McDearmon, John K. v. Moseley, William S. 1862 St. Charles 461/3
The Auditor of Public Accts

Old Box 613/9

32
222

mandamus

McDearman - Clerk of County Court of St. Charles wants $200 for service

Moseley - State Auditor of Public Accounts refuses to pay should be $100

wants court to make him allow acct

F 62
Dryden
Refused

O: law governing compensation wasn't repealed

Jno. K. McDearmon
vs
Wm S. Moseley Auditor
of the State of Missouri

In the Supreme
Court of the
State of Mo.
Mandamus.

Ste, Jno. K. McDearmon and Wm S. Moseley, hereby agree, that the following, shall constitute the facts in the above case, & the Defendant Wm S. Moseley hereby waives, all forms, as to notice ~~—~~. — The facts as agreed upon are as follows: — The Plaintiff Jno. K. McDearmon, Clerk of the County Court of St Charles Co. Mo., copied Two Hundred thousand words & figures, from the tax list of 1861., for which he claims Two Hundred Dollars, it being at the rate of ten cents per hundred words or figures. The Defendant Wm S. Moseley, as Auditor aforesaid, refuses to pay the above amount of Two Hundred Dollars claiming that the Plaintiff is only entitled, to One Hundred Dollars it being at the rate of five cents per hundred words or figures.

Jno. K. McDearmon Plff.
by his atty. Jno. C. Orrick.

Wm S Moseley

Jno. K. McDearman
~~[illegible]~~ M. vs 62. 146.
Wm S. Moseley.

(9)

Mandamus.

For May 15th

Filed May 13. 1862
A W Mead Clk

1862 May 15. Argued and Submitted Dr 55.
1862 May 26. Mandamus refused Opinion filed Dr 65

(4)

J. K. McDearmon
vs
Wm S. Moseley } Mandamus.

Pffs. Pts.

1st. The act entitled "an act amendatory of an act to amend "an act to regulate fees" approved March 28th 1841, revived that portion, of the original act approved Dec 5th 1855, which entitles County Clerks to ten cents per hundred words for copying tax lists for the year 1861 – Sheet acts of /60 & /61. – 30 – Fee Law of 1855. – Sheet acts /56 & /57 – 63 –

General references –

Fee Law of /55 –
Act of Feby. 12th/57 – page 63
Act of Nov 23/57 – " 103
Act of Dec 14th/59 – 89.
Act of Jany 25th/61. – 31
Act of March 27th/1841 – 69.

Mc Dearmon
— vs —
Mosley } Mandamus.

Filed May 15. 1862
A. B. Mead
Clerk

(6)

In the Supreme Court, St. Louis,
March Term, A.D. 1862.

John K. McDearmon
against } Application for Mandamus.
William S. Moseley, Auditor of Public Accounts.

This is an application on the part of the plaintiff, who is the Clerk of the County Court of Saint Charles County, for a mandamus against the Defendant, who is the Auditor of Public Accounts, to compel said Auditor to audit and allow the claim of plaintiff against the State for making out the tax-book of said County for the year 1861. The compensation claimed by plaintiff, is at the rate of ten cents per hundred words, while defendant is willing to audit and allow the claim of plaintiff at the rate of five cents per hundred words. The Plaintiff claims under the sixth section of "an act to regulate fees," approved December 5. 1855, and the defendant justifies his refusal to allow the claim, by the law of January 25. 1861. The application comes before the Court upon an agreed statement.

On behalf of the Auditor, the following points and authorities are relied on.

I. The sixth section of "the act to regulate fees" approved December 5. 1855. (R. S. vol 1. page 760,) allowed County Clerks ten cents per hundred words for making out the tax book.

II. So much of the sixth section of the act of 1855 as regulated the compensation of County clerks for making out tax books, was repealed by the sixth and seventh sections of art 7, of the act of November 23rd 1857, (Sess. Acts 1857, Adj. Session, p. 75) Harris vs Buffington, 28 Mis. Rep. 53.

