

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT INVERNESS

[2026] SC INV 99

INV-A159-25

JUDGMENT OF SHERIFF GORDON LAMONT

in the cause

JOHN GRAY, residing at 128 High Street, Grantown-on-Spey, PH26 3EN and
KATHLEEN ELIZABETH GRAY, residing at the same address

Pursuers

against

THE REIDHAVEN TRUSTEES being THE RIGHT HONOURABLE IAN DEREK FRANCIS OGILVIE-GRANT, THE EARL OF SEAFIELD, THE HONOURABLE JAMES ANDREW OGILVIE-GRANT, VISCOUNT REIDHAVEN, DAVID JOHN CARMICHAEL MACROBERT, solicitor, formerly of 152 Bath Street, Glasgow and now at care of Capella, 60 York Street, Glasgow and ALAN RODERIC BARR, care of 58 Morrison Street, Edinburgh as the current Trustees acting under the Deed of Trust by the said the Honourable James Andrew Ogilvie-Grant, Viscount Reidhaven dated 27 March and recorded in the Books of Council and Session on 8 April both months in the year 2002, having a business address at Seafield Estate, Seafield Estate Office, Cullen, Buckie AB56 4UW

Defenders

Pursuers: John Gray on own behalf and as lay representative for Kathleen Elizabeth Gray
Defenders: Lindsay KC; Brodies LLP

INVERNESS, 4 August 2026

The sheriff having resumed consideration of the cause, finds as follows:

Findings in fact

1. The pursuers are John Gray and Kathleen Elizabeth Gray, spouses residing together at 128 High Street, Grantown-on-Spey, PH26 3EN.
2. The defenders are the Right Honourable Ian Derek Francis Ogilvie-Grant, the Earl of Seafield, the Honourable James Andrew Ogilvie-Grant, Viscount Reidhaven, David John

Carmichael MacRobert, solicitor, formerly of 152 Bath Street, Glasgow, and now at care of Capella, 60 York Street, Glasgow, and Alan Roderic Barr, care of 58 Morrison Street, Edinburgh as the current Trustees acting under the Deed of Trust by the said the Honourable James Andrew Ogilvie-Grant, Viscount Reidhaven dated 27 March and recorded in the Books of Council and Session on 8 April both months in the year 2002.

3.
 - a. 6/1/1 of process is a notarial instrument in favour of Jessie Meldrum or Gillies recorded 12 June 1891;
 - b. 6/1/2 of process is a lease in favour of John Grant, recorded 12 June 1891;
 - c. 6/1/3 of process is a lease in favour of James McQueen recorded 27 January 1913;
 - d. 6/1/4 of process is a Feu contract between the Countess of Seafield and Jessie Meldrum Gillies recorded 20 May 1963;
 - e. 6/2/1 of process is a disposition by Margaret Christina Grant or Greig and William James Greig in favour of the Trustees of the Countess of Seafield recorded 22 April 1983;
 - f. 6/2/2 of process is a disposition by the Trustees of the late Countess of Seafield in favour of Viscount Reidhaven of Strathspey Estate recorded 31 May 1988;
 - g. 6/2/3 of process is a Feu disposition by James Andrew Ogilvie-Grant, Viscount Reidhaven to Woodhouse Cars Limited recorded in the General Register of Sasines (Moray) on 21 January 2000;
 - h. 6/2/4 of process is a disposition and assignation by Viscount Reidhaven in favour of the Reidhaven Trust recorded 28 March 2002.
4. 6/3/2 of process is a copy of "A Guide to interpreting title plans" and was prepared for use by the Registers of Scotland.

5. 6/3/3 of process is section L06 of the Land Registration (Scotland) Act 1979 Registration Manuals and was prepared for use by the Registers of Scotland.
6. 6/3/4 is section P8.2 of the Land Registration (Scotland) Act 1979 Registration Manuals and was prepared for use by the Registers of Scotland.
7. 6/3/2, 6/3/3 and 6/3/4 applied when the title sheet and title plan for title number MOR9668 were created by the Keeper of the Register of Scotland on or around 6 July 2009.

Properties: the pursuers' property - 128 High Street

8. The pursuers are the current registered proprietors of 128 High Street, Grantown-on-Spey ("128 High Street"). They became the registered proprietors of 128 High Street on 6 July 2009. The pursuers' date of entry to 128 High Street was 12 June 2009.
9. The pursuers' title to 128 High Street is registered in the Land Register of Scotland under title number MOR9668. Production 5/2 is a copy of the said title sheet. Production 5/3 is a copy of the title plan for MOR9668.
10. On 26 March 1999 title to land on which 128 High Street is located was conveyed to Woodhouse Cars Limited by Feu disposition granted by The Honourable James Andrew Ogilvie Grant, Viscount Reidhaven, dated 26 March 1999, which was recorded in the General Register of Sasines on 21 January 2000 (hereinafter referred to as "the 1999 disposition"). It is production 5/5.
11. The land conveyed by the Feu disposition was registered under title number MOR2274. The land conveyed by the Feu disposition was greater in extent than 128 High Street (MOR9668).

12. A disposition in favour of the pursuers was granted by Ingram Builders Limited on 12 June 2009 (5/1 of process). 128 High Street was broken off from title number MOR2274 and registered under title number MOR9668, when it was acquired by the pursuers.

