholly neglected and re-
fused, and still neglect and refuse so to do, to the
damage of said Plaintiff twenty-five hundred dollars, 30
and therefore they bring their suit, &c.

HUTCHINSON & BELDON,
Attorneys of Plaintiffs.

DEMAND FOR COPY OF BOND SUED
UPON.

The Defendants demand oyer and a copy of the writing, obligatory mentioned in the Declaration in this cause, and the condition thereof underwritten.

Yours, &c.,

GILBERT & ATKINSON,
Defendant's Attorneys.

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BOND.

Know all men by these presents that we, William Wallace, of New Jersey, Charles E. Wallace, Alfred Holloway, Winfield S. Wallace, all of Burlington County, in said State of New Jersey, are held and bound unto "The Inhabitants of the Township of Bordentown," in the sum of twenty-five hundred
20 dollars, lawful money of the United States of America, to be paid to it, and its successors and assigns; to which payment we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this twenty-eighth day of May, in the year of our Lord, one thousand eight hundred and eighty-five. The condition of this bond or obligation is, that if the said William Wallace, Charles E. Wallace, Alfred Hol-
30 loway and Winfield S. Wallace shall pay unto the said "The Inhabitants of the Township of Bordentown," or to its successors and assigns, the sum of two and a half dollars, each and every week, to the

Overseer of the Poor, for the time being, of the said Township of Bordentown, to be applied to and for the support of a certain female bastard child, of whom, William Wallace, one of the parties hereby bound, is the father, for and during such period of time as the said bastard child shall or may be chargeable to the said Township, then the said obligation is to be void, otherwise to be and remain in full force and virtue.

In witness whereof, we have hereunto set our 10
hands and seals the day and year above written.

WM. H. WALLACE, [L.S.]

C. E. WALLACE, [L.S.]

ALFRED HOLLOWAY, [L.S.]

W. S. WALLACE. [L.S.]

Sealed and delivered in the presence of Clarence
T. Atkinson and Shreve Hartshorn.

PLEAS.

And the said William Wallace by Charles E. Wallace, admitted by the said Court here as guardian of the said William Wallace, to defend for the said William Wallace, who is an infant under the age of twenty-one years, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, by Gilbert & Atkinson, their Attorneys, come and defend the wrong and injury, when, &c., and say that the said 30
supposed writing obligatory is not their deed; and of this they put themselves upon the Country, &c.

And the said William Wallace, by his guardian,

Charles E. Wallace, as aforesaid, and Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, for a further plea in this behalf, by leave of the Court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, further say that they ought not to be charged with the said debt by virtue of the said supposed writing obligatory, because they say that the said William Wallace at the time of the making
 10 of the said supposed writing obligatory in the said Plaintiff's declaration mentioned, was an infant within the age of twenty-one year, to wit: of the age of nineteen years and upwards, and this they are ready to verify

Wherefore they pray judgment, if the said, "The Inhabitants of the Township of Bordentown," in the County of Burlington, ought to charge the said William Wallace, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, with the said
 20 debt, by virtue of the said supposed writing obligatory, &c.

And for a further plea in this behalf, the said William Wallace, by his guardian Charles E. Wallace, as aforesaid, and Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, by leave of the Court here for this purpose first had and obtained according to the form of the statutè in such case made and provided, say that they ought not to be charged with the said debt, by virtue of the said
 30 supposed writing obligatory in said Plaintiff's declaration mentioned, because they say, that the said William Wallace, the principal in the above mentioned supposed writing obligatory and the person

in said supposed writing obligatory and in the said Plaintiff's declaration, recited about as father of the supposed bastard child therein mentioned at the time of making the said supposed writing obligatory, to wit: on the twenty-eighth day of May, A. D. eighteen hundred and eighty-five aforesaid, at the City of Bordentown, in the said Township of Bordentown, in the said County of Burlington, was unlawfully imprisoned by the said "The Inhabitants of the Township of Bordentown," in the County aforesaid, 10 and other natural persons in collusion with it, until by the force and duress of imprisonment of him the said William Wallace, he and they made and delivered the said supposed writing obligatory to the said "The Inhabitants of the Township of Bordentown" as his and their deed; and this they are ready to verify.

