

**Case No. 16,715.** UNITED STATES v. WILLIAMS.  
[5 Cranch, C. C. 619.]<sup>1</sup>

Circuit Court, District of Columbia.

Nov. Term, 1839.<sup>2</sup>

MARSHAL OF DISTRICT OF COLUMBIA—ADVANCES OF MONEY—LIABILITY ON OFFICIAL BOND.

1. The president of the United States has authority to order advances of money to be made by the secretary of the treasury to the marshal of the District of Columbia; and such advances may be presumed to have been made under the special direction of the president; and the sureties of the marshal are liable therefore.
2. The marshal of the District of Columbia and his sureties are liable to account for all common-law fines and forfeitures received by the marshal, whether on execution or otherwise. But he is not liable upon his bond for executions not returned; nor, in this action, for escape of persons taken and in his custody on ca. sa., for fines, &c, whether prayed in commitment in execution or not

Debt on the official bond of Henry Ashton, late marshal of the District of Columbia.[See Case No. 16,714.]

The breaches assigned were, first, for not accounting for the sum of \$6,455.16, advanced to him as marshal; second, for not accounting for certain common-law fines

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and forfeitures received by him; third, for not executing certain writs of *fi. fa.* and *ca. sa.* put into his hands; fourth, that he suffered certain persons, taken and in his custody on *ca. sa.* for fines, &c, to escape.

R. S. Coxe, for defendant, contended that by the "Act concerning the disbursement of public money," 31st January, 1823, e. 9 (Pamph. p. 7), all advances of money are prohibited, except to "disbursing officers of the government," "under the special direction of the president of the United States;" and then only so much "as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfilment of the public engagements." That the marshal was not such a disbursing officer as is contemplated by the act. The only money he is to disburse is for the expense of holding the courts, &c, which, by the act of May 8, 1792, § 4 [1 Stat. 277], is to be paid to the marshal at the treasury, after having been examined and certified by one of the judges of the court, after which he is to "pay over" the same to the persons entitled thereto. That act does not contemplate any advance of money to the marshal. Besides, there is no evidence of any special direction of the president to make this advance. It was, therefore, money illegally advanced, and the sureties are not liable therefore.

Mr. Key, for the United States, contra, admits that there is no paper in the departments showing the order of the president to advance money to the marshal, but the order of a head of a department is to be considered as the order of the president. It was in fact made by the secretary of the treasury, whose acts must be presumed to be lawful until the contrary appears. The marshal is clearly a disbursing officer. It could never be expected that he should himself advance all the expenses of holding the courts in the district, and the uniform practice, ever since the commencement of the government, has been to advance money to the respective marshals, to be accounted for at the treasury.

THE COURT (*nem. con.*) was of opinion that the order of the secretary of the treasury may be presumed to be under the special direction of the president; that the advance was legally made, and that the sureties were liable.

THE COURT also (*nem. con.*) decided that the marshal and his sureties were liable, on his bond, for all common-law fines and forfeitures received by him, whether upon execution or without execution. See the Maryland law of 1795, c. 74, and the act of congress of March 3d, 1801 (2 Stat 103).

THE COURT also decided that the marshal was not liable upon his bond, for writs of *fi. fa.* paid into his hands against persons who had goods, &c. sufficient, &c; and writs of *ca. sa.* against persons able to pay; the executions not having been returned.

THE COURT also decided, that the defendant is not liable in this action for the escape of persons taken and in custody on *ca. sa.* for fines, &c, whether prayed in commitment in execution or not

Verdict and judgment for the plaintiff.

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Both parties took bills of exception.

{A writ of error was sued out from the supreme court, where the judgment of this court was affirmed. 1 How. (42 U. S.) 290.}

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

<sup>2</sup> [Affirmed in 1 How. (42 U. S.) 290.]