

**Levy Court of Washington County Vs. Ringgold**

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**Court :** US Supreme Court

**Decided On :** 1831

**Appeal No. :** 30 U.S. 451

**Appellant :** Levy Court of Washington County

**Respondent :** Ringgold

**Judgement :**

Levy Court of Washington County v. Ringgold - 30 U.S. 451 (1831)

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**Levy Court of Washington County v. Ringgold**

**30 U.S. (5 Pet.) 451**

*APPEAL FROM THE CIRCUIT COURT*

*OF THE COUNTY OF WASHINGTON*

## **SYLLABUS**

The "act concerning the District of Columbia," passed 3 March, 1801, does not require the marshal to apply to the district attorney for executions in all cases of

finer levied by the circuit court and make him liable for neglecting to do so if no execution issued.

The Levy court of Washington County is not entitled to one-half of all the fines, penalties, and forfeitures imposed by the circuit court in cases at common law and under the acts of Congress, as well as the acts of assembly of Maryland adopted by Congress as the law of the District of Columbia.

The district attorney is specially charged with the prosecution of all delinquents for crimes and offenses, and these duties do not end with the judgment or order of the court. He is bound to provide the marshal with all necessary process to carry into execution the judgment of the court. This falls within his general superintending authority over the prosecution.

Interest is not chargeable on money collected by the marshal of the District of Columbia for fines due to the Levy Court, the money having been actually expended by the marshal in repairs and improvements on the jail, under the opinions of the Comptroller and Auditor of the Treasury Department that these expenditures were properly chargeable upon this fund, although that opinion may not be well founded.

MR. JUSTICE THOMPSON delivered the opinion of the Court.

This was a summary proceeding in the Circuit Court of the District of Columbia on the application of the Levy Court of Washington County against the marshal of the district to recover their proportion of the fines, forfeitures, and penalties collected or which it is alleged ought to have been collected by the marshal and paid over to the levy court, under the provisions of the second section of the act of Congress, supplementary to the act entitled, "an act concerning the District of Columbia," passed 3 March, 1801. Burch's Dig. 233.

The account containing the claim on the part of the plaintiffs

was referred to the auditor to examine and receive testimony thereon and report to the court. By his first report, a balance of three \$364.46 was found in favor of the marshal. Exceptions were taken to this report, and the account was again referred to the auditor with directions to disallow \$814.95, which in the first report had been allowed for the repairs of the jail, and upon the second report a balance of \$613.31 was found against the marshal.

To this report exceptions were taken by the plaintiffs but disallowed by the court, and judgment rendered for the balance reported by the auditor. Upon which a writ of error has been brought to this Court, and the exceptions taken have been presented under the following heads:

1. Does not the law require the marshal to apply to the district attorney for executions in all cases of fines levied by the circuit court, and make him liable for neglecting to do so if no execution be issued?
2. Is not the levy court entitled to one-half of all the fines, penalties, and forfeitures imposed by the circuit court in cases at common law and under the acts of Congress, as well as the acts of the assembly of Maryland, adopted as the law of this District by Congress?
3. Is the marshal liable to pay interest on the money found to be due from him to the levy court, and which he has or ought to have collected and paid over?

The decisions of these questions must depend entirely upon the acts of Congress and the laws of Maryland which have been adopted as the law of Washington County in this District.

The act of Congress of 1801, before referred to, provides that the marshal shall have the same power regarding the collection of the fines, and be subject to the same rules and regulations as to the payment thereof, as the sheriffs of Maryland are subject to in relation to the same.

The first point turns upon the question whether it was the marshal's duty to apply to the district attorney for executions, and his duty to issue them on such

application.

The second section of the Maryland act of 1795, ch. 74, declares, that it shall and may be lawful for the attorney general

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of this state, or either of his deputies, *ex officio*, and they are hereby directed and required, on the application of the sheriffs of the respective counties in this state, to order a writ or writs of *capias ad satisfaciendum* to be issued for the recovery of all fines, penalties, and forfeitures, which have or may hereafter be imposed by any court of record in this state, together with the costs accruing thereon. And by the seventh section, the sheriffs are made answerable for all fines, penalties, and forfeitures imposed by the judgment of any court where no writ of execution shall issue for the recovery of such fine, &c.;, unless the sheriff shall make it appear to the satisfaction of the treasurer that the party on whom such fine, &c.;, was imposed was insolvent and unable to pay the same.

