

APPROACH TO BILLS OF COST AND TAX ATION  
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PAYMENT INTO COURT

1. JUDICATURE (CIVIL PROCEDURE CODE) ACT

Payment into Court Paragraph 220 sub section 3

If the Plaintiff accepts money paid into Court in satisfaction of a claim or if a sum is accepted or sums paid in respect of one or more of specified causes of action and the Plaintiff gives notice that the other cause or causes of action is abandon, the Plaintiff may after four (4) days from the payment out and unless the Court or a Judge otherwise order tax the costs incurred to the time of payments into Court and forty-eight hours after location may sign judgement for the taxed cost

Paragraph 132, The Court or Judge may decide all question of costs as between a Third Party and the other Parties to the action and may order anyone or more to pay the costs of any other or others, or give such directions as to costs as the justice of the case may require.

NOTICE OF TAX ATION  
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Paragraph 673, One days notice of Taxing costs together with a copy of the Bill of costs shall be given by the Attorney at Law of the party whose costs are to be taxed to the other party or his Attorney at Law in all cases where a Notice to Tax is necessary.

RECKONING TIME  
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Paragraph 675. In any case in which any particular number of days bot expressed to be clear days is prescribed the same shall be reckoned exclusively of the first day and inclusively of the last day. "Clear Days"

shall be reckoned exclusive both of the first and last days.

Service shall be effected before the hour of 4.00 p.m. otherwise deemed to have been effective on the following day. The Court may require a Plaintiff who may be out of the island either at the commencement or at anytime during the progress of the suit to give security for costs and may stay the proceedings until such security is given.

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#### LEGAL PROFESSION ACT

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Paragraph (23). Taxing Officer means the Registrar of the Supreme Court or such other person as may be prescribed by the rule of Court.

#### NOTICE OF ATTENDANCE

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Paragraph 25. Upon any reference if either Attorney at Law or the party to be charged having due notice refuses or neglects to attend the taxation the Taxing Office may proceed to tax or settle the Bill ex-parte.

Paragraph 26. If the Bill of Costs when taxed is less by a sixth part or more than the Bill served, the Attorney at Law shall pay the costs otherwise the party charged shall pay the costs. This does not include fees paid to Council

#### RECOVERY OF FEES

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Paragraph 21. An Attorney at Law may in writing agree with a client as to the amount and the manner of payment of fees for the whole or part of any legal business done or to be done by the Attorney, either by a gross sum or percentage or otherwise, so, however that the Attorney making the Agreement shall not in relation to the same matter make further charges than those provided in the Agreement. (Provided that if any suit commenced for the

recovery of such fees the agreement appears to the Court to be unfair or unreasonable the Court may reduce the amount agreed to be payable under the agreement.

Paragraph 22. An Attorney at Law shall not be entitled to commence any suit for the recovery of any fees for any legal business done by him until after the expiration of one month after he has served on the party charged a bill of those fees. The Bill either being signed by the Attorney or a Partners. In case where the client may become bankrupt compound with his creditor or about to leave the island, the Court may notwithstanding one month has not expired from delivery of the bill Order that the Attorney at Law be at liberty to commence an action. Any party chargeable with an Attorney bill of fees may refer at to a taxing master within one month after receiving same.

COURT OF APPEAL RULE 1962

The Taxing officer when taxing the fee for professional legal services shall adhere to the scales and procedures from time to time in force in the Supreme Court in relation to the Taxation of costs.

Where the Costs of Appeal are allowed they may either be fixed by the Court by consent of the parties at the time when the Judgement is given or may be ordered to be taxed.

NOTICE OF TAX ATION

Three days Notice of taxing costs together with a copy of the bill shall be given by the Attorney at Law of the party whose costs are to be taxed to the other party. If upon taxation of costs more than one sixth is deducted from any Bill of Cost taxed as between party and party no costs incurred in the taxation shall be allowed as part of

such bill nor shall such costs of taxation be charged or chargeable as between Attorney and client.

If upon taxation of costs, more than one sixth is deducted from any bill of costs taxed as between Attorney at Law and client no costs incurred in the taxation shall be allowed as part of such bill. It shall be lawful for the Taxing Officer to assess costs of being represented by an Attorney which have been incurred by the client or other party or parties on whom notices of taxation has been served and to sign an allocatur for the amount to be assessed. It shall be lawful for the client, or other party or parties as aforesaid to sue out execution for the amount so assessed without further or other proceedings.

