

MINUTES OF MEETING

OF THE

COUNTY COURT

CLERKS' ASSOCIATION,

HELD AT

OSGOODE HALL, TORONTO,

21st JULY, 1886.

TORONTO:

WARWICK & SONS, 26 AND 28 FRONT STREET, WEST.

1886.

MINUTES
OF THE
TENTH ANNUAL MEETING
OF THE
COUNTY COURT CLERKS' ASSOCIATION

Held at Osgoode Hall, Toronto, 21st July, 1886.

Present :—M. B. Jackson, Esq., President ; Messrs. Canfield, Eagar Fraser, Fisher, Grace, Gunn, Inglis, Mitchell, McBeth, McDonald, McGuinn, McLaren, McLaws, McFadden, Northrup, Rice, Stevenson and Wilson.

President in the chair.

Minutes of last meeting were confirmed, having been printed and distributed.

Letters read from Messrs. Fraser, Marcon, Thompson and Twigg, expressing regret at not being able to attend.

Treasurer reported 47.16 on hand.

On motion of Mr. McLaren, seconded by Mr. Stevenson, M. B. Jackson, Esq., re-elected President.

On motion of Mr. Grace, seconded by Mr. McLaws, A. G. Northrup, re-elected Secretary and Treasurer.

Agreed that chairmans address be published in full in the minutes.

Agreed to take up the questions from question drawer, and dispose of them, each to be discussed after being read if necessary.

Questions,
answer to.

ANSWERS TO QUESTIONS.

From Question Drawer at the Meeting.

- Fee book, Surrogate charges in.** The charges in Surrogate matters I would enter in Fee book when completed, but if not carried to completion, then enter the fees as far as they have gone. I would enter in the Fee book the stamp cancelled by the Surrogate Clerk. I think the Clerk is intitled to charge for copy of probate given for the purpose of registration.
- Stamp cancelled by Surrogate Clerk.**
- Copy of Probate for Registration, charge for.**
- Surrogate Special Attendance, wrong charge.** The Law provides no such charge or allowance for Judges, as one dollar special attendance on granting of probate and no such charge can be legally made.
- Joinder of issue, allowance for.** As to joinder of issue see minutes 10/83.
- 594, Indorsements under.** Indorsements under 594 should be made on all writs of execution concurrent and otherwise.
- Chattel Mt'g., Power of Atty. Filing.** No charge can be made for filing power of Attorney with a chattel mortgage; there is no provision for such a charge.
- Chattel Mt'g., entry of amt. of Renewal in fee book.** It is not necessary to enter amount for which chattel mortgage is renewed in your fee book; all is wanted is the entry of amount of original mortgage.
- Item 123, to what applies.** Item 123 of tariff does not apply to action brought on covenant in mortgage. It applies to foreclosures, etc., etc.
- Præcipes, Goods and Lands, Renewal.** Only one Præcipe is necessary for writs, goods and lands, or for renewal of same; of course, being only one filing, only one /10 stamp can be charged.
- Interpleader, where money to be paid in.** In case in H. C. when Interpleader order made issue to be tried in C. C., the Sheriff should pay money payable into Court into the Accountant of the Supreme Court at Toronto.
- Counsel fees, how to determine.** In determining a Counsel fee to be allowed the officer should consider the pleadings, evidence, time, importance, witnesses and difficulty of a case.
- Clerk's powers not altered by Act.** Under Chancellor Boyd's decision, I understand that 48 Vic. Cap. 13, sec. 22, the powers of taxing officers are only the same as they were before the Act.
- Attendances for writs.** Solicitors are entitled to attendances for writs under Rule 544.
- Attendances.** No more attendances in a cause than are necessary should be allowed. This question is too general, it should have given instances.

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Attendance for certified copy of Proceedings after trial should be allowed.

When Indorsement is made on Executions under Rule 594, searches for writs should not be charged. Rule 594, Searches.

When in an action for the recovery of land no costs are allowed; the Plaintiff is not allowed costs of writ of Possession, but the Solicitor, of course, can recover all the costs of the action and writs against his client. Ejection, no costs, costs of writ.

When separate writs of Possession and for costs are issued, which could have been issued in one writ, I would only allow for one writ. Writs for Possession and costs, allowance for.

Fee on order for judgment—Fee on judgment.—Term fee on judgment should all be allowed though they may all occur together. Fees, order, judgment and Term, allowance of.

Copies of Interrogations to be annexed to Commission must be made by the Solicitor. Copy Int'g's. for Com'n., who made by.

Since decision of C. J. Wilson, 2/ Instructions to Examine and Attending to order and for copy should be allowed, unless copy ordered at the time of the examination, then I would not allow Attending to order copy. Exam'n. Ins. for Attendan's

Under item 104 of H. C. Tariff a duty is thrown on the officer of determining the nature of the case, and what the Counsel fee should be it is for you to be satisfied on this point and to act on your own judgment. Item 104, C.C fees.

