

13002

No. _____

Supreme Court of Illinois

Bryner

vs.

Board of Supervisors of

Peoria County

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 159.

Bryner

vs

Belmont

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ABSTRACT.

In The Supreme Court, April Term, A. D. 1860.

Page. JOHN BRYNER,

vs.

The Board of Supervisors
of Peoria County.

} Error to Peoria County.

THIS cause was commenced in the Circuit Court of Peoria County to the November term, 1859. The declaration was in debt and plea of general issue.

The case was submitted to Judge Powell for decision without a jury on an agreed state of facts. The defendants admitted that the services were rendered as charged in the bill, and that they were of the value as charged in the bill of items, but denied the liability of the County to pay for the same.

8-9 The items admitted to be correct consist of mileage in summoning grand and petit jurors for different terms of the Circuit and County Courts, being over 3,000 miles travel, and amounting to \$163.30.

Also, for serving subpoenas before the grand juries and for the Court, in different cases, amounting to \$50.80.

Also, for money paid out for printing of jury warrants, certificates, bonds and bills of sale, amounting to \$32.00.

All of which was admitted to be correct, as to the items charged, but defendants denied their liabilities therefor.

The case was submitted to the Court on the following agreed state of facts, to-wit:

10 "JOHN BRYNER,
vs.
The Board of Supervisors
of Peoria County. } It is agreed in the said cause that
the plaintiff was Sheriff of Peoria County, and as such rendered
the services of 'mileage' in serving venires duly issued by the
County Clerk of Peoria County, and in executing orders of
Court for summoning Jurors, as charged in his bill filed with the
declaration in said case.

"It is also agreed that the plaintiff rendered services to the value of thirty dollars of the services charged in that part of the bill filed, with that part of the declaration marked as 'criminal bill for convictions,' &c., which last mentioned services were rendered for serving subpoenas before the Grand Jury of said County—for serving writs of scire facias on forfeited recognizances, in criminal cases, and for serving writs of capias and subpoenas in cases pending in the Circuit Court of Peoria County, in which cases convictions were had. It is further agreed that the said plaintiff has paid out for printing of blanks of the kind charged in said bill, and which was proper to be used in the discharge of his duties of sheriff—money, to the amount of thirty-two dollars, as charged in said bill—that he has used a part of said blanks in the discharge of his duties as sheriff, and that he has the remainder of such blanks in his possession to be used in the same manner, and that the same were of the value charged in said bill.

It is further agreed that no part of the value of said services, as such, has been paid to said Sheriff.

It is further agreed, that during the time while the said services in serving venires, and executing orders of Court to summon Jurors as aforesaid, were being rendered, the defendant allowed and paid to the plaintiff ten dollars for each regular pannel of Jurors, and ten dollars for every pannel of Jurors summoned by order of Court, both in the Circuit Court and County Court of said county.

John Bryner
my
The Board of Super
visors of Peoria Co

Abstract

The Court shall take this agreement as evidence in said cause,
and shall determine said cause without the intervention of a Jury.

M. WILLIAMSON, Attorney for Plaintiff.

MANNING & MERRIMAN, Attorneys for Defendant.

The Court ordered judgment for defendant, to which plaintiff
excepted.

M. WILLIAMSON, for Plaintiff.

159-5.
John Bryner
My

Board of Supervisors

Abstract

Filed Apr. 18. 1860

L. Leland

Clerk

ABSTRACT.

In The Supreme Court, April Term, A. D. 1860.

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The case was submitted to Judge Powell for decision without a jury on an agreed state of facts. The defendants admitted that the services were rendered as charged in the bill, and that they were of the value as charged in the bill of items, but denied the liability of the County to pay for the same.

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vs.
The Board of Supervisors
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It is agreed in the said cause that the plaintiff was Sheriff of Peoria County, and as such rendered the services of 'mileage' in serving venires duly issued by the County Clerk of Peoria County, and in executing orders of Court for summoning Jurors, as charged in his bill filed with the declaration in said case.

"It is also agreed that the plaintiff rendered services to the value of thirty dollars of the services charged in that part of the bill filed, with that part of the declaration marked as 'criminal bill for convictions,' &c., which last mentioned services were rendered for serving subpoenas before the Grand Jury of said County—for serving writs of scire facias on forfeited recognizances, in criminal cases, and for serving writs of capias and subpoenas in cases pending in the Circuit Court of Peoria County, in which cases convictions were had. It is further agreed that the said plaintiff has paid out for printing of blanks of the kind charged in said bill, and which was proper to be used in the discharge of his duties of sheriff—money, to the amount of thirty-two dollars, as charged in said bill—that he has used a part of said blanks in the discharge of his duties as sheriff, and that he has the remainder of such blanks in his possession to be used in the same manner, and that the same were of the value charged in said bill.

It is further agreed that no part of the value of said services, as such, has been paid to said Sheriff.

It is further agreed, that during the time while the said services in serving venires, and executing orders of Court to summon Jurors as aforesaid, were being rendered, the defendant allowed and paid to the plaintiff ten dollars for each regular pannel of Jurors, and ten dollars for every pannel of Jurors summoned by order of Court, both in the Circuit Court and County Court of said county.

John Bryner
14

Board of Supervisors

Abstract

The Court shall take this agreement as evidence in said cause,
and shall determine said cause without the intervention of a Jury.

M. WILLIAMSON, Attorney for Plaintiff.

MANNING & MERRIMAN, Attorneys for Defendant.

The Court rendered judgment for defendant, to which plaintiff
excepted, M. WILLIAMSON, for Plaintiff.

John Bryner¹⁵⁻⁹⁻⁵
By

Board of Super-
Visors

Abstract

Filed Apr. 18. 1860
L. Leland
Clerk

B R I E F

OF POINTS AND AUTHORITIES.

JOHN BRYNER,
vs.
The Board of Supervisors
of Peoria County. } Supreme Court.

- 1 The first question is whether the county is liable to pay the Sheriff for summoning grand and petit juries, it not being possible to apportion the fees in such cases, to the parties litigant.

The fees, therefore, must be paid by the county, or the Sheriff must render the service for nothing. The Sheriff renders the service in such cases at the instance and request of the Board of Supervisors. They direct the clerk to issue the summons.

The Statutes provides that the County Commissioners Court shall select twenty-three persons from all parts of the county to serve as Grand Jurors. It says a "summons" shall issue commanding him to "summon" the persons selected, &c., which "summons" shall be served at least five days before the sitting of the court, &c.. It must be returned to the county clerk.—Scates Treat. and Blackwell Stat. 679, Sec. 5.

The Statute in relation to fees provides that the Sheriff shall be allowed five cents per mile for necessary travel to serve any summons.

If he is not allowed fees under this clause then the Statute has not provided that he shall or shall not have compensation.

2 A Sheriff in all cases is entitled to compensation for his services, unless the Statute provides he shall render the service for nothing.—12 Wend. 257. 2 Denio. 41. 2 Sanford 742. Crocker on Sher. section 1097. 9 John R. 328.

3 Where a Statute provides that a Sheriff shall not have any other or greater fees than are provided by law only, applies to particular services, where particular fees are provided by statute, and does not extend to cases where no fees are provided by law; in all such cases the Sheriff is entitled to his reasonable fees.—2 Cowan R., 534. 18 John R., 242.

In 18 John Rep., the clerk was required to perform a duty for the benefit of the county, where no fees were provided by law in sending notices to different Justices of the Peace. The Court held that the county was liable, and awarded a mandamus to compel payment.

In 2 Cowan, the service was for services of the clerk in engrossing the minutes of the Court where no fees were provided. The Court held that the service was rendered to the county, and as the statute did not say he should perform the service gratuitously, he was entitled to reasonable compensation, and awarded a mandamus to compel it.

In 2 Greene, (Iowa,) 473, the Court decides that in that State where an Attorney is appointed by the Court to defend a criminal too poor to employ counsel, that the service is rendered for the county, and though no fees were provided, it was decided that the Attorney was entitled to reasonable fees from the county.

