

**Dox Vs. Postmaster General**

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**Court :** US Supreme Court

**Decided On :** 1828

**Appeal No. :** 26 U.S. 318

**Appellant :** Dox

**Respondent :** Postmaster General

**Judgement :**

Dox v. Postmaster General - 26 U.S. 318 (1828)

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**Dox v. Postmaster General**

**26 U.S. (1 Pet.) 318**

*CERTIFICATE OF DIVISION OF OPINION AMONG JUDGES OF THE CIRCUIT COURT*

*OF THE UNITED FOR THE SOUTHERN DISTRICT OF NEW YORK IN THE SECOND CIRCUIT*

**SYLLABUS**

The act of Congress for regulating the Post Office Department does not in terms discharge the obligors in the official bond of a deputy postmaster from the direct claim of the United States upon them on the failure of the Postmaster General to commence a suit against the defaulting postmaster within the time prescribed by law. Their liability therefore continues. They remain the debtors of the United States. The responsibility of the Postmaster General is superadded to, not substituted for, that of the obligors.

The claim of the United States upon an official bond and upon all parties thereto is not released by the laches of the officer to whom the assertion of this claim is entrusted by law. Such laches have no effect whatsoever on the rights of the United States as well against the sureties as the principal in the bond.

The cause was commenced in the District Court of the United States for the Northern District of New York, and removed by writ of error to the circuit court.

The following were the points of disagreement:

1st. Whether the district court had jurisdiction of the cause.

2d. Whether, by the facts appearing on the record and admitted by the pleadings or found by the jury, the sureties are exonerated or discharged from their liability upon the bond set forth in the record.

3d. Whether the said bond, from the facts so found or admitted by the pleadings or appearing on the record, can, in judgment of law, be considered as paid and satisfied, or otherwise discharged.

The original suit was commenced in the district court in August, 1823, and the plaintiff declared in debt on a bond in the penal sum of \$6,000, executed on 1 January, 1816, by Gerrit L. Dox, Peter Dox, Gerrit La Grange, and Isaiah Townsend, conditioned for the faithful performance of the duties of postmaster at Albany by Gerrit L. Dox.

The declaration alleged two breaches of the condition of the bond:

1. That said Gerrit L. Dox did not, at any time between

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1 January, 1816, and 1 January, 1817 (he being, during the whole of that time, Postmaster as aforesaid), render any accounts of his receipts and expenditures according to the condition of said bond, but utterly neglected so to do.

2. That after the date of said bond, and more than three months previous to the commencement of the suit, there came to the hands of said Gerrit L. Dox, as such postmaster as aforesaid, the sum of \$6,000 for postages, over and above commissions, &c., which he had not paid over to the Postmaster General, but had refused so to do, although often requested, &c.;

Gerrit L. Dox, the principal obligor, pleaded separately three pleas:

1. *Non est factum*, and tendered an issue.

2. To the first breach, that he did render true accounts of his receipts and expenditures as such postmaster, &c., and tendered an issue.

3. To the second breach, that he had paid to the Postmaster General all the moneys he had received, over and above his commissions, &c., and tendered an issue.

Issues were joined on these pleas as tendered.

The defendants, Peter Dox, Gerrit La Grange, and Isaiah Townsend, the sureties of said Gerrit L. Dox, pleaded six pleas:

1. *Non est factum*, and tendered an issue.

2. To the first breach, that Gerrit L. Dox did render true accounts of his receipts and expenditures, &c., and tendered an issue.

3. To the second breach, that the said Gerrit L. Dox had paid to the Postmaster General all the moneys he had received over and above his commissions, &c.,

and tendered an issue.

4. To the second breach, that they executed the bond as sureties; that Gerrit L. Dox was removed from office on the first day of July, A.D. 1816; that the Postmaster General, knowing there were sureties, did not open an account against Gerrit L. Dox, and make any claim and demand on him for the moneys received by him as Postmaster, until the first day of July, A.D. 1821, at which time the Postmaster General did open an account against and claim and demand of said Gerrit L. Dox, the sum of \$3,041.35; that Gerrit L. Dox, at the time of his removal from office, was solvent and able to pay his debts, and continued so for three years, and until 1 July, 1819, and that after 1 July, 1819, and before the 1 July, 1821, to-wit, on 1 January, A.D. 1820, he became insolvent, and still continues to be insolvent. This plea concluded with a verification.

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5. To the second breach, that they executed said bond as sureties for said Gerrit L. Dox, that said Gerrit L. Dox was removed from office on the first day of July, A.D. 1816; that the Postmaster General, well knowing that they were sureties for Gerrit L. Dox, and that Gerrit L. Dox had neglected and refused to pay over to the Postmaster General, the balance due from him at the end of every quarter while he was such postmaster, did not commence a suit against said Gerrit L. Dox for his neglect and refusal to pay, until August in the year 1821, at which time a suit was commenced against him and his sureties, on the bond in question; that Gerrit L. Dox was solvent at the time of his removal from office, *viz.*, on 1 July, 1816, and continued so for three years, and until 1 July, A.D. 1819, and that after 1 July, 1819, and before 1 July, 1821, *viz.*, on 1 January, A.D. 1820, he became insolvent, and still continues to be insolvent. This plea also concluded with a verification.

