

J. B. METCALFE WALTON v. J. J. HANTCHE.

CIVIL APPEAL CAUSE No. 35 OF 1941.

Solicitor appearing in person—costs.

The Subordinate Court gave judgment for the appellant on 28th August, 1941, and summarily determined the amount of costs to be awarded to the appellant as £2 12s. 1d. On 1st September the appellant gave notice as follows:

“TAKE NOTICE that the Plaintiff will apply to the Court that the Order for costs payable by the Defendant to the Plaintiff herein be reviewed and taxed as under:

	£	s.	d.
Letter before action	0	5	0
Preparing Summons... ..	0	5	0
Copy to serve	0	2	0
Preparing affidavit and fair copy	0	3	4
Copy to serve	0	1	0
Attending to swear	0	3	4
Attending to enter Summons	0	3	4
Attending Court when case defended	1	1	0
Attending to hear deferred judgment	0	6	8
Preparing this notice	0	3	4
Letter to Court and Defendant enclosing copy	0	10	0
Two copies of Notice	0	2	0
<i>Paid disbursements.</i> On Writ £0 14 3			
Extra service fee at present unascertained. Paid train fares to Lusaka and return £0 19 6			
	£3	6	0
ADD DISBURSEMENTS			
TOTAL			
To which may be added the Costs of any attendance at Court in connection with this review			

Dated at Broken Hill this 1st day of September, 1941.

This application will be made on Wednesday, the 10th day of September, 1941.”

The extra service fee was later ascertained to be £2 6s. 8d. This made the disbursements claimed by the appellant £4 0s. 5d. and the total of the costs claimed £7 6s. 5d. On the 24th September, at the hearing of the application, the appellant stated he had decided to appeal against the order instead of applying for a review of the order. On the hearing of the appeal the High Court laid down the

principles applicable where a solicitor appears in person and accordingly disallowed certain of the items of the costs claimed by the appellant.

Law, C.J.: The learned Resident Magistrate gave judgment for the appellant for £7 4s. 8d. and for costs on the undefended scale £2 12s. 1d. The appellant has appealed against that part of the judgment which relates to the costs. There can be no doubt that the order for costs was wrong because the case was contested and costs should have been taxed accordingly.

2. The appellant first gave notice to the respondent by letter dated the 1st September, 1941, that he would apply to the Resident Magistrate (Lusaka) for a Review of Taxation on the 10th September, 1941. The appellant appears to have been under some misapprehension as to the meaning of Order 35 Rules 1 and 2, Subordinate Court (Civil Jurisdiction) Rules, 1940, and in consequence thereof he abandoned his Application for Review and filed a Notice of Appeal on the 25th September, 1941.

3. The costs claimed by the appellant are itemised in his Notice of Review. Before examining those items it must be borne in mind that the appellant, a legal practitioner, was conducting his own case. It is clear from the decided cases that a solicitor who successfully sues or defends in person is entitled to party and party costs except in respect of certain services which he alone can give (*The London Scottish Benefit Society v. Chorley, Crawford and Chester*, 1883-4, 12 Q.B.D., p. 452 and (on appeal) 1883-4, 13 Q.B.D., p. 872, which was followed and approved in *H. Tolprutt and Co., Ltd. v. Mole* (1911) 1 K.B.D., p. 836. The principles to be followed in taxation in such cases appear at page 876 in the 13 Q.B.D. report where BRETT, M.R. said:

“The unsuccessful adversary of a solicitor appearing in person cannot be charged for what does not exist, he cannot be charged for the solicitor consulting himself, or instructing himself, or attending upon himself. The true rule seems to be that when a solicitor brings or defends an action in person, he is entitled to the same costs as an ordinary litigant appearing in person, subject to this restriction, that no costs which are really unnecessary can be recovered.”

4. Applying those principles, as also Annexure D of the Subordinate Court Rules, the following items are disallowed from appellant's bill of costs as shown in his Notice of Review:

	£	s.	d.	
Copy to serve	0	1	0	No provision. Item 29 not applicable.
Attending to swear	0	3	4	See remarks of Brett, M.R. referred to above.
Letter to Court and Defendant.	0	7	6	Item 11 authorises 2s. 6d. Item 44 not applicable.
2 copies of Notice	0	2	0	No provision. Item 29 not applicable.
Train fares to Lusaka	0	19	6	Item 50, Note (a).
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	£1	13	4	
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The mileage service fee £2 6s. 8d. appears to have been overlooked by the Resident Magistrate and must be allowed to the appellant.

5. The question of costs remains to be considered. In this connection I consider that this matter could have been more properly and expeditiously disposed of on a taxation and that this appeal was unnecessary because an Application for Review had already been made. In these circumstances, and in the exercise of my judicial discretion I allow 6s. 8d. as costs which is the amount which would have been allowed under Item 41. No other costs for this appeal will be awarded. In the result, the appeal is allowed and the appellant's costs are fixed at £5 19s. 9d. in lieu of the £2 12s. 1d. which were allowed by the Resident Magistrate. In addition, of course, the appellant has had judgment for £7 4s. 8d. Consequently, the respondent has to pay the appellant £13 4s. 5d. in all in respect of this case.