

No. 16,

30. Sales

The Mayor & City
Council of Baltimore

vs.

The County Commissioners
of Baltimore County

B. B. G.

Senior

B. B. G.

C. J.

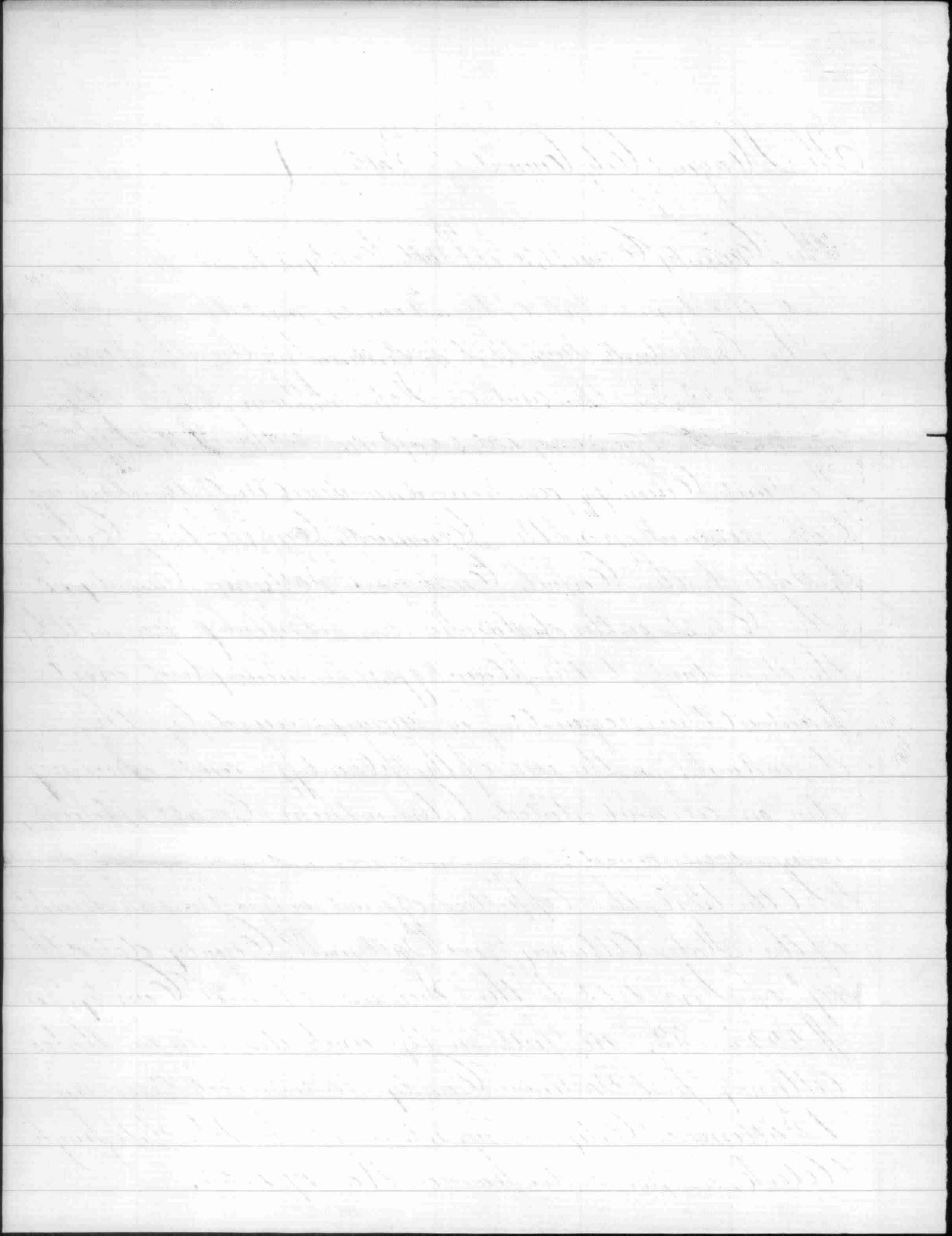
Filed May 5th 1863.

The Mayor & City Council of Baltimore }
of }
The County Comptrol' of Baltimore County }

The Appellees, sued the Appellants, to recover the sum of \$2,223.33, the amt of States Attorneys fees & Compensation, paid by the Appellees to the State Attorney for said County, for services rendered in certain Criminal Cases, removed from the Criminal Court of the City of Baltimore to the Circuit Court for Baltimore County.

