

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT PERTH

[2026] SC PER 88

PER-A183-24

JUDGMENT OF SHERIFF ALISON MCKAY

in the cause

MR XX

Pursuer

against

MS XX

Defender

**Pursuer: McSherry; solicitor advocate
Defender: Harrison**

Perth, 2 June 2026

The sheriff, having resumed consideration of the cause, finds the following facts to be admitted or proved:-

1. The pursuer is XXXXX XXXXX, residing at xxxx xxxx xxxx xxxx. He is 59 years old and retired.
2. The defender resides at xxxx xxxx xxxx xxxx. She is 43 years old and employed as a community nurse.
3. The parties were in a romantic relationship from around February 2022 until around November 2022.
4. On 8 September 2022 the pursuer purchased a vehicle, namely a dark blue Mini Cooper SD vehicle registration number XXXX XXX (hereinafter referred to as “the vehicle”) from Mr XXXXX XXXXX, residing at xxxx xxxx xxxx xxxx.

5. The pursuer travelled from his home address to Derbyshire in order to inspect the vehicle prior to purchase.
6. Before to travelling to England the pursuer showed the defender a number of photographs of cars for sale and enquired whether she liked them.
7. Following inspection the pursuer decided to purchase the vehicle. On the same day he sent a photograph of the vehicle to the defender asking if she liked it. The defender confirmed she did.
8. The purchase price of the vehicle was Six Thousand Pounds (£6,000) Sterling. The pursuer obtained a receipt for this sum, 5/1/1 of process.
9. The pursuer told the defender he had purchased the vehicle for her.
10. The pursuer did not discuss the purchase of the vehicle with the defender in advance, nor ask her if she wished to purchase the vehicle.
11. Upon his return to Scotland the pursuer attended at the defender's home with the vehicle. He presented the vehicle to the defender. The vehicle has remained in the defender's possession since then.
12. No financial discussions took place between the parties upon delivery of the vehicle to the defender.
13. The defender is the registered keeper of the vehicle, and has been since 18 August 2022.
14. The defender has been responsible for insuring and maintaining the vehicle since the pursuer delivered same into her possession.
15. Following delivery of the vehicle to the defender the pursuer left the defender's address in the vehicle previously owned by her and advertised it for sale. He attended at

the defender's address to have her sign the relevant documentation and to complete the sale of same.

16. In November 2022 the parties' relationship broke down.

17. During November 2022 the parties exchanged a number of text messages. The defender recognised the pursuer had incurred the cost of purchasing the vehicle during their relationship and offered to pay him back when she was in a position to do so.

18. On 10 December 2022 a further email exchange took place between the parties, during which the pursuer suggested the defender might be in a position to repay him if she inherited funds from a third party who had previously gifted her a sum of money.

19. At the time the parties' relationship ended the pursuer did not seek repayment of the purchase price of the vehicle from the defender, nor did he suggest a contract had been entered into between the parties in that regard.

20. At some point following the parties' separation the defender offered to give the pursuer the vehicle. The pursuer refused this offer.

21. In March 2023 further text messages were exchanged between the parties. The pursuer sought repayment of the purchase price for the vehicle and suggested for the first time the purchase price had been a loan to the defender. The defender again offered to return the vehicle to the pursuer, or to pay him at the rate of £50 per month. The pursuer rejected both these offers.

22. In text message and pre-litigation communications the defender offered (i) to make payment of the purchase price of the vehicle to the pursuer when she was in funds and able to do so, (ii) to deliver the vehicle to the pursuer or (iii) to make payment of the purchase price of the vehicle to the pursuer in instalments. The pursuer rejected these offers.

23. The pursuer only sought payment from the defender in respect of the purchase price of the vehicle once it was apparent the parties' relationship had broken down with.

MAKES the following findings-in fact and in-law:-

1. The vehicle was delivered and presented to the defender by the pursuer as a gift.
2. The defender is the owner of the vehicle.
3. No contract was entered into between the parties in relation to the vehicle.
4. The defender is under no legal obligation to make payment to the pursuer in respect of the purchase price of the vehicle.

