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MINUTES OF MEETING

OF

COUNTY COURT

CLERKS ASSOCIATION

HELD AT

OSGOODE HALL, TORONTO,

ON THE

23RD AND 24TH JULY, 1879.

FRANK W. HYNES, BOOK & JOB PRINTER, BELLEVILLE.

COUNTY

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JULY 23RD AND 24TH, 1879.

PRESENT: M. B. Jackson, Esq., President, Austin, (Bramp-on,) Canfield, (Woodstock,) Eager, (Milton,) Grace, (Lindsay,) Hough, (Guelph,) Inglis, (Owen Sound,) Mitchell, (Cayuga,) McFadden, (Stratford,) M'Guinn, (Napanee,) Northrup, (Belle-ville,) Willson, (Welland,) Twigg, (Picton.)

Meeting called to order by the President.

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

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

Several letters were read from Clerk apologizing for being absent.

Treasurer reported cash on hand $5.42.

Minutes of last meeting not read, as they had been printed and in hands of members.

President stated that since the last meeting, and also in response to suggestions by Secretary, calling this meeting, a good number of questions had arisen in points of practice, and he had prepared a paper on those points.

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It was agreed to hear the President's paper first, and to discuss it as far as necessary to understand all its different parts.

CROWN OFFICE, C. P.,
TORONTO, July 23, 1879.

GENTLEMEN:

Since our meeting in July 1878 it occurred to me that it might be of interest to you if I would draw your attention at our present meeting to some of the points on which I have been consulted by various Deputy Clerks about which they expressed difficulties, and desired information and direction. Many of these points may be familiar to some of you, but inasmuch as they have presented difficulty to others I have thought it better to bring them before you, even at the risk of being considered tedious.

First, I am sorry that I cannot congratulate you on having something like a vacation, and being freed from the anomaly of being obliged to be in your offices an hour extra each day of vacation. This always has seemed to me to be a great hardship, and I have done what I could to have you released from it. A clause was introduced into an Act last Session making the hours for keeping your offices open in all Courts from ten to twelve, but I find that it was struck out in Committee. I will now proceed to put the various points upon which I have been consulted, in as concise a form as possible.

When there are two counts in a declaration: Defendant pays money into Court upon one, Plaintiff takes the money out in satisfaction and goes on with the action on the other count, and it results in a general verdict for Defendant. On taxation the Plaintiff will be entitled to the costs up to the plea of payment, and the Defendant to all subsequent costs; Plaintiff's costs to be set off against Defendant's.

The affidavit upon which it is sought to tax witness fees to a party in a cause should explicitly state that the party was a necessary and material witness on his own behalf, and was examined at the trial as such witness, and that he attended such trial only for the purpose of giving such testimony; and further, that he would not have attended such trial if it had not been necessary for him to do so to give such testimony. When the proper affidavit is made the party will be entitled to the ordinary witness fees for attendance and time.

Where a Plaintiff recovers a verdict in a Superior Court case which entitles him only to Division Court costs, and a certificate for costs is refused, he is only entitled to the same costs as he would have had had he brought the action in the proper Division

Court. This especially applies to the distance travelled by witnesses, and the number of days attendance at the trial. The witnesses might all reside in the immediate neighbourhood of the Division Court—and a Division Court it may be taken for granted would last only one day—but they may have to travel many miles to the Assize town, and may be there weeks before the case is tried. In such a case the Plaintiff should only be allowed the distance the witnesses would have necessarily to travel to the Division Court, and only one day's attendance.

Where an order is made on a Chamber application which provides that the costs of the application shall be costs in the cause to either Plaintiff or Defendant, if the party in whose favour the costs are made costs in the cause fails in the action, he cannot be allowed the costs under the order, because he is not entitled to the costs of the cause, and his right to the costs under the order was contingent upon his succeeding in the cause.

The following would be the formal parts necessary on an examination of a party before judgment :—

COUNTY COURT OF THE COUNTY OF .

A. B. Plaintiff,)
C. D. Defendant.) Examination of the Defendant C. D. taken on oath before me, E. F., Clerk of the C. C. C. of —, under and by virtue of an order in that behalf made by His Honor , the Judge of this Court, ordering such Examination. Dated day of , 1879.