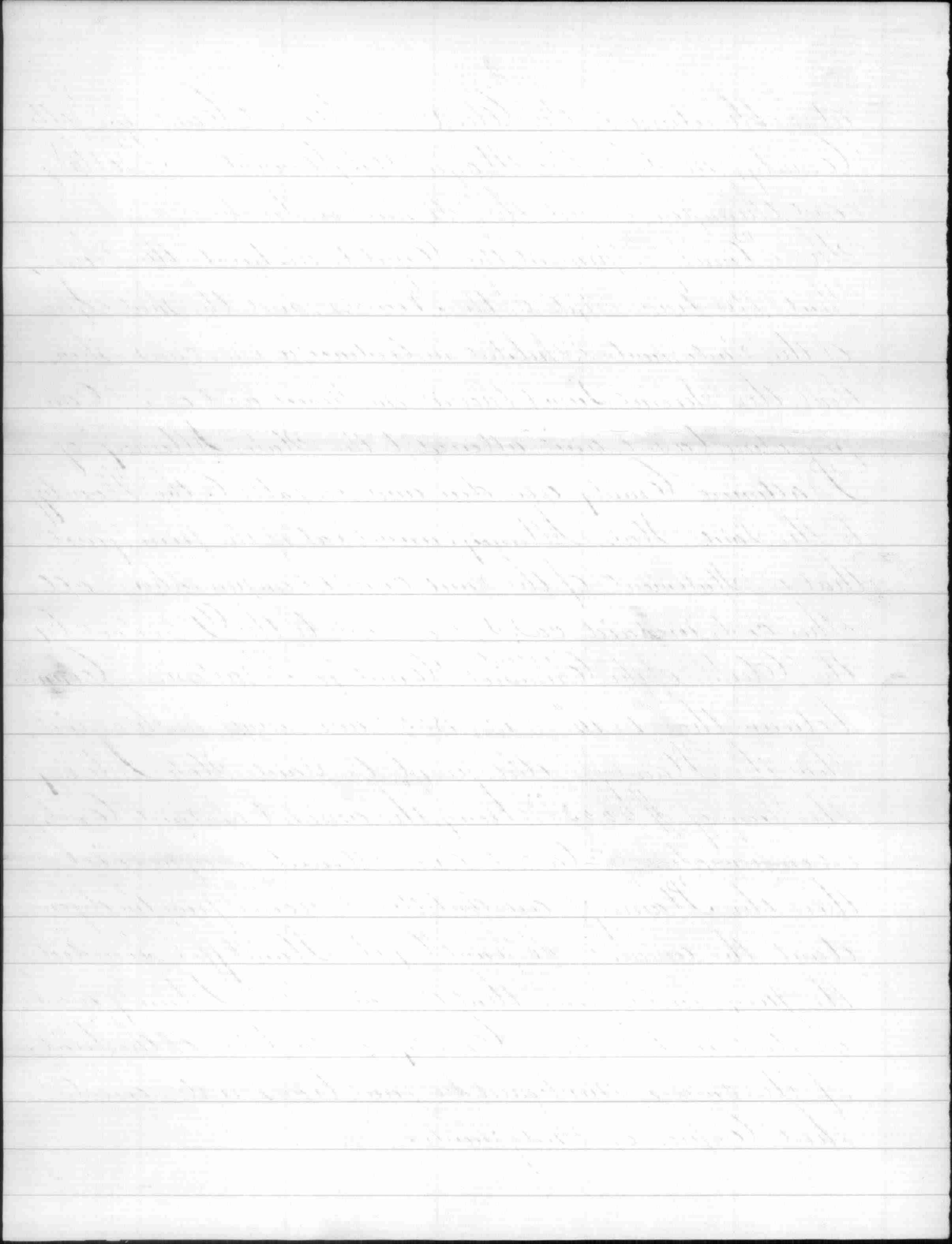
The Counts in the declaration are for money payable by the defendants, to the plaintiffs; for money lent and paid at their request; for money received by the defendants, for the use of the plaintiffs, and for money due no account stated between them, On all of which, issues were joined.

At the trial, the Appellees offered in evidence the receipt of the States Attorney for Baltimore County, dated the 19th of Nov^r 1853, to the Treasurer of said County, for \$2223.33, in full for the amt due him as States Attorney for Baltimore County, for removed cases from Baltimore City, as per return of H. M. Fitzhugh Clerk, as per order passed Nov^r 19th 1853.



also, the return of the Clerk of the Circuit Court for Baltimore County, made to the Mayor & City Council of Baltimore and thereupon asked the following instruction.

The Plaintiff prayed the Court to instruct the Jury, that the transcript of the Records, and the Shert Copies of the Judgments Exhibited in Evidence in this cause show that the Several Sums therein mentioned as Costs & Compensation taxed and allowed to the State Attorney of Baltimore County were due and payable by the Plaintiff to the said State Attorney; and that if the Jury find that a Statement of the said Costs & Compensation & all other costs ~~in~~ said cases, was sent to the Defendant by the Clerk of the ^{Circuit} Criminal Court for Baltimore County between the 14th & 19th July 1853; and shall further find, that the Plaintiff, did pay to the said State Attorney, the sum of \$2223³³ being the amount of said Costs & Compensation, so taxed and allowed as aforesaid, then the Plaintiff are entitled to recover from the defendant the amount so paid by the Plaintiff; provided the Jury further find that the said State Attorney was resident in Baltimore County, at the time of the trial of the causes mentioned in said transcripts and Shert Copies of Judgments.

