

# *The Small Debts Recovery Act*

*being*

Chapter 60 of *The Revised Statutes of Saskatchewan, 1920*  
(Assented to November 10, 1920).

## **NOTE:**

**This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.**

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## CHAPTER 60

### An Act respecting the Recovery of Small Debts

#### SHORT TITLE

##### Short title

**1** This Act may be cited as *The Small Debts Recovery Act*.

1913, c.31, s.1; R.S.S. 1920, c.60, s.1.

#### INTERPRETATION

##### Intpretation

**2** In this Act, unless the context otherwise requires, the expression:

##### “Justice of the peace”

**1. “Justice” or “justice of the peace”** means a justice of the peace residing in the judicial district in which the cause of action arose or within which the defendant resides, (a) where the defendant is a municipal corporation a justice of the peace residing in a judicial district within which the municipality is wholly or partly situated, and (b) where the defendant is a company a justice of the peace residing within the judicial district where the company has an agency or place of business; and includes a police magistrate residing and exercising jurisdiction in such judicial district, and a judge of the district court of such judicial district acting as a justice of the peace.

1913, c.31, s.2; 1917, c.34, s.35 (redrawn); R.S.S. 1920, c.60, s.2.

#### APPLICATION

##### Claims not to exceed \$100

**3(1)** This Act shall apply to all claims and demands for debt whether payable in money or otherwise where the amount or balance claimed does not exceed \$100, unless the same be reduced to that sum by payment or by abandonment of the amount over \$100:

Provided, that no action shall be brought to which the Crown is a party, or where the title to land is in question, nor against the personal representatives of a deceased person, nor the assignees of an insolvent debtor; and

Provided further, that nothing herein contained shall prevent a person from proceeding under the rules of the district court governing small debt procedure or in any other manner authorised by law.

**(2)** No municipality shall take proceedings under this Act for the recovery of taxes except for taxes imposed in respect of the occupancy of land, where such land is exempt from taxation.

1913, c.31, ss.3, 18 and 48 (redrawn); 1915, c.43, s.40; 1916, c.37, s.34; 1917, c.34, s.35(3); R.S.S. 1920, c.60, s.3.

## PROCEDURE

**Summons**

**4** A person having such claim or demand may obtain from a justice of the peace a summons (form A).

1913, c.31, s.4; R.S.S. 1920, c.60, s.4.

**Statement of claim**

**5** The plaintiff when applying for a summons shall furnish the justice with a simple statement in writing of the cause of action together with a copy to file; in the case of an account the particulars may be in the usual form of items of account or otherwise; in the case of a bill, note or order a copy thereof shall be furnished, and in the case of a claim under any other written instrument a copy shall be furnished or a concise statement of the purport or effect of it shall be given to the extent of exhibiting the grounds of action so that in each case it may be known or understood by a person of ordinary intelligence what the action is brought for; such statement shall be verified by the oath of the plaintiff or some person conversant with the facts (form B) and a copy thereof shall be attached to each copy of the summons.

1913, c.31, s.5; R.S.S. 1920, c.60, s.5.

**Justice's register**

**6** Every justice shall keep a book in which he shall enter all processes issued by him under this Act with the date and names of the parties and the judgments rendered.

1913, c.31, s.6; R.S.S. 1920, c.60, s.6.

**Service of summons**

**7** The summons may be served by any adult person upon the person to whom it is directed, either personally by delivering to him a copy, or if such person cannot conveniently be found by leaving a copy for him at his last or most usual place of abode with some inmate thereof apparently of the age of sixteen years or over.

1913, c.31, s.7; R.S.S. 1920, c.60, s.7.

**On a corporation**

**8** Where the defendant is a municipal corporation the summons shall be served on the mayor, overseer, reeve, clerk, secretary or secretary treasurer and, where a company, on the president, head officer, secretary or accredited agent or officer transacting business within the judicial district.

1913, c.31, s.8; R.S.S. 1920, c.60, s.8.

