

1880

MINUTES AND PROCEEDINGS.

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notice is served on Plaintiff that an appearance has been entered and he searches to see if it is so, a second search should then be charged.

When a Record has been entered for trial, say at Huron, and the venue is subsequently changed to Brant, and the record is again being entered at Brant, the same fees must be charged as if the record had never been entered before.

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When an attorney performs services for his client in which no suit is involved, or in which no costs follow suit as in Division Court cases, paying taxes, interest, collecting rents, &c., &c., a commission to the attorney should be allowed. As to amount, it is in the discretion of the Master, according to the services rendered. When amounts are large, involving proportionately small labor, the percentage is less than when the amounts are small and involving proportionately large amounts of labor. In such cases, the master must exercise his own discretion, seeing that the attorney is fairly remunerated for the labor expended.

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Where an affidavit of disbursements swears that a subpoena was issued in the cause, and the parties named in the schedule on the back were subpoenaed and examined, we have always taxed subpoena and copy of same, on the grounds that they were sworn to.

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The costs in Surrogate cases will depend on the court in which the proceedings are taken. If taken in the Surrogate, then the County Court scale must be adopted, if in the Court of Chancery, then the Chancery scale must be adopted. This would appear to be the case on reference to Re Osler, 24 Grant, 529, and Re Harris, 459.

I was asked if a defendant demurs to plaintiff's declaration, and on argument of the demurrer, judgment is given in favor of the plaintiff, subsequently the plaintiff is nonsuited at the assizes, on the taxation of costs, who is entitled to the term fee for the term in which the demurrer is argued. The rule is that the successful party is entitled to the costs of the cause including of course term fees, the unsuccessful party must bring himself within the exception of this rule. If the argument of the demurrer was the only proceeding taken that term, which would carry a term fee, then plaintiff should have it, but if the defendant's pleading was in the same term, or the trial took place in the same term, or any other proceeding on the part of the defendant, which would entitle him to a term fee, then the fee would go to the defendants, in preference to the plaintiff.

A Sheriff is entitled to mileage in going to seize, also in going to sell, but I would say not in general for postponement of sales unless under very peculiar circumstances. For instance, suppose he went to sell and circumstances arose at the sale that rendered a postponement imperative, or that the parties to the suit both requested the postponement, then I would allow the mileage, otherwise not, because I would not think it necessary under ordinary circumstances.

I am asked if a Sheriff seizes goods under an execution, and owing to their being a prior claim, he has to sell goods to a greater amount

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