Statement of the case.

LEVY COURT *v.* CORONER.

1. The Levy Court of Washington County, in the District of Columbia, if not a corporation in the full sense of the term, is a *quasi* corporation; and can sue and be sued in regard to any matter in which, by law, it has rights to be enforced, or is under obligations which it refuses to fulfil.
2. The fees allowed by the eighth section of the act of Congress of July 8, 1838, to the coroners of the counties of Washington and Alexandria, and to jurors and witnesses who may be lawfully summoned by them to any inquest, are payable by the Levy Court of the county, not by the Federal Government.
3. Jurors and witnesses summoned in form by the coroner's summons, regularly served, are so far "lawfully summoned" under the eighth section of the act of July 8, 1838, just named, that they may be allowed their fees, though the case of death in which they were summoned was strictly not one for a coroner's view, and though the coroner himself would be entitled to none. Fees advanced by the coroner to jurors and witnesses in such a cause may be properly reimbursed to him, and consistently with a refusal to pay him those claimed as his own.

THE coroner of the County of Washington, D. C., brought *assumpsit* in the Circuit Court of the District against what is called the "Levy Court" of Washington, for his fees; fees for "viewing the body," and fees which he had advanced to jurors and witnesses at inquests called by him for that purpose.

Three questions arose:

1. A preliminary one; namely, whether the "Levy Court" was a body capable of being sued at all?

2. If it was, whether it was the Levy Court or the Federal Government which was bound to pay the fees of coroners and their inquests, &c.

3. If it was the Levy Court which was bound to pay them, whether the coroner could recover fees advanced to *jurors and witnesses* on occasions where the death, though sudden, had not occurred from other than natural causes; cases, for example, where the death came from apoplexy, fits, excessive and habitual intemperance, and other cases which the *coroner* considered had occurred from "misadventure," but which

might not have fallen within that term as interpreted by the law.

AS RESPECTED THE FIRST QUESTION,—the preliminary one, of whether the Levy Court was a body capable of being sued,—it appeared that this body derived its powers from a statute of Maryland, passed A. D. 1794, entitled "An act for the establishment and regulation of the Levy Courts in the several counties of this State." This authorized them to adjust the expenses of the county, and to impose an assessment for their payment, and to appoint a collector, who shall give bond *to the State*. Suits were directed to be brought against the collector, and judgments entered *in the name of the State*. By other statutes they are charged with the expenses of the county relating to roads, bridges, the poor and poor-houses, the orphans' court, the jail, &c., and invested with power to levy such expenses by taxes. One of these statutes calls them *Commissioners of the County*, and some acts of Congress speak of them in the same terms.

AS RESPECTED THE SECOND QUESTION—that is to say, whether the fees of the coroner, his inquests and witnesses, were payable by the Federal Government, or by the Levy Court itself, it is necessary to state the history of the legislation under which the claim was made.

Prior to the year 1838, there was no compensation allowed in the District by law to *jurors* and *witnesses* for attending inquests on the coroner's summons. They were compelled to attend by due process for the public good. The *coroner* himself, however, by an old statute of *Maryland*, passed A. D. 1779, but in force in the District, had a fixed fee—two hundred and fifty pounds of tobacco—for each inquest, without regard to the time which he might be required to give to it, or the trouble which it cost. This fee the statute made payable, in the first place, out of the estate of the decedent, and, in the absence of such estate, by the *Levy Court*.

On the 7th of July, 1838, *Congress* passed an act,* the

* 5 Stat. at Large, 306.

main purpose of which was to create a criminal court for Washington County, and transfer to it from the Circuit Court the jurisdiction of criminal causes. This Circuit Court had been in existence for many years,* and, from the date of its establishment, the marshal of the District, and also jurors and witnesses, had been paid from *the treasury of the United States.*

The *third* section of the new act—the act, to wit, of 1838—provides that the district attorney, marshal, and clerk of the Circuit Court, shall attend the criminal court, and perform the same duties, in relation to criminal causes, which had been required of them in the Circuit Court; and shall receive the same compensation therefor. Like provision is made for witnesses and jurors.