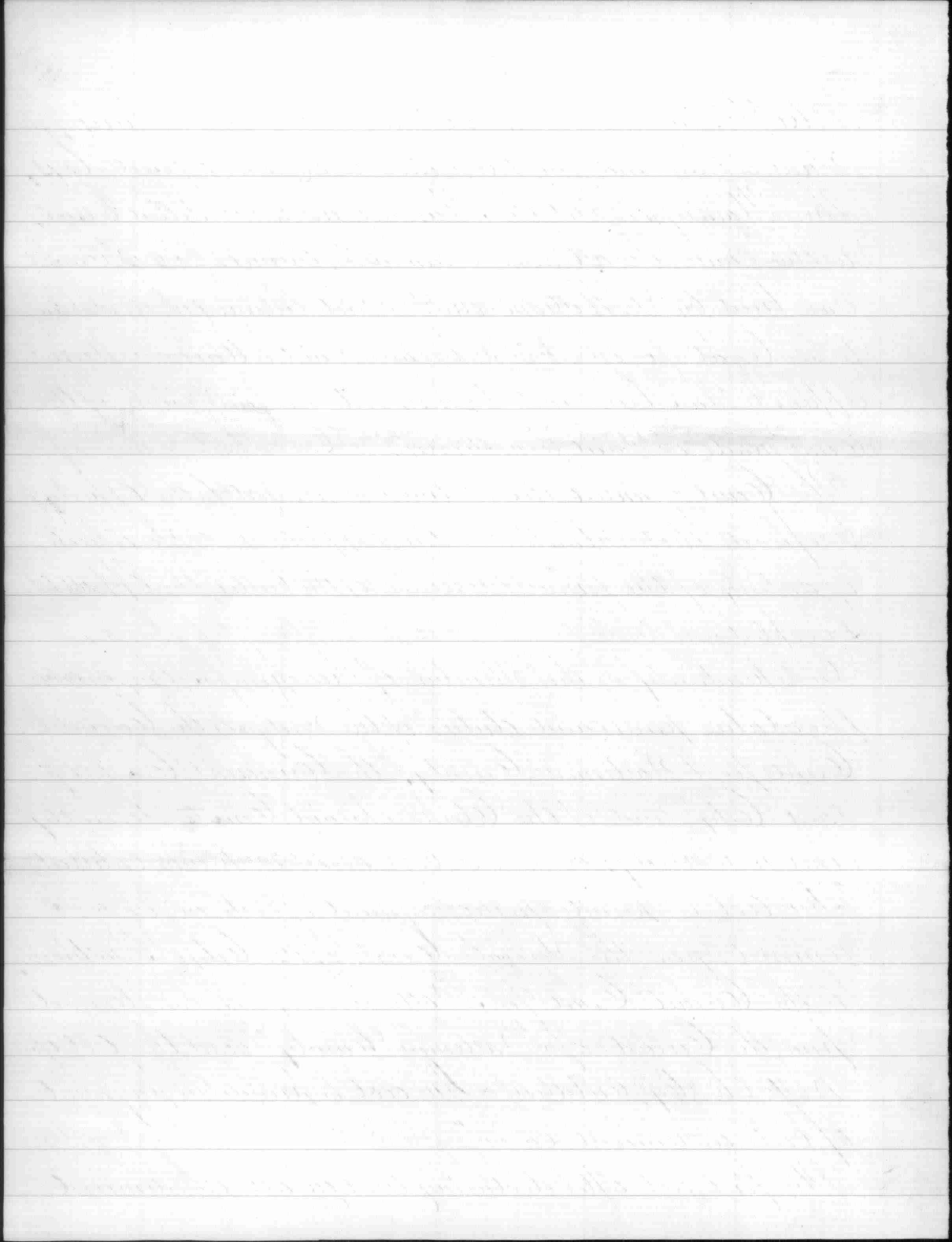


The Defendants prayed the Court to instruct the jury, that if they find from the proof the Records offered by the Plaintiff; Yet the Plaintiff are not entitled to recover in this case the allowance claimed by them of \$30 in each case tried by J. Williams the District Attorney in addition to his legal fee of \$3.33 $\frac{1}{3}$ because said allowances do not appear to have been made by any order or judgment of the Court made in said ^{cases} respectively.

The Court granted the instruction prayed by the Appellants & refused that submitted by the Appellants. To which granting of the former & refusal of the latter, the Appellants Excepted.

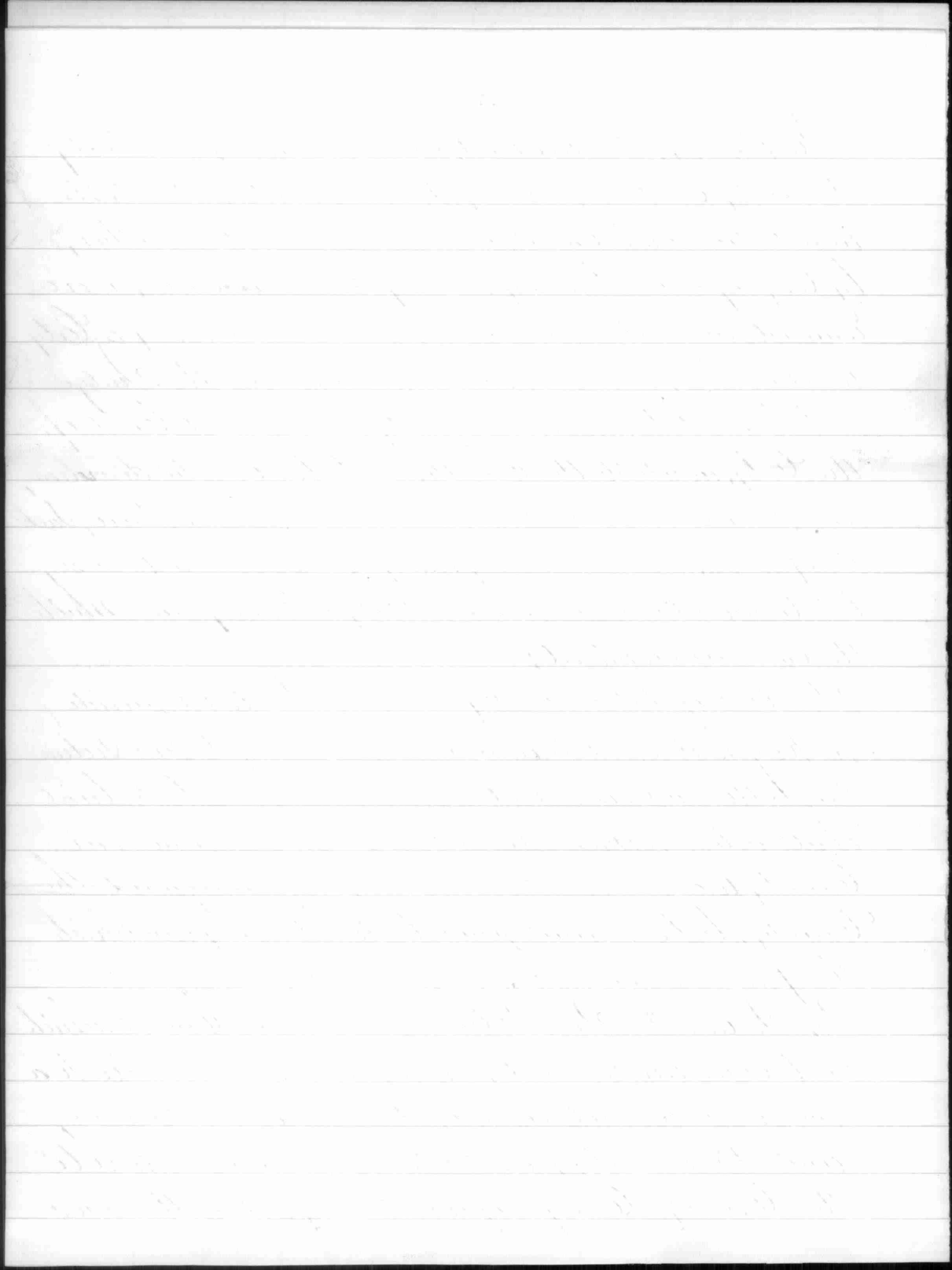
Independently of the structure of these prayers, they involve the legislative powers and duties of the Judges of the Circuit Court for Baltimore County, the Criminal Court of said City and of the Clerks of said Courts severally and respectively, under the Act of 1852 ch 315, entitled "An Act to provide for the payment of costs in cases removed from the Several Courts of the City of Baltimore, to the Circuit Court for Balto County & in cases removed from the Circuit of Baltimore County" and the Act of 1834 ch 269, entitled "An Act to provide for payment of costs in removed cases"

The first act after declaring that, in all cases removed



from the City, to the Circuit Court of Baltimore County for trial, all the costs incurred in the trial of said cases, including Jurors, Bailiffs and the officers of the Court, during the time occupied in the trial of said cases, (Except such costs in Civil cases as shall be charged to either Plaintiff or defendant) shall be levied & collected from the City of Baltimore, "(Sec 2^d) Enact, That in all Criminal cases removed from the Criminal Court of Baltimore to the Circuit Court for Baltimore County and tried, it may be lawful for the Judges of the said Circuit Court to allow to the State's attorney for Baltimore County in addition to the sum now allowed by Law, such compensation not to exceed the sum of thirty dollars for any one case, as the said Judge may deem just and proper, to be levied and collected from the City of Baltimore.

