

of the latter writ the Court may *on motion of the plaintiff* consolidate the suits, and the same principle would apply to actions *ex contractu*, and the practice in Baltimore has been to consolidate all such actions as of course; but the plaintiff is not bound to renew against a defendant returned *non est*; and see Code, Art. 75, sec. 86,¹³ that if one of several defendants is summoned and fails to appear, an appearance shall be entered for him and the suit proceed. In *Mitchell v. Smith* the Court went on to say, that in some cases where separate suits have been instituted, which depended on the same facts and principles, Courts have ordered them to be put to the same jury at the same time; but they declined to decide in that case (which was an action of assault and battery against two jointly, but brought in separately, and after separate declarations against each the suits were on motion of the plaintiff consolidated,) whether if the plaintiff had elected to issue separate writs at first, as he might have done, the Court would have been right in ordering the consolidation. It is said that in all these cases separate costs are to be taxed in each action up to the time of consolidation. In cases where separate actions may be brought though there can be but one satisfaction the plaintiff is entitled to costs in all the suits, *Bank of Columbia v. Ross*, 4 H. & McH. 455.

How costs are taxed.—"It is," say the Court in *Kierstead v. Rogers supra*, "the unquestionable province of the Court, through its officers, to tax the costs the party is at in prosecuting his action." And in that case where on the execution of a writ of inquiry the jury found "about ten dollars costs," this was held a formal defect and amended at once, the Court observing that in *Harris v. Jaffray*, 3 H. & J. 543, the question did not properly arise. These costs are in fact taxed by the clerk, according to the scale prescribed by law, see *Mayor & C. C. of Balto. &c. v. Comm'rs of Balto. Co.* 19 Md. 554. In our practice where all proceedings are not recorded (see note on 8 H. 6, c. 12 *infra*) the entry of these costs is generally made on the docket. They include an attorney's appearance fee,¹⁴ clerk's fees, which are larger or smaller according to the nature of the action, and whether the proceedings **82** are or are not to be recorded, witnesses' fees, sheriff's fees, surveyor's fees where plats are returned, expenses of the execution of commissions, &c. Counsel fees are not allowed to be taxed as costs at law,¹⁵ except in proceedings between landlord and tenant in Baltimore City, where a counsel fee is allowed as part of the expenses, Code, Public Local Laws, Art. 4,

¹³ Code 1911, Art. 75, sec. 146.

¹⁴ Code 1911, Art. 36, sec. 10; *Neighbors v. State*, 41 Md. 478; *Ruley v. Hyland*, 77 Md. 487; *Albert v. Albert*, 78 Md. 338, 347; *Goldsborough v. Lloyd*, 86 Md. 374; *Worcester Co. v. Melvin*, 89 Md. 37, 42.

Premiums on bonds of surety companies are sometimes entitled to be taxed with the costs under Code 1911, Art. 24, sec. 10.

¹⁵ Counsel fees are not costs. No attorney's fee, except the appearance fee, is ever included in the taxed costs unless there is some special statutory authority authorizing it. *Hamilton v. Trundle*, 100 Md. 276; *Bauernschmidt v. Bauernschmidt*, 101 Md. 148, 154; *Singer v. Fidelity Co.*, 96 Md. 221.