



28 January 2015

## PRESS SUMMARY

**McGraddie (Appellant) v McGraddie and another (Respondents) (Scotland) (Costs)**  
**[2015] UKSC 1**  
*On appeal from [2012] CSIH 23*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Reed

### BACKGROUND TO THE JUDGMENT

This appeal concerns a dispute between a father, (“the Pursuer”) and son (“the First Defender”). The Pursuer gave the First Defender a cheque for £285,000. The First Defender and his wife used £200,000 to purchase a house in their own names for £285,000, the balance being raised by way of mortgage. The parties fell out and the Pursuer began proceedings seeking the conveyance of the house to him on the ground that the £285,000 had been paid to the First Defender to buy a property for the Pursuer.

The Lord Ordinary rejected the Defenders’ case that the £285,000 was a gift and granted the Pursuer substantially the relief which he sought. The Defenders appealed and the Extra Division allowed the appeal. The Pursuer appealed and the Supreme Court allowed his appeal for reasons given in the judgment of Lord Reed (see [2013] UKSC 58), reinstating the Lord Ordinary’s decision.

The Defenders were legally aided in the Inner House and in the Supreme Court, but the Pursuer was not. The Pursuer took out After the Event Insurance (“ATE insurance”) against his potential liability for the Defenders’ costs if he were to lose his appeal to the Supreme Court and was subsequently ordered to pay the Defenders’ costs. The premium which the Pursuer paid for the ATE insurance was £40,000. The Pursuer seeks an order that the Legal Aid Board (“the Board”) pay his expenses. The relevant statutory provisions enable the court to make an award in relation to “the whole or any part of any expenses incurred by [a legally unassisted party] so far as attributable to any part of the proceedings in connection with which another party was a legally assisted person”. The Court can make such an order in relation to the expenses of an appeal if “an order for expenses might be made in the proceedings, apart from this Act” and “the court is satisfied that it is just and equitable in all the circumstances that the award should be paid out of public funds”. The Pursuer contends that the £40,000 ATE premium should be recoverable from the Board as part of his expenses.

### JUDGMENT

In a judgment given by Lord Neuberger, the Supreme Court unanimously awards the Pursuer his expenses of the appeal to the Inner House and to the Supreme Court against the Legal Aid Board, but directs that those expenses should not include the ATE premium of £40,000 paid by the Pursuer.

## REASONS FOR THE JUDGMENT

The relevant provisions of the Supreme Court Rules and Practice Direction 13, and the Rules of the Court of Session allow expenses which are reasonably incurred. It is clear that the ATE premium was reasonably incurred [10-11]. However, the question remains whether an ATE premium is an item of expenses which is recoverable from the other party. In the absence of any express provision permitting it, one would not expect an ATE premium to be recoverable as it is simply not part of the costs of the appeal as a matter of ordinary language [12-13]. The same can be said of the language of the Scottish Rules of Court [16]. This position is confirmed by both English and Scottish authority [17-18]. This leads to the conclusion that, in the absence of agreement or a specific statutory sanction (either expressly or through valid delegated legislation) to the contrary, a successful party to litigation cannot recover an ATE premium, however reasonable it was to have incurred it, as part of his costs or expenses of legal proceedings [19].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://www.supremecourt.uk/decided-cases/index.shtml>