

MINUTES OF MEETING
OF THE
COUNTY COURT
CLERKS' ASSOCIATION

HELD AT
OSGOODE HALL, TORONTO,

AUGUST 29 AND 30, 1883,

*WITH INDEX TO REGULATIONS AND MINUTES
FOR YEARS 1872-78, 79, 1880-81, 82, and 83.*

Toronto;
PRINTED BY C. BLACKETT ROBINSON, 5 JORDAN STREET.
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MINUTES
OF THE
SEVENTH ANNUAL MEETING
OF THE
COUNTY COURT CLERKS' ASSOCIATION,

Held at Osgoode Hall, Toronto, 29th and 30th days of August, 1883.

Present:—M. B. Jackson, President; Messrs. Austin, Eagar, Grace, Gunn, Hall, Inglis, Marcon, Maloney, Mitchell, McBeth, McDonald, McGuinn, McLaren, McLaws, Northrup, Rice, Reynolds, Stevenson, Twigg, Willson.

President in the Chair.

Minutes of last meeting amended by adding the word "Court" between the words "County" and "Clerks" on fifth line of first page.

Letters were read from Messrs. Canfield and Fraser regretting their inability to be present.

Treasurer reported \$39.49 on hand, but reminded the members that there were outstanding bills to be paid.

On motion of Mr. Twigg, seconded by Mr. Marcon, M. B. Jackson, Esq. was re-elected President.

On motion of Mr. Gunn, seconded by Mr. Mitchell, Mr. Northrup was re-elected Secretary and Treasurer.

President stated that C. C. Tariff, to be made by Board of Judges, had not been issued, but trusted it would be soon, as it is so much needed.

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4. MINUTES OF THE SEVENTH ANNUAL MEETING.

Matters of practice relating to business of clerks in offices, and taxation of bills, taken up and discussed.

On motion of Mr. Mitchell, seconded by Mr. Austin, President read his address, so that questions arising out of it with those proposed by members present could be discussed together.

President read his address, as follows:—

TORONTO, August 29th, 1883.

I hope we are all glad to meet each other on this the occasion of our annual gathering together, and that our meeting may be of mutual benefit to us all.

Introduction.

I intend only on the present occasion to draw your attention to one or two salient points. There will be a large number of other points to which I will refer when the address is being prepared for the printer, and which you will all hereafter be able to read at your leisure. By adopting this course it will leave you the most of your very limited time while you are assembled together to interchange views on the many subjects that may have presented themselves to you during the past year; it will also have the additional advantage in case any points may arise about which you are in doubt. I may look into them and explain them in my printed address.

Index

In regard to these addresses they are now pretty numerous, and cover a large space, and most of you have found difficulty in getting information from them on any given subject, owing to there being no means of reference by which to ascertain what particular portion of the addresses treated upon the subject under consideration. The difficulty is increased by the fact that some subjects are referred to in half a dozen different places. To obviate these difficulties, and to give you every facility of reference to any subject treated on, I have prepared an index of all the addresses, which I hope you will find furnish you with the aid desired. This index I have submitted to our Secretary and to Mr. McGuinn, both of whom have examined it and have favoured me with their views on it, and with valuable suggestions of which I will thankfully avail myself. I may say that I have tested it myself in inspecting, and have not yet found it to fail me. I intend extending the index to the address of this meeting and having it printed with it. The references in the index, "R" mean the first Regulations printed; then say, 10/82 means page 10 of Minutes of C. C. C. Association of 1882, and so on. I may say that as soon

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OF THE COUNTY CLERKS' ASSOCIATION.

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as the tariffs are completed I intend to revise all the addresses, consolidate them, adding the Rules of Court, since, the Judicature Act, and annotated tariffs.

This brings me to a subject that I cannot help thinking is in an unsatisfactory state—that is the question of ^{Taxations.} taxations. There are two taxing officers. It was intended that they should perform their duties under the superintendance of a Master. No such officer has been appointed, so they both follow their own views. Instead of there being one principle of action to apply to and govern taxations in the High Court of Justice, one considers himself a Chancery man and taxes according to the views taken of taxations in the old Chancery Court, the other is a Common Law man and taxes according to the views which prevailed in the old Common Law Courts. The consequence is that there are two systems of taxation, if I may so express it, the same as existed before the Judicature Act. I understand they do not agree, and there is no one to determine between them what is right. Both these officers before the Judicature Act performed their duties under the direction of a Master, to whom all questions of difficulty, all special matters, and disputed questions, and all the higher branches of taxation were referred for decision, such as the scale of costs to be allowed, the construction of verdicts and Rules of Court, and their effects on costs, revision fees, counsel fees, and the numerous difficult questions arising between attorney and client, sheriffs' fees, poundages, witness' fees, and all other questions lying beyond the ordinary detail of taxation.

