C. F. WILHELM JANTZEN, by and through his Agent W. FRITZ, Petitioner, *v.* GEORGE W. STUBBLEFIELD, Police Magistrate of the Commonwealth District of Monrovia, and FRANK N. WILLIAMS, Respondents.

OBJECTIONS TO ITEMS IN A BILL OF COSTS.

Argued April 4, 1934. Decided April 20, 1934.

1. The salaried officers of our several courts are not entitled to per diem pay during the regular sessions of our courts.
2. Whenever a case is placed upon the motion calendar of the regular term, the Government's tax fee should be paid the same as if it had been entered upon the trial docket.
3. Although there is neither law nor rule of court permitting the payment of a successful attorney's fee, because of a long established usage the custom will be upheld until the law or a rule of court forbids same.

Petitioner applied to one of the Justices of this Court to issue a writ of mandamus against a Police Magistrate of the Commonwealth District of Monrovia to command him to try an action of debt against Frank N. Williams, one of the respondents herein. The application for the writ of mandamus was denied and petitioner appealed to the full bench. The denial of the writ was affirmed. Petitioner has objected to certain items in the bill of costs allowed against him in connection with the petition for the writ. *Objections partly sustained.*

Barclay & Barclay for petitioners. *C. L. Simpson* * for respondents.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

On the 12th day of October, 1933, C. F. Wilhelm Jantzen, by and through his agent W. Fritz, filed a peti-

* Counsellor C. L. Simpson, who was attorney of record for appellee, had submitted his brief to the Court before his elevation to the office of Secretary of State.—Howard, Clerk.

tion before Mr. Justice Dixon in chambers praying for a writ of mandamus to be issued against George W. Stubblefield, Esquire, Police Magistrate of the Commonwealth District of Monrovia, to command him to resume jurisdiction and try an action of debt against one Frank N. Williams, one of the respondents in these proceedings, which had been dismissed upon issues of law raised by the defendant in said case. Said petition was denied by Mr. Justice Dixon, and petitioner being dissatisfied with this ruling, appealed to the full bench. On the 24th day of January, 1934, during the November term, 1933, this matter was taken up, and the bench unanimously supported the decision of Mr. Justice Dixon, because the mandamus prayed for was contrary to the procedure contemplated by the statute laws in such cases made and provided. Liberian Statutes (Old Blue Book), p. 116, art. 1, § 8 of the original Judiciary Act.

After the determination of these proceedings, the clerk made out the usual bill of costs as in all cases in this Republic in keeping with the ruling of the Court. Whereupon sundry items were objected to by Counsellor Anthony Barclay, one of the legal representatives of the petitioners, which objections are the subject of these proceedings, and are as follows:

(1) Per diem pay of the officers of court during the hearing of the mandamus proceedings.
(2) Payment of government tax fee of one dollar for docketing.
(3) The payment of a successful attorney's fee of ten dollars.

As to item one of the foregoing objections, the Court is unanimous in upholding Counsellor Anthony Barclay's contention, because it is our opinion that the salaried officers of our several courts are not entitled to day pay during the regular sessions of said courts, as their payments are otherwise provided for by law.

As to item two of said objections, we are of the opinion

that the government tax fee of one dollar should be paid because the cause at bar has been docketed on the Motion Calendar of the regular session of this Court, which is the April term (see motion calendar, case No. 9).

As to item three of said objections, which objects to payment of a successful attorney's fee of ten dollars, we must admit that there is no law or rule of court providing for the payment of a successful attorney's fee in our courts; but this is a precedent and practice hoary with age in this country, and we are therefore of the opinion that this precedent should be followed in our courts until such time as a law or a rule of court be made prohibiting same, because precedent becomes law in the absence of law; and it is so ordered.

Objections partly sustained.

MR. CHIEF JUSTICE GRIMES, with whom MR. JUSTICE GRIGSBY concurs, dissenting.

In the case at bar Mr. Justice Grigsby and the writer find ourselves unable to agree with our colleagues in ordering the payment of a successful attorney's fee, and the reasons for our dissent now follow:

First of all there is no law, common or statutory, that we have seen which will support the contention that a successful attorney before this Court should receive a gratuity in an amount of ten dollars to be included in the bill of costs, and collected from the losing party. It is true such a custom has arisen, and runs back to a time previous to the entrance upon the arena of any member of this bench or bar, and to that extent there is a great deal to be said in its favor especially as no lawyer, and no litigant, has heretofore seen fit to raise any objection to it. But, nevertheless, it does not run back to a period "whereof the memory of man runneth not to the contrary," and hence lacks one of the essential requisites of a valid custom. 1 Blackstone's Commentaries 76–77.

It would appear that the innovation of giving ten dollars to a successful attorney in the Supreme Court arose without any law to support it, having crept into the practice as a sort of concomitant with that of including in every bill of costs an item known as the "government tax fee," which in most cases is one dollar. The latter has, however, the advantage of legislative authority, as it is based upon section 2 of the scale of fees duly enacted and made an appendix to the compilation of 1856 of the Acts of the Legislature of Liberia, commonly known as the Old Blue Book. On the other hand we have not been able to find any statute to which the granting of a "successful attorney's fee" can be traced either expressly or by implication.

But even then the latter has heretofore only been added to bills of cost which grew out of a case regularly appealed to this Court for trial, and not to a mere application for remedial process.

The writer was an Assistant Clerk of this Court from 1901–1906 inclusive, had a large general practice from 1911–22, and thereafter was Attorney General of Liberia until 1931, but this is the first bill of costs that he has ever seen in which ten dollars for a successful attorney's fee was encouched where the matter upon which the bill of costs was based was merely an application for a remedial writ. To the minds of Mr. Justice Grigsby and myself, to agree to this would be to sanction the carrying of innovations too far.

The ideal of the fathers was that justice should be administered without sale, denial or delay. And although it was in making provision for the granting of that high prerogative writ known as the writ of habeas corpus that they added the corollary that the writ shall be issued in the most easy, free, cheap and expeditious manner possible, still, my colleague, Mr. Justice Grigsby and I, are of opinion that to make a bill of costs of twenty-six dollars and fifty cents follow an application for a remedial writ