

RIDDLE v. MARSHAL OF THE DISTRICT OF
COLUMBIA.[1 Cranch, C. O. 96.]¹

Circuit Court, District of Columbia. Nov. Term, 1802.

EXECUTION—DELIVERY OF WRIT—SERVICE.

A fi. fa. first delivered to the marshal, will supersede a fi. fa. delivered to a constable subsequently, but first levied.

A justice of the peace for Alexandria county issued a fi. fa. on the 30th of September, 1801, in the case of Riddle v. Kell, for \$19.44, and 58 cents costs, which was delivered to Abercrombie, a constable, on the 11th of March, 1802. On the 3d of March, 1802, a fi. fa. was issued from the clerk's office of Alexandria county, against Kell, at the suit of the United States for a fine or forfeiture, and came to the hands of the marshal on the 9th of March, 1802, who afterwards levied it on the goods in the hands of the constable taken on the justice's fi. fa.

Mr. Taylor, for Joshua Riddle, moved the court to quash the service of the fi. fa. of U. S. v. Kell, and for a rule on the marshal to return the goods to the constable, on the ground of their being in the custody of the law, and cited 10 Vin. Abr. 561. Goods in execution, though wrongfully, being once seized and in custody of the law, cannot be seized again by the same or any other sheriff, and if they are sold thereon, such bargain is void. Per Holt, C. J., *Bachurst v. Clinkard*, 1 Show. 174.

Before KILTY, Chief Judge, and MARSHALL and CRANCH, Circuit Judges.

KILTY, Chief Judge, was for granting the motion. MARSHALL, Circuit Judge, for discharging the rule, because there did not appear to be any means of quashing the justice's execution. CRANCH, Circuit Judge, for discharging the rule because the justice's

warrant did not appear to be regular; and if Biddle has been injured, he may bring his action. Rule discharged.

¹ [Reported by Hon. William Cranch, Chief Judge.]

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