

No. 13166

Supreme Court of Illinois

Hunt

vs.

Hoyt

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Journal of the
Hunt

13166

1859

ms. to repay bills of costs

Supreme Court

E. Hunt }
vs } Motion & reply
Hoyt & wife } Costs -

I, Lyle Dickey, in behalf of
the Clerk inserts that the
taxation of costs is right -

The fees, by ~~statute~~, of the Clerk
of the Supreme Court ~~prior to 1855~~
~~were & now are~~ for making copies
of any record - paper or proceeding,
~~which~~ which he is required to furnish
~~by 1855~~ by statute - 75 cts
for every 12 words & that rule is
in full force -

In December 1855 (see 16 Ill. R.)
this court made a rule requiring
"the party bringing a cause into this
court" to file with the record an
abstract - &c

& making it the duty of the Clerk
to cause such abstract to be printed
& ~~to~~ furnish ~~to~~ one copy to each
judge & one to the opposite party
"for which the Clerk shall be"
allowed fees as in other cases"
referring no doubt to the ~~then~~ statute rule

In this state of case & the practice & rulings being thus the rules of Nov-1858 were adopted - & all former rules rescinded -

Rule X requires the party "to" "file with the record a complete abstract of the record"

The second clause of Rule X requires the clerk to cause such abstracts to be printed & one copy of which shall be furnished to each Judge - one to reporter one to adversary - "for which the clerk shall be allowed fees as in other cases" -

Rule X1 - provides for opposite party filing abstracts if neglected by plff or appellant & having the costs taxed therefor

Rule X11 - Requires the Clerk to furnish seven printed copies of abstracts (same as rule X in this respect) the next sentence says requires the party filing abstracts - to deposit an advance of 20 cts per ~~word~~ word in the abstract or in lieu thereof he may furnish the clerk with the printed abstracts -

And in this case he did so furnish
the Clerk the printed Copies -

It is insisted that the words "in lieu
thereof" refer not only to the advance
of 20 cts per 100 words - which
is the only subject of the sentence in
which the phrase is used - but
that it is in lieu of filing "a written
~~or~~ abstract" & in lieu of the Clerk
causing to be printed & furnished
7 copies - and in lieu of the advance
of 20 cents per 100 words -

We answer if this is all so -
the little word "thereof" is made
to perform a most multifarious
duty - The construction sought
does violence to the language of the
rules - Does violence to the practice
which has prevailed in all the
districts -

The rule gives the party
the privilege of furnishing to the Clerk
the printed copies - instead of advan-
cing to the Clerk the money to
pay for the printing - The
Clerk is still required to furnish
the several copies to the Judges
reporter &c. & for these copies he
bears his costs - less the proper credits
on account of advance of 20 cts per 100
words ~~or less~~ for expense of printing

of 15 cents & every 72 words

It will be observed that under that rule no requirement of an advance to the Clerk for expenses was made - The only provision on that behalf was the \$5.00 paid in on filing the record -

Under this rule the parties often did their own printing & furnished abstracts already printed - & it was insisted by parties that in such case the Clerk was not entitled to any fees for these copies - but the Clerks insisted that they were entitled to "fees as in other cases" viz 15 cents to the 72 words" & that where parties printed abstracts the Clerk would accept them & allow the party furnishing - what it would have cost the Clerk to print - & this the Clerks insisted was done ~~not~~ from a sense of justice & not required of them by law - The question of the right of the Clerk to tax fees, under that rule, for copies of abstract where the party furnished printed copies - was brought before the Supreme Court at Springfield in a case where Turner the Clerk there was interested - & the Court held that the Clerk had a right to charge the Court

& the successful party always
recovers of his adversary his
taxable costs & this is not
governed by the price of clerk
hire - or for printers bills
Any other ~~construction~~
~~will~~

The plaintiff in error if
successful - must have judgment
for costs - does this embrace
any thing for printed abstract

If the clerk cannot tax as
against the pl^{ff} in error any
thing for copies of abstracts (where
he furnishes printed abstracts)

It follows that pl^{ff} in error
can not recover any costs on
that account against the opposite
party - for the law only allows
him to recover taxable costs
& there is no rule or law to tax
the actual cost of the printing.

