Rules and regulations, formerly in force, abolished.

which the armies of the United States have heretofore been governed, and the resolves of Congress thereunto annexed, and respecting the same, shall henceforth be void and of no effect, except so far as may relate to any transactions under them, prior to the promulgation of this act, at the several posts and garrisons respectively, occupied by any part of the army of the United States.

Approved, April 10, 1806.

Statute I.

April 10, 1806.

Chap. XXI.—*An Act relating to bonds given by Marshals.*(a)

Bond of the marshal shall be

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the bond heretofore

(a) By the 27th section of the act of September 24, 1789, chap. 20, vol. i. 87, the appointment of a marshal in each district, is provided for, and his duties and powers regulated.

The decisions of the courts of the United States as to the duties, powers, and liabilities of Marshals are:—

The marshal may have an attachment to enforce the payment of his fees of office, against suitors in the court; so also against the endorser on the writ, who by the lex loci, is liable to respond for costs. Anonymous, 2 Gallis. C. C. R. 101.

The marshal is entitled to his full commissions according to the act of 1799, chap. 19, upon all interlocutory sales of prize property. The act of 27th January, 1813, applies only to sales after final condemnation. The Avery, 2 Gallis. C. C. R. 308.

It is the duty of the marshal, upon all interlocutory sales, to bring the proceeds into court, with a regular account of the sales. *Ibid.*

The marshal is entitled to commissions upon prize property, removed from his district, by consent of parties, and there sold. The San Jose Indiana, 2 Gallis. C. C. R. 311.

After a rule on the marshal to return the capias ad satisfaciendum issued against the defendants, on 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. Segourney *v.* Ingraham et al., 2 Wash. C. C. R. 336.

Where an individual, acting in pursuance of what he conceives a just claim to property, proceeds by legal process to enforce it, and causes a levy to be made on property which is claimed by another, without abusing or perverting its true object, there is and ought to be a very different rule for damages, from the case in which vindictive damages may be allowed, if after a due course of legal investigation, his case is not well founded. Where the defendant had acted as the marshal of the United States, in the execution of his duties as a public officer, and had made a levy, but had done nothing out of the strictest line of duty, the circuit court instructed the jury to allow compensation for the injury sustained, and nothing more. Pacific Ins. Co. *v.* Conard, Baldwin's C. C. R. 143.

It has long been settled that a jury ought not in any case to find exemplary damages against a public officer, acting in obedience to orders from the government, without any circumstances of aggravation, if he violates the law in making a seizure of property. *Ibid.*

A marshal is not removed by the appointment of a new one, until he receives notice of such appointment; all acts done by the old marshal after the appointment of a new one, before notice, are good; but his acts subsequent to notice are void. Wallace's C. C. R. 119.

If a debtor, committed to the state jail under process from the courts of the United States, escape, the marshal is not liable. Randolph *v.* Donaldson, 9 Cranch, 76; 3 Cond. Rep. 280.

The act of Congress has limited the responsibility of the marshal to his own acts and the acts of his deputies. The keeper of a state jail is, neither in fact nor in law, the deputy of the marshal; he is not appointed by, nor removable at the will of the marshal. When a prisoner is regularly committed to a state jail by the marshal, he is no longer in the custody of the marshal, or controllable by him. *Ibid.*

If a marshal, before the date of his official bond, receive, upon an execution, money due to the United States, with orders from the comptroller to pay it into the Bank of the United States, which he neglects to do, the sureties in his official bond, executed afterwards, are not liable therefor upon the bond; although the money remain in the marshal's hands after the execution of the bond. The United States *v.* Giles and others, 9 Cranch, 212; 3 Cond. Rep. 377.

Query. Whether the sureties in a marshal's bond conditioned for the faithful execution of his duty, "during his continuance in the said office," are liable for money received by him after his removal from office, upon an execution which remained in his hands at the time of such removal? *Ibid.*

The comptroller of the treasury has a right to direct the marshal to whom he shall pay money received upon executions, and a payment according to such directions is good; and it seems he may avail himself of it upon the trial without having submitted it as a claim to the accounting officers of the treasury. *Ibid.*

It is the duty of the marshal of a court of the United States, to execute all process which may be placed in his hands; but he performs this duty at his peril, and under the guidance of law. He must, of course, exercise some judgment in the performance. Should he fail to obey the exigit of the writ without a legal excuse, or should he in its letter violate the rights of others, he is liable to the action of the injured party. Life and Fire Ins. Co. of New York *v.* Adams, 9 Peters, 573.

The marshal makes distribution of proceeds of prize sales in his hands, at his peril; and on his mispayment a libel lies against him. For safety the marshal should obtain the order of the court, which ought not to be made without previous measures guarding against fraud, and providing for latent claims. Keene et al. *v.* The Gloucester, 2 Dallas, 36.

