



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 2
PER-CA22-22**

Sheriff Principal Aisha Y Anwar KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL AISHA Y ANWAR KC

in appeal in the cause

COLIN GILLAN

Pursuer and Appellant

against

MARK SINCLAIR

Defender and Respondent

**Pursuer and Appellant: Forsyth, solicitor; Gilson Gray LLP
Defender and Respondent: MacRae, solicitor; Gilmartin Finlay MacRae**

15 January 2026

Introduction

[1] Is a party found entitled to an award of expenses by the Sheriff Appeal Court entitled to interest on those expenses? This opinion addresses that issue.

Background

[2] The appellant challenged the decision of the sheriff at Tayside Commercial Court to dismiss his action against the respondent and grant decree against him in the respondent's counterclaim with expenses on 24 June 2024. His appeal was refused on 5 September 2024.

He sought leave to appeal to the Court of Session; however, his application for leave to appeal was refused on 14 November 2024.

[3] Upon resolution of that application, the respondent enrolled a motion for an additional sum to be added to his account of expenses in terms of Chapter 27A of the Ordinary Cause Rules 1993 (“OCR”), on the basis that he had made the equivalent of a successful pursuer’s offer to settle the counterclaim. The sheriff refused the award of an additional sum as incompetent. The respondent appealed. That appeal was dismissed as incompetent on 16 October 2025: *Gillan v Sinclair* [2025] SAC (Civ) 35.

[4] Separately, the respondent intimated an account for the decree of expenses granted by the Sheriff Appeal Court in his favour. The account of expenses was lodged with the auditor of court on 18 December 2024. The respondent lodged no objections to that account, nor did he appear at the diet of taxation on 5 March 2025. Following the diet of taxation, the auditor made avizandum. He reported on 8 August 2025 and taxed the respondent’s account of expenses at £5,852.

[5] On 3 September 2025 the respondent lodged a motion inviting this court: (i) to grant decree for the expenses as taxed with interest thereon at 8% a year from 15 January 2025; (ii) to find the appellant liable to the respondent in the expenses of the motion as taxed, and for an account to be given in and remitted to the auditor; and (iii) to allow for immediate extract. That motion was opposed by the appellant. The opposed motion called before me on 6 November 2025.

Statutory provisions

[6] The following rules of the Sheriff Court and the Court of Session provide for interest on judicial expenses. OCR 32.5 states:

“Interest on expenses**32.5.**

- (1) Paragraph (2) applies where the sheriff grants decree for payment of—
 - (a) expenses as taxed; and
 - (b) interest thereon.
- (2) Without prejudice to the sheriff’s other powers in relation to interest, the decree pronounced may require the party decerned against to pay interest on the taxed expenses, or any part thereof, from a date no earlier than 28 days after the date on which the account of expenses was lodged.”

[7] RCS 42.4A states:

“Interest on expenses**42.4A.**

- (1) At any time before extract of a decree for payment of expenses as taxed by the Auditor the court may, on the application of the party to whom expenses are payable, grant decree against the party decerned against for payment of interest on the taxed expenses, or any part thereof, from a date no earlier than 28 days after the date on which the account of expenses was lodged.
- (2) Paragraph (1) is without prejudice to the court’s other powers in relation to expenses.”

Submissions for the respondent

[8] OCR 32.5 allows a sheriff to award interest when granting decree for payment of the taxed expenses. RCS 42.4A(1) states interest on expenses may be awarded at any time before extract of a decree for payment of expenses as taxed. While there was no equivalent rule for the Sheriff Appeal Court, there was no good reason why it ought to have a different regime from the Sheriff Court or the Court of Session (*Gray v Cape* [2023] SAC (Civ) 19 [32]).

[9] In terms of section 47(3) of the Courts Reform (Scotland) Act 2014, the Sheriff Appeal Court has all the powers inherently possessed by any court of law for the purpose of discharging its function and giving full effect to its decisions. The Sheriff Appeal Court had previously used this power in holding that the term “sheriff” in OCR 27A.8(1) could be substituted for “Sheriff Appeal Court” such that a pursuer was entitled to an uplift on their account of expenses at both first instance and on appeal to the Sheriff Appeal Court, even

though there was no such power contained within the Act of Sederunt (Sheriff Appeal Court Rules) 2015 (superseded by the Act of Sederunt (Sheriff Appeal Court Rules) 2021 (“the SAC Rules”)) (*Wright v National Galleries of Scotland* [2020] SAC (Civ) 12 [9]).

