

HENEHAN

THE HIGH COURT

1981 N0. 10151p

27

BETWEEN:

SEAN HENEHAN

Plaintiff

and

ALLIED IRISH BANKS LIMITED

Defendant

Judgment delivered on the 19th day of October 1984 by

Finlay P.

This is an application brought by the Plaintiff who sues as a litigant in person for a review of the disallowance by the Taxing Master of certain objections carried before him in relation to the taxation of his, the Plaintiff's, costs.

The Plaintiff instituted proceedings against the Defendants in the High Court claiming damages and the action came before Mr. Justice Barrington on the 20th April 1983 when he dismissed the proceedings but ordered "that the Defendants do pay to the Plaintiff his costs of these proceedings when taxed and ascertained".

It was agreed by the Plaintiff and by Counsel on behalf of the Defendants before me that the reason why notwithstanding the dismissal of the claim, the learned Judge ordered the Defendants to pay the Plaintiff's costs was that the Defendant succeeded on a plea of the statute of limitations which was added to the defence by a late amendment.

The Plaintiff having instituted the action and brought it to trial as a lay litigant also prepared his own Bill of Costs and brought that for taxation as a lay litigant. The Bill thus presented contained 28 items which may be grouped into the following categories -

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Item 1.	"Expenses involved in consultations with solicitors, travel, postage, phone-calls etc.	£850.00
Items 2, 3, 8, 14, 16, 17, 18, 19, 20, 21, 22.	Expenses of travelling to Dublin in connection with the case, each of which is measured at	£75.00
Items 4, 5, 7, 13, 23.	All being items of Stamp Duty on the filing of pleadings.	
Item 15.	Photocopies of documents.	
Item 24.	Compensation for time involved in travelling in attending court on given dates	£320.00
Item 25.	Compensation for time lost and disruption of business in connection with the preparation of the case.	£3,200.00
Item 26.	Accountants fee for examining Bank Books	£350.00
Item 27.	Four witnesses expenses	£530.00
Item 28.	Numerous telephone calls, postage and registered post	£50.00

The total amount of the Bill as claimed came to £6,196.90. The Taxing Master disallowed and maintained a disallowance on objection of all items other than Stamp Dukty and the claim of £50.00 for telephone calls, postage etc. and thus taxed the Bill in a total sum of £111.90 which together with duty at £19 made a total of £130.90. In a very full and careful report to me, the Taxing Master has set out the principles upon which he reached these decisions and the authorities which he consulted in order to do so. The authorities are -

Anthony .v. Walshe 22 Law Reports Ireland

London Scottish Benefit Society .v. Chorley 1884 13 Q.B.D.

Buckland .v. Watts 1969 2 A.E.R.

From these decisions, the Taxing Master deduced that the principle of law applicable to the taxation was that the Plaintiff suing as a litigant in person could not obtain any compensation

for time, trouble or loss of earnings involved in the preparation of his case by reason of the fact that he would, if so compensated, in effect be paid for professional work not being a member of the legal profession and secondly, that it was established that a personal litigant cannot under an order for costs be reimbursed his cost of travelling to be present in Court.

It was in obedience to these principles that the Taxing Master disallowed the items concerned with re-imbusement for preparation of the case, the items consisting of travelling expenses and the items claimed in respect of seeking advice from a solicitor. He disallowed the items of witnesses expenses on the different and factual ground that these had not been in any way vouched before him nor had it even been proved that witnesses had attended Court. It was apparently on the same ground that he disallowed the cost of fees to an Accountant.

I am satisfied that the Taxing Master correctly interpreted the effect of the decisions to which he referred and furthermore that his taxation of this Bill of Costs was in accordance with those decisions and in accordance with what he states to have been a consistent practice in the Taxing Masters Office.

Insofar as he disallowed items on the basis that they had not been proved or vouched before him, I have no doubt that I cannot and should not disturb his decision and no evidence was offered to me which indicated that his finding of fact resulting in that decision was incorrect.