13. A copy of the title sheet for title number MOR2274, following the creation of title number MOR9668, is Production 10 for the pursuers. A copy of the title plan for MOR2274 is Production 11 for the pursuers.

The defenders' - 126 High Street

14. The defenders are the current heritable proprietors of 126 High Street, Grantown-on-Spey ("126 High Street").

15. The fourth Earl of Seafield was the heritable proprietor of the land on which 126 High Street and 128 High Street were erected until his death in 1811.

16. The fifth Earl of Seafield was the heritable proprietor of the land on which 126 High Street and 128 High Street were erected until his death in 1840.

17. The sixth Earl of Seafield was the heritable proprietor of the land on which 126 High Street and 128 High Street were erected until his death in 1853.

18. The seventh Earl of Seafield was the heritable proprietor of the land on which 126 High Street and 128 High Street were erected until his death in 1881.

19. The eighth Earl of Seafield was the heritable proprietor of the land on which 126 High Street and 128 High Street were erected until his death in 1884.

20. The mother of the eighth Earl of Seafield, Caroline Stuart, Countess of Seafield, was the heritable proprietor of the land on which 126 High Street and 128 High Street were erected from 1884 until her death in 1911.

21. The Testamentary Trustees of Caroline Stuart, Countess of Seafield, were the heritable proprietors of the land on which 126 High Street and 128 High Street were erected from the Countess' death in 1911 until June 1950.
22. The twelfth Countess of Seafield was the heritable proprietor of 126 High Street and 128 High Street from June 1950 until 20 May 1963.
23. By Feu contract between the Countess of Seafield and Jessie Meldrum Gillies recorded 20 May 1963 (6/1/4 of process), 126 High Street was sold to Jessie Meldrum Gillies.
24. By disposition by Margaret Christina Grant or Greig and William James Greig in favour of the Trustees of the Countess of Seafield recorded 22 April 1983 (6/2/1 of process), the Trustees of the Countess of Seafield acquired title to 126 High Street.
25. By disposition by the Trustees of the late Countess of Seafield in favour of Viscount Reidhaven of Strathspey Estate recorded 31 May 1988 (6/2/2 of process), Viscount Reidhaven acquired title to *inter alia* 126 High Street and 128 High Street.
26. By disposition and assignation by Viscount Reidhaven in favour of the defenders, recorded 28 March 2002 (6/2/4 of process), the defenders acquired title to *inter alia* 126 High Street.

History of the properties

27. In the late eighteenth or early nineteenth century, the land to the southeast of the High Street of Grantown-on-Spey was divided into plots or tenements.
28. In or around 1817 the land on which 126 High Street and 128 High Street are located was owned by the then Earl of Seafield. In 1817, what is now known as 126 High Street, Grantown-on-Spey was known as tenement, or plot 39. In 1817, what is now known as 128 High Street, Grantown-on-Spey was known as tenement, or plot 40.

29. A 19 year lease was granted over tenement 39 by the then Earl of Seafield (being the predecessor-in-title to both 126 and 128 High Street, Grantown-on-Spey) commencing on Whitsunday 1817. The terms of that lease are contained in 6/1/2 of process.

30. A 19 year lease was granted over tenement 40 (128 High Street) by the then Earl of Seafield (being the predecessor-in-title to both 126 and 128 High Street, Grantown-on-Spey) commencing at Whitsunday 1818. The terms of that lease are contained in 6/1/3 of process.

31. Except for their parties, dates of entry and property subjects, the leases of tenement 39 and tenement 40 contained the same standard letting terms.

32. Tenement 39 and tenement 40 were developed, with tenement 39 (126 High Street) being constructed first, followed by tenement 40 (128 High Street) 1 year later, in accordance with the timescale and terms dictated by their respective leases.

33. 6/3/1 is a copy of an extract from the Ordnance Survey map for Grantown-on-Spey, surveyed in 1868 by Captain C W Wilson RE and published in 1872. The location of 126 High Street and 128 High Street is shown circled in blue (6/4/4 of process).

34. The building erected at 128 High Street in the early nineteenth century remains materially the same in respect of its external appearance and structure.

35. The building erected on 126 High Street was materially altered in respect of its external appearance and structure in or around 1891.

36. The first four images in production 6 for the pursuers are images of the properties in their current configuration.

Gable wall

37. The southwestern boundary of 126 High Street adjoins the northeastern boundary of 128 High Street.

38. There are at least four flues within the gable wall. The flues within the gable wall are original to its construction. For a period of time prior to 1999, the flues within the gable wall served both 128 High Street and 126 High Street. For much of that time (between construction and 1999), the two fireplaces in 126 High Street were vented via those flues, in addition to the fireplaces in 128 High Street.

39. All use of the chimneys ceased prior to 1999. The fireplaces were closed up and the chimney pots capped.

40. The southwestern gable wall of 128 High Street has three flues, and three chimney pots, in a narrower/shorter chimney stack than that found in the northeastern gable wall.

41. There were at one time four chimney pots on the chimney stack on the gable wall between the properties. Production 9 for the pursuers shows the three remaining chimney pots and the location of the now removed fourth chimney pot.