Wherefore they pray judgment if they ought to be charged with the said debt by virtue of the said supposed writing obligatory, &c. 20

And for a further plea in this behalf, the said William Wallace, by his guardian, Charles E. Wallace, as aforesaid, and Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, by leave of the Court, here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say that they ought not to be charged with the said debt by virtue of the supposed writing obligatory in said declaration mentioned, because they say that the said supposed writing obligatory 30 in said Plaintiff's declaration mentioned, was made and delivered by them the said defendants, and received and accepted by the said "The Inhabitants of

the Township of Bordentown," and its officers, without the Justices of the Peace, named in the acts of the Legislature of this State, governing and regulating the legal proceedings to provide for "the maintenance of bastard children" or any two of the Justices of the Peace, having first, before the making and delivering of the said supposed writing obligatory, on the day and year in said declaration mentioned, to-wit, the twenty-eighth day of May, A. D. 10 eighteen hundred and eighty-five, sat together immediately after the said William Wallace was brought before the Justice of the Peace who issued the process for the arrest of him, the said William Wallace, according to the form of the statute in such case made and provided, as aforesaid, and afforded the said William Wallace an opportunity to deny and traverse the charge of bastardy so made against him, the said William Wallace, though he, the said William Wallace, was at the time of the making and 20 delivering of the said supposed writing obligatory in the said declaration mentioned, then and there held and detained before one Justice of the Peace in and for the said county of Burlington, until the said supposed writing obligatory, was by them the said William Wallace, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, made and delivered as the said plaintiff in its declaration hath above thereof complained, and this they are ready to verify.

Wherefore they pray judgment if they ought to 30 be charged with the said debt, by virtue of the said supposed writing obligatory, &c.

And the said William Wallace, by his guardian, Charles E. Wallace, as aforesaid, and Charles E. Wal-

lace, Alfred Holloway and Winfield S. Wallace, for a further plea in this behalf, by leave of the Court, here for this purpose first had and obtained according to the form of the statute in such case made and provided, say that they ought not to be charged with said debt by virtue of the said supposed writing obligatory, because they say that the said supposed writing obligatory in the said declaration mentioned, bearing date the day and year aforesaid, to-wit: May twenty-eighth, A.D. eighteen hundred and eighty-five, 10 was made and delivered by the said William Wallace, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, to perform, carry out and comply with what is known by the statute of the said State of New Jersey, as an "order of filiation," no notice of which said order of filiation omitted, was, nor ever has been brought to the knowledge of the said William Wallace, by the said "The Inhabitants of the Township of Bordentown," or any one on its behalf, and this they are ready to verify. 20

Wherefore, they pray judgment if they ought to be charged with the said debt, by virtue of the said supposed writing obligatory, &c.

And the said William Wallace, by his guardian, Charles E. Wallace, as aforesaid, and Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, for a further plea in this behalf, by leave of the Court here for this purpose, first had and obtained, according to the form of the statute in such case made and provided, say that they ought not to be charged with 30 the said debt, by virtue of the said supposed writing obligatory, because they say that first before the making and delivering of the said supposed writing

obligatory, bearing date the day and year last aforesaid, and in the said Plaintiff's declaration mentioned, no "order of filiation" was made by "the Court of two Justices of the Peace," according to the laws and customs of this State, adjudging the said William Wallace guilty of the said charge of bastardy; and, this they are ready to verify.

Wherefore they pray judgment if they ought to be charged with the said debt, by virtue of the said
 10 supposed writing, obligatory, &c.

GILBERT & ATKINSON,
 Attorneys for Defendant.