Then came an *eighth* section in these words:

"There shall hereafter be allowed and paid to the *coroners* of the counties of Washington and Alexandria, in said District, and to the *jurors* and *witnesses* who may be lawfully summoned by them in any inquest, the same fees and compensation *as are now paid to the marshal of said District, and the jurors and witnesses attending said Circuit Court in said county, for similar services.*"

These fees were *construed*, by the parties concerned, to be such as the marshal received for summoning, swearing, and impanelling jurors, swearing witnesses, and returning inquisitions. But the statute did not say who was to pay either the fees given by the third section to the district attorney, marshal, and clerk of the Circuit Court, or those given by the eighth section to the coroner, his jurors and witnesses; the same with the former.

THE THIRD QUESTION depended upon the expression of this same section, that these fees were to be paid to jurors and witnesses who might be "*lawfully* summoned" by coroners to "*any*" inquest; and on the fact, whether or not an inquest and witnesses, who received a summons, in form and on its face wholly regular, were "*lawfully* summoned" to any inquest which the *law*, rightly interpreted, would not consider a proper case for the coroner's jurisdiction.

* It was established by act of February 27, 1801; 2 Stat. at Large, 103.

Argument for the Levy Court, plaintiff in error.

The court below thought, on the *first* point, that the Levy Court was a body which could properly be sued; on the *second*, that *it*, and not the Federal Government, was the party to pay the coroner's fees. On the *third*,—while it thought that in no case of death from apoplexy, fits, or excessive and habitual intemperance, or of sudden death proceeding from natural causes and the visitation of God, it was proper to hold an inquest, and accordingly disallowed the coroner's claim in such cases to *fees for himself*,—it yet allowed him reimbursement of fees advanced by him to *inquests* and *witnesses*.

Judgment having been given accordingly, the correctness of the views taken below was now the matter in error here.

Mr. W. S. Cox, for the Levy Court, plaintiff in error:

I. On the preliminary point. There is no act of Maryland or of Congress which makes the Levy Court a corporation, or endows it with the capacity of suing and being sued. Even if it could be considered a *quasi* corporation, it could not sue or be sued without an enactment to that effect. Accordingly, the only reported cases in this District, to which the Levy Court was a party, were cases of a special character; one the case of a rule to show cause,* and the other a special and summary application, under an act of Congress.† English cases indicate that the justices of the county in England exercise functions analogous to those of our Levy Court, and cannot be proceeded against by suit, but only by *mandamus*.

II. But the court below also erred in their construction of the act of 1838. In the *third* section, it directs that the district attorney, marshal, and clerk of the Circuit Court shall attend the Criminal Court, and perform all the duties by law required of them in relation to the criminal business of the Circuit Court, and *shall receive the same fees and compensation therefor*, and that the *jurors* and *witnesses* attend-

* Levy Court *v.* Ringgold, 2 Cranch's Circuit Court, 659.

† Levy Court *v.* The Corporation of Washington, Ib. 175.

ing said court *shall be entitled to the same compensation they now receive* for their attendance in the Circuit Court. No one ever doubted that, under this section, the fees of jurors and witnesses in the Criminal Court were to be paid by the United States, although it is not so expressed. But the language of this section is not more pointed, in that direction, than that of the eighth section, referring to jurors and witnesses in cases of inquests. "*There shall be hereafter paid,*" for services in cases of inquest, "*the same fees and compensation as are now paid*" for similar services in the Circuit Court. Shall be paid by whom? Surely by the same paymaster as now pays those. If it had been intended otherwise, would not the act have said distinctly, "there shall be hereafter paid *by the Levy Court* (or by some one else) the same fees as are now paid by the United States?" Looking at the acts of Congress alone, who can designate the Levy Court any more than the corporation of Washington or Georgetown, as the source of payment? There is, perhaps, scarcely an act of Congress fixing the compensation of any officer, which designates the Treasury of the United States as the source of payment more distinctly than this. In most cases the language is, that such officer's compensation shall be, or, that he shall receive, be entitled to, or paid, such and such amounts. It may, indeed, be asserted, generally, that when Congress directs money to be paid, it is to be paid out of the Federal Treasury, unless something different is expressed, particularly where the law containing the direction clearly contemplates such payment from the Treasury, in regard to its principal subject-matter.

It will be argued, perhaps, that when the law of 1838 passed, the coroner's fee on inquests was, under existing laws, chargeable to the county; and that a general enactment, adding to his fees, is to be construed as making them payable from the same quarter, and as re-enacting the existing law, with reference to the new fees.

