

MEAD v. SCOTT.

{1 Cranch, C. C. 401.}<sup>1</sup>

Circuit Court, District of Columbia. June Term, 1807.

COSTS—ON APPEAL FROM JUSTICE OF  
PEACE—DISCRETIONARY.

Costs on appeal from a judgment of a justice of the peace, are within the discretion of the court, if the judgment be affirmed in part.

Upon an appeal from the judgment of a justice of the peace, the jury found a verdict for the appellee, for \$10.69. The judgment of the justice was for \$17.50.

Mr. Law, for appellant, contended for costs. Appeals from justices of the peace are given by the Maryland act of 1791 (chapter 68). The condition of the appeal-bond only provides for costs in case the judgment shall be affirmed. The appellee cannot sue upon the bond, for the condition has not been broken. The judgment has not been affirmed, although the appellee has recovered something; yet he had obtained a judgment below for too much. In the case of *Austin v. Hughes*, in Montgomery county court the judgment was diminished only two dollars, and yet the appellant recovered judgment for costs.

F. S. Key, contra. It is an appeal as to fact as well as law, and new evidence was admitted. The case is taken up de novo. Costs are a matter of discretion. The bond, if appellant had given one, would have bound him to pay all such damages and costs as this court shall award against him.

Mr. Morsell, in reply, admits that this court has original jurisdiction as to fact, but as to law it is only appellate. If the proceedings below are not regular, the judgment must be reversed. If this court, or the jury should give more than the justice of the peace had

given, appellee may release and affirm the judgment as to the residue. If the judgment below was erroneous, the appellant has sustained his appeal, and ought not to pay costs.

THE COURT was of opinion that in such cases costs are within the discretion of the court, and as there was no evidence of a tender of any part of the money, or any offer to pay as much as the appellee finally recovered; it is the opinion of the court that the judgment of the justice ought to be affirmed as to the sum awarded by the jury, with costs, and reversed as to the residue.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

This volume of American Law was transcribed for use  
on the Internet

through a contribution from [Google](#). 