Present : W. BETHUNE, Attorney for Plaintiff.
T. CHEATHAM, Attorney for Defendant.

The Defendant being sworn says as follows :

(Here follows Examination.)

And I certify that the Examination was read over to the Defendant, and was signed by him in my presence, and in the presence of , being the parties attending when the signature was made.

(The certificate must be altered in case the party examined either could not or would not sign it—when it would read—"was signed by me, the said Defendant being unable—or refusing—to sign name." See Sec. 164, Sub. Sec. 2., C. L. P. Act, page 643.)

Where a Summons was granted to set aside a notice of trial with a stay of proceedings, and a copy of it served on the Clerk of the Court, and the case was still pending undecided before the Judge, and the Plaintiff in the face of the stay of proceedings desired to enter his record for trial with the Clerk, I advised the Clerk to enter the record at the Plaintiff's own risk, the duty being a ministerial one, as much so as filing a paper; and if the record is improperly entered the Defendant can apply to set it aside or strike it out. Besides, it is the Plaintiff who enters the record,

not the Clerk; the Clerk is the mere medium through whom it is done, and it is the Plaintiff's proceedings that are stayed, not the Clerk's—and it is for the Plaintiff, not the Clerk, to consider what would be a violation of such stay. Besides a great many things might have occurred since the granting of the Summons to alter the position of the parties. The case might have been enlarged, or might be standing for judgment with verbal leave to Plaintiff to enter his record, and the Clerk's refusal to enter the record might be a denial of justice, for which he might perhaps be held liable.

Issue books are abolished in all the Courts, and cannot be allowed on taxation.

Veterinary Surgeons holding a diploma coming within Chap. 35, Sec. 27, Sub. Sec. 2, R. V. S. O., are entitled to the same amount for witness fees as a Barrister or a Surgeon.

A party to a suit must exercise a reasonable discretion as to the number of witnesses he should call to prove a fact; and if he fails in exercising such reasonable discretion, and the Judge and Jury refuse to hear any more witnesses on the point after a certain number had been examined, the remainder should *prima facie* be disallowed, and it should require a very strong case indeed to be made out before any of them could be allowed.

In controverted election cases where a party is examined before the County Court Judge, the fees on such examination are a perquisite of the Judge, and no copies of such examination should be given by the Judge or Clerk; on its being taken it should be immediately sent to the Clerk of the Crown in whose Court the case is in, and all copies must be obtained from him.

There is a decision of the late Mr. Justice Burns that rules for costs of the day must be issued from the head office. Were it not for this decision I would have thought that such a Rule could be issued by the Deputy in whose office the case is carried on.

There is also a decision of the late Mr. Justice John Wilson that a certificate in a Superior Court case which states "I certify to entitle the Plaintiff to County Court costs," disentitles the Defendant to set off his excess costs of defence between County and Superior Court costs. I have been unable to understand this decision, but it must be followed until reversed.

If a verdict is recovered in an action of trespass not exceeding eight dollars, the Plaintiff will not be entitled to any costs, notwithstanding that the title to land was brought in question, unless the Judge certifies to entitle him to costs.

When an order is made in a Superior Court case for the examination of a party before an officer holding the position of Deputy

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Clerk of the Crown, no matter how he may be designated in such order, the fees for such examination must be paid in stamps.

Where in a case agency fees are properly allowable, the charge made by the agent for returning a paper, a copy of which had been served by him to his principal, should be allowed.

When proceedings are carried on in Chambers under Secs. 10, 11 and 12, C. 49, R. S. O., the parties can only be allowed Chamber costs. This I think is a hardship on the profession, because such cases might involve interests of great value, which together with the legal questions which might be involved, would, if conducted in another Court, entitle Counsel to large fees.

