

United States Vs. Kirkpatrick

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Decided On : 1824

Appeal No. : 22 U.S. 720

Appellant : United States

Respondent : Kirkpatrick

Judgement :

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United States v. Kirkpatrick

22 U.S. (9 Wheat.) 720

ERROR TO THE DISTRICT COURT FOR

THE WESTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

A bond, given on 4 December, 1813, for the faithful discharge of the duties of his office, by a collector of direct taxes and internal duties, appointed under the Act of 22 July 1813, ch. 16, by the President, on the 11th of November 1813, to bold his

office until the next session of the Senate, and no longer, and subsequently appointed by the President, with the advice and consent of the Senate, on 24 January 1814, is to be restricted (as to the liability of the sureties) to the duties and obligations created by the collection acts passed antecedent to the date of the bond.

The second commission issued under the appointment, with the advice and consent of the Senate, operates a revocation of the first commission, issued under the appointment by the President, which was to continue until the end of the next session of the Senate and no longer, and the liability of the sureties in the bond did not extend beyond the duration of the first commission.

In general, laches is not imputable to the government, and where the laws require quarterly or other periodical accounts and settlements, a mere omission to bring a suit upon the neglect of the officer or agent to account will not discharge his sureties.

The case of *People v. Jansen*, 9 Johns. 232, distinguished, and so far as it conflicts with the present case overruled.

In general, the debtor has a right to make the appropriation of payments; if he omits it, the creditor may make it, but neither party has a right to make an appropriation after the controversy has arisen.

In cases of long and running accounts, where balances are adjusted merely for the purpose of making rests, the law will apply payments to extinguish the debts according to the priority of time.

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This was an action of debt commenced by the United States, in the court below against the defendants in error, J. Kirkpatrick and others, as the obligees of a bond given by them to the United States on 4 December, 1813, conditioned for the true and faithful discharge of the duties of the office of collector of direct taxes and internal duties by Samuel M. Reed, who had been appointed to that office by the

President on 11 November, 1813, and, by the terms of his commission, was to hold his office during the pleasure of the President "and until the end of the next session of the Senate of the United States, and no longer." On 24 January, 1814, he was reappointed to the same office by the President, by and with the advice and consent of the Senate, and by the new commission issued to him, was to hold his office "during the pleasure of the President of the United States, for the time being." The pleadings upon which the cause was tried in the court below were extremely informal and confused, but they resulted substantially in the following questions of law, upon which the judge instructed the jury, and a bill of exceptions was taken.

1. Whether the liability of the sureties to the bond was limited to the duties and obligations imposed upon the collector by the Act of 22 July, 1813, ch. 16, and other acts relating to the assessment and collection of direct taxes and internal duties, passed antecedent to the execution of the bond, thus excluding the liability for moneys

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collected under subsequent statutes. Upon this point, the court below instructed the jury that the responsibility of the sureties did not extend to the obligations created by the subsequent statutes.

2. Whether the jury was at liberty to impute laches to the government from the delay of the proper officers to call the collector to account at the periods prescribed by law from the year 1814 to 1818. The court left it to the jury to decide whether, under the circumstances of the case, the government had not waived its resort to the sureties.

3. Whether the responsibility of the sureties extended beyond the duration of the first commission. Upon this point the court below charged the jury that the responsibility of the sureties extended to the reappointment of the collector under the new commission until his duties and obligations were varied by the statutes enacted subsequent to the date of the bond.

4. How the payments, which had been made by the collector, were to be appropriated. The balance found due in each account had been carried forward to the succeeding account, and the court was of opinion that the government could not make the appropriation at the time of the trial so as to apply the payments to the extinguishment of debts due subsequent to the time when the sureties ceased to be liable.

Upon these instructions a verdict was found for the defendants, upon which a judgment was rendered in the court below and the cause was brought by writ of error to this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

In this case, the Court cannot but lament the extreme irregularity and laxity of the pleadings if, indeed, the informal minutes upon the record be entitled in any measure to the appellation of pleadings. Some apology is indeed to be found in the asserted inaccurate local practice in the state courts, but it is impossible, without breaking down the best settled principles of law, not to perceive that the very errors in the pleadings are, of themselves, sufficient to justify a reversal of the judgment and an award of a repleader. The agreement of the parties filed in the case may indeed help the formal defects, but cannot be admitted to dispense with the substance of appropriate pleas, for otherwise it would be difficult to ascertain what was tried or to be tried, and we might as well dispense with the declaration itself as with the subsequent pleadings. It is to be hoped that in future a more correct

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practice will find its way into the district court.