**On a firm**

**9** In the case of copartners doing business under a firm name, it shall be sufficient in process against them to insert the name and style of the firm as used by them and to serve such process upon any member of the firm residing or doing business in the judicial district.

1913, c.31, s.9; R.S.S. 1920, c.60, s.9.

**Proof of service**

**10** Service of such summons may be proved by the oral testimony or by the affidavit of the person effecting the same (form C) and must be effected at least three clear days before the return day thereof:

Provided that, if the justice who issued the summons is satisfied in any case that the interval between the service and return days is insufficient, he may adjourn the hearing.

1913, c.31, s.10; R.S.S. 1920, c.60, s.10.

**Return of summons**

**11** The summons shall be returnable not less than six days nor more than twenty days from the date of issue.

1913, c.31, s.11; R.S.S. 1920, c.60, s.11.

**Summons returned unserved**

**12** When the summons has not been served before the return day therein named the justice may, at the request of the plaintiff by memorandum to that effect indorsed upon the summons, name a new return day for such summons not later than twenty days after the last return day and may in like manner fix new return days from time to time.

1913, c.31, s.12 (redrawn) ; R.S.S. 1920, c.60, s.12.

**Set off and counterclaim**

**13** Debts due from the plaintiff to the defendant before action brought may be set off or set up by way of counterclaim against the plaintiff's claim at the trial; but if the presiding justice is of opinion that the plaintiff has been taken by surprise he may adjourn the hearing.

1913, c.31, s.13; R.S.S. 1920, c.60, s.13.

**Judgment for defendant in certain cases**

**14** If a set off or counterclaim is established equal to the debt due the plaintiff, the defendant shall have judgment with costs; if a set off or counterclaim exceeding the amount of the debt due the plaintiff by a sum not more than \$50 is established, then the defendant shall have judgment for the excess with costs; if the set off or counterclaim established be less than the plaintiff's debt, the latter shall have judgment for what is due him with costs.

1913, c.31, s.14; R.S.S. 1920, c.60, s.14.

**Cross demand exceeds claim by more than \$50**

**15** If the defendant's demand exceeds the debt due the plaintiff by more than \$50 the defendant may set off the amount of the plaintiff's claim but shall not have judgment for the overplus unless he abandon so much as shall reduce the excess to \$50; he may, however, sue for such overplus in any court of competent jurisdiction.

1913, c.31, s.15; R.S.S. 1920, c.60, s.15.

**Counterclaim against executors**

**16** In suits brought by executors or administrators the defendant may set off demands due him from the testator or intestate.

1913, c.31, s.16; R.S.S. 1920, c.60, s.16.

**Judgment on counterclaim**

**17** When a counterclaim is established in a suit brought by executors or administrators the judgment shall be against them as such but execution thereon shall bind only the assets in their hands.

1913, c.31, s.17; R.S.S. 1920, c.60, s.17.

**Adjournment of court**

**18** The justice may adjourn court from time to time or day to day if necessary to finish the business; he may also upon proof on oath or affidavit of the absence of material and necessary witnesses, or for other good cause, adjourn the hearing for any period not longer than one week, but only one such adjournment shall be granted except it is proved to him on oath or affidavit that a party is sick or absent from Saskatchewan.

1913, c.31, s.19 (redrawn); R.S.S. 1920, c.60, s.18.

**Subpoenas to witnesses**

**19** A justice may issue subpoenas to witnesses (form D) to be served within the province, and the person subpoenaed on being tendered the legal fee shall attend.

1913, c.31, s.20; R.S.S. 1920, c.60, s.19.

**Service**

**20** The subpoena may be served by any person by showing it to the witness and delivering to him a copy thereof with his fees.

1913, c.31, s.21; R.S.S. 1920, c.60, s.20.

**Effect**

**21** A subpoena issued by a justice hereunder shall have the force and effect of a subpoena issued out of a district court, and any witness not attending in obedience thereto shall be liable to attachment and shall also be liable in all other respects as for disobedience to a subpoena issued out of such court.

1913, c.31, s.22; R.S.S. 1920, c.60, s.21.

