

**United States Vs. Boyd**

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**Court :** US Supreme Court

**Decided On :** 1841

**Appeal No. :** 40 U.S. 187

**Appellant :** United States

**Respondent :** Boyd

**Judgement :**

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**United States v. Boyd**

**40 U.S. (15 Pet.) 187**

*ERROR TO THE CIRCUIT COURT FOR THE*

*SOUTHERN DISTRICT OF MISSISSIPPI*

Gordon D. Boyd was duly appointed a receiver of public moneys for the district of lands subject to sale at Columbus, in

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the State of Mississippi, for the term of four years from 27<sup>f</sup> December, 1836. On the 15th of June 1837, he gave a bond in the penal sum of \$200,000, jointly and severally, with Samuel Rossdale and others, the defendants in error in the present suit. The condition of the bond was that whereas the President of the United States had, pursuant to law, appointed him, the said Boyd, receiver as aforesaid, for the term of four years from 27 December, 1836, that therefore,

"if the said Boyd shall faithfully execute and discharge the duties of his office, then the above obligation to be void, and of none effect, otherwise, it shall abide and remain in full force and virtue."

At May term 1838, a suit was instituted on this bond by the United States in the Circuit Court for the Southern District of Mississippi against the obligors, being the present defendants in error, to recover the penalty thereof. The defendants cravedoyer of the bond, and afterwards of the condition, and subsequently, pleaded that the plaintiffs ought not to maintain their action, because

"the said Boyd did, from time to time, and at all times after making of the said bond, and the condition thereof, well and truly observe, perform fulfill and keep the condition of said bond by faithfully executing and discharging the duties of his office according to the tenor and effect, true intent and meaning of the said condition."

At November term 1839, the United States filed an amended replication in which they said that they ought not to be barred from maintaining their action, because the said Boyd had not performed the condition of the said bond, and two breaches thereof were assigned.

1. That

"the said Boyd, after 27 December, 1836, and while he was receiver, and as such receiver, received of the public moneys, large sums, viz., \$59,622.60, which said sum he, then and there, wholly failed, neglected and refused to pay over to the said plaintiffs, pursuant to his instruction from the Secretary of the Treasury, as he was bound to do by law, and the duty of his said office of receiver."

2. That

"the said Boyd, after 27 December, 1836, and on divers days and times between that day and 30

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September, 1837, while he was receiver, and as such receiver, received divers sums of the public moneys, amounting in the whole to \$59,622.60, and that the said sum remained in the hands of the said Boyd, as receiver, on 30 September, 1837, and the said Boyd, then and there, wholly failed, neglected and refused to pay the same over to the United States, pursuant to his instructions from the Secretary of the Treasury, as he was bound to do by law, and the duty of his office."

To this replication the defendants demurred for the following causes:

1. The first breach does not state the time at which Boyd, as receiver, received the said money, after his appointment, whether before or after the date of the bond.
2. The first breach does not state that Boyd neglected to pay over any moneys received by him, as receiver, after the date of the bond.
3. The second breach does not state any time at which Boyd, as receiver, received the said money.
4. The second breach does not state that Boyd, as receiver, neglected to pay over any moneys received by him as receiver after the date of the bond.
5. That the replication is otherwise insufficient.

The United States joined in the demurrer, and the same was sustained by the court and judgment thereupon entered for the defendants. The United States prosecuted this writ of error.

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CATRON, JUSTICE, delivered the opinion of the Court.

This was an action of debt brought upon a bond with the following recital and condition, dated June 15, 1837:

"The condition of the foregoing obligation is such that whereas the President of the United States hath, pursuant to law, appointed the said Gordon D. Boyd, receiver of public moneys for the district of lands subject to sale at Columbus, in the State of Mississippi, for the term of four years from 27 December, 1836. Now therefore, if the said Gordon D. Boyd shall faithfully execute and discharge the duties of his office, then the above obligation to be void and of none effect; otherwise, it shall abide and remain in full force and virtue. "

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The defendants cravedoyer of the bond, condition, &c.;, and pleaded performance of the condition.

By a replication, the defendants assigned two breaches.

1. That said Boyd, after 27 December, 1836, received, in his official capacity, \$59,622.60, which he failed to pay over to the United States as he was bound to do by law.

2. That said Boyd, on 27 December, 1836, and at divers days between that day and 30 September, 1837, received \$59,622.60, as receiver, which sum remained in his hands on 30 September, 1837, and that he failed to pay the same pursuant to his instructions from the Secretary of the Treasury, as he was bound to do by law, and the duties of his office.

To this replication the defendants demurred, and the court below sustained the demurrer.

