

1882

MINUTES OF MEETING

OF THE

COUNTY COURT

CLERKS' ASSOCIATION

HELD AT

OSGOODE HALL, TORONTO,

AUGUST 23RD, 1882.

Toronto:

PRINTED BY C. BLACKETT ROBINSON, 5 JORDAN STREET.

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MINUTES
OF THE
SIXTH ANNUAL MEETING
OF THE
COUNTY CLERKS' ASSOCIATION,

Held at Osgoode Hall, Toronto, on the 23rd August, 1882.

Present :—M. B. Jackson, President ; Messrs. Austin, Canfield, Eagar, Gunn, Ghent, Grace, Hough, Inglis, Marcon, Moloney, McGuinn, McLaren, McDonald, McDougall, Northrup, Stevenson, and Willson.

President called meeting to order.

Secretary produced Minutes of last year, amended on page 5, line 13, by striking out " un " before unliquidated, to read liquidated in Division Court jurisdiction.

Letters were read from Messrs. Fraser, Rice, and Reynolds, explaining their absence.

Treasurer reported \$20.99 on hand, as the Government paid printing Minutes last two years.

On motion of Mr. Northrup, seconded by Mr. Eagar, M. B. Jackson, was re-elected President.

On motion of Mr. McGuinn, seconded by Mr. Gunn, Mr. Northrup was re-elected Secretary and Treasurer for current year.

President stated C. C. Tariff would likely be issued soon ; that the Board of Judges had it under consideration.

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Moved by Mr. McGuinn, seconded by Mr. Marcon, that the balance of Morning Session be spent in conversation, and asking and answering questions.

Item 122 of Tariff covers all orders, and a fee should be taxed.

Under Rule 325 every judgment should be entered in the book kept for the purpose of entering judgments.

Summonses for service out of jurisdiction can be issued during vacation.

Adjourned until 2.30 p.m.

President read his address, as follows :—

TORONTO, August 23rd, 1882.

Introduction.

GENTLEMEN,—On the occasion of our sixth annual meeting I am glad to be able to congratulate you upon the fact of its being held in vacation, the first real vacation which you have ever had, and which has only been obtained after years of persistent, unceasing efforts. A year or so ago I thought we had succeeded. A clause was introduced into an Act of Parliament providing for vacation in the County Offices, but in committee it was struck out. Now, I hope you have it *en permanence*, and that it may be a source of healthy relaxation to you all for many years to come.

Fees on Examination.

I am sorry that the Act giving you the fees on examinations has not been as beneficial to you as might have been anticipated, owing to the action taken by some of the learned County Court Judges. This action would appear to me to be as much a matter of regret on their account as yours.

Chamber fees.

I understand a number of the learned County Court Judges hold that you are not entitled to the fees on Chamber proceedings in the Superior Courts taken before the County Judges as Local High Court Judges. I am sorry for this, though I cannot help saying that in very strictness they can scarcely hold otherwise. But there was, I believe, no intention on the part of the Government to deprive you of these fees, and I believe there is no such intention now. I do not believe that the law is really different now from what it was before the Judicature Act, and the Government then assented to the regulation under which you formerly took these fees, and confirmed it in writing, as will appear by the letter of the Attorney-General annexed to the regulations. Since, I have heard from several Local Registrars that their

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judges have insisted on stamps being put on such proceedings. I wrote to the Attorney-General, setting out the whole matter, and asking for instructions if you were to be deprived of these fees. The letter has never been answered, and I may say that I do not expect an answer, and until an answer is given I would say to every officer concerned that they are perfectly justified in personally appropriating such fees as heretofore. If it was found that owing to the action of the County Court Judges they could not get these fees, then I think it would be a matter to approach the Government on, and ask for a clause to be inserted in an Act restoring the right to take the fees.

The complaint appears to be universal among you, gentlemen, that your fees have been so reduced by the passing of the Act giving increased jurisdiction to the Division Courts as to almost make your offices undesirable, considering the restrictions attaching to the holding of them. It appears to me that a very effective remedy would be found for this if the clerks, in addition to their present duties, were to be made *ex-officio* Clerks of the Division Courts in their respective County Towns, as the Division Court Clerkships become vacant, and receive the emoluments now received by the Division Court Clerks, or let those fees be funded and have a substantial addition to their salaries made. This is merely a suggestion which I throw out for your consideration.

Division Court Clerkships.

I must congratulate you on having survived a year's experience of the Judicature Act, considering the views taken of it when we last met; but I think that its actual working has shown it not only to be much less formidable than you expected, but also, that in the main, you have found it very beneficial in its features and carrying out, and that, on the whole, it has much simplified proceedings — though this would not be the case in some matters of detail, which we hope will in time be rectified by rules of Court, ample power having been given to the Court to make rules in that behalf.

Judicature Act

In considering the best course to be pursued at the present meeting, I have been in some doubt. I sometimes think that I have perhaps occupied too much of your time and attention, and have not left you sufficient time to carry out your own views and proceedings, and that it would be better for me at this meeting to leave the conduct of the proceedings much more in your own hands. With this view I will make my remaining remarks as short as possible.

Course to be adopted.

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Former addresses.

