ROANE ET AL. TRUSTEES R. E. B. *vs.* HINTON ET AL.

There should be strong reasons for overruling previous adjudications, especially where there are several successive decisions establishing the same doctrine.

Precedents should not implicitly govern but discreetly guide, but where a principle has been once declared and acquiesced in, in subsequent cases it should be adhered to, unless great injury and injustice would necessarily result from such adherence.

In most questions of practice, more depends upon the uniformity of the rule, than the rule itself.

Pelham v. The State Bank, 4 *Ark.* 202, *Dardenne v. Bennett, id.* 458, *and McLain v. Onstott*, 3 *Ark.* 483, approved.

Profert of the assignment of a promissory note is necessary: as held in *Alston & Patrick v. Whiting and Slark, ante.*

Writ of error to the circuit court of Independence county.

THIS was an action of debt, determined in the circuit court of Independence county at the August term, 1844, before the Hon. THOMAS JOHNSON, then one of the circuit judges.

The suit was brought by Sam C. Roane, James S. Conway and others, trustees of the Real Estate Bank, against Hinton and Allen, upon promissory notes, executed to the bank by the defendants, and assigned to the plaintiffs as trustees of the bank. In the declaration no profert was made of the assignments. The defendants demurred, the court sustained the demurrer, and the plaintiffs brought error.

PIKE & BALDWIN, for the plaintiffs.

In *Pelham vs. the State Bank*, 4 *Ark.* 202, it was held that when oyer was craved of an instrument, and not of the assignment upon it, the assignment became no part of the record: And in *Dardenne vs. Bennett, ib.* 458, the same point was ruled upon the authority of *McLain vs. Onstott*, 3 *Ark.* 483. In the latter case the court so held, taking the law to be analagous with that in the case

of a bond with a condition, where oyer of the bond is not oyer of the condition. The principle is supposed by the court to be settled by certain authorities there referred to which we respectfully crave leave to examine.

Lady Cook vs. Remington, 6 *mod.* 237, was debt on a bond conditioned to perform covenants in a certain indenture mentioned. Oyer was craved of the indenture, which was given. One of the covenants contained in it was that the defendant would deliver the plaintiff certain goods, a particular schedule of which was written on the back of the indenture. Of this schedule oyer was not given. The court held the schedule to be part of the indenture, and therefore that the plaintiff had not given complete oyer; and said that it was different from a bond with a condition endorsed where oyer might be given of the bond alone without the condition. The same case is reported in 2 *Salk.* 498.

In *Cabell vs. Vaughan,* 1 *Saund.* 290, *n.* 2, it is also said that oyer of the bond is not oyer of the condition, because they are different instruments. And the same principle is stated in *Sevans vs. Harridge,* 1 *Saund.* 9 *a n* 1. The endorsement *of a bond* is spoken of in the same note as differing from the endorsement of a deed, and in *Cook vs. Remington* referred to: which all show that the word endorsement is not at all used in the sense of assignment

We are persuaded that the court, on a review of these cases, will be convinced that they do not establish the principle sought to be enforced in this case. There is no analogy between a bond and a condition, and a money bond or note and its endorsement to a third person. It was accordingly held in *Longmore vs. Rogers, Willes* 288, that a defendant craving oyer of a deed was entitled to have a copy of the attestation and names of the witnesses, and of any memorandum at the bottom of the deed and *every thing* written on it, just as if the deed itself were brought into court.

In *Van Rensselaer vs. Poucher,* 24 *Wend.* 319, the court said the same as was said in *Longmore vs. Rogers.*

No common law authority sustains the opinion of this court; and although it may be considered an unimportant point of practice, which once settled it is easy to conform to, yet where the

plaintiff has pursued the law, and an erroneous decision will lose large and heavy debts, we respectfully submit that it is his right to have the law correctly decided, though contrary to former decisions of this court.

JOHNSON, C. J., not sitting.

OLDHAM, J., delivered the opinion of the court.

The counsel for the plaintiffs in error call upon the court to review the cases of *Pelham vs. The State Bank*, 4 *Ark.* 202, *Dardenne vs. Bennett id.* 458 *and McLain vs. Onstott*, 3 *Ark.* 483. The court is well satisfied with the correctness of the rule as laid down in those cases. There should be strong reasons for overruling previous adjudications, especially where there are several successive decisions establishing the same doctrine. Precedents, it is said, should not implicitly govern, but discreetly guide, but when a principle has been once declared and acquiesced in, in subsequent cases it should be adhered to, unless great injury and injustice would necessarily result from such adherence. The questions settled in the above cases can be easily observed in practice and will result to the injury of no person. We can see no reason why this court should declare the decisions in those cases erroneous, and produce that doubt, uncertainty and confusion necessarily resulting from vacillating judicial authority. In most questions of practice, more depends upon the uniformity of the rule than the rule itself.

The case of *Alston & Patrick vs. Whiting & Slark*, decided at the present term, was determined upon the authority of the cases referred to. It was there held that profert of the assignment of a promissory note should be made to entitle the assignee to maintain his action. The plaintiffs having failed to plead the assignments of the notes to them with profert, the circuit court properly sustained the demurrer to the declaration. Affirmed.