Sections 3 & 4th make similar provision, to those of Sec: 1 & 2^d "Mutatis mutandis", as the Costs of cases removed from the County, to the City, requiring the costs to be levied by the County Commissioners of Baltimore County or collected from the County & paid over to the Register of the City of Baltimore and the compensation to be levied & collected as aforesaid & paid to the Register of the City for the benefit of the said State's Attorney.

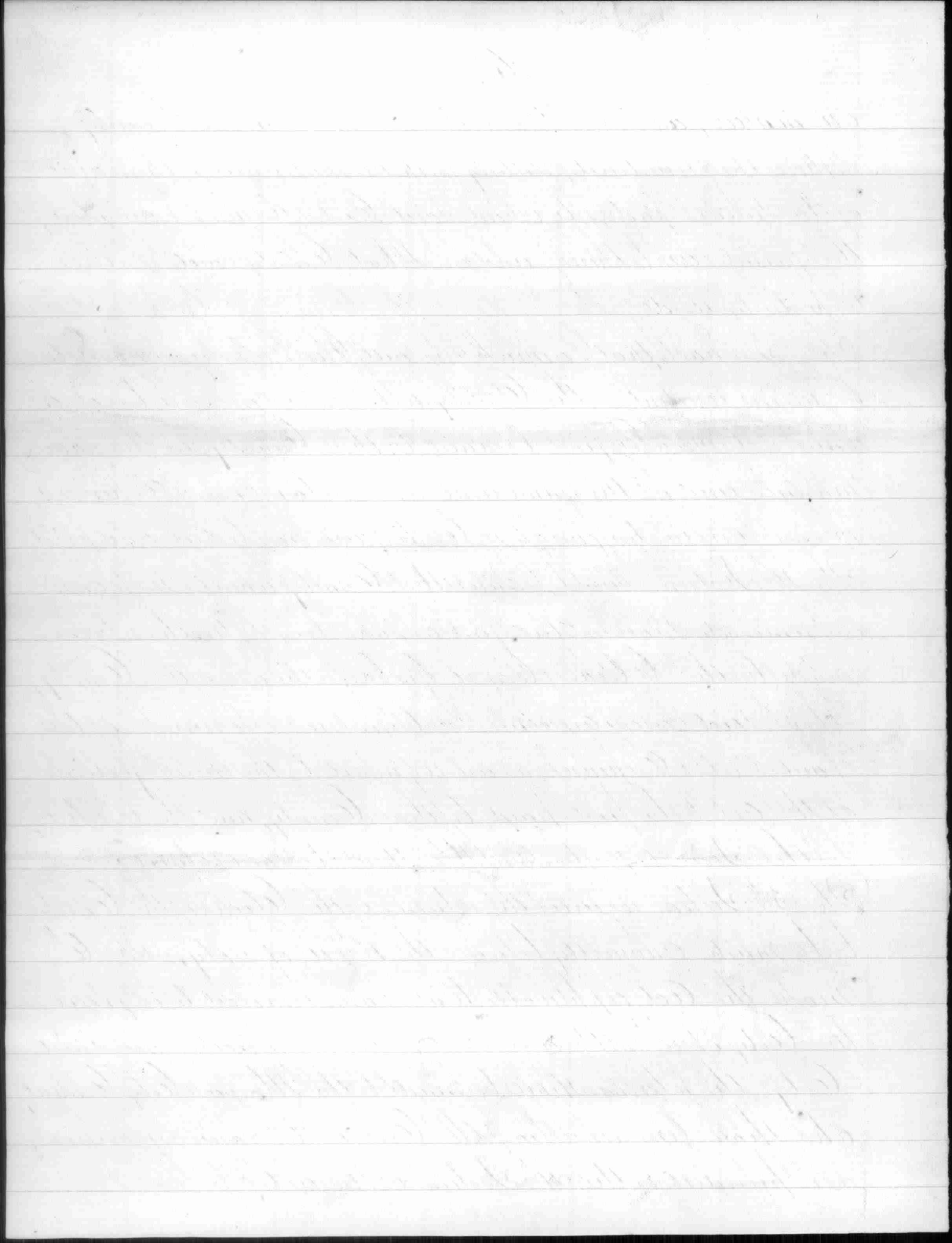


originated, as to the County Commissioners of the County,
 Where they was tried, setting forth in said returns, the names
 of the several parties to whom said Costs & Expenses are due,
 the several amounts thereof, and in What County said Parties
 respectively reside,

Sec 3 Enacts, that so much of said Costs & Expenses as is due
 to persons resident in the County where said cases are tried or
 removed to shall first be paid by that County, in the same
 manner and at the same time as similar Costs & Expenses
 in cases originating in said County, are now levied and paid.

The 4th Section Enacts, That the County where such cases
 are removed, shall at the first annual levy after the returns
 made by the Clerk, levy in gross for the use of the County,
 Where said cases are removed to for trial, so much of the
 said Costs & Expenses, as are required by the third Section
 of the act to be first paid by that County, and the residue,
 for the several parties entitled thereto by said returns.

