United States *v.* January and Patterson. (*a*)

Application of payments.—Official bonds.

When a collector of revenue has given two bonds for his official conduct, at different periods, and with different sureties, a promise by the supervisor to apply his payments exclusively to the discharge of the first bond, although some of the payments were for money collected and paid after the second bond was given, does not bind the United States, and does not amount to an application of the payments to the first bond.

Error to the Circuit Court for the district of Kentucky. This case was submitted to the court, without argument, and—

Duvall, J., delivered the opinion of the court, as follows:—In this cause, the opinion of the court is required on a single point. The facts are these: The supervisor of the revenue, for the district of Ohio, in due form of law, *573] appointed John Arthur collector *of the revenue for the first division of the first survey of the said district. Arthur, on the 25th day of August 1797, together with the defendants, his sureties, executed a bond to the United States, in the penalty of $4000, with condition that Arthur should truly and faithfully execute and discharge all the duties of said office, according to law. The supervisor, for greater security to the government, was in the habit of renewing the commission, and renewing the office-bond; and on the 23d day of March 1799, Arthur executed another bond to the United States, with Robert Patterson surety, in the penalty of $6000, with this condition, "that if the said John Arthur has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of said office, and shall also render and settle his accounts according to law, then the obligation to be void," &c.

Arthur proceeded to make the collections, and from the commencement of his duty to the 30th of June 1802, was charged with the collection of $30,584.99½. On the settlement of his account in the year 1803, he was in arrear $16,181.15½, and suits were instituted on each of the bonds. The pleadings were the same in both actions. There was a plea of performance, to which the plaintiffs reply, and allege as a breach of the condition, that the defendants have failed to collect and pay over the revenue arising within his district, &c., and are in arrear to the United States, &c., on which issue was joined. Pending the suits, Arthur died; and they were prosecuted to judgment against the sureties only.

The supervisor kept one general account only against the collector. On the trial, the plaintiffs exhibited, on their part, the general account between them and the defendant on which the balance, as before mentioned, is $16,181.15½. They also exhibited the balance appearing to be due, by terminating the account with the period when Arthur gave the second bond, at the time his first commission was revoked, which was $6483.59½.

The defendants, to support the issue on their part, offered the deposition of a witness, who proved that James Morrison, the late supervisor of the revenue, informed him, that Arthur had paid a sufficient sum to discharge *574] *the bond first given, and that what he had paid should be so applied. After reading the deposition, the plaintiffs introduced the supervisor himself to contradict the defendants' witness. In his testimony, he admits,

(*a*) March 16th, 1813. Absent, Todd, Justice.

that the payments made by Arthur, if applied to the first bond, would discharge it; and that he might have frequently told January and others, that the whole of the bond would be paid off, if the payments made by Arthur were appropriated exclusively to its discharge; and that he himself had entertained the opinion, that they ought to be so applied. To repel the testimony of the supervisor, and to support that of their witness, the defendants produced a clerk in the supervisor's office, who proved, "that the defendant, January, several times called at the office of the supervisor, on the subject of his bond, expressed his uneasiness about its remaining out, and his desire to get it up. That the supervisor assured him, that Arthur had paid enough to discharge that bond, and that he might make himself easy; but refused to give up the bond, because he thought that such bonds ought to remain as vouchers, in his office.

The plaintiffs, on this state of the case, moved the court to instruct the jury, that the promise of the supervisor as to the application of the payments in discharge of the bond, was not of itself an appropriation of the payments, unless it was followed by some act of appropriation. The court overruled the motion, and at the instance of the defendants, instructed the jury, that if they believed, that the supervisor had made the election and promise as proven, it was a declaration of his election how the payments made by Arthur should be applied; and that whether a formal entry, in the books of their appropriation, corresponding with that election, were made or not, was immaterial, and that the jury ought to consider the application as made. To the opinion of the court thus given, the plaintiffs excepted, and this court must now decide as to the correctness of the opinion of the court below.

