

April, 1933

THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

REPORT OF COMMITTEE ON LEGAL COSTS

TO THE MARITIME LAW ASSOCIATION:

Your Committee was appointed at the May, 1932, meeting of this Association to consider and report as to the possibility of reform in the matter of legal costs in admiralty. Three propositions were referred to the Committee by the Association as follows:

1. The bill drafted by Mr. Hickox on behalf of the American Bar Association and accepted and approved at the 1931 meeting of said Association to amend U. S. Code, Title 28, Section 572, by adding thereto the following:

“On appeal in admiralty proctor’s docket fee of \$100.00 and the reasonable cost of the brief of the successful party.”

2. The amendment of U. S. Code, Title 28, Section 574, to eliminate the provision allowing poundage to the Marshal where no funds pass through his hands, which matter it was stated Mr. Huger of Charlestown proposed to bring to the attention of the American Bar Association Committee in 1932.

3. The amendment of U. S. Code, Title 28, Section 754, to change the present statutory rule providing for stipulations for value in double the amount claimed in the libel.

On December 19, 1932, the President of the Association referred to the Committee a letter from Oscar Houston, Esq., dated September 19, 1932, in reference to costs in admiralty in the District Court, and requested the Committee to include in its study the following question:

4. Should costs in admiralty in the District Court be increased (as proposed by Mr. Houston) with the object of relieving the Federal Courts of the burden of much of the small admiralty litigation which now occupies the time of said courts?

As the three members of the Committee are located, one in New Orleans, another in Baltimore and the third in New York, a meeting has proved impossible, and discussion of the points in question has necessarily been confined to correspondence. Most of the points of difference between members of the Committee have been eliminated by correspondence so that the Committee is able to unanimously make the following report and recommendations with the single exception that Mr. Whip does not agree with Mr. Young and Mr. Sprague in recommending the increase of the docket fee on appeals in admiralty, and files a dissent on this point which appears at the end of this report:

Docket Fee and Brief on Appeal

1. The majority of the Committee believe that U. S. Code, Title 28, Section 572, should be amended by increasing the admiralty proctor's docket fee on appeals in admiralty in cases involving substantial amounts and by allowing the reasonable cost of the brief of the successful party within certain limits dependent upon the amounts involved. The Committee feels, however, that a proctor's docket fee of \$100.00 is too large an amount to be taxed as costs in all admiralty appeals and that some limit should be placed upon the amount for which briefs should be taxed as costs. There are some admiralty cases where only small amounts are at issue that are of real merit and involve important questions of law deserving the attention of the Circuit Court of Appeals. To tax as costs a proctor's docket fee of \$100.00 in such cases would be likely to prevent appeal which in our opinion would be contrary to the best interests of the profession. The same is true of allowing briefs to be taxed as costs without limit as to amount. The majority of the Committee therefore favors a graduated proctor's docket fee and allowance of the reasonable cost of briefs of the successful party on a sliding scale, depending upon the amount involved on the appeal, and recommends as follows:

Recommendation

That U. S. Code, Title 28, Section 572, should be amended by adding thereto the following:

“On appeals in admiralty, where the amount involved is not over \$1,000.00 a proctor’s docket fee of \$20.00; where the amount involved is from \$1,000.00 to \$5,000.00 a proctor’s docket fee of \$50.00; where the amount involved is over \$5,000.00 a proctor’s docket fee of \$100.00. On such appeals cost of brief of successful party to be taxed, where amount involved is not over \$1,000.00 at not exceeding \$25.00; where amount involved is between \$1,000.00 and \$5,000.00 at not exceeding \$50.00; where amount involved is over \$5,000.00 at not exceeding \$75.00.”

These limits are necessarily arbitrary and in themselves have no merit except that the Committee feels some difference should be made between the small cases and the large ones, and the limits chosen seem as fair as any.

Marshal’s Poundage—Recommendation

2. That U. S. Code, Title 28, Section 574, be amended by striking out the following paragraph relating to Marshal’s poundage:

“When the debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission of 1 per centum on the first \$500 of the claim or decree, and one-half of 1 per centum on the excess of any sum thereof over \$500; Provided, That, when the value of the property is less than the claim, such commission shall be allowed only on the appraised value thereof.”

This will still leave the Marshal his poundage where the maritime property is sold under process and the funds pass through his hands.

Stipulation for Double Value—Recommendation

3. That U. S. Code Title 28, Section 754, requiring a stipulation for value to be in double the amount claimed in the libel be amended so as to enable the parties to stipulate the amount of the release bond at not more than the amount claimed in the libel, with interest plus an allowance for libellant’s costs, or in the event of their inability or refusal to so stipulate the amount to be fixed by the Court, and if not so fixed then a bond in double the amount so claimed to be required. The reason for the allowance in said bond

of a sum for libellant's costs is due to the fact that in some of the District Courts no separate stipulation for costs is required upon filing claim or appearance, provided the respondent or claimant makes a small deposit with the Clerk of the Court.

Taxable Fees—No Recommendation

4. The Committee is not in favor of increasing the amount of taxable fees in admiralty in the District Court at present in view of the economic situation and of the fact that admiralty litigation is diminishing instead of increasing. Any present congestion is believed to be due to an accumulation of old causes that would not be affected by any change of rules. As soon as these old causes have been tried we believe there will be no great congestion.

In the Committee's view the situation in admiralty is different from that in some of the state courts, where a large volume of tort cases, brought, many of them, merely as strike cases for the purpose of making a settlement, has been reduced by an increase of filing fees to be allowed to the Clerk.

It is the belief of the Committee that in the main litigation in admiralty is not subject to the criticism that has been made of negligence cases in the State Courts where an increase in fees was found helpful. It is also the belief of the Committee that to increase the fees in the District Court in admiralty would lead to the elimination of many small meritorious cases and would serve to drive others into the state or municipal courts where the judges are unfamiliar with admiralty law.

The Committee feels that in so far as possible the admiralty bar should attempt to keep maritime causes in the admiralty court before judges who are familiar with the admiralty law, and that no action should be taken which would tend to drive such cases elsewhere.

W. W. YOUNG

GEORGE W. P. WHIP

*Subject to dissent below
on docket fees on appeals.*

GEORGE C. SPRAGUE

Chairman

April 15, 1933.

[1941]

*DISSENT AS TO PROCTORS' DOCKET FEES ON
APPEALS IN ADMIRALTY*

TO THE MARITIME LAW ASSOCIATION:

While otherwise agreeing in the above report I find myself unable to agree with Mr. Sprague and Mr. Young, the other two members of the Committee on Legal Costs, in respect to increasing the docket fee on appeals in admiralty. My reasons for being opposed to an increase of the docket fee are substantially as follows:

FIRST: Maritime affairs should be litigated in the Admiralty Courts and nothing should be done to drive such affairs into Common Law Courts.

SECOND: I can find no good reason to ask an unsuccessful litigant to pay a fee to the lawyer who represents the successful litigant. A lawyer should obtain his fee from his client and one should be allowed to litigate his rights without being penalized to the extent of being compelled to pay both his lawyer and the successful party's lawyer as well.

GEORGE W. P. WHIP.