

A255/83

v

LA Ref 19/96/400557/84
 ↪ 19/96/400558/84
 19/96/600209/86

AYR: 4 APRIL 1989

The Sheriff having resumed consideration of the cause, Approves the Account of Expenses incurred by A Graeme Adam & Co., Solicitors, Irvine, as taxed at £752.96, and Decerns the Pursuers to pay said sum.



NOTE: For a brief period during the course of this action the second defender, [REDACTED] was represented by A Graeme Adam & Co., but when Mr Adam was suspended by the Law Society (and later struck off) Mr W White, S.A. ^{was} appointed judicial factor on the firm's estate, and Mr Friel, Solicitor, Glasgow, acted for the judicial factor. The account of Graeme Adam & Co. was presented for taxation by Mr Friel on behalf of the Scottish Legal Aid Board.

The Auditor of Court taxed the account on 7 July 1988 in the sum of £752.96. In his note to that finding, the Auditor draws the Court's attention to two points. The first question raised is whether the account can be presented without the consent or concurrence of the judicial factor. Any difficulty on this point is, I think, cured by the production of the assignation dated 13 October 1988 in terms of which the judicial factor assigned to SLAB all his rights in relation to the taxation and obtaining of a decerniture for the recovery of expenses awarded in the action.

A second point raised concerns the status of SLAB, and their right to enter the process and pursue the question of expenses. As the matter was not free from difficulty, I put the motion out for a hearing on 12 January 1989 to hear submissions from Mr Friel, who kindly attended at my Chambers on that day for that purpose. The Auditor of Court

(Mr MacColl, SCD,) was in attendance.

The relevant statutory provisions may be stated shortly. Section 2(6)(d) of the Legal Aid (Scotland) Act 1967 provides "Where a person receives legal aid in connection with any proceedings.....(d) any sums recovered by virtue of an award of expenses or of an agreement as to expenses in his favour with respect to the proceedings shall be paid to the Legal Aid Fund".

Section 16(1)(d) of the said Act provides - "The court may..(d) make provision for the recovery of sums due to the Legal Aid Fund and for making effective the priority conferred by this Act on the payment of such sums out of property recovered or preserved for a person receiving legal aid, including provision - (i) for the enforcement for the benefit of that fund of any award of expenses in favour of a person who has received legal aid".

The Legal Aid Rules 1958 apply to the circumstances of the present case, and rule 6(1) provides "Where under a judgment of court..... an award of expenses..... is made in his favour, the Law Society may take all such proceedings as may be necessary to enforce such judgment Provided that it shall be competent for the Law Society to do diligence on a decree for expenses either in the name of the assisted person or in the name of the Society without obtaining a formal assignation from the assisted person".

Mr Friel said that he had been advised by SLAB that this case was the first in which the particular problem now before me had been raised. He produced a number of Court of Session decrees in which the decree in favour of SLAB had been made. He said that the normal procedure in a question of expenses was that the court firstly made a finding of/

of expenses; the court then made an order for taxation; this was followed by a motion for approval of expenses as taxed; and finally came the decerniture by the court of the appropriate amount. On the narrower view of interpretation of the statutory provisions, the argument was that SLAB could do nothing until the stage of decerniture. He submitted that that view was too narrow, and that if SLAB's intervention was to be limited until the stage of decerniture, the rules would have said so specifically.

Referring to Rule 6 of the 1958 Rules, he submitted that the expression "the Law Society may take all such proceedings as may be necessary to enforce such judgment" was not limited to decerniture, but included such earlier matters as a motion for taxation, and so on. He suggested that the argument that the extent of liability of the unsuccessful party could not be established until after taxation, and therefore the question of enforcement could not arise before the assessment of liability, was unsound.

Again, with reference to the statutory expression "the Law Society may take all such proceedings" it was reasonable to infer the addition of the words "between the award of expenses and final decerniture".

Mr Friel also submitted that a formal assignation to SLAB was not strictly necessary. He pointed out that the proviso to Rule 6 made it competent for the Law Society to do diligence on a degree for expenses without obtaining a formal assignation; a fortiori he argued that if an assignation was not necessary, then a sist by SLAB into the action was unnecessary.

I think that Mr Friel's submissions are well founded. It seems to me that tenor of section 2(6) of the 1967 Act is to the effect that

expenses awarded to an assisted person should in appropriate circumstances be recoverable by and be paid to the Legal Aid Fund. To achieve that end, I think that the statute implies that in appropriate circumstances SLAB does have the right to pursue the expenses of the action, they have the right to make any incidental representation that may be necessary, and they have a right to be heard at any diet of taxation of expenses. I think that the argument that SLAB can only intervene at the late stage of decerniture is to take too narrow a view of the statutory provisions.

I accordingly approve the account of expenses as taxed by the Auditor of Court.

N. C.