All these questions are now to be determined by the present officers. It has occurred, and doubtless will occur again, that I direct you one way and the taxing officers hold another. You will find directions in the address immediately following the Judicature Act, in which I stated that certain fees should be allowed; they were disallowed by both taxing officers, and such disallowance has been held to be wrong on appeal. The only way I see to avoid confusion is for you, gentlemen, still to be guided by me in such matters until it is otherwise ordered; and if the taxing officers differ, wait until there is a distinct ruling on the question on an appeal, of which I will keep you informed at each annual meeting. I really do not see how it can be bettered as matters now are. My great desire is to keep you from being embarrassed by conflicting holdings, and the only way to accomplish that is that you should have one party to apply to in such matters, and on being advised

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by him your responsibility should cease. I may, in this connection, say that the Government has been pleased to appoint Mr. Winchester, Inspector of Sheriffs, County Attorneys, etc., and also of Deputy and Local Registrars. Such of you, gentlemen, as come under any of the above heads will not hereafter be visited by me, but, as far as advising you on any points you may desire information on hereafter, our positions are unchanged, and I will always, as heretofore, be happy to be of any service to you. The Deputy Registrars and Local Registrars, I presume, will also have the option of advising with Mr. Winchester on these points. I would bespeak for Mr. Winchester from the officers coming under his inspection, the same kindly consideration that has always been extended by you all to myself.

Præcipe orders, fee on.

It has been ruled on appeal that one dollar fee is to be allowed on præcipe orders. This you will find was held to be so in our Minutes.

Agency fees, in same county.

It has been ruled by the Hon. Mr. Justice Osler that Agency fees are to be allowed when a Solicitor resides in the same County as that in which the proceedings are carried on. I need not inform you that this holding is contrary to the holding of the Courts of Common Law since time immemorial, and will add very heavily to the liability of the suitors when the opposing Solicitors reside out of the county town. As to what distance it will be necessary to reside out of the county town in order to entitle the Solicitor to Agency fees does not appear, but I would suggest that it must be beyond the two mile limit within which a defendant appearing in person must fix a place at which he can be served with papers. The practice in such matters heretofore has been that when an order was made by a single Judge conflicting with a settled fixed practice of the Court, it was of course followed in the case in which it was made, but the practice of the Court continued until it was altered by a decision of the full Court. This course was found advisable because Judges often made conflicting orders, and the practice could not be varied, to comply with them. I have spoken to the learned Judge about this order and he still holds to it, and said he made it after consulting a number of his brother Judges. Under these circumstances I would advise you all to follow it in future.

Surrogate.

I find that a number of learned County Court Judges hold that lands devised to Executors for a given purpose, say to sell, etc., become personalty, and that they are entitled to fees on the value thereof, and that

Land devised to executors.

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stamps should also be put on, and the Clerk's fees increased in proportion of such value. On reference to page 20, Minutes of 1880, you will see my views on this subject; unfortunately, they are adverse to such of the learned Judges as hold as above, and on communication with the Attorney-General, I was sent a copy of his written opinion which held, as I had previously held, that lands so devised had nothing to do with the Surrogate Court, and that no fees or stamps could be charged in respect thereof. I am asked by one gentleman whose Judge holds that fees are payable in respect of such a devise, and who charges them on his own behalf, and instructs his Clerk to charge such fees, and to put on stamps according to the value of such lands, what is he to do? My answer is as it always has been in cases where learned County Court Judges hold views adverse to mine—I desire, above all things, to avoid putting a Clerk in antagonism to his Judge, the Judge is *dominus litis* in his own Court, and his Clerk should obey his rulings, therefore in such cases charge the fees and put on the stamps as directed by the learned Judge. Any party desiring to contest the Judge's right to such fees can only do so, as far as I see, by tendering the proper fees and demanding probate on payment thereof; if refused, then he can apply for a mandamus on the Judge to grant the probate on payment of the fees, less such alleged overcharges.

It has always been held in the Common Law Courts that two sureties were necessary in every bond for security for costs. The Hon. Mr. Justice Cameron, in a case of Fletcher and Noble in July last, held that the Chancery practice should prevail, and that a bond for security for costs should not be disallowed on the ground that there was only one surety, it being otherwise sufficient. As to the evidence to be acted on in judging sufficiency of surety the Rule is, that if the proper affidavits of execution and justification are made it is *prima facie* evidence of sufficiency. If the sufficiency is objected to, something must be shown which tangibly affects the financial position of the surety, such as *bona fide* claims against him which cannot be realized on executions in Sheriff's or Bailiff's hands, not satisfied or returned *nulla bona*, etc., etc.

Security for costs. Bonds for.

I would beg to call gentlemen's attention to the necessity of making the quarterly returns of judgments entered, punctually after the end of each quarter, and if no judgments are entered during the quarter—send return showing such to be the case. A number of gentlemen

Quarterly returns.

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have been sadly remiss in this respect. In making these returns some gentlemen omit to state what Division the return is for; please attend to this in future; also state whether judgment is for Plaintiff or Defendant. Each return should be signed by the officer in his official capacity.

Papers, books, judgments, How to keep.

