

BENWAY v. WOOD, *Ap't.*

The indorser of a writ returnable before a justice of the peace is not liable to pay a judgment for costs recovered by the defendant against the plaintiff on a complaint under the statute for not entering the action.

APPEAL of the defendant, Wood, from a judgment of a justice of the peace, charging him, in *scire facias*, as indorser of a writ in an action brought against the plaintiff, Benway, by Propre & Co., residents of Vermont. Facts agreed: Propre & Co. did not enter their action, and, on complaint filed by Benway for costs, the justice, without notice to Propre & Co. or to Wood, rendered judgment for costs against Propre & Co. in favor of Benway, and upon *scire facias* charged Wood with the amount of that judgment.

*S. L. Bowers*, for the plaintiff.

*Wait & Chellis* and *Davis & Enright*, for the defendant.

BLODGETT, J. At least one fatal objection lies at the very threshold of this case. The defendant's liability as indorser of the original writ extended only to the costs which might be recovered in that action. None have been recovered. The complaint for costs was an original and independent proceeding, in which the defendant was a stranger, and to which his liability did not extend. Other questions raised by the case and discussed by counsel are therefore not considered.

*Appeal sustained.*

DOE, C. J., did not sit: the others concurred.

STATE v. GRIFFIN, *Ap't.*

An appellant from a sentence of a justice of the peace is bound to pay the fees for the appeal, recognizance, and copies to the justice, and the entry fee to the clerk of the supreme court.

The right of trial by jury in such cases, being subject to a similar burden of greater amount when reserved by the constitution in 1784, is not impaired by Gen. Laws, c. 258, ss. 3, 4, requiring such payment.

APPEAL, by the defendant from a judgment rendered against him by a justice of the peace on a complaint for assault and battery. The question is, whether the defendant is bound to pay to the justice the fees for the appeal, recognizance, and copies