On looking over my addresses to you, I find that they now contain a great deal of matter ; but I am afraid that unless very carefully read and annotated, they will, in a great measure, fail in the object they were intended to subserve. Of course they were intended as guides or ready references for each officer on points which would frequently come before him ; but I am afraid that, though the material is there, yet a ready means of getting at it is not, and I am divided in my own mind as to the remedy—whether to get them reprinted, together with an index, or whether it would be desirable that a work should be got up for the general guidance of the officers, including a thoroughly annotated tariff. If the latter, to what extent should it go? Should it be a general work on the Judicature Act, or should it be confined to such portions of it as apply to the duties of the officers? The consolidating and indexing the addresses would be much the easiest; the other would be a work of a great deal of labour, upon which I am afraid I can scarcely reach. I am convinced that the first, at any rate, is expedient, from the fact of gentlemen writing me frequently about matters which were fully explained in some one portion or other of my previous addresses.

The following points, being some of which I have been written to about, may be of some use to you:—

Rule 431. Security for costs

Under this rule the order for security may be given on production of the copy of the writ of summons served—the original being, of course, in possession of the Plaintiff.

Rule 325. Order of Local Judge for sale or vesting order.

Under this rule it appears to me that an order made by a Local Judge of the High Court for sale, or a vesting order, should be entered in the judgment book of the division in which action is brought, as a judgment in the action.

Rules 45-6-7-8. Service out of jurisdiction.

When a writ of summons No. 2, specially indorsed, is served out of the jurisdiction, it is necessary also to serve a statement of claim with it. If default is then made by Defendant, final judgment may be signed for the amount claimed, if the claim is one on which such a judgment could be signed if the writ was served within the jurisdiction.

Quo Warranto.

Applications for *Quo Warrantos* and proceedings thereunder would be Chamber proceedings, and should be treated as to filings and charges as such, except when the tariff allows a different fee.

Chattel Mortgage searches.

If a chattel mortgage has been renewed, and a party desires to search the original and the renewed mortgage, the Clerk is entitled to a search for each.

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Quo Warranto proceedings cannot be taken in the Courts of Common Pleas or Queen's Bench; they must be taken in the High Court of Justice—in one of its divisions—and the writ must be tested in the name of the President of the High Court.

Quo Warranto.

It was contended on one occasion by a Solicitor that in signing judgment by default he could present his bill of costs to the officer, and that the officer should enter judgment for amount of the bill without taxation. I need scarcely say that this cannot be done.

Taxation of costs

If a Solicitor desires to file, say, a statement of claim, the officer should file it, although he may know that it is unnecessary. The officer when he taxes the costs will decide whether or not it was necessary; and if he decides it to be unnecessary, he should not allow it on taxation. This principle applies to all other proceedings.

Filing papers.

In computing time for entry of actions for trial at the Assizes under this Rule, I think Rule 455 will apply, and when Sundays come in question, they must not be counted. Therefore, if an Assize commenced on Tuesday, it would seem to me that the previous Friday would be the last day for entry of records.

Rule 464. Time as to entry of actions for trial.

In strictness, Clerks are obliged to make out writs, commissions, etc., for solicitors.

Making out Writs.

In case of an affidavit being produced to be filed, I do not think it concerns the Clerk whether an indorsement was made on it pursuant to this Rule or not showing on whose behalf it was filed. This is an objection to be taken, if thought worth while, before a Judge or the Court, but if affidavit is filed and used, such an objection would not be entertained by the officer on taxation.

Rule 467.

All judgments signed in the outer offices must be exemplified there, and must not be sent to the head office for that or any other purpose. The following is a proper form of heading and finishing of an exemplification:

Exemplification of judgments.

ONTARIO.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith.

To all to whom these presents shall come—GREETING:

KNOW YE, that amongst the Common Pleas enrolled in our High Court of Justice for the Province of Ontario, *at Vanu*, before the Honourable John *Markins Hegarty*, President, and his brethren the Justices of the said High Court, the [date of entering judgment in writing], in the

Records in G.C.

MINUTES OF THE SIXTH ANNUAL MEETING

year of our Reign, and on the [No. of Roll] Roll, it is thus contained :

[Copy of Judgment Roll in full.]

*Slants
\$5.00 for
Certificate
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manuscript*

ALL AND SINGULAR which premises by the tenor of these presents we have commanded to be exemplified.

IN TESTIMONY whereof we have caused the Seal of our said Court, at _____, to be hereunto affixed.

WITNESS: The Honourable JOHN HAWKINS HAGARTY, President of our said High Court of Justice, at _____, the _____ day of _____ A.D. 188 _____, and in the _____ year of our Reign.

Entry of judgment at Toronto.

It is held that in a case conducted in an outer office to final judgment, but not including final judgment, the suitor entitled to judgment may elect to enter judgment at the head office, and for that purpose the officer on præcipe would be right in forwarding the papers to the head office.

Surrogate fees.

It seems to me that when a creditor of an estate applies to administer, section 64, cap. 46, R.S.O., does not apply, and I do not think the fees mentioned in that section would cover the legal requisites of Letters granted to a creditor to an estate of a value within the amount stated by the Act.

Wrongly forwarding pleadings.

Some gentlemen still continue to send pleadings when forwarding record and exhibits after trial for motion in term. Please do not do so. The pleadings should remain in the original office on file.

Stamps on Chancery exhibits.

I was asked whether at Chancery sittings there should be a twenty cent stamp for each witness, and a ten cent filing stamp on each exhibit filed at the Assizes? By Rule 432 the Chancery disbursements are to be the same as Common Law disbursements on analagous proceedings, and there being no such charges at the Assizes, I would not make any such at Chancery sittings.