The plaintiff took issues on the first, second, and third pleas of the sureties as they were tendered, and to the *fourth, fifth, and sixth* pleas, respectively, he replied that said Gerrit L. Dox was not solvent at the time of his removal from office, nor

did he continue to be solvent for the space of three years thereafter, or any part of said time, nor did he on 1 January, 1820, or at any other time after 1 July, 1819, become insolvent, and thereupon issues were joined.

The issues were tried at the May session of the court in the year 1824. All the issues were found for the plaintiff except those joined on the *fourth, fifth, and sixth* pleas of the sureties, which were found in favor of said sureties; *the breaches assigned, having been found to be true, as above stated, the damages on them were assessed at \$6,000.*

After the verdict and at the same session of the court, a motion was made on behalf of the said Postmaster General for judgment in his favor notwithstanding the verdict against him on said *fourth, fifth, and sixth* issues with the sureties, and judgment given for the said plaintiff.

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

This suit was instituted against Gerrit L. Dox, a deputy master, and against his sureties on a bond given for the faithful performance of his duty. It was brought in the Court for the Northern District of New York, and was removed by writ of error into the Circuit Court sitting in the Southern District of New York, composed of the Associate Justice of this Court, and the Judge of the Southern District. On the hearing, the Judges were divided in opinion upon three questions; which have been certified to this Court.:

1st. Whether the district court had jurisdiction of the cause.

2d. Whether by the facts appearing on the record and admitted by the pleadings or found by the jury, the sureties are exonerated or discharged from their liability upon the bond so given by them as set forth in the record.

3d. Whether the said bond, from the facts found, or admitted by the pleadings, as appearing by the record, can, in judgment of law, be considered as paid and

satisfied, or otherwise discharged.:

1st. The question first to be considered respects the jurisdiction of the Court. The difficulties which were believed to attend it when this cause was adjourned have been removed by the opinion of this Court in the case of the *Postmaster General v. Early*, 12 Wheat. 136.

In that case, the question was fully considered and deliberately decided. The time which intervened between the default of the officer and the institution of the suit exceeded the time prescribed by the act of Congress in that case as well as this. Consequently the circumstances of the two cases are in this respect precisely the same. But the counsel for the deputy postmaster says that this point was not brought into the view of the court and has not been considered. The opinion of the court undoubtedly did not take a view of the question whether the Postmaster General possessed such an interest in the cause that it ceased to be a suit brought for the United States. This inquiry was not made in terms, but could not have escaped observation. The act of Congress for regulating the post office establishment does not in terms discharge the obligors from the direct claim of the United States on them on the failure of the Postmaster General to commence a suit against the

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defaulter within the time it prescribes. Their liability therefore continues. They remain the debtors of the United States. The responsibility of the Postmaster General himself is superadded to, not substituted for, that of the obligors. The object of the act is to stimulate the Postmaster General to a prompt and vigilant performance of his duty by suspending over him a penalty to which negligence will expose him, not to annul the obligation of his deputy. Had the object of the act been to favor the sureties, its language would have indicated that intention. If this construction be correct, the obligors in this bond remain the debtors of the United States, and the superadded responsibility of the Postmaster General cannot affect the reasoning on which the jurisdiction of the court was sustained in the case of the *Postmaster General v. Early*.

The second question proposed for the consideration of the Court is whether, on the facts appearing in the record, the sureties are discharged from their obligations.

The breaches assigned are:

1st. That Gerrit L. Dox failed to render accounts of his receipts and expenditures, as deputy postmaster.

2d. That he had failed to pay over the moneys he had received over and above his commissions, &c.;

The defendant pleaded 1st, *non est factum*; 2d, that Gerrit L. Dox did render true accounts, &c.;, and 3d, that he did pay over the moneys he received. The issues joined on these pleas were found for the plaintiff.

The question arises on other pleas the issues on which were found for the defendants and which state in substance that Gerrit L. Dox was removed from his office on 1 July, 1816; that the Postmaster General did not open an account against him and make any claim and demand on him for the moneys received by him, as Postmaster until 1 July, 1821; that at the time of his removal from office, he was solvent and able to pay his debts, and continued so until 1 July, 1819, after which he became insolvent, and continues to be so. These pleas also state that the Postmaster General, well knowing that Gerrit L. Dox had neglected and refused to pay over the moneys due from him as Postmaster at the end of every quarter, &c.;, did not commence a suit until August, 1821.

These facts, placed on the record without explanation, must be admitted to show a gross neglect of duty on the part of the Postmaster General. Does this neglect discharge the sureties from their obligations?