42. Photographs of the interior of 126 High Street are produced at 6/4/1, 6/4/2 and 6/4/3 of process. These show a fireplace in the wall.

Defenders' actions re gable wall

43. On or around 6 March 2025 the defenders re-opened a disused fireplace within 126 High Street. The fireplace was closed some time prior to 1999. It had served 126 High Street. The defenders purpose in doing so was to install a metal flue pipe in a flue in the chimney. This was to connect a wood burning stove within 126 High Street.

44. The defenders did not seek consent or permission from the pursuers before carrying out those works.

45. The defenders granted an undertaking to the pursuers in court in the following terms:

“Until such time as the action is determined, no works shall be undertaken by the defender to the said property, unless any such works have the prior consent of the pursuers or the court.”

Ownership of gable wall

46. The southwest gable wall of 126 High Street and the northeast gable wall of 128 High Street are the same structure.

47. There are two fireplaces in the northeast gable wall of 128 High Street (being also the southwest gable wall of 126 High Street, that is, the gable wall) which exclusively serve 126 High Street.

48. The two fireplaces in the northeast gable wall of 128 High Street (being also the southwest gable wall of 126 High Street, that is, the gable wall) which exclusively serve 126 High Street are vented through flues in the gable wall.

Findings in fact and law:

49. These proceedings have as their object rights *in rem* in property situated within the jurisdiction of this court. This court accordingly has jurisdiction.

50. The 19 year lease of 126 High Street, Grantown-on-Spey commencing at Whitsunday 1817 contained an obligation on the tenant to build a mutual gable wall between 126 and 128 High Street, Grantown-on-Spey.

51. The 19 year lease of 128 High Street, Grantown-on-Spey commencing at Whitsunday 1818 contained an obligation on the tenant to build a mutual gable wall between 126 and 128 High Street, Grantown-on-Spey.

52. 126 and 128 High Street, Grantown-on-Spey were built with a shared, mutual gable wall, being the northeast gable wall of 128 High Street and the southwest gable wall of 126 High Street.

53. The shared, mutual gable wall is the subject of this dispute between the pursuers and the defenders.

54. The Feu disposition dated 26 March 1999 by the Honourable James Andrew Ogilvie-Grant, Viscount Reidhaven, of the land on which 128 High Street, Grantown-on-Spey is located, disposed to Woodhouse Care Limited only a one-half share of the mutual gable wall separating 126 and 128 High Street, Grantown-on-Spey. It thus remained a mutual gable.

55. The pursuers did not acquire title to the entire northeast gable wall of 128 High Street by disposition in their favour by Ingram Buildings Limited dated 12 June 2009.

56. The northeast gable wall of 128 High Street remains a mutual gable wall, shared between the owners of 126 High Street and 128 High Street. Its use is regulated by the legal principles applicable to mutual gables.

Interlocutor

Repels pleas-in-law for the pursuers in their entirety; sustains plea-in-law 4 for the defenders and grants decree of absolvitor; awards the expenses of the action to the defenders; allows a report to be prepared and remits same to the auditor of court to tax and report thereon.

NOTE

Introduction

[1] The case involves a dispute over ownership of a gable wall. The wall separates 126 and 128 High Street. The pursuers contend that they own the entirety of the gable wall as proprietors of 128 High Street. The defenders contend that the wall is a mutual gable wall and therefore they own a half share of the gable wall as proprietors of 126 High Street.

[2] The wall is located at properties to the southwest boundary of 126 High Street and to the northeast boundary of 128 High Street. The issue is whether a wall between them is a mutual wall or entirely the property of 128 High Street. The issue became focused when, on or around 6 March 2025, the proprietors of 126 High Street attempted to re-open a disused fireplace within 126 High Street. This was objected to by the pursuers as the heritable proprietors of 128 High Street.

[3] In summary, the pursuers' position was that the gable wall is entirely within his property at 128 High Street. Applying *Fraser v Campbell* (1895) 32 SLR 400 means that the gable wall is accordingly their property. The defenders therefore had no right to carry out work to the wall. This is the property of the pursuers. The basis of ownership was said to be the pursuers registered title. This was combined with the proposition that 128 High Street was built after 126 High Street. Accordingly, the wall to 128 High Street was built after the wall of 126 High Street had been built.

[4] In summary, the defenders' position was that this was a mutual gable wall. They relied on the terms of the original leases to both properties, the matters agreed in the joint minute and the terms of the 1999 disposition. It was submitted that the appropriate analysis required consideration of *Galloway v Galloway* (1888) 16 R 259. Doing so led to the conclusion that the 1999 disposition transferred 128 High Streets' share in a mutual gable

wall (but not the entire wall). Accordingly, the defenders as proprietors of 126 High Street retained partial ownership in the mutual gable and were therefore entitled to carry out work to their property.

Diet of proof

[5] The diet of proof was held on 25 June 2026. No evidence was heard. Parties were content to agree the affidavits of witnesses as the equivalent of their evidence-in-chief without the necessity of cross. The following affidavit evidence was led this way:

For the pursuer:

- a. The pursuer (17 February 2026) (restricted to matters of fact and not his opinion evidence)
- b. The surveyor, Mr Silcocks (13 February 2026) with report dated 27 September 2025 (the objection to his evidence by the defenders in respect of certain matters was accepted by the pursuer).

