



**SHERIFF APPEAL COURT**

**[2026] SAC (Civ) 53  
LAN-B8-26**

Appeal Sheriff I H Cruickshank

**OPINION OF THE COURT**

delivered by APPEAL SHERIFF IAN HAY CRUICKSHANK

in the appeal in the cause

**IAIN ALEXANDER SMITH**

Pursuer and Respondent

against

**WILLIAM JAMES SMITH (Junior)**

Third Defender and Appellant

and

**GREENTOWER FARMS LIMITED**

First Defender

and

**WILLIAM JAMES SMITH (Senior)**

Second Defender

**Appellant: Reekie, (sol adv); Brodies LLP  
Respondent: Nicolson, solicitor; Harper MacLeod**

20 July 2026

**Introduction**

[1] In terms of section 994 of the Companies Act 2006 (“the 2006 Act”) a member of a company may apply to the court for an order on the ground that the company’s affairs are

being, or have been, conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members. If the court is satisfied that a petition is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of (section 996(1) of the 2006 Act). Orders can be applied for in the sheriff court by summary application.

[2] In pursuance of such orders the pursuer and respondent in this appeal (“the respondent”) lodged a summary application at Lanark Sheriff Court anent his interests as a member of the company cited as the first defender (“the Company”). Following a caveat hearing various interim orders were granted in his favour. Although this appeal initially challenged the granting of all interim orders, only one such order remains the subject of appeal. It is in the following terms:

*“ad interim* interdicts William James Smith, Senior and William James Smith, Junior from intromitting with the moveable assets (including any and all livestock) of the Company without the consent of the Pursuer (which consent will not be unreasonably withheld) until further orders of court”

[3] This appeal is taken by the third defender (“the appellant”). The substance of this appeal is two-fold. First, it is submitted that the respondent had failed to set out a *prima facie* case to justify the order. Secondly, the balance of convenience lay against the granting of the order.

[4] This appeal has been determined on the written submissions of the parties.

### **Basis of the summary application and interim orders granted**

[5] The summary application was brought by the respondent in relation to affairs of the Company which was described as a family farming business. It was averred that the nature of that business was the raising of dairy cattle and dairy farming generally. It was further averred that the Company had operated as a “quasi-partnership” between the respondent,

his recently deceased mother and the second and third defenders with each having individual responsibility for operations, working on the farm and corporate decision making. Since 2020 the respondent had been solely responsible for the management of the Company's dairy cattle and principally responsible for the operation of contracts with third parties.

[6] In addition to the current shareholders the respondent's mother, and wife of the second defender, had died on 18 August 2025. At the time of her death, she owned 24.94% of the Company's issued share capital. The second defender owned 26.06% of the issued share capital with the appellant and the respondent, the two being brothers, each owning 24.5%. In terms of the deceased's will her shareholding was bequeathed to the respondent. The deceased's executor was the second defender. In January 2026, the appellant advised the respondent that he and his sister intended to claim legal rights on the estate. Solicitors acting for the estate were not instructed to provide any information to the respondent.

[7] It was averred that on 24 December 2025 the Company held a general meeting at which a resolution had been passed to remove the respondent as a director. This was unfairly prejudicial to his interests as a member of the Company. An order was sought to have him reinstated as a director. An interim order *ad factum praestandum* ordaining the second and third defenders to restore the respondent's directorship was granted at the caveat hearing and is no longer the subject of this appeal.

[8] Since removal as director the respondent averred that none of the Company's livestock had been managed or tended. Due to non-delivery of milk, it was understood that a key contract had been lost which could result in significant loss to the Company. The specific averments in support of the order now appealed were as follows:

*“Separatim, the Pursuer is reasonably concerned that Mr Smith Junior is arranging to sell some or all of the Company’s livestock. The Company had no succession plan for the management or maintenance of the livestock herd following his removal as a director of the Company. The Company’s livestock is its main income producing asset and the depletion of the herd will restrict its ability to trade going forward, which will be damaging to the Company and prejudicial to the Pursuer as a shareholder. The Pursuer seeks an order interdicting the remaining directors from intromitting with the moveable assets (including all livestock) of the Company, and for interdict *ad interim*.”*

