

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2026] SC GLA 98

GLW-A849-25

JUDGMENT OF SHERIFF D N TAYLOR

in the cause

RICHARD DENNIS
THE ACCOUNTANT IN BANKRUPTCY

Pursuer

against

AMANDA ROSE McCUTCHEON

Defender

Pursuer: Heaney, advocate

Defender: Thompson

Glasgow, 26 June 2026

The Sheriff, having resumed consideration of the cause, Sustains the second plea in law for the pursuer to the extent of excluding from probation the averments in Answer 9 of the record reading:

“Separatim, the Pursuer on behalf of the AIB is personally barred from reneging on the agreed payment of £500 in exchange for the interest in title. Further explained and averred that at the time of transfer of the deed the debtor was absolutely insolvent. The agents acting for the Pursuer contacted Thompson Family Law. A response was given by Thompson Family Law to the Pursuer’s agents on 20 May 2025.”

Repels the defender’s first plea in law; *Quoad ultra* allows parties a proof before answer of their averments under reservation of the pursuer’s second plea in law on a date or dates to be assigned at the hearing on expenses hereinafter referred to; Assigns a hearing on

expenses to take place on 22 July 2026 at 9.30am within Glasgow Sheriff Court, 1 Carlton Place, G5 9DA to call in open court.

NOTE:

Background

[1] I heard from counsel for the pursuer and from the defender's solicitor in debate on 5 March 2026.

[2] In the proceedings the pursuer seeks an order for production and reduction of a disposition of the heritable subjects at 4 Holyrood Crescent, Glasgow, G20 6HJ (the subjects), by Steven McCutcheon in favour of the defender.

[3] Steven McCutcheon (hereinafter referred to as the debtor) is the defender's husband. He bought the subjects on 15 October 2009.

[4] The pursuer avers that the debtor was sequestrated on his own application on 8 November 2012. Ian Wright was appointed as his trustee (the first trustee). The subjects vested in the first trustee in terms of the Bankruptcy (Scotland) Act 1985 (the 1985 Act). In April 2017 the debtor offered the first trustee £500 to discharge his interest in the subjects. The first trustee accepted the debtor's offer with the approval of the Accountant in Bankruptcy and abandoned the subjects. A Notice of Abandonment of Heritable Property was completed in respect of the subjects and registered on 26 September 2018. The first trustee has not been discharged.

[5] On 2 August 2021 the debtor executed a disposition in favour of the defender which was subsequently registered in the Land Register on 19 August 2021. The Land Certificate states that there was no consideration for the disposition. An updated Land Certificate

states in the consideration section: “By virtue of Decree by the Sheriff Court of Glasgow and Strathkelvin at Glasgow”.

[6] The decree referred to in the updated Land Certificate is a decree granted in absence in an action raised by the defender against the debtor following the refusal of the first trustee to sign a disposition transferring title to the subjects into the defender’s sole name. The decree found and declared that the defender had acquired the whole interest in the subjects having purchased the first trustee’s interest in the subjects.

[7] On 23 May 2023 the debtor was sequestrated for a second time, again on his own application. The pursuer took up office as his trustee.

[8] The basis of the pursuer’s claim in this action is that the transfer of the subjects by the debtor to the defender was a gratuitous alienation. The pursuer avers that at the date of the transfer the subjects had a value of around £850,000.

[9] In response to the pursuer’s averments the defender avers that the first trustee agreed to sell his interest in the subjects to the defender for the sum of £500. The defender subsequently instructed an action of declarator to be raised in the terms referred to in paragraph 6 above. Decree was granted in that action. The disposition executed by the debtor in favour of the defender on 2 August 2021 was executed by the debtor in implementation of the decree granted in the action of declarator. There was no gratuitous alienation by the debtor to the defender. In any event the pursuer, on behalf of the Accountant in Bankruptcy is personally barred from reneging on the agreement reached that he would receive £500 in exchange for his interest in the title of the subjects. Further the debtor was absolutely solvent at the time of the transfer.

[10] After initial procedure a debate was fixed in respect of the pursuer's second plea in law. This plea seeks decree *de plano* on the basis that the defender's averments are irrelevant *et separatim* lacking in specification.

[11] For the purposes of the debate the parties' written pleadings are contained within a record, No 9/2 of process dated 10 September 2025. In advance of the debate parties lodged written submissions. They supplemented their written submissions by oral submissions at the debate. At the conclusion of the debate, I made avizandum. I now issue my judgment.