The law, with respect to the application of particular payments, when the debtor owes distinct debts, has long *since been settled. The [*575
debtor has the option, if he thinks fit to exercise it, and may direct the application of any particular payment at the time of making it. If he neglects to make the application, the creditor may make it; if he also neglects to apply the payment, the law will make the application.

In this case, a majority of the court is of opinion, that the rule adopted in ordinary cases is not applicable to a case circumstanced as this is; where the receiver is a public officer, not interested in the event of the suit, and who receives on account of the United States, where the payments are indiscriminately made, and where different sureties, under distinct obligations, are interested. It will be generally admitted, that moneys arising due, and collected subsequently to the execution of the second bond, cannot be applied to the discharge of the first bond, without manifest injury to the surety in the second bond: and *vice versâ*, justice between the different sureties can only be done by reference to the collector's books, and the evidence which they contain may be supported by parol testimony, if any, in the possession of the parties interested. The court is of opinion, that the circuit court erred in the opinion given, and that it be reversed.

Judgment reversed.[1]

---

[1] In 5 Mason 87, there is a review of this case by Judge STORY, in which he says, that the only points upon the record were the admissibility of Hughes' deposition, and the instruction of the court with reference to that deposition. No point was made as to the effect

UNITED STATES *v.* PATTERSON. (*a*)

Public accounts.

A debtor of the United States, who puts evidences of debts due to himself, into the hands of a public officer of the United States, to collect and apply the money, when received, to the credit of such debtor, in account with the United States, is not entitled to such credit, until the money gets into the hands of a public officer of the United States, entitled to receive it.

Its being in the hands of an agent of a person who, at the time when the claims were put into his hands for collection, was a public officer of the United States, entitled to receive debts due to the United States, but whose office became extinct, before the money was received by his agent, is not sufficient to entitle such debtor to a credit in account with the United States therefor.

THIS was also a writ of error to the Circuit Court for the district of Kentucky.

The case was submitted without argument, and DUVALL, J., delivered
*576] the opinion of the court as follows :—*This case has been considered in connection with that against January and Patterson. A suit was instituted on the bond, dated 23d March 1799, against Arthur and Patterson; and pending the suit, Arthur died. The defendant pleaded performance, to which the plaintiffs replied, alleging as a breach of the condition, that the stipulations therein contained had not been performed, and that the defendant was in arrear to the plaintiffs, the sum of $16,181.15½, &c., on which issue was joined.

The evidence, exhibited in the suit against January and Patterson, was produced in this case. On the trial, the defendant took several exceptions, but not having appealed, they are not open to examination.

The plaintiffs also took an exception to the allowance of a credit to the defendant. The supervisor had received the evidences of a number of outstanding debts due to Arthur, which he undertook to collect, and promised to apply the proceeds to Arthur's credit. Among them was the bond of Beelor & Moore, which was sued; at the trial of this suit, it appeared, that the amount of that bond had actually come into the hands of the agent of the person who had been supervisor; but that office being extinct, it was

---

(*a*) March 16th, 1813. Absent, TODD, Justice.

of payments and credits made on a general account, in an account-current between the parties. But the whole cause seems to have proceeded upon the assumption, that but for the special election and promise of the supervisor, the payments made and credited, upon general account, would not have extinguished the antecedent items of debt, so as to have discharged the first bond in which January was surety. The point not having been made, could not intentionally have been decided by the supreme court. The United States are bound by the same rules as to the application of payments, as any other creditor. United States *v.* Wardwell, 5 Mason 82. In the case of official bonds, executed by the principal, at different times, with separate and distinct sets of sureties, the court has settled the law to be, that the responsibility of the separate sets of sureties must have reference to, and be limited by the periods for which they respectively undertake by their contract, and that neither the misfeasance nor nonfeasance of the principal, nor any cause of responsibility occurring within the period for which one set of sureties have undertaken, can be transferred to the period for which alone another set have made themselves answerable. United States *v.* Eckford, 1 How. 250; Jones *v.* United States, 7 Id. 688. And see Boody *v.* United States, 1 W. & M. 150; Myers *v.* United States, 1 McLean 493; Postmaster-General *v.* Norvell, Gilp. 106.