
Shinn v. Cotton.

SHINN V. COTTON.

FERRIES: *Penalty for running without license.*

The penalty imposed by Mansfield's Digest, Sec. 3335, for keeping a ferry and charging therefor any money or other valuable thing, without obtaining a license, is not recoverable against one who runs a free skiff as an inducement to persons to trade at his store, when it appears that the persons carried did not agree to buy anything from the defendant, and that he made no charge, in money or otherwise, for ferriage.

APPEAL from *Johnson* Circuit Court.

G. S. CUNNINGHAM, Judge.

Mansfield's Digest, Sec. 3328 provides that the County Court shall not permit any ferry to be established within one mile above or below any ferry previously established, except at or near cities and towns where the public convenience may require it. * * *

Section 3335 of the same digest is as follows:

"If any person shall keep any ferry over any navigable stream, for which he shall charge any person any money or any other valuable thing, without complying with the provisions of law in relation to obtaining license, he shall forfeit and pay to every other person having a licensed ferry on the same stream or lake, in the same county, five dollars for every person so ferried, and the same sum for every wagon or other article so transported, which may be the subject of a separate charge, to be sued for and recovered by civil action, founded on this statute, with costs of prosecution."

G. W. Shinn, for appellant.

One who runs a free ferry within one mile of a licensed ferry, without obtaining license or permission of the licensed ferryman, and said free ferry is run for the purpose of getting increased trade and custom at the store of the owner of the free ferry, thereby damaging the licensed ferry by taking away custom and tolls, is liable under Sec. 3335 of Mansfield's Digest. 1 *Johns. Chy.*, 611; 9 *Johns. (N. Y.)*, 507; 1 *Haywood*

(*N. C.*), 457; 20 *Ark.*, 561; 2 *Kans.*, 198; 3 *Murph. (N. C.)*, 57; 1 *Nott. & McC. (S. C. Const. Ct.)*, 387; 2 *Steev. (Ala.)*, 211; 12 *N. E. Rep.*, 631.

Suit for the penalty is the proper remedy. 5 *Johns.*, 175; 10 *id.*, 388; 44 *Ark.*, 184.

PER CURIAM. This is a suit for statutory penalty under Sec. 3335 Mansfield's Digest. The proof showed the running of a free skiff within a mile of plaintiff's licensed ferry, by the defendants, as an inducement to persons to trade at their store. The agreed statement of facts is to the effect that the persons so carried did not agree to buy anything of defendants, and that the defendants made no charge, in money or other valuable thing, for ferriage.

Plaintiff's right to damages for an injury done him, had he sought such a remedy, would have been clear under the authorities cited by him; but the statutory penalty is not recoverable against one who runs a free ferry. The agreed statement of facts excludes a recovery.

Affirmed.