The pursuer's submissions

[12] The pursuer adopted his written submissions.

[13] The defender has advanced three lines of defence in her defences. All three lines are irrelevant. On that basis the pursuer is entitled to decree of reduction as first craved. The Sheriff Court has the power to grant decree of reduction.

[14] The pursuer's first submission relates to the averments which the defender makes on record about the solvency of the debtor. It is a defence to a claim that a transaction is a gratuitous alienation to prove that the debtor's assets were greater than their liabilities at the time of the alienation – see section 98(6)(a) of the Bankruptcy (Scotland) Act 2016 (the 2016 Act).

[15] The onus of establishing the debtor's solvency is on the party seeking to uphold the alienation and detailed averments are required (McKenzie-Skene, *Bankruptcy* (1st Edn, 2018 at paragraph 14-29).

[16] Paragraphs 25 and 26 of the Sheriff Appeal Court's decision in *Walton's Trustees v Walton* 2004 SCLR 319 contain an authoritative discussion of what is meant by solvency in this context. The defender has to give notice in her pleadings of how, with reference to the

approach adopted in *Walton*, she intends to establish that the debtor was solvent at the time of the alienation.

[17] The only averments which the defender makes about solvency on record are contained in Answer 9 where it is averred:

“Further explained and averred that at the time of transfer of the deed the debtor was absolutely solvent. The agents acting for the Pursuer contacted Thompson Family Law. A response was given by Thompson Family Law to the Pursuer’s agents on 20th May 2025.”

These averments fall far short of what the defender requires to aver. They do not give the pursuer fair notice of the basis upon which it is claimed that the debtor was solvent at the time of the alienation.

[18] The pursuer’s second submission concerns the defender’s averments about the consideration for the alienation.

[19] There is no dispute that the subjects were transferred or alienated to the defender. In Answer 9 the defender expressly avers that the subjects were transferred into her sole name in implementation of the decree granted in the action of declarator.

[20] In fact, the only time that there was an alienation was when the disposition was granted. That is what moved the subjects from the debtor’s patrimony to that of the defender. Registration of the disposition granted by the debtor in favour of the defender conferred a real right in the subjects upon the defender. It is that right which the pursuer seeks to challenge in these proceedings. The decree of declarator which the defender condescends upon is no more effective to protect the defender than an unregistered disposition. Against that background the defender has no relevant case that there was no alienation.

[21] Neither does the defender make relevant averments that the alienation was made for adequate consideration. Section 98(6)(b) of the 2016 Act places the onus upon the person seeking to uphold the alienation (ie the defender in this case) to establish that the alienation was made for adequate consideration. McKenzie-Skene, *Bankruptcy* at paragraph 14.29 and the Inner House case cited therein of *MacFadyen's Trustees v MacFadyen* 1994 SLT 1245 consider what is meant by "adequate consideration" in this context. On record the defender does not make any averments which would allow her to prove that there was a transfer of value in exchange for grant of the disposition. It follows that there are no proper averments that the alienation was made for adequate consideration.

[22] Thirdly and finally the pursuer considered the defender's averments in relation to personal bar. In Answer 9 the defender avers that:

"Separatim, the Pursuer on behalf of the AIB is personally barred from reneging on the agreed payment of £500 in exchange for the interest in title".

The problem with these averments is that the sequestration in which the first trustee was appointed and the sequestration in which the pursuer was appointed are two separate processes. Reference was made to paragraphs 13 to 18 of the pursuer's written submissions which explain the distinction between the two bankruptcies. There are simply no averments that the pursuer did or said anything which would entitle the defender to invoke the doctrine of personal bar.

The defender's submissions

[23] The defender adopted her written submissions.

[24] She conceded that her averments in relation to the issue of solvency were inadequate. Nonetheless she submitted that she had a relevant defence to the pursuer's claim.

[25] The defence was underpinned by the decree granted in the action raised by the defender against the debtor. That decree found and declared that the defender had acquired the debtor's whole interest in the subjects. In those circumstances the defender queried what right had been lost by the debtor when he granted the disposition. If the pursuer had a remedy at all he required to seek reduction of the decree and the disposition. In any event in granting the disposition the debtor was simply giving effect to what the court had already ordered in terms of the decree.