Where an information for a defamatory libel has been laid against a Defendant before a Magistrate, and Defendant committed for trial, but at the following Assizes the Grand Jury find no Bill, no costs can be allowed Defendant, under 37 Vic., Chap. 38, Sec. 12. Sec. 12 gives Defendant costs if judgment be given for him—such costs being the costs sustained by him by reason of the indictment or information. In such a case there is no indictment, because the Grand Jury ignore it, and besides the proceedings before a Grand Jury being *ex parte*, no costs can be incurred by Defendant; and the word information used in that section does not apply to an information before a Magistrate.

In quo warrants cases, I do not think the parties can be allowed for service of Subpœnas to bring witnesses before a Judge under Sec. 189 of Municipal Acts, unless the matter is taken out of the operation of the Act protecting Sheriffs, by their having been in the hands of the Sheriff without being served the necessary number of days in that behalf required.

When a verdict is rendered in favour of a party to a suit at the trial, the record should never be sent to the Clerk of the Crown unless it is required to be used in Term. In some instances where verdict has been rendered and certificate for immediate execution granted, Clerks have sent the records to the Clerk of the Crown for the purpose of applications being made to him for Counsel fees. This should not be done. The record under these circumstances should be given out at once to the parties having the verdict. This saves a great deal of trouble and sometimes expenses to the parties which cannot be allowed to them on taxation, besides the Clerk has no right to send the record out of his possession; of course, if at the trial the Judge reserves the case for further consideration and desires the Clerk to forward the Record to Toronto, he should do so.

When a notice of trial has been given and duly countermanded, and at a subsequent trial the Defendant succeeds and has a verdict

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in his favour on the taxation of costs, no allowance should be made to Defendant for Subpœnas, copies, services, instructions for Brief or Brief or Notices, applicable only to the time when the notice of trial was countermanded; because no such steps should be taken until the time for countermanding notice of trial has passed. The only exception to this would be in the case of Subpœnas, which under very extraordinary circumstances the Master may in his discretion allow to be issued before the time for giving notice of countermand has passed; such as in a case where very great difficulty is experienced in finding and Subpœnaing a witness, say for instance that he is away out among lumbermen, &c., &c.

I find it a very general practice to allow Affidavit of Service of Notice to admit. This should only be allowed when it comes under Secs. 172 and 173, Chap. 50, R. S. O.

No allowance should be made for Affidavits or attendances in getting certificates for immediate execution, or order for increased Counsel fees.

No charge should be made by Clerks of Assize for giving out Records, and no such charge should be taxed against the opposite party.

I have been asked whether in an action of Trover brought in the County Court, in which a verdict for $62 was rendered for the Plaintiff, without any certificate for costs—"Would the Clerk be justified in taxing County Court costs?" I answered that he would; because the Division Court can only entertain an action of Trover in a case where the damages sought to be recovered does not exceed $40—and in a case where the damages recovered were $62, it is clear that under no possible circumstances could it have been brought in the Division Court, and County Court costs must therefore of necessity be allowed. The distinction between a case where you can look at the record for the purpose of fixing the rate of costs to be allowed and where you cannot, I take to be this: Where a verdict is on a cause of action and for such an amount that it might be brought for all that appears on the record in one Court or the other, and the Court to which it properly belongs is determined by some fact or circumstance outside the record, then, unless there is a Judge's certificate to entitle the Plaintiff to costs in the higher Court, without the certificate costs can only be allowed on the scale of the lower Courts, such as say a verdict on an account for $350. If the claim was unliquidated and unascertained by the signature or act of the party, the case could only be brought in the Superior Courts; if it was liquidated and ascertained by the signature or act of the parties, then the action should be brought in the County Court—but there

nothing on the face of the record to determine how this is, and it can only be determined by a Judge's certificate, and in the absence of such certificate only County Court costs can be allowed. But if the action is for seduction or an ejectment, or such like actions which can only be brought in the one Court, the record shows this for itself, and Superior Court costs can be taxed accordingly. So in the above case for Trover in the County Court with $62 recovered, County Court costs would be allowed, because that action for such an amount could not possibly be brought in the Division Courts.

I have been asked whether where a judgment was signed in C. B. by mistake, the action being in C. P. and the *Fi Fa* issued in C. P., could the Clerk alter the judgment and make it in the proper Court? I answered no, it can only be amended by a Judge's order; also, that the Clerk had nothing to do with the mistake, it is a matter for the Attorney to remedy. But in such a case no further writs should be issued in C. P., because there was no judgment to found them on.