In 2 Scam Rep., 3, the Supreme Court refused to award a mandamus to the clerk to send up the record for the State until the State paid the fees, although there was no statute giving him fees in such cases.

Some cases have been decided against officers and others, recovering of the county for services; but in all such cases the case turned upon the point that the service was not rendered for the county.

The county should be liable to pay the fees of officers in forfeited recognizances, for now the money in such cases goes to the

county. The cases decided, when the Court held the county not to be liable, was under a different law, when the money collected went to the State, and they held that the county could not be held liable to pay the fees for they had no interest in making the money.

The statute requires the Sheriff to serve chauncery summons, &c., by copy. The statute requires this to be done, and the officer has no discretion or choice. It is then necessary to have blanks for the purpose. The Sheriff is obliged to do certain service in a certain way. The case in 20 Ill. 126, is not an authority against this, because in that case they merely decide the Sheriff was not bound to keep an office, and therefore the county was not bound to keep one for him, but the statute does require the Sheriff to give certificates, &c., serve summons in chauncery by copy, &c.

M. WILLIAMSON, for Plaintiffs.

13-9-5
Bryner
M
Board of Supervisors
Pref

Filed Apr. 18, 1860

L. L. Leland

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BRIEF OF DEFENDANTS IN ERROR.

State of Ill., Supreme Court, 3d Grand Division,
APRIL TERM, A. D. 1860.

JOHN BRYNER,
vs.
The Board of Suservisors
of Peoria County. }

In this case it is sought to charge the county for official services rendered by the Sheriff.

We contend that a county is not chargeable for such services, unless the county is a party to a suit, or there is a provision of law to that effect. This principle is recognized in the case of Kitchel et al, versus the county of Madison 4 scam. 163. Officers and attorneys may be required to perform services as a portion of the burthens of their office for which no compensation is provided. Vise et al versus, the county of Hamilton 19 Ill. 78.

The services for which compensation is sought were reuderred under the general law of the State, and for the State not for the county.

There is no express provision of law requiring counties to pay for such services, and upon the authority of the foregoing decisions, as well as upon principle, they are not chargeable with them.

The act of February 27, 1847. Purp. stat. 565 permitted the

county to pay the Sheriff not exceeding Ten Dollars for summoning the jurors for each term of court. This amount has been paid by Peoria county during the time while the fees charged by the Sheriff were accruing. We think this was voluntary on the part of the county; and the amount paid shows that the allowance was extremely liberal.

The act of 1849, Purp. Stat. 571 sec. 57, established the Sheriff's fees. It gives fees for serving a writ summons or subpoena. It then allows the Sheriff "for summoning a jury (grand jury excepted) each case fifty cents." This is given for the "act" of summoning, and it is given in each case of summoning a petit jury. The law is silent as to who shall make the payment. If it is in each cause where a jury is called, it is chargeable to the parties in that suit, and not to the county.

It then gives the Sheriff mileage for serving any such writ or process as aforesaid; but no writ or process by which a jury is to be summoned, was mentioned before in the act: and most clearly all the fees before mentioned relates to fees to be paid by the parties litigant. It is still more clear when the same clause gives mileage only "from the place of holding court to the place of residence of the defendant or witness, or place of service." Jurors are not defendants or witnesses, and no mileage is therefore given in case of service on jurors. The mileage given by this section is expressly limited to cases in which the service is had on defendants and witnesses. The court has no power to interpolate the words, "and jurors."

In a subsequent clause, the Sheriff is allowed "for summoning a jury in each case of forcibly entry and detainer, and attending the trial, two dollars." Is this allowance chargeable to the county?

In this same section where the county is required to pay fees to the Sheriff it is expressed. The county is required to allow the Sheriff for "ex-officio" services not exceeding thirty dollars. This is not confined to "ex-officio" services in criminal cases.

We say then, that no mileage is allowed Sheriffs for serving

VENIRES, and nothing requiring the county to pay him mileage or for summoning jurors, except at their election under the act of 1847, which has not been repealed by the act of 1849.

We think that these principles are clearly recognised in the cases of *Armsbruy, vs. Supervisors of Warren Co.* 20 Ill. 126, and county of *Crawford, vs. Spenney* 21 Ill. 288.

These services are not rendered for the county as a municipality. They are rendered for the State. The county is merely the agent of the State in selecting the juries.

In regard to the printed blanks, we submit that there is no law requiring the county to furnish the Sheriff with stationary. The case of the county of *Knox, vs. Arms* turned entirely upon the statutory provision, and the construction that the word "stationary" as used in the act included printed blanks. If the provision of the statute in that case was necessary to charge county, here in its absence the county ought not to be charged.

As to the charge for serving subpoenas in criminal cases. That point is sufficiently decided; the county of *Crawford, vs. Spenney* and *Kitchel, vs. the county of Madison* above cited.

MANNING & MERRIMAN,

13-9

Bryner - 5

vs

Board of Supervisors
of Peoria County

Depts Bonds

Filed Apr 26. 1860

A. Deland

Clerk

ABSTRACT.

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8-9 The items admitted to be correct consist of mileage in summoning grand and petit jurors for different terms of the Circuit and County Courts, being over 3,000 miles travel, and amounting to \$163.30.

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All of which was admitted to be correct, as to the items charged, but defendants denied their liabilities therefor.

The case was submitted to the Court on the following agreed state of facts, to-wit:

10 "JOHN BRYNER,
vs.
The Board of Supervisors
of Peoria County. } It is agreed in the said cause that the plaintiff was Sheriff of Peoria County, and as such rendered the services of 'mileage' in serving venires duly issued by the County Clerk of Peoria County, and in executing orders of Court for summoning Jurors, as charged in his bill filed with the declaration in said case.

"It is also agreed that the plaintiff rendered services to the value of thirty dollars of the services charged in that part of the bill filed, with that part of the declaration marked as 'criminal bill for convictions,' &c., which last mentioned services were rendered for serving subpoenas before the Grand Jury of said County—for serving writs of scire facias on forfeited recognizances, in criminal cases, and for serving writs of capias and subpoenas in cases pending in the Circuit Court of Peoria County, in which cases convictions were had. It is further agreed that the said plaintiff has paid out for printing of blanks of the kind charged in said bill, and which was proper to be used in the discharge of his duties of sheriff—money, to the amount of thirty-two dollars, as charged in said bill—that he has used a part of said blanks in the discharge of his duties as sheriff, and that he has the remainder of such blanks in his possession to be used in the same manner, and that the same were of the value charged in said bill.

It is further agreed that no part of the value of said services, as such, has been paid to said Sheriff.

It is further agreed, that during the time while the said services in serving venires, and executing orders of Court to summon Jurors as aforesaid, were being rendered, the defendant allowed and paid to the plaintiff ten dollars for each regular pannel of Jurors, and ten dollars for every pannel of Jurors summoned by order of Court, both in the Circuit Court and County Court of said county.

John Bryner
vs
Board of Supervisors
Abstract

... of County paid to the Clerk of Court and County Court of said
County and ten dollars for every hundred dollars returned by said
and paid to the plaintiff ten dollars for each unpaid hundred of the
... returned, were being rendered the defendant below of
... to be paid or returned, that during the time within the said County
... was not paid back to said County.
It is further stated that no part of the value of said services
... in said bill.
The same amount and that the same were of the value specified
... that the respondent of said plaintiff in his petition to be used in
... said plaintiff in the discharge of his duties as sheriff and that he
... two dollars as specified in said bill - that he has used a part of
... charges of his duties as sheriff - namely, for the amount of salary
... charges in said bill and which are payable to him only in the case
... the said plaintiff, for his out-of-pocket expenses of himself or the plaintiff
... in which case, as specified in said bill, the said plaintiff was not
... returned to said plaintiff in the County Court of Lewis County
... returned in certain cases and for certain value of certain services
... charges for certain services of a fee for the fee of sheriff's return
... returned for certain services, above the cost of jury and other
... and the same charges, etc., which last mentioned services were
... bill that with the part of the defendant's petition as specified
... value of said services of the services charged in the part of the
... bill is also stated that the plaintiff rendered services to the
... County for a certain amount as charged in the bill filed with the
... County Clerk of Lewis County and in execution orders of
... the services of, and also, in serving returns duly placed by the
... the plaintiff, was Sheriff of Lewis County and as such rendered
... of Lewis County. It is agreed in the said case that
... the board of supervisors.

