

It would seem, therefore, that in England the fees for briefs are limited to briefs in certain specified cases, but in practice it is usual to allow one shilling per folio for drawing brief observations, notwithstanding there are no special provisions in the particular law. See note to Fee 96 at p. 184; and by Fee 79 at p. 180 a fee is given for instructions for counsel to make *any* application to a Court or *Judge* where no other brief. The provision for a fee for brief in our tariff is more general, it is not limited at all. In view of what I have set forth I do not see how I can put a limited construction on it. I think a fair way of getting at the correctness of the fee would be as follows: In every case where, assuming that the solicitor and counsel were separate persons, the solicitor would be compelled to or reasonably justified in engaging counsel to make the application or attend a brief and instructions therefor are taxable, when he would neither be compelled to engage counsel or reasonably justified in doing so they would not be taxable. And possibly it might be as well for the clerk in that case to insist that the brief shall be produced. This last remark does not apply to briefs on trials or hearings; I have already decided that in such cases it is always assumed that a brief has been prepared, and therefore \$2 at least is taxable for it. Applying that test in this case, under ordinary practice a fee for foreclosure is obtained by motion to the Court if the defendant does not appear, and it would be necessary to retain and instruct counsel to make that motion. I cannot see that the practice in this respect is altered by the provision allowing the proceedings to be commenced by originating summons. I therefore am of opinion that the fees claimed are taxable. I notice that the tariff contemplates that counsel may attend as such in Chamber applications (Item 77).

Mr. Brown, who appeared for one of the defendants on the review, claimed that the item of \$1 allowed for instructions for pleadings should not be allowed. In *The Merchants Bank v. Currie*,¹ I held that a fee for the perusal of a Chamber summons was not taxable under item 43 of the tariff, holding that it was not a pleading within the meaning of the tariff. If I was correct in that holding, the fee for these instructions is not taxable. I was much influenced in *The Merchants Bank v. Currie* by the fact that the word "petition" was used

Judgment.
Wetmore, J.

¹ Not reported.