I was also asked if it was necessary to file a prommissory note in entering a judgment by default of an appearance? I answered no, the judgment is signed on the writ "special indorsement and affidavit of service." This is all the statute requires, and the Clerk can ask no more.

I was also asked was a Clerk obliged to file a renewal of a Chattel Mortgage on a Legal Holiday, when the office was legally closed? I answered, I thought not. I was further asked whether the Clerk would be justified in filing the renewal on a Legal Holiday, and would such filing be legal? I answered, that I was not prepared to say that it would not be legal to renew a Mortgage on a Holiday, except, of course, a Sunday, but that I would rather not give my opinion about it.

A Sheriff is not allowed for an Affidavit in the service of a County Court Writ—it is included in the allowance for the service of the writ.

I was asked what rate of costs should be taxed in an action in the County Court, where the original amount was $440.02, the balance claimed $63.53, and the amount recovered $38.53, claim unliquidated and unascertained, and no certificate? I answered only Division Court costs, as to its being unliquidated or not, that would only be determined by a certificate.

I was asked where a Common Law record was to be tried at a Chancery Sittings, and it was anticipated that it would occupy some days in trying, could the Deputy Registrar in Chancery, who happened, also, to be Judge of the County Court, require the

Deputy Clerk of the Crown to act as Deputy Registrar in this case, because no pay was attached to the service. I answered, most certainly not; that the Clerk of Assize had nothing to do with the Chancery Sittings, and that it would be impertinence on his part to obtrude himself on the Court; that the duty of trying the case was thereon on the Court by statute, and that it must try it by its own machinery, part of which is its Deputy Registrar.

I know of no means by which a Sheriff can be allowed mileage for more than one attempt at serving a writ. I dont see how he can be allowed for any abortive attempt at service.

Where a Sheriff has a Writ of Summons against three Defendants, living at, say 10, 20 and 30 miles distance from the Court House, in the same line of travel, and they are served at the same time, he can only be allowed 30 miles for travelling.

No allowance can be made on taxation for surveys made prior to bringing an action. A reasonable amount can be allowed for plans drawn and used as evidence on the trial.

A Sheriff is not entitled to anything for a return of a writ of *Fi Fa*, "Expired," or for "Renewal." It is not a return within the meaning of the Tariff—he would, of course, be entitled to receiving and entering.

The Sheriff would be entitled to the following fees on return of execution:—

SUPERIOR COURTS.	
Receiving	25
Return	50
	75
If Warrant to execute has been actually made out and given to the Bailiff to execute at the proper time, not otherwise	75
	$1.58

COUNTY COURTS.	
Receiving	10
Return	25
	35

Warrant subject to same remarks as in Superior Courts.

In all cases making out of warrant should be proved by the Sheriff and that it was made out at the proper time, and not merely to substantiate the charge.

In ejectments, as well as in other actions, judgment can be entered at the head office, though the proceedings were commenced

and carried on in an outer office. As to ejectments, I do not think the question free from doubt, but it is certainly the practice to do so, and until it is held wrong by competent authority, I would still continue to do so. The doubt is raised by the different wording of the statute when referring to ejectments and other cases.

When a Sheriff is asked to search for executions in his hands against, say, John Brown, and for a certificate as to same by parties not parties to any suit against Brown, and on searching he finds say three, one at suit of Jones, another at suit of Robinson, and another at suit of Ferguson, the Sheriff must include these in one certificate, and can charge for only one and three searches. Some Sheriffs insist on giving a certificate in each case, thereby increasing the cost very much; but they have no right to insist upon doing so, the certificate is not in the cause but in *Re* John Brown.

When a Superior Court record is tried at a County Court, or a County Court record is tried at the Assizes, the cost shall be the same as if the case was tried in the Court in which the case was originally brought or commenced. Chap. 49, R. S. O., from secs. 31 to 44, both inclusive.

