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Relief from Forfeiture of Bail in Criminal Cases

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though the Wyoming courts have not yet adopted a measure of damages for breach of an express covenant to drill an oil well the better measure would be the well-cost rule whether applied as a direct measure or damages or by giving specific performance of the purchase price, in effect, through awarding the cost of drilling the well. In any event the uncertainty can be eliminated by including a provision for liquidated damages in the contract.

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RELIEF FROM FORFEITURE OF BAIL IN CRIMINAL CASES

The practice of allowing an accused his freedom upon posting a certain bail with the court has been in use in England for about 1000 years, and was first codified about 1275 A.D.[1] The purose of bail is to relieve from imprisonment a person accused but not proven guilty.[2] When it is considered that even today six months to a year may elapse between the arrest of an accused and his trial, it is obvious that there is a real need for provisions for bail.

The constitutions of most states and the Federal Government make provision of some sort granting bail to an accused. This subject has been extensively covered in the law reviews and the concensus generally is that bail is a matter of right in cases in which the accused has not had a trial;[3] and that in cases in which a trial has been had and an appeal is pending, the granting of bail rests in the sound discretion of the court.[4]

It will be assumed in this article that the accused has been admitted to bail, i.e that the required security or bond was posted and the accused released on condition of his appearing at a later time, but that the accused failed to appear at the required time and his bail was forfeited. The purpose of this note is to explore the posibilities of obtaining relief from this forfeiture.

Allowance of bail, provisions for forfeiture on default, and relief from this forfeiture is statutory today in almost all states. Results reached in the decided cases will vary from state to state depending upon the requirements of the particular statute involved.

Statutes and case law providing for relief from forfeiture of bail can be generally classified into three groups, depending upon a time factor. Statutes falling into class one require that the parties inform the court of any extenuating circumstances that might justify a remission, before the forfeiture, or after the forfeiture but before final judgment on the forfeiture of the

1. Desmond, Bail-Ancient and Modern, 1 Buff. L. Rev. 245 (1952).
2. State v. Wynne et al., 356 Mo. 1095, 204 S.W. 927 (1947); State ex rel. Smith v. Western Surety Co., 154 Neb. 895, 50 N.W.2d 100 (1951).
3. 5 Wyo. L. J. 195 (1951).
4. 13 Pitt. L. R. 755 (1952).

bail. Class two statutes allow a certain number of days after final judgment in which to bring up the circumstances relied on for a remission; and the statutes of the third class (including Wyoming) place no outside limit upon the time in which a party may make application for relief from a forfeiture.[5] It will be noted, however, that under a statute like that of Wyoming, the application for remission cannot be made until the accused has been arrested and surrendered to the proper court for trial.

The vast majority of decided cases involve an application for relief after forfeiture of the bail bond but before final judgment thereon. It is readily apparent that, as far as time limitations are concerned, in this situation the parties can apply for relief from a forfeiture under any of the three types of statutes set out above. Thus, the principles and rules evolved from these cases are applicable to all states no matter which type of statute may be in force.

In 1813 a landmark case, *United States v. Feely*,[6] was decided by the United States Supreme Court. This case held that the trial court could, in its discretion, grant relief from forfeiture of a bail bond where there was no design to evade justice and the accused repaired the default as much as was in his power. In deciding this case, Chief Justice Marshall stated that "the object of a recognizance is not to enrich the treasury, but to combine the administration of criminal justice with the convenience of a person accused, but not proved to be guilty." This statement has been quoted with approval by all courts during the last 140 years, regardless of which "side of the fence" they were on regarding relief from a forfeiture.

In 1839 a Federal Statute[7] was passed which required a showing that the principal had not *willfully* defaulted before any remission could be granted by the Court.[8] This Statute was clarified by a Supreme Court decision[9] which held that a bail would be exonerated where performance was rendered impossible *by an act of God, an act of the obligee, or an act of the law.* In all other situations the default was willful and relief from the forfeiture would be denied. Most of the states have either, partially[10] or totally[11] adopted the Federal law as stated above, but many of them have

