

File No. 8832 Continued.

OPINION.

requires that "all fines imposed for violation of the provisions of this sub-title shall be turned over to the proper authorities of the City or County to be used for street or road improvements, and no part of any such fines shall go to the informer".

6635 The Justice has turned this fine over to the City of Baltimore, and the City should now turn over the money to Mr. Whiteford. This seems to me to have been a payment, not voluntary, but under duress, and for that reason recoverable.

Lefferman's Case, 4 Gill 425.
1 Poe on Pleading, Section 120.

It is also similar to a case where judgment has been rendered against the defendant, who pays the judgment, and thereafter the judgment is reversed on appeal, in which case the defendant can sue to recover the amount paid.

State vs. B. & O. 34 Md., 363.
1 Poe on Pleading, Section 124.

6636 Mr. Whiteford should not be put to the necessity of suing the City, but provision can be made for him in the Ordinance of Estimates for 1909. I can find no statute or ordinance which seems to contemplate the repayment of money under such circumstances, and without such an express warrant of law, it would appear that an ordinance is necessary.

Section 6, Article 10 of the Ordinances of the Mayor and City Council of Baltimore, Code 1906, p. 730, authorizes the Mayor to remit such fines as he may think proper. No provision is made as to the manner of repayment.

6637 I am informed, however, by the City Comptroller that the Mayor simply issues a warrant, which is recognized, and the payment follows thereafter. Where a fine upon conviction has been paid and the conviction annulled upon appeal, a practice somewhat analogous to that in the case of remitted fines, might be followed, and upon proper evidence of the payment of the fine and costs, and a copy of the judgment of the Court showing the acquittal, the Mayor might issue a warrant authorizing the payment. I refer to this as a simple method of dealing with the situation, though I am not entirely satisfied that it is free from all legal objection.

Very truly yours,

(Signed) Sylvan Hayes Lauchheimer,
Deputy City Solicitor.