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H. P. DOTSON.

COUNTIES MUST PAY.

Judge Street has handed down his decision upon the demurrer of defendant in the suit of Salt Lake county vs. Morgan Richards Jr., State auditor, which was brought to obtain a writ of mandate to compel the auditor to issue a warrant to the State treasurer for the mileage and per diem of jurors while employed in the district courts, whether they were engaged in civil or criminal cases. The defendant contended that the jurors' compensation, while engaged in civil cases, is expressly made a county charge, and that the plaintiff having included items of this nature along with fees for service in criminal cases in his demand, is not entitled to a writ of mandate.

In his opinion Judge Street says that one section of the county government act provides that the sums required by law to be paid to jurors in civil cases shall be a county charge and it should be noted that this provision appears as one of eleven specific subdivisions of section 165, each of which applies to matters arising in connection with the administration of affairs of the county, including matters connected with the administration of justice in both civil and criminal causes in the district courts. As to the remaining subdivisions, there would seem to be no question but that the county must pay, without reimbursement from the State, all charges lawfully accruing under any of such subdivisions.

Section 166 in connection with the subdivisions of sections 94 and 118, if considered alone and without limitations, would seem to require the county treasurer and the county auditor to make and transmit to the state auditor a complete itemized statement of all certificates issued by the clerk of the district court and county attorney for mileage and attendance of grand jurors (whose compensation is not made a county charge) and the mileage and attendance of all petit jurors engaged in the trial of cases in the district court. These provisions standing alone would probably be construed to include the mileage and fees of jurors engaged in the trial of civil causes in the district court, as well as in criminal cases.

It is contended upon the part of the county that section 166 must be construed either as requiring reimbursement to the county by the State of fees of jurors engaged in trial of civil cases paid under subdivision 4, of section 165, or that the two sections are repugnant, and that section 166 must prevail as constituting the latest expression of the legislative will and intent.

It seems to me that the former construction leads to a reductio ad absurdum. To make the mileage and attendance of jurors in civil cases (which are the sums required by law to be paid to jurors in such cases) a county charge in one section and then in the next section to make them a State charge by requiring repayment to the county by the State is an absurdity which ought not to be ascribed to a legislature, even one which was

overcrowded with the demands of necessary legislation.

The greatest weight in the argument on behalf of the plaintiff was given to the remaining contention, i. e., that section 166 being wholly repugnant and irreconcilable with subdivision 4 of section 165, the matter must be disregarded. The inquiry must be as to whether or not such repugnancy exists, and if so, which section must prevail.

It is a principle of statutory construction, supported by reason and respectable authority, that if general and special provisions are in the same act, the presumption is that both are intended to operate. In adjusting the general provisions to the special provisions considerations of reason and justice are proper to be borne in mind and ought to have much weight and force.

It would therefore seem to have been the intention of the legislature to make "the sums required by law to be paid to jurors in civil cases" a county charge, as shown in subdivision 4 of section 165, but it would also seem to be a matter of common honesty to limit section 165 so as to exclude these sums from becoming ultimately a charge against the State.

The opposite construction would result in the collection by the county of a fund under pretence of the payment of certain expenses, and then its appropriation for county purposes, while the State actually paid the expenses.

It is not necessary to enlarge upon other legal principles involved in this discussion, but after careful consideration of the act itself and the rules of law applicable, I am of the opinion that the general provisions of section 166 are limited by the exclusion of the fees and mileage of jurors engaged in civil cases in the district courts, and that the certificates prescribed in that section should, as to petit jurors, include only the mileage and attendance of petit jurors engaged in the trial of criminal cases in the district court.

The demurrer of the defendant is sustained, and as plaintiff elects to stand upon the complaint, the writ of mandate is denied and the action is dismissed.

ATTACKED BY HORNETS.

H. E. Stillwell and James Ingram, members of a party of four who left Des Moines, Ia., something over a month ago for a hunting and fishing trip in the Northwest, arrived at Portland, Oregon, Saturday, and left to visit friends near Harrisburg, from which point they will proceed to California. The other two members of the party met with peculiar misadventure, and are now on their way home in the care of relatives. One of them is T. A. Roberts, who is perfectly helpless and paralyzed from stings of hornets, and the other is William Davidson, with a pistol bullet buried somewhere under the left shoulder blade, which the doctor has not yet been able to find. The party, soon after passing the Oregon line, fell in with an old trapper and hunter named Jake Boyd, whom they engaged to take them into the most remote part of the Blue mountains to hunt elk and deer. They camped on a small stream emptying into Desola-

tion lake, and for a week enjoyed the finest hunting imaginable and splendid fishing in the lake and its tributaries. On September the 2nd the party, with their guide, started out to have a final hunt. While they were eating their lunch a flock of wood ducks came around a bend of the shore, and each of the party seized his revolver to take a shot at them. Davidson and Boyd, the guide, ran toward the shore to get a better shot at the ducks. As Boyd took aim Davidson stumbled in front of him, and the bullet entered Davidson's back, ranging across and remaining buried in the muscles of the shoulder. Davidson was placed in the boat, the flow of blood stopped as well as possible and the party returned to camp. When they arrived at the snag where they left Roberts they were astonished to find him in the water up to his chin, holding on to a root, while thousands of big black hornets were circling about his head. The party rowed to the shore, and securing a long pole, on the end of which a hook was made by cutting off a limb, a lot of dry brush and moss was gathered and fastened to the end of another long pole, and the party returned to the snag, taking the precaution to button up their coats, tie handkerchiefs over their faces and pull their hats well down over their ears. When they neared the snag the brush and moss were set on fire and pushed out ahead on the drift. This drew the attack of the hornets, which rushed into the smoke. Stillwell managed to fasten the hook in the clothing of Roberts, and the men at the oars soon pulled them all away to a safe distance, when Roberts was dragged on board more dead than alive and the boat was headed for camp. Roberts explained that he began fishing soon after he was put ashore, and caught a number of fine trout, but when the sun was up about an hour and it began to get warm, hornets by the thousands began to issue from a cavity in the roots of the snag, and at once attacked him. He slid into the water, but of course could not keep his head under, and he had been stung all over his head and face till he was nearly dead, and his head swelled to twice its natural size. The stings on the back of the neck, at the base of the skull, seemed to have affected his spinal cord and the nerve centers and rendered him completely paralyzed. The physician said that Davidson would probably recover, but his arm would be useless, while he was inclined to think that Roberts would remain a paralytic during the remainder of his life and would probably not survive long.

Omaha Stockman, Sept. 14: J. F. Gearing of Bagnone, Idaho, brought in three cars of range cattle. R. E. Miller of Market Lake, Idaho, was at market with five cars of cattle. W. L. White was here from Wasatch, Utah, with three double-deck cars of sheep.

Clare Abbott met with a peculiar accident at Oakland, Cal., Sunday night. He was having a discussion with a friend, and in order to give his points stress pounded on a table with his hand. He came down so hard one time that he broke two bones in the back of his hand.