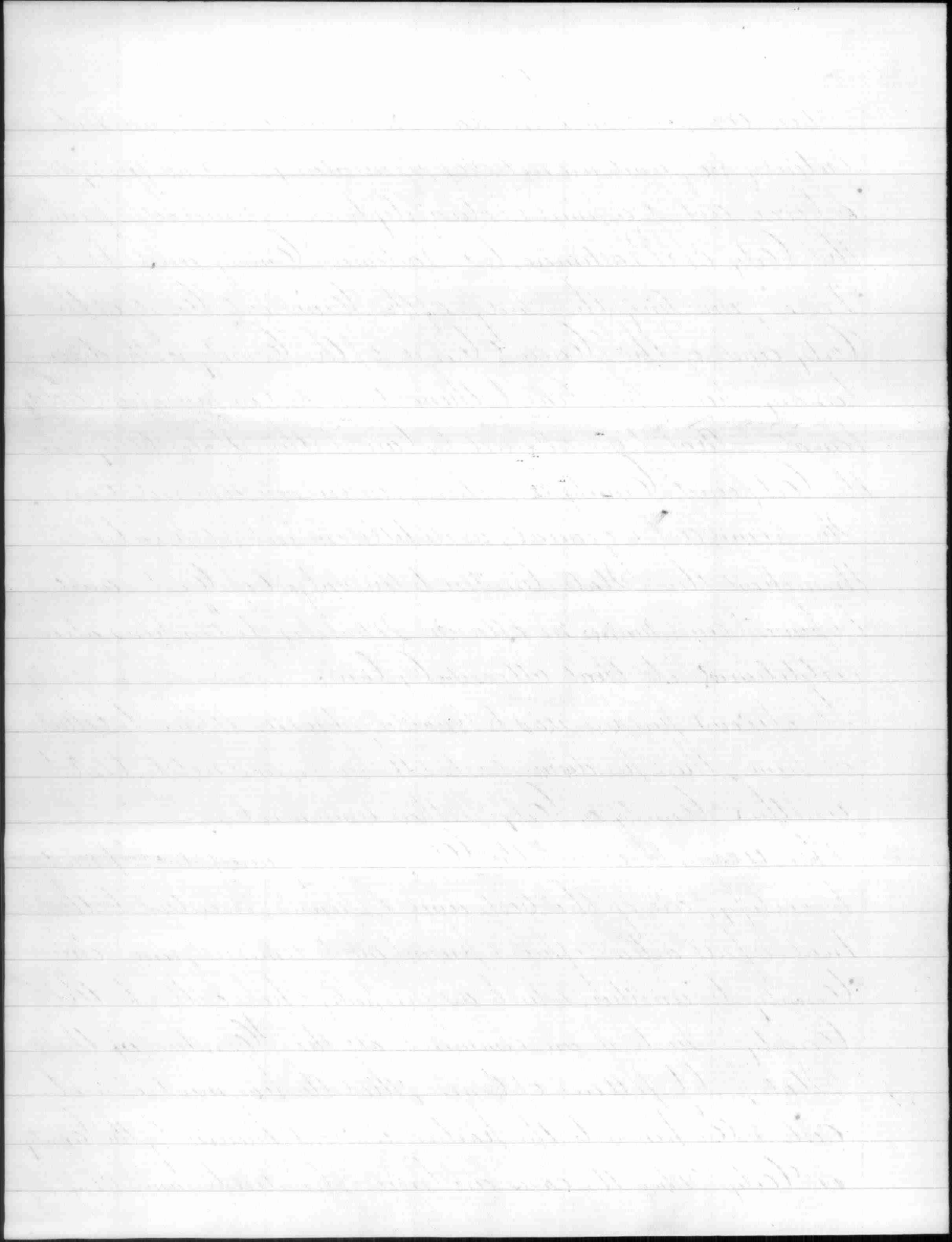
The 5th Section requires the returns of the Clerk of the Court
 to be made annually between the 1st & 10th of July, The 6th
 makes the act applicable to all cases removed to or from
 the City of Balt^o and that in cases removed from said
 City, the returns shall be made to the Mayor & City Council,
 who shall levy and pay the Costs in the same manner
 as is provided in the 4th Section of the act,



These acts, although "in pari materia", in part, are not entirely so, and are not supplementary. The first, is a local act, confined exclusively to cases removed from the City of Baltimore, to Baltimore County and vice versa, investing the Judge of the Criminal Court of the City and of the Circuit Court of the County with discretionary power, peculiar to them, to make compensation, additional to that then allowed by law, to the States Atty for the City and County respectively, in certain removed cases. The second act is general, as its title imports, operative throughout the State, limited to the subject of Costs and Expenses and makes no allusion whatever to "compensation additional" to that allowed by law.

The obvious purpose was to Enable witnesses & others to collect at home, their per diem, costs & Expenses, and not to look to another County or City for their remuneration.

The accounts, which the Clerks are required to keep and to certify, are of the Costs and Expenses, "incident to the trial of all actions, issues & proceedings removed from one County to another, which are properly chargeable to the County" such as are common to all the Counties of the State. It follows of course, that the payment of such costs & Expenses to the parties resident therein by the County or City where the cases are tried is limited to same class.