Insofar as he disallowed general items for compensation for work carried out in the preparation of the case, I am satisfied that it is a clear principle of the taxation of the costs of a personal litigant that

he cannot be remunerated or compensated as if he was a professional lawyer and that there is no apparent injustice in that principle nor any reason to doubt its validity. With regard, therefore, to Item No. 1 of £850 and Item No. 24 of £320 and Item 25 of £3,200 I am satisfied that the ruling of the Taxing Master was correct and cannot and should not be reviewed.

The remaining issue which arose before me and which was, in my view, the major issue arising from this application was the question as to whether the Plaintiff should be allowed the cost of travelling from where he lived in Fethard, Co. Tipperary to Dublin for the purpose of attending in the Offices and at Court in the preparation and presentation of his case. It is quite clear that the decision of Anthony .v. Walshe in particular expressly prohibits the allowance as part of costs to a lay litigant of the cost of travelling to Court. It was, therefore, in a sense correct for the Taxing Master to follow that decision.

I am not, however, bound by the decision in Anthony .v. Walshe and I have therefore though paying respect to it, re-examined the principles upon which it was formed. This re-examination is, in my view, necessary apart from any other consideration due to the fact that the jurisdiction of the Court to award costs and the consequence of an order providing for costs seems to me to be part of the ancillary machinery associated with the access of citizens to the Courts and as such should in my view be construed in the light of the Constitutional origin of that right of access and the obligation of the Courts to make such a constitutional right real and effective. cf. The State Quinn .v. Ryan 1965 I.R., Cawley .v. The Minister for Posts and Telegraphs 1966 I.R. The precise issue before the Court in Anthony .v. Walsh was the travelling expenses of a Plaintiff suing in person associated with her

successful defeat of a motion brought by the Defendant to remit the action in which the costs of the Motion were awarded to the Plaintiff. Lord Ashbourne, the Chancellor, expressly reserved the position with regard to the cost of travelling to present the action when he stated at Page 622

"A plaintiff suing in person might have to appear at the trial to conduct his case, and thereupon the question as to his right to travelling expenses arises. A plaintiff appearing in person may also be a necessary witness in his case. These are not the questions before us."

Lord Justice FitzGibbon's judgment is based largely on a historical consideration of the origin of costs in the Court commencing with the period when no costs were contemplated or allowed and continuing to the provision for costs first arising in the Statute of Gloucester (6 Ed. I., cap.1). Lord Justice Barry whilst appearing to support the principle that in general a litigant suing in person is not entitled to travelling expenses in order to come to Court was in the minority in ruling that in the particular circumstances of the successful defeat of a Motion brought by the Defendant to remit the action that an order should be made allowing the travelling expenses.

Naish L.J. supported his agreement with the majority of the Court by a quotation from Cokes commentaries which interpreted the Statute of Gloucester as expressly prohibiting the costs of a suit from including the costs and expense of a suitor's travel or loss of time.

If, as I believe to be the case, I am not bound by this authority or by the other decisions of the English Courts to which I was referred and which I have considered, then it seems to me that

there is a patent illogicality and injustice in a prohibition on the expenses of travelling to Court by a lay litigant and the allowing to him of other out-of-pocket expenses. The procedures and rules of the Courts do not permit of a lay litigant suing in person and not employing a professional lawyer from being represented at any stage of the proceedings by a lay agent. The Rules of Court provide that a person suing as a lay litigant must maintain an address in Dublin for the purpose of service of documents upon him or her by the opposing party. They do not, however, provide for the carrying out of any of the functions necessary for a party suing in person such as the attendance at Court for the fixing of dates, the attendance on applications for the adjournment of the case and the attendance for the presentation of the case itself and for the filing and obtaining of documents in the Central Office to be carried out in any special way which could or would avoid the personal attendance of the litigant.