STATE OF NEW JERSEY, }
 BURLINGTON COUNTY, } ss:

Charles E. Wallace, the duly admitted guardian of William Wallace, infant, defendant above named, to defend for the said William Wallace, and also, in his capacity as one of the above named defendants and Alfred Holloway and Winfield S. Wallace, being
 20 by me duly sworn, upon their several oaths, severally and respectively say that the foregoing pleas by them pleaded, are not intended for the purpose of delay, and they and each of them respectively, believe that they have a just and legal defense to said action on the merits of the case.

CHARLES E. WALLACE,
 Guardian of William H. Wallace.

CHARLES E. WALLACE,
 ALFRED HOLLOWAY,
 WINFIELD S. WALLACE.

Sworn and subscribed to be-
 30 fore me, this 25th day of
 September, A. D. 1886, at
 Bordentown, N. J.
 MAHLON HUTCHINSON,
 Supreme Court Commissioner

DEMURRERS TO PLEAS.

And the said Plaintiff, as to the said plea of the said Defendants by them (secondly) above pleaded, says that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said Plaintiff from having or maintaining its aforesaid action against the said Defendants, and that the said Plaintiff is not bound by law to answer the same, and this the said Plaintiff is ready to verify, 10 wherefore by reason of the insufficiency of the said plea in their behalf, the said Plaintiff prays judgment and its debt aforesaid together with the damages by it sustained, on occasion of detention thereof to be adjudged, &c.

HUTCHINSON & BELDON,
Plaintiffs' Attorneys.

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JOINDERS IN DEMURRERS.

And the said William Wallace by Charles E. Wallace, admitted by the said Court here as Guardian of the said William Wallace, to defend for the said William Wallace, who is an infant under the age of twenty-one years, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, saith that their said plea by them secondly above pleaded, and the matters and things therein contained in manner and form 30 as the same are above pleaded and set forth are sufficient in law to bar and preclude the said "The Inhabitants of the Township of Bordentown," in the

County of Burlington, from having or maintaining its aforesaid action against them, the said William Wallace, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, and they, the said William Wallace, by his Guardian, aforesaid, Charles E. Wallace Alfred Holloway and Winfield S. Wallace, are ready to testify and prove the same, when, where and in such manner as the said Court here shall direct and award.

10 Wherefore, inasmuch as the said "The Inhabitants of the Township of Bordentown," in the County of Burlington, hath not answered the said plea, nor hitherto in any manner denied the same, the said William Wallace, by his guardian as aforesaid, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, pray judgment, and that the said "The Inhabitants of the Township of Bordentown," in the County of Burlington, may be barred from having or maintaining its aforesaid action thereof against
20 them, the said William Wallace, Charles E. Wallace, Alfred Holloway and Winfield S. Wallace, &c.

GILBERT & ATKINSON,
Defendant Attorneys.

[A demurrer in similar form is filed to the third, fourth, fifth and sixth pleas respectively, and joinder in demurrer is filed thereto in similar form, it being agreed that the same shall be considered as if actually printed herein.]
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GILBERT & ATKINSON,
Defendant Attorneys.
HUTCHINSON & BELDON,
Plaintiff Attorneys.]

SPECIFICATION OF CAUSES OF
DEMURRERS.

I. Demurrer to second plea: that the defendants have therein joined in a plea which is good for one only, to wit: William Wallace.

II. Demurrer to third plea; same as for demurrer to second plea.

III. Demurrer to fourth plea:

1. That it is uncertain, in that it does not set out before what Justice of the Peace, if any, William Wallace, therein mentioned, was detained, as in said plea alleged, or for what cause, or by whom, or that it was by virtue of any process. 10

2. That no cause of defence is therein positively averred or set up.

3. That it is impertinent and not responsive to the declaration and the cause of action therein set up.

4. That the allegations therein contained are not a sufficient defence to the cause of action set up in declaration. 20

IV. Demurrer to the fifth plea:

1. That the defendants therein aver a waiver of the defence set up (that they made the bond without the notice.)

2 and 3. The second and third causes of the demurrer to the fourth plea.

V. Demurrer to the sixth plea:

1 and 2. The second and third causes of demurrer to the fourth plea. 30

HUTCHINSON & BELDON.

