

Co. Ct.]

HARNER V. DIPPLE.

[U. S. Rep.]

guine, and, perhaps, saw elements of value which those who have since seen it have been unable to discover. It would be difficult to say which was right.

If the property had increased in value and become of consequence to the assignee, the valuation here made would probably have satisfied those creditors, and when deficiency takes place (if it has here) then they should, on the other hand, be bound by the value which they deliberately placed on it. I can see nothing more in this case than an offer made in hopes of its being accepted, and when refused, an attempt made to get rid of its consequences. See the remarks of Bacon, C. J., at page 491 of 3 Chan. D., in the case of *In re Balbirnie, ex parte Jameson*.

The strictness with which the Courts have acted in refusing an amendment of a solicitor's bill of costs after it has become the subject of taxation affords not an inapt analogy to the case in hand, *Loveridge v. Botham*, 1 B. & P. 49; *Davis v. Dysart* (Earl), 25 L. J. Chan. 122, affirmed in appeal 25 L. J. Chan. 322, *In re Heather*, L. R. 5 Chan. 694. For these reasons I think the petition must be dismissed, but, as I am not satisfied that the assignee was as expeditious as he might have been in advising the petitioners' solicitor of his refusal to accept the security, and because the point is, under the Act, comparatively new, I don't think this a case for costs.

Petition dismissed, without costs.

UNITED STATES REPORTS.

SUPREME COURT OF OHIO.

HARNER V. DIPPLE.

Contract by infant.

An undertaking by an infant as surety for the stay of execution is not void, but only voidable, and when ratified by him after arriving at maturity, becomes a valid and enforceable contract.

[*American Law Register*, Nov. 1878.

Motion for leave to file a petition in error to the District Court of Clarke County.

The original action was brought by Dipple against Harner, on an undertaking for stay of execution, executed by the defend-

dant during his minority. It appears that the defendant arrived at his majority before the period of stay expired, and that after the expiration of the stay he acknowledged his liability, and promised the plaintiff, to whom the undertaking was made, to pay the amount of the judgment stayed. Upon this state of facts judgment was rendered for the plaintiff in the Court of Common Pleas, which judgment was afterwards affirmed by the District Court.

To reverse these judgments leave was now asked to file a petition in error.

Spencer & Arthur, for the motion, cited: 1 Parsons on Contracts, 295; *Keane v. Boycott*, 2 H. Blackst. 511; *Reeves' Domestic Relations*, 378 n.; 2 Kent's Com. 236; 1 Mason, 32; *Bingham on Infancy*, 23; *Swan's Treatise* 601-2; *Baker v. Lovitt*, 6 Mass. 78; *Oliver v. Hondlet*, 13 Id. 237; *Whitney v. Dutch*, 14 Id. 457; *Boston Bank v. Chamberlain*, 15 Id. 220; *Chandler v. McKinney*, 6 Mich. 217; *Duntun v. Brown*, 31 Id. 182; 11 S. & R. 305; *Tyler on Inf. and Cor.* 48, 48; 54 Penna. St. 380; *Story on Contracts*, sect. 57; 10 Ohio, 127; 8 East, 331.

Keifer & White, contra, cited: *Swain's Treatise*, 601; *Tucker v. Moreland*, 10 Pet. 59; 1 Am. Lead. Ca. (5th ed.) 299, 300, 304, 306; *Cole v. Penmoyer*, 14 Ill. 160; *Curtin v. Patton*, 11 S. & R. 305, 310; *Hinley v. Margaritz*, 3 Barr. 428; *Patchin v. Cromach*, 13 Vt. 330; *Tyler on Inf.* 56-7; *Bing. on Inf.* 43, 44; *Vaughn v. Darr*, 20 Ark. 600; *Shropshire v. Burns*, 46 Ala. 108; *Williams v. Moore*, 11 M. & W. 256; 1 Pars. on Con. (6th ed.) *328, 329 and note b; *Thornton v. Illingworth*, 9 Eng. C. L. 256; *Gibbs v. Morrill*, 3 Taunt. 307; *Mason v. Denison*, 15 Wend. 71; *Conroe v. Birdsall*, 1 Johns. Cases, 127; *Ayers v. Hewitt*, 19 Me. 281; *Arnold v. Richmond Iron Works*, 1 Gray, 434; 2 Kent, 235, 247; *Roof v. Stafford*, 7 Cowen, 185; *Slocum v. Harker*, 13 Barb. 537; 3 Burr. 1804; *Fonda v. Van Horne*, 15 Wend. 631; *Petrow v. Wiseman*, 40 Ind. 148; *Kline v. Beebe*, 6 Conn. 494; *Owen v. Long*, 112 Mass. 403.

The opinion of the Court was delivered by

McILVANE, J.—The question made is, was the undertaking sued on absolutely void, or