AND THEREFORE sustains the defender's plea in law; repels the pursuer's fourth plea in law **DISMISSES** the action and finds the pursuer liable to the defender in the expenses of the action as taxed, and allows an account thereof to be given in and remits same, when lodged, to the auditor of court to tax and report.

NOTE

Procedural history

[1] I heard evidence on 9 February 2026. The pursuer was represented by Mr McSherry and the defender by Mr Harrison. Prior to the proof diet a vulnerable witness notice was lodged on behalf of the defender. The pursuer disputed the basis for the application, which was nonetheless granted to allow the defender to give evidence from behind a screen. In addition, I appreciate the co-operation of both parties and their respective agents in allowing me to put in place practical arrangements within the confines of the court room so that parties did not have a direct line of sight to the other at any point during the hearing.

Evidence

[2] A short joint minute was entered into agreeing the designation of the parties and the fact that the vehicle was registered in the name of the defender. The provenance of various text messages sent between the parties and pre-litigation correspondence was also agreed.

[3] I heard evidence in person from the pursuer on his own behalf, and from the defender and one of her friends. Each witness adopted the terms of sworn affidavits but gave further evidence expanding on the terms of same prior to being cross-examined and re-examined.

[4] At the conclusion of evidence I adjourned to allow parties' agents to lodge detailed written submissions.

[5] A hearing on submissions took place on 18 March 2026.

Witnesses***Parties***

[6] The issue before the court relates to the purchase of a vehicle whilst parties were in a romantic relationship which has since broken down. In circumstances where a relationship has broken down it is almost inevitable that the parties will have different perspectives on what occurred during their relationship and regarding things said, or done, following that breakdown. It is common in such cases for both parties to have a completely different impression of what has occurred, without necessarily lying or attempting to mislead.

[7] The pursuer maintained the purchase of the vehicle was a joint decision following various discussions with the defender. The defender's position was no such discussion had taken place although she conceded that one day the pursuer had shown her images of vehicles and asked her opinion about them. In this respect I preferred the evidence of the

defender, who reported the pursuer sent her a photograph of a car and asked if she liked it and then delivered it to her the following day leaving her with the clear impression that the vehicle was a gift.

[8] At article two the pursuer avers his contract with the defender was entered into in or around September 2022. The letter forwarded by his agents to the defender on 14 May 2024 upon his instructions (5/1/3/1 of process) states that his contract with the defender was entered into in or around October 2022.

[9] In cross-examination the pursuer explained this discrepancy arose because he had instructed his solicitor from memory alone, and that he did not consult text messages retained on his mobile telephone until these proceedings were raised.

[10] I consider the more likely explanation for this clear discrepancy is that no contract was entered into between the parties. I further note the pursuer was unable to provide the court with any specific details of the discussions his own case is founded upon.

[11] The pursuer suggested the defender's previous vehicle was in poor condition and required numerous repairs during the short period of the parties' relationship. His view was that multiple repairs to the vehicle were not cost-effective and he explained that was why he sourced an alternative vehicle for her.

[12] The defender's position was that her car may have required a minor repair prior to the pursuer purchasing the vehicle which is the subject matter of this dispute, but nothing more. It had an MOT when the pursuer sold the vehicle, the defender was happy with it and she could not afford a new one.

[13] In cross-examination the pursuer conceded the defender's previous car had an MOT and that she had no urgent need to replace her vehicle. He referred to the purchase of a new vehicle as "a sensible option" rather than "throwing good money after bad".

[14] Tellingly, the pursuer also confirmed in cross-examination that he knew the defender could not afford to purchase a new vehicle, and that she did not ask him to do so.

Significantly, he commented that he had been in a position “to help” the defender

[15] The pursuer asserts he is the owner of the vehicle. In cross-examination it was put to the pursuer that as the owner of the vehicle he was entitled to possession of it. The pursuer responded this was not part of “the agreement”, and further that the vehicle would now have a higher milage and consequent lower value.