The first question arising on the pleadings is whether the sureties of Boyd are bound for defalcations between 27 December, 1836, the date of the appointment, and 15 June, 1837, the date of the bond. The condition of the bond is prospective,

and in its last clause does not differ in effect from that passed on in the case of [\*Farrar v. United States\*](#), 5 Pet. 374, [30 U. S. 389](#) . In that case, William Rector had been appointed surveyor of public lands and given bond with sureties conditioned "if the said William Rector shall faithfully execute and discharge the duties of his office, then said bond to be void," &c.; Rector had been appointed and commissioned as surveyor on 20 February, 1823. The bond bore date 7 August, 1823. The prominent question presented on the trial was whether the sureties of Rector were liable for moneys received by him as surveyor, and appropriated to his own use after his appointment and before the execution of the bond, on which the court held that the sureties could only be made answerable for moneys in Rector's hands at the date of the bond, which were held by him in his official capacity in trust for the government, and not for moneys previously appropriated to his own use. Said the Court,

"If intended to cover past dereliction,

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the bond should have been made retrospective in its language. The sureties have not undertaken against his past misconduct."

But the failure of the receiver to account and pay quarterly, as prescribed by the rules of the Treasury Department, or monthly, if the sum of \$10,000 had been received during any one month, was no legal defalcation of which the securities can avail themselves. Laches are not imputable to the government. The regulations requiring settlements to be made by its officers at short periods are designed for the protection of the government, and merely directory to the officers, and form no part of the contract. Such is the settled doctrine of this Court as holden in [\*United States v. Kirkpatrick\*](#), 9 Wheat. 720; [\*United States v. Vanzandt\*](#), 11 Wheat. 184; and [\*United States v. Nicholl\*](#), 12 Wheat. 509. It follows the averment in the replication that Boyd, from 27 December, 1836, to 30 September, 1837, had received on behalf of the United States the sum of \$59,622.60, which sum, at the last date, remained in his hands, and for which he then failed to account as bound to do by law and the duties of his office, is a good breach of the

condition, and well assigned; it matters not at what time the moneys had been received if, after the appointment, they were held by the officer in trust for the United States and so continued to be held at and after the date of the bond. That they were so holden at the end of the third quarter of 1837 is admitted by the demurrer.

It is insisted on behalf of the United States that aside from the foregoing considerations, the sureties are bound equally with the principal in the bond on the ground that the condition, on settled legal principles and by implication, is retrospective and covers all defaults of the officer from the date of the commission, because it is recited and part of the obligation that Boyd had been appointed receiver for four years from 27 December, 1836. We have with much care considered this position, and think it cannot be sustained. This Court held in [\*Miller v. Stuart\*](#), 9 Wheat. 702, that the liability of a surety is not to be extended by implication beyond the terms of his contract; that his undertaking is to receive a strict interpretation,

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and not to extend beyond the fair scope of its terms, and that the whole series of authorities proceeded on this ground. The principal ones relied on in that case have been relied on in the present, and we think the principles settled by them preclude the Court from maintaining that the sureties are liable by implication, contrary to the plain prospective obligation of the bond "that the said Boyd shall faithfully execute and discharge the duties of his office." In the language of the Court in *Farrar v. United States*, "if intended to cover past dereliction, the bond should have been made retrospective in its language."

Some difficulty has been presented in regard to the form of the replication, testing it by the common law principles of pleading. It avers several breaches. The cause, however, comes by writ of error from the District of Mississippi, and the modes of proceeding of that state govern the pleadings. By the act of 1822, 2, found in the Revised Code of Mississippi 614, any number of breaches may be assigned; and by 6, when a demurrer shall be joined, in any action, no defect in the pleadings

shall be regarded by the court, unless specially alleged in the demurrer, as causes thereof. That several breaches had been assigned is not alleged as a special cause of demurrer, and therefore could not have been noticed by the court, had no provision existed justifying more breaches than one, even had such replication been contrary to the strict rules of pleading by the common law.

It is proper to remark that when this cause is remanded to the circuit court for further proceedings to be had therein, it will be in the condition it would have been had that court overruled the demurrer, and subject to additional pleadings, or an amendment of the present ones, according to the rules and practice of the circuit court and on such terms as it may impose.

*We order that the judgment be reversed, the demurrer overruled, and that judgment be entered by the circuit court for the penalty of the bond in favor of the United States, against the defendants, to be discharged by the assessment of damages on the second breach in the replication, unless the pleadings, on leave granted, be amended in prevention of such judgment and assessment of damages.*

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This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court with directions to overrule the demurrer and to enter judgment for the penalty of the bond in favor of the plaintiff against the defendants, to be discharged by the assessment and payment of damages on the second breach in the replication, unless the pleadings, on leave granted, be amended in prevention of such judgment and assessment of damages.