Generally speaking an officer is not responsible for the correctness of a practitioner's proceedings, such as Judgment Rolls, etc., etc., but there are cases of mistake which have come under my notice in which I think the officer would be held responsible. For instance: An Attorney brings into your office a specially indorsed writ with an affidavit of service, the writ being against John Brown, and he produces a Judgment Roll and signs a judgment against Frederick Robinson, a party not named in the writ, and on the judgment issues in good time an execution against Robinson, and his goods are levied on, the only authority to sign such a judgment is given by the statute, and it can only be done on the production of a writ duly indorsed with an affidavit of service; and if the officer signs a judgment against any one without these requirements being complied with, I would be inclined to think that he might be held responsible.

Where an action is brought against several Defendants and one Defendant succeeds in obtaining a verdict, all being defended by one Attorney, before any costs can be allowed to the Defendant succeeding he must show that he has bona fide incurred costs, and is liable to the Attorney for same; as in many cases the Defendants against whom the verdict is given are the parties who employed the Attorney and who pay him, and the other Defendant was merely such owing to his connection with them, and was defended at their expense; for instance, it is generally so in

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actions against landlord and tenant, master and servant, Sheriff and Bailiff, etc. In such cases the defendant succeeding, never having incurred any costs is not allowed any, but if it is shown that he is liable for his proportion of the costs of the defence and is not in any way indemnified from them, he should be allowed his proportionate share.

I have noticed in many ejectment actions a clause is put in the affidavit of service of the writ of Summons, that the Defendant at the time of the service was in actual adverse possession of the land. *Re* taxation I would treat this as merely an affidavit of service, and would allow nothing for it where it was made by the Bailiff or party serving the Summons.

Where it is necessary to give a notice of action before issuing Summons, such a notice should be allowed as costs in the cause.

Where an action of trespass is brought and a plea put in denying that the land is the land of the Plaintiff, at the trial the Defendant withdraws his plea, denying the title, and a verdict is rendered in favor of Plaintiff for $30, in such a case full costs should be taxed, because the withdrawal of the plea was too late to effect the question of costs at all.

Where Attorneys live in different counties and they agree to accept service of each others papers through the post, the letters transmitting papers should be allowed.

Where an action is brought against A & B, verdict against A and in favor of B, Plaintiff cannot be allowed to come in and tax his costs and enter his judgment against it without notice to B because there should only be one judgment, and besides a question of setting off costs might arise.

A transcript of a judgment from a Division Court does not require to be docketed.

A subpœna should have the same marginal memorandum on issuing that other writs have.

Transcripts of Judgment can only be granted in cases where the judgment on the amount unsatisfied on it amounts to at least forty dollars.

A County Court Clerk cannot charge for swearing witnesses in a quo warrants case before a Judge of the County Court.

When the venue in a County Court case is changed, the Clerk of the Court to which the venue is changed need not file the papers sent him from the original Court; he should mark them received as of the day when removed. cenn

When a Sheriff returns a writ into Court he need not file it and the officer marks it "received," etc.

Where a party gets an order to amend his own proceedings and no mention is made of costs, no costs of the order or amendment should be taxed.

Where an old man, a witness, was examined *de bene esse* under a commission, and was alive and gave evidence at the trial, thereby rendering the commission useless, the Master should allow the costs of the commission as well as of the witness as costs in the cause; he being satisfied that the proceedings were bona fide all through, and not taken to make costs, or for any other sinister purpose. The law is not very clear on this point, but I came to this conclusion on being asked for direction on it by a Deputy.

In response to the circular sent to the Deputies by Mr. Northrup, the following questions have been submitted to me, the answers being appended:

By Mr. Rice—

1. Should transcript judgments from the Division Courts be docketed in County Court judgment docket?

To this I am instructed to answer No, contrary to my own opinion.

2. Should ten cents be charged for filing the affidavit of renewal attached to copy of chattel mortgage, in addition to fee of twenty-five cents for recording the instrument itself?

No. By R. S. O., page 1,131, the allowance for services to Clerks is fixed at twenty-five cents each instrument, and no allowance is made for any other filings.

3. When money is paid into Court on a plea of payment, should the fees provided by R. S. O., Chap. 56, Sec. 109, be paid in stamps, or is the Deputy Clerk of the Crown entitled to same to his own use?