Item 103 cannot be affected by the distance a Solicitor may be obliged to come. Item 103.

A Solicitor who has obtained an assignment of his client's mortgage can obtain an order on Præcipe under Rule 385, making him a party to the suit, or he can proceed under Rule 384. Solicitor, Assignment of Client's claim continuing suit.

Under Rule 544-19, the necessary letters and attendances to obtain decision of taxing officer at Toronto should be allowed, but not affidavits, they are not included in the Rule. Rule 544-19, Allowances.

When in a mortgage case judgment is signed under Form 168, referring it to Master for his report; execution cannot issue until after report made, but if judgment is signed under Form 169, when the Registrar takes the account, then execution can issue at once, under the 6th provision of said Form. Mortgage suit, issuing execution.

No judgment should be entered in any case for costs settled by the parties, they must be ascertained by the Officer of the Court, therefore, when in the progress of the suit, a cognovit is Cognovit, costs, who fixed by.

given in the action for damages and a fixed amount for costs; these costs should be taxed and ascertained by the Officer before judgment is entered for them.

Item 133,
Minutes of
judg't & orders

Copy of Sum-
mons certifi-
ing,

Chancery |
judgments,
entering,

Costs Solicit'r
and Client to
be paid by
third party.

I have explained as to drawing minutes of judgment and orders. *See post.*

You cannot require Solicitor to certify to copy of Summons filed by him on issuing original—it is his risk if it is not correct.

Judgments in Chancery cases are to be entered *in extenso* in judgment book.

When a case is settled, Defendant to pay costs as between Solicitor and Client, these mean costs Solicitor and Client to be paid by third party; he would not be subject to pay costs of service of summons; when under Statute, Sheriff should have served it, but he would be liable for costs of Solicitor, stopping witnesses coming to trial after settlement of case.

The above are all the questions submitted at the meeting.

Moved by Mr. Fraser, seconded by Mr. Wilson, that next meeting of the Association be held in Osgoode Hall, Toronto, on the 3rd Wednesday of July, 1887, at 11 a.m.

On motion of Mr. Wilson, seconded by Mr. McBeth, the thanks of the Association are due and are hereby tendered to M. B. Jackson for his uniform kindness and great services.

The following is the President's Address:—

TORONTO, July 21st, 1886.

GENTLEMEN,—I am sure we are all glad to meet together again on this, the occasion of the tenth annual gathering of our association, I can congratulate you, that since our last meeting there has been no vacancy in your ranks; occasioned by death or otherwise. I hope we may have this to record on many meetings to come.

I am sorry that we are still without a new disbursement tariff which is necessary to put matters in complete working order. The Surrogate tariff is still under consideration, I hope by the time we meet again one will be published, that will be satisfactory to you.

I would draw your attention to some matters on which I have been consulted, the answers to which may be of use to you.

Service of writ
by mailing.

The fact of a writ of summons having been mailed to a defendant and not returned, and not received back through the Dead Letter Office, would not justify you in signing a judgement by default for want of an appearance.

Costs, Solicit-
or and Client
 $\frac{1}{2}$ off.

In judging whether $\frac{1}{2}$ of a bill between Solicitor and Client is struck off you should take the whole bill into consideration including an item in bulk without details. There are cases in which a Solicitor claims, say for a number of distinct matters,

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and one is entirely disallowed, it is not sometimes taken into consideration in estimating whether $\frac{1}{2}$ is struck off; for a full explanation as to this I must refer you to the books on the subject.

An Interpleader issue must be filed before the proceedings can be certified for trial.

Interpleader, certifying for trial.

In case in High Court. Interpleader issue ordered to be tried in County Court, case tried, and order made in High Court for costs to Plaintiff. I would allow High Court costs to making of order inclusive, and C. C. costs on proceedings in County Court.

Interpleader High Court costs, when issue tried in County Court.

Examinations taken other than by a D. C. C. or L. R. cannot be received by officer without stamp being affixed for filing.

Examinations filings.

Under Sec 165, C. L. P. Act, 643, R.S.O. I would allow on taxation for copy certified by judge before whom taken for use as evidence.

Examination certified by judge,

When a solicitor furnishes his client with a bill for say, \$260, and offers to accept \$200 in full without prejudice, this is not such an offer as would protect the solicitor against costs, in case $\frac{1}{2}$ of the \$260 was subsequently struck off on taxation, such an offer must be an absolute, only claiming the \$200 whether more or less was allowed.

Bill, Solicitor and Client offer to take less.

In a County Court case I think the reference under Cap. 50, R.S.O. Sec. 189, must be to the Clerk of the County Court, or to a Referee, and not to a Local Master.

Reference C. C. under 189, c. 50, R.S.O.

