The papers before me in the review run into 688 pages. They contain the bill, the notice of review, the case stated by the Taxing Master, the contentions of both parties, the Taxing Master's report thereon and the further contentions of parties filed pursuant to the said report. There A are also certain annexures to the contentions. In addition I have the accounts submitted by the expert witnesses. The record of the arbitration proceedings is also before me. The contentions of the parties are very detailed and contain very full argument on all the items challenged. Because of this I did not deem it necessary or advisable to hear further argument and I accordingly decided to deal fully with the B matters raised. I did so in Chambers as envisaged by Rule 48 (2).

This bill of costs reflects many items which are not chargeable as between party and party. It is clear that the attorney did a great deal of extra work, not only in matters relating to his own labours but also in regard to the briefing of the expert witnesses and the consultations C with counsel. The impression I have gained is that a great deal of caution was exercised by the attorney. This is of course commendable but the extra work done as a result thereof cannot be charged in a party and party bill.

I have had some difficulty in deciding how to set out the objections and the items to which they relate. City Deep in its "notice of re- D view" has divided its objections into three groups. Group (A) contains twenty-three objections and these relate to counsel's fees disallowed. Group (B) contains twenty-four objections and these relate to attorneys fees disallowed. Group (C) relates to the fees claimed in respect of the experts evidence.

E I will, as far as possible, in part II of this judgment,* deal with each challenged item in the chronological order in which it appears in the bill. I will refer to the item by setting out the group, the item number, the page on the bill of costs, the date, the details of the work, the amount charged and the amount disallowed.

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MINISTER OF WATER AFFAIRS v. VON DURING.

(TRANSVAAL PROVINCIAL DIVISION.)

1973. *January* 8. MOLL, J. 86(2)615 A

Costs.—Party and party.—Counsel's fees.—Refresher fees allowable in lengthy trial.—Principle Taxing Master should apply.

The practice of differentiating between the refresher fee paid to counsel for the first and subsequent days in a lengthy trial is permissible, but the question B as to whether or not it is to be resorted to is a matter for the Taxing Master to decide regard being had to the particular circumstances of the case with which he has to deal. There appears to be no reason why there should be a further graduation or differentiation on subsequent days. Counsel's refresher fee is a fee which represents a reasonable remuneration for counsel's work for the day in Court and it is this principle which the Taxing Master is called upon to apply. C

Review of taxation in terms of Rule of Court 48.

MOLL, J.: This is a review of taxation in terms of Rule 48 of the Uniform Rules of Court.

The taxation which is the subject-matter of the present review pro- D ceedings flows from an action for compensation in consequence of an expropriation by the present applicant during 1964 in terms of sec. 60 of the Water Act, 54 of 1956, as amended, of certain ground in the district of Piet Retief which was the property of the respondent.

The said action came before IRVING STEYN, J., during 1968-1969 and E the trial lasted 65 days. The judgment prepared by the learned Judge ran to 390 pages from which it appears that a large volume of technical evidence from experts in varying fields was adduced. Despite the assistance which was to be gained from a decision of the Appellate Division given some time prior to the hearing of the matter the issues in this case F and the determination thereof appear to me to have been complex and difficult. In his said judgment the learned Judge ordered that the issue in regard to the costs of the proceedings was to be argued on a date to be arranged with the Registrar. In the result and after having heard argument an order was made on this aspect of the case. In so far as it is relevant to the present matter it included an order in favour of the present G respondent allowing:

(*a*) the fees for senior and junior counsel;
(*b*) the necessary travelling expenses of both counsel and attorneys;
(*c*) the qualifying expenses and the necessary travelling expenses of certain professional witnesses who were declared to be such. H These included, *inter alia*, Dr. R. R. Maud and Mr. C. van der Plas.

The bill of costs as between party and party submitted to the Taxing Master of this Division by the respondent's attorneys during June, 1972, after setting out a fee for the first and second days of the said trial in respect of senior and junior counsel claimed refreshers for counsel as follows:

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(*a*) Senior counsel:
"Thereafter 59 days at R300 per day ... ... R17 700."

(*b*) Junior counsel:
"Thereafter 57 days at R200 per day ... ... R11 400."

A In regard to the expert witnesses, Dr. Maud and Mr. van der Plas, the said bill of costs reflected their claims as follows:

"Paid expert witnesses—see schedule 'A';
Dr. Maud:
Attend Court, giving evidence:
21.11.68—2.20-4.00 p.m.
22.11.68—10.00-11.50 a.m. R522,80
B C. van der Plas:
Attend Court, giving evidence:
26.11.68—3.30-4.00 p.m. ... ... R407,00."

