

property seized on execution. The presiding Judge there held that Division Court officers must regulate their charges strictly by the tariff of fees laid down by the statute. That they could not take *imaginary fees*, or fees which they might think justly or equitably due them; in other words, that costs or fees cannot be charged by *implication*.

No superior court will allow any officer to charge any other fees than those definitely pointed out by the tariff, much less should this be allowed in the Division Courts in back counties, where it may lead to great abuses.

It has been mentioned to the writer than an out-county clerk lately insisted upon a suitor paying nearly \$4 for fees of various kinds to him and the fee fund, in an application for a new trial, made on behalf of this suitor. The same fees are charged by him for orders, judgments, and hearing, as if the case was actually being tried in court.

It should be remembered that at common law no costs were chargeable at all. The King's courts administered justice freely, and the parties, if they had lawyers, paid them themselves. The King's judges were paid by the public. This is the case now (or was a few years ago) in many of the Western American States, where the old common law is carried out. Costs are therefore the creation of statutes passed at various times.

In the superior courts statutes authorize the judges to fix the tariff of costs to be taken by officers acting under them. In inferior courts, such as division and magistrates courts, particular statutes lay down definitely what fees shall be charged, and none other should be charged. Out of the many hundred applications for new trials made in Upper Canada under the Division Court Act, similar fees to those spoken of were never charged before.

The rule of practice relating to new trials (rule No. 52) speaks plainly enough of postage and transmitting fees, and charges by the clerks, which we can see is reasonable enough. For the clerks may have to transmit papers to the judge and to pay postage, which should be paid beforehand. But to charge a hearing fee,—a fee on order,—a fee on application,—a fee on entering order,—a fee on judgment, in addition to the postage and transmission fees, is going beyond the statute, and if so, would be punishable under the section already referred to.

Now, in addition to the principle of the common law alluded to, it must be borne in mind that the *Division Courts Act* was passed in Canada, at a time when there was a great outcry about lawyers costs, and was intended to increase the jurisdiction of the courts, and at the same time make them cheap courts; but at the same time the writer does not wish to be understood as arguing against some proper and reasonable increase of Division Court fees in certain cases, such for example as remuneration for keeping possession of property under seizure; nor is it argued that cheap law is always the best.

This is a very debatable matter. But when we have a law, officers should not at their discretion, or by the permission even of their judges, exact new fees, not warranted by the statute. In some counties, and in Toronto, bailiffs exact a fee varying from thirty cents to seventy-five cents for a return of *Nulla Bona* on every execution in their hands. This is in the view of the writer simple extortion, as not warranted by the statute. Yet it would only be reasonable that some small fee should be allowed. In many counties clerks are in the habit of charging certain fees over and above postage, for transmitting and receiving, to enter in their books transcripts of judgments from out-counties. This is also wrong, as the tariff of fees has reference only to summonses sent for service. Other clerks are in the habit of charging an order fee to fee fund and themselves for every *certificate* put on an execution, where the judge *certifies* to avoid the *exemption laws*; a charge which the judges and clerks of the superior courts do not exact. A clerk some time since is said to have refused to issue an execution until he got a dollar in stamps for such charges.

Now it will be recollected that the law is very severe on Division Court officers for taking illegal fees (see section 186, Con. Stat. Division Court Act), and care should be exercised in this matter. If the law is wrong let it be altered by the Legislature. It is well known that in the Division Courts, even now, in proportion to the sums collected in them, they are dearer than the superior courts. A claim say for \$20 sued has been exceeded in amount in a short period by the officers fees, apart from witness costs, where mileages, judgment summonses, and hearing fees have been charged.—*Communicated*.