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

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(*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.

contended on the part of the United States, that the payment could not be considered as a payment to government. The court was of a different opinion, and instructed the jury accordingly; to which opinion of the court, an exception was taken, and a writ of error prosecuted.

This court is of opinion, that the circuit court erred in the decision thus made. The reception of the outstanding debts by the supervisor, for the purpose of having suits commenced for the recovery of them, was an accommodation to the defendant, who could not be justly entitled to credit, until the money was in the hands of some public officer authorized to receive it.

Judgment reversed.

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*577] *Livingston *v.* Dorgenois. (*a*)

Error.—Mandamus.

A writ of error does not lie to an order of the court below, granting an indefinite stay of proceedings, upon suggestion of the attorney for the United States, in a case to which the United States are not parties; but the court will award a *mandamus nisi*, in the nature of a *procedendo*.[1]

This was a writ of error to the District Court of the United States for the district of Orleans, in a suit brought in that court, by Edward Livingston against F. I. Le Breton Dorgenois, marshal of the territory of Orleans, according to the forms of the civil law, as established in that territory.

The petition of E. Livingston stated, that one John Gravier, on the 30th of April 1803, was an inhabitant of the province of Louisiana; that he was the owner and possessor of a plantation or parcel of land adjoining, and next above the city of New Orleans, and bounded in front on the river Mississippi, which had been uninterruptedly owned and possessed by himself, and those under whom he claimed, for upwards of eighty years. That the said plantation or parcel of land had then, to wit, on the said 30th day of April, and long before, been greatly increased by the alluvion of the said river, which had always, from the several periods of its increase, been considered, possessed and lawfully held, as parcel of the said tract of land, by the said Gravier and those under whom he held.

That the mayor, aldermen and inhabitants of the city of New Orleans having, under some pretence of title to the said alluvion, or to a servitude therein, committed divers trespasses on the said land, the said John Gravier filed his petition in the superior court of the territory of Orleans, being a court of competent jurisdiction, and from whose judgment there is no appeal, praying for an injunction against the said trespasses, and that he might be quieted in the possession of the said land. And that such proceedings were had in the said court, on the said petition, that it was finally adjudged and decreed, that the said John Gravier should be quieted in his lawful enjoyment of the said alluvion, and that an injunction, before granted, should be made perpetual, which judgment was carried into execution. After which, the petitioner (Livingston) took possession, *under Gravier, of the property in question, which he held as the legal owner [*578

(*a*) February 18th, 1813. Absent, Livingston and Todd, Justices.

[1] See Patterson *v.* Patterson, 27 Penn. St. 40.