In stamps, Deputy is entitled to no fees for his own use.

4. When a Superior Court case is tried at a sittings of the County Court, is the C. C. Clerk entitled to a fifty cents fee on verdict as well as fifty cents for entering record?

No. The fees are to be same as if case was tried in Superior Court. The tariff in express terms gives the Clerk fifty cents on entering record, including records from Superior Court. This seems to me to clash with the statute, but I would allow the fee on entering the record, under the tariff—but you cannot charge fifty cents on the verdict.

By Mr. McGuinn—

1. An Attorney contends that in a search of papers in a judgement for instance, with a view to set aside, that unless he makes

use of every paper in his affidavits I cannot charge him a general search, which must include also the search of the books in which any entries in the case are made, and that if he does not search the books it is not a general search. Please define what a general search is at the meeting?

A general search entitles a party to search all proceedings, entries, papers, etc., etc., that are in a cause or matter, but practically we work it in this way, as the tariff itself prescribes: If search extends back not more than two terms, ten cents; if extending two and not more than four terms, twenty cents; if extending four terms, fifty cents. When an Attorney is making a bona fide necessary search, I would not let the charges be more troublesome than the tariff necessarily requires, and with very few exceptions, if the charge is made according to time, it will answer every purpose. Indeed, it is a pity that the words general search were used, as I scarcely see their application.

2. Mr. Guinn's second question is answered by the answer to Mr. Rice's second question.

By Mr. Northrup—

1. Witness residing in Toronto is required at Belleville Assizes, and a week before Commistion day is subpœnaed in Belleville; he attends Court; he had either to remain the week or go home and return; what is he entitled to receive?

He should in such a case go home and return, and receive the same fees as though he had been subpœnaed in Toronto. It would never do to remain the week over in Belleville, because his fees as a witness could not commence before the Assize day. But there are circumstances where a witness might be subpœnaed before the Assize day and fees be allowed before the Assizes commenced; as for instance, the Captain of a ship about to sail abroad: the Master is allowed great discretion in such matters, and it is for him to decide on the bona fides in such cases, and allow or disallow fees accordingly.

2. What fees is a witness entitled to subpœnaed from an adjoining County, when verdict is within the jurisdiction of the Division Court?

A witnesses remuneration is not in any way contingent on the amount of the verdict, and will be according to what Court the case is in in which he is subpœnaed. The amount which might be received from a Defendant would be lessened if the verdict came within the Division Court; his daily allowance would be less, and the number of days and miles travelled might be less, according to where cause of action arose; but the amount the witness

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would be entitled to receive from the party subpœnaing him can not be effected by the verdict.

3. Can Counsel fees be taxed for attendances examining a witness under a Commission?

Attending on examining witnesses under a Commission is an Attorney's business; but there may be cases of sufficient importance and difficulty to call for Counsel, and in such cases it is in the discretion of the Master to allow Counsel. This is a discretion that should be carefully and sparingly exercised; indeed, in most cases it might be better to leave it to the Master at Toronto to determine.

4. What fees is Clerk of County Court entitled to for ~~suits~~ Services under Cap. 49, Secs. 10—16, and Cap. 101, R. S. O.?

I cannot see that under that the Clerk is entitled to other fees than under an ordinary application in Chambers for ~~suits~~ Services under Cap. 49, Sec. 10. As to Chap. 101, this is a long act, and I have only had time to run through the marginal notes. It regulates Partition cases, and provides for the proceedings in the Court. I would at present think that the Clerk should charge on all the proceedings the same charge as in ordinary suits in the Courts for similar or analogous proceedings.

5. What fees is Defendant entitled to when ordered to appear for examination under Cap. 49, Sec. 17, or Cap. 50, Sec. 304, R. S. O., and is there any difference between the two?

Defendant would be entitled to ordinary witness fees under both Sections. Section 19 is included in Sec. 304. I would think 19 being retained is an oversight.