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given, or which may hereafter be given by the marshal of any district, for the faithful performance of the duties of his office, shall be filed and recorded in the office of the clerk of the district court or circuit court, sitting within the district for which such marshal shall have been appointed, and copies thereof, certified by the clerk, under the seal of the said court, shall be competent evidence in any court of justice.

filed in the office of the clerk of the court, &c.

SEC. 2. *And be it further enacted*, That it shall be lawful, in case of the breach of the condition of any such bond, for any person, persons, or body politic, thereby injured, to institute a suit upon such bond, in the name and for the sole use of such party, and thereupon to recover

Suits may be instituted on the breach of the condition of the bond, &c.

The marshal is bound to serve a subpœna in chancery as soon as he reasonably can; and he will, in case of neglect, be answerable to the complainant, who may have sustained a loss in consequence of his neglect. Kennedy *v.* Brent, 6 Cranch, 187; 2 Cond. Rep. 345.

The court will not dictate to the marshal what return he shall make to process in his hands; he must return it at his peril; and any person injured by it, may have his legal remedy for the return. Wortman *v.* Conyngham, Peters' C. C. R. 241.

The return of the marshal to a writ, cannot be traversed in an action between the parties to the suit in which the writ issued. Wilson *v.* The Executor of Hurst, Peters' C. C. R. 441.

An officer of the United States, who has levied a sum of money on an execution in favour of the United States, to whom the United States are indebted for fees of office in a sum greater than the amount of the execution, has a right to retain it by way of set-off; and on a motion made on the part of the United States to commit the officer for failure to pay over the money so levied, he will be permitted to show that the United States are indebted to him: and if this be shown, it is sufficient cause why he should not be attached. United States *v.* Mann, 2 Brockenb. C. C. R. 9.

A marshal is liable upon his official bond, for the failure of his deputy to serve original process; but the measure of his liability is the extent of the injury received by the plaintiff, produced by such negligence. If the loss of the debt be the direct legal consequence of the failure to serve the process, the amount of the debt is the measure of damage; but the mere failure to execute the process, does not, in itself, necessarily infer the loss of the debt to the plaintiff, by the negligence of the officer, because the plaintiff might sue out other process, on the failure of the officer to execute the first process. The question, whether the loss of the debt was or was not the direct legal consequence of the negligence of the officer, is a question of fact, depending on circumstances, of which the jury must judge. United States *v.* Moore's Administrators, 2 Brockenb. C. C. R. 317.

Where a writ of capias ad respondendum, comes to the hands of a deputy marshal, who arrests the debtor, and the debtor thereupon pays to the deputy the amount of the debt for which he was sued, and the officer discharges the debtor from custody, and returns the writ, "debt and costs satisfied," this is not an official act which binds his principal. The deputy marshal is a mere ministerial officer, and he has no right to adjust the debt, and make himself responsible to the plaintiff. He is bound to pursue the mandate of the writ, and that requires him to arrest the debtor, and take bail. The discharge of the debtor from custody, without taking bail, is indeed a misfeasance in office, for which his principal, the marshal, is responsible; but he is only responsible for the injury done to the plaintiff. The return of the deputy, shows that no bail was taken; and if by taking out other process, the plaintiff could have secured his debt, which is a fact to be determined by the jury; the loss of the debt to the plaintiff, is not the necessary legal consequence of the conduct of the deputy, and no injury, in a legal sense, is done to the plaintiff thereby. *Ibid.*

Where a decree directs an officer of the court to sell property, "and bring the proceeds of sale into court," and the sale is on a credit of one, two, and three years, and bonds are given for the payment of the instalments, these bonds are the immediate proceeds of sale. As a matter of convenience, they may be permitted to remain in the hands of the officer; but as matter of strict right, the creditor may require that they shall be brought into court. Wallis *v.* Thornton's Administrators et al. 2 Brockenb. C. C. R. 422.

Where bonds are made payable to the marshal of a court, he has a right to collect them. In such case, the marshal must be considered as a trustee for the creditor. *Query.* Whether the direction to take bond implies, that it shall be taken to the marshal, rather than to the creditor? Where bonds are taken, not to the marshal and his successors, but to J. P., marshal, &c., his executors, administrators, and assigns, could his successor, in the event of the marshal being changed before the money is paid, act on these bonds without an assignment? *Ibid.*

By the 69th section of the collection act of 1799, ch. 22, the goods or merchandise seized under that act, are to be put into custody of the collector, or such other persons as he may appoint for that purpose, no longer than until the proper proceedings are instituted under the 89th section of the same act, to ascertain whether they are forfeited or not; and as soon as the marshal seizes the goods under the proper process of the court, the marshal is entitled to the sole and exclusive custody thereof, subject to the future orders of the court. Ex parte Jesse Hoyt, Collector of the Port of New York, 13 Peters, 279.