But the fact that one sort of fee—a certain amount of tobacco—was payable to the coroner by the county, does not justify the inference that the *fees given to him by this act*,

and which, for similar services, were always paid to the marshal by the United States, were to be paid by the county also. On the contrary, the fact that these fees were not charged to the county under the old law, rather forces us to infer that they were not intended so to be under the new. The fees which the coroner was entitled to, under the act of 1838, were construed to be such as the marshal received for summoning, swearing, and impanelling jurors, and swearing witnesses, and returning inquisitions. And as the United States paid these to the marshal, the fair inference is, that they meant to pay them to the coroner for similar services, rendered in the interest of public justice in this seat of exclusive Congressional dominion. Especially will this be regarded as the case when we consider that the provision in question is found in a law, the main scope and object of which was to create a new tribunal, all the expenses of which are confessedly chargeable to the United States.

Again, the argument in question is inapplicable to the allowances to jurors and witnesses, which constitute the most important part of this claim. The county paid nothing to jurors and witnesses on inquests before the act of 1838, and to infer that Congress meant to impose the burden of their compensation on the county because a certain coroner's fee was theretofore chargeable to the county, is to draw a conclusion wider than the premises.

Again, if the existing law is referred to and adopted by the act of 1838, as to the new allowances to the coroner, it must be the whole and not a particular part of it. The act of 1779 does not make the coroner's fee payable directly by the Levy Court, but directs that it shall be *paid* out of the goods and chattels of the person dead, if any there be, otherwise *to be levied* by the commissioners of the county. Now, did Congress mean the new fees of the coroners, and the fees of jurors and witnesses, to be paid out of the estate of the deceased, and was each juror and witness to have a separate cause of action against the estate, and, that resource failing, a separate ground for a *mandamus*, or other proceeding, against the Levy Court? Congress would hardly have left

all these questions thus uncertain, had they meant to incorporate the Maryland act of 1779 into their own act of 1838; and their silence shows that they had no reference to the act of 1779, but meant simply to refer to their own existing legislation, as to the fees and allowances in suits in court, and to extend the benefit of it to the cases of inquest.

III. The court below disallowed the coroner's claim for *fees*, in certain cases in which the inquests were illegally held, but allowed his *disbursements* to jurors and witnesses in the same cases. If the inquests were illegally held, so that the coroner could not claim compensation for his services, how could his disbursements upon these illegal inquests give him a legal claim for money laid out and expended? If his time and labor were given at the risk of losing them, so must his payments have been made at his own risk.

Mr. J. H. Bradley, contra.

Mr. Justice MILLER delivered the opinion of the court.

1. The first question which arises in this case, is whether the Levy Court of Washington County has a legal capacity to be sued in a court of justice.

The Levy Court is the body charged with the administration of the ministerial and financial duties of Washington County. It is charged with the duty of laying out and repairing roads, building bridges, and keeping them in good order, providing poor-houses, and the general care of the poor; and with laying and collecting the taxes which are necessary to enable it to discharge these and other duties, and to pay the other expenses of the county. It has the capacity to make contracts in reference to any of these matters, and to raise money to meet these contracts. It has perpetual succession. Its functions are those which, in the several States, are performed by "county commissioners," "overseers of the poor," "county supervisors," and similar bodies with other designations. Nearly all the functions of these various bodies, or of any of them, reside in the Levy Court of Washington. It is for all financial and ministerial

purposes the County of Washington. If not a corporation in the full sense of the term, it is a *quasi* corporation, and can sue and be sued, in regard to any matter in which, by law, it has rights to be enforced, or is under obligations which it refuses to fulfil. This principle, a necessary one in the enlarged sphere of usefulness which such bodies are made to perform in modern times, is well supported by adjudged cases.*

2. We are next called upon to determine, whether the fees of the coroner of Washington County, and of the jurors and witnesses who attend at his summons upon the inquests held in the county, and which cannot be made out of the estate of the decedent, are by law payable by the Treasury of the United States, or by the Levy Court of said county.

It is contended by counsel for plaintiff in error, that these fees are payable out of the public treasury. The main reason on which the claim is founded is, that the fees mentioned in the third section are confessedly paid from that source. Hence it is argued that all the fees embraced in the same act, are by necessary intendment, payable from the same source, unless a contrary intention is expressed. And in support of this view, counsel says: "No one ever doubted that under this section" (the third) "the fees of jurors and witnesses in the Criminal Court were to be paid by the United States, although it is not so expressed."

