

(1976)

...es. Capital
...wed on the
...established
...calculating
...t normally
June 1977
...de for an
...ompany of
...the tax law
79.
...a dwelling
...owering the
...ling-homes
...ms as they
...xistence of
...sion in the
...roperty is
...rcise of the
...allow non-
...enancy for
...e the view
...n of a lease
...full ex-
...change for
...finance Act
...rms wide
...nt right of
...ite period.
...particular
...e will ac-
...an interest
...eir powers
...n, this will
...on in view
...s exercised
...n interest in
...ich. Board
...hed on 1st
...ection with
...age 14, in
...the case of
......

Section E Capital Transfer Tax
Paragraph 2 (Powers of Advancement) add paragraph:
Examples
Practical illustrations of para 15 [BTR 1976, p 406/7]
Dispositive trusts
Third line—
Read: Trustee Act 1975
Read: Trustee Act 1925
Age of majority
First line—
Read: Trustee Act 1975
Read: Trustee Act 1925
Fourth line—
Read: BTR 1971 page 474
Read: BTR 1977 page 474.
Double Taxation
Statement issued on 1st August 1978 announcing the
Agreement with effect from 1st October 1978 of the 1946
Canadian Death Duties Agreement the Board said that the
Agreement had ceased to have effect in relation to estates of
individuals who died after 31st December 1971 (the date
at which Canada had repealed its estate tax) and that this
tax was shared by the Canadian authorities. However, as
the Minister of State announced on 27th July in a reply to a
Parliamentary Question, the Board have now been
informed that the Double Taxation Relief (Estate Duty)
(Canada) Order 1946 (SRO 1946 No 1884) and the Agreement
in Schedule to the Order do have effect in relation to
estates of individuals who died after 31st December 1971 and
from 1st October 1978, the date from which the Agreement
is determined. Subject therefore to the normal rules gov-
erning the reopening of settled cases the provisions of the
Agreement will apply to the estates of individuals who
died before 1st October 1978. The main effect of this will be
that deceased persons who were domiciled in Canada at the
time of their death but who were deemed to be domiciled in
Scotland under the provisions of section 45 Finance Act 1975
shall be treated as so domiciled if they died before 1st
October 1978.

Double Taxation Relief (Taxes on Income) (Norway)
Order 1979 entered into force on 22nd June 1979. It
has been published as SI 1979 No 303.

Legal Aid

Lothians and Borders Committee
Mr Warner has resigned as Secretary of the Lothians
and Borders Committee. Mr B. P. T. McGowan, presently
Secretary in the Supreme Court Committee, has
been appointed Secretary of the Lothians and Borders Com-
mittee in his place.

Working-Party on Legal Aid legislation

The Working-Party is now moving towards completing its report on Legal Advice and Assistance and Legal Civil Proceedings.

Previous notices in the *Journal* invited members to submit matters for consideration. Any member still having a matter which he feels should be considered should submit it to the Secretary of the Central Committee who will place it before the Working-Party.

Legal Aid in civil proceedings

Assessment of resources in cases of juveniles

Regulation 5 of the Assessment of Resources Regulations provides that in an application by a juvenile (a person under sixteen), save in exceptional circumstances, the means of the person liable to maintain the juvenile have to be taken into account. Normally the refusal of a parent (or person liable to maintain as aforesaid) to co-operate in relation to the application will be taken by the Department as an abandonment of the application unless there are exceptional circumstances. As an indication of exceptional circumstances, the following case should be noted. Solicitors considered a mother and child had a good claim against certain authorities for the death of the father. The circumstances of the death were exceptional and distressing to the mother that she instructed abandonment of her claim and that of her son as she was unable to give evidence and would not co-operate in any way as regards means. The Department agreed with the Legal Aid Committee that the son should not be denied Legal Aid and that the case was one within the meaning of 'exceptional circumstances'. The decision as to what constitutes 'exceptional circumstances' is one for the Department but in appropriate situations representations by Legal Aid Committees or solicitors will be considered by the Department.

