

E. MANHEINER, Agent for the Belgan Trading Company, Appellant, vs. J. L.

FULLER, Appellee.

LRSC 3; 1 LLR 211

[January Term, A. D. 1887.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Debt.

Appeal bond—Parties competent to become bail.

1. If the bailee be not liable to the ordinary process of the court, or if he be unable to pay the amount laid in the bond, he is disqualified to stand bail.
2. The signing of an instrument on behalf of another can only be binding on such person when there exists either expressed or implied authority so to do.
3. The approval of an appearance bond by an inferior court will not bar a motion with respect to its insufficiency, before a superior jurisdiction.

On the calling of this case the appellee offered and submitted for the consideration of the court a motion to dismiss, on the following grounds: 1, For want of proper parties to the bond filed. 2, Because said bond is not sealed by the parties thereto. 3, Because W. Bakker, who signs said bond for H. J. G. Moddermann, does not aver that he does so as the attorney for the said H. J. G. Moddermann.

The court has carefully considered the several objections raised in the motion and now proceeds to the determination of same. Among the essential qualifications to enable one to become bail for another is that the bailee be liable to the ordinary process of the court and be able to pay the amount for which he became responsible. Upon inspection of the bond in question it appears that one William Bakker has undertaken to affix thereto the name of H. J. G. Moddermann as bail for the appellant.

Here we remark, the signing of an instrument for another can only be binding when done by authority expressed or implied. The evidence of such authority does not appear to the satisfaction of the court; this court could not regard such signing binding in the least, upon the person whose name was thus signed. It is clear to the mind of the court that the purported bond filed in this case should have been signed by H. J. G. Moddermann in person, or by someone professing to be authorized to act for him—either as his agent or attorney. The approval of an appearance bond by an inferior court does not constitute a bar to a plea or motion as to its insufficiency before a superior court.

For the reasons above expressed the court is of opinion that the objections set up in the motion are well founded. Upon the whole, we say that the irregularity of the bond renders it proper for us to entertain the appellee's motion to dismiss. It is accordingly adjudged that the appeal is dismissed and that the appellant pay the legal costs of the appeal.

Key Description: Appeal (Appeals appearance bond, approval by trial court no bar to contest sufficiency)

Appearance (Approval of bond by trial court no bar to contest of sufficiency on appeal)