And

*“The Pursuer is reasonably apprehensive that Mr Smith Junior has intromitted with the assets of the Company in a manner breaching the fiduciary duties he owes to the Company and in a manner which is unfairly prejudicial to the pursuer’s interests as a member. The Pursuer is reasonably apprehensive that Messrs Smith will continue to intromit with the assets of the Company unless interdicted from doing so, including livestock ...”*

[9] In addition, it was averred that two areas of land owned by the Company had been transferred to the appellant and his sister. An interim order was also sought to interdict the further intromission of heritable property without the consent of the respondent.

[10] Having considered both oral and written submissions the sheriff proceeded to make two interim orders, one of which is now appealed. The sheriff did not make an order interdicting disposal of further heritable property.

[11] The sheriff was referred to case law in relation to the powers of the court when making orders under sections 994 and 996 of the 2006 Act. He considered the powers the court had to grant orders as outlined in *Li v Holouis Ltd* [2009] CSIH 87.

[12] In granting the interim interdict, the sheriff determined that a *prima facie* case had been made out and that the balance of convenience favoured the respondent. He noted most of the factual averments were not in dispute. Whilst acknowledging that a substantive hearing would be required to consider the parties’ respective position on any final orders, he concluded that given the structure of the Company, and its operation as a quasi-partnership, in the absence of interim orders the respondent could again be removed as a director and

that the moveable assets of the company could be disposed of. He observed (at paragraph 22 of his note) that:

“The possibility of this situation becoming the reality was further enhanced by the concession made ... that sale of the livestock was under active consideration, as steps taken to break up the defender company. I was not satisfied that there was any prejudice to the defender company or the first or second interested party in the *status quo* which had existed before 23 December 2025 being preserved ...”

[13] Having granted interim orders at the caveat hearing the sheriff granted warrant to cite and ordained answers to be lodged with a further hearing assigned thereafter.

### **Submissions for appellant**

[14] It was submitted for the appellant that the sheriff correctly identified that the court had the widest possible discretion when selecting a remedy to protect against unfair prejudice under the 2006 Act. It empowered the court to give full effect to the members’ understandings on which the Company came to be associated but it did not empower the court to rewrite those understandings (*Re: Posgate & Denby (Agencies) Ltd* (1986) 2 BCC 99352). When granting interim orders, and in particular interim interdict, a *prima facie* case had to be established. That meant there had to be “a case to argue and a case to answer” (*Reed Stenhouse (UK) Ltd v Brodie* 1986 SLT 354 at 357L-358C).

[15] Although it was averred that the Company had operated as a quasi-partnership, beyond the familial relationship, the pleadings were silent on the basis on which it was said that the Company operated as such. Whereas the sheriff concluded in his note that submissions were made on behalf of the Company that it was operating as a quasi-partnership, it was not recorded whether it was conceded on behalf of the Company that it operated in such a way. The concession had in any event been made in the context where the respondent had not yet been restored as a director.

[16] Pleadings were further criticised as the respondent had averred that he had been solely responsible for the management of dairy cattle, and principally responsible for the operation of contracts with third parties. What was pled was that the respondent has been solely responsible for those matters, not that he had any expectation to be solely responsible for them.

[17] Given averments that there had been no management of the livestock since 24 December 2025, and apprehension of the loss of key contracts, there was nothing to suggest the appellant would intromit with moveable assets. If anything, the allegation was that there was a failure to realise these assets. There was a lack of any averment that any livestock had been sold or were being advertised for sale. The bald averment of reasonable apprehension that there would be intromission with assets without further specification was not enough.