Three errors have been insisted upon by the government as contained in the charge of the court below. The first is that the judge limited the responsibility of the sureties upon the collector's bond to the duties and obligations imposed by the

acts of Congress antecedently passed, thus excluding the liability created by the subsequent statutes. The second is the direction of the judge that the jury was at liberty to impute laches to the government from the delay to call the collector to account at the periods prescribed by law, and the consequent injury to the sureties. The third is the direction that the payments made by the collector might, under the circumstances, be applied to the discharge of the balance due from collections made under the acts which were in force when the bond was given.

As to the first point. The collector was appointed, under the Act of 22 July, 1813, ch. 16., for the assessment and collection of direct taxes and internal duties. In the 2d section it provides

"That one collector . . . shall be appointed for each of the said collection districts, . . . and if the appointment of the said collectors, or any of them, shall not be made during the present session, the President of the United States shall be and is hereby empowered to make such appointment during the recess of the Senate by granting commissions which shall expire at the end of their next session."

The 18th section of the same act further provides

"That each collector

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. . . shall give bond with one or more good and sufficient sureties . . . in at least double the amount of the taxes assessed in the collection district for which he may be appointed, which bond shall be payable to the United States with condition for the true and faithful discharge of the duties of his office according to law, and particularly for the due collection and payment of all moneys assessed upon such district."

The condition of this bond principally refers, as will appear on an inspection of the act, to assessments of direct taxes. But the subsequent acts, Act of 24 July, 1813, ch. 21, s. 14., and ch. 24, s. 6, and ch. 25, s. 3 and s. 10, and the Act of 3 August, 1813, ch. 38, s. 2 and s. 5, and ch. 51, s. 13, laying internal duties, contain

provisions enlarging the authority of the collector, and the Act of 2 August, 1813, ch. 55, expressly extends the liability under the bond to the due collection and payment of all moneys accruing from the duties laid by these acts. So that there is no doubt that as to bonds subsequently given, the language of the condition is to receive an interpretation which shall secure the fidelity of the collector under all these acts. The collector, whose bond is in question, was appointed by the President on 11 November, 1813, and by the terms of his commission he was to hold his office during the pleasure of the President "and until the end of the next session of the Senate of the United States, and no longer." The bond in question was given by the collector and by the defendants, as his sureties, on 4

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December of the same year, and it follows in its terms the requirements of the act of Congress. On 24 January, 1814, the President, with the advice and consent of the Senate, reappointed the party collector, &c., and by his new commission he was to hold his office "during the pleasure of the President of the United States for the time being." No new bond was taken under this commission. Under these circumstances, the district judge held that the liability of the sureties was strictly confined to the duties and obligations created by the acts passed antecedent to the date of the bond. And we are of opinion that this is the true construction of the condition of the bond. There is nothing in the original act, under which the appointment was made, which contemplates a permanent and continuing liability for all duties under all laws which might be subsequently passed. In its terms, the condition, as expounded by the other parts of the act, had a principal reference to the assessments of direct taxes, and it is extended further in its operation only by the express and positive directions of the Act of 2 August, 1813, ch. 55, s. 1. To this extent, therefore, it may well be of force, but to go beyond it would be to exceed the legislative declaration and create a general where the act had fixed a limited responsibility. If the argument on behalf of the government were correct, the provision so solicitously placed in this last act was wholly unnecessary, for the liability would expand with the new duties imposed by every successive act of the legislature. But the act itself

furnishes no ground for such an exposition, and we do not feel ourselves at liberty to give to contracts of this sort further efficacy than the laws and the parties must have had in their contemplation.

This point, however, becomes of comparatively small importance in the cause if another which has been argued in this connection cannot be maintained. We allude to the question as to the duration and force of the original commission of the collector. Strictly speaking, this question does not arise upon the present record. For although the court below decided that in point of law both commissions constituted but one continuing appointment, the second commission operating only as a confirmation of the first, yet as the verdict was found for the defendants on another ground, and no exception was taken by them, it is not matter of error which can be assigned upon the present occasion. But as it is manifest that the same question must arise upon any subsequent trial if there should be a reversal of the judgment, and will form a most important and, perhaps decisive ground of argument, and as all the parties are desirous of our opinion on this point and it has been fully argued from its bearing on the other points in the cause, and might have been material if our decision on the first point had been different, we have no hesitation in declaring our opinion that the decision of the court below was founded in mistake.

