

Boyden Vs. United States

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Court : US Supreme Court

Decided On : 1871

Appeal No. : 80 U.S. 17

Appellant : Boyden

Respondent : United States

Judgement :

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Boyden v. United States

80 U.S. (13 Wall.) 17

I N ERROR TO THE CIRCUIT COURT

FOR THE DISTRICT OF WISCONSIN

SYLLABUS

1. A receiver of public moneys of the United States does not stand in the position of an ordinary bailee; he is bound to higher responsibility. Upon a suit, therefore, on a bond "for the faithful discharge of his trust," such a receiver cannot discharge

himself by showing that he was suddenly beset in his office, thrown down, bound, gagged, and that against all the defense he could make, the money was violently and without his fault taken from him.

2. Though statutes oblige receivers to pay over when required by the Secretary of the Treasury, a declaration stating that the receiver had been often requested to pay is enough after verdict, there having been general regulations in force at the time the bond here sued on was given requiring receivers to pay at stated times.

The United States sued Boyden and his sureties on his official bond as receiver of public moneys for the district of lands subject to sale at Eau Claire, in the State of Wisconsin. The bond was given pursuant to the 6th section of the Act of May 10, 1800. [[Footnote 1](#)] The section enacts:

"The receiver of public moneys shall, before he enters upon the duties of his office, give bond with approved security *for the faithful discharge of his trust.* "

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This bond was conditioned that if the said Boyden truly and faithfully executed and discharged all the duties of his said office according to law, then the obligation should be void. The breach alleged was that Boyden had received as receiver \$5,088 of the moneys of the United States, which he had not paid over to the United States "although often requested so to do."

The defendants pleaded as one plea that Boyden had been violently robbed of the said sum of money, and under a notice that they would give in such evidence offered upon the trial to prove that, on the 23d of December, 1859, at Eau Claire, in the State of Wisconsin, while in the land office of the United States for that land district, he the said Boyden, then and there being the receiver of public moneys for said district and then and there being in the discharge of the duties of his office as such receiver, was suddenly beset by some person or persons to him unknown and thrown down, and against all defense that he could make was gagged and bound, and the moneys described in the complaint *violently and without his fault* taken from him and carried away.

To the introduction of this evidence the United States objected upon the ground that the facts as offered to be proved constituted no defense. The court sustained the objection, and the defendants excepted.

Judgment having been given for the United States, the defendant brought the case here.

The assignments of error were:

1. That the evidence offered was improperly rejected.
2. That the declaration did not state a cause of action. This second assignment being founded on the fact that an act of August 6, 1846, [[Footnote 2](#)] requires all receivers of public moneys to keep in their possession all of the moneys by them received until the same is *ordered by the proper department or officer of the government* to be transferred or paid out, and that the amendatory act of March 3, 1857, [[Footnote 3](#)] requires

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persons having moneys of the United States in their hands to pay them to the Treasurer, the Assistant Treasurer, or public depositary of the United States, *when required by the Secretary of the Treasury or any other department.*

The case was twice argued.

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MR. JUSTICE STRONG delivered the opinion of the Court.

Were a receiver of public moneys, who has given bond for the faithful performance of his duties as required by law, a mere ordinary bailee, it might be that he would be relieved by proof that the money had been destroyed by fire, or stolen from him, or taken by irresistible force. He would

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then be bound only to the exercise of ordinary care, even though a bailee for hire. The contract of bailment implies no more except in the case of common carriers, and the duty of a receiver, *virtute officii*, is to bring to the discharge of his trust that prudence, caution, and attention which careful men usually bring to the conduct of their own affairs. He is to pay over the money in his hands as required by law, but he is not an insurer. He may, however, make himself an insurer by express contract, and this he does when he binds himself in a penal bond to perform the duties of his office without exception. There is an established difference between a duty created merely by law and one to which is added the obligation of an express undertaking. The law does not compel to impossibilities, but it is a settled rule that if performance of an express engagement becomes impossible by reason of anything occurring after the contract was made, though unforeseen by the contracting party, and not within his control, he will not be excused. [[Footnote 4](#)] The rule has been applied rigidly to bonds of public officers entrusted with the care of public money. Such bonds have almost invariably been construed as binding the obligors to pay the money in their hands when required by law, even though the money may have been lost without fault on their part. It is true that in the case of the *Supervisors of Albany v. Dorr*, [[Footnote 5](#)] in the supreme court of New York, it was decided in a suit on a bond of a county treasurer, conditioned for the payment of all money that should come into his hands as treasurer, that he was not responsible for the public money feloniously stolen from his office without any negligence, want of due care, or other blame or fault whatever on his part, and this decision was affirmed in the Court of Appeals of that state, only, however, by an equal division. [[Footnote 6](#)] It was rested upon the supposed liability of the officer *virtute officii* which it was thought his bond did not increase, and it was supposed to be sustained by *Lane v. Cotton* [[Footnote 7](#)] and *Whitfield v.*