R.S.O. c. 41, sec. 13, makes Clerks of Assize. Marshals and Clerks of Assize.

Marshals and Clerk of Assize.

Where a judgment is entered in your judgment book, which gives costs, and the costs have not been taxed; leave a blank space at the bottom, to fill in the taxing officers certificate.

Judgment, costs not taxed, leave space,

Where a writ of summons has been issued and lost by Plaintiff, and Plaintiff issues a concurrent, I would only allow costs of one writ.

Summons lost, costs.

No fees can be allowed a witness who does not attend a trial.

Witness fees.

A Defendant may file a statement of defence including a plea of payment into Court, though he pays no money into Court, the officer receives it as any other filings.

Plea, payment into Court, no money paid in.

When an order is made dismissing a case with costs, the costs may be taxed allocatur endorsed on order and execution issued for amount without entering judgment.

Execution, on order dismissing case with costs.

Witness fees in Quo Warranto matters are governed by the same rules as in other cases.

Witness fees, quo warranto.

"Verdict of Jury," for Plaintiff and \$10 damages, certificate for full costs granted. No judgment can be entered on this until the judge makes an order for the entry.

Verdict, enforcing.

The D.C.C. Deputy Registrar or L. Registrar are the proper parties to settle minutes of judgment.

Judgments, minutes of, who to settle.

When costs are granted on a certain scale, say County Court costs, it applies to all proceedings both before and after judgment.

Costs on certain scale, what applies to.

An Interlocutory judgment for want of a defence should not be entered in the judgment book, it should be signed, filed and entered in the procedure book.

Interlocutory judgment, how entered.

- Amendments.** Under Rule 183, I would allow the parties to make such amendments as they please, by consent even to substituting an entirely new pleading.
- Court Fees.** Term or Court fees are allowed in precisely the same way as previously to the Judicature Act.
- Writ of Summons to be signed and sealed.** The officers issuing a writ of Summons must sign and seal it under Rule 24.
- Instructions, action by solicitor.** When a Solicitor brings an action for himself, using his partner's name as Solicitor he cannot be allowed instructions, no more than if he had sued in his own proper person, the same rule applies when he sues pro forma in the name of any other solicitor.
- Summons, (writ), length of.** The Indorsement on the back of a writ of summons cannot be counted as part of the writ of Summons, in settling the number of folios in a summons. It is allowed for separately, but in mortgage cases when the indorsement is very long, I find the officers here allow three or four folios extra for the copy of writ served. This is without authority, but is so much in the direction of what is fair that I do not think you need hesitate to follow it.
- Copy of.**
- Examiners charges for return.** On Examinations under order 285 J. A. the Examiner is not entitled to a formal return, the form of the Examination itself is all the return necessary; but if you have to send it to another office then you would be entitled to returning it.
- Local Registrar, costs solicitor and client, Chancery.** I think a Local Registrar can tax bills of costs between Solicitor and Client, in the Chancery Division.
- Taxation of costs, L. R.** A Local Registrar must tax costs of suits in all the divisions.
- Case not tried. Judge engaged in case at Bar.** Where a case has been entered for trial and could not be tried, owing to judge having been engaged in the case at the Bar, the costs so incurred would be costs in the cause.
- Taxing costs, Toronto.** Where proceedings are commenced and carried on in Toronto, the costs must be taxed here.
- Costs Remanet.** Witness fees and Counsel fees are costs incidental to remanets and should be taxed to the successful parties; but only a refresher should be allowed for the Counsel.
- Order for costs effect.** When a judge makes an order in an action granting costs to either party this order will carry the costs of the Court, in which this action is brought, no matter how small the amount recovered.
- Original filings not to be sent with Record.** When a praecipe is given an officer to send Record and Exhibits, after a trial for a motion at Toronto, the officer should not send the original procedure papers.
- Order for costs Interlocutory proceedings.** If a case is brought in the High Court Justice, and the Judge makes an order giving Plaintiff County Court Costs, this scale would apply to an application made by Plaintiff to strike out Defendants statement of defence, or part thereof, which was granted with "costs to be costs in the cause to Plaintiff in any event."

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The Inferior Jurisdiction of the old Court of Chancery now applies to the Common Law Divisions and should be acted on. See Chancery Rule, 553. The stamp on the writ of summons must be \$1.00, because there had been no writ of summons in Chancery proceedings, and therefore the Chancery Inferior Jurisdiction tariff does not apply to it; this tariff will be found set out in minutes 12/82, the disbursements at 17/82. See also Rule O. J. A., 515.

Jury fees should be paid when the action is entered for trial, the passing of the certified copy of proceedings has nothing to do with it. Jury fees.

The Clerks own fee of 3/ is payable at the same time. Clerks 3/ fees.

If an action has been entered for trial and is a remanet from one judge to another no further fees are payable after the first entry. Remanet fees.