**Trial**

**22** Every cause shall be tried and determined at the return of the summons, if duly served, or on some day to which the court or hearing is adjourned.

1913, c.31, s.23; R.S.S. 1920, c.60, s.22.

**Court room**

**23** The room or place in which the justice sits to hear and try a claim under this Act shall be deemed an open and public court to which the public generally may have access so far as the same can conveniently be given them.

1913, c.31, s.24; R.S.S. 1920, c.60, s.23.

**Plaintiff failing to appear**

**24** The plaintiff may withdraw his claim before trial or consent to judgment for the defendant; if he fail to appear the claim may be dismissed or adjourned in the discretion of the justice and in all cases the successful party shall recover costs.

1913, c.31, s.25; R.S.S. 1920, c.60, s.24.

**Evidence**

**25** The presiding justice shall take down fully the evidence offered on the trial and shall read over to each witness the evidence given by him and the witness shall subscribe his name thereto; the evidence shall be taken on oath and the parties and witnesses shall be subject to cross examination and re-examination; the parties may be represented by solicitors or agents.

1913, c.31, s.26; R.S.S. 1920, c.60, s.25.

**Defendant failing to appear**

**26** If the defendant do not appear and defend, the justice may adjourn the hearing as hereinbefore provided or the plaintiff may prove his case and judgment may be given against the defendant in his absence.

1913, c.31, s.27; R.S.S. 1920, c.60, s.26.

**Form of proceedings and fees**

**27** The processes and proceedings in actions in justice's civil courts shall be according to the forms in the schedule to this Act and the fees therefor shall be taxed according to the table of fees (form F).

1913, c.31, s.28; R.S.S. 1920, c.60, s.27.

**Affidavits**

**28** Affidavits to be used in justice's civil courts, or in proceedings in appeal therefrom, may be sworn before any justice of the peace, notary public or commissioner for taking oaths.

1913, c.31, s.29; R.S.S. 1920, c.60, s.28.

**Witnesses' fees**

**29** The justice shall tax and allow to the successful party witness fees for the witnesses, including such party, who attend the trial on his behalf, whether such witnesses be sworn and examined or not, provided that it be made to appear to the justice that such witnesses were material and necessary and attended for the purpose of giving evidence.

1913, c.31, s.30; R.S.S. 1920, c.60, s.29.

## JUDGMENT AND EXECUTION

**Certificate of judgment**

**30** Any justice who has tried a case under this Act shall upon request and on payment of a fee of fifty cents therefor furnish a certificate of the judgment given in form E; and such certificate shall be admitted as evidence of the said judgment without any proof of the authenticity of the signature of such justice or any other proof whatsoever.

1913, c.31, s.31; 1917, c.34, s.35; R.S.S. 1920, c.60, s.30.

**Entering judgment of a judge**

**31** Where the justice who tries the case is a district court judge, he shall forthwith after delivering judgment cause the said judgment together with his notes of the evidence and all documents in his possession connected with the case to be filed with the clerk of the district court, and upon payment to the said clerk of a fee of fifty cents such judgment shall be entered as a judgment of the district court, and execution may be issued thereon according to the ordinary procedure of the court.

1913, c.31, s.32; R.S.S. 1920, c.60, s.31.

**Entering judgment of a justice**

**32(1)** In other cases the person in whose favour judgment was given or his agent, upon payment of a fee of fifty cents, may file a certificate of the judgment (form E) as provided in section 30 in the office of the clerk of the district court for the judicial district in which the action is brought, and thereupon it shall be entered as a judgment of such court and execution may be issued thereon according to the ordinary procedure of the court.

(2) In cases where an appeal has been taken as hereafter provided such filing may be made after the appeal has been heard and disposed of; where no appeal has been taken such filing may be made at any time after the expiry of ten days from the date of pronouncing judgment, or if the time for filing notice of appeal has been extended by the judge as hereinafter provided, after the expiration of such extended time if no notice of appeal has been filed in the meantime.

