

Filed Dec 7<sup>th</sup> 1862

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THE MAYOR & CITY COUNCIL  
OF BALTIMORE

vs.

THE COUNTY COMMIS-  
SIONERS FOR BALTIMORE  
COUNTY.

IN THE

Court of Appeals

OF MARYLAND,  
December Term, 1862.  
No. 16.

APPELLANT'S STATEMENTS AND POINTS.

THIS was an action brought by the Appellees to recover from the Appellants, the sum of \$2,223.33, the amount of the State's Attorney's fees and compensation, taxed by the Circuit Court for Baltimore County, in certain criminal cases removed from the Criminal Court of Baltimore City, and tried at November Term, 1854; and which said sum was paid by the Appellees to the State's Attorney for said County.

The declaration is on Record, page 2.

The plea *non assumpsit* is on Record, page 4.

The verdict and judgment for \$2,223.33, is on Record, pages 5 and 6.

On the trial in the Court below, the Plaintiffs read in evidence to the jury a full Record of one of the removed cases, and short copies of judgment (by consent of Counsel) in all the other cases.—Record, page 8.

These papers, by agreement of Counsel, are omitted from the Record, but are to be read on the argument in this Court.—Record, page 9.

The Plaintiffs further gave in evidence a statement, being the returns of the costs and expenses, in removed cases, as required by the Act of Assembly in the premises to be made to the Defendants—and produced the receipt of the State's Attorney for the money claimed by the Plaintiffs to be due to them, and to be payable by the Defendants.

One instruction was prayed on either side:—

The Plaintiffs' was granted; the Defendants was rejected.

The substance of the Plaintiffs' prayer is, that the taxation of the costs and compensation, in the several cases, made it the duty of the Plaintiffs, in the first instance, to pay the State's Attorney the amount thereof, and the duty of the Defendants to repay the Plaintiffs.

The substance of the Defendants' prayer is, that the Transcript and Short Copies of the judgments do not show that the allowances were made by order of the Court, in the respective cases; and, for that reason, the Plaintiffs are not entitled to recover.

The Appellants will contend:

1. That the Transcript and Short Copies of the judgments do not show that the allowances were made by order of the Court.

2. That the judgments must show on their face that the cases were *tried*, and the allowance to have been made *after* the trial—and that there must be a special order of the Court in each case—and that the compensation could not be allowed by a general order of the Court.

*a copy 1852 -*

*1 Gile 372*

*8 Gile 154*

*5 Georgia 183-*

*1 Dutch (17) 399*

*Summaries or Statutes - 77*



3. That the power given to the Court to fix the amount of compensation is a discretionary one, and that it must appear from the judgments that such discretion was exercised, and that there was a judicial determination of the same by the Court, and on an order emanating from the Court allowing such additional compensation in each case.

4. That the Court erred in granting the Plaintiffs' prayer, because it *assumed* the *fact* that the Transcript of the records and the Short Copies of the judgments shew that the sums therein mentioned as compensation were due by the Defendant [the Appellant,] and did not leave the jury to find the fact that the Transcripts show that the compensation had been allowed by the Court.

2 Md. 75, Brune vs. Ellicott.

3 Md. 146, Guitar vs. Martin.

3 Md. 295.

3 Md. 198.

4 Md. 242.

4 Md. 273.

4 Md. 476, Ellicott vs. Peterson.

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5. That the intention of the law was to give the State's Attorney such extra compensation as to the Court was just and proper; and that it must appear from the Transcripts that the Court made an estimate of the same, before the Clerk of the Court had a right to certify as provided by the acts cited.

JOHN L. THOMAS, JR.,  
*City Counsellor.*

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In the Court of Appeals - December Term }  
1862 }

The Commissioners of Baltimore County }  
vs }  
The Mayor & City Council of Baltimore }

The Controversy in this case is reduced  
to a single Enquiry -

By the Act of Assembly of 1852 Chap. 315 Sect. 2,  
the Judge of the Circuit Court for Baltimore County  
is authorized to allow to the States Attorney, not  
exceeding \$30, in each case of removal from  
the Criminal Court of Baltimore, to be levied &  
allowed collected from the City of Baltimore -

By the Act of Assembly of 1854 Chap 269, it is  
provided by the 1<sup>st</sup> Sect. that the Costs & expenses in  
removed cases, shall be paid by the County from  
which such cases are removed. -

By the 2<sup>nd</sup> Sect. the Clerks are required to keep  
full & accurate accounts of the Costs & Expenses -  
setting forth the names of the several parties  
to whom the costs & expenses are due &c. -

By the 3<sup>d</sup> Sect. the cost & expenses due to



persons residing in the County where the trial is had, shall be first paid -

Sect 4<sup>th</sup> Authorizes the levy for Costs & Expenses by the County from which the Cause is removed -

Sect. 5<sup>th</sup> provides for returns & returns.

