

Case No. 16,597. UNITED STATES v. UNION NAT. BANK.  
[10 Ben. 408.]<sup>1</sup>

District Court, S. D. New York.

April, 1879.<sup>2</sup>

MONEY PAID UNDER MISTAKE OF FACT—LACHES—UNITED STATES AS PLAINTIFF.

1. A party entitled to recover money, paid under a mistake of fact, is bound to give prompt notice of the discovery of the mistake to the party to whom the money was paid.
2. Where the party to whom money is so paid, sustains damage in the loss of his remedy over against another party, through the negligence of the party to whom he is liable in failing to give notice of the discovery of the mistake, he is thereby discharged from liability.

[Cited in U. S. v. National Park Bank of New York, 6 Fed. 854.]

3. The action being equitable, the United States suing as plaintiff in such action is bound by the same equitable rules as any other plaintiff in such an action and cannot recover, if through its failure to give notice of the discovery of the mistake the defendant has lost his remedy over.
4. In such an action by the United States, where it appeared that the assistant treasurer at New York gave notice of the discovery of the mistake, and demanded payment, but afterwards withdrew the notice and demand, *held*, that assuming that he was the proper officer to give such notice he was the proper person to withdraw it, and the defendant having relied on such withdrawal and thereby lost his remedy over was discharged from liability.

S. Tenney, Asst. U. S. Dist. Atty.

Geo. De Forest Lord, for defendant

CHOATE, District Judge. This is a motion for a new trial for error of law in directing a verdict for the defendant. It was not attempted on the argument to sustain the action, except as an action for money paid under a mistake of fact. Assuming that all the elements of such a cause of action once existed, a question which it is unnecessary now to examine, yet I see no reason why the United States should be exempted from the general rule applicable to any other party who is entitled to maintain such an action, that they shall not, by their delay after the discovery of the mistake, lead the party liable to them into further loss, as, for instance, the loss of a remedy over against another party. This is an equitable action and the plaintiff can only recover on showing that it is equitably entitled to the money. The duty of promptly notifying the defendant on discovery of the mistake, is conceded by the plaintiffs counsel; but it is claimed that the notice from the sub-treasurer was a performance of this duty. The discovery by the United States of the alleged mistake before that notice was given cannot, I think, be denied. Assuming that the sub-treasurer was the proper person to give the notice, and demand payment of the defendant, he was also the proper party to withdraw that notice, and I think it is clear that what took place after the notice was given, was equivalent to a withdrawal of the notice, on which the bank had a right to rely, and did rely, until it lost all remedy over against

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Polhemus and Jackson; and after that, only, was the claim renewed by commencement of this action. I think this is a claim in respect to which laches may be imputed to the United States, and that on the-ground of laches and entire want of equity in the claim on the undisputed facts, the direction of a verdict for the defendant was right. See U. S. v. Cooke [Case No. 14,855].

Motion denied.

{The judgment was affirmed in the circuit court upon a writ of error. Case unreported.}

<sup>1</sup> {Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict Esq., and here reprinted by permission.}

<sup>2</sup> {Affirmed by circuit court; case unreported.}