

HARVEY V. CRAWFORD COUNTY.

COUNTIES: *Liability for costs upon acquittal for misdemeanor in justice's court.*

APPEAL from *Crawford* Circuit Court.

J. S. LITTLE, Judge.

Charles F. Harvey is a justice of the peace for Crawford County, and in May, 1887, George Galbraith was brought before him on a charge of felony. An examination was had, upon which it appeared that Galbraith was not guilty of the felony, but was guilty of a misdemeanor. He was thereupon held to answer the latter charge, and on a trial by a jury, was acquitted. Harvey subsequently presented to the County Court a claim for the fees which accrued to him in the misdemeanor case, and it was rejected. He appealed to the Circuit Court, where the claim was again disallowed, and from the judgment there rendered against him this appeal is prosecuted.

Sections 2343, 2348 and 2351, Mansfield's Digest, are as follows:

Sec. 2343. In all criminal or penal cases, if the defendant shall be acquitted, except in cases where the prosecutor shall be adjudged to pay the costs, or, in cases of felony, if convicted shall not have property to pay the costs, the same shall be paid by the county.

Sec. 2348. In all prosecutions in cases less than felony, in courts of justices of the peace and in other inferior courts, the prosecutor, or some person for him, shall enter into bond, with good and sufficient security, for the payment of all the costs which may accrue in said prosecution.

Sec. 2351. It shall be lawful, however, for the justice or other officer, when he has strong reasons to believe that the person applying for a warrant has been, in plain violation of the criminal laws of this State, maltreated, either in person or property, to permit such person to prosecute without giving

the bond required in section 2348: *Provided*, That the person so applying for a warrant shall make affidavit that he is unable to give security for the costs which may accrue in said prosecution.

The appellant, *pro se*.

Counties are liable for costs where the defendant is acquitted, and there is no judgment against the prosecutor for costs. *Rose Dig.*, p. 215, sec. 13; 37 *Ark.*, 226; 44 *id.*, 31; *Mansf. Dig.*, sec. 2348.

PER CURIAM. The county is not liable for costs ^{Counties:} upon acquittal for a misdemeanor in any case in ^{Costs.} which the justice of the peace should have exacted a bond for costs, but did not. *Stalcup v. Greenwood Dist., etc.*, 44 *Ark.*, 31.

The judgment is affirmed.
