

United States Vs. Ringgold

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Court : US Supreme Court

Decided On : 1834

Appeal No. : 33 U.S. 150

Appellant : United States

Respondent : Ringgold

Judgement :

United States v. Ringgold - 33 U.S. 150 (1834)

U.S. Supreme Court United States v. Ringgold, 33 U.S. 8 Pet. 150 150 (1834)

United States v. Ringgold

33 U.S. (8 Pet.) 150

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR

THE COUNTY OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

On the opening of the record for the argument of this case, it was found that the sum in controversy was less than the amount which, according to the act of Congress, authorizes a writ of error except on a special allocatur, from the Circuit

Court of *the District of Columbia, to this Court. The provisions of the law permit writs of error to be sued out without such allocatur, when the sum in controversy amounts to one thousand dollars and upwards.*

On the application of counsel stating the questions in the case were of great public importance and were required to be determined in order to the final settlement of other accounts in which the same principles were involved, the Court gave the special allocatur.

The Marshal of the District of Columbia, upon the settlement of his accounts at the Treasury, claimed an allowance and credit by the United States for the sum of \$1,111.02, being the amount of his poundage fees on a *capias ad satisfaciendum* against John Gates at the suit of the United States, and upon which Gates was arrested by the defendant, as marshal, and committed to jail, and afterwards discharged by order of the United States.

Admitting the defendant in an execution to be liable for poundage if the plaintiff releases or discharges him and thereby deprives the marshal of all recourse to the defendant, there can be no doubt that the plaintiff would thereby make himself responsible for the poundage.

By the statutes of Maryland relative to poundage fees, in force in the County of Washington, in the District of Columbia, the marshal is entitled to poundage on an execution executed, and they fix the rate of allowance; those statutes do not designate which of the parties shall pay the poundage.

It is undoubtedly a general rule that no court can give a direct judgment against the United States for costs in a suit to which they are a party, either on behalf of any suitor or any officer of the government. But it by no means follows from this that they are not liable for their own costs. No direct suit can be maintained against the United States. But when an action is brought by the United States to recover money in the hands of a party who has a legal claim against them for costs, it would be a very rigid principle to deny to him the right of setting up such claim in a court of justice, and turn him round to an

application to Congress. If the right of the party is fixed by the existing law, there can be no necessity for an application to Congress except for the purpose of remedy. And no such necessity can exist when this right can properly be set up by way of defense to a suit by the United States.

The discharge in this case is absolute and unconditional, and the marshal had no authority to hold the defendant in custody afterwards. Admitting Gates to have been liable for these poundage fees, the marshal's power or right to compel payment from him was taken away by authority of the United States, the

plaintiff in the suit. And the right of the marshal to claim his poundage fees from them is thereby clearly established.

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This was an action of assumpsit instituted by the United States in the circuit court to recover the sum of \$345, money of the plaintiffs, alleged to have been received by the defendant as Marshal of the District of Columbia. The defendant pleaded *nonassumpsit*, and issue was joined thereon. The counsel for the plaintiffs and defendant submitted the following statement, subject to the opinion of the court on the law and facts.

This is an action of assumpsit, brought to recover the sum of \$345, money of the plaintiffs which came to the hands of the defendant as marshal of the District of Columbia. Upon the settlement of the defendant's accounts as marshal with the Treasury, he claimed an allowance and credit for the sum of \$1,111.02 (see account marked A), being the amount of his poundage fees on a *capias ad satisfaciendum* against John Gates at the suit of the United States, and upon which Gates was arrested by the defendant as marshal and committed to jail, and afterwards discharged by order of the President of the United States. (See statement marked B.) It is agreed that this claim was presented to the accounting officers of the Treasury before the institution of this suit, and disallowed.

Account A

United States, Dr. June term, 1819

To cepi ca. sa. v. John Gates; released from jail by
order of the President of the United States50

Writ and return14

Poundage fees on first \$26.67, at 7 1/2 percent . . . 2.00

Ditto on residue, \$36,946 at 3 percent. 1,108.38

\$1,111.02

T. RINGGOLD, M.D.C.

Statement B

"District of Columbia, County of Washington, Circuit Court, December term 1818.
United States v. John Gates, Jr. January 5, 1819. Judgment for sixty-five thousand
dollars,

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current money, damages, to be released on payment of \$63,597.73 or such other
sum as may hereafter be certified by the accounting officers of the Treasury --
costs \$11.82. Upon which judgment execution (*ca. sa*) was issued to June term,
1819, and returned by the marshal with the following endorsements thereon: "

" *Certificate of second auditor of amount due* "

"Treasury Department, Second Auditor's Office, 27 March 1819. I certify, that on
settlement of the account of John Gates, Jr., late paymaster of the United States
light artillery, on 29 October, 1818, a balance of \$36,960 was found due by him to
the United States, which said balance is now standing against him on the books at
this office."

