

Taxation Report

8th January 2002

GM


0076743600

Michael S Allan Solicitors

Solemn Time & Line

Precognitions

[REDACTED]

ELGIN 8th JANUARY 2002.

Having heard from [REDACTED] S.L.A.B and Mr. Burn, Solicitor, Aberdeen, on 30 November 2001, I have determined the sum allowable to Mr. Burn for representing [REDACTED] in the Criminal Indictment Proceedings, final disposal of which was on 17 October 2000, at Elgin Sheriff Court. The sum being £12747.09.

[REDACTED] intimated at the beginning of the Taxation that after reviewing the Account, the only issue at dispute between the parties, was of the sum claimed for Precognition.

This had been the longest Indictment in Scotland, supporting 178 charges, 8 Accused persons and 107 Productions. It was because of the number of accused in this case that Mr. Burn, Aberdeen, came to represent [REDACTED]. All other Criminal Solicitors in Elgin were engaged by other co-accused.

Many charges did not relate to the Accused [REDACTED] but as stated by Mr. Burn, there was no possible way he was able determine which witnesses spoke to which piece of evidence and to which charge.

Involved in this case were 179 witnesses. Only 3 weeks was given for the list of witnesses to be examined. Crown statements are not furnished to Defence Agents in Solemn Proceedings. More co-operation would have been desirable from the Crown in identifying which witnesses spoke to which charges but, as there is no obligation for the Crown to undertake this, it was not done. A list of productions was also given to the Agent just before the First Diet. Again, no indication was given as to which witness, if any, spoke to which production.

Time was obviously of the essence in this case and Precognition Statements had to be facilitated quickly. [REDACTED] ventured that more Precognition Statements could have been noted via the phone. Mr. Burn stated that a solicitor can obtain a better "feeling" of the probity of the witness, when speaking face to face, whereas no such impression can be obtained of witnesses when precognosced by phone.

Of the cases referred to myself, by [REDACTED] and Mr. Burn, it was the lack of Precognition that was commented upon and none stated that too many Precognition Statements had been taken, as opposed to this case. Mr. Burn stated that the responsibility for the preparation of the case rests solely with the Defence Agent. The possible consequences at the outcome of the case for Mr. Burn's client were too serious, not to have all precognitions before him.

[REDACTED] advanced and this was agreed by Mr. Burn, it would have been more prudent for the Precognition Agent to reside overnight in Lossiemouth, rather than travel from Aberdeen daily.

I am of the opinion that the Precognition Agent was correct in trying to arrange appointments to see the majority of witnesses. If he had not done so, then I do not think that so many witness statements would have been garnered so expeditiously.

Time must be allowable to the Precognition Agent for dictation of some police statements where the officer was not present. If these statements had been face to face, as with other Police witnesses, a concomitant increase in expenditure may have possibly occurred.

██████████ advocated that travelling time allowable for the Defence Agent, as regards consultations with his client, should be from Elgin to Inverness Prison rather than Aberdeen.

As stated earlier, because of the unavailability of a local Agent, Mr. Burn had no choice but to travel from Aberdeen, his base. I note that ██████████ received 4 visits from Mr. Burn's firm and one of these visits co-incided with a meeting of all Defence Agents in Elgin. I feel this demonstrates a degree of fiscal economy by Mr. Burn's firm.

An entry dated 15 August 2000 for a letter relating to the "Informer" was brought to attention by both parties for different reasons. ██████████ stated that it was unnecessary. Mr. Burn, conversely, stated that the case was discussed in the Police Magazine, which is on public view in every Police Station, before the case came to Court. Therefore I will allow the fee. This matter is worthy of note, due to the possible repercussions of publicity, prior to Trial Diet.

I have deducted £771.21 from the account, in respect of travelling time by the Precognition Agent, to and from Aberdeen and ancillary journeys from Lossiemouth and have added £648.56 for three return journeys from Aberdeen to Lossiemouth, journeys undertaken to visit witnesses outwith Lossiemouth and an average of £40 per night for 11 nights Bed and Breakfast and Dinner.

U. M. Bell