[18] The appellant submitted that no case had been made out that the respondent had any legitimate expectation to have a controlling say in the sale of Company assets. Although it was pled that the Company operated as a quasi-partnership, even in a partnership decisions could be made by the majority of partners. Inevitably the minority may be unhappy with that decision. Being outvoted by the majority was not the same as the majority acting unfairly. Accordingly, taking the averments anent quasi-partnership at their highest the respondent would have an expectation to be a director and be involved in management. In the absence of an ancillary agreement there could be no expectation that consent was necessary for normal business decisions including the sale of assets. As such, the interim remedy granted had the effect of rewriting the agreement upon which the respondent's expectations could rest or in the manner found permissible in *Re: Posgate & Denby (Agencies) Ltd.*

[19] It was submitted that nothing in the pleadings, or recorded in the sheriff's note, showed that either the second defender or the appellant would intromit with moveable assets beyond the bare assertion that there was concern that livestock may be sold. That a sale was under consideration had been conceded by the Company but that was the situation before the respondent's restoration as a director. Beyond that there was no case that the assets would be sold. Averment that there was a "concern" for there being no management of the herd had no basis. Upon being restored as a director the inference became that the respondent would resume control of the livestock. As such, any concern as to sale of that livestock would be alleviated.

[20] The sheriff identified that the general purpose of the interim orders was to restore and preserve the *status quo ante*. He should have concluded that the order sought went beyond that and therefore the balance of convenience lay with not granting the order. Furthermore, the order had the ability to prejudice the Company's ability to function. That could cause irreparable harm. If the respondent were ultimately successful matters could be made good by final orders including orders for payment of damages. Whilst submissions to that effect were made before him, the sheriff did not appear to consider this factor. No consideration was given as to how easily such damages might be quantified or if damages could provide adequate compensation. Had the sheriff applied his mind to this he ought to have concluded that any loss to the respondent could be quantified in a reasonably straight forward manner. The sheriff ought to have concluded that the availability of damages pointed away from the balance of convenience lying with the grant of interim interdict.

[21] Finally, it was submitted for the appellant that if a *prima facie* case had been made out, and the balance of convenience favoured the respondent, the only concern lay with the

sale of livestock. The sheriff should have restricted the interim order to that moveable asset only.

[22] The appellant invited this court to recall the sheriff's interlocutor as far as it granted the interim interdict. The secondary position was to recall the interim interdict and of new grant the same in terms interdicting the appellant and the second defender from intromitting with any and all livestock of the Company without the consent of the respondent. Thereafter, on either basis the matter should be remitted to the sheriff to proceed as accords. In the event of success, the appellant sought expenses occasioned by the appeal.

### **Submissions for respondent**

[23] It was submitted for the respondent that it was a matter for the discretion of the sheriff whether to grant interim interdict. A challenge would only succeed on limited grounds. These would include if there had been an error of law or it was a decision that no reasonable sheriff could have made (*Fotheringay, Petitioner* Inner House, unreported 2025 - this case, and its facts, being referred to in some detail in the respondent's written submissions to this court). It would not be sufficient to persuade an appellate court that it might have reached a different conclusion. A discretionary decision will not be interfered with on appeal unless it was plainly wrong. This was not the basis of the appeal in this case.

[24] In granting an interim interdict the sheriff exercised his discretion to regulate matters pending a substantive hearing. An appellate court should not embark upon a consideration of the merits (*Highlands and Islands Enterprise v CS Wind UK Limited* [2020] CSIH 48). The appeal court should assume, unless the appellant can demonstrate to the contrary, that the

sheriff knew how to perform his function and what matters to take account of in exercising his discretion (*Pigłowska v Pigłowski* [1999] 1 WLR 1360). It was clear from the sheriff's note that he had properly considered all of the submissions made before him. The sheriff's reasoning could not be faulted, and he had exercised his discretion in a manner that was reasonable and sound in law.

[25] The respondent submitted that the sheriff was entitled to find a *prima facie* case had been made out and there was a clear and cogent basis for so finding. The Company's agent had confirmed that much of the factual narrative as presented was accepted. That acceptance had been a factor taken account of in the granting of the interim interdict. At first instance the respondent's agent had lodged detailed written submissions. Based on all the submissions before the sheriff the appellant's reliance on the articles of association was misplaced. It was also wrong to suggest that the management of the Company being vested in its directors was a barrier to the grant of interdict against those directors for taking unfairly prejudicial decisions. It was possible for directors to take decisions in accordance with a Company's articles which were unfairly prejudicial to Company members. That is the situation which the respondent found himself in when removed as a director.

