

Case No. 15,692. UNITED STATES V. MCKEWAN ET AL.
[4 Blatchf. 383.]¹

Circuit Court, S. D. New York.

Oct. 14, 1859.

CUSTOMS DUTIES—BOND GIVES FOR OLD DEBT.

Where, in an action of debt brought by the United States against two defendants, on a bond, it was set up, in defence, that the bond was given for an antecedent debt, consisting of duties due at the custom-house, the payment of which was secured by a bond executed by one of the defendants and another person, that more than twenty years had elapsed, after the giving of the first bond, before the execution of the second, that no demand of payment had been made in the meantime, that the defendants executed the second bond without a knowledge of this defence to the claim, and that they were advised by the agent of the plaintiffs that there was no defence to the demand. *Held*, that this was no defence to the action.

This was an action of debt, upon a bond executed by the defendants [John McKewan and William Hall] to the plaintiffs, December 14th, 1855, in the penalty of \$2,300, conditioned for the payment of \$1,137.15, in several instalments.

Charles H. Hunt Asst U. S. Dist. Atty.

Archibald G. Rogers, for defendants.

NELSON, Circuit Justice. The defence set up in this case is, that the bond was given for an antecedent debt, consisting of duties due at the custom-house, the payment of which was secured by three several bonds, dated in the year 1832 (the month not given), executed by McKewan, one of the defendants, and one William G. Marshall; that more than twenty years had elapsed, after the giving of the first three

UNITED STATES v. McKEWAN et al.

bonds, before the execution of the bond sued on; that no demand of payment had been made in the meantime; that the defendants executed the new bond without a knowledge of this defence to the claim, and in ignorance of their rights; and that they were advised by the agent of the plaintiffs that there was no defence to the demand. The judge at the circuit overruled this defence, and directed a verdict for the plaintiffs, and it requires no argument or authority to show that this ruling was correct. New trial denied.

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]