
FORTY-SEVENTH LEGISLATURE.

HOUSE.

No. 8.

STATE OF MAINE.

EXECUTIVE DEPARTMENT, }
Augusta, January 11, 1868. }

To the Senate and House of Representatives :

I have the honor to transmit herewith a communication from the Chief Justice of the Supreme Judicial Court in relation to fees of litigation, with schedule accompanying, prepared in compliance with the act of February 21st, 1867, and now submitted for such action as you may deem expedient.

J. L. CHAMBERLAIN.

BANGOR, January 6, 1868.

SIR:—By the act of February 21, 1867, chapter 89, it is made “the duty of the Justices of the Supreme Judicial Courts of this State, to prepare a schedule or tariff of legal taxable cost, *as provided by statute*, which can lawfully be included in an execution issued by the clerks of said Courts and can be defined, naming *each item* in the chapters and several sections, on fees, &c.

By the general law of the State, the prevailing party is entitled to costs. There was no act limiting the taxation of costs specially to the items as “provided by statute,” and prohibiting the taxation of all else. The Court sends a case of mutual accounts to an auditor or refers some matter in a bill in equity to a master; in real actions a survey may be required; on petitions for partition commissioners may be appointed; and in cases of every description, parties may submit their rights to arbitration. In these and similar instances the reasonable charges of those thus acting in

the service and under the order of the Court have been included in the bill of costs of the prevailing party for a period long anterior to the organization of the State.

By section 3, the clerk is required, "if requested by the judgment debtor or his attorney," upon the payment of fifteen cents, to "copy the several items of cost taxed in the execution on a separate slip of paper, to be passed into the hands of the officer, creditor or attorney, as the case may be, with the execution when issued; which bill of costs shall be presented to the debtor with the execution or kept with the execution to be furnished the debtor when called for."

By section 4, "if any clerk shall tax *other* or higher fee on any item of cost than that prescribed by the Court in the said schedule furnished, *or not authorized by statute*, he shall forfeit the sum of fifty dollars for each and every such offence," &c.

The act seems to proceed upon the assumption that for all items taxed in a bill of costs, fees have been established and are "authorized by statute." But such is not the case. There are very many services important and necessary in the administration of justice, and for which those rendering them are justly entitled to compensation, when no fees are established by statute, and where none can well be established in advance. When a surveyor is required, the costs and charges of the survey will depend upon the skill and accuracy of the survey, the time required for its completion, and the ability of the surveyor; for it is apparent that more accuracy will be required when the contest relates to a few feet in a populous city, than when it concerns the boundaries of a township in the remote forests. The surveyor is entitled to his usual rate of compensation, as charged for similar services, at the time and place where they are rendered. So, in cases of reference, the referees are the judges selected by the parties. The causes submitted will vary in magnitude and complexity, requiring different degrees of time, attention and ability for their full investigation and just decision. In these and similar cases, when no fees are established, or "authorized by statute," the court claim and exercise the right of supervising charges, if objected to and found unreasonable, and of making suitable deductions.

When parties are absent from the State, as in libels for divorce, or petitions for partition, or in suits at common law, the statute provides in certain cases for notice to absent defendants, by publication in a newspaper, and the costs of such service by publication

are allowed, if not unreasonable, in the plaintiff's bill of cost, if he be the prevailing party.

There is no definite fee prescribed by statute for a libel or petition for partition, or complaint for flowage; but by analogy with similar services, the amount in the accompanying schedule has been taxed.

So no specific fees are provided for an officer for keeping the property attached. As his just compensation will depend on the amount and kind of the property attached, and the time during which it is held under attachment, it will be apparent that no definite fee can be established for such services.

I mention these instances by way of illustration, as cases where no fees are established by statute for services necessary, important, and deserving compensation, and which should equitably be included in the costs taxed against the losing party, through whose fault, it is assumed, these costs have been incurred. If not allowed, the prevailing party would incur expenses for which he would remain without remuneration, if he were limited to items "authorized by statute."

The pressure of other official duties prevented the preparation of the schedule before the statute went into effect. It was not supposed to be the intention of the Legislature to make so radical a change as the peculiar phraseology of the statute might seem to indicate. As the Legislature was soon to be in session, it was deemed advisable, upon consultation, to delay the matter until that time, and then through you to transmit a schedule of the fees as usually taxed, including as well those established by statute as those allowed for similar services with those so established. The schedule has been prepared with great care by a very accurate clerk, and contains substantially a list of the items included in the bill of costs of the prevailing party. It may not be amiss to remark that the items are moderate in amount, as compared with those for similar services in most of the States.

I have the honor to be, with great consideration,

Your obedient servant,

JOHN APPLETON.

Hon. J. L. Chamberlain, Governor of Maine.

SCHEDULE OF FEES.

Items of cost taxable for the plaintiff so far as the same are applicable.

Writ of attachment, (including power of attorney, declaration, attorney's fee and blank,) \$3.54

Libel, petition or complaint, \$3.50.

Writ of replevin and bond, \$4.53.

Service as taxed by the officer, subject to correction.