"WILLIAM LEE, 2d Auditor"

" *Return of marshal* "

"Cepi, released by order of the President of the United States, herewith returned."

"T. RINGGOLD, Marshal"

" *President's order of discharge* "

"To the Marshal of the District of Columbia. Whereas John Gates, Jr., of the County of Albany in the District of New York, is confined and held in custody in the prison aforesaid in pursuance of a certain judgment and execution obtained at the suit of the United States, and whereas it appears to my satisfaction that the said John Gates, Jr., is unable to pay the said debt for which he is imprisoned, now therefore, by virtue of the power and authority vested in the President of the United States by an Act of Congress passed the 3 March, 1817, entitled 'an act supplementary to an act for the relief of persons imprisoned for debts due the United States,' I, James Monroe, President of the United States, do hereby authorize you to discharge from your custody out of the prison aforesaid the body of the said John Gates, Jr.."

"Given under my hand in the City of Washington this 5 March, 1819, and forty-third year of the independence of the United States."

"JAMES MONROE"

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The circuit court gave judgment in favor of the defendant, and the United States prosecuted this writ of error.

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

The United States brought a suit against the defendant in the Circuit Court for the County of Washington in the District of Columbia, and upon the trial of the cause, the following statement of facts was, by the agreement of the parties, submitted to the court for its opinion of the law thereupon.

"This is an action of assumpsit brought to recover the sum of \$345, money of the plaintiffs, which came to the hands of the defendant as Marshal of the District of Columbia. Upon the settlement of the defendant's accounts as marshal with the Treasury, he claimed an allowance and credit for the sum of \$1,111.02, being the amount of his poundage fees on a *capias ad satisfaciendum* against John Gates at the suit of the United States, and upon which Gates was arrested by the defendant as marshal and committed to jail and afterwards discharged by order of the United States. It is agreed that this claim was presented to the accounting officers of the Treasury before the institution of this suit and disallowed."

Upon this statement of facts the circuit court gave judgment for the defendant.

The matter in dispute, in this case, being under the value of \$1,000, a writ of error has been specially allowed according to the provisions of the Act of Congress of April 2, 1816 (Davis' Col. 305), and the cause comes here for revision.

Upon the argument here it has been contended by the Attorney General on the part of the United States:

1. That by the laws of the State of Maryland, to which the acts of Congress refer, the defendant, and not the plaintiff, is liable to the sheriff, or marshal, for his poundage on the service of a *capias ad satisfaciendum*.
2. That whatever may be the rule in respect to individuals, the United States, under the general terms employed in the acts of Congress and of the State of Maryland, is not liable to the officer.

That the defendant is legally entitled to the fees claimed by him as poundage upon the execution served upon Gates cannot be denied.

By the Act of Congress of 27 February, 1801, Davis' Col. 125, sec. 9,

it is declared that the marshal shall be entitled to receive for his services the same fees, perquisites, and emoluments which are by law allowed to the Marshal of the United States for the District of Maryland.

And by the Act of Congress of 3 March, 1807, Davis' Col. 176, provision is made for certain specified services by the marshal -- not, however, including poundage fees, but containing this general provision

"That for such services as are not enumerated in this or some other act of Congress, the marshal shall receive, for services performed in the County of Washington, the like fees and compensation as by the laws of Maryland in force on the first Monday in December, 1800, were allowed to a sheriff of a county of Maryland for the like services."

By the Maryland law of 1779, ch. 25, sec. 5, the sheriff, on the service of any execution for money or tobacco, shall charge and receive on the same at the rate of ten percentum for the first five pounds and at the rate of five percentum for the residue, and no sheriff shall be chargeable for any action of escape for more than the sum of money really due or endorsed to be received on the execution in discharge thereof.

If any doubt could exist whether an execution against the body was included or intended to be included under the general terms "any execution for money or tobacco," that doubt is removed by the provision in relation to escapes, which can apply only to cases where the party was held under an execution against the body.

This provision as to poundage is modified by a subsequent Act of 1790, ch. 59, sec. 2, which declares that instead of the poundage fees to the sheriff by the act of 1779, he be allowed only at the rate of seven and a half percentum for the first ten pounds, and at the rate of three percentum for the residue, and this is the rate at which the marshal has charged his poundage in the present case.

Although the right of the marshal to poundage on a *capias ad satisfaciendum*, is clearly established by these laws, yet they are silent with respect to the party who is liable to him for the payment thereof.

In the case of *Fisher v. Beatty*, 3 Har. & McHen. 148, in the Court of Appeals of Maryland, the question was made whether on an execution the defendant is liable to the sheriff

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for his fees, and the court decided that he was not. The grounds upon which that decision rested are not stated, and in two other cases in the same court, *Stewart v. Dorsey*, 3 Har. & McHen. 401, and *Madock v. Cranch*, 4 Har. & McHen. 343, the same question arose, but accompanied with circumstances that did not call for a direct decision upon the point, though in the latter case the court said the fees must be paid by the person who issues the attachment. From these cases it would seem reasonable to conclude that in the courts in Maryland it is held that the plaintiff in the execution, and not the defendant, is liable to the sheriff for his poundage.