[26] The defender's personal bar plea could only be determined after evidence had been heard. Issues of personal bar are, by their nature, fact sensitive issues. In relation to the adequacy of consideration the defender avers in Answer 9 that the subjects were in substantial negative equity and of no benefit to the creditors of the debtor's first sequestration. She avers that she agreed a price of £500 with the first trustee on behalf of the pursuer. The rectified title sheet for the subjects lodged as No 5/6 of the defender's second inventory of productions refers to the consideration for the subjects as "By virtue of Decree by the Sheriff Court of Glasgow and Strathkelvin at Glasgow". These averments are capable of representing a defence to the claim. The averments about the defender having acquired the subjects at some time in the past and about the proper consideration for the property are also matters to be explored at proof.

The pursuer's reply to the defender's submissions

[27] In a brief reply to the defender's submissions the pursuer submitted that adequacy is an objective test – see McKenzie-Skene *Bankruptcy supra* at paragraph 14-29. What happened at the time that the first trustee apparently reached agreement with the defender is irrelevant

to the position at the time the disposition was executed by the debtor in favour of the defender.

[28] On personal bar if the defender was claiming that there was some kind of agency relationship operating the details of that relationship should be pled.

[29] Finally, the pursuer submitted that the decree which the defender founds upon doesn't order the debtor to do anything at all.

Decision

[30] The pursuer made three main submissions in the course of the debate, focusing on the different strands of the defender's defence.

Solvency

[31] The defender conceded that her averments in relation to the issue of solvency were irrelevant. No motion to amend was made in respect of this part of the defence. It follows that the defender has not pled a relevant defence in terms of section 98(6)(a) of the 2016 Act. Accordingly, the defender's averments on the solvency issue fall to be excluded from probation. Although the pursuer has only one plea in law – a plea seeking decree de plano – that plea is apt to allow the exclusion of irrelevant averments from probation (see *Macphail: Sheriff Court Practice* (4th Edn) at paragraph 9.122).

Personal Bar

[32] The basis of the defender's personal bar argument, as averred in Answer 9, is that:

“the pursuer, on behalf of the AIB is personally barred from reneging on the agreed payment of £500 in exchange for the interest in title”.

[33] It is clear from this averment that the personal bar plea is founded upon the alleged action of the first trustee in agreeing a price of £500 for the sale of the subjects.

[34] The pursuer submitted that paragraphs 3.05 to 3.07 of *Gloag and Henderson: The Law of Scotland* (15th Edn) represent a crisp summary of the law on personal bar. I agree. The paragraphs cited from *Gloag and Henderson* refer to *Gatty v Maclaine* 1921 SC (HL) 1, the locus classicus of the modern law of personal bar. In *Gatty*, Lord Chancellor Birkenhead set out at p 7 the well well-known formulation of the law as follows:

“The learned counsel cited various authorities in which these doctrines have been discussed, but the rule of estoppel or bar, as I have always understood it, is capable of extremely simple statement. Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time.”

[35] Applying Lord Birkenhead’s test to the present case there must be words or conduct on the part of the pursuer which justified the defender in believing that a certain state of facts existed.

[36] The backdrop to the defender’s personal bar argument is the position with the appointment of the first trustee and the pursuer. Different statutory regimes applied in relation to the appointment of the appointment of the first trustee and the pursuer.

[37] The defender avers in Answer 9 that the first trustee was appointed “on behalf of the Accountant in Bankruptcy”. In fact, as is apparent from consideration of the then applicable statutory provisions, the first trustee was appointed **by** (my emphasis) the Accountant in Bankruptcy in terms of section 2(1A) of the 1985 Act (inserted by section 14(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007) which states that:

“(1A) Subject to subsection (1C) below, where the Accountant in Bankruptcy awards sequestration of the debtor’s estate and the debtor application—

- (a) nominates a person to be the trustee;

(b) states that the person satisfies the conditions mentioned in subsection (3) below; and

(c) has annexed to it a copy of the undertaking mentioned in subsection (3)(c) below, the Accountant in Bankruptcy may, if it appears to him that the person satisfies those conditions, appoint that person to be the trustee in the sequestration.”

The fact that the first trustee was appointed by the Accountant in Bankruptcy does not mean that he was acting on behalf of the Accountant in Bankruptcy.

[38] The pursuer was appointed as trustee in terms of section 51 of the 2016 Act. The terms of the deliverance sequestrating the debtor’s estate and appointing the pursuer as his trustee are admitted by the defender in Answer 1.

