
Springfield and Memphis Railroad Company v. Lambert.

SPRINGFIELD AND MEMPHIS RAILROAD CO. V. LAMBERT.

FEES: *Witnesses in several cases.*

In civil cases witnesses are entitled to their ferrriage and *per diem* in every case in which they are summoned, however numerous.

APPEAL from *Lawrence* Circuit Court.

Hon. R. H. Powell, Circuit Judge.

Erb, for appellant.

SMITH, J. Witnesses were summoned on behalf of the defendants, in two civil cases pending in *Lawrence* Circuit

Court, wherein the railroad company was plaintiff. They attended to testify, and proved up their attendance in each case. The cases were determined against the company. The clerk taxed their ferriage and *per diem* allowance in both cases. The company moved the court for a retaxation of costs, insisting that the witnesses were entitled to claim their attendance in one case only. But the Circuit Court decided otherwise.

Sections 39 and 40 of the fees act of February 25, 1875, provide that witnesses shall be allowed compensation for each day's attendance before the Circuit Court in civil and criminal cases, \$1.50; but in criminal cases, when the costs are paid by the county, they shall be allowed pay in but one case, no matter in how many cases they are summoned or called upon to testify. But for this exception, the county would be liable, when the cases are determined adversely to the State, for their fees in all the criminal cases, where they have attended in obedience to a subpoena, as decided in *Pulaski County v. Downer*, 10 Ark., 588.

The statute contains no exceptions as to double pay in civil causes, and the courts can make none, as they have no power to legislate. *Erwin v. Turner*, 6 Ark., 14; *State Bank v. Morris*, 13 Ib., 291; *Pryor v. Ryburn*, 16 Ib., 671; *Maclin v. Thompson*, 17 Ib., 199; *Smith v. Macon*, 20 Ib., 17; *Bennett v. Worthington*, 24 Ib., 487.

Affirmed.