[10] Had the appellant paid his expenses timeously this motion would not have been required. As no objections to the auditor’s statement were lodged by the appellant and given the passage of time since the account was lodged, immediate extract ought to be issued. The respondent was entitled to decree.

Submissions for the appellant

[11] The SAC Rules made no provision for interest on expenses. They ought to be interpreted strictly. Although the SAC held all the powers inherently possessed by any court of law in terms of section 47(3) of the 2014 Act, that inherent power did not extend to granting decree for interest on expenses where no such rule existed within the SAC Rules.

[12] Even if interest could be sought for an account of expenses arising from an appeal to the SAC, the respondent’s motion for interest on the award of expenses had, on this occasion, come too late: he ought to have sought interest when the SAC had awarded expenses, namely on 5 September 2024 and 14 November 2024.

[13] The appellant should not be found liable for the expenses of the motion; to do so would create a procedural absurdity. If the expenses of the motion were awarded, it would mean a further account of expenses in respect of the respondent’s motion and then, no doubt, a further motion from the respondent for interest to run on that account of expenses. The process could, theoretically, continue indefinitely.

[14] In the event the court was minded to award interest on the expenses, the appellant submitted that 4% a year was a more reasonable figure to apply (*Farstad Supply AS v Envirico Ltd* [2013] CSIH 9; 2013 SC 302).

Decision

The competency of the motion

[15] Until the introduction of the Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019 (“the 2019 Rules”), there was no specific provision which enabled a court to award interest on judicial expenses. However, it was competent for the court, in the exercise of its discretion, to award interest on judicial expenses (*Maclaren, Expenses in the Supreme and Sheriff Courts of Scotland* (1912) pp 505 - 507; and *Phee v Gordon* [2014] CSIH 50; 2015 SCLR 343 [16]).

[16] In 2006, the Scottish Law Commission proposed that, where a party to litigation was found entitled to recover fees and outlays in judicial expenses from another party, statutory interest should be payable on such expenses (Scottish Law Commission, *Report on Interest on Debt and Damages*, Report No 203 (2006), p 53). That proposal was reflected in clause 8 of the draft Interest (Scotland) Bill in January 2008, but the Bill was not taken forward by the Scottish Parliament.

[17] The issue was, however, considered again in detail by Sheriff Principal Taylor’s *Review of Expenses and Funding Civil Litigation in Scotland* published in 2013 (“the Taylor Report”). There was universal acceptance by all respondents to the Consultation Paper for the Taylor Report that interest on judicial expenses should apply in some respect (Taylor Report, Chapter 2, para [111]). However, there were differing views as to the date from

which interest ought to apply. The Taylor Report recommended that the courts should have power to award interest at the judicial rate of interest, on judicial expenses from 28 days after an account of expenses has been lodged. It was considered that this would encourage a paying party to make an early payment to account, leaving only the items in dispute to be determined by the auditor of the court (Taylor Report, Chapter 2, para [130]).

[18] The 2019 Rules inserted OCR 32.5 and RCS 42.4A into the OCR and the RCS.

OCR 32.5 and RCS 42.4A both reflected the Taylor Report's recommendation for interest to run no earlier than 28 days after the date on which an account of expenses was lodged.

However, the 2019 Rules did not create an analogous rule in the SAC Rules 2015.

[19] Paragraph 2 of the 2019 Rules states:

"2. — Application

(1) Subject to sub-paragraphs (2) and (3), the amendments effected by this Act of Sederunt apply in respect of proceedings commenced on or after the coming into force of this Act of Sederunt.

...

(4) For the purpose of sub-paragraph (1)—
 (a) proceedings in the Sheriff Appeal Court; and
 (b) proceedings in the Inner House of the Court of Session under Chapters 38, 39 or 40 of the Rules of the Court of Session 1994, other than on a remit from the Sheriff Appeal Court,
 are distinct proceedings."

[20] The 2019 Rules apply to Sheriff Appeal Court and the Inner House of the Court of Session. However, the 2019 Rules provided that appeal proceedings would be treated as distinct (ie they would require a separate account of expenses). The legislative drafters intended the 2019 Rules to apply to both the Sheriff Appeal Court and the Inner House.