I would allow 50 under item 122 County Court tariff, which provided for item 27, & 30, to which item 122 refers. 122 C.C. Tariff costs.

In an undefended case entered at the assizes for a mere declaration of rights, if the judge merely referred the matter to the master, I would allow a fee of 10/ at the assizes; but if the matter was gone into the clerk might consider the trouble, also the importance of the case, and allow beyond that sum up to his limit of 20/ as circumstance would justify. Declaration of rights undefended Council fee.

Where a case is tried by a judge without a jury, and he gives a judgment, this judgment can be entered up at once unless the judge stays the entry. Case tried by Judge when judgment can be entered.

An officer of the Court attending as a witness is only entitled to ordinary witness fees, notwithstanding the fact that some judges have informally held the contrary. Officer of Court witness fees.

The costs of transferring a case are costs in the cause. Attending to move for order, and attending for order are both allowed, costs of obtaining increased Council fees are allowed, but I would not allow instructions for. See order 544, s. s. 19. Costs transferring attendances increased Council fees.

Section 64, Surrogate Court Act, does not apply to guardianship matters at all, no matter what amount the estate is. Small Estate guardianship.

A writ of summons for service out of jurisdiction may be served on a Solicitor of Defendant, who can accept service in the usual way as Solicitor, and in default of appearance, judgment can be signed if writ is specially endorsed. Writ out of jurisdiction Service, Solicitor Judgment.

When a Solicitor has a copy of examination, he should annex it to his Brief, and not copy it in, if copied in, it should not be allowed for. Brief Copy of Examination.

An expired writ cannot be renewed.

Writ, Expired Renewal.

Order 582, that Clerk in Chambers at Toronto, shall sign orders made by Judge of High Court, does not extend to Local High Court Judges, and does not I think apply to the County by Court, it is purposely worded so as to apply to Toronto only. Orders, who to be signed by.

Rule 594, as I understand it, applies to writs issued previously to the passing of the Rule and renewals, that is when indorsing an execution, you have to indorse for such previous writs and renewals. As to the carrying out of this Rule, I have been directed to instruct you as follows:—"When a Clerk issues a Indorsing Executions, Rule 594.

“ writ he endorses on the back of it, as the Solicitors fees for
 “ issuing it, the amount stated in the rule, if previous writs or
 “ concurrent writs are issued, he adds the amount allowed for
 “ each, he follows the same course as to renewals. No responsi-
 “ bility attaches to the officer as to the number of writs issued
 “ or the renewals thereof, but if a case arose in which the officer
 “ had reason to belief that the process of the Court was being
 “ abused by a Solicitor, his proper course would be after
 “ indorsing the writ as above, to ask the Solicitor for an
 “ explanation, and if not given or if the explanation was unsatis-
 “ factory, he should then bring the matter under the notice of
 “ the Court through one of the Inspectors. You will under-
 “ stand that this Rule in no way interferes with the responsi-
 “ bility of the Solicitor, for the amount he causes to be levied
 “ for costs of writs, and that the Courts will make an example
 “ of any Solicitor who, under colour of a writ or the officers
 “ indorsment thereon, causes to be realized out of an execution
 “ Defendant a larger amount than he is in strickness entitled to.
 “ The Rule is not intended to give any new or additional rights
 “ to the Solicitor or to impose on the officer any new duty, save
 “ that of indorsing the writ as directed. The Solicitor is to
 “ realize fees in such cases and in no other, than as before the
 “ Rule was passed. The Rule is intended to prevent the indorse-
 “ ment of excessive amounts of fees. It would be as well to ask
 “ the Solicitors in each case to name the amount required by him
 “ to be indorsed on the writ for fees.”

Chancery case
 tried under
 Rule 592.
 passing stamp.

Rules 590 and
 592. Entry for
 trial. Chan-
 cery and
 Common Law
 cases.

Fees to officers

Judgments
 under Rules
 78 and 502
 when referred
 to Master.
 Execution.

Costs, various
 items.

Where a case in the Chancery Division under Rule 592, is entered for trial at the assizes, the certified copy of proceedings must be stamped with 1/ passing stamp.

Where a Chancery case is entered for trial at the assizes, with or without a jury, the Clerk of assize is entitled to no fee, the Deputy Registrar is entitled to 8/ if his fees are not commuted; if commuted the fees would be same as on entry of any other record, and thus whether there may be a separate sitting for Chancery cases in the place where entered. Rules 590 and 592 merely facilitate the entry of such cases. When a Common Law case is entered for trial with a Deputy Registrar, he is entitled to 8/ if fees not commuted, otherwise the fee is the ordinary Common Law fee, and this fee should be taxed, the Deputy Clerk is entitled to no fee in such a case. In both cases the Deputy Registrar should attend at the trial. Minutes of 81-6-20 and 34 and of 82-20, bear on this subject somewhat.