6. Should Clerk tax Attorney a Bill of costs under Sec. 166 of Cap. 47? If No, can Attorney get any costs? on transmission

I cannot see how the Attorney can get any costs of transmission, and of course no bill of such can be taxed if he is not entitled to them. If an Attorney thought he was entitled to any such costs he might test his right to them by endorsing them on his Execution.

7. Delaration has three counts, Trover, Trespass and Common counts—verdict general on whole record for $60; what costs would be taxed on certificate by Judge?

I would tax County Court costs—because Trover to $60 must be brought in C. C., and the Judge not having distributed the verdict the Clerk cannot do so, and must act on it as he finds it. If wrong, let an application be made to Judge to rectify the verdict.

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8. Execution placed in Sheriff's hands. He takes possession of Defendant's goods; before sale Defendant assigns; Assignee demands property. What fees is Sheriff entitled to, and who should tax his bill, Judge or Clerk?

I think the Sheriff would be entitled to his fees for all services rendered up to the time of the Assignee taking possession; in case of dispute they could be settled under Cap. 66, Sec. 48, R. S. O., in which case the Clerk should settle them. I do not think that it would be a case coming under Sec. 45, and the Sheriff would not be entitled to poundage, because it is the Law that removes the whole matter from his control, not the act of the parties independently of the law, as in the case of payment of the Execution under Sec. 45 it remains with the Judge to settle the amount.

I have been asked some questions by a gentleman signing himself with the initials C. A. S. His letter is neither dated nor does it appear whence it was written. I know of no deputy with such initials, yet he says he cannot be present at our meeting:—

1. Is the postea a filing or part of the Record?

It is part of the Record, and not a filing.

2. Should copy of notice to plead or reply be filed on taxing costs?

Yes, the same as any other voucher?

3. What is the proper charge for Judgment Roll when Judgment signed for want of a plea?

X Thirty-five cents a folio; but we have always allowed not less than one dollar and fifty cents for any roll except by default of an appearance, which is fixed by the tariff at ninety cents.

4. Are instructions to defend and for pleas allowed in C. C.; where is it in tariff?

The C. C. tariff allows instructions to defend—also instructions for pleading, one dollar; this applies to both Plaintiff and Defendant; it is not instructions for Pleas, but for Pleadings generally.

5. Should affidavit of Notice to Produce and Admit be allowed on taxation? Are they necessary, except in certain cases?

Where a Notice to Produce is given and is necessary in a cause it is provided by Chap. 50, Secs. 172 and 173; that a notice to admit the Notice to Produce may be given, and where it is given X an affidavit will be sufficient to prove the service of a notice to produce, thereby saving a witness; it is only under these sections that the affidavit should be allowed. To be taxed, it in fact should be put in as an exhibit at the trial, unless it could be shown that

ing so was rendered unnecessary by the opposite party producing the documents required, or making an admission at the trial.

6. Plaintiff's Attorney orders copy of examination of Plaintiff taken before Clerk. Is it taxable against Defendant in case Plaintiff succeeds at trial?

The answer to this would depend upon whether the costs of the examination were directed to be costs in the cause. If Yes, I would allow it; if No, I would not.

With regard to directions that I may have given as to taxations in the County Courts, I understand that in some instances the learned Judges of some County Courts have disputed from some of these directions, and instructed their Clerks to disregard them, and tax contrary to them. I would submit to these learned Judges that the County Courts in these matters should be and are governed by the holding and ruling of the Superior Courts; by statute they are so, and I feel sure it will commend itself to them that it should be so, because in no other way could a uniformity of holding and practice prevail in the various County Courts throughout the Province; and I think this being admitted, they would further admit that there would much more likely be a correct view as to the holdings and rulings entertained at Toronto by the officers presiding there than any County Court Judge could possibly have; besides, it is the decisions of these officers that govern taxation, until they are altered or overruled by the Courts. I would hope that these considerations would be sufficient to induce any learned County Court Judge to waive his views in favor of the directions given, where those directions are unfortunately at variance with them.

Another question as to Sheriff's fees has just been brought under my notice. When a Sheriff is asked to search for and certify to executions against say Jones, Brown and Robinson, he is entitled to the proper searches as to each, and to give a separate certificate as to each; but if asked to search for and give certificates as to executions against Jones, Brown and Robinson jointly, he would be only entitled to proper searches and one certificate, it being only one matter.