[16] The pursuer has also rejected the defender’s offers to deliver the vehicle to him, firstly following the parties’ separation and later in the context of legal communications albeit latterly subject to payment by him of a specified sum of money to the defender.

[17] I did not believe the pursuer when he stated he considered himself to be the owner of the vehicle. His own actions, in rejecting the defender’s offer to deliver the vehicle to him and failing to seek delivery of same, are not in my view consistent with a genuinely held belief that he is the owner of the vehicle.

[18] It was not in dispute that following delivery of the vehicle to the defender’s address the pursuer returned home with the defender’s previous car which he subsequently sold. The pursuer contended that he had sold the vehicle for around £1700 and had retained £200 to cover costs before paying the remainder to the defender. The defender disputed having received any of the sale proceeds in respect of her own car.

[19] In the absence of evidence beyond that of the parties (bar Mr xxxx who could only report what he had been told by the defender) I frankly do not know who to believe regarding the circumstances of the sale of the defender’s previous car. It will be noted I have made very limited findings in fact in this regard. However, it seems to me that if the pursuer had genuinely assisted the defender to purchase a vehicle which he knew she could

otherwise ill afford in the context of an agreed contract in respect of repayment of the purchase price, then logically he would have retained the proceeds of sale as part payment towards the sum due to him. To suggest otherwise is simply incredible.

[20] The pursuer insisted discussions had taken place between himself and the defender which amounted to representations that she anticipated receiving an inheritance from a third party and would repay him the purchase price of the vehicle upon receipt of same. The defender's position was that she never talked to the pursuer about the third party's estate and did not tell him she would receive funds from his estate.

[21] In this particular chapter of evidence I preferred the evidence of the defender to that of the pursuer. As previously indicated, the pursuer's evidence regarding these alleged discussions was far from satisfactory. I also accepted the defender's evidence that in fact she has received no such inheritance, despite her own suggestion that she would pay the pursuer a sum of money in the event she received such funds.

[22] Following the breakdown of the parties' relationship the defender indicated in her messages to the pursuer that she would repay him for the cost of the vehicle. I did not form the impression that she made this offer because she accepted she was contractually bound to do so, but rather that she made the offer on the basis of common courtesy because the relationship had broken down so shortly after the pursuer had given her the vehicle. I formed the impression she was trying to do "the right thing" in so far as she could afford to do so.

[23] In reaching this impression I had particular regard to the terms of 5/2/1 of process which comprises a thread of text messages during which the pursuer sought payment for the cost of the vehicle **if** (my emphasis) the defender received some money from the third party referred to; the defender indicated she would pay him back and said she "felt bad

about the car"; and in response to her message saying "I'm not like that Xxxxx" the pursuer responded "I know your not!"

[24] In my view this particular production clearly indicates no contract was ever entered into between the parties and that whilst the defender offered to repay the pursuer the cost of the vehicle she was not, and did not consider herself to be, contractually bound to do so.

[25] Whilst I found it impossible to rely completely upon the pursuer's evidence, I am in a similar position in relation to the defender's evidence.

[26] In particular, in cross-examination, the defender denied sending the text message to the pursuer which comprises 5/3/1/1 of process. I did not believe the defender on this particular point. In light of the remainder of her evidence I formed the view that this simply amounted to an error on her part, particularly given she accepted she was the author of all the other messages she was referred to.

[27] During the course of the evidence it was noted that the sales receipt for the purchase of the vehicle was dated 8 September 2022 whilst the V5 certificate was dated 18 August 2022. Neither party was able to explain this apparent discrepancy to the court and neither agent was able to assist me in this regard at the hearing on submissions. These dates are not disputed and I have made findings in fact confirming these dates, but am unable to reconcile this clear discrepancy upon the evidence before me.