#### COMPUTATION

In the computation of one-sixth of all bills of costs for the purpose of this paragraph fees paid to Counsel shall be excluded.

#### REVIEW

A party who may be dissatisfied with the Certificate or allocatur of the Taxing Officer as to any item or part of any item which may have been objected to may within fourteen days from the date of the Certificate or allocatur or such other times as the Court or Judge may allow apply to the Court for an order to review the taxation.

GENERAL RULES AND ORDERS OF THE SUPREME COURT OF  
JUDICATURE OF JAMAICA ARRANGED BY TREVOR LYONS REGISTRAR OF  
THE SUPREME COURT 138. (PART 7 GENERAL PROVISIONS)

#### COSTS

Paragraph 24. In all cases of costs whether between party and party or between Attorney at Law and client it shall be competent for the party having to pay such costs offer any Notice a sum in gross in lieu of such



costs: and if the party entitled to such costs shall agree to accept such sum the Registrar of the Supreme Court shall certify the sum specified in such notice as the sum at which the Registrar has ascertained such costs, but if such last mentioned party shall refuse to agree to such notice and shall thereby render it necessary to have such taxed and the same shall be taxed to a sum less than the sum offered by such notice, the party so refusing shall be charged with the expenses of such taxation.

Paragraph 25. In any case where the Court or Judge shall think fit to award costs to any party, the Court or Judge may by the Order direct Taxation of the costs of such party and payment of a proportion thereof, or direct payment of a sum in lieu of taxed costs and direct by and to whom such proportion or sum shall be paid. The Court or Judge may at the hearing of any cause or matter in Court or in Chambers and whether the same is objected to or not direct the costs of any pleading Affidavit, evidence, Notice of Cross Examine, witnesses account, statement or other proceedings or any part thereof which is improper, unnecessary or contain unnecessary matter, or is of unnecessary length, to be disallowed or may direct the Taxing Officer to look into the same and to disallow the costs thereof or of such part thereof as the Taxing master shall find to be improper, unnecessary, or to contain unnecessary matter or to be of unnecessary length, and in such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceedings, matter, or length, and in any case where such question shall not have been raised before and dealt with by the Court or Judge, the Taxing Officer may look into the same (and as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid and thereupon the same consequences shall ensue as if the Taxing Officer had been directed specially so to do.

Paragraph 27. No costs of Counsel attending at Chambers shall in any case be allowed unless the Judge certifies it to be a proper case for Counsel to attend.

Paragraph 28. In every case when any Judgment or order of the Court or a Judge is silent as to costs each party shall pay his own costs

Paragraph 29. If upon taxation of costs more than one sixth is deducted from the Bill of costs taxed as between Attorney at Law and client no costs incurred in the taxation shall be allowed as part of such Bill (Rule 29 was Amended by Gazette May 6th May 1949). In the computation of the deduction on all bills of costs for the purpose of this rule fees paid to Counsel shall be excluded.

Paragraph 33. One day's notice of taxing costs together with a copy of the bill of costs shall be given by the Attorney at Law of the party whose costs are to be taxed to the other party or his or her Attorney at Law in all cases where a Notice to Tax is necessary.

Usually no notice or bill is necessary to be served where there was no appearance and a Default Judgment was ordered unless it is necessary or specifically directed or ordered.

Paragraph 35. English Rules apply where there is no previous provision to the contrary.

Paragraph 36. The Court or Judge at the hearing of any cause or matter or upon any application or procedure in any cause or matter disallow or may direct the Taxing Office to look into same regarding any proceeding, pleading or document or any part thereof considered to be improper or unnecessary.

PRACTICE AND PROCEDURE HIGH COURT (ENGLISH)

Page 132. Chambers, If attendance is by Counsel the Master should be asked on each attendance to

Costs law and practice is changing continually it is therefore an advantage to the costs draftsman if he or she can attend on taxation, for by so doing they will acquaint themselves not only with the practice but also with the unreported reviews of Taxation so that every time they prepare a Bill of Costs, they will have in mind the possibility of it being subject to Taxation.