It may be asked if the act does not express that these fees are to be paid out of the public treasury, upon what principle is it so universally conceded that they are to be thus paid? The answer is, because they were paid by the United States before the passage of that law; and while the lawmakers found it necessary to provide that officers, witnesses, and jurors, rendering services in a new court, of the same kind which they had formerly rendered in the Circuit Court, should receive the same compensation, they took it for

* Inhabitants, &c., *v.* Wood, 13 Massachusetts, 192; Bradley *v.* Case, 3 Scammon, 608; Overseers of Pittsburg *v.* Overseers of Plattsburg, 18 Johnson, 407; Overseers, &c., *v.* Birdsale, 1 Cowen, 260; Jansen *v.* Ostrander, Id. 670; Commonwealth *v.* Green, 4 Wharton, 598.

granted that the compensation would come from the same quarter as before.

An extension of this reasoning to the fees provided in the eighth section, where Congress desires to increase the compensation of the coroner, leads us to the conclusion that these fees were also to be paid from the same source they were formerly, namely, the Levy Court. It seems to us that the inference from the fact, that Congress made no mention of the source of payment for these fees, is that they did not intend to make any change in the rule on that subject. In regard to the fees payable to the coroner for his own services, there appears to be no room for doubt. And although the fees allowed to witnesses and jurors owe their existence to this act, and were therefore never before payable, either by the Levy Court, or by the United States Treasury, we cannot doubt that they must follow in that respect the fees of the coroner. They relate to the same kind of service, rendered in the same cases, and are provided for in the same sentence of the act which increases his fees. It would require positive language in the act to enable us to hold that while the coroner's fees for an inquest are payable by the Levy Court of the county, those of the jurors and witnesses summoned to serve on the same occasion, are to be paid by the Treasury of the United States.*

We are, therefore, of opinion that the fees allowed by the eighth section of the act of 1838, which cannot be made out of the estate of the deceased, should be paid by the Levy Court of Washington County.

3. Certain fees paid by the coroner to witnesses and jurors were allowed by the court, in cases where the fees for his own services were disallowed on the ground that the inquests were held in cases not provided for by law.

It is alleged for error, that the sums paid by him to witnesses and jurors in these cases were allowed him.

The eighth section of the act already quoted says, that

* See Attorney-General Cushing's opinion, 6 Opinions of Attorneys-General, 561.

these fees shall be allowed "to witnesses and jurors who may be lawfully summoned." It would be a very forced construction of this provision, as well as unjust, to hold that this lawfulness depends upon any other fact than the regular service of the summons by a lawful officer. The jurors and witnesses are compelled, when thus summoned, to obey the writ. They have no right to consider whether the summons issued on a proper state of facts as they might appear to the coroner, nor the means of deciding it, if they had the right. When witnesses and jurors thus summoned actually attend, they are entitled to their fees. It can make no difference in the justice or legality of the claims whether they are presented by the witnesses and jurors to the Levy Court, or whether they are first paid by the coroner and presented by him. He loses enough by his mistake in judgment, when he is refused compensation for his own services, without being compelled to lose what he has advanced for the public service.

We discover no error in the record, and the judgment of the Circuit Court is, therefore,

AFFIRMED.

MILWAUKIE AND MINNESOTA RAILROAD COMPANY AND FLEMING, APPELLANTS, *v.* SOUTTER, SURVIVOR.

1. Though a court below is bound to follow the instructions given to it by a mandate from this, yet where a mandate has plainly been framed, as regards a minor point, on a supposition which is proved by the subsequent course of things to be without base, the mandate must not be *so* followed as to work manifest injustice. On the contrary, it must be construed otherwise, and reasonably.
2. The appointment or discharge of a receiver is ordinarily matter resting wholly within the discretion of the court below. But it is not always and absolutely so.

   Thus, where there is a proceeding to foreclose a mortgage given by a railroad corporation on its road, &c.—a long and actively worked road—(a sort of property to a control of which a receiver ought not to be appointed at all, except from necessity), and the amount due on the mortgage is a matter still unsettled and fiercely contested, the appointment