

PREVOST v. GORRELL.

[25 Pittsb. Leg. J. 125; 5 Reporter, 617; 12 West. Jur. 372; 6 Am. Law Rec. 744; 7 Am. Law Rec. 239; 5 Wkly. Notes Cas. 152; 13 Phila. 468; 35 Leg. Int. 147; 3 Cin. Law Bul. 212; 10 Chi. Leg. News, 229; 2 Month. Jur 40.]

Circuit Court, E. D. Pennsylvania. Oct. 13, 1877.

PRACTICE—EXECUTION—REV. ST. U. S. § 985.

Writs of execution from United States courts in states divided into more than one district ran all over the state.

Sur application for instructions to the marshal in the execution of a writ of fi. fa. A writ of fi. fa., directed to the marshal of the Western district, had issued from the circuit court of the United States for the Western district of Pennsylvania, upon a judgment in the plaintiff's favor obtained in that court. Under this execution, property in that district had been levied upon, and the same writ was then handed to the marshal of the Eastern district, with directions that he should seize under it property in the last named district. The marshal applied to the court at chambers, for instructions, alleging that under the act of congress he was not instructed as to whether he had authority to levy under the writ directed to the marshal of the Western district, or whether an independent writ (either concurrent or subsequent) issued from the Western district, and directed to himself, was necessary.

A. Sydney Biddle, argued that the language of the act was plain. Section 985, p. 184, of the Revised Statutes [4 Stat. 184], provides that "all writs of execution upon judgments or decrees obtained in a circuit or district court, in any state which is divided into two or more districts, may run and be executed in

any part of such state; but shall be issued from, and made returnable to, the court wherein the judgment was obtained.”

MCKENNAN, Circuit Judge. The language of the statute is plain: “All writs of execution” are to run and be executed all over the state, where it consists of more than one district “May” means at the plaintiff’s option. He has a right to concurrent execution all over the state. It is impossible to give the words of the statute effect unless every writ is allowed to run in all the districts in the same state. The formal direction to one marshal is of no consequence, since the same act of congress which enlarges the territorial power of the writ enlarges the direction correspondingly.

{See note to Case No. 11,404.}

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