

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

A191/1975

MF v Glasgow Corp

Account of Expenses incurred by Messrs. A.C. Mackay & Co., Solicitors Glasgow to the Law Society.

Taxation at Glasgow on 22nd December 1975.

Note by Auditor of Court dated 16th January 1976.

In this account which is solicitor and client, third party paying (legal aid), the only matter in real dispute was whether I should tax off 20% in respect that the Sheriff granted decree at the end of the day for £125, being within the value of the Summary Cause Statutory limit of £250, whereas the sum actually sued for was £500, above the Summary Cause limits and coming under the heading of an ordinary action.

Validity of deduction from Summary Cause fees.

Reference was made to the Table of Fees, Schedule 2 to the General Regulations paras. 2 and 3. It was argued by Mr McKay, for the pursuers, whose account it was that (1) para. 2 of the General Regulations was not that relevant here as/para referred to "party and party" accounts whereas this was a "solicitor and client" account third party paying. Mr Campbell, for the Law Society conceded this point but argued that it came within the ambit of para. 3 and should therefore attract a deduction of 20%. Para. 3 states where "Except the Sheriff otherwise directs the fees in this table shall be reduced by 20% in actions where the value of the action, if ascertainable from the process, or the sum craved, does not exceed £250 and in removing and ejection actions where the annual rent of the gross annual value does not exceed £250. Where a counterclaim is lodged the value of the action shall be the addition of the sum sued for and the sum in the counterclaim."

It is pertinent to note that para. 2 (party and party accounts) reference is made to "sum decerned for" whereas in para. 3 no reference is made to the type of account, so it must be assumed that it refers to all accounts outlined in para.1 and reference is made to the value of the action or the sum craved."

In this respect as Auditor of Court I must ignore para. 2 and decide the

account on para.3. Despite the fact that the Sheriff did make a specific modification of the fees by deduction of 20% in his interlocutory judgment para. 3 refers to inter alia "where the value of the action or the sum craved exceeds £250"; in this case therefore as the sum craved did exceed £250 in my submission the question of any modification by 20% is not relevant.

It may ^{seem} illogical that a party and party account attracts a deduction of 20% that no other account does but going further into the two paras (2 and 3) take the last sentence of para. 3 "where a counterclaim is lodged the value of the action shall be the addition of the sum sued for and the sum in the counterclaim". If the pursuer sued for £200, a defender's counterclaim for £100. If both were successful the Sheriff would grant decree to the pursuer for £100 which according to para. 2, and quite rightly in my opinion, result in an account of expenses on the party and party judicial account being modified by 20%. But according to para. 3 on any other account the £200 would be added to the £100 making the value of the action £300 and subsequently the solicitor and client account would be taxed on that scale attracting no modification.

Although this has no bearing strictly speaking in the present case it brings out in my submission the logic behind these regulations and that is that should a pursuer sue for a sum of say £300 and decree is eventually granted for only £200 why should the defender in the party and party account have to pay expenses increased by the fault of the pursuer not suing in the first place for the correct sum due? Whereas in a solicitor and client account should the pursuer instruct his solicitor to pursue an action in excess of the sum rightly due then he must take the consequences by way of additional expense incurred. Why should his solicitor be subjected to

a reduction of fees through the insistence of his client?

In this case it is unfortunate that the Legal Aid Committee are the "third party paying" but as Auditor of Court I cannot take this into consideration as my duty is to tax the account independently in terms of the Table of Fees provided and in this respect I have not subjected the account to a modification of 20%.

*Accountant
Auditor of Court*
