

Hodgson Vs. Dexter

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Court : US Supreme Court

Decided On : 1803

Appeal No. : 5 U.S. 345

Appellant : Hodgson

Respondent : Dexter

Judgement :

Hodgson v. Dexter - 5 U.S. 345 (1803)

U.S. Supreme Court Hodgson v. Dexter, 5 U.S. 1 Cranch 345 345 (1803)

Hodgson v. Dexter

5 U.S. (1 Cranch) 345

ERROR TO THE CIRCUIT COURT OF THE COUNTY

OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

The defendant, as "Secretary of War," took on a lease, under seal, a house and lot of ground in the City of Washington, the same being granted "to him and his successors," and the same was occupied by him for the transaction of the public

business of the War Department until 8 November, 1800, when the building was destroyed by fire without the default or negligence of the lessee. *Held* that the defendant was not personally liable for the value of the house to the owner or lessor.

It is too clear to be controverted that where a public agent acts in the line of his duty and by legal authority, his contracts made on account of the government are public, and not personal. They enure to the benefit of, and are obligatory on the government, not the officer.

An action of covenant was instituted in the Circuit Court of the County of Washington in the District of Columbia against the defendant, late Secretary at War, by the plaintiff, who was the owner and lessor of a house in the City of Washington, and which was by him leased to the defendant, Mr. Dexter, for the purposes of the War Department. The buildings were destroyed by fire, and the plaintiff claimed to recover the value of them from the defendant in this suit. The lease was in the following words:

"This indenture, made 14 August, 1800, between Joseph Hodgson of the City of Washington and Territory of Columbia, of the one part, and Samuel Dexter of the same place, Secretary of War, of the other part, witnesseth that the said Joseph Hodgson, for and in consideration of the sum of \$400 current money of the United States to him in hand paid by the said Samuel Dexter, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath demised, granted, and to farm let, and by these presents doth demise, grant, and to farm let to the said Samuel Dexter and his successors all that the three story messuage or tenement erected and built

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on part of lot number 14 in square number 75, situate on Pennsylvania Avenue in the City of Washington aforesaid, together with the background and improvements, running from the said messuage (fronting 26 feet) in parallel lines down to lot number 12, on said square, being the premises next adjoining the

messuage or tenement now in the occupation of Mr. Jonathan Jackson, with the improvements and appurtenances thereto belonging or appertaining, to have and to hold the said demised premises unto him, the said Samuel Dexter and his successors, from the day of the date hereof, for and during, and unto the full end and term of eight calendar months from thence next ensuing and fully to be complete and ended. And the said Joseph Hodgson, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said Samuel Dexter and his successors that he, the said Samuel Dexter and his successors shall and may peaceably and quietly have, hold, use, occupy, possess, and enjoy the above demised premises for and during the term granted thereof without the let, suit, trouble, molestation, or eviction of him, the said Joseph Hodgson, or his heirs or assigns, or of any other person or persons whatsoever lawfully claiming or to claim by, from, under, or in trust for him or them. And the said Samuel Dexter, for himself and his successors, doth hereby covenant, promise, and agree to and with the said Joseph Hodgson, his heirs and assigns, that he the said Samuel Dexter and his successors shall and will at all times during the said term keep or cause to be kept in good and sufficient repair the said demised premises, inevitable casualties and ordinary decay excepted, and the same, so well and sufficiently kept in repair, shall and will, at the end of the said term, yield and surrender up to him the said Joseph Hodgson, his heirs and assigns. In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year first above written."

"SAMUEL DEXTER [Seal]"

"JOSEPH HODGSON [Seal]"

"Signed, sealed and delivered in the presence of"

"John Goulding"

"S. Lewis, Jr. "

The breaches stated in the declaration were two.

1. That the defendant did not during eight months keep the premises in repair, &c.;, and hath not delivered up the same in good repair at the end of the time.
2. That the defendant did not keep the premises in repair, inevitable casualties excepted, but the same were destroyed by an evitable casualty, to-wit, fire, which was occasioned and took place from negligence or from the act or acts of one or more evil disposed persons.

To this declaration the defendant pleaded that on 8 November, 1800, the premises, against the will and without the negligence or other default of him the said Dexter, were burned and consumed by fire from some cause to him wholly unknown.

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To this plea the plaintiff demurred, and the defendant joined in the same.

The defendant also pleaded

"That on 15 May, 1800, the President of the United States, for the time then being, in pursuance of authority given to him by law, did order and direct the various offices belonging to the several executive departments of the United States, of which the Department of War then was and yet is one, to be removed to the City of Washington on 1 June then next ensuing, and that in obedience to the same order and direction the various offices of the Department of War aforesaid were removed to the said City of Washington on the said 1 June, and that thereby it became proper and necessary, that a suitable building should be hired in which the said offices of the said Department of War might be holden and kept, and for this purpose and for no other purpose whatever the building mentioned in the indenture aforesaid was by the said indenture leased to the said Dexter, and that at the time of executing the writing aforesaid, he was Secretary of the Department of War, and in that capacity did make and execute the same, and that before the expiration of the said term of eight calendar months, *viz.*, on the first day of

January, 1801, he, the said Dexter, at Washington aforesaid, resigned the office of Secretary of the Department of War and from and after that time ceased to hold the same office, and until this time he hath never holden the same, and further, that on 5 March in the year last mentioned, Henry Dearborn esquire was there duly appointed and commissioned as Secretary of the Department of War, and then and there accepted of the same office, and hath ever since held the same, and he, the said Dearborn, now is and ever since his acceptance of the said office of Secretary of War as aforesaid hath been the lawful successor of him the said Dexter in the said office, and this the said Dexter is ready to verify. . . ."