#### RETAINER OF ATTORNEY AT LAW

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The retainer of an Attorney at Law is in effect a contract between the Attorney at Law and his client. It may be written, verbal or even in some circumstances be construed by implication. Usually the retainer will stipulate the work to be done and sometimes the remuneration to be charged. In instances where the retainer is silent as to costs (and this is usually the case) this it is implied that the usual proper scales of costs are to apply wherever necessary.

Where an Attorney at Law has agreed not to charge his client costs then costs cannot be recovered from another party, as costs awarded against a party in proceedings are in the nature of an indemnity against costs payable by the client to his Attorney at Law. Consequently the "ceiling" of the costs which are recoverable from another party is limited by the client's liability to his Attorney at Law in the first instance.

#### ENTITLEMENT TO COSTS

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Speaking generally any person who is of full age and in control of his own affairs may employ an Attorney at Law to act for him in legal matters or proceedings, and may at any time during the proceeding act in person should he or she so wish or desire. There are instances in which an Attorney at Law may not be employed. Only an Attorney at Law who is on the Roll of Attorneys at Law and holding a current practising Certificate may charge and receive



profit costs in accordance with the scales of costs appropriate to the particular Court concerned (See Legal Profession Act Paragraph 5 (If the name of an Attorney at Law is removed from the roll any practising certificate issued to him shall cease to be in force (paragraph) no Attorney at Law shall, in connections with his practice as a Lawyer, without the written permission of the council, employ or remunerate any person who to his knowledge is disqualified from practising as a Lawyer by reason of the fact that his name has been struck off the roll) (paragraph 20)).

#### CONTENTIOUS AND NON-CONTENTIOUS BUSINESS

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Contentious business is defined as being business done in or for the purposes of proceedings begun before a Court or before an Arbitrator and not being non-contentious or common form probate work where there is no contention as to the right thereto. To list whether a matter is contentious or not is, therefore, where proceedings have begun.

Thus, if a Writ is issued, Petition presented or filed, Originating Summons issued Notice of Appeal given, or Plaint Issued then work relative to that proceeding is deemed to be "contentious".

#### SCALES OF CONTENTIOUS COSTS

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Individual Courts have their own scales of costs whether in the Resident Magistrates court or in the Supreme Court or Court of Appeal.

In all cases the scales of contentious costs consist of a list of the charges which the Attorney at Law is entitled to make for a particular step in the proceedings. In some cases a fixed amount is allowed for the particular step in others a charge between a fixed minimum and or fixed maximum is allowed, while in a few cases the charge is discretionary.



ACTING IN PERSON  
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Ordinarily a party acting in person who is awarded costs in Court proceedings can only recover from the other side his out of pocket expenses. A practising Attorney at Law who acts for himself in Court proceedings is however, in a different position, and is entitled to recover the same costs as if he were not a party to the proceedings, except that he cannot charge for items relating to attendances on and obtaining instructions from himself.

If it is necessary for an Attorney at Law acting for himself to instruct a Town Agent then the Attorney at Law is entitled to charge agency charge in the ordinary way.

ATTORNEY AT LAW - TRUSTEE  
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An Attorney at Law who is a Trustee, Administrator,, or Attorney at Law under a power of Attorney is in a special fiduciary position and normally can only charge the trust fund or estate with "out of pocket expenses" both in contentious and non-contentious business unless the deed under which the Attorney at Law is appointed i.e. trust deed, will or power of Attorney contains a charging clause which makes it perfectly clear that the Attorney at Law is authorized to charge profit costs. The Court may however in cases where such a clause does not exist, exercise discretion under its inherent jurisdiction and award profit costs, but it will only do so in circumstances which warrant such action.

PROFESSIONAL AND NON PROFESSIONAL WORK  
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Attorneys at Law often undertake work of a "Non-Professional character" i.e. work outside the scope of legal representation and not ordinarily covered by any scale of fees. The most common example is the collection of rents or

mortgage payments. Quite often prior arrangements are made with regard to the remuneration. Where this is not so, in the case of rent collection the scale usually allowed to estate agents is charged.