I find some gentlemen misapprehend the mode in which suits and papers are desired to be entered and kept. I thought I had fully explained this, but at the risk of repeating myself and being tedious, I will again perhaps a little further elucidate it. If a summons is issued enter it in the process book, give it its proper number and year. All cases in which no further step is taken in the suit, I would put the copies of summonses in a parcel each year, in order, according to their number, and make no further entries concerning the same. If an appearance or judgment by default is entered mark "appearance," or "judgment," in the proper column, and transfer the case to the procedure book, in which enter the subsequent proceedings. This would also be done in case proceedings are continued without an appearance, as by filing a statement of claim or otherwise; in such case it should be shown in the process book that such proceedings have been taken, by entering in the proper column "statement of claim,"—these entries shewing that the case has been transferred to the procedure book. When a case is transferred to the procedure book it should take its number year by year, according to its entry therein. When once a case is entered in the procedure book put the papers in an envelope, indorse the envelope first with the year at the top, in the middle, at the left hand corner put the letters P. B., which will stand for procedure book, then the number of the case in the procedure book. In case judgment is entered put in the right hand corner the letters J. B., which will stand for judgment book, and the number of the case in the judgment book, as follows:

If the judgment is entered in a different year from that in which the entry is made in the procedure book, put the year in which judgment is entered in the right hand corner, at the top.

Number your judgment book year by year, and your procedure book should show the number of the entry in the judgment book, such as judgment entered, J. B., 108. The cases in which judgment is signed should be put away each year

P. B. 2. 1883. J. B. 4.

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in the regular order of number; and the cases in which judgment has not been signed should also be put away each year, leaving in the files, one year's papers and the papers for the current year. These last all ought to be according to number, all the numbers in which judgment has been entered would be wanting. I am thus particular because my former instructions were misunderstood. I have applied to the Attorney-General to supply you with envelopes which he has granted; they will be sent to you. Those that are sent are only to be used in High Court cases.

I now proceed to mention some of the points I have been consulted on and the advice I have given on such points.

When a judgment is given on two branches of a case, say first for defendant, declaring a will valid, second against plaintiff, declaring a deed void, with no costs of defendant in respect of the will, and with costs to plaintiff in respect of the deed, the plaintiff is only to be allowed the actual costs incurred in respect of the deed, any time, witness or counsel fees, which would apply to the will, neither party would get.

Judgment for different parties costs.

The absconding debtor's case where an appearance and special bail has been put in and a declaration filed to which no plea has been filed, you cannot sign final judgment without an order directing you to do so.

Absconding debtor's judgment.

I have been asked whether under R. S. O., chap. 50, sec. 159, a Clerk of a County Court could give an appointment to examine in a County Court case; that section empowers a Deputy Clerk of the Crown a special examiner or Local Master to give such appointments. It has always been considered that the above powers were given to the officers named in Superior Court cases only, and not in County Court cases, but as the law now stands I think the County Court can act under the same provision but must act through its own officers, and the only officer it has in analogy to those mentioned is the Clerk of the Court whose office corresponds to that of the Deputy Clerk of the Crown, and that, therefore, he can grant such appointments in County Court cases.

Examination, appointment for, who can give?

Where a Judge enters a nonsuit simply without anything further, this appears to me to be a case of a trial by a Judge; and before judgment could be entered on it an order to that effect would be required, and no costs could be taxed without an order giving one party or the other such costs. While believing the above to be correct until there is a decision one way or the other, I would advise an officer, if the nonsuit is directed, to

Nonsuit judgment on costs

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enter the judgment at Plaintiff's risk, but not to allow costs unless they are expressly ordered by the Judge.

Joinder of issue; allowance for.

There appears to be no allowance in the High Court tariff for joinder of issue; it seems to have been omitted by mistake. This being the case I would go back to the old tariff and allow for it what is there provided for the item.

Report, where filed.

Any report made in the progress of a case should be filed in the office where the proceedings are carried on.

Mortgage affidavit.

The affidavit alluded to in form 169 Judicature Act in mortgage suits is an affidavit by plaintiff or other person having the necessary knowledge, to the effect that the mortgage in question is a good, valid, subsisting mortgage duly executed, etc., that the amount of the mortgage is due and owing or that so much of it is due and owing, and that only such payments have been made on it. You will see by No. 2 of the form that the findings are founded on the affidavit filed.

Case put off to next assizes, remains on docket, need not re-enter.

When a case has been entered for trial and is put off until the following Court I think under rules of 4th of December, 1875, it becomes a remanet, not having been *tried or otherwise disposed of* within the meaning of these rules and need not be re-entered. The contrary has since been held by the Master in Chambers, but his decision was overruled by Hon. Mr. Chief Justice Wilson. See also page 19, minutes of 1882. Of course it follows that in such a case neither stamps nor jury fees can be required, neither can the Clerk of Assize demand a second three dollars, as I understand some have done.

Writs, marginal notes in.

The necessity as to marking in the margin of writs, the office out of which they issue, is the same as it always has been.

Exhibits, charge for, Term or Court fees.

No charge is made for filing exhibits at the assizes. The Term or Court fees in actions to recover lands are the same as in other actions.

Corrections, as to making.

