

SOLICITOR H.J. BRAMBLE

ACCUSED

LB

A12644

(2)

Edinburgh 14th October, 1969. The Solicitor's Account in this case relates to a Summary Trial which was partly heard on 21st February 1969 and in which the evidence and speeches were concluded on 14th March 1969. The Sheriff Substitute took the case to avizandum, and issued Judgment on 18th March 1969. The solicitor contended before me that as this case was heard in Court on 3 separate days, he was entitled in terms of Section 4 of the Act of Adjournal (Criminal Legal Aid Fees) 1964 to a total maximum fee of £78.15/-. He also maintained that the further fee of £15.15/- referred to in said Section properly included an element of work done in preparation for each additional day. He further maintained that in interpreting the Regulation the "contra proferentem" Rule should apply, and, in the case of doubt, the interpretation most favourable to the nominated solicitor should be allowed.

Mr. K.G. MacGregor on behalf of the Law Society of Scotland contended that the further fee under Section 4 related only to the time the solicitor was actually engaged in Court at the adjourned hearing.

My view is that in a case such as this, where no application has been made to the Sheriff Substitute for certification in terms of Section 13(2) of the Act of Adjournal (Criminal Legal Aid Fees Amendment) 1968 the fair and reasonable interpretation of Section 4 of the Act of Adjournal (Criminal Legal Aid Fees) 1964 is that a nominated solicitor is under that Section entitled to a fee not exceeding £47.5/- in respect of all work done in preparation for a Summary Trial and conduct of that trial provided the trial starts and finishes on the same day. The further fee "not exceeding £15.15/- in respect of every day on which an adjourned hearing takes place" accordingly covers only the time spent by the solicitor in conducting the case, at the adjourned hearing, and does not include any element in respect of work done in preparation/

precognosing witnesses etc. who were led at the adjourned hearing.

It was conceded at the taxation that the period of adjournment was a short one, and that no fee was appropriate for the solicitor going over the papers and refreshing his mind as to the case - I could foresee that where the adjournment was a lengthy one, such a charge might be reasonable, but in the present case I am of the opinion that the solicitor is entitled to (a) the maximum fee of £46.15/- in respect of preparation for and conduct of the first day's trial, (b) £7 in respect of his attendance at Court conducting the adjourned trial which has been certified to have taken 2 hours, (c) £3.10/- in respect of his attendance at the Judgment together with outlays, which have been agreed at £11.7.11d, making a total of £68.12.11d.

I also have allowed the Agent a fee of £3 for attendance at the taxation. My Audit Fee is £1.6.8d, and I have therefore taxed the whole account at £72.19.11d.

  
SHERIFF COURT AUDITOR.