This latter section may well admit of the construction that it applies only to cases where the party is committed by order of the court, without an execution. But if construed in connection with the second section, it will still leave the question open whether the district attorney was bound on the application of the marshal to issue a *capias ad satisfaciendum* in all cases, and if he was not, it can hardly be pretended that the marshal is made responsible for not collecting the fine. If this question rested entirely upon the Maryland laws before referred to, there would be strong grounds for the conclusion that it was the duty of the marshal to apply to the district attorney to issue the executions, and that he was bound to issue them accordingly. But the district attorney here derives his authority from the acts of Congress, and not from the laws of Maryland, and his rights and duties are to be collected from those acts, and although the attorney general in Maryland might have been bound to issue executions on the application of the sheriff, it does not follow that the district attorney is alike subject to the orders of the marshal in this respect. It becomes necessary, therefore, to inquire whether the district attorney is bound to comply with the request of the marshal, if made, and to issue executions

in all cases without exercising his own judgment on the subject. The Act of Congress of 27 February, 1801, Burch 230, provides for the appointment of a marshal and a district attorney. The former is to have within this District the same powers and perform the same duties as is by law directed and provided in the case of

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marshals of the United States, and the latter is to perform all the duties required of the district attorneys of the United States, and by the 35th section of the Judiciary Act of 1789, 2 L.U.S. 71, it is enacted that there shall be appointed in each district a meet person, learned in the law, to act as attorney for the United States in such district, whose duty it shall be to prosecute in such district all delinquents for crimes and offenses cognizable under the authority of the United States, &c.;

The marshal of this district is put on the same footing with respect to his duties and powers as other marshals of the United States. They are considered as mere ministerial officers, to execute process when put into their hands, and not made the judges whether such process shall be issued. And it would require the most clear and explicit provision to clothe them with such power, so much out of the ordinary and appropriate powers and duties of the office. But to give the marshal authority to demand an execution in all cases is incompatible with the powers given to the district attorney. He is specially charged with the prosecution of all delinquents for crimes and offenses, and those duties do not end with the judgment or order of the court. He is bound to provide the marshal with all necessary process to carry into execution the judgment of the court. This falls within his general superintending authority over the prosecution. And whether an execution shall be issued or not is more appropriately confided to the district attorney than it would be to the marshal.

We are accordingly of opinion upon the first point that the law does not require the marshal to apply to the district attorney for executions, and that he is not liable for omitting to do so.

The next question will depend upon the construction to be given to the second section of the Act of Congress of 3 March, 1801, Burch 233, which declares that all fines, penalties, and forfeitures accruing under the laws of the States of Maryland and Virginia, which by adoption have become the laws of this district, shall be recovered, with costs, by indictment, or information in the name of the United States or by action of debt in the name of the United States and of the informer, one-half of which fine shall accrue to the United States and the other half to the informer, and the said fine

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shall be collected by or paid to the marshal and one-half thereof shall be by him paid over to the board of commissioners, &c.; (the levy court), and the other half to the informer.

There is certainly some obscurity in the language here used, and the construction is not entirely free from difficulty. And in this view of the law various conjectures have been suggested with respect to the intention of the legislature. It has been said that no good reason can be assigned why Congress should have made any discrimination between penalties and forfeitures affixed by statute to offenses and discretionary fines imposed by the court in cases at common law. It is not perceived by the Court that any good reason does exist for such discrimination, but the question is whether the act of Congress has made such discrimination. And although the intention of the legislature may be taken into view by the court in the construction of a statute where the language is so obscure and doubtful as to admit of different interpretations, yet we do not think the act in question falls within this rule.

The inquiry is what denomination of fines, penalties, and forfeitures is referred to in this act. It is more a matter of description than anything else, and is to be ascertained only by the act itself. They must be fines, penalties, and forfeitures accruing under the laws of Maryland which, by adoption, have become the laws of this district, and which shall be recovered with costs. This is language appropriate to the prosecution of a suit or action for some fixed and definite penalty, but is

inapplicable to mere discretionary fines, which may be imposed by the court or not, at its pleasure. But this is rendered more clear by the direction as to the mode and form in which such fines, penalties, and forfeitures are to be recovered. It is to be by indictment or by information, or by action of debt in the name of the United States and of the informer. The fine, forfeiture, or penalty must be of such description that it may be recovered in either of these modes. If by indictment or information, it must be in the name of the United States; if by action of debt, it is a *qui tam* action in the name of the United States and the informer. And the disposition of the money, when recovered, would seem to leave no reasonable doubt on this question. One half

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is directed to be paid by the marshal to the levy court and the other half to the informer, and this distribution applies as well to that which is recovered by indictment or information as to that which is recovered by action of debt. These provisions are entirely inapplicable to cases where there is no informer who is to take one-half. Those discretionary fines imposed by the court by way of punishment for common law offenses cannot fall within the class of fines designated in the statute, for in such cases there is no informer. In case of a fine imposed for an assault and battery, for instance, who is the informer? The law knows of no such character, and no distribution of the fine could be made as required by the statute.

There was no error, therefore, in the direction of the court upon this point.

3. The claim for interest, we think, was properly disallowed. It appears from the auditor's report that the money was actually expended by the marshal in repairs and improvements on the jail, and that, too, under the opinion of the Comptroller and Auditor of the Treasury Department that these expenditures were properly chargeable upon this fund. And although that opinion may not be well founded, it would be unreasonable to charge the marshal with interest, the money not having remained in his hands or been applied to his own use, and the appropriation of it, having been made under the sanction of the Treasury Department, ought to

exonerate him from any charge of negligence or intentional misapplication of the money.

*The judgment of the circuit court is accordingly affirmed with costs.*

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington, and was argued by counsel, on consideration whereof it is considered, ordered, and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.

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