

HENRY *v.* SOWLES.*District Court, D. Vermont.*

August 25, 1886.

COURTS—UNITED STATES DISTRICT
COURT—JURISDICTION.

The United States district court has jurisdiction of an action, under the fourth subdivision of section 563, Rev. St., brought by a United States marshal to protect money in his hands as such, and when wrongly interfered with in its possession, or when his right to it as marshal is invaded.

Motion to Dismiss for Want of Jurisdiction.

Kittredge Haskins, U. S. Atty., for plaintiff.

Edward A. Sowles, *pro se*.

WHEELER, J. This is an action of trover, brought to recover damages for the conversion of a sum of money, in one count described as “\$3,000 in money,” and in another as “\$3,000 in United States treasury and national bank notes of various denominations and value,” by the plaintiff, in his capacity of United States marshal for the district of Vermont. It is alleged in each count that the plaintiff was possessed of the money in his capacity of United States marshal as aforesaid, and lost it; that it came to the hands and possession of the defendant thereafterwards by finding, who, well knowing it to be the proper goods and chattels of the plaintiff in that capacity, refused to deliver it to him on demand, and converted it to the defendant’s own use. The parties are both set up as citizens of the state of Vermont. The defendant has moved to dismiss the suit for want of jurisdiction of this court.

The jurisdiction of this court is different from that of the circuit court, in such cases. That court was given jurisdiction by the act of March 3, 1875, of all suits of the required amount, arising under the constitution or laws of the United States. 18 St. at Large, 470; Supp. Rev. St. 173. If the plaintiff’s title to this money

would arise under those laws, so as to give that court jurisdiction under that act, as it probably does, that act does not extend to this court. The jurisdiction of this court, if it exists, is to be found apparently only in the fourth subdivision of section 563, Rev. St., which gives jurisdiction to this court “of all suits at common law brought by the United States, or by any officer thereof authorized by law to sue.”

This is a suit at common law, and the plaintiff is an officer of the United States beyond question. As such officer, he is entitled to the custody of money. Rev. St. §§ 787, 791, 3616, 3617, 5504. He may receive it as disbursing officer of the government, or by virtue of the execution of civil or criminal processes. When he receives it as marshal from any of these sources, he receives it in his official capacity. That capacity is the foundation of his title. In this case there is nothing alleged to show how he came by this money. It is merely alleged that he held it in his official capacity as marshal. ⁴⁸² His title to it, according to the allegations, is that of an officer, and of an officer of the United States. To maintain trover, the plaintiff must have the general or a special property in the goods, and a right to immediate possession. The plaintiff, if this allegation is true,—and for the purposes of this motion it must be taken to be true,—had property in this money by virtue of his office as marshal, and his title to it rests upon his capacity as marshal. He must have the right, as marshal, to protect money in his hands as marshal, and to sue for it when wrongly interfered with in its possession, or when his right to it as marshal is invaded. *Postmaster General v. Early*, 12 Wheat. 136. This case is to be decided upon the record as presented. This money may have been received from the treasury, to disburse as an officer of this court, to pay jurors and government witnesses, and it would be strange if he could not sue in this court, but must go to another jurisdiction for his redress.

As the case stands now, he appears to be an officer of the United States, authorized by the general principles of law, and therefore authorized by law, to sue upon his official title to this money, for the unlawful conversion of it. Motion denied.

See S. C. *post*, 521.

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