Fees on orders.

Item 134 of the tariff should be allowed on every judgment, whether by default or final, although the wording of item might not seem to warrant it.

Examination fees.

Under section 64, sub-sec. 5, of Judicature Act, if a Deputy Clerk of the Crown becomes a Local Registrar, the change in the name of the office can make no difference in his right to retain to his own use fees on any reference or examination taken before him, and, of course, the Chancery Division being only a branch of the High Court, this applies to any references or examinations taken before him in that division.

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OF THE COUNTY CLERKS' ASSOCIATION.

The Judicature Act does not confer equitable jurisdiction on the County Courts, beyond what its jurisdiction in such matters was previously as to equitable defence, etc. It merely applies all the provisions of the Judicature Act to any cases properly within the jurisdiction of the County Court, leaving the jurisdiction precisely what it was before. Therefore it would have no jurisdiction to foreclose mortgages, etc. But in any action brought in the High Court of Justice, which, before the Judicature Act, 1881, and the Law Reform Act of 1868, might have been brought under the equitable jurisdiction of the County Court, only the fees and disbursements are to be allowed which are fixed by the tariff referred to in Order 553 of Chancery; and for anything not provided in said lower tariff, allowance according to the High Court tariff is to be made, subject to the same proportion of reduction as exists between the said lower tariff and the higher tariff of the Court of Chancery. For the tariff framed under Rule 533, see Rule 515 hereafter.

Equitable Jurisdiction of County Court.

Where sale and delivery of mortgaged premises is prayed by plaintiff, the County Court has no jurisdiction whatever, and section 78 of the Judicature Act does not apply to it. Section 78 applies to actions in which the Court has jurisdiction, but the defendant's counterclaim is beyond the jurisdiction.

Sale. Jurisdiction of County Court.

If a Master gives an appointment for 2 o'clock, and does not attend on it until 2.20, and the business is completed by 3.20, he can only charge or allow for one hour's attendance. If a Master gives an appointment for, say, 2 o'clock, and none of the parties attend on it, if it was given as a salaried officer of the Court, he would charge nothing except for the appointment—he has to be in his office, and goes on with his duties, and no time need really be lost. Besides the above has always been the practice. But if the appointment was given by a Deputy Clerk of the Crown, a Special Examiner, an Arbitrator, or by any officer entitled to the fees payable on it to his own use, if the parties failed to attend on it he could properly charge as for one hour's attendance, because he, in fixing the hour, has to arrange his other business so as to be able to attend on it, and therefore should be paid for at least an hour.

Attendance on appointments.

Any step in a County Court action rendered necessary by the Judicature Act should be allowed for by applying the County Court tariff to it as nearly as possible. Any item for which there is no analagous charge in the C. C. Tariff—such as perusals, drafts of affidavits, etc., etc.—

Allowances in County Courts.

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I am afraid must go unremunerated. I am sorry for this, but it is owing to the unaccountable delay in making a County Court tariff.

Conduct of Examinations.

On the examination of a party to an action, no one has a right to be present during the examination besides the parties, their counsel, solicitors, or agents of solicitors. Therefore if two plaintiffs are to be examined: say A. and B. A. has no right to be present during B.'s examination, or B. during A.'s examination. It is distinctly laid down that "An Examiner's office is not a public Court; there is no right to admit anyone but the parties, their counsel, solicitors and their agents."

I think you will find that most, if not all, of the conclusions or suggestions contained in the Minutes of our last meeting respecting the Judicature Act, have turned out to be correct, or have since been made so by Rule of Court.

Rule 503. Local Seals.

Of the new Rules, up to 503, they consist in verbal amendments of the former Rules. 503 was intended to do away with the necessity of a stamp being affixed for each impression of your local seals, where formerly no seal was used. This Rule does not go as far as the necessity of the case demanded; but I think it is generally acted on as though it did, and it is much better so.

Rule 509. Local Orders.

I am not sure what the ultimate working of this Rule will be, as far as the head offices are concerned; it speaks for itself as far as local offices are concerned. We will have to wait to see under what circumstances it will come into operation.

Rule 511. Costs judgment without trial.

This Rule applies to taxation of costs when judgment is entered without trial, decision of a Court or Judge, or order as to costs. It explains itself.

Rule 512. Costs.

This Rule is also as to costs. The two rules place the question of costs, in cases included in them, where I believe it really was before, only for an English decision. This rule will not affect cases tried before it was passed.

As to this and the preceding rule, I have drawn up the following illustrations of their operation, which I hope will enable you to apply them correctly:—

Scale of allowance of costs.

First—If judgment is entered on a decision or order of Court or Judge, and no mention is made as to costs, no costs can be taxed or allowed to either party.

Second—If judgment is entered on order or decision of Court or Judge, also when case tried by jury and an order is made granting costs merely, without saying on what scale, the full costs of the Court in which the action is brought should be allowed.

Third—If judgment is entered without decision of

Court or etc., where the s affidavit is found liquidate parties, costs shc \$400, full \$200 up be allow costs shc

Fourth: tried by order is r full High is for any County C for \$200, only be al are broug are for a the Count ant would of d sion. Wl Judge, the of costs to by the offi it was unl of the part made by t would jus must be m to those brought in section 18, In actions when no or to be allow R.S.O., ca Courts; an also 41 Vi tion 2, as t

This rule as to costs tried, revived existing bef

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Court or Judge, such as on default of appearance, defence, etc., where the cause of action is one which would properly be the subject of a special indorsement, and there is no affidavit shewing the facts on which the cause of action is founded, and establishing that the claim was not liquidated or ascertained by the signature or acts of the parties, and there is no Judge's order as to costs, then costs should be allowed as follows: If the claim is over \$400, full High Court costs should be allowed; if over \$200 up to \$400, inclusive, County Court costs should be allowed; if \$200, inclusive, or under, Division Court costs should be allowed.

