

the laches or the wrongful acts of its officers; and it was said by the Chief Justice, delivering the opinion of the court: "Here the surety was aware of the lien which the law gave as security for the payment of the tax. He also knew that, in order to retain this lien, the government must rely upon the diligence and honesty of its agents. If they performed their duties and preserved the security, it inured to his benefit as well as that of the government; but if, by neglect or misconduct, they lost it, the government did not come under obligations to make good the loss to him, or, what is the same thing, release him *pro tanto* from the obligation of his bond. As between himself and the government, he took the risk of the effect of official negligence upon the security which the law provided for his protection against loss, by reason of the liability he assumed." These views are conclusive to show that the importers as well as their surety are liable on the bond in this case. If the importers could be regarded as having always been, or as having at any time become, sureties only in respect of the duties, with the goods as the primary security (a position shown to be wholly untenable), it is well settled, by the decisions of this court, that the negligence of the officers of the government does not affect the liability of a surety in a bond any more than it does that of his principal. *Dox v. Postmaster-General*, 1 Pet. 318; *United States v. Kirkpatrick*, 9 Wheat. 720; *United States v. Vanzandt*, 11 id. 184.

*Judgment affirmed.*

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DODGE v. FREEDMAN'S SAVINGS AND TRUST COMPANY.

Where a mortgage of lands in the District of Columbia, or a deed of trust in the nature thereof, to secure the payment of money, is foreclosed, sect. 808, Rev. Stat., relating to the District, authorizes a decree *in personam* against the debtor for the balance remaining due after the proceeds of the sale of the lands have been applied to the satisfaction of the debt.

APPEAL from the Supreme Court of the District of Columbia.

The Freedman's Savings and Trust Company, the holder of

certain notes of Dodge, secured by his deed of trust in the nature of a mortgage upon lands in the District of Columbia, filed its bill in the court below, and obtained a decree, which was affirmed here at the October Term, 1876, 93 U. S. 379. A sale of the lands was then made, and, after the application of the proceeds to the satisfaction of the debt, the court, pursuant to its adjudication that the complainant recover the balance remaining due, and that he "have execution thereof as at law," ordered that a writ be issued.

Dodge thereupon appealed.

*Mr. Reginald Fendall* and *Mr. John D. McPherson* for the appellant.

*Mr. William A. McKenney* and *Mr. Enoch Totten* for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Section 808 of the Revised Statutes relating to the District of Columbia is as follows:—

"SECT. 808. The proceeding to enforce any lien shall be by bill or petition in equity, and the decree, besides subjecting the thing upon which the lien has attached to the satisfaction of the plaintiff's demand against the defendant, shall adjudge that the plaintiff recover his demand against the defendant, and that he may have execution thereof as at law."

This statute applies to suits for the foreclosure of deeds of trust in the nature of mortgages to secure the payment of money, and authorizes a decree in favor of the plaintiff against the debtor defendant for the payment of the balance of the debt that may remain due after the application thereto of the proceeds of the sale of the trust property, and an order for execution thereof as at law. This is such a decree in such a suit, and it is consequently

*Affirmed.*