Contribution fraction

As indicated in the previous *Journal* the contribution fraction has been altered from one-third to one-quarter from July 1979. The amendment was made by the Legal Aid (Scotland) Order 1979 (Commencement No 1) (Scotland) Order 1979.

Expenses in divorce cases under the five-year non-cohabitation rule

Craigie v Craigie—1979 SLT (Notes) p 60
Members will have noted this case in which the First Division considered the question of awards of expenses in a legally aided undefended divorce on the grounds of non-cohabitation for five years. The Division held that it should be a new general rule of practice to the effect that where there is no financial provision the normal rule will be no awards of expenses although the Court would still retain its over-riding discretion which would probably be exercised only very exceptionally. Where the wife seeks some financial provision the rule will be the same although the Court thought it was easier in these cases to envisage circumstances where the Court might exercise its discretion.

Auditor's opinion

Sir: We send herewith a copy of a Note from the Audit Commission to the Court of Session in a case Catherine McCulloch v McCulloch. This arises out of the question of whether it is necessary to have a Legal Aid Certificate in a divorce action which covers ancillary matters. It is clear from the Audi-

opinion that this is not necessary, but we fear that many solicitors being unaware of this decision are acceding to abatements made by the Legal Aid Central Committee Taxation Department, which would not be supported on taxation.

Edinburgh

Drummond & Co

NOTE
by
The AUDITOR of the COURT of SESSION
for
The LAW SOCIETY
In Causa
MRS CATHERINE McGREER or McCULLOCH
against
PETER TRAINER McCULLOCH.

This is a Taxation between the Solicitors for the Pursuer and the Law Society in connection with the account of expenses to be paid to the Solicitors.

Contained in the account commencing in October 1976, there are entries in connection with adding a conclusion for a capital payment which was not contained in the original Summons. The Law Society maintain that the Legal Aid Certificate does not provide for a capital payment and that accordingly all the entries concerned with the amendment of the Pleadings to insert a conclusion for a capital payment should be disallowed. They take the view that any such work should not be included because the Solicitors did not ask permission from the Law Society to amend.

The Solicitors on the other hand contend that the entries should be allowed because they are part of the work which a prudent Solicitor would have done in the best interests of his client, and are therefore payments which should be properly made out of the Law Society funds even although permission was not sought.

The Auditor of the Court of Session on 14th April 1970, in the case of *Butler v Butler* decided that, in view of the terms of the Act, Scheme and Regulations, charges for an amendment adding an interdict in that case should be allowed. In his Note in that case, he narrated the various sections of the Legal Aid Act and Scheme at length and he repeats these notes in this Note and incorporates them in it by reference to his Note of 14th April 1970 *brevis causa*.

The Auditor has come to the view in this case that the amendment in question was not a change or variation of the Proceedings in terms of the Act, Scheme and Regulations, and accordingly proposes to allow it. He is of the opinion that adding a claim for a capital payment following upon information received after the Summons has been lodged is a part of the Proceedings which could reasonably be accepted in an Action of this nature.

It is, of course, the case that the Committee must be satisfied that an application has a probable cause, and no doubt the Law Society would say that in this case the amendment and the facts averred in it have not come under the scrutiny of the Committee. In an Action such as this, it would seem to the Auditor to be reasonable for the Committee to expect that, if it became apparent that the Defender had money, a claim for a capital payment would follow.

IN RESPECT WHEREOF

W. Rufus Smith

In reply

The foregoing letter and Note were submitted for publication by the solicitors whose account in the case *McCulloch v McCulloch* was taxed by the Auditor of the Court of Session against the Legal Aid Fund. It is considered necessary to bring the following additional information to the attention of the profession.

The Auditor's decision relates to adding a conclusion for a capital payment because of information received after the Summons had been lodged. The important part of this is:

'He is of the opinion that adding a claim for a capital payment following upon information received after the Summons has been lodged is a part of the Proceedings which could reasonably be accepted in an Action of this nature.'