Where a judgment is signed under Rules 78 and 502 under form 168, referring to master as to subsequent incumbrances. You will find in clause 3, a provision for Defendant to pay forthwith after Master's report, the amount found due by the report, on the report being filed, execution can issue for the amount found due. I understand that when the report is filed it becomes a part of the judgment, the matter might be in very much better form, but we must take things as we find them.

Item No. 11, C. C. Tariff, /75 is allowed for copy of Subpoena.
 Item 91, H. C. Tariff, I would not allow perusal of a joinder of issue.

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Where a Solicitor sends a Writ of Summons to an agent for service I would allow letter enclosing.

An order of reference made at Nisi Prius should bear a 1/ stamp.

If a Solicitor draws a minute of judgment under directions of the Registrar or Judgment Clerk, see item 133, he is entitled to /20 a folio for it, but it must be such a matter as the officer would direct to be done; drawing an order, dismissing a motion or such like, could not come under this head.

Where an affidavit is filed on a motion a copy of it may be allowed in the brief.

Instructions should not be allowed for an ordinary affidavit of Costs. disbursements, but may be allowed for a special one—such as one accounting for not calling witnesses, etc.

Under item 96 both parties are entitled to an attendance of one dollar.

I would allow now attending to enter judgment.

Clerk of Assize is not entitled to any personal fee on an order of reference. Fee on Reference.

At Common Law the allowance per hour to a Special Examiner is 2/, which covers oaths and marking Exhibits. Fees on Examinations.

A Deputy Clerk of the Crown or Local Registrar can only charge 1/ per hour; this does not include oaths or filings.

A Solicitor can only be allowed 1/ per hour on attending on an examination, but this can be increased at Toronto.

A Local Master in Chancery can charge 1/50 per hour, /20 for oath and /20 for Exhibits.

Above charges apply to actions in all the divisions.

If a Judge makes an order for the production of any document in your office, of course obey it, leaving the responsibility on the Judge for the consequence of carrying out his order, doing all that can be done to prevent any evil consequences ensuing. In case a judgment or transcript chattel mortgage, etc., was ordered to be produced on the trial, I would not send them as Exhibits with the Record for a motion in Toronto unless expressly ordered to do so. Production by officer of documents.

Where it becomes necessary to decide as to sufficiency of a Surety on the property he shows himself to own—it is not necessary that the estate should be unincumbered—but I would require to be satisfied that, if sold, it would realize at Sheriff's sale the amount of the incumbrance and the amount for which he was surety over and above expenses. Sending to Toronto.

Where a case has been tried and the Judge takes Record and papers to Toronto, writes out a judgment and indorses a finding on the Record, and all the papers are sent back to the Clerk, he should forthwith enter the indorsement on the back of the Record of the Judge's finding in his Assize book and notify the parties concerned. All parties should be allowed to read the details of the judgment as written and then it should be forwarded to the Reporter of the Division the suit is in. The parties should be allowed to make such notes of the judgment as they might be presumed to make during the time of its being read to them, but not to copy it or to make copious extracts therefrom. If a dispute should arise as to what extracts should Surety sufficiency.

Case tried, reserved, judgment given, notifying parties where judgment to be sent.

be allowed, the Clerk can read the judgment over to the parties and let them make notes as he reads it. The judgment should be returned to the reporter within ten days. If parties move against the judgment in Term, a copy of it must be supplied the Court for each Judge by the party moving. These directions are urgent and the Clerks are particularly requested to *strictly* observe them without fail. In no case should the judgment be kept longer than ten days, and at the expiration of ten days should be returned, if case in Q. B. D., to S. J. Vankoughnet, Esq., Reporter, if in C. P. D., to G. F. Harmon, Esq., Reporter, and if in Chancery, to A. H. F. Lefroy, Esq., Reporter. The address of all the Reporters is Toronto.

Bill, Solicitor
and Client.

Where a Solicitor and Client bill is referred for taxation the officer has no right to add to the bill, it can only be done by Judge's order. A Solicitor, on delivering a Bill or at any time before an application to tax is made, notifies his Client that he only claims a certain amount on the bill and that he will only take that amount, no matter what amount the bill is taxed at, more or less. If the bill is subsequently taxed in estimating whether 1/6 has been taxed off, the difference between the amount of the bill and the amount agreed to be taken must be discarded and the 1/6 estimated on the balance; after deducting from the amount taxed off the said difference between bill and demand. If a sixth is struck off the Client gets his costs; no question can arise about Solicitor getting any costs of the reference, but Client cannot get costs of affidavits or portions thereof used to oppose Solicitor's claim when he fails in his opposition, neither can Client for time occupied by discussions which are determined against him.

Assault, costs,
taxation of
Local Master's
power to make
orders, etc.