In dealing with the aforesaid items the Taxing Master allowed senior counsel's refreshers as claimed. In regard to junior counsel the Taxing Master, so it appears, acting in terms of Rule 69 of the Uniform Rules C of Court, allowed the refreshers as follows:

"53 days at R150 and, in addition, 4 days at R150 when he appeared in Court without the assistance of senior counsel."

The fees in respect of the two experts were allowed as claimed in the said bill of costs.

The applicant is dissatisfied with the ruling of the Taxing Master in D regard to the aforesaid items and has, in terms of sec. 48 (1) of the said Rules, required the Taxing Master to state a case for the decision of a Judge.

In so far as it relates to counsel's refreshers para. 3 of the stated case is as follows:

"The following case is stated for decision by a Judge: Has the Taxing Master E erred in exercising his discretion in allowing—
(*a*) senior counsel a retention fee of R300 per day for 59 days;
(*b*) junior counsel a retention fee of R150 per day for 53 days and in addition a fee of R150 per day for 4 days when he appeared alone, i.e. 57 days."

Para. 5 of the stated case which has reference to the fees which were allowed to the said two experts sets out the point for decision as follows:

F "Has the Taxing Master erred in exercising his discretion in allowing the fees as such?"

In dealing with a matter such as the present one it is perhaps apposite to say at the outset that where the ruling of a Taxing Master is brought on review the Courts will not lightly disturb the discretion which he G enjoys. The exercise of that discretion will only be interfered with if it appears that he has exercised it improperly or has not brought his mind to bear on the question in issue or has acted on an unsound principle. See *Nourse Mines Ltd.* v. *Clarke*, 1910 T.P.D. 660 at p. 661.

I propose to deal in the first instance with the Taxing Master's ruling in regard to counsel's refreshers.

H In so far as the *quantum* of fees allowed to counsel by the Taxing Master is concerned it must, I think, be accepted that the Court is loath to interfere with a Taxing Master's discretion in this regard. The fact that the Court, had it been called upon to determine the said fees in a party and party bill of costs, would have allowed more or less affords no reason for interference. Such interference would be justified only where a Taxing Master acts on a wrong principle or has failed to exer- [illegible] *Ltd.* v. *Chandlers*

Ltd. and Others, 1947 (4) S.A. 453 (T) at p. 459. Also *Duvos (Pty.) Ltd.* v. *Newcastle Town Council and Others*, 1965 (4) S.A. 553 (N) at p. 558.

The applicant's objection in the present matter, as I understand it, relates not to the actual *quantum* of the refresher fees allowed by the A Taxing Master, but to the fact that the latter failed to have regard to the applicant's contention that in a lengthy trial such as the present one counsel's fees for the period after the first and second day, should have been reduced at some intermediate stage prior to the conclusion of the trial. The applicant advances two reasons as to why this should have B been done in the present instance.

It is contended, firstly, that long before the end of the present trial the issues between the parties had become more defined and crystallized

"and the importance and complexity of the hearing thereafter commensurately diminished".

It is suggested that this position ordinarily prevails with regard to pro- C tracted trials.

The second reason advanced lies in the submission that in practice there has always been a tendency for counsel's fees to be "scaled down"

"in accordance with the length of the duration of the hearing and that, towards the end of a protracted trial, such as the present, the fees concerned would invariably have been reduced as the conclusion of the hearing approached". D

It is contended that the Taxing Master

"should have ruled in principle that towards the conclusion of the trial the sequence and complexity thereof would have been substantially reduced, and that in any event counsel's fees should not be placed on the same basis as they were shortly after the commencement of the case".

The question of counsel's refresher was dealt with in *African Guarantee and Indemnity Co. Ltd.* v. *Hitge and the Assistant Taxing* E *Master*, 1923 W.L.D. 76, where it was held that it is a fee which represents a reasonable remuneration for counsel's work for the day in Court. In dealing with the practice of graduating refreshers so as not to make them the same for each day, the learned Judge at p. 78 remarked as follows: F

"Ordinarily speaking, where a case lasts only a few days, there would seem to be no reason for differentiating. But where the proceedings are very prolonged I think that fact should be taken into consideration by the Taxing Master, and that it is not wrong in principle for him, where a case has lasted a considerable time, to differentiate between the refreshers for the first time and subsequent days, provided always that he allows a reasonable fee for counsel's remuneration for the day's work in court."

That case does not, as was said by TINDALL, J., in *Grimbeek* v. G *Oosthuizen*, 1927 T.P.D. 899 at p. 905,

"decide that the Taxing Master ought always to graduate the refreshers or that the Court will interfere if he does not . . .".