Fourth—If judgment is being entered in an action tried by a jury, in debt, covenant, or contract, and no order is made as to costs, if the finding is for over \$400, full High Court costs should be allowed; if the finding is for any amount up to \$400, inclusive, and over \$200, County Courts costs should be allowed; if the finding is for \$200, inclusive, or under, Division Court costs can only be allowed. And, of course, where any such actions are brought in the High or County Court, and findings are for amounts such as above are shewn to be within the County or Division Court respectively, the defendant would be entitled to the usual set-off of excess of costs of defence in cases coming under this fourth division. Where no order as to costs has been made by the Judge, the plaintiff must abide by the finding as to scale of costs to be allowed him, and no evidence can be taken by the officer as to the nature of the claim to shew that it was unliquidated and not ascertained by the signature of the parties. This can only be shewn by an order being made by the Judge for such costs as he thinks the case would justify, and without such order the allowance must be made as above. Of course this does not apply to those cases which from their nature can only be brought in the High Court, and which are mentioned in section 18, cap. 43, R.S.O., which would carry full costs. In actions other than the above tried by a jury, and when no order is made as to costs; the scale of costs to be allowed will easily be determined on reference to R.S.O., cap. 43, sections 18, 19, and 20, as to County Courts; and R.S.O., cap. 47, sections 53, 54, 55 and 56, also 41 Vic. cap. 8, section 6, and 43 Vic. cap. 8, section 2, as to Division Courts.

This rule, in cases tried by jury, and where no order as to costs is made by the Judge before whom they are tried, revives the statutes and practice as to such cases existing before the passing of the Judicature Act, among

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others, the provisions as to costs in the Revised Statutes of Ontario, pages 681-2-3-4-5 and 6, and also the provisions as to costs in slander, double and treble costs for unlawful distress, and all other Acts then in force, unless there be some direct provision in the Judicature Act altering or interfering with them, and Rule 428 will not do so unless, of course, it is acted on by the Judge trying the case making some special order as to costs under this Rule.

Certificate for County Court costs.

When a judge certifies or orders County Court costs to be allowed a plaintiff, this entitles the plaintiff to County Court costs without being liable to set off of excess of costs between High Court and County Court costs. To entitle Defendant to set-off such excess of costs, the right to so sett-off must be granted by the certificate or order.

I was asked whether a claim for the following items could have been brought in the Division Court:—

Goods, per invoice	\$16 50
Cash	0 60
Bill of Exchange.....	120 19
Bill of Exchange.....	120 08
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	257 37
Paid.....	120 10
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(Interest from July 10th, 1882, till judgment).

I answered that the above was a case which could have been brought in the Division Court, and that only Division Court costs could be allowed.

Rule 513. Discovery.

This Rule is as to discovery, and explains itself.

Rule 515. Inferior jurisdiction costs.

This provides as to costs to be allowed in cases which, before the Judicature Act, could have been brought under the Equity jurisdiction of the County Court. The following is the tariff framed under Chancery Rule 553, and referred to in this Rule:—

TARIFF REFERRED TO IN ORDER 553.

Solicitor.

Instructions for suit	\$1 00
Instructions to defend	1 00
Instructions for petition where no bill is filed	1 00
Letter of notice before instituting suit	0 25

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Drafting bill not exceeding 20 folios, including copy to keep \$2 00
 For every additional folio above 20 (to be allowed in the discretion of the Master), including copy to keep, per folio..... 0 20

No greater sum than \$3 to be taxed by the Master for drawing any bill, without the special direction of one of the Judges of the Court, upon the application of the solicitor requiring the same, for which application no charge is to be made.

Drafting answer or other pleading, petition, or special affidavit, per folio 0 20

No greater sum than \$3 to be taxed for drawing any answer, petition, or affidavit, without the special direction of one of the Judges of the Court, as provided for in the case of bills; and no greater sum is to be allowed for drawing an answer, petition, or affidavit, than would have been taxed irrespective of this order.

Engrossed copies to file, copies to serve (other than copies on which a fee is paid to the Master, Clerk of Records and Writs, or Deputy Registrar, for reading over or authenticating the same), per folio 0 10

Copies of orders, or other papers or documents required to be served, per folio 0 10

Office copies, authenticated by the Clerk of Records and Writs or Deputy Registrar, per folio 0 08

Affidavit of service of bill, including attendance to swear..... 1 50

Affidavit of service, including attendance to swear 0 20

Præcipe for any process, including attendance..... 0 25

Special attendance on Master's warrant or appointment, or on examination of witnesses, or on hearing of cause or demurrer or special motion 0 50

No such fee or any other costs of and incidental to an appointment, is or are to be allowed by the Master to any party, either by consent or on any ground whatever, as parts of the costs of the cause, when the appointment was adjourned without being proceeded on, or where no substantial progress with the reference was made thereon. But the Master may order the payment of such costs, as provided for by Order 213.