The rule acted on here as to making corrections is, that if an error is discovered while the matter is in hand, say for or against a bill, it can be corrected, though the bill was signed, but if an allocatur had been signed and was taken away no correction could be made unless it was returned. This right we exercise at any time during the day on which the error was made, but not afterwards. This correction can be made although a judgment might have been completed up to entry in the judgment book, but not if the entry had been completed in the judgment book.

Letters, answering by Clerk.

I think a gentleman can without impropriety answer letters addressed to him making inquiries as to chattel

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mortgages and Surrogate business; the rule as to doing business in person, or by Solicitor or agent, would not, I think, apply to such matters.

The old rule was that a Counsel fee could not be allowed before the record was actually entered for trial, and as this could not be done before the commission day a fee could not be allowed before that day. In many cases I have thought this rule was a great hardship, and that the Master should have had power to allow a fee after the time for countermanding notice of trial had passed. I think under our present practice, when a trial is put off on payment of costs, and the time for countermanding notice of trial has passed and the action has been entered for trial, I would allow a ten dollar refresher fee, unless it was held otherwise by the Court.

Counsel fee, Assizes, when to be allowed.

Upon a claim for \$302.00 upon two judgments recovered in Lower Canada, specially indorsed on signing judgment by default of an appearance, I would only allow County Court costs.

Scale of costs for \$302.

Under the present practice either or both parties may enter the record for trial; if it is a jury case the question arises must both parties pay the jury fees. I do not at present see how it is to be avoided, but I would think that when both parties enter, as the trial must be had on the Plaintiff's entry, in some way or other the Defendant ought to be entitled to a return of the jury fees, at any rate. I don't quite see at present how this is to be accomplished; it might perhaps be better for the Clerk to ask the direction of the presiding Judge in the matter.

Entry of case by both parties; payment of jury fees.

I am glad that it has been held that one dollar can be allowed for copy of summons filed on issuing original.

Copy of Summons, Allowance for.

In an action a jury notice was given on 30th March; action entered for trial on 2nd of April; on 11th April order made striking out jury notice, question asked, "Am I right in demanding jury fees?"

Jury fees, are they payable?

This matter is governed by cap. 48, sec. 145, R.S.O., and by Rule 261 of the Judicature Act; the section says: With every record entered for trial certain jury fees shall be paid. Rule 261 alters the law as to entry for trial. The record is not now entered for trial, the action is entered for trial on præcipe filed. As I understand the matter, the fees must be paid when action is entered, and if there is a jury notice at the time of entry the jury fees must also be paid; and as they are required to be paid over forthwith to the Treasurer, I do not see how they are to be got back on the jury notice being subsequently struck out.

Sheriffs' fees, allowance beyond poundage.

When a Sheriff seizes a stock of goods it is generally considered that his poundage is his remuneration; but if a Defendant thinks the goods could be sold at a greater advantage by selling them out in small parcels, and requests the Sheriff to so dispose of them, it would be in an officer's discretion to make such allowance as he thought proper to the Sheriff for his extra trouble. When a Sheriff has a number of executions against an estate and realizes on them, he is entitled to poundage on each separately.

Insolvency, Searches in.

It appears to me that if a Clerk is asked to search all the papers in an insolvency case or produce them, he would be entitled to a fifty cent search; but if asked to search a paper he would be only entitled to twenty cents, though he might have to go through all the papers to find it. If he was asked to produce all the papers on an application before a Judge he would be entitled to a fifty cent search; but if the application was adjourned once or several times, and the papers had to be produced each time, I do not think he would be entitled to further searches, as after the first time he would be keeping the papers for the Judge, as his Clerk. Ewart, 151; Clark's Insolvency, 421.

Statement of Defence, time for delivery.

When a statement of claim was filed and served on the 5th of May, under Rule 160, Defendant must deliver his statement of defence within eight days from the delivery of the statement of claim; this wording, of itself, would exclude the day of delivery in computing the time for delivery of the defence, but under Rule 458 it is doubly clear that the first day is excluded, and as the last day, the 13th, falls on Sunday, under Rule 457 Defendant would have all day Monday to put in his defence, and judgment by default could not be signed before Tuesday.

Witness' fees, Allowance of.

If a trial was put off at 3.30 p.m., the witnesses of all parties should go home, and not be allowed for the next day unless they could not reach home on that day, in which case they should be allowed for the next day. So if a case was postponed, and witnesses were on the way and were stopped and turned back by telegraph or otherwise, they should be allowed for time and travelling expenses for the distance they came and returned, though they had not been at the Assizes at all. This would of course be on the production of a proper affidavit.

Rent, Poundage on.

If a Sheriff levies and pays the landlord's rent out of the levy, he is entitled to poundage on the amount of the rent in addition to the poundage on the execution.

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Whoever has charge of a taxation is the party moving, and must procure the appointment, and must pay the fees of taxation whatever the result of the taxation may be.

Fees on taxation, Who to pay.

When a case is tried by either Judge or jury which has been brought in the High Court, and a judgment or verdict is rendered for the Plaintiff for any amount, say \$100, and the Judge indorses on the record as follows, "I direct judgment in favour of the Plaintiff for \$100 and costs," it must be presumed that the order was made under Rule 428, and you cannot go back of the order to inquire whether it is or not, and costs having been given, it must be presumed that they were given in respect of the Court in which the action was brought, and that therefore it was intended to give full costs of the High Court, and full costs should be taxed accordingly.