[3]

The Court shall take this agreement as evidence in said cause,
and shall determine said cause without the intervention of a Jury.

M. WILLIAMSON, Attorney for Plaintiff.

MANNING & MERRIMAN, Attorneys for Defendant.

The Court rendered judgment for defendant, to which plaintiff
excepted.

M. WILLIAMSON, for Plaintiff.

159. 55
John Bryner
Board of Supervisors
Abstract

Filed Apr. 18. 1860

L. Leland
Clerk

B R I E F

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1 The first question is whether the county is liable to pay the Sheriff for summoning grand and petit juries, it not being possible to apportion the fees in such cases, to the parties litigant.

The fees, therefore, must be paid by the county, or the Sheriff must render the service for nothing. The Sheriff renders the service in such cases at the instance and request of the Board of Supervisors. They direct the clerk to issue the summons.

The Statutes provides that the County Commissioners Court shall select twenty-three persons from all parts of the county to serve as Grand Jurors. It says a "summons" shall issue commanding him to "summon" the persons selected, &c., which "summons" shall be served at least five days before the sitting of the court, &c. It must be returned to the county clerk.—Scates Treat. and Blackwell Stat. 679, Sec. 5.

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The statute requires the Sheriff to serve chauncery summons, &c., by copy. The statute requires this to be done, and the officer has no discretion or choice. It is then necessary to have blanks for the purpose. The Sheriff is obliged to do certain service in a certain way. The case in 20 Ill. 126, is not an authority against this, because in that case they merely decide the Sheriff was not bound to keep an office, and therefore the county was not bound to keep one for him, but the statute does require the Sheriff to give certificates, &c., serve summons in chauncery by copy, &c.

M. WILLIAMSON, for Plaintiffs.

159.-5
Brief
Super
my
Board of Supervisors

Filed Apr. 18. 1860

L. Leland
Clerk

BRIEF OF DEFENDANTS IN ERROR.

State of Ill., Supreme Court, 3d Grand Division;

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The act of February 27, 1847. Purp. stat. 565 permitted the

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The act of 1849, Purp. Stat. 571 sec. 57, established the Sheriff's fees. It gives fees for serving a writ summons or subpoena. It then allows the Sheriff "for summoning a jury (grand jury excepted) each case fifty cents." This is given for the "act" of summoning, and it is given in each case of summoning a petit jury. The law is silent as to who shall make the payment. If it is in each cause where a jury is called, it is chargeable to the parties in that suit, and not to the county.

It then gives the Sheriff mileage for serving any such writ or process as aforesaid; but no writ or process by which a jury is to be summoned, was mentioned before in the act: and most clearly all the fees before mentioned relates to fees to be paid by the parties litigant. It is still more clear when the same clause gives mileage only "from the place of holding court to the place of residence of the defendant or witness, or place of service." Jurors are not defendants or witnesses, and no mileage is therefore given in case of service on jurors. The mileage given by this section is expressly limited to cases in which the service is had on defendants and witnesses. The court has no power to interpolate the words, "and jurors."

In a subsequent clause, the Sheriff is allowed "for summoning a jury in each case of forcibly entry and detainer, and attending the trial, two dollars." Is this allowance chargeable to the county?

In this same section where the county is required to pay fees to the Sheriff it is expressed. The county is required to allow the Sheriff for "ex-officio" services not exceeding thirty dollars. This is not confined to "ex-officio" services in criminal cases.

We say then, that no mileage is allowed Sheriffs for serving

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As to the charge for serving subpoenas in criminal cases. That point is sufficiently decided; the county of Crawford, vs. Spenney and Kitchel, vs. the county of Madison above cited.

MANNING & MERRIMAN,

159-5
Supersors

Sept Brief

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Filed Apr 26, 1860

L. Deland
Clerk

BRIEF OF DEFENDANTS IN ERROR.

State of Ill., Supreme Court, 3d Grand Division,
APRIL TERM, A. D. 1860.

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It then gives the Sheriff mileage for serving any such writ or process as aforesaid; but no writ or process by which a jury is to be summoned, was mentioned before in the act: and most clearly all the fees before mentioned relates to fees to be paid by the parties litigant. It is still more clear when the same clause gives mileage only "from the place of holding court to the place of residence of the defendant or witness, or place of service." Jurors are not defendants or witnesses, and no mileage is therefore given in case of service on jurors. The mileage given by this section is expressly limited to cases in which the service is had on defendants and witnesses. The court has no power to interpolate the words, "and jurors."

In a subsequent clause, the Sheriff is allowed "for summoning a jury in each case of forcible entry and detainer, and attending the trial, two dollars." Is this allowance chargeable to the county?

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We say then, that no mileage is allowed Sheriffs for serving

VENIRES, and nothing requiring the county to pay him mileage or for summoning jurors, except at their election under the act of 1847, which has not been repealed by the act of 1849.

We think that these principles are clearly recognised in the cases of *Armsbruy, vs. Supervisors of Warren Co.* 20 Ill. 126, and county of *Crawford, vs. Spenney* 21 Ill. 288.

These services are not rendered for the county as a municipality. They are rendered for the State. The county is merely the agent of the State in selecting the juries.

In regard to the printed blanks, we submit that there is no law requiring the county to furnish the Sheriff with stationery. The case of the county of *Knox, vs. Arms* turned entirely upon the statutory provision, and the construction that the word "stationary" as used in the act included printed blanks. If the provision of the statute in that case was necessary to charge county, here in its absence the county ought not to be charged.

As to the charge for serving subpoenas in criminal cases. That point is sufficiently decided; the county of *Crawford, vs. Spenney* and *Kitchel, vs. the county of Madison* above cited.

MANNING & MERRIMAN,

13-9

Bryner. vs. Supervisor

Depts Brief

Filed Apr 26. 1863

L. Leland
Clerk

BRIEF OF DEFENDANTS IN ERROR.

State of Ill., Supreme Court, 3d Grand Division;
APRIL TERM, A. D. 1860.

JOHN BRYNER,
vs.
The Board of Suservisors
of Peoria County.

In this case it is sought to charge the county for official services rendered by the Sheriff.

We contend that a county is not chargeable for such services, unless the county is a party to a suit, or there is a provision of law to that effect. This principle is recognized in the case of Kitchel et al, versus the county of Madison 4 scam. 163. Officers and attorneys may be required to perform services as a portion of the burthens of their office for which no compensation is provided. Vise et al versus, the county of Hamilton 19 Ill. 78.

The services for which compensation is sought were rendered under the general law of the State, and for the State not for the county.

There is no express provision of law requiring counties to pay for such services, and upon the authority of the foregoing decisions as well as upon principle, they are not chargeable with them.

The act of February 27, 1847. Purp. stat. 565 permitted the

county to pay the Sheriff not exceeding Ten Dollars for summoning the jurors for each term of court. This amount has been paid by Peoria county during the time while the fees charged by the Sheriff were accruing. We think this was voluntary on the part of the county; and the amount paid shows that the allowance was extremely liberal.

The act of 1849, Purp. Stat. 571 sec. 57, established the Sheriff's fees. It gives fees for serving a writ summons or subpoena. It then allows the Sheriff "for summoning a jury (grand jury excepted) each case fifty cents." This is given for the "act" of summoning, and it is given in each case of summoning a petit jury. The law is silent as to who shall make the payment. If it is in each cause where a jury is called, it is chargeable to the parties in that suit, and not to the county.