When the hearing shall exceed one hour, then for every additional hour which shall be occupied by such hearing, and at which the solicitor

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shall be present in Court, provided the same be noted in the Registrar's book, or be proved by affidavit (such affidavit to be without charge), the same not to exceed \$2

For every additional hour beyond one hour in the Master's office..... 0 50

For attendance in the Master's office upon a warrant or appointment to hear and determine, the Master may increase the fee for such attendance to any sum not exceeding one dollar per hour, where, in the judgment of the Master, the matters to be heard and determined are of such special nature as to have required previous preparation; and where the Master finds that previous preparation has been bestowed thereupon, and that in his judgment such increased fee is reasonable and proper under the circumstances; but no such allowance is to be made for more than one day, unless the hearing is proceeded with *die in diem* to the conclusion thereof, or unless such proceeding be prevented by a party other than the one claiming the increased allowance, and the increased allowance is not to be made unless the same is noted at the time in the Master's book.

For every additional hour in the examination of witnesses, where no counsel is employed 0 50

The fee on the attendance of a solicitor, where the solicitor attends in person and no counsel is employed, may in special cases be increased in the discretion of the Judge or officer before whom the examination is had, to one dollar, and where the examination occupies more than one hour, then one dollar for every additional hour which is so occupied, and during which the solicitor is present in attendance thereupon, provided the same is noted at the time in the Registrar's book, or in the book of the Master, or other officer, as the case may be.

Attending consultation of counsel, per hour..... 0 50

No special attendance to be allowed to a solicitor on proceedings upon which he appears also as counsel.

Appointment to settle minutes, or to pass decree or order, copy and service..... 0 50

For every hour's attendance before the Registrar, by his appointment, on settling minutes, the same being noted by the Registrar..... 0 50

For every hour's attendance before the Registrar, by his appointment, on passing decree or special order, the same being noted by the Registrar 0 50

The fee on settling minutes and on passing decrees or orders may be increased in the discretion of the Registrar in special cases to one dollar, where the

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OF THE COUNTY CLERKS' ASSOCIATION.

solicitor attends personally on each settling or passing.

Where minutes settled, or decree or special order approved of or passed between the solicitors after appointment issued by the Registrar ...\$0 50

In such case no fee to be allowed to either party as for attendance before the Registrar, in respect of the same settling or passing.

Fee on all orders and writs of Court to the party obtaining the same..... 0 50
Instructions for brief 0 50
Brief, per folio, including briefing and fair copy, subject to be reduced by the Master if the same contain superfluous matter, or be of unnecessary length 0 10
Observations, or other original matter in brief, per folio 0 20

A brief of deposition or special affidavits to be allowed only where fee and brief for second counsel is taxed.

Drawing special minutes when prepared by the solicitor, per folio 0 20
Advertisement for sale of real or personal estate, under the direction of the Court, including all copies except for printing..... 0 50
Copies, for printing, per folio 0 10
Fee on conducting sale, including arrangements with auctioneer, correcting proof sheets (if any), and attending sale 2 50
For every hour beyond three occupied at such sale 0 50
Drawing bill of costs, and attending taxation 0 50
Drawing Judge's appointment, attending for his signature, and to serve 0 50
Every necessary attendance..... 0 25
Necessary agency letters in the course of a cause or matter, to be allowed on taxation between party and party as attendances —
Postages—the amount actually disbursed.

The sum allowed for copying and briefing shall be 10 cents per folio, except when authenticated by the the Clerk of Records and Writs or read over by the Master, but the same shall not in any case exceed one-half of the amount allowed for drawing what shall be so copied or briefed.

Counsel.

On argument in Chambers in cases proper for the attendance of the counsel, to be increased at the discretion of the Judge 1 00

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MINUTES OF THE SIXTH ANNUAL MEETING

On settling and signing pleadings and petitions respectively, where from their special nature the Master shall think the pleading or petition a proper one to be settled by counsel.....	\$1 00
On consultations.....	2 00
On special application to the Court, arguing demurrer or other special argument, or at the hearing of a cause	5 00

To be increased in the discretion of the Master to a sum not exceeding \$20 to senior counsel, and \$10 to junior counsel, in suits of a special and important nature; but more than one counsel fee is not to be allowed in any case not of a special and important nature. Where two counsel fees or an increased fee is allowed by a Local Master, he is to forward to the taxing officer with the bill, upon transmitting it for revision, such information as may enable the taxing officer to judge of the propriety of the fee or fees allowed.

Master.

Every summons or warrant	o 10
Administering oath, or taking affirmation.....	o 20
Marking every exhibit	o 10
Drawing depositions, reports, or orders, per folio..	o 20
One fair copy, when necessary	o 10
Copy of papers given out when required, per folio.	o 10
Every attendance upon a reference.....	o 50
For each additional hour	o 50
Every certificate.....	o 20
Filing each paper	o 10
Taxing costs, including attendance	o 50
Making up and forwarding answers and depositions	o 10
Every special attendance out of office within two miles	o 50
Every additional mile above two.....	o 10
Reading affidavit, per folio	o 02
Matter added, per folio	o 20
Searching files in office	o 10

Registrar.

Drawing minutes of decree or special order, per folio	o 20
Drawing decree or order, per folio.....	o 20
Entering same, per folio	o 10
Fee on payment of money into Court	o 10
Fee on payment of money out of Court.....	o 10

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OF THE COUNTY CLERKS' ASSOCIATION.

Judge's Secretary.