Judgment for Plaintiff \$100 and costs, carries full costs.

Rule 369 prescribes the means by which a judgment debtor can be brought up for examination, that is by appointment of the examiner; and upon its being served forty-eight hours before the time appointed for the examination, and payment of the same fees as a witness would be entitled to, gives such appointment the same effect as the service of a Rule or order. From this it is clear that under this Rule it cannot be necessary to issue or serve a Subpœna in addition to the appointment, as the service of a Rule or order followed by disobedience can be enforced by process of contempt. The appointment is served by giving a copy to the party and showing him the original at the same time.

Examination, Judgment, Debtor, Subpœna.

I have been asked if a specially indorsed writ is issued against A, B, and C, each one served on a different date, judgment by default signed against A on the 10th, and against B on the 13th, no costs taxed, C appears and defends, case tried, verdict against C, and judgment signed against C and costs taxed: should three judgments be entered in the judgment book? Yes, certainly; as each judgment is entered it must be entered in the judgment book. Indeed, until it is so entered, it is not a judgment and cannot be enforced as such. This will appear more clearly when it is considered that after the lapse of the necessary time after the time for appearance, execution could have issued against A; and so also as to B, the taxation or non-taxation of costs does not affect the matter in any way, as Plaintiff was not obliged to tax costs or enter judgment for them.

Several Defendants, several judgments.

I cannot understand the principle, or want of principle, on which engrossing affidavits can be allowed without the service having been first shown to have been rendered; if this is correct, then I cannot see why proof of any other service is necessary.

Engrossing affidavits, Allowance of.

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Entry for trial, When fees to be paid.

The fees for entering a case should be paid when action is entered for trial, and if no certified copy of pleadings was furnished the officer within the time prescribed in that behalf, the case should not be entered on the Assize docket.

Chattel Mortgages, Deputies' seal.

Chattel Mortgages, as far as I understand, need not be sealed with the Deputy's seal or County Court seal. It is a document filed in the office of the Clerk of the County Court, not of the Deputy Clerk. I doubt very much whether section 51 of the Judicature Act applies to the County Court at all; at present I think not.

Three Defendants, Defend separately, succeed, Allowance to, Judgments, etc.

A sues B, C, and D; they *bona fide* appear by separate Solicitors and at trial by separate Counsel. Verdict for Defendants. I think if their defences were separate and there was no collusion they would be entitled to three Bills, three Counsel fees, and I don't see why they would not have three judgments if they so desired, but they could join in one judgment; it would follow of course that they would be entitled to separate executions.

Costs in cause orders.

I would think that an order obtained allowing Plaintiff to pay money in to Court instead of giving a bond for security would be costs in the cause, and if Plaintiff succeeded he could tax them against Defendant, and if Defendant succeeded he could tax them against Plaintiff.

Poundage on what allowed.

My present impression is that a Sheriff is entitled to poundage only on the amount realized by the sale, and which accrues to or is paid over to the Plaintiff, certainly not on his own fees; but if rent is due, and he has realized the amount and paid it over to the landlord he is entitled to poundage on the amount of the rent. *Michie vs. Reynolds*, 24 U.C., 303.

Lis pendens, Stamp for.

A certificate of *lis pendens* should have a one dollar stamp, as it must be under the seal of the Court if issued in an outer office.

References, What deputies entitled to on; what are.

A question has arisen as to whether an officer, who is entitled to appropriate the fees of references under sec. 64, s.-s. 5, is entitled to the filings on the references. I may say here that I think he is entitled, first to the appointment, then to the reference by the hour, then to the filings, and lastly to the return. An examination, when taken by such an officer, must, under the statute, be duly returned to the office in which the original proceedings are carried on, but on doing so the filings need not be stamped because they are provided for by that subsection, and have been paid to the examiner; the officer to whom they are sent should receive them without stamps and mark them received, but if the examination was taken by any other officer than one provided for by

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that sub-section the filings must be stamped when it is returned, and should not be received without the proper stamps; the above is the conclusion arrived at by the three Registrars of the High Court, on consultation on the effect of said sub-section, and will please be acted on in future, unless overruled by a court decision. Under this sub-section I think the officer is entitled to the fees on all references to, and all examinations taken by, him, such as, say, reference to allow a bond for security for costs to tax bill of costs between attorney and client, and all other references made to him by an order of a Court or Judge, but this will not apply to computation of interest on judgments by default or on verdicts.

The fees payable to Clerk of Assize on entry of action for trial should be paid when the action is entered, not when the certified copy of pleadings is handed in for the Judge.

Clerk of Assize,
When fees payable to.

Having found on going round, a difference of practice in charging Surrogate fees, both where a Judge has and has not commuted his fees, a difference which the very strange wording of the tariff of the Surrogate act almost gives rise to, and it being very desirous that all should charge alike I have framed the following tariff for the guidance of all after a great deal of hesitation and after having consulted some learned Judges and a leading County Court Judge who kindly lent me his assistance; I hope you will find it to be of use to you:—

Surrogate fees,
Table of.