The Clerk of Assize should tax costs, etc. when ordered to be paid under 32 and 33 Vic., Cap. 20, sec. 78.

Under 48 Vic., Cap. 13, sec. 21, the Local Master can make orders in Common Law matters and, unless he has commuted, is entitled to the fees thereon to his own use, but he can charge only such fees as were and are payable at Common Law on such orders and no more should be paid or taxed. I doubt if there should be any fees, because whatever fees were payable, were payable to the fee fund and none to the Judge, and he acts in his capacity of Master only under this Act, and not as Deputy Registrar, and as Master he would be entitled to no fees that were payable at Common Law. If the Local Master is also Local High Court Judge, then all orders that he makes in Common Law matters are made as Local High Court Judge and must be paid for in stamps, and no such orders unstamped should be received, filed or acted on.

Administra-
tion at Assizes

Under 48 Vic., Cap. 13, Sec. 11, where Administrator is appointed, same stamps are payable to the Crown as in ordinary Surrogate cases; to ascertain these fees an affidavit of value must be made. I am in great doubt as to what fees the Clerk would be entitled to, but as the Statute is silent as to his fees and expressly provides as to stamps, I am forced to the conclusion that the Clerk is not entitled to any fees on such matters.

Affidavits, a
number filed,
Instructions.

When six affidavits were used in opposing a term motion the rule as to instructions for affidavits in such case is: One instruc-

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tions would be allowed and only one if the affidavits were of a similar kind, corroborative or nearly so. If they were long and important, differing somewhat, two instructions might be allowed, but if they were each and severally of sufficient importance and contained entirely different and new matter or sufficient of it, separate instructions might be allowed for each affidavit.

Where a Chancery case is entered for trial at a Common Law sittings for a county different from that in which the proceedings are carried on, I think the Clerk might charge the 3/ fee and attend to the case, because the Deputy Registrar could not attend to it out of his own County and the Deputy Registrar of the County where it is tried can have nothing to do with it.

Chancery cases entered for trial in county other than where carried on. Fee.

Chapter 16-47 Vic.—Under this Act, if the amount of the mortgage is within the C.C. and the remedy sought to be enforced can be pursued therein, the order for leave to proceed is to be made by the Judge of C. C. and the fees are the Clerk's, but if amount and remedy comes within the H. C. J. and is beyond the C. C., then the order is made by the Local Judge of H. C. and fees must be paid in stamps.

Mortgage, leave to proceed, 47 Vic., Cap 16; who order made by; Fees.

In order that a Sheriff can recover his fees for service and mileage of a Writ of Summons, he must make a return on it pursuant to R. S. O., Cap. 50, Sec. 335, page 681.

Sheriff's fees for service, mileage, necessity of Return.

Briefs are never allowed on Chamber applications.

Chambers, Briefs.

Where a Chancery case is entered at the Assizes and a jury is demanded, the jury fee must be paid as in other cases.

Chancery cases, Jury fees.

In case of a Solicitor dying and his estate being administered' any Solicitor and Client bill taxed at instance of Administrator is subject to the 1/6th Rule, the same as if bill was being taxed by the Solicitor himself. This would also apply to case where the Solicitor's estate was sold by Administrator and the bill was delivered by the purchaser and taxed.

Bill Sol'r. and Client in hands of Administrator or purchaser, 1/6th Rule.

The following is in answer to some questions put by Mr. Thomson in 1885:—

Tariffitem 16—"Out of jurisdiction" means out of the Province. Certificates of *lis pendens* or other certificates with seal of Court must have 1/ stamp, /50 being for seal.

Tariff item 16. Certificates, seal.

Præcipes should be filed for Præcipe orders and certificates.

Præcipes.

If a Solicitor desires to enter a number of cases for trial and he is in his turn of precedence, his cases should be entered if he so desires.

Assizes, entering cases.

An attendance for an order /50 should be allowed in addition to fee on.

Attending for order.

In an action for recovery of land a notice to quit given before action cannot be allowed as part of the costs.

Notice to quit.

The Sheriff is of course entitled to fees and mileage on all orders and papers he serves.

Sheriff, service of orders, etc.

Where an exemplification of a C. C. judgment, being a transcript of a Division Court judgment, is wanted, of course the transcript, which by Statute becomes a C. C. judgment, must be exemplified.

Exemp'n. of C. C. judgt., being a transcript from D. C.

Letter by Solicitor with papers for service.

Interpreter, witness fees.

Notice of tax'n., necessity of.

Papers before Judicature Act.

Ins. to Examine.

Statutory holiday, etc.

Chattel mortgage searches. Counterclaim Instructions.

Item 109 C. C. Tariff.

Fiat on order.

Item 11 C. C. Tariff.

Service of writ other than by Sheriff, at Sheriff's request, Fees.