Mr Xxxxx

[28] Mr Xxxxx is a friend of the defender. He has never met the pursuer in person and was not present when the vehicle was delivered to the defender's home address by the pursuer.

[29] I note Mr Xxxxx's affidavit states the defender told him the pursuer purchased the vehicle "for her" but does not specifically make reference to the vehicle having been a gift.

[30] Mr Xxxxx's evidence is based entirely upon things said to him by the defender and whilst I do not doubt his credibility his evidence took me no further in assessing the evidence furnished by the parties themselves.

Submissions

[31] I am obliged to both parties' agents for their detailed written submissions, which I do not propose to rehearse here.

[32] Put short, Mr McSherry invited me to accept the pursuer's evidence and to find that a contract had been entered into between the parties as averred by him whilst Mr Harrison invited me to find that there was no such contract entered into and that the defender acquired the vehicle from the pursuer by way of gift.

[33] Mr Harrison also raised an *esto* point and suggested that if I determined the pursuer had loaned money to the defender I could also conclude the loan was qualified by becoming payable only upon the defender's receipt of the expected inheritance referred to in evidence.

[34] Mr McSherry objected to the *esto* position proposed by Mr Harrison, on the basis that it was not raised in the written pleadings before the court and the pursuer had no notice of such a position. In this regard I accepted Mr Harrison's submission that evidence on this point was explored during the course of the proof without objection.

[35] In the event I did not require to consider this point further given I do not accept upon the evidence that a contract was entered into between the parties.

[36] Finally, in his written submissions Mr McSherry invited me to make a finding in fact that neither of the parties "are, or have ever been, qualified solicitors enrolled to practice

Scots law". Whilst I am sure this is indeed the case, neither party specifically confirmed this in evidence and so I cannot properly make a finding in fact to that effect.

[37] Mr McSherry also made much of this fact throughout his submissions but in my view this has no material bearing on the question of whether or not a contract was entered into between the parties.

[38] In respect of the expenses of the action Mr McSherry and Mr Harrison were agreed that expenses followed success.

Discussion

[39] In addition to lodging written submissions parties' agents also lodged lists of authorities, and again I am obliged to them for their assistance in this regard.

[40] The pursuer sets out to prove that in or around September 2022 the parties agreed that the pursuer would purchase the vehicle, the defender would pay a sum equal to the purchase price to the pursuer and that ownership of the vehicle would pass to the defender upon payment of that sum in full.

[41] Payment not having been made, the pursuer further avers the defender is in breach of contract, albeit he does not seek compensation or payment of any further sums beyond the purchase price of the vehicle.

[42] The pursuer's position in evidence was that the defender had represented to him that she was the named beneficiary in the estate of a third party and that payment of the purchase price of the car would be made upon receipt of this inheritance. It is averred at article three that the defender told the pursuer she was not a beneficiary in December 2023 and that, there being no basis to defer the date for making payment of the purchase price, the sum due to the pursuer immediately became payable.

[43] One difficulty for the pursuer is that he conceded in evidence that no discussion ever took place between the parties as to what would happen if the defender did not receive the inheritance upon which the purported contract is based. It seems to me that if a contract was entered into in the level of detail averred by the pursuer this would have been the subject of discussion.

[44] Another difficulty is that I found the pursuer's evidence to be contradictory and vague. My impression of the pursuer's evidence was that it was self-serving in the extreme, particularly in circumstances where it was not supported by the terms of his own text messages to the defender.

[45] In all the circumstances I am not satisfied that a contract was entered into between the parties and accordingly no sums are due by the defender to the pursuer.

[46] I accept Mr McSherry's submission that money lent is repayable on demand (The Law of Contract in Scotland, McBryde, 3rd Ed Paragraph 24-21) but in this case no money was "lent". Rather, a vehicle purchased by the pursuer was delivered by him to the defender in circumstances where he was well aware she could not afford to purchase the vehicle herself.