MEMORANDUM OF FEES IN SURROGATE COURTS.

1ST.—IN CASES OF *Probate*.

Where property devolving is

	\$1,000 or under.	Over \$1,000 and not exceeding \$1,200.	Over \$1,200 and not exceeding \$2,000.	Over \$2,000 and not exceeding \$3,000.	Over \$3,000 and not exceeding \$4,000.
<i>Under Schedule A.</i>					
Application	0 50	0 50	0 50	0 50	0 50
Certificate	0 50	0 50	0 50	0 50	0 50
Seal	0 50	0 50	0 50	0 50	0 50
Grant	0 50	1 00	1 00	1 50	2 00
	\$2 00	\$2 50	\$2 50	\$3 00	\$3 50
<i>Under Schedule B.</i>					
Order for probate...	0 50	0 50	0 50	0 50	0 50
Order for inventory..	0 50	0 50	0 50	0 50	0 50
Fee on Grant	2 00	2 00	3 00	3 00	4 00
Total fees	\$5 00	\$5 50	\$6 50	\$7 00	\$8 50

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and for every additional \$1,000 of property an additional \$1.50 of fees. In administration suits the same charges as above, and fifty cents in addition for order approving of bond; and of course all necessary orders made by a Judge in addition to those above mentioned would be fifty cents extra. In cases where property of deceased, real and personal, is under \$200 the only fee would be a fifty cent stamp in case Judge has commuted. It is thought that the above is the result of a true construction of the Statutory tariff, and that it should be followed unless in the future a decision of the full Court should alter the construction.

Judgment by default, Costs of.

The following is an example of a bill of costs which should be taxed on entering a judgment by default of an appearance:—

COSTS ON JUDGMENT BY DEFAULT ON SPECIALLY INDORSED WRIT.

Jones v. Smith.

Instructions.....	\$3 00	.....
Letter to Defendant and postage	0 50	\$0 03
Copy of Writ for Clerk, paid filing.....	1 00	0 10
Writ and paid.....	2 00	1 00
Special indorsement	1 00	.....
Attending Sheriff for writ.....	0 50	.....
Paid service, \$2.70; mileage, 2 miles 26c.; postage, 6c.....	.....	3 02
Affidavit of payment of mileage, if any ...	1 00	.....
Attending to pay, or letter with	0 50	.....
Attending to search, appearance, and paid	0 50	0 10
Affidavit of no appearance	1 00	.....
Judgment	1 00	.....
Fee on	1 00	.....
Bill of costs	0 40	.....
Attending on taxation	1 00	.....
Stamps on præcipe for judgment (no com- putation) .....	.....	1 70
If computation, additional stamp for com- putation .....	.....	1 00
Filings, say 4 at 10 cents each.....	.....	0 40

Nothing is charged for the certificate for costs, it is treated as an allocatur.

A Sheriff is not entitled to any privileges on service of orders, pleadings, etc., these can be served by Solicitor.

In case a search is made, if the object searched for is not further back than two terms only ten cents can be charged; exceeding two, and not more than four, twenty cents; exceeding four terms or a general search,

Orders, etc.,
Who can serve.

Searches,
Charges for.

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fifty cents; it matters not what is involved in getting the item or matter required.

The filed proceedings in an action should not be brought into Court on the trial unless under a Subpoena or Judge's order. Whatever a Judge orders, of course the Clerk must do. Examinations should not be sent to Toronto on a præcipe. Above applies to all Courts.

Filings should not be sent from office to court.

If an order is made to amend the filing, the order will not amend the proceeding, it must be regularly amended and the proper stamps put on, otherwise the Clerk treats the matter as though no order to amend had been made.

Amendment, how made.

All documents annexed to affidavits must be stamped when filed. So must also all vouchers referred to in the affidavit and certified to by Commissioners, if they are brought into and used in Court with the affidavit.

Affidavits and vouchers filings.

When case is removed into High Court from County Courts only the writ and return are filed, the other papers are removed by the writ, and all are entered in the procedure book.

Removal from County to High Court-filings.

If a party desires to issue several executions in the same case to the same or different counties, he can ask for these in one præcipe, and only one filing can be charged.

Executions, Præcipe for.

In proceedings against Defendants out of jurisdiction the writ of summons or notice of it, and a statement of claim must be served. After service an order must be made by the Court or a Judge allowing the service. This applies whether the claim was the subject of a special indorsement or not.

Defendants out of jurisdiction, judgment by default.

When a transcript of judgment from a Division Court is filed in a County Court execution can issue on it at once.

Transcript, Execution on.

A judgment may be entered one day and the costs taxed on a subsequent day.

Entry of judgment, and taxation of costs.

In case a Solicitor procured the services of an officer in a matter which the law requires should be paid for by a stamp, such as a taxation reference, etc., etc., and after the service has been performed the Solicitor refuses to pay the stamps necessary, the matter in which the Clerk has been acting should be retained by the Clerk, and the Solicitor should not be allowed to act on or use it in any way, any more than if nothing had been done in the matter, the Solicitor would be liable to a special application being made to the Court to punish him for contempt, and to enforce the payment of the stamps.