For the defenders:

- a. Jeanette Love (17 February 2026) - former resident of 126 High Street
- b. Tina Ward-Taylor (17 February 2026) - former resident of 126 High Street.

[6] The evidence concluded on 25 June 2026. The matter was taken to avizandum.

Issue

[7] The issue before the court is the ownership of the mutual wall between 126 High Street and 128 High Street. On one view, the position of both parties can be summed up fairly succinctly:

- The pursuers' position is that they have title to the wall in its entirety.

- The defenders' position is that it is a mutual gable. A half share was conveyed in 1999 (and therefore no more than a half share in 2009). They retain a one-half share of the wall.

Evidence

[8] An objection was taken by the defenders at the outset of proof to parts of the evidence of the pursuer and parts of the evidence of Mr Silcocks, the chartered surveyor.

This was on the basis of a) the affidavit's straying into opinion evidence and b) the affidavits attempting to deal in terms with the matter that was to be determined by the court.

The pursuer effectively conceded these points. The proof was thereafter able to commence.

[9] The evidence in the case was largely agreed. There was a substantial joint minute between parties. In addition, the witness evidence led by affidavit evidence did not require any cross-examination by either party.

[10] The affidavit evidence before the court can be summarised as follows

For pursuers:

a. First pursuer, John Gray

Mr Gray resides at 128 High Street, Grantown-on-Spey with his spouse. They are the proprietors of 128 High Street. He considered that the northeast gable wall was within his title plan (Land Register of Scotland title MOR9668). He gave evidence regarding the circumstances of how he became aware of works from 126 High Street attempting to restore a chimney flue. He indicated to the workers that chimney was owned by himself and his wife. He noted the steps he took with the defenders (a cease-and-desist letter together with correspondence). It was noted that there was a clear dispute regarding the ownership of the wall. They had no alternative but to

raise proceedings for interdict. Neither he nor his wife had any knowledge of any prior use by 126 High Street of the gable wall. No information had been communicated to them or their predecessors in title about shared use of the chimney. They did not contemplate any future use of the chimney by the defenders or indeed themselves.

b. David Silcocks

Mr Silcocks is a chartered surveyor. He was asked by the pursuers to provide a report on the northeast gable wall of 128 High Street, Grantown-on-Spey. He set out his qualifications and the evidence which was provided to him in making his report (title plans and pictures). He carried out an inspection of the property on 1 September 2025.

He made the following measurement:

- The measurement of the southwest gable corner to its northeast gable corner (the front wall where it adjoins the High Street) was 13.05 metre. This is the same length as stated in the 2009 disposition plan (title number MOR9668).

For defenders:

a. Jeanette Love

She resided in 126 High Street from December 1979 to June 1983. There were three fireplaces within the property. On the right as you entered the property there was a fireplace. This adjoined the wall with 128 High Street. It was a posh, beautiful fireplace. The mantel was mahogany. The tiles around the fireplace were fancy.

Above that fireplace was a fireplace in a bedroom. 128 High Street was on the other side of the wall of this fireplace. This fireplace was never used. It was partially blocked when they moved in.

The two fireplaces on the ground floor (reception room and back room) were used all the time. Coal and wooden logs were used to fuel the fire. The chimneys were cleaned twice a year with a chimney sweep brush. She recalled seeing the chimney sweep brush come out of a chimney on the right-hand side of the house (looking from high street).

There have been no changes to the structure of 126 High Street since moving out.

b. Tisa Ward-Taylor

She resided in 126 High Street, from 1979 to 1983 with her parents and two brothers.

There were three fireplaces in 126 High Street when she resided there. Two of these fireplaces were in the wall which had 128 on the other side (one in a reception room and one in a bedroom). The fireplace in the bedroom was boarded up by her father but the hearth and surround were still evident. The fireplace in the ground reception room was grand. It had a dark surround ornate, with tiles down either side. It had a grate that could be pulled out. It was her job to collect coal from the back garden.

The outside of 126 High Street has not changed since she left in 1983 (although the rear of the property has changed).

Summary of submissions for the pursuers

[11] The submissions for the pursuers were made orally and in their note of argument.

The pursuers contend that they are the heritable proprietors of all and whole 128 High

Street. This includes the gable wall and chimney. It was contended that the defenders had no right, title or interest therein.

[12] The pursuers found on their registered title and the surveyor's report. They submit that this demonstrates that the whole northeast gable wall and chimney are included in the title to 128 High Street. The title sheet for MOR9668 is authoritative.

[13] The defenders had owned both 126 and 128 High Street up to 26 March 1999. It was their own disposition that the defenders were taking issue with. The defenders had produced no documentary title or recorded deed supporting their ownership of one half the gable wall in 128 High Street.

[14] It was noted that the bounding description of 128 High Street was in the following terms: "on or towards the north-east and the east-northeast by One hundred and twenty-six High Street". It was submitted that bounding property is excluded from the bounded property. Accordingly, no part of 126 High Street lies within the boundary of 128 High Street.

[15] The description of 126 High Street in the disposition of 22 April 1983 was notably imprecise. This is in contrast to the pursuer's title to 128 High Street. 128 High Street is defined by a precise and dispositive plan, supported by exact measurements on the ground and warranted by the Keeper on registration. In these circumstances it is not open to the defenders to found on an imprecise and unwarranted area. The title to 128 High Street should prevail in these circumstances.

