

The provision for a lump sum to be determined by the court and taxed in criminal cases was added. It fixes a maximum of \$25 in misdemeanor cases and \$100 in felony cases. It may be questioned whether costs as such should ever be taxed against the convicted defendant in a criminal case. The acquitted defendant is not permitted to tax costs against the United States. Indeed the allowance of costs in criminal cases is not a matter of right but rests completely within the discretion of the court. *Morris v. United States*, 1911, 185 Fed. 73, 107 C.C.A. 293.

In *Alberty v. U.S.*, C.C.A.9, 1937, 91 F.2d 461, the defendant was fined \$100 on each of 11 accounts of an indictment under the 1906 Food and Drug Act (title 21, §§ 2, 10, U.S.C., 1934 ed., as amended). Costs of prosecution were taxed in the sum of \$1,499.80. Yet the court in its discretion might have reached substantially the same result by imposing a fine of \$200 on each count without any taxation of costs.

Changes were made in phraseology.

#### REFERENCES IN TEXT

The Comprehensive Forfeiture Act of 1984, referred to in subsec. (c)(1), is chapter III of title II of Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 2040, as amended. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 1961 of Title 18, Crimes and Criminal Procedure, and Tables.

#### AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101-647 substituted “if the property is not disposed of by marshal’s sale” for “If the property is to be disposed of by marshal’s sale”.

1988—Pub. L. 100-690 added subsecs. (a) to (d), struck out former subsecs. (a) and (b), and redesignated former subsec. (c) as (e).

1986—Pub. L. 99-646 designated existing provisions as subsec. (a) with pars. (1) to (9) and subsec. (b) with pars. (1) and (2), substituted a period for the semicolon at end of each par., and added subsec. (c).

1962—Pub. L. 87-621 increased fees for serving an attachment in rem, or libel in admiralty, warrant, attachment, summons, *capias*, or any other writ from \$2 to \$3, for serving a subpoena or summons for a witness or appraiser from 50 cents to \$2, for preparation of a proclamation in admiralty from 30 cents to \$3, and for copies of writs or other papers furnished at the request of any party from 10 to 30 cents per folio of 100 words or fraction thereof, and mileage for necessary travel from 10 cents a mile to 12 cents per mile, or fraction thereof, inserted provisions authorizing a fee of \$1, in addition to the prescribed fee, for forwarding any writ, order, or process to another judicial district for service, and \$3 for preparation of any notice of sale or other public notice or bill of sale, permitting payment of travel expenses where there is an endeavor to serve any process, writ, or order, prohibiting collection of mileage fees for services or endeavors to serve in the District of Columbia, and empowering marshals to require a deposit to cover all fees and expenses, and substituted provisions authorizing a fee of \$3 for serving a writ of possession, partition, execution, order or process, and commissions of 3 per centum on the first \$1,000 collected and 1½ per centum on amounts over \$1,000 for seizing and levying on property (including seizures in admiralty), disposing of the same and receiving and paying over the money for provisions which permitted a marshal serving such a writ or process, and seizing and levying on property, advertising and disposing of the same and receiving and paying over the money, to receive the same fees and poundage as allowed for similar services to the sheriffs of the States in which the service is rendered, and 2½ per centum on any sum under \$500, and 1½ per centum on amounts over \$500 for sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and provisions permitting collection of actual expenses incurred, and \$3 per hour for each deputy marshal required, for the keeping of property attached, and di-

recting the marshal to collect, in advance, a deposit to cover initial expenses and periodically thereafter such amounts as necessary to pay expenses until litigation is concluded, for provisions which allowed only such compensation as the court, on petition, might allow.

1950—Act Sept. 9, 1950, increased mileage fees from 6 to 10 cents a mile.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-646, § 39(b), Nov. 10, 1986, 100 Stat. 3600, provided that: “The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986].”

#### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-621, § 3, Aug. 31, 1962, 76 Stat. 418, provided that: “This Act [amending this section] shall become effective ninety days after enactment [Aug. 31, 1962].”

#### COLLECTION AND DISPOSITION OF FEES AND EXPENSES FOR SERVICES

Pub. L. 101-162, title II, Nov. 21, 1989, 103 Stat. 997, provided in part: “That notwithstanding the provisions of title 31 U.S.C. 3302, for fiscal year 1990 and hereafter the Director of the United States Marshals Service may collect fees and expenses for the services authorized by 28 U.S.C. 1921 as amended by Public Law 100-690, and credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services”.

#### § 1922. Witness fees before United States magistrate judges

The fees of more than four witnesses shall not be taxed against the United States, in the examination of any criminal case before a United States magistrate judge, unless their materiality and importance are first approved and certified to by the United States attorney for the district in which the examination is had.

(June 25, 1948, ch. 646, 62 Stat. 956; Pub. L. 90-578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 828 (R.S. § 981; May 28, 1896, ch. 252, § 19, 29 Stat. 184).

Last clause of section 823 of title 28, U.S.C., 1940 ed., providing “and such taxation shall be subject to revision, as in other cases” was omitted as unnecessary in view of the inherent power of the court to revise costs taxed.

Changes were made in phraseology.

#### CHANGE OF NAME

“United States magistrate judges” substituted for “United States magistrates” in section catchline and “United States magistrate judge” substituted for “United States magistrate” in text pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title. Previously, “United States magistrates” and “United States magistrate” substituted for “United States commissioners” and “United States commissioner”, respectively, pursuant to Pub. L. 90-578. See chapter 43 (§ 631 et seq.) of this title.

#### § 1923. Docket fees and costs of briefs

(a) Attorney’s and proctor’s docket fees in courts of the United States may be taxed as costs as follows:

\$20 on trial or final hearing (including a default judgment whether entered by the court or by the clerk) in civil, criminal, or admiralty cases, except that in cases of admiralty and