5. "Whenever any judgment shall have been rendered against the defendant . . . the court . . . shall have power to remit or reduce the amount . . . when it shall be made to appear . . . the accused had been arrested and surrendered to the Proper Court. . . ." Wyo. Comp. Stat. 1945, sec. 10-419.
6. 1 Brock 255, Fed. Cas. 15082 (1813).
7. "When any recognizance in a criminal cause . . . is forfeited . . . court may . . . remit . . . whenever it appears to the court that there has been no willful default. . . ." 5 Stat. 322 (1839).
8. Continental Casualty Co. et .al. v. United States, 314 U.S. 527, 62 S.Ct. 393, 86 L.Ed. 426 (1941).
9. Taylor v. Taintor, 16 Wall. 366, 21 L.Ed. 289 (1873).
10. Smith v. People, 67 Colo. 452, 184 Pac. 372, 7 A.L.R. 392 (1919); State v. Funk, 20 N.D. 145, 127 N.W. 722, 30 L.R.A. (NS) 211, Ann. Cas. 1912c, 743 (1910); State v. Row, 89 Iowa 581, 57 N.W. 306 (1894); Shetsky v. Hennepin County et al., 60 N.W.2d 40 (Minn. 1953); People v. Parkin et al., 263 N.Y. 428, 189 N.E. 480 (1934).
11. Ricks v. State, 189 Okla. 598, 119 P.2d 51 (1941); Bowling v. Commonwealth, 123 Va. 340, 96 S.E. 739 (1918); State v. Pelley, 222 N.C. 684, 24 S.E.2d 635 (1943); State v. Wynne, *supra* note 2.

experienced great difficulty in applying this law to the cases which arise.

Exoneration of the bail because performance was rendered impossible by *an act of God* has caused the courts the least difficulty of all. Thus, where the principal failed to appear on the required day because of illness,[12] death,[13] insanity at the time,[14] or even sickness in his family,[15] the vast majority of courts have held that this a good excuse and relief from the forfeiture should be granted.[16]

The real problems arise in connection with exoneration of the bail because performance was rendered impossible by *an act of the obligee* or *an act of the law*. A number of courts have construed *an act of the obligee* to be an act of the State in which the forfeiture took place,[17] and have narrowly construed *an act of the law* to mean the law operative in the State in which the forfeiture took place.[18] In *Taylor v. Taintor*[19] there was a dissenting opinion which urged that *an act of the law* should mean any law operative in the United States. Although this view is appealing, it was not taken up and the status of the law on this point remained unchanged for over 100 years.

Today the states are generally divided into two distinct factions which can be best illustrated by reference to the following fact situations:

1. At the time the principal was required to appear in State X, he was in the custody of State Y, either sentenced to prison or awaiting trial. Thus his bail was forfeited for failure to appear.
2. While free on bail in State X, the principal jumped bail and went to State Y and concealed himself. Subsequently, the principal was apprended in State Y and returned to State X.

In situation No. 1 the Federal Courts[20] and many states[21] hold that imprisonment in another State is not such an act of law as to come within the rule; that, the principal's default in this situation was *willful* because he voluntarily left the jurisdiction where his bail was posted and subjected himself to the criminal laws of another state; and thus, the courts were without power to reduce or remit the forfeiture of his bail. This seems to be an unnecessarily harsh rule. Under this statement of the law it should be quite apparent that where the principal jumps bail as in situation No. 2, no relief from his forfeiture is possible since the default is willful.[22]

12. Chase v. People, 2 Colo. 481 (1872); White et al. v. State, 82 Okla. 116, 198 Pac. 843 (1921).
13. Western Surety Co. v. People, 120 Colo. 338, 208 P.2d 1164 (1949); People v. Parkin, supra note 10.
14. Smith v. People, supra note 10.
15. McArdle v. McDaniel, 75 Ga. 270 (1885).
16. Ann. Cas. 1915B, 431.
17. See note 9 supra; see note 22 supra.
18. Ibid.
19. See note 9 supra.
20. Ibid.
21. State v. Pelley, supra note 11; King v. State, 18 Neb 375, 25 N.W. 519 (1885).
22. See note 8 supra; Shetsky v. Hennepin County et al., supra note 10; People v. Continental Casualty Co., 301 N.Y. 79, 92 N.E.2d 898 (1950).

State Courts which refuse to follow the Federal rule above, hold that in situation No. 1, principles of honesty and justice require that the state refund the bail.[23] For example, where the principal while free on bail posted in Florida was arrested in Texas, and the State of Florida contended he would not have returned voluntarily if he had been free, the Florida court held, "what would have happened if what did happen had not happened, can be little more than conjecture"[24] and the bail would not be forfeited.