The plaintiff replied,

"protesting that the said Dexter did not, in his capacity of Secretary of War, sign, seal, execute, and deliver the indenture of lease aforesaid exhibited, yet by way of replication he

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saith that although the said Dexter ceased to be Secretary of War on 1 January, 1801, and that on 5 March in the same year a certain Henry Dearborn became his successor, duly appointed Secretary of the Department of War and still remains such, yet that the house and premises in the lease aforesaid mentioned were burnt down and consumed by fire arising from within the same from the negligence or default not of the said Dexter, but of some person unknown during the term aforesaid, viz., on 8 November, 1800, while the said Dexter was Secretary of War and whilst he had possession of the said premises and before the appointment of the said Dearborn, and that neither the said Dexter nor any other person hath, during the continuance of the said lease or at any time, built up and repaired the said premises, and this, the said Hodgson is ready to verify. . . ."

To this replication there was a general demurrer and joinder.

The defendant also pleaded "that on 15 May, 1800, the President of the United States for the time then being, in pursuance of authority given to him by law," ordered the executive offices to be removed to Washington, &c.;, as stated in the

defendant's plea,

"and that it became proper and necessary that a suitable building should be hired in which the several offices of the Department of War aforesaid might be holden and kept, and that for these purposes and for no other purpose whatever"

the buildings, &c.;

"were by the said indenture leased to the said Dexter by the said Hodgson, and that at the time when the said Dexter executed the indenture aforesaid, he was Secretary of the said Department of War, and this he is ready to verify. . . ."

To this plea the defendant demurred generally, and the plaintiff joined in the same.

The circuit court gave judgment for the defendant, and the plaintiff prosecuted this writ of error.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The plaintiff in error has made two points.

1. That under this contract, the defendant was bound in his private capacity.
2. That the matter pleaded in his plea did not show the casualty by which the buildings were destroyed to have been inevitable.

This Court gives no opinion on the second point, being unanimous in favor of the defendant on the first.

It appears from the pleadings that Congress had passed a law authorizing and requiring the president to cause the public offices to be removed from Philadelphia to Washington, in pursuance of which law instructions by the president were given and the offices belonging to the Department of War were removed; that it became necessary to provide a war office, and that for this purpose, and no other, the

agreement was entered into by the defendant, who was then at the head of this department. During the lease the building was consumed by fire.

It is too clear to be controverted that where a public agent acts in the line of his duty and by legal authority, his contracts made on account of the government are public and not personal.

They enure to the benefit of and are obligatory on the government, not the officer.

A contrary doctrine would be productive of the most injurious consequences to the public as well as to individuals. The government is incapable of acting otherwise than by its agents, and no prudent man would consent to become

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a public agent if he should be made personally responsible for contracts on the public account. This subject was very fully discussed in the case of *Macbeath v. Haldimand*, cited from 1 Term Reports, and this Court considers the principles laid down in that case as consonant to policy, justice, and law.

The plaintiff has not controverted the general principle, but has insisted that in this case the defendant has, by the terms of his contract, bound himself personally.

It is admitted that the house was taken on account of the public in pursuance of the proper authority, and that the contract was made by the person at the head of the department for the use of which it was taken; nor is there any allegation, nor is there any reason to believe, that the plaintiff preferred the private responsibility of the defendant to that of the government, or that he was unwilling to contract on the faith of government. Under these circumstances, the intent of the officer to bind himself personally must be very apparent indeed to induce such a construction of the contract.

The court can perceive no such intent. On the contrary, the contract exhibits every appearance of being made with a view entirely to the government.

The official character of the defendant is stated in the description of the parties. This, it has been said, might be occasioned by a willingness in the defendant to describe himself by the high and honorable office he then filled. This unquestionably is possible, but is not the fair construction to be placed on this part of the contract, because it is not usual for gentlemen, in their private concerns, to exhibit themselves in their official character.

The tenement is let to "the said Samuel Dexter and his successors," an expression plainly evidencing that it was not for himself otherwise than as Secretary of War and that the lessor so understood the contract. It is also evincive of the correctness of the observation of the defendant that the words "said Samuel Dexter," refer to him in his official character, as described in the premises. The habendum is "to have and to hold the said demised

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premises to him the said Samuel Dexter and his successors," &c.;, showing that to the knowledge of the lessor, if Mr. Dexter should go out of office the next day, the successor to the War Department would succeed also to the occupancy of the office.

The covenant for quiet enjoyment during the term is with the said Samuel Dexter and his successors and is that they as well as he shall enjoy.

The covenant on the part of Mr. Dexter on which the suit is brought is for himself and his successors.

The whole face of the agreement then manifests very clearly a contract made entirely on public account, without a view, on the part of either the lessor or lessee, to the private advantage or responsibility of Mr. Dexter.

The only circumstance which could excite a doubt was produced by the technical operation of the seal. This, in plain reason and common sense, can make no difference in designating the person to be responsible for the contract, and so it has been determined in *Unwin v. Wolseley* 1 Term 674.

The Court is unanimously and clearly of opinion that this contract was entered into entirely on behalf of government by a person properly authorized to make it, and that its obligation is on the government only.

Whatever the claims of the plaintiff may be, it is to the government, and not to the defendant, he must resort to have them satisfied.

Judgment affirmed with costs.

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