[47] I do not accept the submission made on behalf of the pursuer that the text messages sent by the defender to the pursuer amount to a recognition of an obligation to repay money to the pursuer. As I have indicated above, I have interpreted these messages as the defender's recognition that in all likelihood the pursuer would not have gifted her the vehicle if he had appreciated their relationship would break down so soon afterwards.

[48] I am satisfied that the purchase of the vehicle was a generous gesture on the part of the pursuer in the context of a romantic relationship with the defender and that he presented the vehicle to her as a gift.

[49] In reaching this conclusion I fully appreciate that there is a strong presumption against donation in Scots Law which “requires very strong and unimpeachable evidence to overcome it” (*Sharp v Paton* (1883) 10R 1000 and *Brownlee’s Exectrix v Brownlee* 1908 SC 232).

[50] However, I note that *Brownlee* concerned an entry in a formal account. Clearly that is not the position here. The subject matter of the dispute between the parties is not a specific sum of money paid by the pursuer to the defender but a tangible asset which was delivered to her by him.

[51] Mr Harrison relied upon a number of authorities which he suggested “taken cumulatively” suggested an argument by analogy that the circumstances of this case justified a presumption for donation. He specifically indicated that these circumstances were (i) a romantic relationship; (ii) a marked financial imbalance between the parties with motivation to donate; (iii) a relatively modest sum involved and (iv) there being no document of debt evidencing a loan.

[52] I agree with Mr Harrison that the relationship between the parties is relevant. Gloag and Henderson *The Law of Scotland* (14th ed.) Vol 1 suggests that: “The presumption against donation is less strong between husband and wife while relations are harmonious”. Here, the donation took place at a time when the parties were in a romantic relationship and there was no suggestion it was not harmonious at the time the pursuer delivered the vehicle to the defender.

[53] Given the parties’ respective means were not detailed in the record I heard no evidence in this regard and cannot be satisfied that there was a marked imbalance in the parties’ relative means. However, I am prepared to accept that the donation was “relatively modest” as submitted by Mr Harrison, particularly given the pursuer’s evidence that he had

sold property in England and had a surplus of funds available to him at the time he purchased the vehicle.

[54] The vehicle was purchased by the pursuer and delivered to the defender in the circumstances I have described. As outlined in Gloag and Henderson *The Law of Scotland* (above) paragraph 13.34: “All the circumstances surrounding the alleged donation will be considered and clear proof is required.”

[55] In this case I have carefully considered the circumstances in which the pursuer acquired the vehicle and delivered it to the defender. I have concluded that no discussion took place during the parties’ relationship which had any bearing upon a liability on the part of the defender to repay the pursuer the cost of the vehicle and I am satisfied that any discussions on this point only took place after the relationship broke down.

[56] I note a further passage in Gloag and Henderson (above) paragraph 13.35 which states: “Proof of *animus donandi* is necessary but not sufficient to effect a valid donation. In addition, delivery or its equivalent is required to transfer ownership to the donee.”

[57] Here, I am not only satisfied that the vehicle was delivered by the pursuer to the defender, but also that the defender clearly became the owner and user of the vehicle thereafter and was registered as the keeper of same.

[58] The fact that delivery of the item was followed by the breakdown of the parties’ romantic relationship does not render the cost of the vehicle repayable, whether on demand or upon the occurrence of a particular event.

[59] Overall, my clear impression of the evidence is that the pursuer purchased the vehicle and delivered it to the defender as a “grand gesture” during the parties’ relationship. Obviously he did not anticipate that the relationship would break down after such a short time, and perhaps understandably he now regrets having done so.

Decision

[60] In light of the above I am satisfied that the pursuer purchased the vehicle and delivered it to the defender as a gift in the context of a generous gesture made during the course of a harmonious romantic relationship between the parties.

[61] Accordingly, I will dismiss the pursuer's crave.

Expenses

[62] The position in respect of the expenses of the action was agreed as set out above and I will find the pursuer liable to the defender in the expenses of the action.