[26] At the caveat hearing the respondent's submissions were focused on the fact that undertakings had been requested but none had been provided. The agent for the Company accepted that the appellant and the second defender intended to sell livestock due to the losses being made by the Company absent the management and involvement of the respondent. It was against that factual background that the sheriff properly formed the view that the pursuer had made out a *prima facie* case.

[27] Had the learned sheriff refrained from granting the interim order in respect of moveable property, the respondent would plainly still have been at risk of the appellant

and second defender taking unfairly prejudicial decisions even upon the respondent's restoration as a director. Without the appellant and second defender being interdicted, subject to the respondent's consent, the Company would have been able to sell the livestock leading to the respondent's aspect of the business suffering. His restoration as a director could not of itself protect him as a shareholder from unfair decisions taken by other directors.

[28] It was submitted that the terms of the interdict were also of relevance. The respondent could not unreasonably withhold consent, and it was understood that the terms of the interdict had not given rise to any disputes concerning intromissions with moveable property since it was granted. The sheriff had carefully considered the matter of consent and determined that not to include that in the order could result in a less favourable outcome for all parties.

[29] The respondent's invitation was to refuse the appeal and remit the matter to the sheriff to proceed as accords.

## **Decision**

[30] This action was lodged on the back of a recent dispute which appears to have arisen out of familial disharmony and conflict about the running of a farm business which itself was operated as a Company. The respondent raised this summary application seeking orders on the ground that the Company's affairs were being, or had been, conducted in a manner that was unfairly prejudicial to the interests of its members. This appeal is taken against one of the interim orders granted by the sheriff at a caveat hearing. Whilst submissions in this appeal were lengthy and detailed, including careful analysis of case

law, I have concluded that for the purposes of this appeal it is unnecessary to refer to the applicable law at particular length. There is no dispute as to how the law should be applied.

[31] Section 994 of the 2006 Act, as far as relevant to the present case, is in the following terms:

**“994 Petition by company member**

- (1) A member of a company may apply to the court by petition for an order under this Part on the ground–
  - (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
  - (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial...”

[32] The powers of the court are contained in section 996 of the 2006 Act which is as follows:

**“996 Powers of the court under this Part**

- (1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.
- (2) Without prejudice to the generality of subsection (1), the court's order may–
  - (a) regulate the conduct of the company's affairs in the future;
  - (b) require the company–
    - (i) to refrain from doing or continuing an act complained of, or
    - (ii) to do an act that the petitioner has complained it has omitted to do;
  - (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
  - (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;
  - (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.”

[33] In pursuance of an order under sections 994 and 996 of the 2006 Act there is no dispute for the purposes of this appeal that interim orders can be competently granted. If a Company's affairs are being conducted in an unfairly prejudicial manner the court has the

power to “make such order as it thinks fit”. It has been recognised that the court has the widest possible discretion in selecting the ultimate remedy (*Wilson v Jaymarke Estates Ltd* 2006 SCLR 510, per LP Cullen at paragraph 12). The court cannot create new remedies but can select from its armoury of competent remedies the one most appropriate for a given situation. That would include orders for payment, *ad factum praestandum* and interdict (*Li v Holouis Ltd* at paragraph 14).

[34] A feature of this appeal relates to the averments that the Company operated as a quasi-partnership. In *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360, Lord Wilberforce considered there were a number of features which led to a Company being regarded as operating as such. These were:

“an association formed or continued on the basis of a personal relationship, involving mutual confidence; an agreement or understanding that all...shareholders shall participate in the conduct of the business; and a restriction upon the transfer of members’ interests in the company.” (paragraph 379)

[35] On the issue of operation as a quasi-partnership the sheriff in his note made specific reference to the observation of Lord Tyre in *Gray v Braid Group (Holdings) Limited* [2015] CSOH 146. In that case his Lordship stated that in determining whether it was unfair for the majority to exercise their rights in terms of the articles or otherwise against that of a minor shareholder it was a relevant consideration whether the Company in question operated in this way. He concluded that the court would more readily find unfairness in exclusion of a shareholder from the management of the company, even if there has been no breach of the terms of the articles of association (at paragraph 24).

