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Charles Scott Williams

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# NOTES

## COSTS AND THE INDEPENDENT IRRESPONSIBLE

By

CHARLES SCOTT WILLIAMS\*

At common law the Crown neither paid nor received costs in criminal cases. The prosecution was in the name of the Crown and the prosecutor was not liable. The poor defendant was liable for the costs, even when acquitted. The only remedy for his inconvenience was the action of malicious prosecution.

This was the law brought to the colony of Pennsylvania and is our law today except as changed by case law<sup>1</sup> or supplied by statute. The innocent defendant, however, has been relieved from the payment of costs in almost every instance.<sup>2</sup>

In felony actions, the grand and petit juries may not place the costs on acquitted defendants, except in cases of larceny under \$100.<sup>3</sup> In such cases costs are placed on the county. The grand jury in ignoring and the petit jury in acquitting may decide who is to pay the costs in misdemeanors and in larcenies of under \$100.<sup>4</sup> The grand jury in such cases may place the costs on the county or the prosecutor but not on the defendant. The petit jury, where there is an acquittal in such cases, may determine whether the county, the prosecutor or the defendant shall pay the costs. The costs may not be divided between the county and any other party but may be divided between the prosecutor and the defendant. This often happens, especially in assault and battery cases when the jury blames both for the altercation.

The district attorney is often asked why an innocent person should have to pay any costs. His stock answer is that such a verdict means not guilty but do not do it again. At any rate, very few defendants complain about paying costs upon acquittal, especially in those highway violations when a guilty verdict would mean automatic revocation of operating privileges.

At common law the constable, the justice of the peace or other officer had difficulty in collecting his costs but this is not so today. Now the county has to pay the costs forthwith.<sup>5</sup> The wheels of justice now move smoothly.

The county is the real party in interest in all costs accruing in the criminal courts, and it is the duty of the county commissioners to supervise the collection of

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\* President Judge 29th Judicial District, Lycoming County, Pennsylvania; A.B. Dickinson, 1926; LL.B., Dickinson School of Law, 1929.

<sup>1</sup> *Commonwealth v. Adams*, 60 Pitts. L. J. 175 (1912).

<sup>2</sup> Act of September 23, 1791, § 13, 19 P.S. 1221.

<sup>3</sup> Act of March 31, 1860, P. L. 427, § 64, 19 P.S. 1223.

<sup>4</sup> Act of March 30, 1860, P. L. 427, § 62, 19 P.S. 1222.

<sup>5</sup> Act of May 11, 1874, P. L. 132, § 1, 19 P.S. 1224; Act of May 19, 1887, P. L. 138, § 1, 19 P.S. 1225; 3 Lyc. Rep. 1.

the same when persons are liable over to the county.<sup>6</sup> The county is also to collect all fines except those that go to the Commonwealth. The clerk of the court should immediately certify the fines to the county commissioners.<sup>7</sup> All fines which by law go to the Commonwealth are to be collected by the clerk of the courts as the agent of the Commonwealth. He is acting in his individual capacity as agent of the Commonwealth.<sup>8</sup>

It often happens that one sentenced to pay a fine or costs is unable to do so. In early English days, such person was treated harshly. Now such person may after three months confinement secure his release under the insolvency acts.<sup>9</sup> In certain cases he may secure his release by confinement of less than three months. In addition, the county commissioners, with the permission of the court of quarter sessions, may have a prisoner discharged when in the opinion of the commissioners such person is unable to pay the fine or costs.<sup>10</sup> The act which allows such release was passed to relieve the county from unnecessarily supporting a convict after the purposes of punishment were sufficiently fulfilled. When such a release is effected, the person released continues to be liable, and many county commissioners demand promissory notes for fine and costs in such cases.

County commissioners should be wary, however, in case of fines which are to go to the Commonwealth. If releases are effected under the *Act of 1887* when prisoners owe fines to the Commonwealth, the county may be liable over to the Commonwealth.

The administration of criminal justice has always been a costly matter. Persons who become involved in crime are the ones usually least able to pay fines or costs.

It was said in 1876:

"Is there an officer or witness in receipt of his own yet? Not at all. The county has boarded the delinquent; the jailer has guarded him; but he goes at last; *independent irresponsibility* makes him free for all time . . . . The discharge of duty on the part of officers . . . , as well as the attendance of witnesses, are simply incidents of the social state. Officers and citizens alike must be content to charge their account to the benefit of society, which overbalance by far all its incidental hazards."<sup>11</sup>

<sup>6</sup> Act of May 11, 1874, P. L. 132, § 1, 19 P.S. 1224; Act of May 19, 1887, P. L. 138, § 2, 19 P.S. 1227.

<sup>7</sup> Act of March 24, 1818, P. L. 273, 7 Sm. L. 120, § 1, 8 P.S. 176; Act of May 2, 1929, P. L. 1278, art. IV, § 384, 16 P.S. 384.

<sup>8</sup> *Matthews et al v. Kiess*, 1 Lyc. Rep. 123.

<sup>9</sup> Act of June 4, 1901, P. L. 404, § 6, 39 P.S. 13; Act of June 16, 1836, P. L. 729, § 47, 39 P.S. 323.

<sup>10</sup> Act of May 6, 1887, P. L. 86, 39 P.S. 14.

<sup>11</sup> 5 Luz. L. Reg. 33 (1888).