Entry, 60 cents in the county courts, \$1 in the law courts.

Travel, 33 cents for every 10 miles to the court, and the same returning, (observing the rule prescribed in R. S., chap. 116, §14.)

Attendance, 33 cents for each day as noted upon the docket, not exceeding 10 days, (but actions under reference, under advisement in the law court, where a party has deceased and his administrator has not come in, and where the defendant is out of the State and the case is awaiting service or notice, only one day's attendance shall be taxed.)

Continuance at each term for the plaintiff or appellant, 5 cents.

Subpœnas, 10 cents each.

Jury fee, \$7.

Witness fees as per certificates and depositions as taxed by the magistrate, (subject to correction on hearing.)

Surveyors and auditors' fees as charged by them, (subject to correction.)

Costs of reference as reported by the referee.

Advertising notices, the amount charged by the publisher, (subject to objection and correction.)

Commission to an auditor or surveyor, 50 cents.

Writ of seizen of dower, \$1, and the fees of the officer and commissioners as taxed thereon, (subject to correction on objection.)

Warrant to make partition, \$1, and the fees of the commissioners as taxed thereon, (subject to correction if objected to.)

Copy of judgment in actions of debt on judgment, and in scire facias against a trustee, 50 cents.

Copy of writ, libel or other process, with order of notice thereon, and copy of libel with summons annexed, \$1 each.

Order of notice annexed to an original libel or other process, returnable in another county, 50 cents.

Copy of order of notice, with abstract of the writ or other process, 50 cents.

When the register of probate, or register of deeds, by request, brings his books or papers into court, to be used on the trial of a cause instead of copies, the usual witness fee may be taxed for him.

Official copies, 12 cents per page of 224 words.

Rule of reference, 20 cents.

Acceptance, 30 cents.

Clerk for making up judgment, (casting damages and taxing costs,) 25 cents, and for a hearing in damages or costs such reasonable compensation as a justice of the court may allow.

Filing depositions, or other papers, 5 cents each.

When a trustee is entitled to costs, they may be taxed as for any other party.

In actions transferred to the law court, the plaintiff, if he prevail, may tax one attorney's fee in addition to that embraced in his writ. If the defendant prevail, he may tax one attorney's fee for the issue in fact, and one for the issue in law.

The defendant, when he recovers cost, may tax the same fees and charges as mentioned in the plaintiff's schedule above, so far as they are appropriate, and for specifications of defence \$2, and 25 cents for the clerk for filing the same, bringing forward and renumbering at each term.

In cases brought up by appeal, the prevailing party will be allowed the legal costs below, as certified by the magistrate, subject to revision, if objected to.

Process to enforce a lien on personal property, \$1.

Writ of execution, 15 cents.

Execution for possession, 25 cents.

Writ of restitution, 40 cents.

Printed copies of reports, exceptions, &c., furnished by the clerks to the law judges, may be taxed in the bill of cost, at the rates paid to the printers, with reasonable compensation to the clerks for preparing the manuscripts, correcting proof, &c.

FEES IN EQUITY CASES.

Attorneys.

Drawing and filing bill, \$5.

Drawing and filing answer, \$5.

Drawing interrogatories, each set, \$1 ; but all in one case not to exceed \$5.

Making abstract, when hearing is on bill, and answer, \$2.50.

Making abstract, when on bill, answer and proof, \$5.

Drawing and filing decree, when not requiring material alteration, \$1.

Drawing and filing each rule, 25 cents.

Each notice given, not to be taxed also as copy, 25 cents.

Copies of abstracts and other copies at the rate of 10 cents for each page of 224 words.

The postage paid on notices and papers transmitted ; no one postage to exceed 25 cents.

All papers transmitted to a member of the court, to be free from charge to him.

For an amendment of the bill or answer, when such amendment is occasioned by an amendment made by the opposing party, half the fee for drawing a bill or answer.

Clerk.

For filing each paper requiring to be filed on the back, and noting the same on the docket, and carrying it forward each term, 5 cents.

Commissioner or Magistrate.

For each jurat to bill, answer, or other paper requiring a like certificate, 20 cents.

For each deposition not exceeding one page of 224 words, \$1, and for each additional page, 25 cents ; but no deposition to exceed \$5.

Fees of Deputy Sheriff and Constables.

ACT OF 1867, CHAP. 114.

To the service of an original summons or scire facias, either by reading or by copy, or for the service of a capias or attachment with summons on one defendant, 50 cents.

If served on more than one defendant, for each, 50 cents.

For attachment of property by the written direction of the plaintiff, his agent or attorney, 25 cents additional to the fees for service aforesaid.

COMMUNICATION.

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For travel for the service of any civil warrant or other process, four cents a mile from the place of service to and from the place of return by the usual way ; but if the distance for which travel is charged as aforesaid is more than fifty miles, only one cent a mile shall be allowed or charged for all travel exceeding that distance.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
January 14, 1868. }

On motion of Mr. PLAISTED of Bangor, laid on the table, and
ordered to be printed.

S. J. CHADBOURNE, *Clerk.*