There can be no such rule -
printers prices vary in different
parts of the state - How shall
the clerk ascertain what the
printing did cost - & how shall
he determine whether the price
is fair & just? And thus
he must do or tax no costs
& tax by our rule.

J. L. D. D. D.

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E. Hunt

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Hay A. & wife

Suggests by Dickey

Filed May 19, 1889.

L. Leland
Clerk

E. Hunt
vs
Boyt & Wigg } Mo to retax costs
for printing abstracts

E. Hunt comes & moves the Court to retax the fee bill in this case - and shows now here that the actual cost of printing the abstract was \$12.60 - and the Clerk has taken the sum of \$29. or more for the same - which said abstracts were furnished ~~wherefore~~ ^{which} really printed by said Hunt - and the Clerk performed no service in relation thereto

Wherefore he prays that the said fee bill may be corrected by striking out the difference between the actual cost & said sum so taxed - conformably to the 12th Rule of this Court

The 10th & 10th Rules (19 & 10 R 13-14) and the first sentence of the 12th Rule prescribes the duties to be performed. That is. Rule 10 directs plaintiff to file manuscript abstract - & directs how it shall be printed.

Rule 11th authorizes Defendant to furnish the abstract, in cases

where plaintiff neglects to do so
Then comes the 12 Rule - which pre-
scribes the duty & compensation to the
Clerk. He is directed to cause 7
printed copies of the written ab-
stract so furnished by the party - to be
furnished & filed - and directs the
party to deposit or pay to him the
sum of 20 cents per 100 words to
enable him to do it - Then
the rule goes on to provide
as follows - "or in lieu
thereof, he (the party paying the
20 cents per 100 words to the clerk) may
furnish the Clerk with the printed
copies of the abstract as required"

The point of dispute is as to the
meaning of the above phrase

We say everything contained
in the previous rules & the first
sentence of this 12th Rule, is
to be included in the phrase
"or in lieu thereof" except
the manner of the getting up
the abstract on white paper,
with small pica- & lined lines
with a margin &c &c.

But it certainly does, as
plain as language can,
provide & say - that the party
may file abstract already

printed in lieu or in the place
of preparing & filing a written
abstract — with in lieu or
in place of the Clerk's having
7 copies printed & furnished un-
der the rules of the Court —
And in lieu or in place
of the deposit of 20 cents
per 100 words with the Clerk.

If the in lieu is not to
be construed as being in the
place of that deposit or
payment — and it is the im-
mediate antecedent to it —
why is it construed as
dispensing with the other
two acts — that is furnish-
ing a written abstract by the
party — and the furnishing
7 printed copies by the Clerk.

All the acts, including the
deposit or payment become
equally useless, and unneces-
sary to be done — by the simple
act of the party in filing
printed ones — that accom-
plishes the object contem-
plated by the provisions pre-
ceding this clause.

Now suppose, and we
may well do so — that the

20 cents would not pay for the printing
Could any one be found that would
contend that the Clerk would
be bound to take the printed ab-
stracts and the 20 cents and
pay the printer the additional
charge over & above it - under
this rule?

I would venture no one
could be found to put that
construction upon it -
under that state of facts.

The rule simply means that
the party may file printed ab-
stracts in place of a written
one - and that will super-
sede the necessity & the di-
rection given the Clerk to have
them printed - and necessarily
the deposit or payment
intended to defray the cost
of the printing when done
under the direction of the
Clerk.

W. B. Scates for

E. Hunt

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E. Hunt

vs

Hooyt & wife

Motion & Argument
to Retain Printing
Abstracts

Filed May 17. 1859

L. Leland
Clerk

Scotes for Hunt