With regard to payment of insurance premiums (and indeed any other payments for non professional work the client is entitled to received the benefit of any commission or rebate allowed to the Attorney at Law. By arrangement with the client the Attorney at Law may agree to accept the commission in lieu of charging profit costs. In the case of insurance works where such an arrangement is made the Attorney at Law is acting virtually in the capacity of an Insurance agent and not as an Attorney at Law.

#### AGENTS

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An Attorney at Law is prohibited from acting as agent for any person who is not an Attorney at Law in any action or in any matter in bankruptcy or do anything to enable the unqualified person to "practise" as a Attorney at Law in any such proceedings. Thus where an Attorney at Law sends process for service to a process server or similar person, or indeed employs a costs draftsman to draw his bill of costs, then the person employed is treated for all intents and purposes as a temporary employee of the Attorney at Law. He certainly is not an agent of the Attorney at Law in the accepted use of the word.

#### INFANTS AND OTHER PERSONS UNDER A DISABILITY

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In proceedings the infant sues by a next friend and defends by a guardian ad litem. The next friend or guardian ad litem is responsible for the costs incurred by the Attorney at Law but normally the Attorney at Law is entitled to claim an indemnity out of the infant's property for such costs. This is also the case where a person suffering from a mental disability is concerned. Where a party under a disability is claiming damages the

Attorney at Law may recover such costs as are allowed by the Taxing Officer in respect of proceedings in the High Court, the Court of Appeal or the Resident Magistrates Court.

#### LEGAL AID -----

Prior to the introduction of legal aid and advice, poor litigant sued in England in what was called "in forma Pauperis". In ancient times, if a Plaintiff sued as a pauper and failed in his action instead of having an order for costs made against him he was ordered to be flogged. This existed up to 1925 when the Poor Person Rules came into being "in form pampers" cases. Indeed in the House of Lords it persisted until 1960 when legal aid was extended to this August Assembly.

Legal Aid has been the means of providing a service whereby person whose income and capital assets fall below certain defined limits can obtain legal assistance in respect of proceedings, claims or for advices, either free or on payment of a contribution towards the costs which varies according to personal circumstances. An Attorney at Law acting for a Legal Aided party is entitled to costs in respect of the legal aid work done.

#### COSTS AWARDED AGAINST ANOTHER PARTY -----

Generally speaking it is a principle of law that costs follow the event. In litigious proceedings costs will usually be awarded to the successful party to be recovered against the unsuccessful party. Nevertheless costs of proceedings are always in the discretion of the Court concerned. In awarding costs the court MUST exercise this discretion judicially. It would not be a judicial exercise of its discretion if the court ordered costs which normally would follow the event to be paid by a stranger to the proceedings. In short, the basic rule of costs follows the principle that, unless there are special circumstances,



all proper costs should be paid to the successful party by the unsuccessful party.

BASIS UPON WHICH BILLS ARE TAXED

These are four bases up which bills are taxed in the High Court namely

- (a) party and party
- (b) Common Fund
- (c) Attorney at Law and own client
- (d) Trustee

(a) Party and party costs are defined as such costs as are necessary or proper for the attainment of justice and enforcing or defending the rights of the party.

The old definition of party and party costs which appeared in the case of Smith & Butler (1875) (LR9EQ473 at page 475) as being such costs as are "all that are necessary to enable the adverse party to conduct the litigation and no more" is still treated as the broad basis on which a "party and party" bill of costs is to be drawn. Items of costs which are incurred merely for the purpose of conducting litigation more easily or more conveniently are not properly party and party items. The allowance for instance, of a case to counsel to advise before the proceedings are commenced, is in most cases, difficult to justify on a party to party basis. Nevertheless in matters in which real difficulty exists, for example who was the proper person to sue, a case to counsel to advise may well be justified on a party to party basis. On the other hand a case to counsel to advise on the merits of the intended proceedings would not be so considered.

The intention of awarding costs to a successful party is to indemnify him against the expenses he has been put to and on this basis an unsuccessful party is bound to pay such costs as his opponent was reasonably entitled to incur.