[16] The 1999 plan annexed to the 1999 disposition is measured to three decimal points and corresponds to those measured on the ground. The subsequent registration of title MOR2274 in 2004 is unambiguous and warranted. It reflects the same essential boundaries

and conditions as the disposition of 1999. No part of the subjects was ever reserved or excluded.

[17] It was submitted that the defenders had produced no evidence in support of their averments regarding why the pursuer's registered title is somehow invalid. The Keeper has carried out his statutory duties properly.

[18] No extraordinary boundary references were considered appropriate in the preparation of title plans MOR2274 and MOR9668. No such reference is made in the property sections of either title sheet. Neither title describes any additional incumbrance, overriding interest or obligation and no burdens or servitudes of any kind relative to 126 High Street.

[19] Any suggestion the Keepers of the Register were negligent in their duty is unfounded and unsupported by the evidence. Rectification of the register can only be done under strict conditions in terms of section 9 of the Land Registration (Scotland) Act 1979.

[20] In respect of the gable wall being a mutual gable, it was submitted that the defenders had provided no evidence that it was a mutual gable. A gable wall could only be a gable wall where it satisfies two characteristics namely:

- a. The wall is constructed partly on the land of each adjoining proprietor; and
- b. The titles to the adjoining properties contain an express declaration that the wall is to be mutual or common.

If neither is present then it was submitted that the gable wall accedes to, and is owned by, the proprietor of land on which it is built (general reference was made to authorities within the bundle and "*Scottish Land Law*" Professor Gordon 3rd Edition at paragraph 3.38 in the following terms:

“The fact that a gable is used by two adjoining properties does not make it a mutual gable, in the special sense in which this term is used, when the gable stands wholly on one”.

It was submitted that *Fraser v Campbell* (1895) 32 SLR 400 was authority for the proposition that where a wall had been built entirely on one person’s ground it was not a mutual gable.

[21] The leases for plots 39 and 40 do not stipulate that any gable was to be constructed on a boundary to form a mutual wall. They do not confer any real right of mutual use binding upon successors in title. No reference is made to a mutual gable in any lease, Feu contract, disposition, title or instrument relating to either property. The leases do not specify that either tenant would have use of and benefits of the vents, presses and chimneys of their neighbour’s houses.

[22] It was submitted that the neighbouring tenements of 39 and 40 were built at different times each within its own gables. This was reflected in the title plans at registration. When built tenement 39 would have had its own chimney and its own gable wall. It is submitted that the defenders had provided no evidence that the proprietors of tenement 39 made any use of the chimney in the gable of the newly built tenement 40 between 1818 and 1891.

If such use occurred, it arose informally and conferred no real right.

[23] In 1891 the new building that was constructed was entirely within the ground of tenement 39. The boundary with 128 High Street remained unchanged. The use of chimneys by 126 High Street was by permission only and conferred no enduring legal right.

[24] Accordingly, the northeast gable wall and chimney are entirely within the pursuers’ property. The defenders have no right, title or interest therein. Accordingly, the court should sustain the pursuers’ pleas-in-law and grant decrees of declarator and interdict.

Summary of submissions for defenders

[25] In summary, the defenders' position was that the pursuer's do not own the entire gable wall to the northeast of 128 High Street. The defenders have a share in the mutual gable as the proprietors of 126 High Street.

[26] In the construction of any writing, the intention of the parties must be discovered from the writing itself (*Rocep-Luso Holdings Ltd v Lindal Dispenser GmbH* 2025 SC 411 at 412). There is a presumption that a building has been built in accordance with a plan (*Sutherland v Barbour* (1887) 15 R 62), if there is a description of a property "bounded" by another then there is a presumption that the boundary is the medium filum of any feature that arises at the boundary (*The Provost, Magistrates, and Councillors of Ayr v James Dobbie* (1898) 25 R 1184).

[27] There is a presumption that a wall which forms the outside wall of two houses is a mutual wall where the houses are owned by a common owner but then disposed to separate disponees (*Galloway v Galloway* (1888) 16 R 259). A mutual wall is owned to the mid-point of the wall with each party having a common interest to contribute to repairs and avoid damage to the wall (*Robertson v Scott* (1886) 13 R 1127).

[28] Applying these legal principles, the leases for 126 and 128 obliged the respective tenants to

"join with neighbouring possessors in building gardens dykes and gables of the houses marching with each other each of them having the use and benefit of vents, presses and chimneys in said gables".

The joint venture of building a gable inevitably leads to the wall being used by both neighbours as a mutual wall. Each neighbour is specifically said to have the benefits listed.

[29] It is agreed that the four flues within the gable wall are original to its construction. It is agreed that prior to 1999 the flues within the gable wall served both 126 and 128 High Street. During this period two fireplaces were vented via those flues. There are fireplaces

built into the gable wall at 126. The flues are original to the gable wall construction.

Accordingly, the gable wall was constructed to serve both 126 and 128 High Street. It is agreed that 128 High Street remains materially the same in terms of external appearance and structure.

