

United States v. Barker.

binding contract which precluded the plaintiffs from suing the acceptor at any time.¹

Upon authority, therefore, we are of opinion, that this writ of error cannot be sustained, and that the judgment below was right. Upon principle, we should entertain the same opinion, as we think the whole reasoning upon which the delay of the holder to enforce his rights against the drawer is held to discharge the indorser after notice, is founded upon the notion, that the stipulation for delay suspends the present rights and remedies of the holder. The judgment of the court below is, therefore, affirmed, with costs.

Judgment affirmed.

*559] *UNITED STATES v. PRISCILLA BARKER, Administratrix of ABRAHAM BARKER, deceased.

Discharge of indorser of bill.

Wherever the government of the United States, through its lawfully authorized agents, becomes the holder of a bill of exchange, it is bound to use the same diligence, in order to charge the indorser, as in a transaction between private individuals.²

Where the United States were the holders of certain bills of exchange, and their agent in New York was directed, by a letter from the secretary of the treasury, dated Washington, December 7th, 1814, to give notice of non-acceptance to the drawer and indorsers, residing in New York, and notice was given to the indorser on the 12th of the same month, the mail which left the 8th, having arrived at New York, at 35 minutes past 10 o'clock, A. M., on the 10th: *Held*, that the indorser was discharged, by the negligence of the holders.

So also, where the United States were the holders of other bills, and their agent in New York was directed, by a letter from the secretary of the treasury, dated Washington, May 8th, 1815, to give notice of non-payment to the drawer and indorsers, residing in New York, and notice was given to the indorser on the 12th of the same month, the mail which left Washington on the 8th, having reached New York early on the morning of the 11th: *Held*, that the indorser was discharged, by the negligence of the holders.

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ERROR to the Circuit Court for the Eastern District of Pennsylvania. This was an action of *assumpsit*, brought in the court below, by the United States, against the personal representative of A. Barker, deceased, the indorser of several bills of exchange, drawn in the year 1814, by J. Barker, in New York, on different houses of trade in England. Among the bills, two were protested for non-acceptance, and two for non-acceptance and non-payment.

It appeared in evidence, at the trial, that the agent of the United States treasury, in New York, where the bills were drawn, and where the drawer and indorsers resided, received a letter from the secretary of the treasury, dated Washington, December 7th, 1814, requesting him to notify the *560] drawer and indorsers of the non-acceptance of the first set of bills, and that notice was accordingly given to them on the 12th of December. It was further proved that the mail which left Washington on the 8th of the same month, arrived at New York, at 35 minutes past 10 o'clock, A. M., on the 10th. It was also proved, that the said agent received a letter from the secretary of the treasury, dated at Washington, May 8th, 1815, direct-

¹ And see *Sterling v. Marietta and Susquehanna Trading Co.*, 11 S. & R. 179.

² *United States v. Bank of the Metropolis*, 15 Pet. 377.

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ing him to give notice of the non-payment of the second set of bills of exchange to the drawer and indorsers, and that they were notified on the 12th of the same month. It was further proved, that the mail which left Washington, containing letters of the 8th of May, reached New York early in the morning of the 11th. But no notice of the non-acceptance of this second set of bills was proved.

The learned judges in the court below instructed the jury, that the holders of the bill had not used due diligence. The letter of the 7th of December 1814, must be considered as having been written on that day, and ought to have been put into the post-office, to come by the mail of the 8th, and, if so, it would have reached New-York on the morning of the 10th. That the letter of the 8th of May 1815, should have been put into the post-office, to come by the mail of the 9th, and would have reached New York the morning of the 11th. The earliest notice alleged was on the 12th of May and December, respectively; and it seemed clear, either that the letters were not put into the post-office at Washington, in due time, or that the agent in New York was guilty of negligence in giving notice to the parties, in either of which cases they were discharged.

A verdict and judgment was rendered upon this instruction in the court below, on which the cause was brought, by writ of error, to this court.

February 16th, 1827. The cause was submitted, without argument, by the *Attorney-General*, for the United States; and by *Webster*, for the defendant.

MARSHALL, Ch. J., delivered the opinion of the court.—*That [*561 whatever doubts might be entertained as to the charge of the court below, relating to the transactions in England (which it has not been thought necessary to state), in respect to the protest and transmission of the bills, we think there is none, as to what took place after their arrival at the treasury of the United States. The question was, whether notice of the dishonor of the bills was transmitted to the party, within the time prescribed by the general law in respect to bills of exchange? The court were of opinion, that there was negligence, either at Washington or New York, as to giving such notice; and that the notice actually given was too late to fix him with the responsibility. The letter from the treasury department, giving the notice, was either not sent in due course of mail to New York, or there was negligence at New York in not giving notice there, as early as it should have been given, after the letter arrived at that city. Whether, therefore, the judge erred or not, as to the first part of his charge, in respect to the transmission of the bills from England in a reasonable time, there was no doubt that the United States had no right to recover, on account of the neglect in giving due notice, after the return of the bills. Upon this ground, the judgment of the circuit court was affirmed.

Judgment affirmed.