It then gives the Sheriff mileage for serving any such writ or process as aforesaid; but no writ or process by which a jury is to be summoned, was mentioned before in the act: and most clearly all the fees before mentioned relates to fees to be paid by the parties litigant. It is still more clear when the same clause gives mileage only "from the place of holding court to the place of residence of the DEFENDANT OR WITNESS, or place of service." Jurors are not defendants or witnesses, and no mileage is therefore given in case of service on jurors. The mileage given by this section is expressly limited to cases in which the service is had on defendants and witnesses. The court has no power to interpolate the words, "and jurors."

In a subsequent clause, the Sheriff is allowed "for summoning a jury in each case of forcible entry and detainer, and attending the trial, two dollars." Is this allowance chargeable to the county?

In this same section where the county is required to pay fees to the Sheriff it is expressed. The county is required to allow the Sheriff for "ex-officio" services not exceeding thirty dollars. This is not confined to "ex-officio" services in criminal cases.

We say then, that no mileage is allowed Sheriffs for serving

VENTRES, and nothing requiring the county to pay him mileage or for summoning jurors, except at their election under the act of 1847, which has not been repealed by the act of 1849.

We think that these principles are clearly recognised in the cases of *Armsbruy, vs. Supervisors of Warren Co.* 20 Ill. 126, and county of *Crawford, vs. Spenny* 21 Ill. 288.

These services are not rendered for the county as a municipality. They are rendered for the State. The county is merely the agent of the State in selecting the juries.

In regard to the printed blanks, we submit that there is no law requiring the county to furnish the Sheriff with stationary. The case of the county of *Knox, vs. Arms* turned entirely upon the statutory provision, and the construction that the word "stationary" as used in the act included printed blanks. If the provision of the statute in that case was necessary to charge county, here in its absence the county ought not to be charged.

As to the charge for serving subpoenas in criminal cases. That point is sufficiently decided; the county of *Crawford, vs. Spenny* and *Kitchel, vs. the county of Madison* above cited.

MANNING & MERRIMAN,

15-9

Bryner

vs

Board of Supervisors

of Peoria County

Defts. Bonds

Filed Apr 26, 1860

L. Deland

Clerk

ABSTRACT.

In The Supreme Court, April Term, A. D. 1860.

Page. JOHN BRYNER,
vs.
The Board of Supervisors
of Peoria County. } Error to Peoria County.

THIS cause was commenced in the Circuit Court of Peoria County to the November term, 1859. The declaration was in debt and plea of general issue.

The case was submitted to Judge Powell for decision without a jury on an agreed state of facts. The defendants admitted that the services were rendered as charged in the bill, and that they were of the value as charged in the bill of items, but denied the liability of the County to pay for the same.

8-9 The items admitted to be correct consist of mileage in summoning grand and petit jurors for different terms of the Circuit and County Courts, being over 3,000 miles travel, and amounting to \$163.30.

Also, for serving subpoenas before the grand juries and for the Court, in different cases, amounting to \$50.80.

Also, for money paid out for printing of jury warrants, certificates, bonds and bills of sale, amounting to \$32.00.

All of which was admitted to be correct, as to the items charged, but defendants denied their liabilities therefor.

The case was submitted to the Court on the following agreed state of facts, to-wit:

10 "JOHN BRYNER,
vs.
The Board of Supervisors
of Peoria County. } It is agreed in the said cause that the plaintiff was Sheriff of Peoria County, and as such rendered the services of 'mileage' in serving venires duly issued by the County Clerk of Peoria County, and in executing orders of Court for summoning Jurors, as charged in his bill filed with the declaration in said case.

"It is also agreed that the plaintiff rendered services to the value of thirty dollars of the services charged in that part of the bill filed, with that part of the declaration marked as 'criminal bill for convictions,' &c., which last mentioned services were rendered for serving subpoenas before the Grand Jury of said County—for serving writs of scire facias on forfeited recognizances, in criminal cases, and for serving writs of capias and subpoenas in cases pending in the Circuit Court of Peoria County, in which cases convictions were had. It is further agreed that the said plaintiff has paid out for printing of blanks of the kind charged in said bill, and which was proper to be used in the discharge of his duties of sheriff—money, to the amount of thirty-two dollars, as charged in said bill—that he has used a part of said blanks in the discharge of his duties as sheriff, and that he has the remainder of such blanks in his possession to be used in the same manner, and that the same were of the value charged in said bill.

It is further agreed that no part of the value of said services, as such, has been paid to said Sheriff.

It is further agreed, that during the time while the said services in serving venires, and executing orders of Court to summon Jurors as aforesaid, were being rendered, the defendant allowed and paid to the plaintiff ten dollars for each regular pannel of Jurors, and ten dollars for every pannel of Jurors summoned by order of Court, both in the Circuit Court and County Court of said county.

John Bryner
my
The Board of Supervis-
ors

Abstract

[3]

The Court shall take this agreement as evidence in said cause,
and shall determine said cause without the intervention of a Jury..

M. WILLIAMSON, Attorney for Plaintiff..

MANNING & MERRIMAN, Attorneys for Defendant..

The Court rendered judgment for defendant, to which plaintiff
excepted.

M. WILLIAMSON, for Plaintiff

159
John Bryner
my
Board of Supervisors
Abstract

Filed April 18. 1860
L. Leland
Clerk

ABSTRACT.

In The Supreme Court, April Term, A. D. 1860.

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vs.

The Board of Supervisors
of Peoria County.

} Error to Peoria County.

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The case was submitted to Judge Powell for decision without a jury on an agreed state of facts. The defendants admitted that the services were rendered as charged in the bill, and that they were of the value as charged in the bill of items, but denied the liability of the County to pay for the same.

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Also, for serving subpoenas before the grand juries and for the Court, in different cases, amounting to \$50.80.

Also, for money paid out for printing of jury warrants, certificates, bonds and bills of sale, amounting to \$32.00.

All of which was admitted to be correct, as to the items charged, but defendants denied their liabilities therefor.

The case was submitted to the Court on the following agreed state of facts, to-wit:

10 "JOHN BRYNER,
vs.
The Board of Supervisors
of Peoria County. } It is agreed in the said cause that the plaintiff was Sheriff of Peoria County, and as such rendered the services of 'mileage' in serving venires duly issued by the County Clerk of Peoria County, and in executing orders of Court for summoning Jurors, as charged in his bill filed with the declaration in said case.

"It is also agreed that the plaintiff rendered services to the value of thirty dollars of the services charged in that part of the bill filed, with that part of the declaration marked as 'criminal bill for convictions,' &c., which last mentioned services were rendered for serving subpoenas before the Grand Jury of said County—for serving writs of scire facias on forfeited recognizances, in criminal cases, and for serving writs of capias and subpoenas in cases pending in the Circuit Court of Peoria County, in which cases convictions were had. It is further agreed that the said plaintiff has paid out for printing of blanks of the kind charged in said bill, and which was proper to be used in the discharge of his duties of sheriff—money, to the amount of thirty-two dollars, as charged in said bill—that he has used a part of said blanks in the discharge of his duties as sheriff, and that he has the remainder of such blanks in his possession to be used in the same manner, and that the same were of the value charged in said bill.

It is further agreed that no part of the value of said services, as such, has been paid to said Sheriff.

It is further agreed, that during the time while the said services in serving venires, and executing orders of Court to summon Jurors as aforesaid, were being rendered, the defendant allowed and paid to the plaintiff ten dollars for each regular pannel of Jurors, and ten dollars for every pannel of Jurors summoned by order of Court, both in the Circuit Court and County Court of said county.

John Bryner
The Board of Super-
vision

Abstract

The Court shall take this agreement as evidence in said cause,
and shall determine said cause without the intervention of a Jury.

M. WILLIAMSON, Attorney for Plaintiff.

MANNING & MERRIMAN, Attorneys for Defendant.

The Court rendered judgment for defendant, to which plaintiff
excepted.

M. WILLIAMSON, for Plaintiff.

159
John Bryner
27
Board of Supervisors
Abstract

Filed Dec. 18. 1860

L. Loeland
Clerk

B R I E F

OF POINTS AND AUTHORITIES.

JOHN BRYNER,
vs.
The Board of Supervisors
of Peoria County. } Supreme Court.