It was seem difficult to understand why a successful litigant should not have a complete indemnity for his costs. The reason is probably partly historical. Originally at common law no costs were allowed at all and when costs came to be allowed by statute first to the Plaintiff and later to the Defendant the costs allowed proved often to be much less than the expenses the litigant had been put to. As time went by a more generous view prevailed. It is the duty of an Attorney at Law not only to advise and help his client to protect his pocket and if in the course of proceedings the Attorney at Law advises a course of action which will incur costs of an additional or unusual nature he must point out to his client (if that be the case) that the additional expense to be incurred will not be recoverable even if he is successful in the action and his opponent is ordered to pay the costs .

#### COMMON FUND -----

In addition to costs being awarded on a "party and party basis in certain cases (usually those in which costs are being paid from an estate or sum of money in which the party concerned has an interest in common with other persons or parties) the Court may direct the costs to be taxed "on a common fund basis. The difference in principle between the party and party" and "common fund" is two fold. The allowances in the common fund bill are more "generous than those in a party and party bill and generally are allowed with "greater scope. The difference from a party and party bill is that in addition to all relevant party and party items such items as a case to advise before and probably during proceedings (both as to prospects, merit and quantum ), certain correspondence with additional attendance on the client and where applicable, certain negotiations for a settlement of the proceedings may be included.

SOLICITOR AND OWN CLIENT

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This Bill is rendered to the client and is payable by him. On occasions however someone other than the client may be paying this type of bill.

This applies where persons under disability. As to the propriety of including particular items of costs in contentious bills. The test is what, in fact, the client expressly (or by implication) authorized the Attorney at Law to do. Certain expenses such as the payment of heavy and seemingly excessive fees to expensive or fashionable counsel or to professional witnesses are termed "unusual expenses" and as a general rule the party who incurs such expenses is the one to pay them. Thus, unless there has been an agreement which specifically states that another party is to pay an unusual expense the cost will be the clients responsibility.

An Attorney at Law acting in a contentious matter on behalf of a person under a disability must not only tax the costs to be paid by another party, but must tax the whole of his costs as only costs so taxed and certified by the Taxing Officer may be recovered from the client. The Attorney at law is not allowed to render a bill for any extra Attorney at Law and own client costs as is the practice in most other types of cases.

On taxation of an Attorney at Law and own client contentious bill it may be said that all relevant costs are allowable except in so far as they are of unreasonable amount or have been unreasonably incurred.

In non-contentious work however the dictum as to what may be charged is "such sum as may be fair and reasonable having regard to all the circumstances of the case and in particular to:-

- (1) The complex of the matter or the difficulty or novelty of the question raised.
- (2) The skill labour, specialized knowledge and responsibility involved on the part of the Attorney at Law.



- (3) The number and importance of the document prepared or perused without regard to length.
- (4) The place where and circumstance in which the business or any part thereof is transacted.
- (5) The time expended by the Attorney at Law
- (6) Where money or property is involved its amount or value and
- (7) The importance of the matter to the client . e.g. The late Bob Marley Estate.

#### TRUSTEE COSTS

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Costs payable to Trustee are either payable out of the income of the trust or out of capital although it is upon specific instances of work done in each case that the decision has to be made, it usually is that costs relating to sales, purchases or mortgages of capital assets will be chargeable against capital whilst work relating to the collection of rents interest, dividends or in respect of income tax matters will usually be chargeable against income. Where an application to the Court is made which results in costs becoming payable out of the trust fund the Court will usually specify from which fund the costs are to be paid. The basis of taxation of a trustee's costs where they are payable out of trust fund is that of almost complete indemnity (i.e. complete reimbursement of all the trustee is liable to pay to his Attorney at Law) To disallow costs to the trustee the Taxing Officer has virtually to decide that they should not have been authorized. Such parts of costs to be paid out of capital and out of income such charge should be shown separately.

#### TERMS RELATING TO COSTS USED IN ORDERS

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The terms most commonly used are as follows:

- (1) Costs in any Event:- This term is almost

invariably used in interlocutory proceedings and means that whatever the final result of the case the named party is to receive his costs of the particular proceeding when the general costs of the action are taxed.

They may be included in an Attorney at law and own client bill of costs for payment by the client.