[39] The defender submitted that she offered to prove on record that the first trustee acted on behalf of the pursuer and that it is trite law that the actions of an agent bind his principal. However, given the provisions of the 1985 Act and the basis upon which the first trustee was appointed, there is no explanation on record of how it could be said that the first trustee acted on behalf of the Accountant in Bankruptcy. The words agent and agency do not appear at all in Answer 9 of the defender’s pleadings. Nor is there any explanation of how the actions of the first trustee could form the basis of a plea of personal bar against the pursuer.

[40] It follows that there are no relevant averments to satisfy the first leg of Lord Birkenhead’s test. The defender’s personal bar averments all relate to the actions of the first trustee. I accept the submission made by the pursuer that actions on the part of the first trustee cannot form the basis of a personal bar argument against the pursuer.

[41] In short, the first trustee was acting in a different sequestration, in respect of a different group of creditors and in a different capacity. The averment and plea in law relating to personal bar are irrelevant.

Adequacy of consideration

[42] In support of his submission on this issue the pursuer cited the opinion of the court in *MacFadyen's Trustees v MacFadyen* 1994 SC 416 where Lord McCluskey stated at p421D:

“In our opinion, it is axiomatic that there can be no ‘adequate consideration’ within the meaning of sec. 34(4) of the Bankruptcy (Scotland) Act 1985 unless the alienation of the property has been for some consideration. In a case such as the present the question as to whether or not a consideration was ‘adequate’ might well be suitable for proof. Accordingly, if in the present case there had been averments relevant to infer consideration we should have allowed a proof before answer on all the matters averred by the defender, including factor (c): the averments in relation to this factor, albeit sparse, give sufficient notice of what the defender hopes to prove. But the real question is whether or not the defender has averred the giving of any consideration at all.

The word ‘consideration’ is not defined in the Act and we consider that it must be given its ordinary meaning as something which is given, or surrendered, in return for something else. If something is given without any return being demanded or expected or obtained and at the time of giving is not intended to be regarded as a consideration of some past, present or future return — which appears to have been the position in regard to the gratuitous services in *Dawson v Thorburn* — that which is given cannot later be converted into a consideration just because at the later date the giver and receiver chose so to describe it. A consideration appears to us to acquire its character as a consideration not later than the time when the giving or surrendering takes place. In the context of bankruptcy law, the bankrupt debtor must be regarded as a trustee for the creditors in respect of such of his assets as are under his control. In that context, it is our view that a consideration must mean something of material or patrimonial value which could be vindicated in a legal process, whether by being claimed or possibly by being pled in answer to another's claim.”

[43] The court's interpretation of what is meant by adequate consideration in *MacFadyen's Trustees* was endorsed in the more recent Inner House case of *O'Boyle's Trustees v Brennan*

[2020] CSIH 3 where the court stated at paragraph 23:

“If a payment is to amount to ‘consideration’ for an alienation, it must in our opinion be the counterpart of that alienation. This means that there must be an element of exchange or reciprocity between the payment and the alienation; the payment must be regarded on objective grounds as a quid pro quo for the alienation.”

[44] Applying these authorities to the present case there do not appear to be any averments by the defender about the adequacy of the consideration. She makes no averments about the value of the subjects. At first blush the averments about what is said to have been agreed about the disposal of the first trustee’s interest in the subjects in 2012 cannot be relevant as they occurred some 9 years or so prior to the alienation.

[45] However, the matter is not as straightforward as that. That is because the issue of adequacy is bound up with consideration of the nature of the alienation.

The nature of the alienation

[46] In the course of considering matters at avizandum I drew parties’ attention to a number of further authorities and asked for written submissions on the authorities. In the event only the pursuer submitted supplementary submissions. The essence of the pursuer’s further submissions was that the additional authorities generally supported the position which the pursuer had adopted at debate.

[47] Of the further authorities which I drew parties’ attention to I was particularly interested in comments made in *McBryde: Bankruptcy* (2nd Edn). Chapter 12 deals with gratuitous alienations and unfair preferences; Part III focuses on the statutory challenge to a gratuitous alienation. At the time Chapter 12 was written section 34 of the 1985 Act was in force. It was, in all material respects, in identical terms to section 98 of the 2016 Act.

[48] The first point which is made in relation to the terms of section 34 is that there must be a challengeable alienation. At paragraph 12-61 it is stated:

“It is an open question whether an alienation in response to a court decree can be an alienation by a debtor. A debtor’s consent to a decree may mean that in substance there is an alienation. This problem has arisen at common law. Because of doubt about the extent to which a court decree could be the act of the debtor special provision is made for recall of an order for capital payment on divorce.”

