SHERIFF APPEAL COURT

[2026] SAC (Civ) 23
GLW-A73-24

Sheriff Principal A Y Anwar KC

NOTE

delivered by SHERIFF PRINCIPAL A Y ANWAR KC

in Application for Permission to Appeal to the Court of Session

in terms of Section 113(2) of the Courts Reform (Scotland) Act 2014

by

RAJ K ROHATGI

Pursuer and Appellant

against

CONNOR SINCLAIR

Defender and Respondent

16 April 2026

Introduction

[1] The applicant seeks permission to appeal a decision of this court delivered on 12 February 2026 refusing his appeal and adhering to the sheriff's interlocutor of 14 August 2025. The application for permission to appeal to the Court of Session proceeded by way of written submissions.

Background

[2] On 3 July 2024, the applicant lodged an initial writ in which he sought damages of £16,000 from the defender for alleged defamation. The parties were formerly employed by the same company. The applicant alleged that the respondent made defamatory remarks about him in an email to their former employer "on or around 18 July 2023" ("the alleged defamatory statement"). In his defence, the respondent avers that the email was in fact sent "on or around 11 July 2023". The applicant's employment was terminated following the employer's investigation into the allegations made in the email.

[3] In terms of his third plea in law, the respondent sought dismissal of the action on the basis that it had not been commenced timeously in accordance with section 18A of the Prescription and Limitation (Scotland) Act 1973 ("the 1973 Act"). A preliminary proof was assigned to determine this plea in law.

[4] Following the preliminary proof, the sheriff made a number of findings in fact including that: (a) on 11 July 2023, the respondent made a statement to the parties' then employer concerning the applicant which the applicant avers to have been defamatory; (b) the parties' then employer commenced an investigation on or about 11 July 2023; (c) the applicant was dismissed from employment by reason of the alleged defamatory statement on 9 August 2023; (d) the initial writ was lodged on 3 July 2024 at Glasgow Sheriff Court; (e) a warrant of citation was granted on 5 July 2024; (f) a few weeks thereafter, the applicant posted a copy of the initial writ to the respondent; (g) a few months thereafter, the applicant contacted the sheriff clerk's office at Glasgow Sheriff Court and was advised that that he required to instruct sheriff officers formally to effect service of the writ upon the respondent; and (h) sheriff officers effected service on 4 October 2024.

[5] During his evidence, the applicant had testified that he posted the writ to the respondent "within a couple of weeks" of receiving the warrant of citation from Glasgow Sheriff Court. He then sent the papers back to the court "after a couple of months" after no response had been received from the respondent. He was then advised by the Sheriff Court clerk that he required to instruct sheriff officers to effect service.

[6] The sheriff found that the applicant's right of action in respect of the alleged defamatory statement accrued on 11 July 2023 and that accordingly, the action was time barred by virtue of section 18A of the 1973 Act, not having been commenced within one year after the right of action accrued.

Proceedings before the Sheriff Appeal Court

[7] The applicant's sole ground of appeal before the Sheriff Appeal Court was that the sheriff had erred in his interpretation of section 18A of the 1973 Act. While another ground of appeal was alluded to in his note of argument (related to an issue of "procedural irregularity"), he confirmed he did not insist upon it. The applicant submitted that he was not seeking to rely upon any dispensation or to seek "an extension of the deadline date for raising an action". He conceded that the sheriff had correctly found that the action had been served out with the limitation period. However, he submitted that the sheriff had erred in law in his approach to the word "commenced" in section 18A of the 1973 Act; an action was commenced not at the date of service but at the date an initial writ is lodged with the court. He relied upon the explanatory notes to the Defamation and Malicious Publication (Scotland) Act 2021 ("the 2021 Act") and submitted that the 2021 Act had been designed to bring the law into line with the law in England and Wales which provided a specific period for service. The word "commenced" should be read in that light.

[8] Having heard submissions, this court refused his appeal.

Application for Permission to Appeal

[9] The applicant seeks permission to appeal on the basis of largely the same arguments advanced during the appeal before this court. He submitted that the legislation was silent or lacked sufficient clarity on the issue of when proceedings were commenced. He submitted that there was a clear difference between the meaning of the words "commencing" and "bringing" legal proceedings. The explanatory notes to the 2021 Act referred to the "bringing of an action". It made "absolutely no sense if Scotland is actually not legally in line with the law in England". In England, it was submitted, a pursuer had a year to raise an action by filing papers with the court and 4 months during which to serve these on the defender. The applicant submitted that section 18A of the 1973 Act was ambiguous and confusing and required to be read having regard to the explanatory notes to the 2021 Act. The Sheriff Appeal Court had erred by misinterpreting section 18A and failing to have regard to the explanatory notes. It was submitted that permission to appeal ought to be granted because there was a "lack of clarity" and a "need for a proper final interpretation". An important point of principle arose because "the country needs to know what is meant by the date of limitation" and it required to be ruled on "by the highest legal authority". The same argument was advanced as a compelling reason for permission to be granted. It was said to be in the interest of justice for permission to be granted.

