

**Levy Vs. Wallis**

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**Court :** US Supreme Court

**Decided On :** 1799

**Appeal No. :** 4 U.S. 167

**Appellant :** Levy

**Respondent :** Wallis

**Judgement :**

LEVY v. WALLIS - 4 U.S. 167 (1799)

U.S. Supreme Court LEVY v. WALLIS, 4 U.S. 167 (1799)

4 U.S. 167 (Dall.)

Levy

v.

Wallis.

Supreme Court of Pennsylvania.

December Term, 1799

IN this case a testatum fi. fa. issued on the 27th of December 1798, returnable to March term 1799, which was levied on twelve horses. A vendition exponas issued to September term 1799; and an alias vend. exp. issued to December term 1799. On the last writ, the sheriff returned, that he had sold the horses to the amount of

1021 dollars; that Thomas Hamilton had bought seven of the horses for 630 dollars; but that, both before and after the sale, he had given written notice, that he claimed the money arising on the sales, by virtue of a levy previously made for him upon an execution, by the former sheriff; and that, therefore, he claimed to retain the amount of his purchases, in part satisfaction of his execution: and the remaining money of the sales aforesaid, the said sheriff has ready, &c.;

From the records, it appeared, that Hamilton had issued a *fi. fa.* against Wallis on the 25th of January, returnable to March term 1798, which was levied (*inter alia*) upon seven horses; and that on the 11th of December 1798, a *vend. exp.* issued, but was never prosecuted.

It, also, appeared, that in the case of Perit, executor, *v.* Wallis, a *testatum fi. fa.* had issued to March term 1797, which was levied (*inter alia*) upon seven horses; that a *vend. exp.* issued; that an *alias vend. exp.* issued to September term 1798, on which the sales were put off at the risk of the plaintiff; and that a *pluries vend. exp.* issued to September term 1799.

The general question was, whether the prior execution creditors, Hamilton and Perit, had not lost their liens, by allowing the property levied upon, to remain in the hands of the defendant?

THE COURT.

The COURT declared, that it had been repeatedly determined, and was become the settled law of Pennsylvania, that the act of

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suffering goods to remain in the hands of the defendant, after they were levied upon, furnished no presumption of fraud here, as it did in England; and that this departure from the English rule arose from sentiments of humanity, and the peculiar necessities of the country. In the interior of the state, particularly, it was the universal practice not to remove the goods after a levy. If, however, the intention of leaving them with the defendant was fraudulent, a subsequent

execution would be preferred, in Pennsylvania, as well as in England. In the present instance, there is no proof of fraud; the first levies are, of course, good; and the sheriff must pay the money arising from the sales accordingly. [ [Footnote 1](#) ] Footnotes

[Footnote 1](#) In Chancellor v. Philips et al. September term 1800, and several other cases, the law has been stated in a similar manner. But in the case of the United States v. Cunningham, in the Circuit Court, before Judges TILGHMAN, BASSET, and GRIFFITH, the same subject was fully discussed; and the Court adhered to the common law rule, notwithstanding the decisions in Pennsylvania.

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