(3) The clerk of the district court shall not accept a certificate for filing until he has satisfied himself that the said period of ten days or such further time as above provided has elapsed since judgment was pronounced and that no notice of appeal has been filed.

1913, c.31, s.33; 1919-20, c.60, s.2; R.S.S. 1920, c.60, s.32.

**Execution and garnishee**

**33(1)** Where not less than \$50 remains unpaid upon a judgment, execution may be issued thereon against the and lands of the person liable in the same manner and with the same consequences as in the district court under similar circumstances.

(2) Any person in whose favour judgment has been entered may obtain a garnishee summons from the clerk of the district court and attach the debts due to the judgment debtor in the manner provided by the practice and procedure of that court.

1915, c.43, s.40; R.S.S. 1920, c.60, s.33.

**Interest on judgment**

**34** A judgment rendered by a justice shall bear legal interest from the date upon which it is filed and entered as a judgment of the district court, and execution may be issued for the amount of the judgment and interest thereon and costs of the execution and of executing the same.

1913, c.31, s.34; R.S.S. 1920, c.60, s.34.



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**Execution against firms**

**35(1)** Where a judgment is against a firm, execution may issue:

- (a) against any property of the partnership;
- (b) against the property of any person who has appeared;
- (c) against the property of any person who has been individually served as a partner with a copy of the summons.

**Joint debtors**

(2) In an action against joint debtors other than members of a firm, execution may issue against the joint estate, if any, and against the separate property of the defendants who have been served with the summons.

1913, c.31, s.35; R.S.S. 1920, c.60, s.35.

## APPEALS

**Judge's decision final**

**36** Where the justice who tries a claim under this Act is a district court judge, there shall be no appeal from his decision.

1913, c.31, s.36; R.S.S. 1920, c.60, s.36.

**Appeal from justice**

**37** Any party considering himself aggrieved by the judgment of a justice, other than a judge of a district court, may appeal to the judge of the district court of the judicial district in which the action was brought.

1913, c.31, s.37; R.S.S. 1920, c.60, s.37.

**Hearing of appeal**

**38** Such appeal shall be to the next sittings of the district court which shall be held, not earlier than fourteen days after the date of pronouncing judgment, at the place where the cause was tried or the nearest place thereto where court is appointed to be held:

Provided that upon the consent of all parties to the action the appeal may be set down and heard at a place where court is appointed to be held other than the place where the cause was tried or the nearest place thereto.

1913, c.31, s.38; 1919-20, c.60, s.3; R.S.S. 1920, c.60, s.38.

**Notice of appeal**

**39** The appellant shall give notice of his intention to appeal by filing in the office of the clerk of the court to which the appeal is made, within ten days after the date upon which judgment was pronounced, a notice in writing setting forth with reasonable certainty the judgment appealed against, and serving a notice thereof upon the opposite party and the justice who tried the case within a reasonable time before the date when the court appealed to is appointed to be held:

Provided that upon application to the judge, either before or after the time limited for filing notice of appeal, the judge may in his discretion extend the time for filing such notice.

1919-20, c.60, s.4; R.S.S. 1920, c.60, s.39.

**Transmission of evidence**

**40(1)** The justice shall, before the time when the appeal from such judgment may be heard, transmit the evidence taken by him at the trial together with all documents in his possession connected with the case, certified under his hand, to the clerk of the court to which the appeal is made, to be kept among the records of the court.

(2) Upon the failure or refusal of the justice to comply with the foregoing provision within the time above limited, the judge of the court appealed to may order that the evidence and all documents connected with the case be transmitted as aforesaid within the time limited in the order, and if the said order is not complied with the justice shall be liable for contempt as in the case of disobedience to any other order of the court.

1919-20, c.60, s.5; R.S.S. 1920, c.60, s.40.

**Judgment on appeal**

**41(1)** When such appeal has been lodged in due form, the court to which the appeal is made shall hear and determine the matter of the appeal and shall be the absolute judge as well of the facts as of the law respecting the matter in appeal, and may make such order with or without costs to either party, including costs of the court below, as may seem meet.