The act under which this appointment was made authorizes the President, in the recess of the Senate,

to make appointments by granting commissions which shall expire at the end of their next session. The first commission is, as has been already stated, in conformity to this provision of the act and is by express terms limited to continue to the "end of the next session of the Senate, and no longer." It follows, therefore, both by the enactment of law and the form of the grant, that the first commission must have expired of itself at that period, and as the next session of the Senate

ended in April, 1814, that is the utmost extent to which it could reach. The bond in question was given with express reference to this commission; and its obligatory force was consequently confined to acts done while that commission had a legal continuance, and could not go beyond it. And here would have been the natural termination of the liability. But in the meantime, a new appointment was made by the President, with the advice and consent of the Senate, and as soon as that was accepted by the collector, it was a virtual superseding and surrender of the former commission. The two commissions cannot be considered as one continuing appointment without manifest repugnancy. The commissions are not only different in date and given under different authorities and sureties, but they are of different natures. The first is limited in its duration to a specified period; the second is unlimited in duration and during the pleasure of the President. If the latter operated merely as a confirmation of the former, then it confirmed its existence only during the original period fixed by the law. But

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such an effect is not pretended, and would be irreconcilable with the terms and intent of the commission. It has been suggested that the practice of the government has been to consider such commissions as one continuing commission. But whatever weight the practice of the government may be entitled to, in cases of doubtful construction, it can have no influence to change the clear language of the law. In short, if the nomination to and approval by the Senate was a mere confirmation, and not equivalent to a new appointment, there was no necessity for the second commission, and yet the argument supposes that it could not be dispensed with, for if no commission had been issued, the first, by its own limitation, would have expired.

Then, as to the point of laches, we are of opinion that the charge of the court below, which supposes that laches will discharge the bond, cannot be maintained as law. The general principle is that laches is not imputable to the government, and this maxim is founded not in the notion of extraordinary prerogative, but upon a great public policy. The government can transact its business only through its agents, and its fiscal operations are so various and its agencies so numerous and

scattered that the utmost vigilance would not save the public from the most serious losses if the doctrine of laches can be applied to its transactions. It would in effect work a repeal of all its securities. On the other hand, the mischiefs to the agents and their sureties would be scarcely less tolerable. For if where the laws, as in the

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present instance, require quarterly accounts and settlements, a mere omission to account is to be deemed a breach of the bond for which a suit must be immediately brought upon the peril of loss from imputed laches, the collectors and their sureties would be oppressed with the most expensive and vexatious litigation, and their whole real estate, which by law is subjected to a lien upon the commencement of a suit, would be perpetually embarrassed in its transfers. This consideration of public or private inconvenience is not to overrule the settled principles of law, but it is certainly entitled to great weight where a new doctrine is to be promulgated. It is admitted that mere laches, unaccompanied with fraud, forms no discharge of a contract of this nature between private individuals. Such is the clear result of the authorities. Why then should a more rigid principle be applied to the government -- a principle which is at war with the general indulgence allowed to its rights, which are ordinarily protected from the bars arising from length of time and negligence? It is said that the laws require that settlements should be made at short and stated periods and that the sureties have a right to look to this as their security. But these provisions of the law are created by the government for its own security and protection and to regulate the conduct of its own officers. They are merely directory to such officers, and constitute no part of the contract with the surety. The surety may place confidence in the agents of the government and rely on their fidelity in office, but he has of this the same means

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of judgment as the government itself, and the latter does not undertake to guarantee such fidelity. No case has been cited at the bar in support of the doctrine except that of *People v. Jansen*, 7 Johns. 332. In respect to that case it

may be observed that it is distinguishable from the present in some of its leading circumstances. But if it were not, we are not prepared to yield to its authority. It is encountered by other authorities which have been cited at the bar and the total silence in the English books in a case of so frequent occurrence affords strong reason to believe that it never has been supposed that laches would be fatal in the case of the government where it would not affect private persons. Without going more at large into this question, we are of opinion that the mere laches of the public officers constitutes no ground of discharge in the present case.

The last ground respects the manner in which the court below laid down the law respecting the appropriation of payments. In our opinion there is no error in the charge on this point. The general doctrine is that the debtor has a right, if he pleases, to make the appropriation of payments; if he omits it, the creditor may make it; if both omit it, the law will apply the payments according to its own notions of justice. It is certainly too late for either party to claim a right to make an appropriation after the controversy has arisen, and *a fortiori* at the time of the trial. In cases like the present of long and running accounts where debits and credits are perpetually occurring

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and no balances are otherwise adjusted than for the mere purpose of making rests, we are of opinion that payments ought to be applied to extinguish the debts according to the priority of time, so that the credits are to be deemed payments *pro tanto* of the debts antecedently due.

Upon the whole, it is the opinion of the Court that for the error of the district court on the question of laches, the judgment ought to be

Reversed and a venire facias de novo awarded with directions also to allow the parties liberty to amend their pleadings.