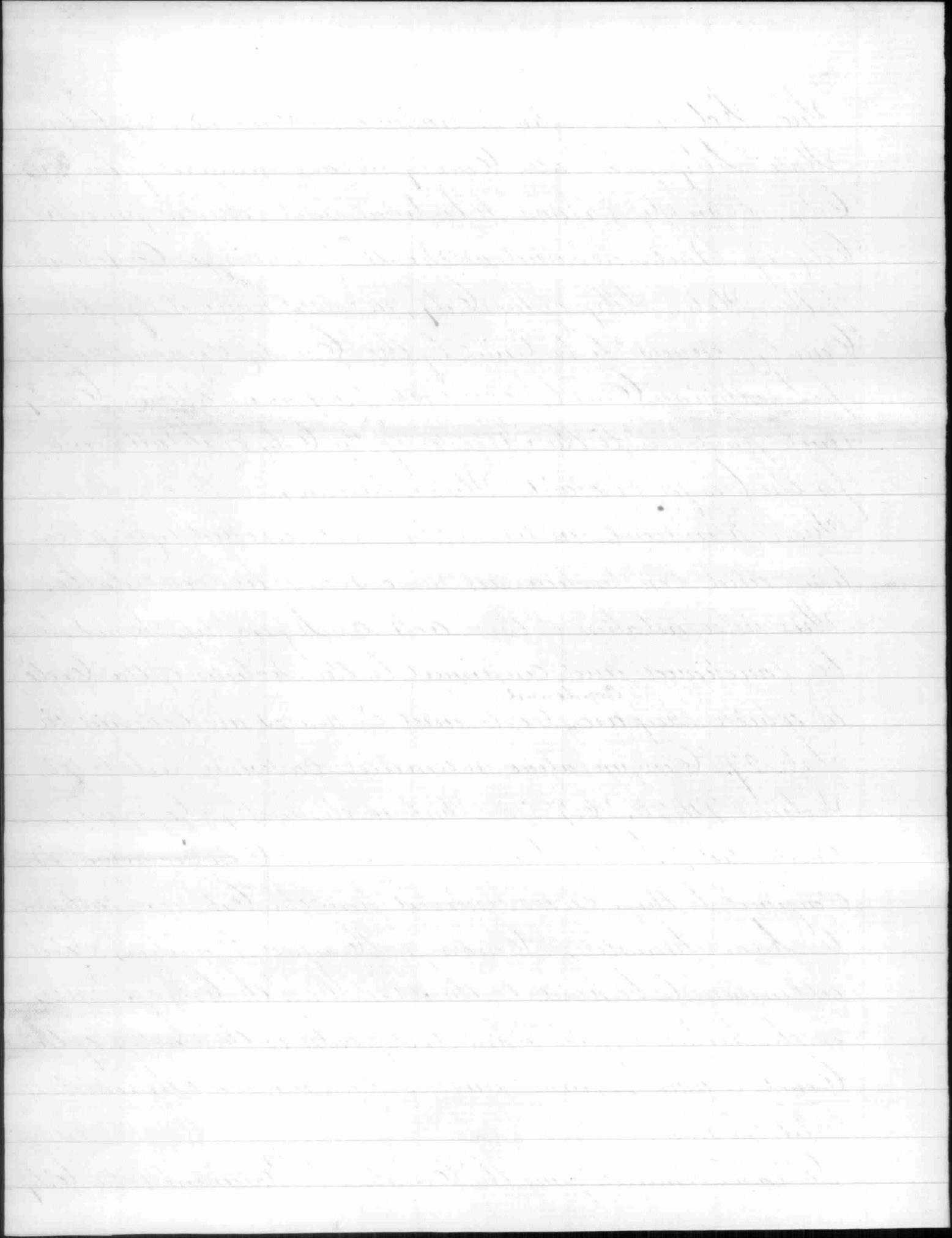


The Act of 1852, Sec 2^d providing for Compensation to the State Atty for Baltimore County in cases removed from the City, Expressly enjains "to be levied and collected from the City of Baltimore," and in Sec 4th providing for Compensation of the States Atty of the City, in cases removed from the County, enacts "to be levied by the County Commissioners of Baltimore County and collected from Baltimore County and paid over to the Register of the City of Baltimore & for the benefit of said States Attorney"

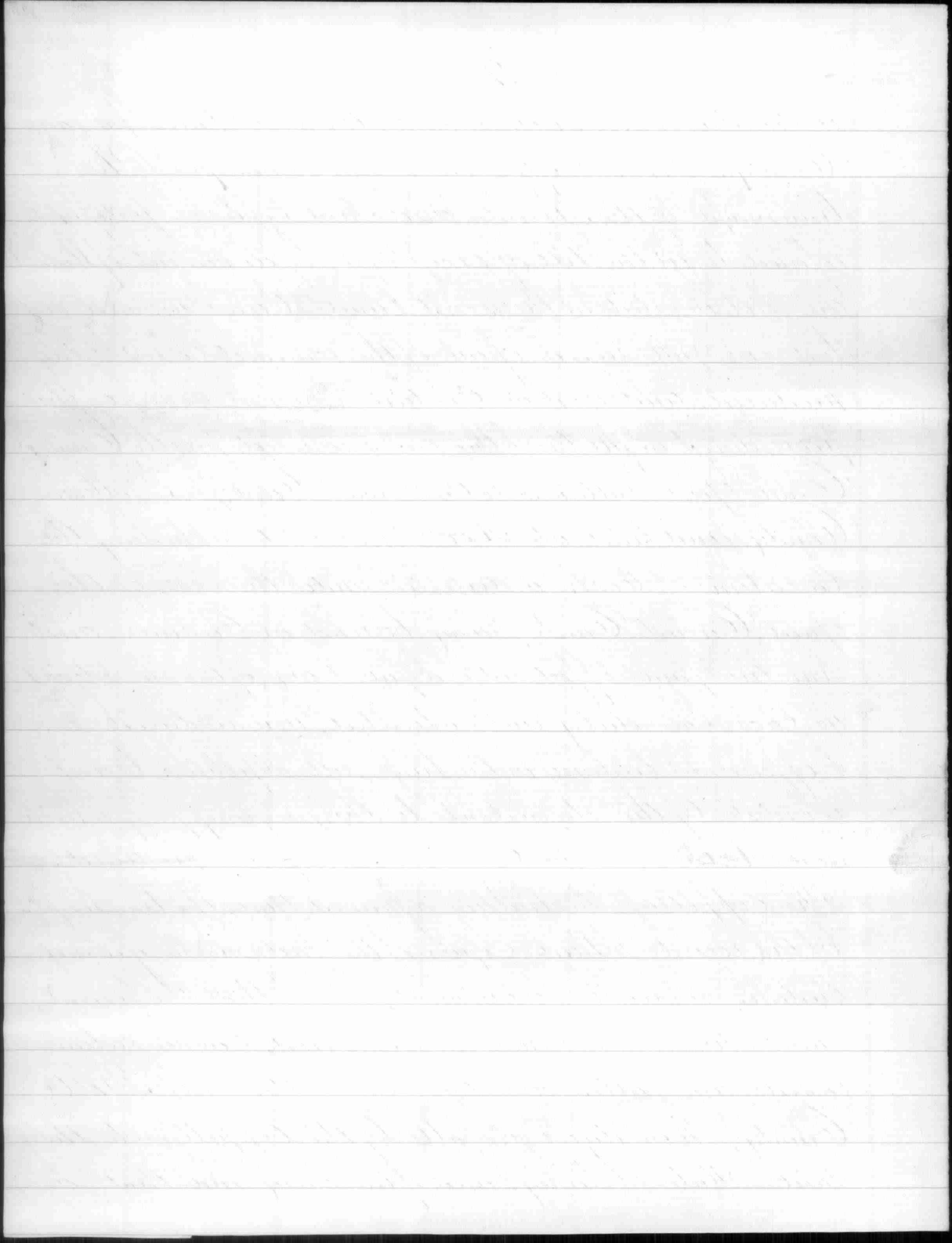
Such provisions are too explicit to be reached by implication and construction, not necessary and inevitable.

