

OPINION
51-34

July 18, 1951 (OPINION)

COUNTIES

RE: Filing Fees in Appeal from Justice Court

We have yours of the sixteenth instant re proper filing fee for the filing of an appeal from the justice court to the district court in civil actions.

A search through the various codes and compilations of the laws of North Dakota fails to discover a specific statute providing for a filing fee for filing an appeal from a justice court. Prior to 1915 fees were provided for different actions, fees varying in cases where judgment was entered by default, or after jury trail, but no specific fee for appeals from justice court was provided. In 1915 (chapter 123) the preceding provisions were changed and embodied in language identical in meaning with our section 11-1704 (1) as found in the Revised Codes of 1943.

So far as we know it was the universal practice at least forty-five years for clerks of district courts to charge and collect a fee of five dollars for every appeal from justice court filed. Therefore, the universal construction placed upon both the law prior to chapter 123, Laws of 1915, and thereafter upon section 3498 of the Compiled Laws for 1913 as amended, has been that a filing fee of five dollars should be charged and collected upon the filing of an appeal in a civil case from a justice court judgment. And subdivision 1 of said chapter 123 is evidently the only provision of said chapter which could be construed as authorizing such filing fee. Since such has been the universal construction of our laws relating to the fees of clerks of district courts, at least since 1915, it is very doubtful if our court would change it.

However, the fee required was raised by chapter 228 Laws of 1947, so that now our opinion is that clerks of district courts are authorized and required to charge a fee of seven dollars and a half for the filing of an appeal from justice courts in civil actions.

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