'It is, of course, the case that the Committee must be satisfied that an application has a probable cause, and no doubt the Law Society would say that in this case the amendment and the facts averred in it have not come under the scrutiny of the Committee. In an Action such as this it would seem to the Auditor to be reasonable for the Committee to expect that, if it became apparent that the Defender had money, a claim for a capital payment would follow.'

The solicitors' letter goes further and indicates that the Auditor's decision covers any ancillary matter such as custody, maintenance, etc.

The Legal Aid Central Committee do not agree with the Auditor's view as stated above nor with the views in the letter. They consider that payment for work relating to ancillary conclusions can only be allowed if specifically included in the Certificate, or if approval has been obtained from the Supreme Court Committee after the Certificate was issued. It would, for instance, be quite unreasonable for a husband or defender to be allowed to defend on custody at the expense of public funds where it was clear he had no chance of success, and the Supreme Court Committee frequently disallow ancillary conclusions on that basis.

The Committee do not propose to be bound by the Auditor's decision in this case either in relation to a conclusion for a capital payment or for other ancillary matters. The Committee would have taken a Note of Objections to the Auditor's decision in this case, but the taxation was on joint remit, and so a Note of Objections was not competent. The Committee, for convenience of solicitors, allow taxations on joint remit, rather than insist on a formal motion for taxation under the Rules of Court.

The Law Society has a right to take a Note of Objections to a report of the Auditor (see *Park v Colvilles* 1960 SC 143) and when the point arises again, the Committee will require the solicitors' account to be remitted to the Auditor for taxation in terms of the Rules of Court to enable a Note of Objections to be stated to the Auditor's report.

If any solicitor is minded to found on the Auditor's decision in this taxation, he should keep in view the status of the decision, which was a decision in an arbitration, not tested judicially. Members may feel they should treat the foregoing item with caution, until the issues have been resolved, judicially or otherwise.

John T. Sutherland
Secretary, Legal Aid
Central Committee

N O T E

by

The AUDITOR of the COURT of SESSION

for

The LAW SOCIETY

In Causa

MRS. CATHERINE MCGREER or McCULLOCH

against

PETER TRAINER McCULLOCH.

This is a Taxation between the Solicitors for the Pursuer and the Law Society in connection with the account of expenses to be paid to the Solicitors.

Contained in the account commencing in October, 1976, there are entries in connection with adding a conclusion for a capital payment which was not contained in the original Summons. The Law Society maintain that the Legal Aid Certificate does not provide for a capital payment and that accordingly all the entries concerned with the amendment of the Pleadings to insert a conclusion for a capital payment should be disallowed. They take the view that any such work should not be included because the Solicitors did not ask permission from the Law Society to amend.

The Solicitors on the other hand contend that the entries should be allowed because they are part of the work which a prudent Solicitor would have done in the best interests of his client, and are therefore payments which should be properly made out of the Law Society funds even although permission was not sought.

The Auditor of the Court of Session on 14th April, 1970, in the case of Butler v. Butler decided that, in view /



N O T E

by

The AUDITOR of the COURT of SESSION

for

The LAW SOCIETY

In Causa

MRS. CATHERINE McGREER or McCULLOCH

against

PETER TRAINER McCULLOCH.

This is a Taxation between the Solicitors for the Pursuer and the Law Society in connection with the account of expenses to be paid to the Solicitors.

Contained in the account commencing in October, 1976, there are entries in connection with adding a conclusion for a capital payment which was not contained in the original Summons. The Law Society maintain that the Legal Aid Certificate does not provide for a capital payment and that accordingly all the entries concerned with the amendment of the Pleadings to insert a conclusion for a capital payment should be disallowed. They take the view that any such work should not be included because the Solicitors did not ask permission from the Law Society to amend.

The Solicitors on the other hand contend that the entries should be allowed because they are part of the work which a prudent Solicitor would have done in the best interests of his client, and are therefore payments which should be properly made out of the Law Society funds even although permission was not sought.

The Auditor of the Court of Session on 14th April, 1970, in the case of Butler v. Butler decided that, in view /