Nonpayment of stamps, remedy.

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Taxation, Solicitor and client.

Taxations between Attorney and client are references, and must be charged as such, not as taxations.

Renewals, writs, Charge for.

The charge for renewal of a writ is one dollar, and ten cents for filing præcipe.

Certified copy of proceedings, Form of.

Certified copies of proceedings should be in the same form and size as the old Records—must be folded lengthwise and be double on a double sheet. The President of the High Court expressly desires this to be carried out. Regulation 2.

Pleadings, form.

Pleadings may be folded lengthwise or across foolscap.

Præcipe for judgment form.

Præcipe for judgment should be folded lengthwise of a foolscap sheet of paper—it need only be single. As to size of Records, see Regulation No. 2.

Præcipe for judgment, Allowance for.

One dollar is generally allowed for præcipe for judgment, that being the amount allowed for præcipe for judgment by default. If it is long, then it can be allowed for at the rate of ten cents a folio.

Dower, judgment in.

The judgment in dower is that she do recover against C. D., her seizen of the third part, etc., etc. See Chit. Pl., 7 Ed., 584.

Writ of dower, who signed by.

The writ of assignment of dower should, I think, be signed and sealed by the Clerk of the Process.

Limited partnership, Registration of.

I really cannot say whether a limited partnership would require to be registered in County Registry office as well as in County Court office. It does not concern our Association, and I have only been able to glance very cursorily at the Act, but all doubt can be obviated by registering in both.

Minutes, Settling.

When minutes are settled the draft is given out to be engrossed, when engrossed it is brought back and compared, the officer keeps his draft among the papers, but does not file it so as to require a stamp. The engrossed copy is used on entering judgment.

Certificate at Assizes, Form of.

The following would be proper forms for Clerks to use in certifying proceedings at Assize or sittings of Courts. See Rules 274, 275 and 329.

When tried by Judge.

IN THE HIGH COURT OF JUSTICE.

DIVISION.

Plaintiff.

vs.

Defendant.

I certify that this action was tried before the Honourable at the

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OF THE COUNTY CLERKS' ASSOCIATION.

holden at the _____ on the _____ day of _____ in the presence of _____ Counsel for Plaintiff, and of _____ Counsel for Defendant. No one appearing for although duly served with notice of trial as by affidavit of service filed appears.

That evidence was adduced on the part of _____ and the said the Honourable _____ did find order and direct as follows:

Where tried by Jury.

(Same titles.)

I certify that this action was tried before the Honourable _____ and a Jury of the _____ County of _____ on the _____ day of _____, in the presence of _____ Counsel for the Plaintiff, and of _____ Counsel for the Defendant, no one appearing for _____, although duly served with notice of trial as by affidavit of service filed appears.

That _____ evidence was adduced on the part of _____ the Jury found _____ and the said Judge did order and direct

As witness my hand and the seal of the said Court at _____ this _____ day of _____ A.D. 1883.

When making out an exemplification of judgment, it should be in accordance with form given at page 7, Minutes of 1882, which should be filled up and completed by the Clerk, who should sign the same at the foot as Local Registrar, Deputy Registrar, or Deputy Clerk of the Crown in and for the High Court of Justice for the Province of Ontario _____ Division, and should of course seal same. No judgment entered in an outer county can be exemplified at Toronto. The exemplification may be verified by a certificate of the Registrar of the Court at Toronto, under the seal of the High Court, and the signature and authority of the Registrar may be authenticated by the certificate of the President of the High Court under seal of the Court, in case any party desires the exemplification to be so verified.

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Moved by Mr. McLaren, seconded by Mr. McBeth:—That the thanks of this meeting are due, and are hereby tendered to the President for the excellent address just read, and for his continued interest in the objects and operations of this Association.

Several Clerks spoke of loss of fees which should accrue to them from examinations, consequent on County Court or Local Judges making orders for examinations to be taken before themselves.

After full discussion it was found this grievance was not general, only a few had cause to complain.

Moved by Mr. Northrup, seconded by Mr. Wilson:—Whereas several Deputy Clerks of the Crown and Local Registrars are by the action of their respective County Court or Local Judges deprived of fees which should accrue to them under provisions of the Ontario Judicature Act for references and examinations; It is resolved by this Association, That the President and Secretary be requested, and they are hereby authorized to sign the petition just read and addressed to the Honourable the Chief Justice and Justices of the Supreme Court of Ontario, and present the same to them in the name of this Association, asking for such steps to be taken as to the Court may seem proper in the premises.

PETITION.

To the Honourable the Chief Justice and Justices of the Supreme Court of the Province of Ontario :

The humble petition of the County Court Clerks, Deputy Clerks of the Crown, and Local Registrars in and for the Province of Ontario.