The practice of differentiating between the refresher for the first time and subsequent days in the circumstances referred to in the *African Guarantee* case, is permissible, but the question as to whether or not it is H to be resorted to is a matter for the Taxing Master to decide regard being had to the particular circumstances of the case with which he is called upon to deal. There appears to be no reason why there should be a further graduation or differentiation on subsequent days. It is clear, as I have indicated, that counsel's refresher is a fee which represents a reasonable remuneration for counsel's work for the day in Court, and it is this principle, subject to what has been said above,

which a Taxing Master is called upon to apply. This would, after all, be the only correct basis if regard is had to the fact that a party who has been awarded an indemnity for costs is entitled to a full indemnity for all costs reasonably incurred by him in regard to his claim or defence.
A *Meer* v. *The Taxing Master*, 1967 (4) S.A. 652 (N) at p. 655.

It follows from what has been said that I cannot accede to the submission that counsel's fees ought to be 'scaled down'

> "in accordance with the length of the duration of the hearing, and that towards the end of a protracted trial, such as the present, the fees concerned would invariably have been reduced as the conclusion of the hearing approached".

B I am also not persuaded by the contention that in lengthy trials the issues between the parties become more defined and crystallized as the trial proceeds and that "the complexity of the hearing thereafter commensurately diminishes". Depending upon the nature and extent of the issues involved, it happens not infrequently that counsel is obliged
C after the Court adjourns and often before the next day's hearing to do a great deal of revision and preparation; he often has to discuss fresh aspects with his client, witnesses or attorney. Many hours may be taken up outside of Court in this way, but, save in very exceptional circumstances, this is still regarded as part of each day's work and no extra fee is charged.

D With regard to the present matter the Taxing Master in his report has stated that by reason

> "of the technical nature of the evidence the issues involved remained virtually undefined until the last",

a proposition which does not appear to me to be an overstatement of the position. He has, moreover, indicated that it was contended by the
E respondent that counsel were required

> "to consult and study the record nightly and at every possible adjournment of the trial";

something which in the circumstances of this case I would clearly accept.

The fee charged by senior counsel for the first day and allowed by the
F Taxing Master was R730. For the second day the fee charged and allowed was R500. The subsequent refreshers were charged and allowed at R300 per day. In regard to junior counsel 50 per cent of the aforegoing fees were allowed by relying on the provisions of Rule 69. In his approach to the fees of senior counsel it is, therefore, clear that the
G Taxing Master did what was countenanced by the *African Guarantee* case, an approach with which, in the present case, there is no fault to be found.

In regard to the *quantum* I agree with the Taxing Master that, regard being had to the main action, senior counsel's first day fee was very reasonable as also his refresher for the first time. The subsequent
H refreshers allowed are, in my view, equally reasonable.

The respondent has not sought to bring the Taxing Master's ruling in regard to these items on review, but in its formal contentions it has submitted that for the four days when he appeared in Court without the assistance of senior counsel, junior counsel should have been allowed R200 per day as claimed and not R150 per day as allowed by the Taxing Master. The respondent asks that this fee of R200 per day be restored to the said taxation. Even on the assumption that I have the

right to take cognisance of this request I do not consider that sufficient grounds have been advanced to justify interference.

When dealing with the *Wellworths Bazaars'* case, *supra*, I indicated that such interference would only be justified where a Taxing Master acts on a wrong principle or has failed to exercise a proper discretion. A
This has not, in my view, been shown to be the case.

On this part of the case I have, therefore, come to the conclusion that the case as stated must be answered in the negative and that the Taxing Master's ruling must stand.

I now pass to the fees allowed by the Taxing Master in regard to the B
said two experts, and I shall, in the first instance, deal with the case of Dr. Maud.

Once again the applicant does not attack the *quantum* of the fee allowed by the Taxing Master, but contends that in determining what was a reasonable fee to be allowed to Dr. Maud the Taxing Master adopted a wrong approach. Dr. Maud, so it appears from the judgment C
of IRVING STEYN, J., is a man holding a number of degrees in chemistry and geology. He has, moreover, had a great deal of experience in soils and particularly soil in relation to sugar cultivation. At the time of giving evidence in the main action he was employed by a firm of consulting civil engineers in Durban. It is contended by the applicant that D
the Taxing Master held the view that, although Dr. Maud was not a civil engineer, the fact that he was employed by a firm of civil engineers entitled him to receive a fee based on the scale and tariff of fees payable to civil engineers as determined by the South African Society for Consulting Engineers, to wit R15 per hour. The applicant submits that this E
approach was incorrect, that Dr. Maud's fees should have been determined independently and not on the scale applicable to civil engineers, and I am asked to refer the matter back to the Taxing Master for him to determine the said qualifying fees on a different basis.

As far as it goes the objection might be legitimate but the Taxing Master's report shows that he did not have the approach contended F
for.

