

BADGETT, EX PARTE.

The act of 23d December, 1842, prescribing the mode of collecting the fees of officers and witnesses, is in derogation of the common law, and must be strictly construed. See "*act to regulate fees of officers*," sections 27-'8-'9. *pamph. acts. 1842, pages 37-'8.*

The fee bill must show, upon its face, that the party claiming the fees is of one of the classes of persons specified in the act, otherwise it is void, and may be superseded.

Petition for Supersedeas.

THE fee bill, referred to in the opinion of the court, was as follows:

"In Clark circuit court—John McLain & Noah H. Badgett part-

ners under the style of McLain & Badgett vs. James Dorris—McLain & Badgett to Willis S. Smith, Dr.”—then follows a list of charges made up of various items, such as for “executing capias, \$1.00, taking bail bond, 75cts, calling action, 12½cts, returning execution, &c., amounting in all to \$18.50. To which is appended a certificate of the clerk of the circuit court of Clark county, under his official seal, “that the above is a correct bill of fees in the case therein mentioned.”

BLACKBURN, for the motion.

JORDAN, contra.

JOHNSON, C. J., delivered the opinion of the court.

This is a motion filed by Noah H. Badgett, as surviving partner of McLain & Badgett, to supersede a fee bill issued by the clerk of the Clark circuit court, and now in the hands of the sheriff of Pulaski county, where it was placed for collection. Badgett has made numerous objections to the fee bill, and amongst others, questions the constitutionality of the law. We do not conceive it necessary to pass upon the constitutional question, as the motion must prevail upon another point. The 27th section of an act approved Dec. 23d, 1842, provides that “All officers and witnesses entitled to fees by this law, for services rendered in any suit, matter, or controversy depending in any court of record, may make out such fee bills for such services, at the end of each term of the court wherein the same is pending, charging the party at whose instance the services were rendered.” This statute is in derogation of the common law, and must consequently receive a strict construction. The party claiming fees must show upon the face of the fee bill, that he falls within one of the classes of persons, specified in the act. It does not appear by the paper now before the court that he is either the sheriff or clerk of the circuit court of Clark, or of any other county, nor that he is a witness in the suit. For this defect alone we think that the fee bill is void, and therefore ought to be superseded.

Supersedeas awarded.