This interpretation of these acts of Assembly, seems to be sanctioned and confirmed by the Sections of the Code in which they are ^{condensed} Costs and Expenses are codified in Art. 27. Compensation in removed cases, in article 75 Sections 74, 75, 76, 77, 78 They are distinctly classifed, ~~condensed~~, In the latter, the source of Compensation is confined to those cases removed from the City of Baltimore to Anne Arundel, Howard & Harford Counties, said allowance to be paid by the Register of the City of Balt^o. or the proper officer upon Certificate of the Judge of the Court to which said Cause or Causes was removed Art 75. Sec 78.

In cases removed from the County of Baltimore to the City



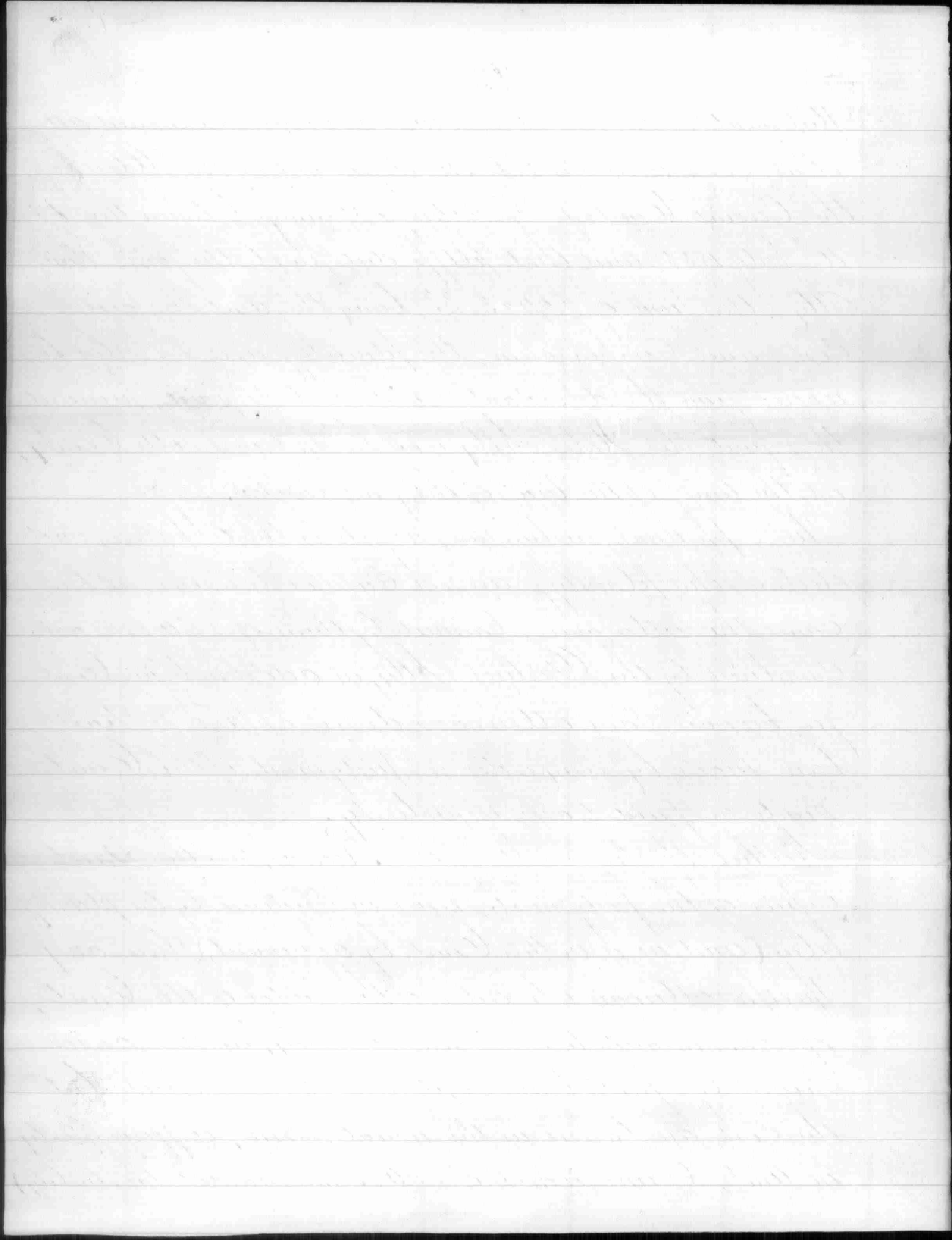
A similar provision is made by the local laws for Jail County, Art 3 Code Dist. Balt^o County. The transcripts of the Records and that copies of judgments referred to in the bill of exceptions, by agreement of Counsel are not inserted in the record; and it was further agreed that one full record of one of the removed cases being produced and read in Evidence - that copies of the proceedings in all the other cases removed from the Criminal Court for Baltimore to the Circuit Court for Baltimore County and tried at New^o Court 1837, including the taxation of costs, as certified under the seal of the Jail Circuit Court, may be read in Evidence, and have the same effect as if a full copy of the proceedings in each case duly authenticated, were produced & offered in Evidence on the trial, all objections being reserved by the defendants to the foregoing proof which could be taken to the Originals if they were produced. The Appellees instruction assumes that, the transcripts of the records & that copies of the judgments given in Evidence under this agreement, show that the several sums therein mentioned as costs and compensation taxed and allowed to the States Attorney of Balt^o County, were due & payable by the Appellees to the said States Attorney, and if the Jury find that a



Statement of the said Costs and Compensation and all other costs was sent to the defendant by the Clerk of the Circuit Court for Baltimore County, between the 14th 10th July 1853, and that Pltffs did pay to the said State Atty, the sum of \$2223. 33, being the amt of said Costs and Compensation, the plaintiffs were Entitled to receive from the defendant, said amt so paid, provided they find the State Atty was resident in Balto County, at the time of the trial of the said causes.