- 1 The first question is whether the county is liable to pay the Sheriff for summoning grand and petit juries, it not being possible to apportion the fees in such cases, to the parties litigant.

The fees, therefore, must be paid by the county, or the Sheriff must render the service for nothing. The Sheriff renders the service in such cases at the instance and request of the Board of Supervisors. They direct the clerk to issue the summons.

The Statutes provides that the County Commissioners Court shall select twenty-three persons from all parts of the county to serve as Grand Jurors. It says a "summons" shall issue commanding him to "summon" the persons selected, &c., which "summons" shall be served at least five days before the sitting of the court, &c. It must be returned to the county clerk.—Scates Treat. and Blackwell Stat. 679, Sec. 5.

The Statute in relation to fees provides that the Sheriff shall be allowed five cents per mile for necessary travel to serve any summons.

If he is not allowed fees under this clause then the Statute has not provided that he shall or shall not have compensation.

2 A Sheriff in all cases is entitled to compensation for his services, unless the Statute provides he shall render the service for nothing.—12 Wend. 257. 2 Denio. 41. 2 Sanford 742. Crocker on Sher. section 1097. 9 John R. 328.

3 Where a Statute provides that a Sheriff shall not have any other or greater fees than are provided by law only, applies to particular services, where particular fees are provided by statute, and does not extend to cases where no fees are provided by law; in all such cases the Sheriff is entitled to his reasonable fees.—2 Cowan R., 534. 18 John R., 242.

In 18 John Rep., the clerk was required to perform a duty for the benefit of the county, where no fees were provided by law in sending notices to different Justices of the Peace. The Court held that the county was liable, and awarded a mandamus to compel payment.

In 2 Cowan, the service was for services of the clerk in engrossing the minutes of the Court where no fees were provided. The Court held that the service was rendered to the county, and as the statute did not say he should perform the service gratuitously, he was entitled to reasonable compensation, and awarded a mandamus to compel it.

In 2 Greene, (Iowa,) 473, the Court decides that in that State where an Attorney is appointed by the Court to defend a criminal too poor to employ counsel, that the service is rendered for the county, and though no fees were provided, it was decided that the Attorney was entitled to reasonable fees from the county.

In 2 Scam Rep., 3, the Supreme Court refused to award a mandamus to the clerk to send up the record for the State until the State paid the fees, although there was no statute giving him fees in such cases.

Some cases have been decided against officers and others, recovering of the county for services; but in all such cases the case turned upon the point that the service was not rendered for the county.

The county should be liable to pay the fees of officers in forfeited recognizances, for now the money in such cases goes to the

county. The cases decided, when the Court held the county not to be liable, was under a different law, when the money collected went to the State, and they held that the county could not be held liable to pay the fees for they had no interest in making the money.

The statute requires the Sheriff to serve chauncery summons, &c., by copy. The statute requires this to be done, and the officer has no discretion or choice. It is then necessary to have blanks for the purpose. The Sheriff is obliged to do certain service in a certain way. The case in 20 Ill. 126, is not an authority against this, because in that case they merely decide the Sheriff was not bound to keep an office, and therefore the county was not bound to keep one for him, but the statute does require the Sheriff to give certificates, &c., serve summons in chauncery by copy, &c.

M. WILLIAMSON, for Plaintiffs.

159.
Bryner
my
Board of Supervisors
Chief of appellants

Filed Apr. 18. 1860
L. Leland
Clerk

B R I E F

OF POINTS AND AUTHORITIES.

JOHN BRYNER,
vs.
The Board of Supervisors
of Peoria County. } Supreme Court.

1. The first question is whether the county is liable to pay the Sheriff for summoning grand and petit juries, it not being possible to apportion the fees in such cases, to the parties litigant.

The fees, therefore, must be paid by the county, or the Sheriff must render the service for nothing. The Sheriff renders the service in such cases at the instance and request of the Board of Supervisors. They direct the clerk to issue the summons.

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county. The cases decided, when the Court held the county not to be liable, was under a different law, when the money collected went to the State, and they held that the county could not be held liable to pay the fees for they had no interest in making the money.

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M. WILLIAMSON, for Plaintiffs.

159
Bryner
Mr
Board of Supervisors
Brief

Gilest Apr 18, 1860
L. Leonard
clerk

Pleas before the circuit court, within and for the county
of Peoria and state of Illinois, on the 2^d day of July, A.D.
1859. - Present - Oliver N. Powell, judge of the 16th judicial
circuit, in said state, John Bryner, sheriff and Enoch
Hewan, clerk,

Page 1

Be it remembered that, ^{hasteforse to wit,} on the twenty sixth day
of May, A.D. 1859, there were filed in the clerk's
office of the circuit court of Peoria County,
Illinois, a declaration and precept in the words
and figures following to wit:

State of Illinois } Circuit Court in & for the County
Peoria County } of of Peoria June Special Term 1859
John Bryner the plaintiff in this suit com-
-plains of the board of supervisors of Peoria County
in a plea of debt for that whereas the said
defendants on the 20th day of May 1859, at the
county aforesaid were indebted to the plaintiff in
the sum of five hundred dollars for fees and services
rendered done and performed by the plaintiff for the
defendant at their request. And in the further sum
of five hundred dollars for the price and value of
goods chattels blanks and stationary then and there
sold and delivered by the plaintiff to the defendants
at their request. And in the further sum of five
hundred dollars for work then and there done and
materials blanks and stationary for the same provided

Page 2

by the plaintiff for the defendant at their request.
And in the further sum of five hundred dollars
for money then and there paid by the plaintiff for
the use of the defendant at their request.

And in the further sum of five hundred dollars
for money then ~~then~~ and there received by the defend-
ants for the use of the plaintiff.

And in the further sum of five hundred dollars
for money found to be due from the defendant to the
plaintiff on an account then and there stated between
them and which said several sums of money were to
be respectively paid by the defendants to the plaintiff
on request. Yet the defendant hath not paid the said
several sums of money nor either of them nor any part
thereof to the plaintiff's damage five hundred dollars
and therefore he brings suit &c.

By M. Williamson
his atty

Page 3

Copy of account sued on

101 Miles Travel serving 24 Jurors Nov Term 1858	
Summoned by order of Judge Powell 5	5.05
24 Miles Travel Summoning 24 Jurors 4 week	
Nov Term 5 & return 10 Return 10	1.30
15 Miles Travel 5 week 12 Jurors 5 & Return	.85
36 " " 5 " 12 " 5 & Return Return	1.90
The above was summoned by order of the Hon. C. N. Powell Judge of the Steby Term County Court	
172 Miles Travel Summoning 24 Jurors	
by order of Judge Loucks 5 & Return Return	8.70
330 Miles Travel Summoning 5	16.50
the Grand Jury for Steby Term 1859	
335 Miles Petit Jury same Term 5 & Return Return	16.85
March Circuit Court 1859.	
327 Miles Summoning Petit Jury 5	16.35
County Court	
76 Miles & Sum 15 Jurors 5	3.80
2 Week Circuit Court	
307 Miles 24 Jurors	15.35
3 Week	
227 Miles 24 Jurors 5	11.35
County Court	
15 Miles Travel 15 Jurors 5	.75
April Term 1860.	
335 Miles 23 Grand Jurors 5	16.75

207. " Pettir " 5 15.30
 May Term Circuit Court
 330 Miles 24 Pettir jurors 5 16.50
 2nd weeks
 320 Miles 24 jurors 5 16.00
 162.30

Criminal Bill of Corrections vs
 People vs. Weise Serving Subp before Grand Jury & Court 7.20
 " " " " " " " " 1.60
 " " Smith " " " " " 4.50
 " " Campbell & Comstock Scir Sta 75
 " " Madina Hoffer Cap & Subp 3.85
 " D. Cowhorn Scir Sta 4.40
 " " Thomas Alwood Capias & Sub 3.85
 " " Cleveland " " 3.45
 " " David Campbell " " 3.70
 " " Isaac Patts " 1.85
 " " Cox 2.05
 " " James Hamilton Sub 3.60
 " " Serving Sub before Grand Jury 10.00
 30.80 \$ 50.80

1838 Printers Bill
 Dec. 24 1839 Printing 500 Jury Warrants for Sheriff 5.00
 Jan 28 " 1000 Sheriffs Certificates 15.00
 500 " Bonds 5.00
 1000 Bills of Sale 7.00
 \$ 32.00 \$ 32.00
 245.10

John Bryner
vs
The Board of Supervisors
of Peoria County

Debt \$ 500.00
Damages \$ 500.00

Page 5

The clerk will issue summons
in Debt as above Debt \$ 500.00. Damages \$ 500.00
Directed to the Coroner of Peoria County to execute
M. Williamson.