- On every application in Chambers (including the order thereon if made) for a decree against infants, for the administration of an estate, for a vesting order, for final order of foreclosure or sale, for foreclosure after abortive sale, or to extend time for payment of mortgage money . \$0 50
- On every other application (including the order thereon if made) 0 20
- For other services, the like fees as are payable to the Master.

Special Examiners.

- Every summons or warrant 0 10
- Administering oath or taking affirmation 0 20
- Marking each exhibit 0 20
- Drawing depositions, per folio 0 20
- Copy for solicitor when required, per folio 0 10
- Every attendance out of office, when within two miles 0 50
- Every attendance out of office above two miles, extra per mile 0 10
- Every certificate 0 25
- Making up and forwarding answers and depositions 0 10
- Every attendance upon an appointment, when solicitor or witness do not attend and Examiner not notified 0 50

Clerk of Records and Writs, and Deputy Registrars.

- Entering parties' names, and filing bill, answer or demurrer 0 50
- Entering and filing all other pleadings, interrogations, depositions, or other evidence, filing and registering affidavits, exhibits or other papers. 0 10
- Entering note *pro confesso* 0 20
- Subpoena, including filing *præcipe* 0 20
- Special writ, writ of commission 0 50
- Office copy of papers required to be given out, per folio 0 10
- Examining and authenticating same, when office copy prepared by solicitor, every three folios . 0 05
- Amendment of record, when engrossment not necessary, per folio 0 10
- Making up and forwarding interrogatories 0 10
- Setting down cause, other than for hearing *pro confesso* 1 00

The fee payable to a Deputy Registrar on setting down a case for hearing to be \$4.

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MINUTES OF THE SIXTH ANNUAL MEETING

Setting down cause <i>pro confesso</i>	\$0 20
Certificate of pleadings being filed	o 20
Certificate of state of cause	o 20
Searching files in office	o 10

Sheriffs.

Receiving, filing, entering, and endorsing every paper.....	o 10
Return of all process and writs except subpœnas..	o 25
Warrant to Bailiff, on writ not executed by Sheriff or Deputy.....	o 25
Serving each office copy bill, including affidavit of service	o 50
Serving each warrant, notice, certificate, subpœna, or other paper.....	o 50
Writ of arrest, arrest on	1 00
Attachment, arrest on	1 00
Sequestration—Upon seizure of estate and effects, under writ of sequestration	1 00
Schedule of goods taken in execution, including copy for defendant, if not exceeding 5 folios...	o 50
Each folio above 5.....	o 10
Removing or retaining property, reasonable or necessary disbursements, and allowance to be made by the Master or by order of the Court or Judge.	
Poundage upon sequestration, followed by sale..	5 %
For services not specified—the like charges as are allowed by County Court Tariff for analagous service.	

Rule 516.
Docketing.

Rule 517.
Returns of judgments.

Does away with docketing, on which I congratulate you.

Provides for transmission of Returns of judgments signed. I have had forms printed, which I hope will be of service to you.

These Returns should be made up to 31st March, 30th June, 30th September, and 31st December, inclusive, in each year, and should be made to the Registrar of each Division, at Toronto, and should contain only the judgments entered in each Division. I notice that a great many Returns are sent without being properly endorsed. I hope this will not occur in future, as it is an unfinished, slovenly way of making a Return, not to speak of its shifting on to the officer receiving it a duty that properly appertains to the officer sending it. I have made out the forms so as to save you all the trouble possible, and hope that it will be duly appreciated.

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As to bonds or recognizances for purpose of security being taken in name of the Accountant of the Supreme Court, his executors, administrators, or assigns, this Rule does not interfere with Rule 430; it applies to infants, lunatics, etc., etc.

Rule 519.
How bond recognizances to be taken.

... 0 10

As to signing judgments in default of defence or demurrer in actions in respect of a mortgage, and plaintiff claims foreclosure, sale, or redemption.

Rule 520.
Judgment by default in mortgage actions.

... 0 25

In cases tried by jury judgment is not to be signed until after the time for moving against verdict or judgment has expired, unless the Judge certifies for execution to issue previously.

Rule 527.
Time for signing judgment in jury cases.

... 0 25

This Rule enables a plaintiff to issue execution on a judgment by default of an appearance, at the expiration of eight days from the last day for appearance, and not before. If the last of the eight days falls on a Sunday, I would issue execution on the Monday. Rules 72-457, section 60, C.L.P. Act. Note U. Harrison's C.L.P. Act.

Rule 72.
When execution may issue after judgment by default.

... 0 50

It is the duty of the officer to see that the time for issuing the execution has arrived, and not to issue it before.

Surrogate fees.

... 0 50

In schedule A, cap. 46, R.S.O., page 481, it is provided:—

When the property devolving is under \$1,000... \$0 50
For every additional \$1,000..... 0 50

5 %

Supposing the property devolving was \$1,050, the fee to be charged would be \$1, just the same as if the property was \$2,000, and so on, the same construction would apply to all subsequent increase of amount.

Rules 1, 2, and 3, of 4th Dec., 1875, respecting remanets, are in full force. I know nothing in the Jurisdiction Act or Rules interfering with them.

Remanets.