Interlocutory judgments, allowances on.

Certificates, stamps on.

Retainer. Chamber papers, sending away.

Production orders, for whosigned by.

A letter should be allowed Solicitor forwarding papers to be served, though not sent to Sheriff and though Sheriff privileged to serve them. This being allowed, no attendance to forward should be allowed; he can have either but not both.

An Interpreter is entitled to witness fees the same as any other witness and his fees should be taxed as costs.

Where notice of taxation should be given, the taxation may be proceeded with without notice being given at Solicitor's risk unless other side has a right to bring in a bill of his own costs, then notice is indispensable.

You can keep papers filed with you in cases before the Judicature Act except judgments.

Instructions for application to examine opposite party is allowed.

I do not think it would be proper to issue execution on a Statutory holiday.

Chattel mortgage searches are regulated by Statute and the last paragraph on 16/83 does not apply to them.

Plaintiff is entitled to instructions in answer to a counterclaim.

Item 109 C. C. Tariff has nothing to do with fee on trial—it is the old Term fee.

Where a Summons is argued and an order made, and a fiat for a fee given, of course the fiat only applies to the order.

Item 11 C. C. Tariff gives /75 for copy of Subpœna.

A Sheriff cannot make a Solicitor in a cause his Bailiff, the Solicitor must choose which occupation he will follow; neither can the Solicitor appoint a Bailiff for the Sheriff, but if a Writ of Summons was offered the Sheriff for service and the Sheriff said he could not serve it, but requested the Solicitor to serve it and the Solicitor did so to save time and in the interests of his Clients; on this being shown I would allow the Solicitor for the service by himself or his agent, though it would not be strictly legal, but it would be right and just, the Statute providing for the service by the Sheriff, only doing so to protect the Sheriff in his fees and, under the circumstances, the spirit, if not the letter of the Act, is complied with; but I would not allow Sheriff's fees.

On entering interlocutory judgment they allow the Solicitor one dollar for judgment and one dollar fee on. I think it wrong, but it had better be followed until it is set right.

The following is in answer to questions put by Mr. Guin in 1885:—

The stamps required on a certificate, whether for registration or not, depends whether the party desires a seal of the Court on it or not; if seal not required, /50, if seal required, 1/; of course this does not include the folios of the matter certified—which require the usual stamp of /10 a folio.

As to Retainer see minutes /84-7.

Chamber papers should not be sent to another county without an order.

Orders for Production under Rule 222 must be signed by Clerk issuing them, not by Clerk of Process.

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A jury notice should be taxed in a Breach of Promise case, as otherwise it might be tried by a Judge; it is not one of the actions reserved exclusively for a jury trial by R.S.O., Cap. 50, Sec. 252. Breach of Promise Jury Notice.

The following is in answer to questions put by Mr. Northrup in 1885:—

There are no fees for transmitting papers except search and filings, and postage. Transmitting papers, fees.

There are no fees at Common Law for marking Exhibits filed on Examinations—this of course does not refer to filings, which are charged as heretofore. Exhibits on Exam'n C.L., fee on marking

The stamp on Interlocutory judgment is 1/10.

Int'y. judg't., stamp on.

Instructions fee under Rule 80 is 1/.

Rule 80, Ins. under.

Item 133 of Tariff only apply to such matters as are drawn under direction of Registrar. It does not apply to simple matters that can be settled by Registrar and does not require the attendance of the parties. Item 133, what it applies to.

Creditors' Relief Act in Division Court case charges should be according to Division Court scale. Creditors' Relief Act.

No fees or stamps are chargeable by Clerk for settling judgment. Settling judg't., fees on.

Rule 583 shows what Chamber orders are to be entered; until a special book is provided for the purpose they had better be entered in the judgment book; of course fees are payable in stamps. Chamber orders, what to be entered.

Assignments for benefit of creditors should be entered in chattel mortgage book. 48 Vic., c. 26, s. 12, ss. 2. Assignments for benefit of Creditors, where to be entered.

The question is asked: "Are costs taxable now under an appointment and a subpoena?" Of course costs are taxable under an appointment or notice, as the case may be. I do not understand what a subpoena has to do with it. Appointment, taxation on.

Attending Counsel with and for pleadings to revise is allowed. Attendances on Revision.

Where an affidavit on production is filed an attendance to examine, it should be allowed, though notice of filing given. Affidavit on Production, Attg. to exam.

An order to tax a Solicitor and Client's bill can issue during vacation. Order to tax Solr. and Cl't., vacation.

Item 122 C. C. tariff refers to item 27. I think, by mistake, it should, I think, be item 30. I would allow /50. Item 122 C. C. Tariff.

As to application for an Interpleader to Local Master, under 48 Vic. cap. 13, s. 21, it is the same as any other Chamber application, which I have previously referred to. Interpleader, Local Master.

