

SEGOURNEY V. INGRAHAM ET AL.

[2 Wash. C. C. 336.]¹

Circuit Court, D. Pennsylvania. Oct. Term, 1808.

MARSHAL—RULE TO RETURN WRIT—RETURN.

After a rule on the marshal to return the *capias ad satisfaciendum*, issued against the defendants, and the return of the marshal, that the plaintiff had directed him not to serve the writ on one defendant, and that the other could not be found; the court have nothing more to do with the rule. If the marshal has misconducted himself, the remedy is an action for a false return.

This was a rule upon the marshal to return the *capias ad satisfaciendum*, issued in this case. Judgment had been obtained against Ingraham and two others. The *capias ad satisfaciendum* issued against all three; and the marshal now returns that the plaintiff's attorney directed him not to serve it on Ketland, one of the defendants, he having paid his part, and been released; and that another of the defendants could not be found.

Mr. Morgan, for plaintiff. Ketland was not released. He paid part of the judgment, and a receipt for so much on account was given. Of several defendants, the plaintiff may direct the writ to be executed on which he pleases.

Mr. Dallas, for defendants. The plaintiff has no right to instruct the officer how to execute his writ—to serve on some, and not on others. On a *capias ad satisfaciendum* against two, if one is taken and discharged, it discharges the other. [M'Fadden v. Parker] 4 Dall. [4 U. S.] 275. There is no difference between that case, and one where the officer is instructed by the plaintiff to serve on one, and not on the others.

BY THE COURT. The writ is returned, and of course the plaintiff has obtained the effect of his motion. If the marshal has misconducted himself in not having served the writ, or has made a false return, the plaintiff can take his remedy. But on the present rule, we have nothing further to do.

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