PULASKI COUNTY *vs.* DOWNER.

The *Digest* of the statutes of Arkansas, prepared by English and inspected and approved by Hempstead, purporting to contain all the laws of a general and permanent nature in force at the close of the session of the General Assembly of 1846, was, as such, published by authority of the State, and distributed under the provisions of the act of 2d January, 1849; and this, at the very least, was a legislative declaration that there were no other such statutes then in force.

The latter clause of *sec.* 25, *ch.* 61, *Rev. St.*, which declares that "witnesses

summoned and attending on the part of the State in more cases than one, when the cost shall be required to be paid by the county, shall only be entitled to fees as for attendance in one case,'' was repealed by act of 23d December, 1843, (embodied in *ch.* 68, *Digest,*) and, under the provisions of this latter act, a witness, in such case, is entitled to his attendance in each case.

Where the legislature take up a whole subject, (as in the fee act of 23d December, 1843,) and cover the entire ground of the subject matter of a former statute, and evidently intend it as a substitute for it, the prior act will be repealed thereby, although there may be no express words to that effect, and there may be in the old act provisions not embraced in the new.

Writ of Error to Pulaski Circuit Court.

Charles A. Downer was summoned as a witness, on behalf of the State, in more than a dozen criminal cases, (gaming,) pending in the Pulaski Circuit Court; and, at the April and October terms, 1848, attended to testify, and at each term proved up his attendance in each case. The cases were determined against the State. The clerk refused to tax the costs of his attendance in each case, but taxed his *per diem* allowance in one case only. Downer moved the Court for a re-taxation of costs, claiming his attendance in each case, which the Court allowed, and ordered the costs so taxed. To which the county of Pulaski excepted, set out the evidence, and brought error.

Case determined in the Court below before the Hon. WILLIAM H. FEILD, Judge.

CLENDENIN, *Att. Gen.,* for the appellant, contended that the latter clause of *sec.* 25, *ch.* 61, *Rev. Stat.,* prohibiting a witness in criminal cases from charging for attendance in more than one case, was not repealed by the act approved 23d December, 1842, (*Acts of* 1842, *p.* 37,) there being no conflict between that clause of the section and the latter act.

CUMMINS, contra. The act of the 23d December, 1842, (*Dig.* 525,) repealed the 25*th sec. ch.* 61, *Rev. Stat.* The *Digest* embo-

dies all the general statute laws of the State then in force, and is made expressly the law of the land. *Acts of* 1848.

Where the legislature takes up a whole subject anew, covering the whole ground, revising the whole subject matter of a former statute, and evidently intending to enact a substitute, the old statute is repealed although the new statute contains no express words to that effect. *Towle vs. Marrett,* 3 *Greenl.* 22. *Davis et al. vs. Fairbairn et al.,* 3 *How. (U. S.) Rep.* 645. *Ellis vs. Paige et al.,* 1 *Pick.* 44. *Rutland vs. Mendon,* 1 *ib.* 156. *Bartlett et al. vs. King ex.,* 12 *Mass.* 545. *Commonwealth vs. Cooley,* 10 *Pick.* 39.

Mr. Justice SCOTT delivered the opinion of the Court.

The *Digest* of the Statutes of Arkansas, prepared by E. H. English and inspected and approved by S. H. Hempstead, purporting to contain all laws of a general and permanent character in force at the close of the session of the General Assembly of the year 1846, were, as such, published by the authority of the State and distributed under the provision of the act approved the 2d January, 1849. (*Pamphlet Acts of* 1849, *p.* 57.) This, at the very least, was a legislative declaration that there were no other such statutes then in forec.

But, independent of any consideration from this source, it is clear, upon another and distinct ground, that the provisions of the *Revised Statutes* relied upon by the State (the last clause of *sec.* 25, *p.* 397) was repealed by the act entitled "An act to regulate the fees of office of the several officers of this State," approved 23d December, A. D. 1842. (*Pamph. Acts of* 1843, *p.* 27.) This last cited act embraced the whole subject of fees, and fully covered the entire ground of the statute of "*Fees, ch.* 91," *Rev. Stat.,* and was evidently a complete substitute for that statute. This conclusion is irresistible upon a careful comparison of the two statutes. The principal difference between them consists in the respective amounts of the several fees fixed. In every thing else the latter is almost a literal copy of the former statute. The only provisions omitted in the new one is that under consideration and some two or three other very immaterial mat-

ters. Entire sections are copied word for word in the same order as they stood, with no other change whatsoever except the numbering of such sections: and if any part of the statute was to remain in force this literal copying of entire sections was so supremely supererogatory as not to be attributed to the legislature, and is, therefore, a conclusive index to their intention.

The authorities are abundant to support the proposition that, where the legislature take up a whole subject anew and cover the entire ground of the subject matter of a former statute, and evidently intend it as a substitute for it, the prior act will be repealed thereby, although there may be no express words to that effect and there may be in the old act provisions not embraced in the new. (*Fowle vs. Marrett,* 3 *Greenl.* 22. *Davis et al. vs. Fairbairn,* 3 *How.* (*U. S.*) *R.* 645. *Ellis vs. Paige et al.,* 1 *Pick.* 44. *Rutland vs. Mendon,* 1 *ib.* 156. *Ashley, appellant, &.,* 4 *Pick.* 21. *Commonwealth vs. Cooley,* 10 *Pick.* 39.) In the case of *Bartlett et al. vs. King ex.,* (12 *Mass. Rep.* 545,) the Court say: "A subsequent statute revising the whole subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, operates to repeal the former. All the subject matter of the act of 28 *Geo.* 2, is contained in the statute of 1785. A part only of its restrictions and limitations in the 2*d sec.* is omitted in the latter, and it is very obvious by comparing them that the legislature considered the latter as a complete substitute and repeal of the former." This last cited case is strongly in point.

There is no error in the judgment of the Court below, and it must be affirmed.