If there is no statute making the defendant responsible for such poundage, it follows as matter of course that it must be paid by the plaintiff, and if the defendant is liable and cannot pay, the plaintiff will be responsible. By the common law, costs are not recoverable against the opposite party, and he who requires the service to be performed must pay all legal charges for such service. It may not, however, be amiss to observe that although, from the cases referred to in the Court of Appeals in Maryland, it is fairly to be inferred that according to the construction there given to the statutes of that state on this subject, the plaintiff, and not the defendant, is liable to the sheriff for the poundage fees on a *capias ad satisfaciendum*, yet a contrary conclusion may well be drawn, if not necessarily implied, in the provision contained in the fourth section of the Act of 1779, ch. 25, which declares that where any writ of *capias ad satisfaciendum* shall issue, poundage shall in no case be demanded or taken upon execution of such writ or upon charging any person in execution by virtue of such writ for any greater sum than the real debt

bona fide due and claimed by the plaintiff amounts to, which sum the clerk or the plaintiff, his agent or attorney, shall and are hereby obliged to make and specify on the back of such writ, and no sheriff shall be obliged to execute such writ before such endorsement, and that the defendant in the execution is liable for such poundage, is strongly fortified by the recital in this section:

"Whereas it often happens that small sums only remain due upon judgments given for great sums and penalties, and nevertheless, in these cases, upon executing of writs of *capias ad satisfaciendum*, the sheriff demands and takes for his fee poundage for

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the whole money for which such judgments are entered, for remedy whereof, be it enacted,"

&c.;

But it is not necessary in the present case to decide whether in any and in what cases the defendant in the execution would be liable to the marshal for his poundage fees. For, admitting the defendant to be liable, if the plaintiff releases or discharges him, and thereby deprives the marshal of all recourse to the defendant, there can be no doubt that the plaintiff would thereby make himself responsible for the poundage.

2. The next inquiry is whether the United States in this respect stands upon a different footing than private parties. It is said the United States is not included in any general statute, but that express provision must be made or the statute cannot apply to them. But a sufficient answer to this is that the statutes of Maryland do not, in terms, apply to individuals or private parties, or designate which of the parties is liable for the marshal's poundage. They only settle that the marshal is entitled to poundage, and fix the rate of allowance. It is undoubtedly a general rule that no court can give a direct judgment against the United States for costs in a suit to which they are a party, either on behalf of any suitor or any officer of the government. [25 U. S. 12](#) Wheat. 550, 6 Cond. 629. But it by no means follows

from this that they are not liable for their own costs. No direct suit can be maintained against the United States. But when an action is brought by the United States to recover money in the hands of a party who has a legal claim against them, it would be a very rigid principle to deny to him the right of setting up such claim in a court of justice and turn him round to an application to Congress. If the right of the party is fixed by the existing law, there can be no necessity for an application to Congress except for the purpose of remedy. And no such necessity can exist when this right can properly be set up by way of defense to a suit by the United States.

This rule is fully recognized by this Court in the case of [United States v. Macdaniel](#), 7 Pet. 16. That was, like this, an action brought to recover a balance, certified at the Treasury, against the defendant, and he set up by way of defense a claim which had been rejected at the Treasury for services as agent for the payment of the navy pension fund, and to which claim this

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Court thought him equitably entitled. It is there said by the Court that this action is for a sum of money which happens to be in the hands of the defendant, and the question is whether he shall be required to surrender it to the government and then petition Congress on the subject. The government seeks to recover money from the defendant to which he is equitably entitled for services rendered. This Court cannot see any right, either legal or equitable, in the government to the money for the recovery of which this action is brought.

If anything more could be wanted to show how entirely unsupported the present suit is, it will be found in the discharge given by the President of the United States of Gates, who was held in custody by the marshal under the execution upon which the poundage is now claimed.

This discharge, directed to the marshal, after reciting that Gates had complied with the requisites of the Act of 3 March, 1817, authorized him to discharge the said Gates from his custody and out of the prison.

This law, 6 L.U.S. 247, gives to the President full power to order such discharge upon such terms and conditions as he may think proper, and the party shall not be imprisoned again for the same debt.

The discharge in this case is absolute and unconditional, and the marshal had no authority to hold him in custody afterwards. So that, admitting Gates to have been liable for these poundage fees, the marshal's power or right to compel payment from him was taken away by authority of the United States, the plaintiff in the suit. And the right of the marshal to claim his poundage fees from them is thereby clearly established.

The judgment of the circuit court is accordingly

Affirmed.

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 ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed.

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