[30] In relation to 126 High Street, there is no evidence that the wall had been taken down between the properties in 1891. There was no evidence that a new wall had been constructed in 1891. Indeed, 126 High Street continues to actively use the fireplaces and vents in the gable wall thereafter for a time prior to 1999. Reference was made to the evidence of Ms Love and Ms Ward-Taylor.

[31] In respect of the 1999 disposition, it was submitted that it contained a general description of the disposed property. In respect of the boundary, it states that 128 High street is bounded

“on or towards the north-east and the east-northeast by One hundred and twenty-six High street aforesaid along which it extends Twenty-one metres and eighty-one centimetres or thereby and Fourteen metres fifteen centimetres or thereby.”

This was submitted to be on all fours with the decision in *Galloway v Galloway* (1888) 16

R 259 because:

- i. two neighbouring properties belong to the same owner;
- ii. the owner transfers one of these properties; and
- iii. The disposition does not express whether the boundary wall between the properties is transferred to the donee or retained by the donor.

Accordingly, the 1999 disposition disposed only a one-half share. The land conveyed was recorded in the Land Register under title number MOR2274.

[32] In respect of the 2009 disposition, the pursuers could only acquire what the donor owned. The title plan shows no more than the northeast boundary of 128 High Street is the

wall between 128 and 126 High Street. It does not indicate whether the boundary is the inner, middle or outer face of the gable wall. The ownership of the gable wall was determined according to the 1999 disposition. The 2009 disposition only disposes the subjects that “form part and portion of the subjects forming and known as 128 High Street, Grantown-on-Spey and registered in the Land Register of Scotland under title number MOR2274”. Accordingly, the 2009 transfer cannot have included the whole of the gable wall.

Discussion and analysis

[33] This case benefits from a chronological approach. The important dates are:

- 1817 - 19 year lease granted over tenement 39 (now 126 High Street)
- 1818 - 19 year old lease granted over tenement 40 (now 128 High Street)
- 1891 - 126 High Street was materially altered in terms of its external appearance and structure
- 1999 Feu disposition of property which includes 128 High Street
- 2009 Feu disposition which breaks 128 High Street away from the property disposed in 1999.

The initial leases (1817 and 1818)

[34] The terms of both leases are available. It is a matter of agreement that the terms of them were the same except for parties, date of entry and property subjects. Both leases (that is for plot 39 and 40, now 126 and 128 High Street respectively) state that the tenant is to:

“Join with the neighbouring possessors in building the garden dykes and gables of the houses marching with each other each of them having the use and benefit of vents, presses and chimneys in said gables...”

Accordingly. The leases envisaged both possessors jointly building the gable wall between them. The leases expressly state that both are to have the use of vents, presses and chimneys in the gable wall.

[35] There is a presumption that a building has been built in conformity with a plan or obligation in the underlying title (*Sutherland v Barbour* (1887) 15 R 62 per Lord Rutherford Clark at 67).

[36] It is agreed that the building erected at 128 High Street remains materially the same in respect of its external appearance and structure. It is also accepted within the joint minute that:

- there are four flues within the gable wall;
- the flues within the gable wall are original to its construction;
- these flues served both 126 and 128 High Street (prior to 1999); and
- two fireplaces in 126 High Street were vented via those flues.

[37] The pursuer submits the following:

- that the leases do not say that any gable is to be constructed astride the boundary so that it constitutes a mutual gable;
- no reference is made to a mutual gable in any lease, disposition or title;
- the leases did not specify that either tenant would have the use and benefit of the vents, presses and chimneys of their neighbours' house;
- that plot 39 had a tenement built on it wholly within its boundary. It would have had its own chimney (or chimneys);

- tenement 40 would have been built solely within the boundaries of that tenement.

[38] However, the pursuers' position ignores the clear terms of the leases. The gable wall was built as a mutual gable wall between the properties. This reflects the terms of the leases which clearly set out the joint building of the wall for the mutual benefit of both. This reflects legal principles applicable in the building of tenements for a continuous street (see *Andrew Jack v Rev Dr James Begg* (1875) 3R 35 per Lord Gifford at page 41):

"It is quite true that where adjoining lots of ground are feued or sold for the purpose of building a continuous street, the owner of any one of the lots in building his tenement constructs its gables one half upon the adjoining lots so as to be mutual gables, and then when these gables are taken advantage of or used by the neighbouring proprietors, they become bound to pay to the first builder half the value of the mutual gables so used by them. It is also true that very often, or in general, the builder of the first tenement builds the mutual gable partly upon his neighbour's ground without the express consent of that neighbour, or as it is expressed by the Lord President in *Lamont v. Cumming*, 11th June 1875, 'behind the back of the adjoining proprietor,' who takes for granted that the mutual gable will be all right, and the want of express consent will not preclude the builder of the mutual gable from claiming half its value from his neighbour who comes to use it. But all this proceeds upon a tacit or implied contract inferred either from a feuing plan according to which the line of street is to be built, or from the special circumstances of each case. Where there is no room for such implied contract and implied consent the rule does not hold, and the builder of a tenement must build it, gable and all, entirely upon his own ground, unless he gets the consent of his neighbour."

In the current case the terms of the leases for both properties set up the inference that what was built between the two properties was a mutual gable wall.