(2) Any of the parties to the appeal may call witnesses and adduce evidence, whether such witnesses were called or evidence adduced on the trial of the cause before the justice or not.

(3) Upon the consent of both parties the evidence taken before the justice at the hearing below, certified by the justice, may be read, and in such case the appeal shall be decided solely upon that evidence.

(4) The evidence of any witness taken by the justice at the hearing below, certified by the justice, may be read on such appeal and shall have the like force and effect as if the witness was there examined, if the court appealed to is satisfied by affidavit or otherwise that the personal attendance of the witness cannot be obtained by any reasonable efforts.

1919-20, c.60, s.6; R.S.S. 1920, c.60, s.41.

**Adjournment of hearing**

**42** The hearing of the appeal may be adjourned from time to time as circumstances require.

1913, c.31, s.42; R.S.S. 1920, c.60, s.42.

**GENERAL****No proceeding void for informality**

**43** No proceeding under this Act shall be deemed invalid for informality provided there has been a substantial compliance with the requirements of this Act.

1913, c.31, s.45; R.S.S. 1920, c.60, s.43.

**Service of notices, etc.**

**44** All notices, papers and documents required to be served upon any party to an action under this Act may, unless provision is otherwise made, be served in the same manner as is provided for service of a summons.

1913, c.31, s.46; R.S.S. 1920, c.60, s.44.

**Costs of appeal**

**45** In every appeal in which a solicitor is employed the judge hearing the appeal may allow the successful party a sum for costs of the appeal in addition to the court fees and necessary disbursements; such sum shall not exceed ten per cent of the judgment recovered if such fee is taxable to the plaintiff or ten per cent of the amount of the claim if such fee is taxable to the defendant.

1913, c.31, s.47; R.S.S. 1920, c.60, s.45.

**Application to set aside judgment**

**46** Either party to an action commenced under this Act may, within six months after the date of pronouncement of judgment by the justice, provided that he has not appealed as hereinbefore provided, apply by notice of motion to the judge of the district court of the judicial district in which such cause was tried, to set aside the said judgment upon the ground that the subject matter of the action was in excess of the jurisdiction of such justice, or that the said judgment was otherwise bad in law, and thereupon the judge may set aside such judgment on such terms as to costs and otherwise as may be just.

1919-20, c.60, s.8; R.S.S. 1920, c.60, s.46.

**Part XV of *The Criminal Code* not to apply**

**47** The provisions of part XV of *The Criminal Code* as to appeals from summary convictions shall not apply to appeals under this Act.

1919-20, c.60, s.9; R.S.S. 1920, c.60, s.47.

## SCHEDULE

## FORM A

*(Section 4)*

## JUSTICE'S CIVIL COURT

## SUMMONS

Province of Saskatchewan,

Judicial District of \_\_\_\_\_

To \_\_\_\_\_

You are hereby required to appear before me at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to answer the demand of \_\_\_\_\_ as shown by his claim hereto attached or indorsed hereon.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_.

.....  
*J.P.*

*(Indorsement)*

This summons is adjourned to \_\_\_\_\_ at the hour of \_\_\_\_\_ at the same place.

.....  
*J.P.*

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## FORM B

(Section 5)

## JUSTICE'S CIVIL COURT

## CLAIM

Canada:

Province of Saskatchewan,

To wit:

The claim of \_\_\_\_\_ of \_\_\_\_\_ in the Province of Saskatchewan (*occupation*), made the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ before the undersigned, one of His Majesty's justices of the peace in and for the Province of Saskatchewan, who saith that \_\_\_\_\_ of \_\_\_\_\_ in the said province is indebted to him in the sum of \$ \_\_\_\_\_ (*here give particulars of claim or refer to them as attached*).

Sworn before me the day and  
year first above mentioned at  
\_\_\_\_\_ in the  
Province of Saskatchewan.

}

.....