[10] The respondent submitted that the law relating to when an action was commenced was clear. There was nothing novel, important or undefined in relation to the proposition that an action for defamation must be brought within one year of the alleged defamatory statement, nor in the proposition that an action commenced upon service. There was no

basis for the court to resort to considering the explanatory notes to the 2021 Act. The applicant's insistence that the law in Scotland should align to that in England was confused. There was no other compelling reason to grant permission.

Decision

[11] Section 113(2) of the Courts Reform (Scotland) Act 2014 provides:

> "The Sheriff Appeal Court or the Court of Session may grant permission under subsection (1) only if the Court considers that –
> (a) the appeal would raise an important point of principle or practice, or
> (b) there is some other compelling reason for the Court of Session to hear the appeal."

[12] An important point of principle or practice is a reference to one which has not yet been established. It does not include a question of whether an established principle or practice has been correctly applied (*Politakis* v *Spencely* [2017] CSIH 74; 2018 SC 184). The issue raised in the proposed grounds of appeal require to be of general importance and not confined to the applicant's own facts and circumstances (*EBA* v *Advocate General for Scotland* [2011] UKSC 29; 2012 SC (UKSC) 1). Even if either section 113(2)(a) or (b) is satisfied the Sheriff Appeal Court retains a discretion as to whether to grant the application.

[13] Applying these principles, the application falls to be refused.

[14] It is a well-established in Scots law that an action is commenced by service of proceedings. One of the earliest reported decisions on the issue also concerned an action of damages for alleged slander (*Alston* v *MacDougall* (1887) 15 R 78). The Inner House held that an action was "commenced" upon the citation of the defender. As explained in Macphail, *Sheriff Court Practice,* 4th edition, paragraph 6.06:

> "The…function of due service of the initial writ is that, as a general rule, it marks the commencement of the action. The principal qualifications of that general rule are that the court has power to grant interim orders such as interim interdict or

> interim delivery before service, and that arrestments on the dependence or to found jurisdiction may be used before service. Such qualifications apart, an action does not commence until the defender is cited, or until that is deemed to have been achieved. Only then is the action in dependence. It is, therefore, vital to ensure that the initial writ is served before the expiry of any relevant period of prescription or limitation. Citation is 'a *sine qua non* before effective action is allowed'."

[15] Section 32 of the 2021 Act amended section 18A of the 1973 Act which is in the following terms:

> "**18A— Limitation of defamation and other actions.**
>
> (1) Subject to subsections (2) and (3) below and section 19A of this Act, no action for defamation or under section 21, 22 or 23 of the 2021 Act (actionable types of malicious publication) shall be brought unless it is commenced within a period of one year after the date when the right of action accrued."

[16] However, section 18A was first inserted into the 1973 Act by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985. The reference to the "commencement" of an action was introduced at that stage and reflected the pre-existing frequent references to actions being "commenced" in the 1973 Act. Again, it is a well-established principle that an action is commenced on the date of citation of the defender. That is the date on which prescription is interrupted (Johnston, *Prescription & Limitation,* 2nd edition, 5.09).

[17] The applicant has not identified an important point of principle or practice which has not yet been established and is unable thus to satisfy the terms of section 113(2)(a).

[18] There is no other compelling reason for the Court of Session to hear the appeal. Insofar as it was submitted that there was a "lack of clarity" or that section 18A of the 1973 Act was ambiguous or confusing, I am not satisfied that this submission is well founded or that the applicant can properly point to any confusion or ambiguity for the Court of Session to resolve. The legislature can be assumed to have used the term "commenced" in section 18A of the 1973 Act in the knowledge of the well-established principle (which applies to several provisions of the 1973 Act) that actions are commenced

upon the citation of the defender. The only material changes made to section 18A(1) by section 32(2) of the 2021 Act were to (i) introduce limitation periods for the new types of action introduced by the 2021 Act and (ii) change the limitation period from 3 years to one year. The references to the "commencement of an action" were unchanged. There is no basis upon which the court can legitimately have recourse to the explanatory notes to the 2021 Act; in any event those notes do not provide the assistance claimed by the applicant. The court is obliged to interpret the 1973 Act in accordance with the normal rules of statutory interpretation. As the Lord President (Carloway) explained in *Politakis (*at para [22]):

> "In considering whether some compelling reason existed, it was important to emphasise the truly exceptional nature of the jurisdiction in relation to second appeals. 'Compelling' is a very strong word…"

[19] The reasons advanced in the application and in submissions amount to little more than a disagreement with the decision of this court. They do not meet the high test referred to by the Lord President.

[20] Finally, in his written submissions, the applicant made references to alleged procedural irregularities. I have had no regard to that submission for the purposes of considering this application. During the appeal hearing, the applicant made it clear that he did not seek to insist upon a ground of appeal related to any alleged irregularities before the Sheriff Appeal Court. This ground did not featured in his application for permission to appeal to the Court of Session. It is too late for this submission to be advanced at this stage. It is a submission the appellant has expressly disowned previously.

[21] Accordingly, I shall refuse the application and award the expenses of the application in favour of the respondent.