[39] In addition, the construction of the gable wall has flues which serve 126 High Street. It is agreed that these flues in the wall are part of its original construction. They have been there since the construction of the gable wall. The southwest gable wall of 126 High Street and the northeast gable wall of 128 High Street are the same structure. There is no evidence before the court of their being two walls between 126 and 128 High Street. On the balance of probabilities, the wall between the properties was jointly built by the occupiers

of 126 and 128 High Street in terms of their leases for their mutual benefit. I base this finding on the terms of the leases together with the matters referred to as agreed regarding the flues and fireplaces in the gable wall.

1891 - alteration to 126 High Street

[40] It is agreed at paragraph 44 of the joint minute that 126 High Street was materially altered in respect of its external appearance and structure in or around 1891. There is no evidence before the court that the existing wall was taken down at that time. Post-1891 the existing flues in the wall continued to serve 126 High Street in the same way they had at the time of construction.

[41] There were two fireplaces in 126 High Street vented through the wall. It is agreed that the building erected at 128 High Street remains materially the same in respect of its external appearance and structure. It is agreed the flues within the gable wall are original to its construction. From this, it can be inferred that 126 High Street had two fireplaces in the original wall between 126 and 128 High Street at the point the joint wall between the two properties was constructed.

[42] It is submitted by the pursuer that the use of flues in the chimney was “permissive” only. This assertion is not based on any evidence. It is entirely speculative. It does not take into account the terms of the original leases.

[43] Given the above, on the balance of probabilities, the wall which remained between the two properties after the reconstruction of 126 High Street remained the same mutual wall constructed at the point 128 High Street was built. It continued post-reconstruction to have flues to 126 High Street as per its original construction. Again, there is no evidence of it having been taken down and reconstructed.

1999 Feu disposition

[44] The 1999 disposition in respect of 128 High Street disposed, *inter alia*, the following (relevant section in bold):

“ALL and WHOLE that plot or area of ground extending to Seven decimal or one hundredth parts of a hectare or thereby at One hundred and twenty-eight High Street, Grantown-on-Spey in the United Parish of Cromdale, Inverallan and Advie and County of Moray bounded as follows videlicet:- On or towards the north-west by High Street, Grantown-on-Spey along which it extends Eighteen metres eighty-five centimetres one millimetre or thereby; **on or towards the north-east and the east-north-east by One hundred and twenty-six High Street aforesaid along which it extends Twenty-one metres eighty one centimetres or thereby and Fourteen metres fifteen centimetres or thereby**; on or towards the south-east by subjects known as One hundred and twenty-eight High Street (part) aforesaid along which it extends Nineteen metres fifty-four centimetres or thereby and on or towards the south-west by One hundred and thirty and One hundred and thirty two High Street aforesaid along which it extends Thirty-five metres ninety centimetres or thereby all as the said piece of ground hereby disposed (hereinafter referred to as ‘the Feu’) is delineated in red and coloured pink and green on the sketch or plan thereof annexed hereto and signed as relative to these presents”.

The land disposed is accordingly “bound” by 126 High Street to the northeast and east northeast.

[45] The disposition contains a general description of the disposed property. This takes us no further in relation to the ownership of the gable wall. As set out above, it describes the property as bounded by 126 High Street.

[46] Accordingly, one must look at authority in determining ownership of the gable wall.

In *Galloway v Galloway* (1888) 16 R 259:

- a. the two neighbouring properties were owned by the same owner;
- b. the owner transferred title to one property;
- c. the disposition did not express whether the boundary wall between the properties is transferred to the disponent or retained by the owner.

Lord Justice-Clerk MacDonald stated “I think that when he did so he gave an equal right to each to what was necessary to both”. The decision held in the specific circumstances of that case that a one-half share in the gable wall had been transferred to both of the new owners. That is, a one-half share in the gable wall. This case is directly in point. The facts outlined above occurred in the present case. Accordingly, applying the same reasoning, 126 High Street retained what was necessary - that is, a one-half share in the mutual gable wall.

[47] The land conveyed by the 1999 Feu disposition was registered under title number MOR2274. The plan in the disposition is not sufficiently detailed to be of assistance in determining ownership of the wall. There are no arrows on the said plan to assist with boundary interpretation. 128 High Street is said to be edged red on the title plan. The red line is inside the wall between 126 and 128 High Street on the side of 128 High Street - that is, what is conveyed in respect of 128 High Street appears to be up to the wall between 126 and 128 High Street. This is more obvious when looking at the expanded version of the said plan at page 6 of Mr Silcock’s report of 27 September 2025.

[48] The Feu disposition disposed 128 High Street. It states that the property disposed is bounded

“on or towards the north-east and the east-northeast by One hundred and twenty-six High Street aforesaid along which it extends Twenty-one metres eighty-one centimetres or thereby and Fourteen metres fifteen centimetres or thereby”.

[49] There are no measurements by the surveyor before the court in relation to the 18.851 metre measurement where the property is said to be bounded to the northwest by the High Street. The measurement of 13.05 metres in the surveyor’s report relates to the later disposition and a measurement of the front of the building facing the High Street. Accordingly, these measurements do not assist in determining where the boundary lies between the properties.

[50] The pursuer relies on the case of *Fraser v Campbell* (1895) 32 SLR 400. He founds on the fact that the wall in question in that case was found to be built entirely on the ground of one party. Therefore, the gable wall was found not to be a mutual gable. In that case, the houses were built 22 years apart. The case turned on the wording of the title to the properties. In particular, it was held that the south gable was built entirely on the defender's property.