The 6<sup>th</sup> Sect Extends the foregoing provisions to the City of Baltimore -

Now the Record before the Court shews that all the provisions in these acts have been precisely complied with. The names of the cases are stated, and the Costs & expenses are particularly specified, in each case, by the Clerk of Baltimore County Court - And, among these Costs and expenses he certifies that \$30 is allowed to the State's Attorney, in each case - All the Costs & Expenses are certified to the County <sup>Court</sup> and to the Mayor and City Council of Baltimore, therefore the County Commissioners order their Treasurers to pay to the State's Atty the aforesaid allowance of \$2223.33 - and the said Attorney acknowledges to have received that amount from the Treasurer.

Now the only Question, which can arise on this Record, which is so full and precise, is - Did the Judge of the said Circuit Court

allow to the said States Attorney the additional fee of \$30 in each case removed from the Criminal Court of Baltimore - pursuant to the 2<sup>nd</sup> Sect. of the Act of 1852?

The first answer, and which ought to be conclusive, is that the Clerk, who is specially required to certify the costs & expenses, by the 2<sup>nd</sup> Sect. of the Act. of 1854 to make and keep a full and accurate account of all costs and expenses and to return the same to the Comms<sup>s</sup> of the County from which the cases are removed and also to the Comms<sup>s</sup> where the same are tried, does certify that such an allowance was made - No other person, not even the Judge himself, was competent to make such a certificate. What authority can dispute the verity or accuracy of the Clerk's certificate?

To the objection raised by the Defendants in his only prayer to the Court, that the Record, including the Clerk's Certificate and return, does not show that the allowances in question were made by the Court, I answer 1<sup>st</sup> by what authority, if not by that of the Court, could the Clerk make

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such a certificate? Is it to be presumed that the Clerk, with the 2<sup>nd</sup> Sect. of the Act of 1852 (which confers that discretionary power on the Judge,) before him, should usurp such a power? Was any evidence produced below to shew ~~that~~ such a usurpation, on the part of the Clerk? None -

2<sup>nd</sup> All that remains on the Defendant's part is <sup>to contend</sup> that the allowance should have been made by the Judge in writing - Does the aforesaid 2<sup>nd</sup> Sect., or any other provision in the Act requires that such allowances should be made in writing? and, if not, - what grounds are there for so contending? nothing either of express provision, or by the practise of Courts of Common Law -

3<sup>d</sup> The Acts and doings of Courts of Common Law are evidenced by entries of their Clerk - In this respect these Courts are distinguished from Courts of Equity, where all the decisions and orders of the Court are set out in writing - Whereas in the former the most solemn acts and decisions of the Court only appear

by entries of the Clerk<sup>5</sup> on his docket,  
even the sentences of such Courts in the  
cases, where the death penalty is ~~passed~~  
pronounced, are only so evidenced. It is only  
by special provisions of recent acts that  
the reasons for the decisions of the highest  
Courts are required to be in writing, their  
Judgments are still testified by the entries  
of their Clerk on his docket —

Wm. W. Wilkes  
Counsel for Appellants

Filed 9<sup>th</sup> Dec 1862  
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COUNTY COMMISSIONERS  
OF BALTIMORE COUNTY,

*ats.*

THE MAYOR AND CITY  
COUNCIL OF BALTIMORE.

IN THE  
**Court of Appeals**

OF MARYLAND.

*Appeal from the Superior  
Court of Baltimore City.*

APPELLEES' STATEMENT AND POINTS.

THIS was an action brought by the Appellees to recover from the Appellants, the sum of \$2,223.33, the amount of the State's Attorney's fees and compensation, taxed by the Circuit Court for Baltimore County, in certain criminal cases removed from the Criminal Court of Baltimore City, and tried at November Term 1854; and which said sum was paid by the Appellees to the State's Attorney for said County.

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The substance of the Defendants' prayer is, that the Transcript and Short Copies of the judgments, do not show that the allowances were made by order of the Court, in the respective cases; and, for that reason, the Plaintiffs are not entitled to recover.

The Appellants will maintain:

1. That the Appellees were bound to pay the respective amounts taxed in the cases.

2. That having paid them, they were entitled to recover them from the Appellants.

3. That the Appellants are estopped from making objection to the payment by the Plaintiffs to the State's Attorney, as the judgments were notice of the taxations to the Appellants, who ought to have warned the Appellees against making payment, if they intended to resist it.

Acts of 1852, ch. 315, sec. 2d especially.

“ “ 1854, ch. 269.

NATH. WILLIAMS,  
WM. MEADE ADDISON,  
*Attorneys for Appellees.*

*4<sup>th</sup> That the propriety of the allowance and its  
made by the Circuit Court of B. County is not  
examenable in this action*

*Rabry v Hammond 2. H. J. 50*  
*Barney's Luce v Patterson 6. H. J. 182 -*  
*Taylor & McNeal v Phelps 1. H. J. 503*  
*Clark v Jackson 16. M. D. Rep. 5 17<sup>th</sup>*  
*1. Smith's Selection of*  
*U. S. Cases 827.*  
*J. Am. C.*

Guyon Hester  
2<sup>d</sup> Howard 309

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Nixon v Wilson 3. G. J. 20.  
Guyon v Davis ad. 4 G. J. 453  
McPherson ad.  
v. Isaac adw. 5. G. J. 60.  
Thomas ad v. Fred. Co. Schol. 9. Gill Johnson 315.