[36] In so far as the appellant founded on *Re: Posgate & Denby (Agencies) Ltd* as authority for the proposition that whilst the court was empowered to give full effect to the members’ understandings on which the Company came to be associated it did not empower the court to rewrite those understandings, I do not consider that authority in itself prevented the

order now appealed from being granted. The background facts upon which relief against unfair prejudice was sought, and refused, were very different from the facts in the present case. Furthermore, the Company structure in that quoted case was very different and would not have been regarded as operating as a quasi-partnership.

[37] It must also be borne in mind that the interim order was granted at the very commencement of procedure, and that occasioned by a caveat hearing. To that end a detailed analysis or particular scrutiny of the pleadings should not have been necessary to determine whether there existed a *prima facie* case. A broad view should be all that was required to be taken at that stage of proceedings. The sheriff was favoured with what appears to have been very full written submissions as expanded by oral submissions at the hearing. The summary nature of the proceedings should also not be lost sight of. The process leading to a substantive hearing would not necessarily require to be overly prolonged. Accordingly, criticism on the part of the appellant levelled at the sheriff for failing to consider what final orders might be granted to compensate the respondent do not in my view have a particular bearing on whether the interim order was justified at that point in time.

[38] Given the stage reached in this summary application, based on the factual background as largely admitted, it is difficult to argue that a *prima facie* case had not been presented. As a result of a dispute between the surviving members of the Company the respondent had been removed as a director in December 2025. He had been excluded from decision making. The respondent had been advised that there was an intention to sell the dairy herd being the Company asset he had been in management of. On that background and based on a concession by the solicitor for the Company that sale of livestock was under active consideration, the sheriff was satisfied that there was no prejudice to the defender

Company, or to the appellant or second defender, in the *status quo* prior to December 2025 being preserved until any factual or legal dispute between the parties could be resolved. In pursuance of preserving the pre-December position the sheriff granted the order to procure the re-appointment of the respondent's directorship. As has been observed, the granting of that order is no longer the subject of appeal.

[39] Given the fluid nature of what had become a rapidly changing corporate landscape within the context of a long-established family farming operation it is difficult to argue against the sheriff placing weight on the quasi-partnership nature of the Company. The admitted fact that sale of the dairy herd was under active consideration, and it appearing to be undisputed that the respondent had been principally responsible for the management of that herd prior to his removal as a director, on that analysis alone, and without further detailed scrutiny of the Company structure it cannot be argued that the sheriff had no basis upon which to grant the interim order now appealed. It was very much a case of placing a protective lock against potential sale of livestock. On that basis the balance of convenience favoured "locking the byre door" but allowing it to be opened with consent pending resolution.

[40] The sheriff was not considering what final orders might be appropriate. He recognised that a substantive hearing would be required once the parties had averred their respective positions. Absent any cogent reasoning that a prohibition against sale would be detrimental to the interests of the Company or its members at that point in time supported the conclusion that the balance of convenience favoured the granting of the order. The view has been expressed that the balance of convenience may turn on which party would suffer more if interim interdict were refused (per *Reed Stenhouse (UK) Ltd v Brodie*).

[41] On appeal it is now argued that if an interim order was justified it should only have been granted against sale of livestock and not all moveable assets. This does not appear to have been a submission made before the sheriff. The principal concern was sale of livestock. Moveable farm assets will be wide ranging and no doubt some of these would be directly linked to the herd. At this stage further detailed averment was unnecessary to further amplify the respondent's concerns. I do not think it is appropriate for this court to interfere with the terms of the order. It was either justified, or not, based on the information as presented at the caveat hearing.

[42] In my judgment it cannot be argued that this order is one which no sheriff acting reasonably would have granted. The terms of the order, incorporating disposal of moveable assets with consent not to be unreasonably withheld, was fair and proportionate set against the background as explained to the sheriff. On that basis I will refuse this appeal.

[43] In refusing the appeal I remit the cause to the sheriff to proceed as accords. Expenses follow success and therefore the expenses occasioned by the appeal as taxed are awarded to the respondent.