(2) Costs in the Cause:- Plaintiff (or Defendant's) costs in the cause means that the costs of a particular proceeding during the course of an action are to be paid to that particular party (but only if) he is granted an order for the payment of his costs at the trial of the action. Costs in cause when not prefaced by either Plaintiff or Defendant indicate that such costs are to be treated as part of the general costs of the proceedings for the determination at the trial or hearing.

(3) "costs of the day". This will be awarded when a case is called on for trial and an application is made at the last moment for an adjournment. If the adjournment is granted it is, almost invariably on terms that the party making the application for the adjournment is to pay the costs of the day. This means paying wasted costs for attendance at Court of Witnesses, Attorney at Law and Counsel.

(4) "Costs Reserved":- Which means that the costs of a particular proceedings are to be specially mentioned to and considered by the trial Judge when costs are considered at the end of the hearing or trial.

(5) "Costs Thrown away":- This is an expression used where an application has to be made during proceedings which could have been avoided, for example where a Defendant applies to set aside a Judgment in Default of appearance. The costs "incurred" being the costs of the application to set aside the judgment and the costs "thrown away" being the costs of and incidental to entering the judgment.

each party is to bear his own costs.

(7) "Dismissed with costs:- this means that the party applying will have to pay his opponent's costs as between party and party.

#### BILLS OF COSTS AND CASH ACCOUNTS

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Payments made by an Attorney at Law on behalf of his client fall into two categories.

First, payments made in the course of his duty when acting for a client as a Attorney at Law are termed disbursements.

Secondly, Those payments made on behalf of the client as his agent are termed "Cash Account Items.

Disbursements are included in the Bill of Costs itself. The cash account is a separate statement containing receipts and payments which is usually delivered to the client with the bill of costs thus giving the client a complete record of the whole financial aspect of the transaction.

Disbursements include such payments as stamp duty, counsels fees, Court fees printing charges, payments to witnesses and fees for medical reports etc. Items which must be shown in the cash account include damages, purchase monies, death duties, capital duty payable on the formation of a company monies received from the client and costs received from other parties to proceedings.

#### PREPARING THE BILL OF COSTS

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Before commencing to prepare or as it is normally called "draw" the bill of costs it is necessary to determine whether the matter is contentious or non-contentious.

In the case of non-contentious business to ascertain whether a scale charge is appropriate if necessary or a charge i.e. a lump sum charge. In the case of contentious work it must be decided whether there is to be a



bill for taxation or not. To prepare any bill of costs demands - reasonably good internal system of keeping detailed records of the work carried out in the Attorney at Law's Office. It is a general practice for the file of correspondence or the papers to contain "slips" recording attendances made both in and out of office and on the telephone and giving details of documents perused and documents drawn. Full details must be obtain of all work done.

#### DRAWING BILLS IN RESPECT OF CONTENTIOUS BUSINESS

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Where a gross sum bill has been delivered the client or the party chargeable may demand an itemized Bill. The costs draftsman should always bear in mind that he must be prepared, if called upon to substantiate the gross sum with a detailed bill of costs. In order to arrive at the gross sum an assessment of the detailed items must be made. The main item in the bill will invariably be "Instructions for trial or hearings" when dealing with this item, attendances on and correspondence with client and attendances on the other side, on witnesses etc. should all be separately noted in order to narrate briefly the details justifying the charge to be made.

Some items carry a fixed charge and cause no difficulty. Other items are priced between an upper and lower limit while others are discretionary. How much to charge for the latter items is always a difficult question. When a bill is to be taxed, the object is to charge such a sum as will be fair and acceptable to the Taxing Officer and which, in addition will not be unduly challenged by the other side who will be present at the taxation to oppose the bill item by item in ordered keep down the amount of costs payable by his client. Experience alone is the only guide to these items. Even individual Taxing Officer's differ in allowance they make. Therefore the costs drawer should not be deterred from asking for and accepting advise from

The most usual form of itemized bill of costs for contentious business is the two column bill of costs. These bills are usually prepared on foolscap size paper with the headings and columns for each page being date, particulars, disbursements and charges. Items appearing in the bill must be sufficiently described as to adequately identify and justify the charge made. Abbreviations (except for dates) must not be used. The items of the bill should be in order of dates.

Interest on costs runs from the date of Judgment in the absence of any order to the contrary.

L. O. B. WILLIAMS