The Appellants instruction, negatives the Appellees, and declares the plaintiffs are not Entitled to recover in this cause the allowance claimed by them of \$30 in each case tried by the District Atty, in addition to his legal fee, because said allowance do not appear to have been made by any order or judgment of the Court made in said cases respectively.

Neither the transcripts of the Records, nor the Short Copies of the judgments, read in Evidence by the plaintiffs below (and used in this Court by agreement) show any specific allowance by order of the Judge of the Court, of Compensation to the State Attorney, in the cases found by such transcript and short copies: but the costs are taxed in the usual form, differing only in amt, (Some items of \$30. being marked "Ch^o the City")

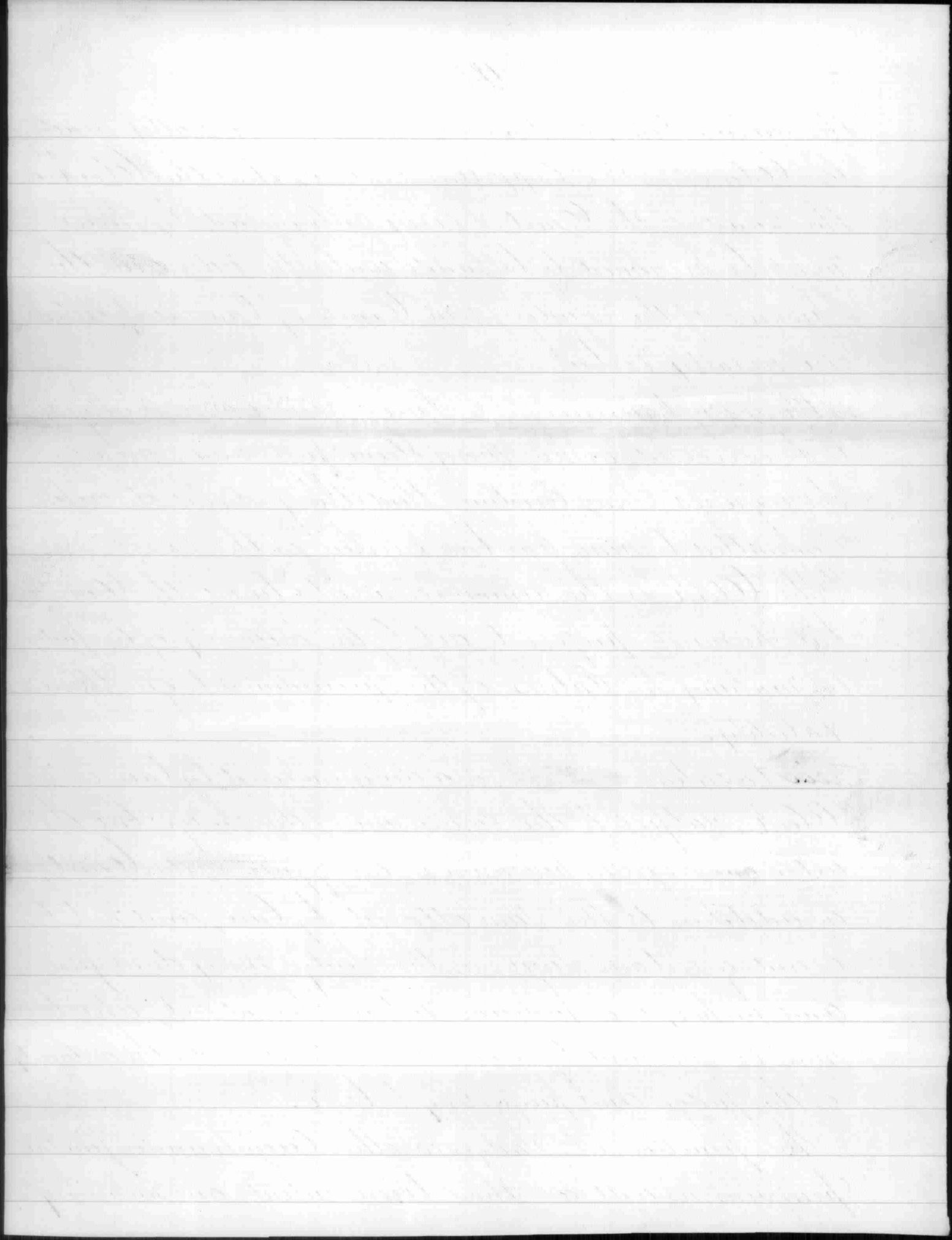


The Entries being exclusively made, and usually made by the Clerk. The Appellee contends, that the Clerk is the hand of the Court, & Every Entry made by him must be presumed to be made under the order & in the presence of the Judge, & in Courts of law, such orders are usually verbal.

When the law invests a Special power in a Judge, to be exercised as he may deem just and proper. It requires some Evidence that the judicial discretion committed to him, had been exercised in the case.

The Clerk is the amanuensis of the Court, but he must profess to act by the authority of the Judge, in making his Entries of the proceedings to give them validity. The awarding of costs, is the act of the Court, ^{or compensation according to the list of fees prescribed} their taxation, is a duty imposed by law on the Clerk, Subject to the Supervision of the Judge; but the allowance of compensation to an officer of the Court, in addition to the sum allowed by law (and not to exceed a certain sum,) as the Judge may deem just and proper, is a judicial, not a Clerical act, which must be evidenced by some order, Entered under the authority of the Judge and purporting to be so.

The practice of Judges in other Circuits under similar provisions as well as the obvious intent and meaning



of the law, enforce this construction.

The position assumed by the Court below, in their adoption of the Appellees prayer & rejection of the Appellants, viz that the transcripts of the records and the short copies of the judgments Exhibited in Evidence in the cause show that the several Sums therein mentioned as Costs and Compensation taxed and allowed the State Atty, of Baltimore County, were due and payable by the plaintiff (the Appellees) to the said State Atty" being erroneous, the judgment must be reversed, without Precedents.