

To be argued by:  
ERICK F. LARSEN  
10 minutes

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Supreme Court of the State of New York  
Appellate Division — Second Department

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GEORGE SASSOWER,  
*Petitioner-Appellant,*

-against-

JOHN P. FINNERTY, Sheriff of Suffolk County,  
*Respondent-Respondent.*

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PEOPLE OF THE STATE OF NEW YORK, EX. REL. GEORGE SASSOWER,  
*Petitioner-Appellant,*

-against-

SHERIFF OF SUFFOLK COUNTY,  
*Respondent-Respondent.*

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GEORGE SASSOWER,  
*Plaintiff-Appellant,*

-against-

ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI, VINCENT G. BERGER, JR., JOHN P. FINNERTY, ALAN CROCE, ANTHONY GRYMALSKI, CHARLES BROWN, HARRY E. SEIDELL, NEW YORK NEWS, INC., and VIRGINIA D. MATHIAS,  
*Defendants-Respondents.*

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RESPONDENTS BRIEF AND SUPPLEMENTAL APPENDIX

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custody upon the grounds that the Sheriff of Suffolk County did not have jurisdiction to execute the Surrogate's Court's mandate in Westchester County?

By denying the Writ of Habeas Corpus the Court below implicitly held that the Sheriff did have jurisdiction to execute the Surrogate's mandate in Westchester County.

STATEMENT

It is apparent from Appellant's Brief and Appendix that he appeals only from so much of the Order below as:

1. Denied the Writ of Habeas Corpus; and
2. Granted judicial defendants application to dismiss; and
3. Denied Petitioners-Appellants application for summary judgment.

No cross appeals have been taken by any of the Respondents.

This Brief and Supplemental Appendix is submitted exclusively on behalf of Respondent, John P. Finnerty, Sheriff of Suffolk County in connection with the Habeas Corpus proceeding below. Respondent Sheriff has never had any real interest in the underlying related Surrogate's proceedings other than as an official of the Court for purposes of ministerially enforcing the Court's mandates. Therefore, this brief is limited to the facts of the brief incarceration of the Appellant and the jurisdiction of the Respondent Sheriff to take Appellant into custody.

STATEMENT OF FACTS

On March 8, 1978 after Appellant was adjudged to be in contempt for the second time, Acting Surrogate Seidell issued a Warrant of Commitment directed to Respondent Sheriff commanding him to take Appellant Sassower into custody and detain him until the judgment and sentence of the Court was satisfied, unless sooner released by further Order of the Court (10) \*.

The contempt order contained an express provision which afforded Appellant an opportunity to purge himself which he did not exercise during the four-month period between its issuance and execution, nor indeed to the present time (A56).

Upon receipt of the Warrant of Commitment Respondent Sheriff commenced diligent efforts to apprehend the Appellant. On the morning of June 10, 1978 Appellant was taken into custody in Westchester County, at which time he was transported and lodged in the Suffolk County Correctional Facility pursuant to the express terms of the Warrant (8).

Only hours later, upon receipt of Appellant's Writ of Habeas Corpus and after conferring with the Court which issued the Writ of Habeas Corpus in order to verify the validity of the Writ, Appellant was immediately discharged from custody in his own recognizance. (9).

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\* All citations are to the Respondents' Supplemental Appendix unless preceded by "A". Only those facts which directly involve Respondent Sheriff are set forth. A complete rendition of the facts is set forth in the Memorandum Decision of the Court below (Appellant's Appendix A48-A56).

POINT I

RESPONDENT SHERIFF ACTED CLEARLY WITHIN  
HIS EXPRESS STATUTORY JURISDICTION IN  
TAKING APPELLANT INTO CUSTODY PURSUANT  
TO THE SURROGATE'S CONTEMPT MANDATE.

Appellant expressly admits that the deputy sheriffs were acting pursuant to the mandate when they arrested him in Westchester County and transported him to the County Correctional Facility for normal processing.

Such admission is, of course, gratuitous, since applicable state law provides that, "an officer to whom a mandate is delivered to be executed, shall: (1) execute the mandate according to its command; ...". New York Civil Practice Law and Rules, §2223 (McKinney's, 1978). In this case, there can be no dispute that the deputies executed the mandate according to its terms.

Further, it is to be observed that the deputies would have been subject to civil liability and judicial sanction if they refused to execute the mandate:

"An officer who fails to execute a mandate according to its command... is liable to the party aggrieved for the damages sustained by him, in addition to any other punishment or proceeding authorized by law."

New York Public Officers Law, §72-a (McKinney's, 1978). See also: Lockhart v. Hoenstine, 411 F.2d 455, 460 (3d Cir. 1969), where the court stated that a refusal to obey a judicial mandate could be deemed contemptuous and subject the official to immediate sanction by the court.

Clearly, there is no dispute as to the deputy sheriff's jurisdiction to execute judicial mandates (including warrants of commitment) within the County of Suffolk. In itself, such jurisdiction to arrest, firmly establishes that the defendant deputies did not act in the total absence of jurisdiction.

Moreover, the New York Criminal Procedure Law (CPL) expressly empowers deputy sheriffs to execute arrest warrants anywhere in the state. CPL §1.20(34)(b) confers police officer status upon all deputy sheriffs of Suffolk County. CPL §§120.50 and 120.70 expressly provide that a police officer whose geographical jurisdiction embraces the locality of the court (as here), may execute a superior court warrant of arrest anywhere in the state.

It was also proper for the Suffolk deputy sheriffs to execute the superior court criminal contempt warrant of commitment in Westchester County. New York Surrogates Procedure Act (SCPA) §212 provides that:

"All processes of the court may  
be served and executed in any part  
of the state."

SCPA §§606(1)(d) and 607(4) authorize a surrogate to cite a fiduciary for criminal contempt and issue a warrant of commitment pursuant to §757 of the New York Judiciary Law.

Judiciary Law §757, (since amended) in pertinent part provides:

"The court ... may ...

. . . .

"(2) Issue a warrant of attachment, directed to the sheriff of a particular county, ... commanding him to arrest the accused and bring him before the court or judge, ... forthwith, ... to answer for the alleged offense."

Judiciary Law §757 has been expressly construed by the New York State Supreme Court to authorize a sheriff to execute a warrant of attachment outside the sheriff's county of territorial jurisdiction.

In Downey v. Fenn, 124 N.Y.S. 876 (S.Ct., Monroe Co., 1910), an arrestee expressly objected to execution of a body attachment pursuant to judiciary law §757 by the sheriff of Monroe County in New York County. The court stated:

"The sheriff of Monroe County obeyed the mandate and executed it. I hold it was properly executed, and the objection is not available. An attachment may be executed by the sheriff outside his county. Crocker, on Sheriffs, §§184, 791." (emphasis added). 124 N.Y.S. at 877.

Moreover, Appellant's argument here appears to be a complete sham in light of the fact that it was expressly rejected by the United States Court of Appeals for the Second Circuit in prior proceedings. Sassower v. Signorelli, Docket No. 77-7511 (December 19, 1978) (reproduced at 95-96 of Respondents' Supplemental Appendix).

CONCLUSION

On the basis of the foregoing the Order of the Court below denying the Writ of Habeas Corpus should be affirmed with costs to Respondents.

Respectfully submitted,

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