*J.P.*

FORM C  
(Section 10)

JUSTICE'S CIVIL COURT

AFFIDAVIT OF SERVICE OF SUMMONS

Province of Saskatchewan,

Judicial District of \_\_\_\_\_

I, \_\_\_\_\_ of  
(state residence and occupation of deponent) make oath and say that I did  
on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ personally serve \_\_\_\_\_ the  
defendant in the annexed process named with a true copy thereof annexed to or  
indorsed upon which were particulars of the plaintiff's claim.

.....  
Signature.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_ before me.

.....  
Signature.

(Service at last place of abode)

JUSTICE'S CIVIL COURT

AFFIDAVIT OF SERVICE OF SUMMONS

Province of Saskatchewan,

Judicial District of \_\_\_\_\_

I, \_\_\_\_\_  
of (state residence and occupation of defendant) make oath and say that I did  
on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_, leave at the last place of  
abode of \_\_\_\_\_ the defendant a true copy of the annexed process with \_\_\_\_\_  
an inmate thereof, apparently of the age of 16 years or over.

.....  
Signature.

Sworn at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_ before me.

.....  
Signature.

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## FORM D

(Section 19)

## JUSTICE'S CIVIL COURT

## SUBPOENA

Province of Saskatchewan,

Judicial District of \_\_\_\_\_

To \_\_\_\_\_

You are required to appear before \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, to give evidence on the part of the \_\_\_\_\_ in a suit now pending between \_\_\_\_\_ plaintiff, and \_\_\_\_\_ defendant, and then and there to be tried (*if duces tecum, add here*) and you the said \_\_\_\_\_ are required to bring and produce at the trial a certain promissory note (*describe the paper, book or whatever it may be*), and take notice that in case you neglect to appear and testify, you will be liable to attachment.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_.

.....  
J.P.

## FORM E

(Section 30)

## JUSTICE'S CIVIL COURT

## CERTIFICATE OF JUDGMENT

Province of Saskatchewan,

Judicial District of \_\_\_\_\_

This is to certify that in a certain action brought in this court and tried by me on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_, in which \_\_\_\_\_ was plaintiff and \_\_\_\_\_ defendant, judgment was given in favour of the \_\_\_\_\_ for the sum of \$ \_\_\_\_\_.

Dated at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_.

.....  
J.P.

## FORM F

(Section 27)

## FEES TO BE TAKEN BY JUSTICES OF THE PEACE

1. Issuing summons and entering same in procedure book.....	\$0.50
2. Every subpoena for a witness or witnesses. (Only one subpoena on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it, additional subpoena shall be issued without charge) .....	0.10
3. For hearing and determining case .....	1.00
4. For hearing and determining case, if case last over two hours .....	2.00
5. For certificate of judgment .....	0.50
6. For copy of any other paper connected with any case, and the minutes of the same if demanded, per folio of 100 words.....	0.05
7. For every bill of costs when demanded to be made out in detail .....	0.10

*(Items 6 and 7 to be chargeable only when there has been an adjudication.)*

## SERVICE FEES

1. Serving summons and returning same, including affidavit of service or attending to prove same .....	\$0.50
2. Mileage to serve summons or subpoena, per mile (one way) necessarily travelled .....	0.10
3. Same mileage when service cannot be effected, but only upon proof of due diligence.	
4. Serving subpoena and returning same, including affidavit of service or attendance to prove same .....	0.50



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## SHERIFF'S FEES

Where execution is issued upon a judgment rendered under this Act, sheriffs, deputy sheriffs and bailiffs shall be allowed the same fees as are prescribed for similar services under the rules governing small debt procedure in the district court.

## WITNESS FEES

Attendance, per day.....	\$1.00
Mileage, one way, per mile .....	0.10

Where railway can conveniently be used witnesses shall only be allowed such sum as would be sufficient to pay railway fare in coming to and returning from place of trial in no case to exceed mileage at above rate.

## DISTRICT COURT CLERK

1. On filing judgment, where case tried by district court judge .....	\$0.50
2. On filing judgment in other cases with judge's order .....	0.50
3. On filing order or judgment on appeal.....	0.50
4. Every other filing .....	0.10

