

bond do not render the sureties liable for the money; third, that the negligence of the treasury department was of such a character as to release the sureties.

So far as the first defense is concerned, it is sufficient to say the statute is plain, and susceptible of but one interpretation, and under its provisions and the stipulated facts there can be no question that Foster was overpaid the full amount sued for.

Does the bond, by its terms, hold the defendants liable for this money? Their undertaking was that Foster should "truly and faithfully discharge the duties of his said office according to law, and truly and faithfully pay over and deliver up all moneys, etc., which shall come into his hands." It would be a narrow and unreasonable interpretation of this instrument to say that it held the bondsmen liable for moneys that came into Foster's hands from other sources, but that it did not hold them liable for moneys that the government might overpay him for salary. The money having been received by Foster in excess of the salary then justly due him, it was his duty to repay the excess to the government. The performance of that duty, and the accounting for this money, were just as fully secured to the United States by the terms of the bond as was the discharge of any duty pertaining to his office, or the payment of any other moneys that might come into his hands as such officer.

Neither does the negligence of the treasury department release the sureties. It is true, as urged, that the officers of the government might have refused to pay the overdraft in the first instance, and it was their duty to have deducted the overpayment from the subsequent drafts for salary. If the obligee in the bond were any other than the government, this defense might avail in behalf of the sureties. But the neglect of the United States officials does not excuse Foster's wrong, in the first instance, in drawing for more money than was due him, or his subsequent failure to refund the same. All the property of the United States is held in trust for the people, and it is now well settled upon grounds of public policy that the public interests shall not be prejudiced by the neglect of the officers or agents to whose care they are confided. *U. S. v. Nashville, C. & St. L. Ry. Co.*, 118 U. S. 120, 6 Sup. Ct. Rep. 1006; *Van Brocklin v. State of Tennessee*, 117 U. S. 151, 6 Sup. Ct. Rep. 670; *U. S. v. Insley*, 130 U. S. 263, 9 Sup. Ct. Rep. 485.

The judgment of the circuit court is reversed, with instructions to enter judgment for plaintiff, and for costs.

UNITED STATES v. ADAMS et al.

(Circuit Court, D. Nevada. November 7, 1892.)

UNITED STATES MARSHAL—BOND—LIABILITY OF SURETIES—LACHES.

The failure of the United States to present their claim against the estate of a deceased United States marshal constitutes no defense to an action against the sureties on his official bond. Laches can never be imputed to the government in any case brought to enforce a public right.

At Law. Motion to strike out averments in answer. Granted.

J. W. Whitcher, U. S. Atty.

Clayton Belknap, for defendants.

HAWLEY, District Judge. This is an action against the sureties on the official bond of Thomas E. Kelley, as United States marshal for this district, to recover the sum of \$2,339, alleged to be due the plaintiff. The defendants, in their answer, among other things, allege that at the time of the death of Kelley, in July, 1888, his estate was valued at \$1,483.14; that this amount was insufficient to pay his debts; that during the time the estate was in process of settlement the plaintiff was notified that said estate was being settled, and plaintiff was requested to present any claim which it might have against said Kelley; that the plaintiff failed and neglected to present any claim to the administrator of the estate; that by reason of the carelessness and negligence of the plaintiff the preference and priority of payment of the United States (Rev. St. U. S. § 3466) was wholly lost, and the entire estate was distributed to other creditors, and defendants were prevented from exercising the right of subrogation. Plaintiff moves to strike out these averments upon the ground that the facts therein stated, if true, constitute no defense to this action. Defendants, in opposition to the motion, rely upon the doctrine announced in *U. S. v. Flint*, 4 Sawy. 43, and *U. S. v. Beebe*, 17 Fed. Rep. 37, to the effect that when the United States voluntarily appears in a court of justice it at the same time voluntarily submits to the law, and places itself upon an equality with other litigants. But this statement is always qualified by the rule that neither the statute of limitations nor laches will bar the government of the United States as to any claim for relief in a purely governmental matter. *U. S. v. McElroy*, 25 Fed. Rep. 804; *U. S. v. Southern Colorado Coal & Town Co.*, 18 Fed. Rep. 273. "The United States are not bound by any statute of limitations, nor barred by laches of their officers in a suit brought by them as sovereign, to enforce a public right, or to assert a public interest; but where they are formal parties to the suit, and the real remedy sought in their name is the enforcement of a private right for the benefit of a private party, and no interest of the United States is involved, a court of equity will not be restrained from administering the equities between the real parties by any exemption of the government, designed for the protection of the rights of the United States alone." *U. S. v. Beebe*, 127 U. S. 338, 8 Sup. Ct. Rep. 1083.

