

an opinion, as follows, was received from Mr. Alonzo L. Miles,
Counsel:-

"Baltimore, Md., November 29, 1902.

To The Honorable,
The Board of Police Commissioners,
Gentlemen:-

I have your letter of the 24th inst., enclosing report of the Marshal of Police upon the subject of the arrest by Officer Daniel L. Clayland of Gustav Fenrich. It appears that Officer Clayland arrested Gustav Fenrich on November 7th. 1902 upon the charge of disturbing the peace, the offense being committed in his presence; that he was tried upon the said charge in the Criminal Court, and the Court, (Judge Dobler) acquitted Fenrich, and upon his acquittal, imposed the cost upon Officer Clayland. You ask my opinion as to the law upon the subject.

Section 340 of Chapter 123 of The Acts of 1898, (Baltimore City Charter) dealing with the powers and duties of the Criminal Court of Baltimore City, provides that "in all cases of misdemeanor, which may be prosecuted in said Court at the instance of any person, if the party so prosecuted shall be acquitted, all the legal costs and expenses attending the prosecution shall be paid by the person at whose instance such prosecution was commenced, unless the Court shall certify that there was probable cause for the prosecution."

The practice of the Court has been not to follow the language of this statute literally, but in case of acquittal, the costs have been paid by the City unless the Court ordered otherwise. In other words, the Courts in such cases have followed the provisions of Section 7 of Article 24 of The Public General Laws, which provides that the costs in such cases shall be paid by the County or City. It seems perfectly clear, however, that the Criminal Court of Baltimore City has the power, in its discretion, under the provisions of Section 340 of the Baltimore City Charter above referred to, to impose the costs upon the person at whose instance the prosecution was commenced in the event of acquittal.

Judge Dennis, sitting in the Criminal Court, has construed this Section to apply to Police Officers making arrests of a person who is afterwards acquitted, as did Judge Dobler in the "Fenrich case" now under discussion. I am not prepared to commit myself to this construction of the statute. On the contrary, in my judgment, Section 340 of the Baltimore City Charter refers only to private prosecutors, at whose instance prosecution may be commenced against an alleged offender, and not to officers of the law who were charged with making arrests for offenses committed in their presence.

If the construction placed upon the law in the instances referred to, by the Criminal Court of Baltimore City, is the correct one, then it would seem that any officer of the law, for any mistake of judgment in making an arrest, could be made to pay the costs. I do not think the law intended this, but that it is meant solely to apply to private prosecutors, who, out of malice or without any probable cause, swear out a warrant or commence prosecution against an innocent person.

While this is my construction of the law, I think the Board should follow the decisions of the Baltimore City Courts upon the question until they have been reversed in some way by the Court of Appeals. In any event, I can see no process by which Officer Clayland can now recover the costs paid by him in the Fenrich case.

Respectfully submitted,
ALONZO L. MILES.

P.S. I return the Marshal's report."

In this connection it was ordered that Officer D.L. Clayland be re-imbursed the amount of costs paid by him in the said