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Under this Rule a question has arisen whether a Clerk of a County Court could give an appointment for the examination, as provided by Rule 369. The Clerk not being one of the parties named (*eo nomine*) in the Rule 366, though a Deputy Clerk is named, it is a matter very open to discussion and of some doubt. I wrote one gentleman that he could not; but on giving the matter the best consideration I can, I am now inclined to think that he can; because Rule 490 provides that the pleadings, practice, and procedure of the High Court of Justice shall apply and extend to the County Courts wherever the present practice and procedure of the County Courts correspond with those of the Superior Courts of Law. This is one of the instances in which they do correspond, and it would appear that the Clerk of the

Rule 366.
County Court examinations on appointment.

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Court holds in that Court an office corresponding to that of Master or Clerk of the Crown or Registrar in the High Court, and that therefore he might, under this Rule, exercise in the County Court the same powers under this Rule and Rule 369 as the Master, Clerk of the Crown, Deputy Clerk of the Crown, Registrar, or Local Registrar could exercise in the High Court. The Statutes and Rules applying to examinations, both before and after judgment are: Rule 219, R.S.O., pages 641-2; Rule 366, *et seq.*, R.S.O., 598 and 675.

Ejectment judgment for part.

In an action for the recovery of land for lots A and B, appearance entered for lot A, no appearance for lot B, a final judgment can be entered as to lot A, which can be enforced by execution while the action goes on as to lot B.

Three dollars fee on entering action.

There appears to be still some misapprehension as to the rights of the different Clerks under cap. 8, section 1, of Statutes of Ontario, 44 Vic. I thought I had sufficiently explained it at pages 6, 20 and 34 of last address, but it seems not from a number of communications I have received on the subject. I hope the following will make it clear:—

Every Clerk of Assize, except the Clerk at Toronto, is entitled to three dollars on every action entered with him for trial, and on every certified copy of proceedings in actions to be tried anywhere except in Toronto, no stamp should be affixed for the passing of it. But if action is to be tried in Toronto, then the one dollar stamp must be affixed as usual for passing it. This is because the three dollars not being payable to the Clerk of Assize at Toronto, the one dollar passing stamp does not, of course, go to making such an amount up as it would if action was to be tried at any other Assize. When an action is to be tried at any other Assizes than Toronto, the Clerk passing the certified copy of proceedings can make no charge either in stamps or money. It is only on the record being entered for trial that the three dollars is to be paid to the Clerk with whom the action is entered, which three dollars includes the one dollar otherwise chargeable on passing. Therefore if the Clerk, say at Hamilton, certifies proceedings in his office in an action to be entered for trial at London, he charges and receives nothing, but the Clerk at London is entitled to three dollars for entering the action for trial; but if the action was to be tried at Toronto, then the Clerk at Hamilton would charge the stamp of one dollar. As to charging the three dollars on the entry of

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Chancery cases with a Deputy Clerk, see Minutes of 1881, pages 6, 20, 21, and 34, where it is fully discussed.

Rule 264.
Time for entry of actions for trial.

As to time within which actions may be entered for trial, Rule 455 applies to the computation of time under this Rule, so that when the first day of the Assizes falls on Tuesday, the last day for entering an action for trial at such Assizes would be the previous Friday, and that the intervening Sunday would not count.



The Judges at the Assizes disapprove entirely of the shape in which certified copies of proceedings for trial are certified to by Clerks. Sometimes there is only one half a sheet of paper, and then folded the short way. No proceedings should be certified which is made upon anything less than a full brief sheet of paper, or a whole sheet of foolscap, so that it can be doubly folded and retain exhibits inside it, and be folded lengthways. You are to refuse to certify proceedings in any other form. I thought I had sufficiently provided for this at page 30, last address, but it seems not.

Form of certified copy of proceedings.

You are particularly requested to certify the proceedings by putting the certificate on the back, and also to mark them on the back when entered for trial, also to endorse the certified copy of proceedings after trial, with the particulars as to number of exhibits, witnesses, counsel, time case occupied, etc., etc. As you have heretofore been requested to mark on the back of the old record, which is precisely the same thing as the certified copy of proceedings, and you have been particularly requested to treat the certified copy of proceedings the same as the old record, I hope it will not be necessary to refer to this again; but it is rather discouraging to see the few who have complied with the request; the not doing so occasions a great deal of unnecessary inconvenience.

Certified copy of proceedings. Where certificates and memoranda to be put.

Refuse to certify unless in form

In case an action is tried before a Judge, and he reserves his decision, and directs the Clerks to forward the certified copy of proceedings to one of the Registrars at Toronto, for the Judge, the Clerk should get from the parties concerned sufficient postage to pay the postage back from the Toronto Registrar—as the certified copy of proceedings must be sent by him back to the Clerk of Assize on the decision being given by the Judge—there is no fund here out of which such postage can be paid, and in default of the postage being sent the papers will have to be returned unpaid by express.

Postage.

Pleadings, papers, and proceedings filed in an action should always remain on files with the officer with whom they are filed, and should not be forwarded to Toronto

Filed proceedings not to be forwarded on principle. Exceptions.

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unless in obedience to an order to do so, or in case of parties desiring to enter judgment in Toronto, to revise taxation, to appeal, or to have bail allowed, then on *præcipe* for that purpose they may be forwarded to taxing officers or Clerk in Chambers, respectively. When judgment is entered in an action the papers or proceedings should not be sent to another office on *præcipe*. Of course the above does not apply to forwarding certified copy of proceedings and exhibits on notice after a trial for a motion in Court pursuant to the Statute.

Notifying Solicitors of Judge's decision.