RESPECTFULLY SHEWETH :

That by the Act of the Legislature of Ontario, increasing the jurisdiction of the Division Courts, the fees and emoluments of your petitioners as County Court Clerks were greatly reduced, in many instances such reduction being from two-thirds to three-quarters of said fees; that to reimburse or compensate your petitioners to some extent for such loss it was provided by section 64, sub-section 5, of the Ontario Judicature Act of Ontario, that "when a reference is made to a Deputy Clerk of the Crown, or an examination is taken by him, he shall be entitled to take and receive to his own use, the fees on such reference or examination."

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That by section 76 of the Judicature Act, and by Rule 422, *et seq.*, certain powers are conferred on the learned Judges of the County Court as "Local Judges of the High Court," and among others that of making orders for references and examinations, the fees connected with which were given to your petitioners by said sec. 64, sub-sec. 5, when such references or examinations were taken before your petitioners.

That a few of the learned County Court Judges, when exercising the powers conferred on them as Local Judges of the High Court, when applied to, to make orders for such references and examinations, make orders for such references and examinations to be had before themselves as Judges of the County Court or Local Masters.

That such orders are in many cases not so made because the applicants desire same to be so made, but because the learned Judges desire and direct the same to be so made, in some cases when the application has been simply made to said Local High Court Judges for orders for reference and examinations, to be had and taken before some one of your petitioners, expressly naming one of your petitioners as such referee or examiner; the name so desired to be inserted by the applicant, as such referee or examiner, has been struck out by the Local High Court Judge and his own name inserted instead, making such reference or examination to himself as a Judge of the County Court or as a Local Master.

That owing to such action by a few learned Local Judges of the High Court, the object intended to be effected by said section 64, sub-section 5, has been in a great measure defeated, and the fees and emoluments intended thereby to accrue to, and be received by your petitioners have been lost to your petitioners, and have been by such action of said learned Local High Court Judges appropriated to their own use, and have been received by them as Judges of the County Court or Local Masters.

That your petitioners in setting out the above facts desire to do so with dutiful respect to said learned Local High Court Judges, and desire to express the regret they feel in being obliged to bring these matters under your notice, but they find that there is no other mode of seeking a remedy for their grievance open to them.

Your petitioners humbly pray that the fees and emoluments intended to be secured to and received by your petitioners by and under said section 64, sub-section 5, may be further secured to

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your petitioners by Rule of Court, or otherwise, as may to your Lordships seem fit, and that such other relief in the premises may be granted to your petitioners as your Lordships may be graciously pleased to grant.

And your petitioners as in duty bound will ever pray.

Dated at Toronto, 29th August, 1883.

Signed, M. B. JACKSON,
President of the County Clerks' Association.

Signed, A. G. NORTHRUP,
Secy. C. C. A.

Adjourned to meet in the President's office to-morrow morning at 10 o'clock.

30th AUGUST, 1883.

President in the Chair.

Secretary handed in list of questions from Mr. Fraser, of Kingston.

President, in answer to a question by Mr. Inglis, explained mode of taxation of fees to Counsel and Arbitrator in arbitrations. Mr. Northrup brought up Sheriff's fees for taking stock in case of seizure of store of goods and possession money, for goods under seizure, and necessity of storing such as proper to store.

Item for reference or computation on signing final judgment discussed—President to refer to it in his address. Service of papers other than mesne process considered. Held that Solicitor could serve and get fees for service and mileage.

Mr. Grace reported he had done all he could since last meeting to get County Court and Surrogate Court tariff, and believed it would soon be issued.

Report received. Thanks of the Association tendered Mr. Grace, and he was requested still to act in the matter.

Lis pendens, or other certificate for registration requiring seal, \$1 stamp.

Payments of accounts left to the discretion of the Treasurer.

Adjourned to meet at the call of the President.

A. G. NORTHRUP,
Secretary.

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TO THE GENTLEMEN OF THE COUNTY COURT
CLERKS' ASSOCIATION.

The accompanying index is an index of the regulations made by authority of the government in 1872, and of each of the minutes of proceedings and addresses of and delivered at the meetings of the County Court Clerks' Association, in the years 1878, '79, '80, '81, '82 and '83—it indexes what is contained in such regulations and addresses without reference as to whether the subject matter is obsolete or repealed. A great deal in the regulations and addresses has no application now under the new state of things since the Judicature Act. It has been my intention to revise them, and I have been waiting for the new tariff to be completed so that I might add them in with annotations—but such a time has elapsed without anything being done in the matter of the new tariff, and the difficulty of reference to the addresses, etc., having been greatly added to each year, I send you this index for use in the meantime. The references are as follows: R. 9, means Regulations, page 9; 12/82 means Page 12 of the Minutes for the year 1882. I have caused to be left a blank at the end of each letter in case any further addresses may want to be added. I hope you will find the index answers the purpose for which it is intended, and if any gentleman finds it incorrect in any particular he would oblige by advising me of it.

M. B. JACKSON,
President County Court Clerks' Association.

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(Alexander & Short Masters)

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the local Master.*

*judgt. attending to enter. 26.50; 66.25
Judgt. fee attending to him \$2.00; also telegram*

*Jury fees to be paid over to Co.
by Treasurer immediately after the
sitting of each Court
see Rule 47 = Regulations to Clerks*

K.

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