III Sections 6 and 7 of article 7 of the act of November 23rd 1857, were themselves repealed by the act of December 14th 1859, (Sess. Acts 1859-60 p. 89) but this, not operating to restore the act of 1855, (R. S. 1855 vol 2. p 1021 Art 3. sec 1.) Clerks were left without any compensation for this service,

IIII. On the 25th of January 1861 (Session acts of 1860-1 Regular session p 30), an act was passed, remedying this oversight and clerks were allowed five cents per hundred words for making out the tax book, and under

this act, Defendant is ready and willing to audit and allow to the claims of plaintiff, but there was an act subsequently passed and during the same session, approved March 28th 1861 (page 29), the first section of which, has caused the application for this mandamus.

V. The act of February 12, 1857 only repealed the 9th and 10th sections of the act of 1855. But the act of February 12th 1857 was partially repealed by the act of March 28th 1861, "and the original act, approved December 5th 1855," was by said last mentioned ~~Le~~ act ~~was~~ declared to be "revived and declared in full force." A proper construction of this phraseology is the only matter now in controversy. It is observable that the fees of County clerks for making out the tax book was not regulated by either the 9th or 10th sections of the act of 1855, but by the Sixth section of that act. The act of February 12, 1857 only repealing two certain sections of the act of 1855, (sections 9 and 10) the act of March 28. 1861 repealing this act of 1857 and reviviving the act of 1855, can only be construed as reviving the two sections thus repealed. The ~~rest of~~ remainder of the act of 1855 not having been repealed, needed no reviving.

Aikman Welch, Atty Genl
for defendant.

W

John K. McDearman

vs { Pet. Mandamus.

Wm. L. Morely, Auditor

Defendant's Brief.

Filed May 15. 1882

A. W. Mead

Clerk

(10)

McDearman

vs

Moseley, auditor

This is an application for a mandamus to require Moseley who is auditor of Public accounts to audit and allow an account for two hundred dollars for the services of McDearman, who is Clerk of the St Charles County Court, in copying the tax book of 1861 for that County containing two hundred thousand words & figures - The auditor admits the performance of the services and is willing to allow for the same the sum of one hundred dollars which is at the rate of five cents per hundred words but the clerk demands ten cents per hundred insisting this is the rate allowed by law for the services -

It is argued by Mr. Orrick counsel for McDearman, but controverted by Attorney General Welch, that the act of 25th January 1861 (Laws Mo. 1860-61 p 31-) which gave five cents per hundred words for this services, was repealed by the amendatory act of 28th March 1861 and that the latter act revived

the 6th section of the act of 5th Decr 1835. (R. S. 1835 p 758) which prescribed ten cents as the compensation -

The question in the case involves the proper construction of the 1st section of the act of 28th March as follows "§ 1. That so much of an act entitled "an act to amend an act entitled "An act to regulate fees." approved Febry 12th 1857 as applies to the clerks of the Circuit Courts, County Courts and Common Pleas Courts of this State and the clerks of the Criminal Court, Land Court and the Law Commissioners Court of St Louis and the Secretary of the Board of County Commissioners of St Louis County, be and the same is hereby repealed; and the original act approved Decr 5th 1835 to which said act is amendatory is hereby revived and declared in full force" - (Laws of Mo 1861 p 30)

The last paragraph of the section taken by itself would well justify the proposition of Mr Orrick that the whole of the act of Decr 5 including the 6th section was intended to be revived and put in force; and if so, it being repugnant to,

repealed the act of 25th January, but this position is met and overturned by the words of the repealing branch of the section which declare "that so much of an act" &c as applies to certain clerks "is hereby repealed" leaving the irresistable inference that some part of the law affected by the repealing act was meant to remain in force -

The 9th and 10th sections of the law of 3d Dec: (not the 6th Sec) which prescribed the fees of clerks of the Supreme Court, Circuit Court &c for services in civil actions, were repealed by the act of 12th Feby 1857 and a new table of fees for the same services was established by the last named act - (Laws of Nyo 1856-7 p. 63) The whole purpose and scope of the act under consideration was to abolish this table of fees, except so far as it related to clerks of the Supreme Court, and in lieu thereof to re-adopt the table prescribed in the 9th & 10th sections before repealed, and not to revive the 6th section which related to a totally different kind of service, - County business, and which was evidently not in the mind of the Legislature

The act of 25th January then was not repealed, but was the law governing the Compensation for the services claimed. Mandamus refused. The other Judges Concurring —

John D. S. Dreyden

McDearman

vs

Moseley auditor

Opinion of Court by

Dryden

Filed May 26. 1862

A. W. Mead

Clk

Mandamus refused

(18)