

SCOTLAND / JUDGMENT

JOHN DAVID McIRVINE v. JOHN ALEXANDER McIRVINE [2012] ScotSC 91 (12 September 2012)

[2012] ScotSC 91

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in the name of the pursuer and presumably used by him for tax purposes. At that point the bank account was in credit of approximately £ 74,000. The profit on the farm, as taken from the four sets of accounts, was building up to a figure between £ 20,000 and £ 25,000. Accordingly for the two years to the cessation of the defender's running of the business a figure of around £ 50,000 could reasonably have been added to that balance making approximately £ 125,000. The actual balance at that point was a debit balance of £ 157,000 so the difference is £ 282,000. This forms one general basis for assessment. There are, of course, numerous other factors. Amongst these are the pursuer's own drawings from the account and his ownership of the arguably improved property and the defender's accounting failures particularly with regard to the sale of the farm subsidy and complete failure to account for the cattle ownership and sales. I am inclined, very much on a broad brush basis, to take the view that many of the factors balance many others, and to utilise the above figure as a base, it having some foundation in reality. Given that this exercise is required by the defender's failure to account it is appropriate that it be rounded upward. I have accordingly awarded a figure of £ 300,000 and granted decree for that sum. Interest will run from the date of citation as craved. [37] The pursuer has largely succeeded in this action. It was necessary for him to raise proceedings to effect a resolution to the dispute. In absence of any sound reason to the contrary he is entitled to an award of expenses. I accept that notwithstanding that the defender represented himself this is an unusual case involving the requirement for careful and thorough preparation to an extent that the employment of junior counsel was justified. I have certified it accordingly. Sheriff of Grampian Highland and Islands at Aberdeen September 2012. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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