Atty for. plff.

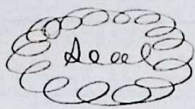
And afterwards to wit on the twenty sixth day of
May A D 1859. there was issued from said Clerks
office a summons in words and figures following to
wit:

The People of the State of Illinois, To the Coroner of
Peoria County - Greeting:

We Command you to summon
The Board of Supervisors of Peoria County. if it may
be found in your county, to appear before our Circuit
Court on the first day of the special term thereof, to
be held at Peoria, within and for said county of Peoria
on the 2^d Monday of June next, then and there in
our said Court, to answer unto John Bryner of a plea
that it render unto him the sum of five hundred
dollars which it owes to and unjustly withholds from
him the said Bryner to his damage five hundred
dollars as he says, and make return of this writ
with an endorsement of the time and manner of

serving the same, on or before the first day of the term of the said court to be held as aforesaid.

Page 6



Witness Emoch P Sloan, clerk of our said court, and the seal thereof at Peoria this 26th day of May in the year of Our Lord one thousand eight hundred and fifty nine. Emoch P. Sloan clerk

Which said summons was returned into said clerk's office, indorsed in words & figures following to wit:
State of Illinois

Peoria County ILL. Served the within summons on Benjamin Slane the chairman and Charles Kettelle the clerk of the Board of Supervisors of Peoria County by ^{reading} them to the same this 3^d day of June 1859.

Peoria June 3^d 1859.

J. N. Niglas.

Coroner

And afterwards to wit, on the fourteenth day of June A.D. 1859. there was filed in the office of the clerk of said court a plea ^{in the above entitled cause} in words and figures following to wit:

John Bryner

vs

Board of Supervisors

Peoria Circuit Court

June Term 1859.

Deft comes & defends the wrong & injury when vs & say that it is not indebted unto plaintiff in manner and form as plaintiff hath above alledged and of this the defendant puts itself upon the country &c.

Manning Villerman
for Deft.

Page 7

Proceedings at a special term of the circuit court began and held at the Court House in the City and County of Peoria, in the State of Illinois, on the second Monday in the month of June, in the year of our Lord one thousand eight hundred and fifty nine, it being the thirtieth day of said month, Present the Honorable Elihu N. Powell Judge of the 16th Judicial circuit in the state of Illinois, John Bryner Sheriff, and Enoch P. Sloan, clerk to wit:

Saturday July 2nd A.D. 1859.

John Bryner

vs

Debt.

The Board of Supervisors
of Peoria County

This day came the parties to this suit by their respective attorneys, waive trial by jury and agree that all matters of law and fact arising in this cause shall be tried by the court, and the court having heard the argument of counsel, and being satisfied in the premises, do find for the defendant.

And afterwards to wit on the second day of July A.D. 1859. there was filed in the office of the clerk of said court a bill of Exceptions in the above entitled cause which is in the words and figures following to wit:

John Bryner

vs
The Board of Supervisors
of Peoria County

} And now on this day came

Page 7

Proceedings at a special term of the circuit court began and held at the Court House in the City and County of Peoria, in the State of Illinois, on the second Monday in the month of June, in the year of our Lord one thousand eight hundred and fifty nine, it being the thirtieth day of said month, Present the Honorable Elihu N. Powell Judge of the 16th Judicial circuit in the state of Illinois, John Bryner Sheriff, and Enoch P. Sloan, clerk to wit:

Saturday July 2nd A.D. 1859.

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vs

Debt.

The Board of Supervisors
of Peoria County

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John Bryner

vs
The Board of Supervisors
of Peoria County

} And now on this day came

on this cause to be heard and the parties having waived a jury, and submitted the cause to the court for trial. The Plaintiff then submitted his account,

Which said account is in words and figures following to wit.

Page 8

Copy of account sued on

101 Miles Travel serving 24 Jurors Nov Term | 58

Summoned by order of Judge Powell 5. 5.05

24 Miles Travel Summoning 24 Jurors 4 weeks

Nov Term 5. + Return 10 1.30

15 Miles Travel 5 weeks 12 Jurors 5 + Return 85

36 " " 5 " 12 " 5 + Return 1.90

The above was summoned by order of
Hon^{ble} E. N. Powell Judge

Feb'y Term County Court

172 Miles Travel Summoning 24 Jurors

by order of Judge Loucks 5 + Return 8.70

330 Miles Travel Summoning 5 16.50

the Grand Jury for Feb'y Term | 59

335 Miles Petit Jury same Term 5 + Return 16.85

March Circuit Court | 59.

327 Miles Summoning Petit Jury 5 16.35

County Court

76 Miles I Sum 15 Jurors 5 3.80

2 week. Circuit Court

307 Miles 24 Jurors 15.35

3 week

227 Miles 24 Jurors 5 11.35

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15 Miles Travel 5 weeks 12 Jurors 5 + Return		85
36 " " 5 " 12 " 5 + Return		1.90
The above was summoned by order of ^{Hon} E. N. Powell Judge Feby Term County Court		
172 Miles Travel Summoning 24 Jurors		
by order of Judge Loucks 5 + Return		8.70
330 Miles Travel Summoning 5		16.50
the Grand Jury for Feby Term	59	
335 Miles Petit Jury same Term 5 + Return		16.85
March Circuit Court	59.	
327 Miles Summoning Petit Jury 5		16.35
County Court		
76 Miles I Sum 15 Jurors 5		3.80
2 week. Circuit Court		
307 Miles 24 Jurors		15.35
3 week		
227 Miles 24 Jurors 5		11.35

County Court

13 Miles Travel 15 Jurors 5 .75
April Term 66
335 Miles 23 Grand Jurors 5 16.75
307 " Pettit " 5 15.30

Page 9

May Term Circuit Court

330 Miles 24 Pettit Jurors 5 16.50
2nd week
320 Miles 24 Jurors 5 16.00
162.80

Criminal Bill of Convictions &c

People vs. Weiss Serving Subj before Grand Jury & Court. 7.20
" " " " " " " " 1.60
" " Smith " " " " " 4.50
" " Campbell & Bonstock Ser. & Fa. 75
" " Madind Hoffer Cap. & Subp. 3.85
" T.D. Souhorn Ser. & Fa. 4.40
" " Thomas Alwood Cap. & Sub 3.85
" " Cleveland " " 3.45
" " David Campbell " " 3.70
" " Isaac Patts " " 1.85
" " Cox 2.05
" " James Hamilton Sub 3.60
" " Serving Sub. before Grand Jury 10.00
30.80 - 50.80

Printers Bill

1838
Dec. 24. Printing 500 Jury Warrants for Sheriff 5.00
1839
Jany 28. " 1000 Sheriff Certificates 15.00
500 " Bonds 5.00
1000 Bills of Sale 7.00
32.00 32.00
245.10

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Page 10

which was admitted ^{by defendants} to be correct as to the charges therein contained, but denied the liability of the county thereon, and the parties thereupon submitted the cause to the trial on the following facts agreed upon by the parties to wit:

State of Illinois }

County of Peoria } Peoria Circuit Court

June Special Term A D 1859.

John Bryner

vs

The Board of Supervisors
of Peoria County }

It is agreed in said cause that the Plaintiff was Sheriff of Peoria County, and as such rendered the services of "Mileage" in serving venues duly issued by the county clerk of Peoria County, and in executing orders of court for summoning jurors, as charged in his bill filed with the declaration in said cause.