Mr. Hough asks whether the profession has a right to take extracts from or copies of Chattel Mortgages upon payment of ten cents search only.

I remember answering this question before, but where, or who asked it I do not remember. I think that the copying of Chattel Mortgages is the Clerk's perquisite, and none else has any right to copy them. This I think would apply to anything like a copious extract also—but the party might take a memorandum of dates,

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parties, amounts and such like. It must be remembered that the Clerk is responsible for the safe keeping of such mortgages, and that they are not tampered with in any way, and if parties are to be allowed to take them and copy them or make copious extracts from them, how can the Clerk be assured that they are not tampered with; and if the right of copying is applied to the profession it would equally apply to any of the public who did not choose to employ a professional man, and so there would be an end to all security. But independently of such considerations, the copying, etc., is a perquisite of the Clerk, and no one has any right to interfere with it.

I am afraid I may have quite exhausted your patience and am quite sure I have exhausted myself, but I hope not without some benefit being derived from the matters brought before you.

I remain gentlemen,
Yours very truly,
M. B. JACKSON,
C. C. & P. C. P.

The whole afternoon was occupied with the President's paper.

Adjourned until 24th instant at 10 a. m.

JULY 24, 1879.

Meeting resumed.

The Association met at 10 a. m., Mr. Grace, in the absence of the President, took the chair.

Mr. Twigg acted as Secretary, in the absence of the Secretary.

Present: Messrs. Grace, Eager, McGuin, Twigg, Austin, Wilson, Mitchell.

Moved by Mr. McGuin, seconded by Mr. Austin,

That a committee be appointed consisting of Messrs. Grace, Northrup, Austin and Fuller, to wait upon the Honourable the Attorney-General to urge the following points on behalf of the County Court Clerks for Ontario:—(1.) Authority to appoint a Deputy for each office. (2.) To dispense with stamps on Superior Court Examinations before Deputy Clerks of the Crown, and they be allowed cash in lieu thereof for their own use. (3.) That the Province provide the necessary books of office for County, Insolvent and Surrogate Courts, instead of the County Council; the same as the books, etc., are provided for the Sheriffs and Registrars.

Carried.

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President resumed the chair.

Mr. Northrup here took his seat.

Agreed that Committee *Re* Clerks' Salaries, viz., Messrs. Ghent, Austin, Grace and Northrup, be re-appointed.

Allowance to Clerks subpœnaed to produce papers at Court does not apply to Division Court. No papers should be produced without an order directing subpœna to issue. If subpœnaed in several cases, same rule to apply as to any witness. Fees to Master in Chancery or special examination for examinations under Administration Justice Act are $2 per hour, oath 20 cents, appointment 50 cents, nothing for report.

Moved by Mr. Twigg (Picton), and seconded by Mr. McGuinn, (Napanee),—

That this Association hears with much regret since our last meeting, of the death of James Fraser, Esq., Deputy Clerk of the Crown and Pleas at Ottawa, and a member of this Association, who also held with much credit the position of President of it; and in his decease we have lost a valuable member and an efficient officer: also, that a copy of this resolution be forwarded to his widow, who has our deep sympathy in her bereavement.

Moved by Mr. Willson, seconded by Mr. Twigg,

That the thanks of this Association be and they are hereby tendered to M. B. Jackson, Esq., for his very valuable report read at the present meeting upon the various questions submitted to him upon practice, taxation, etc., and also for his kindly attendance and assistance at our meetings.

Moved by Mr. McGuinn, seconded by Mr. Grace,

That the Secretary be requested to have the paper read by the President printed with the minutes, and that a copy be sent to each Clerk in the Province, requesting a fee of one dollar from each to defray expenses.

Moved by Mr. Inglis, seconded by Mr. Twigg,

That this Association meet the second Wednesday after end of July term, 1880, at 12 o'clock, noon, at Osgoode Hall, Toronto.

Meeting closed, hoping for a larger attendance next year.

A. G. NORTHRUP,
Secretary.