It appears from this report that the Taxing Master fully appreciated the fact that, although employed by a firm of civil engineers, Dr. Maud was himself not a member of this profession. In arriving at a decision as to a proper fee, the Taxing Master had regard to the qualifying G
fees of experts in other professions and the tariffs laid down by their societies. He mentions, *inter alia*, consulting engineers, architects and auditors. In each case the tariff is R15 per hour. He states that he regarded Dr. Maud's fee of R10,50 per hour as very reasonable. I find nothing wrong with this approach. In fact it appears to me to be perfectly reasonable in circumstances such as the present to have regard to H
the fees allowed to experts in other professions.

There is, lastly, the fee allowed to Mr. C. van der Plas. In this instance too the applicant contends that the Taxing Master applied a wrong approach in his ruling to allow the fees claimed on behalf of this expert.

It is submitted that, in determining the *quantum* to be allowed to Mr. van der Plas, the Taxing Master should have had regard to the said witness' qualifications and/or experience or the lack thereof. He ought furthermore to have considered the nature of the investigations conducted by this expert, which it is contended were relatively uncomplicated and of a restricted nature. The Taxing Master, so it is suggested, adopted A the attitude that it was unnecessary to have regard to the complexity of the investigations undertaken by van der Plas or, for that matter, to bear in mind his qualifications or experience. His approach was, so it is contended, that as the Court in the main action had ordered qualifying fees to be paid to van der Plas, he, the Taxing Master, was loath B to reduce the amount claimed and that van der Plas was *ipso facto* entitled to the fees claimed.

Finally it is submitted that the Taxing Master ought in any event not to have allowed fees for three visits to the said farm as the valuation which van der Plas was called upon to make in regard to certain improvements was relatively uncomplicated.

C From the Taxing Master's report it does not appear to me that he was unmindful of van der Plas' qualifications and/or experience. He refers to a passage in the judgment of IRVING STEYN, J., from which it appears that the learned Judge attached considerable importance to van der Plas' experience as a building contractor in the Piet Retief D and Gollel areas. It is, moreover, clear from the said judgment that the lack of experience on the part of the three experts, one of whom was a quantity surveyor, called by the present applicant, was mainly responsible for the fact that the learned Judge decided to accept the evidence of van der Plas as a foundation for his ultimate valuation of certain improvements.

E I am also of the view that it cannot be said that the Taxing Master ignored the nature of the investigations conducted by van der Plas. In his report he says that he is unable to accept the contention that this witness' evidence was of relatively minor importance. He points to the fact that van der Plas' evidence was tendered against three witnesses F of the present applicant on this particular aspect. It seems to me not unreasonable to suppose that the thoroughness of van der Plas' investigations coupled with his experience as building contractor must have accounted for the learned Judge's finding.

Apart from the aforegoing the two fees of R60 on the particulars as G set out in this witness' account do not appear to me to be in any way unreasonable.

There remains the question of the three trips from Piet Retief to the said farm at Gollel in regard whereto travelling expenses were allowed.

The expropriation of the said property, as I have indicated, took place H in 1964 and it was not until 1968 that the matter was heard. Van der Plas was apparently called upon when he gave his evidence in November, 1968, to present his valuation of the buildings concerned on the basis of building costs during 1964. It does not appear to me to be unreasonable, as was contended by the respondent, that he would have been required to ascertain detials of the costs of transport, materials and labour during 1964. He would also it seems to me have had to acquire a fairly intimate knowledge of the quantity and quality and of materials used in the

relevant buildings. This in itself might well have justified three trips to Gollel and the said farm over a period of four years.

I am certainly not able to find that the Taxing Master in allowing these expenses as necessary travelling expenses had exercised his discretion improperly or that he has failed to bring his mind to bear on the A issue or that he has acted on an unsound principle. No point is made by the applicant in regard to the travelling expenses for this expert between Piet Retief and Pretoria or in regard to the fee allowed for one day's consultation.

It follows from the aforegoing that the question raised in para. 5 B of the stated case, which relates to the fees allowed to the said two experts, must be answered in the negative and that the Taxing Master's ruling in this regard must stand.

I am empowered by Rule 48 (3) of the Uniform Rules of Court to award a fixed sum to be paid by the unsuccessful party to the opposing party, and this appears to me to be a matter where I ought to resort to C this procedure.

The contentions on both sides were brief (those of the applicant to six pages and those on behalf of the respondent to seven pages) and the report of the Taxing Master is also concise. The costs involved for the respondent must in my view be modest, and it seems to me that an D amount of R25 would constitute a sufficient award.

In the result the application fails and the applicant is ordered to pay the amount of R25 as costs to the respondent.

Applicant's Attorney: *State Attorney*. Respondent's Attorneys: *Klagsbrun, Schewitz & Partners*. E