

TAXATION OF LEGAL AID FEES

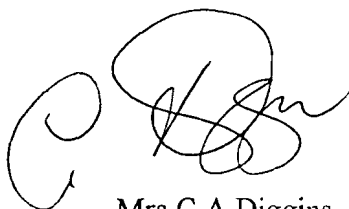
i.c.

[REDACTED]

DB v AF & IM

Inverness 2 March 1999 Act; Mr Beaumont Alt; [REDACTED]

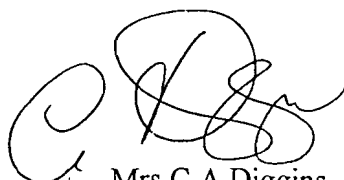
Having heard the solicitor for the Pursuer and the solicitor for the Scottish Legal Aid Board on the question of all work claimed for the period from 1 July 1996 to 2 September 1996 and on the question of the expenses of the taxation today, makes avizandum



Mrs C A Diggins
Auditor of Court

Inverness 8 March 1999

Having resumed consideration of the foregoing account (1) refuses the pursuers claim for fees for the period from 1 July 1996 to 2 September 1996 therefor, taxes the foregoing account in the sum of TWO THOUSAND ONE HUNDRED AND EIGHTEEN POUNDS AND THIRTY PENCE (£2118.30) STERLING being inclusive of an audit fee of £308.00 and in addition, outlays in the sum of FIVE HUNDRED AND SEVENTEEN POUNDS AND FIFTY PENCE (£517.50) sterling and (2) finds Mr Beaumont personally liable to the Scottish Legal Aid Board for the expenses of the taxation held on 2 March 1999



Mrs C A Diggins
Auditor of Court

NOTE:-

Mr Beaumont appeared as the agent submitting the Legal Aid Account and [REDACTED] appeared on behalf of the Scottish Legal Aid Board

(1) Argument for the Board

[REDACTED] moved that the fees claimed for the period from 1 July 1996 to 2 September 1996 be disallowed. He argued that Mr Beaumont's application for Legal Aid was in respect of an action of Declarator and Payment, no interdict as claimed and only in respect of the Defender Andrew Fraser. He argued that the procedure governed by regulation 18 was not complied with in that form SU4 was not completed by the agent and granted by the Scottish Legal Aid Board prior to the work being done. He also submitted that the time limit prescribed in regulation 18(4)(b) was not complied with. I note that regulation 18 (4)(b) states "the solicitor shall, if an application for legal aid has not already been submitted, submit an application for legal aid within 28 days of commencement of the urgent work; failure to do so shall exclude that work from any legal aid that may be made available" [REDACTED] referred me to the determination by the Secretary of State dated 23 August 1995 and specifically paragraph 3 thereof wherein it states "The factors to which the Board are to be satisfied are:-

- 3.1 that the solicitor had reasonable grounds for believing on the information available at the time that the work was done, that the applicant would be eligible for legal aid in terms of section 15 of the Legal Aid (Scotland) Act 1986 and
- 3.2 that the work was actually, necessarily and reasonably done"

[REDACTED] argument in this regard being that Mr Beaumont had no reasonable grounds for believing that the applicant in this case would be eligible for legal aid and that to pay for this period was *ultra vires*

(1) Argument by Mr Beaumont

Mr Beaumont commenced by showing me a copy of the application for Legal Aid as submitted to the Scottish Legal Aid Board; this did not advance his argument. He

submitted that interdict followed automatically but did not refer me to any legislation of regulation in that regard. Mr Beaumont indicated that provision existed whereby a solicitor may seek a fresh memorandum and having heard [REDACTED] in reply to this point, he did confirm that such provision did exist and were applied to cases where the grounds of a case are changed. The procedure was for the agent to resubmit a legal aid application and a new memorandum would be issued. However in this case, this procedure was not adopted by the agent.

(2) Argument for the Board

[REDACTED] in respect that more than one-fifth of the fees are disallowed, made a motion that Mr Beaumont be found personally liable to the Scottish Legal Aid Board for the expenses of the taxation. I was referred to the following cases:-

Meiklejohn -v- Moncrieff CS 1850 at page 303

Hogg -v- Balfour CS 1835 at page 451

and Cameron and Mandatory; Chapman and Mandatory Cs 1835 at page 24

all of which advanced Mr Shearer's argument therefor.

(2) Argument for Mr Beaumont

Mr Beaumont argued that if [REDACTED] argument was upheld, he was of the opinion that there was no requirement for [REDACTED] to attend the taxation on behalf of the Board and to have travelled from Edinburgh for that purpose. Appointment of a local agent would have been sufficient. I heard [REDACTED] in reply to this argument who indicated that to appoint a local agent would have been to breach confidentiality. His personal attendance was necessary in a matter of this importance and given his personal experience and his ability to address the auditor fully on the objections to the account