[49] The position at common law is discussed at paragraph 12.24 where, in relation to different types of fraud, it is observed:

“But in truth the methods of acting to the prejudice of creditors are various and there may be devices which do not fall neatly into either of the two traditional categories, such as facilitating or interrupting diligence, or abandonment of defences to an action followed by a transfer of assets in implement of a court decree.”

Two cases are cited in the footnote to the passage quoted above namely: *Laurie’s Trustees v Beveridge* (1867) 6M 85 and *Wilson v Drummond* (1853) 16D 275.

[50] In *Laurie’s Trustees* the defender had obtained decree for the delivery of certain articles after a bankrupt debtor had withdrawn his defences to an action. The bankrupt debtor’s trustee raised proceedings against the defender arguing that the decree granted in the defender’s favour was reducible as a preference under the Bankruptcy Act 1696 and at common law. After proof the court found in favour of the bankrupt’s trustee. The decree had been obtained for the purpose of carrying out and giving effect to an illegal preference. The defender reclaimed arguing that the decree had been obtained properly. The bankrupt debtor’s withdrawal of his defences and the subsequent grant of decree were not voluntary acts. In refusing the reclaiming motion the Lord Justice Clerk (with whom the other Lords concurred) stated:

“As to the decree, it may very well, I think, be said that, as part and parcel of a transaction giving a preference within the sixty days of bankruptcy, it is reducible under the statute, but apart from the statute, I consider the decree to be objectionable as obtained by an arrangement between the parties, and in order to facilitate the getting of the articles, and I am therefore prepared to concur with the Lord Ordinary in his special finding with regard to it, as well as upon the whole case generally.”

[51] In *Wilson v Drummond* the trustee of a bankrupt debtor sought reduction of a deed and writings in terms of which the debtor abandoned his defences in an action which contained declaratory and debt conclusions. After the record was closed the pursuer sought issues for jury trial that the granting of the deed and writings were reducible as unfair preferences under statute and at common law. The Lord Ordinary found that the pursuer was entitled to the issues sought save for the issue relating to the Bankruptcy Act 1621. The pursuer reclaimed arguing that he was entitled to issues on all of the grounds proposed. The First Division refused the reclaiming motion finding that the pursuer was not entitled to an issue under the 1621 Act. However in its judgment the court endorsed the Lord Ordinary's decision to allow issues under the Bankruptcy Act 1696 and at common law.

[52] In addition to referring to *Laurie's Trustees* and *Wilson v Drummond*, Professor McBryde also refers, at paragraph 12.24, to the Scottish Law Commission's Memorandum on "Aliment and Financial Provision" (1976) Vol 2, paragraphs 3.93 to 3.94. At paragraph 3.93 the Scottish Law Commission stated:

"First, at common law, creditors may challenge a transfer of money or property if the transfer was gratuitous and the transferor was insolvent at the time of transfer. We do not, however, consider that this rule would extend to a capital payment or property transfer made under a court order on divorce. The basis of the common law rule is that a voluntary and gratuitous alienation made by a debtor when in a state of insolvency is deemed to be a fraud on his creditors. But a payment or transfer of property ordered by the court on divorce is not voluntary since the debtor is required to make it by the court. Arguably, it is not gratuitous since the order imposes an obligation which transforms the nature of the payment or transfer into an onerous one."

Following the Scottish Law Commission's Memorandum section 35 of the Bankruptcy Act 1985 was enacted. Section 35 provides for the recall of an order for payment of a capital sum on divorce in certain circumstances and now appears (in all material respects) as section 100 of the 2016 Act.

[53] Professor McBryde points out that the Scottish Law Commission may have assumed that a payment under a court decree could not be a voluntary act and therefore could not be challenged as an alienation by the debtor. If that is the case the Commission may have overlooked *Laurie's Trustees* and *Drummond* as cases where a decree or deed was reduced as being part of a fraudulent transaction.

[54] What lies at the heart of the discussion in *McBryde* and the other authorities is that for an alienation to be challengeable it must be voluntary. As stated in Goudy, *A Treatise on the Law of Bankruptcy in Scotland* (4th Edn) at p 22:

“It has been recognised as a general principle in our law, that voluntary alienations of property by debtors while in a state of insolvency, to the prejudice of their creditors, are fraudulent”.

