


No. 13964

Supreme Court of Illinois

Sharp

vs.

Town of Carlyle

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Supreme Court of Illinois--1st Grand Division, June Term, 1870:

LEVI SHARP,
vs.
THE TOWN OF CARLYLE.

PETITION.

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF THE STATE OF ILLINOIS :---
Your petitioner, Levi Sharp, respectfully represents unto your Honors that in the case of the Town of Carlyle, vs. Levi Sharp, determined at the last term of this Honorable Court, in his opinion there is error, and that your petitioner, being the apellee in the cause, was not heard, either in person or by counsel. Your petitioner prays your Honors that said cause may be opened for re-argument, and your petitioner, as in duty bound, will ever pray, &c.

ERRORS ASSIGNED.

1st The Court erred in rejecting the two dollars per day in cases excepting forcible entry and detainer.

LAWS RELIED ON.

- Purple's Statutes, Volume I, Page 559, Section 17.
- do Volume 1, Page 664, Section 21.
- do Volume 1, Page 665, Secs. 23, 24, 25 and 27.
- do Volume 1, Page 666, Secs. 28, 32 and 34.
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- do Volume I, Page 672, Sec. 69.
- do Volume 1, Page 674, Sec. 81.
- do Volume 1, Page 676, Secs. 92 and 94.
- Statutes of 1865, Volume 1, Page 108, Sec. 5.
- Statutes of 1867, Volume 1, Page 113, Sec. 1.

BRIEF OF PETITIONER.

The first section I have referred to is in regard to the fee-bill, of 1845, of Justices of the Peace. I know it is insisted that the two dollars per day there spoken of, is in reference to trials of forcible entry. Then I ask, is that the only case in which Justices of the Peace are required to hold court and try causes; if so, then there would be no controversy about the two dollars a day---but such is not the fact; on the contrary, there are twenty sections that speak of trials before Justices of the Peace, in the course of discharging his legal duty, besides that of forcible entry and detainer. Now, I ask, is he to try all the causes that come before him for nothing, and does the law hold out a bribe to ill-natured litigants to go to law, because the Justice is not allowed to charge for his time in determining their causes? And, again, I ask who pays the Justice for his time? Not the public, most assuredly, but the individual who is the cause of the litigation. And is it not right that he should be paid? His time is as precious as other people's; he has to furnish his office, and in a great many instances, it is his only means for gaining a livelihood. I ask, by what rule of justice can a Justice of the Peace be required to preside when a trial of replevyng of property is in controversy, for an entire day, and because it is not a forcible entry case, get nothing for his time? That could never have been the intention of the Legislature.

The law, in regard to fees of Justices of the Peace was cut down from 1819 to 1845, and from 1845 to 1861, the fees of Justices of the Peace, in a case of collecting a note, was 56 cents; in 1861 the fees were raised to 85 cents, in a cause where there was no litigation; and from that date the Legislature seems to have been devising some way or means to raise the salaries of those officers whose salaries were fixed by the Constitution at such low figures that no man could hold his office and make a support for himself and family. Under these circumstances, it is not reasonable to suppose that they would cut down the fees of any officer; hence I came to the conclusion, by reading the 5th section of the Statutes of 1865, page 108, that the Legislature did intend to allow Justices of the Peace two dollars per day in all cases, or in none at all; and as there is nothing said in the law about repealing any part of the chapter to which this is an amendment, and as the two dollars per day is set down in the list of fees in civil cases, I very readily came to the conclusion that it is right to charge the two dollars in all cases where there is a trial, and where there is no trial

even in forcible entry, a Justice of the Peace is not entitled to charge for a trial.--- For-instance, where a defendant comes up and pleads guilty---in that case there is no trial. and the Justice that would charge for a trial under such circumstances, is guilty of malfeasance, and deserves to be punished accordingly.

In conclusion, I only have a few more words to say: The Legislature of 1867 passed an act, and made out a fee-bill for Justices and Constables, the 1st section of which reads as follows: "The fees of Justices of the Peace and Constables of this State shall be as follows: For the services herein mentioned, to-wit:" Then follows the fees set down for different services, but there is no fee mentioned for Writ of Replevin, for Posting Estrays, or for Making Transcript of Trial and Proceedings from Justice's Docket, to obtain a lien on real estate by an Execution from the Circuit Clerk, and none is mentioned for trials either in forcible entry or otherwise; all is left as it was before. No doubt the Legislature thought the fees for these services required no change, and therefore left them undisturbed.

For the foregoing and other good and sufficient reasons, I am of the opinion that there is error in not allowing two dollars per day in all cases on trial before Justices of the Peace.

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