Where the surety goes to considerable expense and trouble to procure the return of the principal, several cases hold that a court may exercise its discretion and grant relief from the forfeiture, upon the ground that encouragement should be given to vigilant and thrifty bondsmen is assisting in the administration of the law.[25] Even where the surety attempted, but failed, to extradite the principal, relief from the forfeiture was granted.[26]

Relief from forfeiture of bail has also been granted in cases in which the principal jumped bail, was later apprehended by officers of the law, was returned to the jurisdiction, and a trial had. Courts granting relief in this situation have held that where no prejudice results to the state and a trial is ultimately had, the real purposes and object of the bail bond has been accomplished.[27] One court suggested the test might be whether or not the ends of justice have been served.[28] It should, however, be noted that in this situation the majority of state trial courts, in the exercise of their discretion, will refuse to grant relief from the forfeiture.[29]

Generally, the state courts in interpreting their own laws have relied heavily upon decisions of the United States Supreme Court which were rendered during the 107 years that the Federal Statute was in effect making non-willfulness of default a prerequisite to relief from forfeiture.[30] During this period Congress frequently found it necessary to pass private acts granting relief from a forfeiture because the courts were powerless to do so.[31]

On March 21, 1946, the Federal Rules of Criminal Procedure became effective. Rule 46 (f) (2) provides, "the court may direct that a forfeiture be set aside, upon such conditions as the court may impose, *if it appears that justice does not require the enforcement of the forfeiture.*" (Emphasis supplied.) Shortly after the adoption of this Rule, relief from a forfeiture was granted in a case in which the principal had defaulted because he was intoxicated; he then appeared two days later and pleaded guilty.[32] The

23. State v. Williams, 48 N.D. 1259, 189 N.W. 625 (1922); State v. Reed, 127 Wash. 166, 219 Pac. 833 (1923); Jones v. State, 112 Texas Cr. 171, 15 S.W.2d 622 (1929).
24. Stirling et al. v. State, 85 Fla. 78, 95 So. 300 (1923).
25. State v. Wright et al., 193 Okla. 383, 143 P.2d 801 (1943); State v. Jimas, 166 Wash. 356, 7 P.2d 15 (1932).
26. State v. Wynne et al., supra note 2.
27. State v. Wright et al., supra note 25; 84 A.L.R. 416.
28. People v. Parkin, supra note 10.
29. State v. Van Wagner, 16 Wash.2d 54, 132 P.2d 359 (1942); People v. Continental Casualty Co., supra note 22; Shetsky v. Hennepin County et al., supra note 10.
30. See note 7 supra; see note 8 supra.
31. See footnote 1 in United States v. Davis, 202 F.2d 621 (7th Cir. 1953).
32. United States v. Smith, 5 F.R.D. 274 (D.C. Ky. 1946).

court stated that prior to the adoption of the Federal Rules it would have been without discretion to remit the forfeiture; that under the Rules, though the default was willful, it would exercise its discretion and remit $300 out of the $500 forfeited.

The trend which the law has taken indicates that today, tests such as "willful, non-willful, act of the obligee, or act of the law" should have no place in the law in deciding the cases which arise. The test should be, as provided by the Federal Rules, whether or not the trial court, in the exercise of its sound discretion, finds that justice requires an enforcement of the forfeiture. The discretion of the trial court is a sound discretion "with regard to what is right and equitable under the circumstances and the law."[33] All courts generally hold that the decision of the trial court will not be disturbed on appeal, unless the exercise of discretion was arbitrary or willful,[34] an abuse of discretion,[35] a flagrant abuse of discretion,[36] or the case is an exceptional one.[37]

There are no cases in Wyoming in which relief from a forfeiture of bail was in issue. The Wyoming statutes[38] regarding forfeiture and relief from forfeiture of bail are identical to those of Nebraska. In a recent case[39] the Nebraska Court held that after final judgment on a forfeited bail bond, the trial court can remit or reduce this judgment only after the accused has been arrested and surrendered to the proper court for trial. Thus, where the principal was in prison in another state, no relief from the forfeiture could be granted at that time. When the Wyoming Supreme Court some day construes the Wyoming Statutes on relief from forfeiture of bail it should follow the new Federal Rules, and should in no way feel bound by decisions of other courts rendered previous to 1946.

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THE CLAIM OF RIGHT ELEMENT IN ADVERSE POSSESSION IN WYOMING

The Wyoming statute of limitations regarding recovery of real property provides:

> "An action for the recovery of the title or possession of lands, tenements or hereditaments can only be brought within ten (10) years after the cause of such action accrues."[1]

33. United States v. Davis, supra note 31.
34. Ibid.
35. White et al. v. State, supra note 12.
36. State v. Jimas, supra note 25; State v. Van Wagner, supra note 29.
37. State v. Shell, 242 Iowa 260, 445 N.W.2d 851 (1951).
38. Wyo. Comp. Stat. 1945, secs. 10-416 to 10-419.
39. State ex rel. Smith v. Western Surety Co., supra note 2.

1. Wyo. Comp. Stat. 1945, sec. 3-501. Sec. 3-502 of the Statutes provides: "Any person entitled to bring an action for the recovery of real property, who may be under any legal disability when the cause of action accrues, may bring his action within ten (10) years after the disability is removed."