By the statute of Indiana, the marshal on a replevy bond is required to take one or more sufficient freehold securities, and if freehold security be not taken, the marshal is liable. Bispham *v.* Taylor, 2 M'Lean's C. C. R. 355.

If the sureties be not freeholders, however ample at the time they may have been considered, the marshal is liable. In this respect the statute must be pursued. *Ibid.*

To examine the county records, is not an unreasonable duty on the marshal. *Ibid.*

Where the marshal takes insufficient bail for the appearance of a defendant, he is only answerable for the actual injury sustained by the plaintiff. In such a case the insolvency of the defendant may be shown in mitigation of damages. *Ibid.*

But where a judgment is replevied, good freehold security must be taken for the payment of the judgment. If insufficient security be taken, the marshal is liable. *Ibid.*

Executions may issue on judgments, &c.

such damages, as shall be legally assessed, with costs of suit; for which execution may issue for such party in due form, and in case such party shall fail to recover in the suit, judgment shall be rendered and execution may issue for costs in favour of the defendant or defendants against the party who shall have instituted the suit; and the United States shall in no case be liable for the same.

Bonds to remain as a security on judgments rendered, &c.

Sec. 3. *And be it further enacted*, That the said bonds shall, after any judgment or judgments rendered thereon, remain as a security, for the benefit of any person, persons, or body politic, injured by breach of the condition of the same, until the whole penalty shall have been recovered; and the proceedings shall be always in the same manner, and as herein before directed.

Within what period suits are to be commenced, &c.

Sec. 4. *And be it further enacted*, That all suits on marshals' bonds, if the right of action has already accrued, shall be commenced and prosecuted within three years after the passage of this act, and not afterwards. And all such suits, in case the right of action shall accrue hereafter, shall be commenced and prosecuted within six years after the said right of action shall have accrued, and not afterwards; saving, nevertheless, the rights of infants, *feme coverts*, and persons *non compos mentis*, so that they sue within three years after their disabilities are removed.

Saving of the rights of infants, &c.

Approved, April 10, 1806.

Statute I.

April 10, 1806.

Chap. XXII.—*An Act regulating the currency of foreign coins in the United States.*(a)

Foreign gold and silver coins to be current in the U. S. at the following rates:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, foreign gold and silver coins shall pass current as money within the United States, and be a legal tender for the payment of all debts and demands, at the several and respective rates following, and not otherwise, viz:

Coins and rates.

The gold coins of Great Britain and Portugal, of their present standard, at the rate of one hundred cents, for every twenty-seven grains of the actual weight thereof; the gold coins of France, Spain, and the dominions of Spain, of their present standard, at the rate of one hundred cents, for every twenty-seven grains and two-fifths of a grain, of the actual weight thereof. Spanish milled dollars, at the rate of one hundred cents for each, the actual weight whereof shall not be less than seventeen pennyweights and seven grains, and in proportion for the parts of a dollar. Crowns of France at the rate of one hundred and ten cents, for each crown, the actual weight whereof shall not be less than eighteen pennyweights and seventeen grains, and in proportion for the parts of a crown. And it shall be the duty of the Secretary of the Treasury, to cause assays of the foreign gold and silver coins made current by this act, to be had at the mint of the United States, at least once in every year, and to make report of the result thereof to Congress, for the purpose of enabling them to make such alterations in this act, as may become requisite, from the real standard value of such foreign coins. And it shall be the duty of the Secretary of the Treasury, to cause assays of the foreign gold and silver coins of the description made current by this act, which shall issue subsequently to the passage of this act, and shall circulate in the United States, at the mint aforesaid, at least once in every year, and to make report of the result thereof to Congress, for the purpose of enabling Congress to make such coins current, if they shall deem the same to be proper, at their real standard value.

Secretary of the Treasury to cause assays of the foreign coins, &c. to be had at the mint, &c. and to make report of the result to Congress.

(a) See act of August 4, 1790, sec. 39, vol. i. 167.

An act relative to the rix dollar of Denmark, March 3, 1791, chap. 19, vol. i. 215.

An act regulating foreign coins, and for other purposes, February 9, 1793, vol. i. 300.

An act supplementary to "an act regulating foreign coins, and for other purposes," February 1, 1798, chap. 11, vol. i. 539.

An act to regulate the duties on imports and tonnage, March 2, 1799, chap. 22, sec. 61, vol. i. 673.