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Le De Spencer. [[Footnote 8](#)] It is quite plain, however, that those cases do not sustain it. They were actions upon the case against the Postmaster General, brought not by the government, but by private individuals to recover damages for

the negligent failure to deliver letters, and the defendants were held not liable for money stolen, even by their subordinates in office. At most, the Postmaster General was a mere bailee, and no question was raised respecting the effect of a bond to secure the performance of his duties. But whatever may have been the ruling in the case of the *Supervisors of Albany v. Dorr*, it is no longer authority, even in the state of New York. *Muzzy v. Shattuck*, [[Footnote 9](#)] subsequently decided and affirmed unanimously in the Court of Appeals, is utterly irreconcilable with it, and it has settled the law otherwise in that state. So in Pennsylvania, in *Commonwealth v. Comly*, [[Footnote 10](#)] it was ruled that the responsibility of a public receiver depends on his contract, when there is one, and not on the law of bailments. There, the condition of the bond was to account and pay over, and it was held no defense by the surety of the receiver that the money was stolen, though it was kept as a prudent man would keep his own funds. It was said by Chief Justice Gibson, in delivering the judgment of the court, after referring to the fact, that a lessee is not relieved from payment of rent by destruction of the demised premises by fire,

"A loss by a visitation of Providence, which no vigilance could prevent, would present a more meritorious claim for relief, one would think, than a loss by robbery, which is always preceded by a greater or less degree of negligence. A receiver, or his surety, would come before a chancellor with an ill grace on that ground, even if there was a power to relieve him. The keepers of the public moneys or their sponsors are to be held strictly to the contract, for if they were to be let off on shallow pretenses, delinquencies, which are fearfully frequent already, would be incessant. A chancellor is not bound to control the legal effect of a contract in any case,

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and his discretion, were he at liberty to use it, would be influenced by considerations of general policy."

State v. Harper [[Footnote 11](#)] is to the same effect. This is precisely the ground which this Court has taken. In *United States v. Prescott*, [[Footnote 12](#)] it was

decided that the felonious taking, stealing, and carrying away the public money in the hands of a receiver of public money, without any fault or negligence on his part, does not discharge him or his sureties, and that it cannot be set up as a defense to any action on his official bond. The condition of the receiver's bond in that case, it is true, was that the receiver should pay promptly when orders for payment should be received, while the bond in the case before us is conditioned that Boyden, the receiver, had truly executed and discharged, and should continue truly and faithfully to execute and discharge all the duties of said office according to law. But the acts of Congress respecting receivers made it their duty to pay the public money received by them when ordered by the Treasury Department, and that department, by its general orders of 1854, required payment to be made before this suit was brought. No exception was made, no contingency was contemplated. The bond therefore was an absolute obligation to pay the money, and differing not at all, in legal effect, from the bond in *Prescott's case*. A similar ruling was made in *United States v. Dashiell*. [[Footnote 13](#)] What the condition of the bond on which suit was brought in that case was does not appear in the report, but it was for the discharge of the paymaster's official duty. The doctrine of *Prescott's case* was also recognized in *United States v. Keebler*, [[Footnote 14](#)] and it must be considered as settled law. Applying it to the case now in hand, it makes it clear that the evidence offered by the defendants, tending to prove that the receiver had been robbed of the public money received by him, was rightly rejected as constituting no defense to the suit on the receiver's bond. It is true that in *Prescott's case*, the defense set up was that the money had been

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stolen, while the defense set up here is robbery. But that can make no difference unless it be held that the receiver is a mere bailee. If, as we have seen, his liability is to be measured by his bond, and that binds him to pay the money, then the cause which renders it impossible for him to pay is of no importance, for he has assumed the risk of it.

There is nothing in the second error assigned. Though under the acts of Congress of August 6, 1846, [[Footnote 15](#)] and the amendatory act of March 3, 1857, [

[Footnote 16](#)] receivers are required to pay when required by the Secretary of the Treasury, there were general orders made for all receivers requiring payments to be made at stated times, which were in existence when this receiver's bond was given. The declaration avers a request, and this is enough after verdict.

Judgment affirmed.

[See *infra*, p. [80 U. S. 56](#) , *Bevans v. United States*.]

[[Footnote 1](#)]

2 Stat. at Large 75.

[[Footnote 2](#)]

9 Stat. at Large 59, 6.

[[Footnote 3](#)]

11 *id.* 249 3.

[[Footnote 4](#)]

Metcalf on Contracts 213; [The Harriman](#), 9 Wall. 161.

[[Footnote 5](#)]

25 Wendell 440.

[[Footnote 6](#)]

7 Hill 583.

[[Footnote 7](#)]

1 Lord Raymond 646.

[[Footnote 8](#)]

Cowper 754.

[[Footnote 9](#)]

1 Denio 233.

[[Footnote 10](#)]

3 Pa.St. 372.

[[Footnote 11](#)]

6 Ohio St. 607.

[[Footnote 12](#)]

[44 U. S. 3](#) How. 578.

[[Footnote 13](#)]

[71 U. S. 4](#) Wall. 182.

[[Footnote 14](#)]

[76 U. S. 9](#) Wall. 83

[[Footnote 15](#)]

9 Stat. at Large 59 6.

[[Footnote 16](#)]

11 *id.* 249.