[55] In Answer 9 the defender narrates the background to the appointment of the first trustee. She avers that the first trustee, on behalf of the Accountant in Bankruptcy, agreed to sell the debtor's interest in the subjects to her for £500. The pursuer denies that there was any such agreement. In Article 2 the pursuer avers that the first trustee abandoned the subjects. However, the court cannot reach factual conclusions at debate (see *Wilson v Norwich Union* 1999 SLT 1139 at 1140H & J). The defender goes on to aver in Answer 9 that she obtained decree in an action of declarator raised against the debtor. The terms of the decree are incorporated *Brevitatis causa* into the defender's pleadings. In what is a critical averment she states that:

“The property was subsequently transferred into the sole name of the defender in implementation of the said decree granted at Glasgow Sheriff Court on 13th July 2021.”

[56] In her oral submissions the defender argued that the decree was a compulsitor. The debtor had no choice but to comply with its terms. In that respect the granting of the disposition in favour of the defender was not a voluntary act. I accept, as the defender

submitted, that the cases cited by the pursuer, ie *Accountant in Bankruptcy v Orr*, *MacFadyen's Trustees* and *O'Boyle's Trustee* are distinguishable. None of those cases concern the grant of a disposition in implementation of a court decree.

[57] As Professor McBryde states it is an open question whether an alienation in response to a decree can be an alienation by a debtor. There are circumstances in which a payment or transfer of property made under a court decree can be found to be a gratuitous alienation. *Laurie's Trustees* is an example of a case where, although the debtor's actions were claimed to be in implement of a decree, in fact they were found by the court to be part of a wider fraudulent arrangement. In that respect the debtor's acts were voluntary. Such situations are fact specific. *Laurie's Trustees* was decided after proof.

[58] The pursuer submitted that the decree granted in favour of the defender did not order the debtor to do anything. The decree was different to the decree in *Laurie's Trustees* which was operative rather than declaratory. The decree granted in favour of the defender was granted in an action raised against the debtor. The decree finds and declares that the defender has acquired the whole interest in the subjects. As the defender submitted, under reference to *Macphail: Sheriff Court Practice* (4th edition) at paragraph 20.01 it should be assumed that the decree was granted "in respect of a live, practical issue having a sufficient degree of reality and immediacy". In any event I do not consider that it is appropriate to focus on the terms of the decree alone. The decree has to be considered in context. The defender makes averments about the agreement reached in relation to the sale of the subjects by the first trustee. For the purposes of the debate, I must read the defender's averments *pro veritate*.

[59] The pursuer also submitted that he had taken the deliberate decision not to challenge the decree. He only sought reduction of the disposition. That was on the basis that it was

registration of the disposition which completed the alienation. While I accept the rationale of that submission it does not deal with the issue of why the disposition was granted. It does not address the point raised by the defender of whether the grant of the disposition can be regarded as a voluntary act such as to be challengeable as a gratuitous alienation.

[60] Reading the defender's averments as a whole and given that, in particular the defender avers that the subjects were transferred into her sole name in implementation of the decree, I do not consider that the court can determine the relevancy of the defender's averments on this issue without hearing evidence. I shall therefore allow parties a proof before answer of their averments (save for the averments relating to the debtor's solvency and personal bar) under reservation of the pursuer's second plea in law.

Conclusion

[61] The defender has conceded that her averments in relation to the issue of solvency are irrelevant. I have found that the defender's averments anent personal bar are irrelevant. Accordingly, to give effect to my decision I shall exclude from probation the defender's averments in Answer 9 on p.6 of the record reading

"Separatim, the Pursuer on behalf of the AIB is personally barred from reneging on the agreed payment of £500 in exchange for the interest in title. Further explained and averred that at the time of transfer of the deed the debtor was absolutely insolvent."

I shall also repel the defender's first plea in law which relates to personal bar. The penultimate and pre penultimate sentences of Answer 9 relate to communications between the parties' agents. I cannot see how these averments have any relevance to the issue which remains in dispute ie the circumstances surrounding the grant of the disposition in favour of the defender and the decree granted in favour of the defender. Accordingly, I shall exclude

these averments from probation as well. *Quoad ultra* I shall allow parties a proof before answer of their averments under reservation of the pursuer's second plea in law.

[62] No submissions were made in relation to the issue of expenses on the basis that the position with expenses would depend on the outcome of the debate. Accordingly, I have fixed a hearing on expenses to take place on 22 July 2026 at 9.30 am Glasgow Sheriff Court, 1 Carlton Place G5 9DA to call in open court. If parties are able to reach agreement on the issue of expenses, they can contact my clerk to seek to have the hearing discharged and an appropriate interlocutor pronounced.