In any case tried at the Assizes in which the Judge trying it reserves his decision, and subsequently the certified copy of proceedings is sent to the Clerk of Assize with the Judge's decision, the Clerk of Assize should at once notify the Solicitors on both sides, by letter or post card, of the decision; this being the only way by which the Solicitors can be made aware of what the decision is, and it is necessary that they should be made aware of it at once so that they may move against it if they so desire.

Order *Nisi* or notice of motion

It may be of some use to the profession to understand when Motions from the Assizes, made in what was Term, should be by notice of motion or by motion for order *Nisi*, or both. The matter stands as follows: If it is desired to move against the finding of a Jury, the motion should be for an order *Nisi*. If the finding of the Jury is satisfactory, but the judgment ordered to be entered thereon by the Judge is considered unsatisfactory or not warranted by the finding of the Jury, then a notice of motion should be given; and if objection is taken to the finding of the Jury, and also to the judgment ordered to be entered thereon by the Judge, then a motion should be made for an order *Nisi*, and also a notice of motion must be given. Of course it will be seen from the above that where a case is tried by a Judge without a Jury it can only be moved against by a notice of motion; this, of course, does not concern you directly, but will enable you to solve the doubts of many practitioners as to the course to be adopted on moving.

Rules 33 and 71. Service accepted by Solicitor.

Under these Rules where the service of the writ of summons is accepted by a Solicitor, the affidavit of service need not swear to the fact of the Solicitor accepting the service being the Solicitor of the defendant. This may not be within the knowledge of the party serving the writ. The affidavit need only state that the writ of summons was served, etc., etc., on So-and-so, a Solicitor

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of the High Court of Justice for Ontario, and that he accepted service of said writ of summons as Solicitor for the defendant and signed the undertaking to appear, endorsed on the said writ of summons.

The following are the charges made at Toronto for copies of short-hand reporters' notes at the trial of actions since 20th May, 1882: For four copies, ten cents per folio of the length of the notes; for three copies, nine cents per folio; for one copy, five cents per folio.

Short-hand notes, Charges for.

Where under this Rule plaintiff becomes entitled to a judgment or order on *præcipe*, the judgment or order should be entered in the judgment-book, the same as any other judgment, and be charged for the same. The terms judgment or order seem to be convertible.

I would be very glad if each gentleman would examine the Minutes of the Clerks' meeting of 1881, and of this last meeting for 1882, and if errors are found in them to advise me of same; or if he has any suggestion to make as to any different course being taken, either as to meetings or as to the nature of address and treatment of subjects dealt on, or as to other subjects to be introduced into the addresses which would be of service to the officers generally in the discharge of their duties, I would feel much obliged if he would favour me with his views.

On motion of Mr. Northrup, seconded by Mr. Gunn, the Committee on Legislation for last year were re-appointed.

Moved by Mr. McGuinn, seconded by Mr. Stevenson,—That the thanks of this Association are due and are hereby tendered to our President for his very able and instructive address.—Carried.

Moved by Mr. Inglis, seconded by Mr. Stevenson,—That Mr. McGuinn be reimbursed the several amounts paid by him on account of this Association, and that the Treasurer pay the same.—Carried.

Adjourned to meet to-morrow morning, at 10 o'clock, 24th August.

The President being absent, Mr. McGuinn was requested to act as chairman.

The Surrogate Tariff discussed.

Copy of proposed Tariff produced by Mr. Grace, C. C. Tariff, following changes suggested:—

No. 1. Every Writ under seal of the Court	\$1 00
" 12. Examinations per hour	1 00
" 19, 20 and 21 made all one—Every search	..	0 25

Moved by Mr. Northrup, seconded by Mr. Willson,—That the matter of amendments to C. C. and S. C. Tariffs be left in Mr. Grace's hands, and he be requested to attend the Board of Judges appointed under the Statute and represent this Association, urging the importance of the changes asked for.

* On motion of Mr. McDonald, seconded by Mr. Gunn, it was resolved :—That whereas, by sub-section 5 of Section 64 of Judicature Act of 1881, the fees heretofore payable to the Crown in stamps were given to the Deputy Clerks of the Crown for their own use, with a view of in some way compensating them for their loss of fees by the increased jurisdiction recently given to the Division Court, but the object the Government had in view in passing such section of Statute has in some counties been frustrated by the action of the Judge of said counties making the orders for such examinations before themselves.

That while the Deputy Clerks of the Crown would refrain from criticising the conduct of those County Court Judges, their superior officers, they respectfully submit that such action on the part of some of them contains a two-fold wrong, namely, a controvention of the spirit of the Statute in this behalf, and a diversion of the fees in a manner not contemplated by the Government.

Moved by Mr. Inglis, seconded by Mr. Northrup,—That a copy of the above resolution be forwarded by the Secretary to Honourable Mr. Hagarty, President of the High Court of Justice.—Carried.

On motion of Mr. Gunn, seconded by Mr. Willson, it was resolved :—That this Association have learned with much concern that it has been recommended and urged in certain quarters that the examinations now supposed to pertain to the Clerks should be taken before Referees, at the option of the parties applying for such examinations, which would have the result of taking such examinations from the Clerks altogether, and that it be an instruction to the Standing Committee to watch this matter.

Adjourned to meet at the call of the President.

A. G. NORTHRUP.

Secretary.

* Neither the mover or seconder of this resolution have any interest in having it passed, as the Judges in their respective counties never took the examinations referred to.