

Business Account incurred by
Rollo, Steven & Bond, Solicitors,
116 Seagate, Dundee to
The Law Society of Scotland

in causa

[REDACTED]

PB

Instruction fee	80 00
Inventory of Productions	9 00
Settlement by Joint Minute <i>PLEASE LET ME HAVE SIGHT OF JOINT MINUTE</i>	53 00
Precognition <u>Patricia C.C. Boyle</u> 2 sps 1 copy	17 00 1 00
Precognition <u>Margaret Rose Wilkinson Boyle</u> 2 sps 1 copy	17 00 1 00
	£168 00
<u>ADD</u> Process fee 10%	16 80
	184 80
<u>ADD</u> Posts and Incidents @ 12%	22 17
	£206 97
V.A.T. @ 8%	16 55
	£223 42
<u>ADD</u> Outlay Dues of Warrant	9 00
	£232 42

NOTE: Effective date of Legal Aid Certificate 10/10/78
Date of Warrant 30/11/78
Date of Service 1/12/78
Date of final interlocuter 26/1/79
No defences lodged
All work done by qualified person.

TACKLED 12/1/79

L.A.S. APPLICATION RETURNED

TACKLED "NO CLAIM"

DUNDEE: 20th July 1979. The Auditor of Court, having heard the Agent for the pursuer and the representative of the Law Society of Scotland on the foregoing Account, taxes the account of expenses at the sum of TWO HUNDRED AND THIRTY-TWO POUNDS 42 (£232.42).


Auditor of Court.

NOTE: This taxation concerned a Solicitor-client account for the pursuer, an assisted person, in an action for affiliation and aliment. In the action the defender had lodged a notice of appearance, and at the tabling diet no order for defences was made, and the case continued a fortnight on the procedure roll. At that diet, the case was settled by joint minute.

The account was submitted under Chapter II of the Table of Fees for Solicitors i.e. block fees, and the Law Society argued that (1) the account should have been submitted with detailed charges under Chapter III, Chapter II being inappropriate in respect the action was not 'defended' since no defences were lodged, and (2) if Chapter II fees are appropriate, the instruction fee should be reduced as all the work under this heading was not carried out.

As regards the first objection, I would point to Gen. Reg. 9 of the Table which gives the Solicitor the option of charging inclusive fees under Chapter I and II or on the basis of detailed fees under Chapter III. If an action is not to be regarded as defended unless defences are lodged, this option is non-existent, as the relevant part of Chapter I only covers decrees in absence granted by endorsement of a minute. The Tables of Fees contains no definition of 'Defended Actions' and I must therefore assume the normal interpretation. Dobie at p.39 states "An action is 'defended' when appearance is made by or for the defender". Apart from that, I doubt if anyone in Sheriff Court practice would regard an action in which a notice of appearance has been lodged as undefended.

The argument that an action is not defended until defences are lodged flies in the face of the 1907 Sheriff Court Rules. For example, Rule 18 - in a defended action the pursuer shall lodge a process, and Rules 34 - 36 regarding/

regarding tabling. It is also noted that the heading immediately prior to Rule 34 is 'Defended Causes'. I feel sure that many instances could be found which would be contrary to the Law Society's interpretation. On the other hand, I can find no support for their view as regards the Sheriff Court Table and accordingly I repel this objection.

As regards the second objection that the instruction fee should be reduced, I note that in terms of paragraph 1 of Chapter II, this covers 'all work to the lodging of defences'. The Law Society argued that this also including perusing the defences which was not done in this case. In my view, the instruction fee ceases at the lodging of the defences in court, at which time the pursuer may not have received his copy. Perusal of the defences must fall under Paragraph 2 - Adjustment Fee. Having taken this view, I can now consider whether the pursuer's agent would have been involved in any additional work covered by the instruction fee if defences had been lodged in this action. I can think of none, and accordingly there are no grounds for reducing the instruction fee and I repel this objection.

Looking to the total amount of fees allowed, I have a certain sympathy for the Law Society acting in this case as guardians of the public purse but I am bound by the Table of Fees in force. In reaching my decision on the objections, I have been sustained by the thought that if in this action defences had been lodged and the case settled by joint minute at the first ensuing diet, no extra work would have been undertaken by the Solicitor, and he presumably would have been entitled to charge these fees without demur. Accordingly the basic fault, if there is one, would not be cured by inserting an interpretation of the words 'Undefended' and 'Defended' in the Tables of Fees. If the solicitor is still to be given an option of 'block' or detailed fees, then Chapter 1 would require to be amended to include this type of case. There would appear to be no justification in that event for the instruction fee for an undefended action to be less than that for a defended action as it involves the same amount of work.