The condition of the bond is broken, and the obligation has become absolute.

Is the claim of the United States upon them released by the

laches of the officer to whom the assertion of that claim was entrusted?

This question also has been settled in this Court.

The case of [\*United States v. Kirkpatrick\*](#), 9 Wheat. 720, was a suit instituted on a bond given by a collector of direct taxes and internal duties under the Act of 22 July, 1813, ch. 16. The act required each collector to transmit his accounts to the Treasury monthly, to pay over the moneys collected quarterly, and to complete his collection, pay over the moneys collected to the Treasury, and render his final account within six months from the day on which he shall have received the collection list from the principal assessor. In case of failure, the act authorizes and requires the Comptroller of the Treasury immediately to issue his warrant of distress against such delinquent collector and his sureties. The comptroller did not issue his warrant of distress according to the mandate of the law, and this suit was instituted four years after such warrant ought to have been issued.

The court left it to the jury to decide whether the government had not, by this omission, waived its resort to the sureties. A verdict was found for the defendants, the judgment on which was brought before this Court by writ of error.

The counsel for the defendant urged that laches might be imputed to the government through the negligence of its officers, but this Court reversed the judgment, declaring the opinion that the charge of the court below, which supposes that laches will discharge the bond, cannot be maintained in law. "The utmost vigilance," it was said,

"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."

It was further said that the provisions of the law which require that settlements should be made at short and stated periods 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 security. After a full discussion of the question, the Court laid down the principle

"that the mere laches of the public officers constitutes no grounds of discharge in the present case." The same question came on to be again considered in the case of [\*United States v. Vanzandt\*](#), 11 Wheat. 184.

This was an action of debt brought up on a paymaster's official bond against one of the sureties. The act for organizing the general staff, and making further provision for the Army of the United States, "makes it the duty of the paymaster to render his vouchers to the Paymaster General, for the settlement of his accounts," and if he fail to do so for more than six

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months after he shall have received funds, the act imperatively enjoins "that he shall be recalled, and another appointed in his place." The paymaster had failed to comply with the requisites of the law, after which the Paymaster General, instead of obeying its mandate by removing him, placed further funds in his hands. The circuit court instructed the jury that the defendant, the surety, was not chargeable for any failure of the paymaster to account for such additional funds, so placed in his hands after his said default and neglect in respect of the funds previously received were known, and a verdict was found for the defendant. The judgment on this verdict was also brought before the Court by a writ of error and was reversed.

The counsel for the defendant contended that this case differed from *United States v. Kirkpatrick*, but the Court said

"The provisions in both laws are merely directory to the officers, and intended for the security and protection of government by ensuring punctuality and responsibility, but they form no part of the contract with the surety."

The placing further funds in the hands of the defaulting paymaster was considered as the necessary consequence of his continuance in office. This is certainly a very strong case. These two cases seem to fix the principle that the laches of the officers of the government, however gross, do not of themselves discharge the sureties in an official bond, from the obligation it creates, as firmly as the decisions of this Court can fix it. We think they decide the question now under consideration.

The third question is whether the bond can, upon the facts of the case, be considered in judgment of law as paid and satisfied or otherwise discharged. If this question was founded on the time which was permitted to elapse before the institution of the suit, the answer must be in the negative. The bond was executed on 1 January, 1816, the Postmaster was removed from office on the 1st day of July in the same year, and this suit was instituted in August, 1821. But little more than five years intervened between the time when the sum due from the principal in the bond was ascertained and the institution of the suit. The presumption of payment has never been supposed to arise from length of time in such a case, even between individuals, much less, in the case of the United States, where all payments are placed on that record which must be kept by the officers of government. An additional reason exists against the presumption in this case. Length of time is evidence to be laid before the jury on the plea of payment. The pleas on which this presumption is supposed to arise not only do not allege payment, but presuppose that payment has not been made, which failure they ascribe

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to the laches of the Postmaster General. In such a case, there can be no ground for presuming payment and satisfaction.

That part of the question which is general, and which refers it to the court to decide whether the bond has been "otherwise discharged," is understood to be a repetition of the second question and to be answered in the answer given to that question.

This Court is of opinion that it be certified to the Circuit Court of the United States for the Southern District of New York:

1. That the district court had jurisdiction of this cause.
2. That the sureties are not exonerated from their liability upon the bond given by them as set forth in the record.

3. That the said bond cannot be considered in judgment of law as paid and satisfied or otherwise discharged.

This cause came on, &c., on consideration whereof, this Court is of opinion 1. that the District Court of the Northern District of New York had jurisdiction of the said cause; 2. that the sureties to the bond on which the said suit was instituted are not exonerated or discharged from their liability on the said bond by the facts appearing on the record and admitted by the pleadings or found by the jury; 3. that the said bond cannot, from the facts found or admitted by the pleadings or appearing by the record, be considered in judgment of law as paid and satisfied or otherwise discharged. All which is directed to be certified to the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

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