The general rule that laches is not imputable to the government is essential to the preservation of the interests and prosperity of the public. It is founded upon public policy. Any other doctrine would be ruinous in the extreme. The government can only transact its business by and through its officers and agents, and its fiscal operations are so various, and its agencies and officers so numerous and scattered, that the utmost vigilance would not save the public from the most serious losses if the doctrine of laches could be applied to its transactions. The supreme court of the United

States has uniformly and repeatedly declared that in a case like the present one laches cannot be set up against the government. *U. S. v. Kirkpatrick*, 9 Wheat. 735; *U. S. v. Van Zandt*, 11 Wheat. 190; *U. S. v. Nicholl*, 12 Wheat. 509; *Dox v. Postmaster General*, 1 Pet. 318; *Gibson v. Chouteau*, 13 Wall. 99; *Gausson v. U. S.*, 97 U. S. 584; *U. S. v. Thompson*, 98 U. S. 489; *Steele v. U. S.*, 113 U. S. 129, 5 Sup. Ct. Rep. 396; *U. S. v. Nashville, C. & St. L. Ry. Co.*, 118 U. S. 125, 6 Sup. Ct. Rep. 1006; *U. S. v. Insley*, 130 U. S. 263, 9 Sup. Ct. Rep. 485. The motion to strike out is granted.

MEYER v. ST. LOUIS, I. M. & S. RY. CO. et al.

(Circuit Court of Appeals, Eighth Circuit. January 27, 1893.)

No. 153.

1. CARRIERS—INSANE PASSENGER—INJURY TO FELLOW PASSENGER.

On trial of an action against a railroad company and a sleeping-car company to recover for the death of plaintiff's intestate, there was proof that deceased, a passenger, while seated in a sleeping car, was approached by an insane person, who made a remark, overheard by the sleeping-car conductor, that "It's a sad thing that they are trying to kill me, and I am a defenseless man," and that shortly afterwards he shot deceased, thereby causing death; that such insane person was recognized by the conductor and porters of the sleeping car as having been transported over the line 19 days before, at which time he was in chains, violent, in charge of police officers, laboring under a delusion of pursuit by Jews, and expressed regret at having no gun to protect himself. At the time of the shooting he was unattended, and prior thereto had frequently stated to a number of persons that he was pursued by Jews who were trying to kill him, and that he was defenseless. The proof further showed that he had a dull, heavy, and sullen look, which might indicate insanity, and had applied to the conductor of the train for protection. *Held*, that an instruction that the defendant railroad company had no right to refuse transportation "on suspicion that such person was dangerous to others from insanity, or any other cause, if such person, at the time of offering to become a passenger, was apparently harmless, and conducted himself in no way different from other passengers applying for passage," was reversible error, as the jury might fairly infer therefrom that defendant was bound to receive an apparently harmless passenger, though it knew that he was insane in fact, or had grounds of suspicion that by reason thereof he might be dangerous.

2. SAME—DUTY OF CARRIER—INSTRUCTIONS.

In such a case the degree of care imposed upon the carrier is the highest, and an instruction that the railroad company was bound to use the utmost care and diligence that prudent and careful men should have exercised is erroneous, in comparing the carrier's legal obligation with any degree of care required of prudent men.

3. SAME.

In such a case a judgment in defendant's favor should be reversed, where, after proper request, the court failed to properly instruct the jury as to the duty and obligation of defendant railway company, or to affirmatively instruct the jury that if the company became chargeable, through its employes, with knowledge of the condition of the insane passenger, it had the right, and it might be its duty, to place him under guard or restraint, or remove him from the cars, if such action was necessary for the protection of the other passengers.

4. SAME.

An instruction that the carrier was not obliged to provide guards or means of restraint or confinement, in anticipation of passengers becoming suddenly insane, or that, if the event occurred after the passenger had begun his journey as an apparently sane person, it would be the duty of