

CAVENDER *v.* CAVENDER.

Circuit Court, E. D. Missouri. February 23, 1882.

1. COSTS—CLERK'S FEES.

The clerk may collect his costs as they accrue, irrespective of the final result.

2. SAME.

A transcript of a record on appeal, or writ of error, is only a *copy*, and the clerk can charge therefor only 10 cents per folio.

3. SAME.—EXPENSES.

For binding or express charges the clerk may charge the *reasonable, actual* cost to him.

4. SAME.

The clerk cannot tax costs for drawing a bond and its approval when it was drawn by counsel and approved by the court.

5. SAME—FOLIO, WHAT.

An original entry, distinct from all others, though less than a folio, (100 words,) is to be charged as a full folio. Appellant must pay costs incident to his appeal.

Motion to retax clerk's costs for a transcript, on appeal to the supreme court. The clerk had collected 15 cents per folio for a transcript, and a like rate for an appeal bond drawn by the attorneys, and also a fee for approval of the bond in open court by the judges.

Lucien Eaton, for the motion.

M. M. Price, clerk, *pro se*.

TREAT, D. J. The clerk has a right to demand payment of his costs as they are earned, without waiting for the final determination of the suit on appeal or otherwise. This, as has been repeatedly decided in this circuit, rests on the controlling fact that he must answer to the United States for fees earned, as if collected; and, consequently, if he chooses to give credit therefor, he is none the less answerable than if the cash were received. Hence he has a legal right to exact payment for work done as it progresses, and is

not bound to forward or deliver the results of his work until they are paid for.

1. Has the clerk the right to charge 15 cents per folio for transcripts of a record, or only 10 cents per folio? The only provision of the United States Statutes under which this class of clerical work falls is in these words: "For a copy of any entry or record, or of any paper on file, for each folio, 10 cents." There are other provisions as to the original entries for which 15 cents per folio are chargeable. Rev. St. § 828.

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The question, therefore, is whether "transcripts" of records for the supreme court fall within the one or other provisions. It may be, as urged, that the accounting officers recognize the distinction claimed, viz., that "transcripts" are to be considered as falling within the rule as to the original entries; still this court must decide the point for itself. What is a transcript; forwarded to the supreme court but a "copy" of something ordered by the court in a case at law, or in equity, to be so forwarded? There is no new or original matter to be thus included. The case is closed here, and a copy of what appears is all that can be embraced in the "transcript." Hence, the exception as to that charge is well taken, and the fee bill as to that item will be reduced from 15 cents per folio to 10 cents per folio.

2. The next exception as to the number of folios has no foundation in fact, and will be overruled.

3. As to binding and express charges the clerk may charge what the same reasonably cost. It does not appear that he has charged otherwise. This exception is overruled.

4. The fee-bill does not disclose what is charged for drawing a bond. It appears that the bond in this case was not drawn by the clerk, and, consequently, he cannot charge for what he did not do. The bond was drawn by appellant's counsel and approved by the

court. The charge by the clerk should therefore be for an entry for the filing and for an entry of the approval of the same by the court.

The general question embraced in the last exception, viz., that the defendant who has taken an appeal cannot be compelled to pay in *advance* of the final decision the costs incident to an appeal, is overruled, for the reason stated at the beginning of this opinion. The fee-bill will be restated according to the views here expressed.

It should be remarked that when an original entry of an order is made, though less than a folio, it is chargeable as a folio, each entry of a kind standing by itself, distinct from all others.

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