There can be no doubt that the Taxing Master was quite correct in assessing and allowing a figure in this case for telephone costs and postage costs of a miscellaneous kind in the sum of £50. There is equally no doubt that he was perfectly correct in allowing to the Plaintiff the costs of all Stamp Duties or fees which he had to pay from his pocket for the purpose of bringing the matter properly before the Court. I cannot see that it would be either just or logical that having been allowed these Items on the clear principle that they were actual expenses which he had to pay from his pocket in order to bring the case to the stage at which the Order for Costs was made that he should be prevented from recovering on precisely the same principle other sums which he necessarily paid from his pocket for the purpose of attending to carry out the procedures necessary to bring the case to Court.

To take but a single practical example out of the Bill of Costs

before me, in order for the Plaintiff to issue the summons in the first instance, it was necessary for him to attend in the Central Office of the High Court in Dublin and to pay a stamp of £24. He claims that his actual expense of attendance on that occasion and I will deal with the quantum of it later was a sum of £75 and, accordingly, the operation of actually issuing the summons cost £99. I find it to be an inexplicable anomaly that of that £99 the Plaintiff having been awarded costs should recover only £24 and should be at a direct loss as to the balance of £75.

I therefore conclude that properly to make effective the access of the citizen to the High Court which is part of his fundamental Constitutional rights that the order for costs when made within the discretion of the Court should include properly incurred and vouched travelling expenses for the purpose of presenting the case. It was urged on me on behalf of the Defendant that such travelling expenses would not be allowed to a plaintiff who was represented by a Solicitor. This undoubtedly is true with regard to preliminary attendances at Court prior to the date of actual trial but arises as I would understand the situation from the existence of the system of Town Agencies for Solicitors and of course by the capacity of a Solicitor to represent his client either through himself or his Town Agent at every preliminary procedure up to the actual trial itself. Where, however, a plaintiff attends at a trial and gives evidence my understanding is that he is allowed actual travelling expenses and furthermore that part of the Solicitor's Bill of Costs include in relation to Solicitors from outside Dublin some allowance for travelling and attendance in Dublin at court, over and above their ordinary professional fees and other outlay. So far from placing a lay litigant in a better position than a litigant who was represented by a Solicitor as the Defendant urges the

allowance of travelling expenses would do, I conclude that to deprive him of them is to treat him in an entirely different and less advantageous way than a litigant who employs a Solicitor. Furthermore, I would not be prepared to subscribe to the view expressed by Lord Chancellor Asbourne in Anthony .v. Walshe that it is irrelevant that quite clearly a defendant ordered to pay costs to a plaintiff as has occurred in this case where the Plaintiff sues as a litigant in person has an ultimate liability much less indeed than he would have incurred had the Plaintiff been represented by a Solicitor and Counsel.

I am therefore satisfied that I should review this taxation by allowing the items of travelling expenses subject to the following qualifications.

It was urged on me on behalf of the Defendant that the amount claimed for each attendance was excessive. The Plaintiff resides in Fethard, Co. Tipperary and a journey to Dublin involves a round trip of 210 miles. He informs me that it was necessary for him on many occasions in order to be present at the 11.00 o'clock Court involved to travel overnight. Disregarding even that necessity and making even the most modest allowance for some form of subsistence on a day journey, the assessment of the expense of travelling, as the Plaintiff did in his own motorcar, at slightly over 30 pence per mile, it seems to me moderate and acceptable. I do not, therefore, see any necessity to have these figures examined or vouched further. There is one Item, however, on the Bill of Costs namely, Item No. 22 which is a claim for travelling to Dublin to obtain the Court Order after it had been perfected. This seems to me an unnecessary expense which the Plaintiff could and should have avoided by communicating in writing to the Central Office when a copy of the Order would undoubtedly have been sent to him. In the absence of evidence that he enquired whether that would be possible or not and was told that it could not be done, I think

this would be an unnecessary expense. I would, therefore, review this taxation by restoring

Items 2; 3; 8; 14; 16; 17; 18; 19; 20 and 21.
making a total addition to the Costs as taxed of £750. I would also allow £75 costs of attendance at the hearing of this motion to the Plaintiff against the Defendants.

approved.
V.A. Field

3.1.1985