[51] However, in the current case, the title position is different. As previously discussed, the leases for plot 39 and plot 40 (126 and 128 High Street respectively) both state that the lessor is to:

“Join in with the neighbouring possessors in building the garden dykes and gables of the houses marching with each other each of them having the use and benefit of vents, presses and chimneys in said gables...”

The wall between the properties is to be built by both the possessors in 126 and 128 High Street. It is to be used equally by both. It is accordingly a mutual gable. The wall has not been built on the property of one. The title position is completely different from that the case of *Fraser*. The wall in the current case was built by both properties as a mutual wall between the properties. The use for both is expressly set out in the leases (that is, it is not the case that one property was simply consenting to use of the vents etc by the other property). Given this, it cannot be said that the wall is entirely built on or is the property of 128 High Street prior to the disposition in 1999.

[52] Given the above, on the balance of probabilities, the land conveyed in respect of 128 High Street did not convey the gable wall in its entirety. 128 High Street is bounded by 126 High Street. The wall lies between the properties. The plan and description do not assist. Accordingly, the ratio of *Galloway* is applicable to the 1999 disposition. When conveying 128 High Street what was conveyed was a one-half share in the gable wall.

126 High Street retained what was necessary to it, namely a one-half share in the mutual gable wall.

2009 disposition

[53] The 2009 disposition broke off part of the area disposed in the 1999 disposition.

In particular, it disposed the property at 128 High Street. This disposition cannot dispose more in respect of 128 High Street gable wall than was disposed in the 1999 disposition.

Having decided that the disposition in 1999 did not convey the gable wall in its entirety to 128 High Street the subsequent disposition in 2009 cannot include the entirety of the gable wall. Put simply, this disposition cannot convey that which is not included in the earlier title.

[54] The 2009 disposition is recorded as Register title number MOR9668 (pursuer's production 1). It disposes the following:

“ALL and WHOLE the subjects forming and known as 128 High Street, Grantown-on-Spey, PH26 3EN shown partly hatched and coloured in red and partly coloured in red on the Plan annexed and signed as relative hereto WHICH DISPOSED SUBJECTS FORM PART and PORTION of the subjects forming and known as 128 High Street, Grantown-on-Spey registered in the Land Register of Scotland under title number MOR2274”.

[55] The plan contains a measurement of 13.05 metres at the boundary between the building and the High Street. The chartered surveyor has produced a report which includes a measurement from one edge of the property to the other which measures 13.05 metres.

This appears to line up exactly with the edge of the property including the gable wall.

It matches the brickwork in the top half of 128 High Street to a point which appears to include the gable wall.

[56] However, the title plan shows no more that the northeast boundary is the wall between 126 and 128 High Street. The line marked in red is inside the wall. The title plan does not show that the boundary is the inner, middle or outer face of the gable wall. No arrows are present to assist with interpretation.

[57] Registers of Scotland “A Guide to Interpreting Title Plans” (joint production number 23) explains the Keeper’s method of showing boundaries on a title plan:

“In Example 1, we can say the legal boundary is shown by the walls around the property. But what if you require to identify the legal boundary more precisely than that? For example, to establish the boundary is the inner, middle or outer face of the wall. Where this level of detail was given in the historic deeds for the property in question the Keeper will show it on the Land Register. That will be done by way of a note in the Property Section of the Land Register title sheet, such as in the following example [...] Where the Land Register does not provide further boundary references, that is because no further detail was available in the historic deeds. In such cases, examination of neighbouring titles may be helpful, but ultimately it may be necessary to consult a solicitor to advise on the various legal presumptions that apply where titles are silent on the precise position of a mutual boundary.”

As said, no such markings are present on the title plan.

[58] I can readily understand the pursuers’ position given the measurements in the plan and the measurements taken by the chartered surveyor. I note the 13.05 metres mentioned in the plan matches the 13.05 metres in the measurements taken by the chartered surveyor. However, that only takes the pursuer so far.

[59] The issue is the boundary with 128 High Street and 126 High Street. The pursuer’s title relies on what was disposed in the disposition of 1999. As indicated, what was disposed was a one-half share of a mutual wall. The Land Certificate which forms the pursuers title under the 2009 disposition cannot give them title to the whole of the gable wall. The sellers of the property in 2009 only owned what had been disposed to them in 1999. While the measurement relied on by the pursuer of another boundary might be accurate in terms of a plan, that plan does not take precedence over the conveyancing

documents which preceded it. The gable wall between the properties is the boundary between the properties. Each property has a one-half share of the gable wall.

Decision

[60] For the reasons set out above I repel the pleas-in-law for the pursuer in their entirety.

I sustain plea-in-law 4 for the defender and grant decree of absolvitor.

[61] Given the above decision I will award expenses as taxed in favour of the defenders.

I note the appropriate concession by counsel for the defenders that there is to be no motion for certifying the cause as suitable for the employment of counsel given the pursuers were party litigants. I will allow a report to be prepared and remits same to the auditor of court to tax and report thereon.

[62] Finally, I wish to commend both Mr Gray and Mr Lindsay for the helpful and professional manner in which proceedings were conducted.