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A McDougall Sheriff Clerk ~~4222250000~~

Please reply to The Sheriff Clerk
Your reference

Hughes Dowdall & Co
Solicitors
216 Bath Street
GLASGOW G2 4HS

Our reference

Date 14.10.75

Dear Sirs

C v C

I enclose herewith a copy of my note in the above
taxation which took place on 10 October 1975, for
your information.

Yours faithfully

A McDOUGALL
Sheriff Clerk

all files

NOTE: The issue for decision in this taxation arises from the interpretation of paragraph 12(4)(b) of the Legal Aid (Scotland) Scheme 1958 which reads as follows:

"(b) any solicitor whose name is included in a list for an area in which he has not a place of business shall only be entitled, when acting for an assisted person in such area, to receive the fees and outlays that would be payable if he had a place of business in such area."

The argument by the Solicitor for the Law Society Central Committee reduced to its simplest terms was that the effect of the paragraph quoted was to exclude all fees and expenses which could be included under the heads of travelling and travelling time in accounts such as the present where the assisted person resided in the area of a local committee and the solicitor has no place of business in that area.

The point made in opposition to that argument was that the paragraph did no more than limit such expenses and fees to those which would be allowable to a solicitor with a place of business within that area. It was also argued that the terms of the paragraph were wide enough to permit such a solicitor travelling expenses and travelling time from any point within the area of the local committee.

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The paragraph in question raises a number of problems, but it is to be observed that had it been intended to exclude travelling expenses and fees for travelling time completely it would have been simple to frame the paragraph so as to permit him the fees and outlays that would be payable if he had a place of business at the seat of the Court, or alternatively at the place where the assisted person resides. Either version would have defined the position precisely. If the argument for the Law Society were accepted the Solicitor in the present case would not be allowed "the fees and outlays that would be payable if he had a place of business in such area".

Accordingly I have rejected the argument of the Law Society and have allowed travelling expenses and fees for travelling time.

I reject the point, made in opposition to the argument for the Law Society Central Committee, that such expenses and outlays are allowable from any locus within the area of the local Committee. It is obvious that in many areas such a construction would permit artificially inflated fees if solicitors could opt for the place from which they calculated travelling expenses and fees. It would also permit a situation in which fees and outlays might be allowable which had not been incurred and that cannot be permissible.

In the present case the travelling expenses were charged from a point 200 yards outside the area of the relative local Committee, because the solicitor in question had travelled on the three occasions direct from his home which was situated there. His journeying, apart from the first 200 yards, was effectively within the area and accordingly I have allowed expenses from the point at which he crossed into the Committee's area. I was informed that no objection was being taken to the amount charged and as these equated to allowances which would be payable under civil service regulations, I allowed the expenses without reduction.

I accept that the period of two hours charged on page 2 for the precognition of the Pursuer (to include travelling time from the boundary of the local Committee area) is reasonable. I also accept that it was a necessary expense because of the Pursuer's disability. Accordingly I have allowed that fee in toto. I have reduced the fees for attendance at the proof on 25 June and 18 July 1975 by the sums of £9 and £12 respectively after considering the circumstances of the proof on these days, and these reductions were agreed by ~~the solicitors for both sides~~. The sums allowed on these two occasions included an element for travelling time from the boundary of the local Committee area.

The other adjustments to the account were in respect of items taxed off by agreement on the basis that they fell under agency.

A handwritten signature in dark ink, appearing to be 'C. H. H.', is written over a horizontal line. The signature is stylized and cursive.