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NOTE:-

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Taxation

This is a taxation of an Account incurred to the Solicitors for an Assisted Person where the Legal Aid Certificate defined the nature of proceedings as "Divorce on the ground of cruelty, custody, Aliment and Periodical Allowance." During the proceedings the Solicitors amended the conclusions of the Summons and the averments to add a crave for interdict to prevent the defender from molesting or annoying the pursuer and from interfering with her custody of the children. A crave for interim interdict was included in the amendment. The consent of the Supreme Court Committee was not sought.

The Law Society have asked that all the entries relating to the interdict should be taxed off because (1) the Legal Aid Certificate does not provide for it and (2) amendment of the Legal Aid Certificate to include it was not authorised in terms of the Law Society practice.

The Solicitor maintains that in terms of the Acts, Scheme and Regulations there is no provision which specifies that the Legal Aid Certificate must contain an express permission for such a part of the proceedings as interdict.

The Legal Aid (Scotland) Act 1967 Sec. 1 Sub Sec. (2) indicates the proceedings in connection with which Legal Aid may be given. This includes civil proceedings in the Court of Session. Sub Section (3) provides that regulations may describe the proceedings to be included. Sub Section (8) provides that services given by way of Legal Aid shall not affect the relationship between solicitor and client.

The Legal Aid (Scotland) Scheme 1958 as amended provides by Section 4(1) that if legal aid is to be granted the Committee shall decide the probable cost of the proceedings. The word used is "proceedings".

Section 16(3) provides that the Legal Aid Certificate shall specify the Court and the proceedings in or in connection with which legal aid is given. The word used is "proceedings". The Certificate is to state whether the proceedings are defended or undefended and indicate in the case of an assisted pursuer the specified defender. The question which arises is "What is the meaning of 'proceedings'?"

Section 16(8) provides that a Legal Aid Certificate shall have effect only for the purposes of the proceedings mentioned in the Certificate. Certain provisions are made in the same section for aliment and diligence but no mention is made of any other parts of the proceedings. The application form provided for under Legal Aid (Scotland) (General) Regulations 1960 para. 4(1) only provides for the nature of the proceedings and does not indicate that every proposed conclusion should be separately stated. This does not assist in ascertaining the meaning of the word

~~"proceedings"~~; However the Act of Sederunt (Legal Aid Rules) 1958

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(S. I-1958 No. 1872) does in Section 2 define proceedings for purposes of legal aid. Sub para. (c) indicates that for the purposes of Legal Aid proceedings in the Court of Session before a Lord Ordinary in so far as they are proceedings in a court of first instance shall be treated as distinct proceedings.

In the view of the Auditor there is nothing in the Acts, Acts of Sederunt or Regulations which indicates that it is necessary for an applicant in an action of divorce for cruelty to state in his application that she proposes to take an interim and final interdict against molestation. The Auditor takes the view that in this particular case the solicitor when informed by his client of the facts averred by amendment was entitled to ask the Court for the remedy of interdict as part of the service he was giving to his client under the Legal Aid Certificate. The proceedings for which the Certificate was granted was an action for divorce for cruelty. The amendment in question in the Auditor's view was not a change or variation of proceedings in terms of the Act, Scheme and Regulations.

It is, of course, the case that the Committee must be satisfied that an applicant has a probable cause and it could be said that in this case the amendment and the facts averred under it have not come under the scrutiny of the Committee so as to enable them to consider that aspect. In a divorce for cruelty it would seem to the Auditor that the averments of cruelty themselves would indicate a probable cause for an application for interdict.

In view of the terms of the Act, Scheme and Regulations the Auditor has come to the view that the charges for the amendment and interdict should be included in this Account and he has therefore allowed them. The ruling refers only to this case. Each situation would require separate consideration.

H. Rogers Smith