While that objective was achieved for the Inner House by the introduction of RCS 42.4A, which applies to all proceedings before the Court of Session, no equivalent provision was made for the Sheriff Appeal Court. Paragraph 2 of the Sheriff Appeal Court (Civil) Practice

Note No 1 of 2021, which is the following terms, invites parties to have regard to the practice of the Court of Session in the absence of an equivalent provision in the SAC Rules:

“Where no provision is made in the Rules or this Practice Note about any aspect of procedure in relation to civil appeals, practitioners may have regard to the practice of the Court of Session in relation to that type of business.”

[21] The respondent has done so. He seeks interest on expenses to run from 28 days after the account of expenses was lodged and moves this court to use its inherent power under section 47(3) of the 2014 Act to award interest on expenses incurred before the Sheriff Appeal Court. *Wright* was cited as being an analogous example of the Sheriff Appeal Court exercising this power. *Wright* is not authority for the proposition that in every circumstance, where the SAC Rules have no equivalent rule to the Ordinary Cause Rules, the provisions of the Ordinary Cause Rules may be invoked. The decision in *Wright* turned on the particular facts of that case. In *Wright*, a pursuer’s offer was lodged prior to proof. The pursuer was unsuccessful at proof; hence, he could not seek an uplift in expenses on his pursuer’s offer. He was, however, successful upon appeal. He sought an uplift in his expenses for both the proof and the appeal. The respondent opposed the uplift in part, on the basis that there was no rule allowing for an uplift in expenses before the Sheriff Appeal Court. The Sheriff Appeal Court determined that the term “sheriff” in OCR 27A.8(1) be read as including “Sheriff Appeal Court”. That interpretation was necessary to give full effect to the decision of the Sheriff Appeal Court and to place the appellant in the same position he would have been, had he enjoyed a successful outcome at first instance. I am not persuaded that *Wright* provides a basis upon which the term “sheriff” in OCR 32.5 can be read as including the “Sheriff Appeal Court” in respect of a motion for interest on expenses relating to procedure before the Sheriff Appeal Court.

[22] Thus, neither OCR 32.5 nor the SAC Rules provide a basis upon which interest on expenses can be awarded in relation to procedure before the Sheriff Appeal Court.

However, in terms of section 47(3) of the 2014 Act, the Sheriff Appeal Court has all such powers as are, under the law of Scotland, inherently possessed by a court of law for the purposes of discharging its function and giving full effect to its decisions. When the Sheriff Appeal Court commenced its jurisdiction over civil appeals on 1 January 2016, the effect of section 47(3) was to confer the same inherent powers as possessed by the other courts of law in Scotland. Those inherent powers included the discretion to award interest on an award of expenses. The Sheriff Appeal Court accordingly has the same power at common law. The respondent's motion for interest is competent.

Should the court exercise its discretion to award interest?

[23] As this court has previously observed, it is inherently desirable for there to be consistency between the Sheriff Court, the Sheriff Appeal Court and the Court of Session in their approaches to taxation, unless good reason exists otherwise (*Gray* [32]). That is particularly so when the 2019 Rules indicate that the intention of the legislative drafters was that the 2019 Rules would be applicable to the Sheriff Appeal Court (paragraph 2(4)(a) of the 2019 Rules), even if that intention was not fully realised. No good reasons have been advanced for this court to take a different approach.

[24] The appellant failed to engage with the taxation process. No offer was made to settle the respondent's account of expenses in advance of it being lodged with the auditor of court. No objections were lodged in response to the account of expenses, nor was there attendance at the diet of taxation by the appellant. More pertinently, the respondent's account of expenses remains unpaid. Although the parties disputed whether part of the sums paid to

date by the appellant to the respondent ought to have been allocated to the respondent's account of expenses, it was accepted by the appellant's agent that the sum taxed by the auditor, namely £5,852 was still to be paid in full. If the appellant wished to avoid an award of interest on these expenses, his remedy was simple: payment to the respondent. For those reasons, I shall exercise my discretion to award interest on expenses to run 28 days after the lodging of the account being 15 January 2025 as sought by the respondent.