Rule 596 applies to such cases as in their nature cannot have interlocutory judgment signed, and no final judgment can be signed without a judgment of the Court on the facts. It applies, I should think, to actions of an equitable nature, such as foreclosures, declaration of rights for sale, etc., etc. Rule 596, to what applicable

C. C. of proceedings to mark receipt of.

The Clerks are again particularly requested to mark on the certified copy of proceedings for trial the date of its entry with or delivery to them. The omission by a large number of Clerks to comply with this simple request occasions very considerable inconvenience.

Who to return papers to.

If papers are sent from Toronto and received by a Clerk, he will please note from whom he receives them and from what office they come, and when returning them to be careful and return them to the same office and officer from whom he receives them; by being particular in this respect, considerable trouble and confusion will be avoided.

Fees, case at Chancery sittings.

A Deputy Clerk is entitled to no fees on entering a Common Law case at a Chancery sittings.

Lis Pendens, Discharge Certificate.

A Clerk cannot be asked to certify that a *lis pendens* is discharged; he can only be asked to certify to the fact of a judgment having been given by the Court, and if the effect of that judgment is to discharge the *lis pendens*, it does so, but the Clerk does not certify so.

Meetings, mode of conducting.

Our last two meetings have been conducted on entirely different principles from those governing the previous ones. I came to the conclusion that my addresses occupied too much of your time and left too little opportunity for you to put questions on matters which may have arisen in your own experience, and to discuss them, I, therefore, thought it best to reserve my address until after the meeting and to send it to you in print instead of delivering it orally. I think I may congratulate you on the result. It was particularly noticeable at the last meeting that the Clerks took hold of matters for themselves and evinced a lively interest in the proceedings—this is shown by the number and nature of the questions asked. This course I would consider best for the future and would suggest, its being followed, at any rate for a year or two, so that it can be seen how it works.

Offices generally.

I am glad to find a very general improvement in the manner of conducting your offices, though in some cases, I am sorry to say, there is great room for further improvement, and I hope in such cases strict attention will be paid to the instructions given and that they will be carried out in full.

Surrogate fees

In Surrogate matters I have found that the tables of fees furnished you in minutes, 12/84 have not been adhered to as strictly as they should have been; indeed, in a number of instances, fees very considerably in excess of those laid down have been charged. I hope to find no such instance in the future, because, in case I do, I will be left no option but to specially report on it, and it would probably be considered as a malfeasance of office. This, I need not tell you, I would be very sorry to have occur.

Quarterly returns.

It is particularly requested that the Clerks would make the quarterly returns of judgments immediately after the end of each quarter; some Clerks most unnecessarily delay making these returns, some not making them until the third month after they are due. Of course a prompt return is required by

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law, but, in addition, the not making the returns promptly disarranges the work at the head office. I hope it will not be again necessary to refer to this subject.

It is also particularly requested that the Clerks would be Criminal prompt in making returns of criminal proceedings immediately returns. after each assize; some Clerks are rather remiss in making these returns as promptly as is desirable.

The following rule has been made by the High Court of Justice, and I have no doubt it will be an accommodation to the profession to have it printed in our present minutes.

17th November, 1886.

WHEREAS, by the Act passed in the 49th year of Her Majesty's reign, chaptered 49, and intituled "An Act to make further provision respecting summary proceedings before Justices and other Magistrates."

It is enacted as follows:—

SEC. 8.—The second section of the Imperial Act, passed in the fifth year of the reign of His Majesty's King George II., and chaptered nineteen, shall no longer apply to any conviction, order, or other proceeding by or before a Justice of the Peace in Canada, but the sixth section of this Act shall be substituted therefor, and the like proceedings may be had for enforcing the condition of a recognizance taken under this Act, as might be had for enforcing the condition of a recognizance taken under the said Imperial Act."

It is therefore ordered, under the authority of the said section, and in pursuance of the terms of the sixth section of the said Act, that no motion shall be entertained by this Court, or by any division of the same, or by any Judge of a division sitting for the Court, or in Chambers, to quash a conviction, order, or other proceeding which has been made by or before a Justice of the Peace [as defined by the said Act] and brought before the Court by *certiorari*, unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of \$100 before a Justice or Justices of the County, or place, within which such conviction or order has been made, or before a Judge of the County Court of the said County, or before a Judge of the Superior Court, and which recognizance with an affidavit of the due execution thereof, shall be filed with the Registrar of the Court in which such motion is made or is pending, or unless the defendant is shown to have made a deposit of the like sum of \$100 with the Registrar of the Court in which such motion is made, with or upon the condition that he will prosecute such *certiorari* at his own costs and charges and without any wilful or affected delay, and that he will pay the person in whose favour the conviction, order, or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the Court in case such conviction, order, or proceeding is affirmed.

M. B. JACKSON,
President C.C.C.A.

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