It is also agreed that said Plaintiff rendered services to the value of thirty dollars, of the services charged in that part of the bill filed with said declaration marked as "criminal bill for convictions &c" which last mentioned services were rendered for serving subpoenas before the Grand Jury of said County, for serving writs of Habeas Facias on forfeited recognizances in criminal cases, and for serving writs of Capias and subpoenas in cases pending in the Circuit Court of Peoria County, in which cases convictions were had.

Page 10

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State of Illinois }

County of Peoria } Peoria Circuit Court

June Special Term A D 1859.

John Bryner

vs

The Board of Supervisors
of Peoria County }

It is agreed in said cause that the Plaintiff was Sheriff of Peoria County, and as such rendered the services of "Mileage" in serving venues duly issued by the county clerk of Peoria County, and in executing orders of court for summoning jurors, as charged in his bill filed with the declaration in said cause.

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Pap 11
It is further agreed that the said Plaintiff has paid out for the printing of blanks, of the kind charged in said bill, and which were proper to be used in the discharge of his duties of Sheriff money to the amount of thirty two dollars as charged in said bill, that he has used a part of said blanks in the discharge of his duties as sheriff, and that he has the remainder of such blanks in his possession to be used in the same manner, and that the same were of the value charged in said bill.

It is further agreed that no part of the value of said services as such has been paid to said Sheriff.

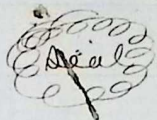
It is further agreed that during the time while the said services in serving venires and executing orders of court to summon jurors as aforesaid were being rendered the defendant allowed and paid to the Plaintiff ten dollars for every regular panel of jurors, and ten dollars for every panel of jurors summoned by order of court both in the Circuit Court and County Court of said County.

The Court shall take this agreement as evidence in said cause and shall determine said cause without the intervention of a jury.

M. Williamson
att'y for Plff
Manning V. Merriman
att'y for deft.

The court thereupon rendered a judgment for the defendants for costs in said cause to which the said plaintiff excepted and prayed the court to sign and seal this bill of exceptions &c

E. N. Powell



State of Illinois }
Peoria county } ss

I, Enoch D. Sloan, Clerk of the circuit court in and for said county and state, do certify that the foregoing is a full and complete transcript of the papers and proceedings of said court appertaining to the cause wherein John Bryner is plaintiff and the Board of Supervisors of Peoria county, is defendant, as the same appears of record and on file in my office.

Given under my hand and seal of said ^{court} office at Peoria, this 3^d day of April A.D. 1860.

Enoch D. Sloan, Clerk



John Byrne et al

The Board of Super-
visors of Peoria County

In the Supreme Court
Apr Term 1866
Error to Peoria

And now comes the said
Plaintiff and says that in the Record
and proceedings and in the rendition
of the Judgment aforesaid there
is Error in this to wit

Said Court Erred in rendering
Judgment in favor of the Defendant
and against the Plaintiff.

For this reason said Plaintiff prays
that said Judgment may be reversed
v

Nov. 14th 1860.

M. J. Murphy
Plffs atty

And Defendant in error says
there is no error in said Record
as alleged by plaintiff in Error
says the said Judgment ought
to be affirmed

Marshall M. Minner
for Deft in Error

159-5
John Bryner
vs

Board of Supervisors
of Peoria County

Record

Filed April 16, 1960
L. Leland
Clerk

John Bryner

vs

The Board of Supervisors
of Peoria County

Supreme Court
April Term 1860

One question is whether the County of Peoria is liable to pay the Sheriff any fees or compensation for Summoning grand and petit jurors - It is impossible under our laws to tax any Costs of Summoning the grand and petit jurors to parties litigant or in any manner to divide or apportion the fees or costs of Summoning grand or petit jurors among the cases before the Court

The fees therefore must be paid by the County or the Sheriff must render the service for nothing

It is a well ^{settled} and universal principle in law that if one person procures the services of another he must pay for such service a reasonable compensation - This principle applies to Counties or corporations as well as individuals. In Summoning grand and petit jurors the Sheriff renders the service directly to the County - It is done under process issued by the direction of the board of Supervisors and the persons designated by the board are summoned - and in directing this the board act for the County - The costs of the due and

proper administration of justice should be and has from time immemorial been borne by the different Counties - Such is the intent and policy of our laws

The Statute provides that the County Commissioners Court of each county shall at least twenty days before the sitting of court select 23 persons from all portions of the county to act as grand jurors and shall cause their clerk within five days thereafter to issue and deliver to the Sheriff a "Summons" commanding him to "Summon" the persons selected to serve as jurors which said "Summons" shall be served at least five days before the sitting of the Court Blackwell's Statute 679 Sec 5

This gives the Sheriff ten days in which to serve a grand jury

In this section the Statute calls the process a "Summons" provides that it shall be issued by the County Clerk and returned to him

The Statute in relation to fees of Sheriffs provides that the Sheriff shall be allowed five cents per mile for necessary travel to serve any Summons and which must necessarily include summoning juries upon summons issued by the County Clerk

Unless this section provides for compensation of the Sheriff for summoning juries there no fees are provided nor are any prohibited

by law

A Sheriff is in all cases entitled to compensation for his services unless the Statute expressly provides that he shall perform the service for nothing

12 Wend 257 2 Denio 41

2 Saund 742 Crocker and

The fact that the Statute provides that an officer shall not have any other or greater fees than what is provided by law only applies to particular services where particular fees are provided and does not extend to cases where no fees are provided by law - If no fees are provided by law then the Sheriff would be entitled to his reasonable fees or compensation for his services

2 Cowan R 534

18 John R 242

In 18 John Rep the Clerk was required to perform a duty for the benefit of the County where no fees were provided by law in sending notices to the different Justices of the Peace throughout the County of the licenses taken out by peddlars - No fees for sending such notices were provided by law - but the Court decided that it was services rendered the County and awarded a peremptory Mandamus to compel the board of Supervisors to allow the account

In 2 Cowan Rep the Clerk of the County claimed for services as Clerk in engrossing

The minutes of the Court - The court decided that the service was rendered to the County and as no fees were provided by law and the law did not say the Clerk should perform the work gratuitously that therefore the County must pay for the services - The Court say such charges constitute a part of the Contingent Charges ^{of the county} and awarded a Mandamus to compel the allowance of the claim

In 2 Greene (Iowa) R 473 the Court decided that the County is liable to pay an attorney his fees in defending a criminal by appointment of the Court although no fee was provided by law - on the ground that the service was rendered to the County the Criminal being unable to employ counsel

They place the decision upon the broad ground that the County is liable like an individual to pay for any service rendered it by law - They say the service rendered was not Voluntary but in obedience to law and that where an act or service is rendered to the County in obedience to any direct mandate of the law or statute reasonable compensation to the person who performs that service is a necessary incident to In 2 Scan Rep 3 The Supreme Court of Illinois refused to award a man -

It has been said that the sheriff as an officer of the Court is bound to summon jurors - This might be so as to jurors during the sitting of court but in vacation there can be no Court of which he is an officer & when the service is rendered in summoning jurors by order of the Court County there is no Court and consequently he can not then be an officer of a Court

damas to the Clerk to send up the record for the State until his fees for making out the same were paid - Thereby deciding that the Clerk was entitled to demand fees where none were provided by law

In summoning a jury the service is necessarily rendered to the County - It is the County that orders it to be done and it is such service that the Sheriff can not charge any where but to the County and from the foregoing authorities it would seem clear that he can charge the County with the services #

I am aware that our Supreme Court have made some decisions that at first thought would seem to conflict with the above authorities - But on closer examination there is not only no conflict but they are in perfect harmony with them

In a case Ill R where they decide that an attorney can not recover of the County for defending a criminal when appointed by the Court their decision is based on the ground that the County was not interested was not a party to the suit & that the service was not rendered at the instance nor request of the County but that the service was rendered for the State

In summoning jurors it is different for

The service is there rendered at the request and Special direction of the County - I think that decision to be ~~that~~ virtually decide that if the Service had been rendered at the instance and request of the County, as in this Case then they would have held the County liable.

