

Waiting days - Edinburgh - Counsel

AUDITOR OF THE COURT OF SESSION

PARLIAMENT HOUSE, EDINBURGH, EH1 1RQ
RUTLAND EXCHANGE No. 304
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JW

H.M. Advocate v [REDACTED]
L.A. Ref: 83/14/80 1978/88

It was appointed that the Indictment of the accused on a charge of rape should call in the High Court at Edinburgh on 13th December 1988. It did not so call. It was notified as to call on 14th December. It did not so call. 15th December was initially mentioned as a possible starting date but this suggestion was departed from. Counsel for the accused then had to return his papers as for the following week he had earlier accepted another engagement. There seems to have been no firm assertion of anticipated calling on Friday 16th December.

Mr. Crawley was engaged on the afternoon of 16th December for the trial now confidently anticipated for 18th December. On 17th December he had a consultation with the accused and visited the locus.

At 10.30 a.m. on Monday 18th December, the accused's representatives were advised that the case could not call that day, but they were advised to attend at 9.30 a.m. on Tuesday 19th December. At 10.45 a.m. on Tuesday they were advised that the case would not after all be heard at that sitting. The case was heard in February 1989 on a fresh indictment and the accused was acquitted.

For Monday 18th and Tuesday 19th December Mr. Crawley claimed fees for waiting days. By long-established practice, accepted by members of the Faculty, the Legal Aid Fund has paid no fees to Counsel for days waiting in the High Court when it sits in Edinburgh, although such fees are always allowed for sittings outside the Capital. Counsel submitted that the unusual delay in reaching a hearing and still more the protraction of the uncertainty about that delay took this case out of that general rule. His entitlement to the fees he proposed, which were quite unexceptionable and indeed modest, should be considered without any arbitrary pre-conditions. The Auditor does not consider the submission well-founded on the facts of the case. Mr. Crawley's position was not affected by the confusion which attended the case in the previous week and his late instruction for the case which, as it happened, resulted from that confusion here, is not in itself an unusual feature: on each of the two days when he was in attendance, he was in effect discharged at an hour early /

The Auditor Evan H. Weir, W.S.
Principal Clerk Janet P. Buck (Mrs)

early in the court day. The Auditor cannot sustain his plea: the Edinburgh practice must be applied here to the usual effect.

It may be that the Edinburgh practice itself should be reconsidered. Much has changed since the period in which it became established. Legal charges have become increasingly related to time spent by the fee-earner. Waiting time has become increasingly accepted as a chargeable item, now specifically provided for in the statutory table of fees in the Sheriff Court and allowed for by the Legal Aid Board in criminal accounts. The more determinedly the court administration makes all possible use of judicial time, the greater the time spent by parties and practitioners holding themselves in readiness to take up any court time which happens to become available. It may also be that an increase in the total number of hours spent by members of the Faculty on criminal work as compared with civil practice, the widening of the background from which the Faculty draws its members and other progressive changes variously affecting them, all contribute to a reduction in the emphasis properly to be placed on Parliament House as the centre and focus of the work of the Bar.

EDINBURGH

20th April 1990.