Timing of motion for interest on expenses arising from appeals to the Sheriff Appeal Court

[25] The appellant challenged the motion for interest as made too late, on the basis that it required to be made at the same time as the motion for expenses. I do not accept that submission. OCR 32.5(1) states that OCR 32.5(2) applies where the sheriff grants decree for payment of: (i) expenses as taxed; and (ii) interest thereon. In *Gray*, this court reviewed the terms of OCR 27A.8(4) with respect to pursuer's offers. The question which arose with respect to that rule was which decree did "expenses as taxed" refer to: the pre-taxation award or the post-taxation decerniture? (*Gray*, [31]). The court determined that it was the latter. Adopting the reasoning provided in *Gray*, if an entitled party to an award of expenses in the Sheriff Court seeks an award of interest to run from 28 days after the account of expenses was lodged, the point at which they should make a motion in terms of OCR 32.5(2) is when the sheriff issues a decree in respect of post-taxation decerniture. RCS 42.4A(1), in a similar manner, allows an entitled party to make a motion for interest on expenses to the Court of Session at any time prior to the extract of a decree for payment of expenses as taxed by the auditor.

[26] A similar procedure should be followed in this court. A motion for interest on expenses running from 28 days after lodging an account of expenses should be made when

the Sheriff Appeal Court is issuing its post-taxation decerniture. That is what the respondent in this appeal has done. Accordingly, this motion was made timeously.

Judicial rate of interest

[27] In the Sheriff Court, the judicial rate of interest on any decree or extract is presently 8% a year (section 9 of the Sheriff Courts (Scotland) Extracts Act 1892). The same interest rate applies to any decree or extract of the Court of Session (RCS 7.7). There is no statute or statutory instrument which regulates the percentage at which interest is to be applied by any decree or extract for expenses in the Sheriff Appeal Court. Again, it is inherently desirable for there to be consistency between the Sheriff Court, the Sheriff Appeal Court and the Court of Session in their approaches to taxation.

[28] The appellant submits that interest of 8% a year upon the figure awarded in the account of expenses would be penal, rather than compensatory. If interest is to be awarded, it should be at the more “reasonable” rate of 4% a year.

[29] The appellant relied upon the opinion of the court in *Farstad*. In that case, the Lord Ordinary (Hodge) was only prepared to award pre-decree interest on an award of damages at a rate of 4% a year, having regard to the reduction of the bank base rate to 2% in late 2008. That was on the basis that the Interest on Damages (Scotland) Act 1958 afforded the court a discretion in fixing pre-decree interest for an award of damages (*Farstad Supply AS v Envirico Ltd* [2011] CSOH 153; 2012 SLT 348 [19] and [27]). He saw no need to depart from the judicial rate of interest in relation to post-decree interest. That decision was upheld on appeal (*Farstad Supply AS v Envirico Ltd* [2013] CSIH 9; 2013 SC 302).

[30] In *Sheridan v News Group Newspapers* [2018] CSIH 76; 2019 SC 203, the Inner House rejected the respondent’s submission that, were interest to be awarded on the damages due

to the reclaimer, it ought to be at a figure of 4% a year. The Inner House did not accede to the respondent's request to reduce it, noting that the court must generally be guided by the judicial rate (*Sheridan* [54]). These authorities tend to support the court having primary regard to the judicial rate, in the exercise of its overall discretion as to expenses.

[31] The appellant failed to advance any reasons as to why the court should depart from the judicial rate of interest applied by the Sheriff Court and the Court of Session beyond simply asserting that it should. I am not persuaded that there is any basis upon which the court ought to do so.

Disposal

[32] Accordingly, I shall grant the respondent's motion, number 3/2 of process, and grant decree for the expenses as taxed, with interest thereon at 8% a year from 15 January 2025, being the date 28 days after the account was lodged; find the appellant liable to the respondent for the expenses of the opposed motion, including the hearing on 6 November 2025; and grant immediate extract.

Postscript

[33] Subsequent to the issuing of this opinion, I have become aware that the statement of the law in para [27] of the opinion overlooks paragraph 4(7) of Schedule 1 of the Act of Sederunt (Sheriff Appeal Court Rules) 2021 which was not referred to in submissions.

Para [27] of the opinion should read:

“[27] Paragraph 4(7) of Schedule 1 of the Act of Sederunt (Sheriff Appeal Court Rules) 2021 provides that where interest is included in, or payable under, a decree, the rate of interest is 8 per cent a year unless otherwise stated”.

Para [31] should read:

“[31] The appellant failed to advance any reasons as to why the court should depart from the judicial rate of interest applied by the Sheriff Appeal Court beyond simply asserting that it should. I am not persuaded that there is any basis upon which the court ought to do so.”

This postscript is added to the opinion following discussions with parties and does not change the court’s decision nor affect the terms of its interlocutor of 15 January 2026.