Also in Olds Rep. where they decide that a Sheriff and collector must furnish his own lights & fuel - for in that case they decide that the Sheriff is not bound to keep an office and hence the County was not bound to keep or furnish one for him but it is clearly to be inferred from that decision that if the law had required him to keep an office as it required the Clerk to do then the County would be obliged to furnish him not only an office but also ~~the~~ fuel lights and whatever was necessary for his office. From all the decisions it would seem that whatever the law requires to be done it will compensate the person for what he is required to do.

On relation to the items of Stationery - The only authority relied on against it allowance was 20th Ill 126 - This case as to Stationery is not in point - The ground on which the Court refused to allow the Sheriff for lights & fuel was that the Sheriff was not bound

to keep an office for the public accommodation - That if he did it was for his own private motives and as the County was not bound to provide him an office (and the law did not compel him to keep one) that therefore the County was not obliged to furnish him with lights & fuel - The Stationery charged for in this case was used for the public benefit - It was used by the Sheriff in discharge of his official duty -

The Statute provides that Summons in Chancery shall be served by Copy that in summoning juries &c the Sheriff shall in certain cases serve by copy - This is a positive requirement of the Statute in which the ~~Sheriff~~ office has no discretion and is therefore different from the Case above cited - It is as much the duty of the Clerk to furnish the Copies to be served by the Sheriff as it is of the Sheriff to furnish the Copies for himself - The law says ~~that~~ it shall be done by Copy but does not say he shall provide himself with the Copies.

The County should furnish all the Stationery necessary to be used by any of her public officers in the performance of any duty required to be done by the law for the benefit of the County - We have just seen that summoning juries was for the

County and at the request of the County and
as an incident thereto the County would
be liable to furnish blanks necessary to serve
the jurors - So with Chancery Summons
also as the County should bear all of the
Costs of administering justice or the Law in
the County which can not in the nature
of things be charged to individuals.

An officer can not be compelled to incur
any expense for the public benefit but what
it is just and equitable that the public
should repay him.

In relation to forfeited recognizances
the authority cited by Defendants counsel
does not apply in this case - at the time
this decision was made the money collected
on forfeited recognizances was paid to the
State and not to the County as now. The
Supreme Court there say the County was
not a party to the proceeding - That the
County was not interested in it - That as
the benefit of the judgment went to the
State and not to the County that therefore
the County was not liable - In all such
Cases now the County is interested - The
prosecution is for the benefit of the County
and therefore the reversed must be the
rule of law - It can make no differ-
ence as to what particular fund the

No 159-5

John Bryner
vs
The Board of Supervisors
of Poria County

Plaintiff's argument
by
M. Williamson

Filed April 25th 1860
L. Seland
Clerk

When recovered will go to for it is still
for the benefit of the County and neces-
sarily reduces taxation of the Citizens of
the County in proportion to the amount
received from forfeited recognizances

M. Williamson

for p^lff in error

John Bryner } In Supreme Court
 as
 The Board of } Error to Poria
 Supervisors of }
 Poria County }

John Bryner Sheriff of Poria
 County Summoned Grand & Petit Jurors
 for different terms of the Circuit & County
 Courts of Poria County until he had
 paid, (if he is entitled to any) amounting
 to \$163.30 ————— \$163.30

He also performed services in
 subpoenaing witnesses before the
 Grand Jury in cases of conviction
 and for serving *Sci. fa.*s on for-
 feited Recognances & Writs of
 Capias & Subpoenas in crimi-
 nal cases in which convictions
 were had — to amount of } 50.80
 For

He paid for Printing Blanks as
 charged in the bill ————— } 32.00
 \$246.10

The question and the only question
 in the case is, whether he can recover
 these fees or any of them from the County

As to the first ~~Item~~.

The Plaintiff contends that the process issued under the direction of the Supervisors for compelling the attendance of Jurors is a Summons

It is issued by the County and for the general benefit of the County - And the Sheriff is required to "Summon" the Jurors

1. People Stat., Sec 2. p. 654.

" " " " 6 p. 655.

This is to all intents & purposes a Summons - it is called by no other name in the Statute - And unless there is some positive prohibition contained in the Statute itself, the Sheriff is Entitled to the same fees as he is - for the Service of any other Summons.

It seems to me that the case is too plain for argument.

Act. Feb. The 4th Item of Sheriff's ^{fees} Sec 57. p 571
12. 1849 People's Statutes is as follows.

" For Summoning a Jury, (Grand Jury Excepted) Each case — 3.50

the 7th Item Page 572. Purple, & that. is
as follows

" Mileage for Each Mile of Necessary
travel to Serve any Such Writ or pro,
Cep as aforesaid, Calculating from
the place of holding Court to the place of
residence of the defendant or witness
or place of Service for going only, five
Cents "

It can not be denied that the
Summons to a Jury is a process - but
the Legislature has removed all obscu-
rity from the subject if any existed
by making use of the unmistakable
language " Any Such Writ or process
as aforesaid," and that too in imme-
diate connection, with the fee allowed
for Summoning a Jury.

The act of Feby 27. 1847. allows the
Sheriff - in the discretion of the County
Comrs (now Supervisors) \$10.00 for
Serving Grand & Petit Jurors for each
term of the Circuit Courts, in full for
his services - So much of any law as
relates to Sheriff fees then in force, for Sum-
moning grand and Petit Jurors was

Repealed — People's Stat. P 565 Sec. (41) (42)

What law was then in force in relation to such fees? — The law of March 3rd 1845 — What was that law?

Word for word — precisely the same as the act of Feb'y 12th 1849 before referred to. — See act Feb'y 3. 1845.

p. 556. Little's Sheriff fees, People's Stat. 556.

By the Re-enactment of this law of Feb'y 3. 1845. on the 12th Feb'y 1849 the act of Feb'y 2nd 1847 is necessarily Repealed, and the law now stands precisely as it did before the passage of the latter act.

That the Sheriff is Entitled to recover upon this Item seems clear and unquestionable

In Relation to the 2nd Charge, there is as little doubt

The Act of 1849 before referred to gives the Sheriff's Mileage in all Cases of Serving Subpoenas and Summons and all other process - This includes Services ^{in cases} of forfeited Recognizances and Subpoenas before Grand Juries, as well as ^{such} Criminal; as in civil proceedings - And the Only Exception taken in the law is in "Criminal Cases when the Defendant is acquitted or discharged"; in which Cases he must serve process without fee. But he may be allowed annually \$30.00 for such Ex Officio Services.

People's Stat. p. 573. Last clause "Shff fees,"

That he is Entitled to be paid these fees there is no doubt - But it perhaps may be contended that although he is so entitled - yet the County is not bound to pay them - Some body or Some Corporation is liable to pay them.

The County set all the process in motion. Its Representatives, the Board of Supervisors Selects; and directs the Sheriff to Summon the Jurors

Through these fiscal agents of theirs.
the process is put in motion -

The Sheriff had no other place
to look for his fees than to the party
or authority which required and
directed him to perform the Service

If he can not recover them from
that Source, he has no other remedy
and the Statute allowing them is
a dead letter - He is entitled to
fees - But has no resource for obtain-
ing them, No place to look to for their
forthcoming - All fines and forfeited
recognances now belong to the Counties
all prosecutions for their recovery are for
the benefit of the Counties, and upon
Every principle of law and Justice
they ought to pay the costs, and fees.

I say nothing in relation
to the charge for printing blanks -
leaving that branch of the Subject
to be determined by the Court upon the
argument of my associate Mr Williams.
Whatever conclusion the Court may
arrive at so far as this item is concu-
red, I think it can have no doubt in
regard to the two first Items of the
Plaintiffs Claim -

A. B. Upde
1, 1871

John Bryner
159 n

The Supervisors
of Pima County

Plaintiffs argu-
ment by

M. B. C. P.
1 1

Filed April 25: 1880
L. Leland
Clerk