



SHERIFF APPEAL COURT

[2026] SAC (Civ) 40
INV-A106-23

Temporary Sheriff Principal B A Mohan
Appeal Sheriff I M Fleming
Appeal Sheriff J F Kerr

OPINION OF THE COURT

delivered by APPEAL SHERIFF JOAN F KERR

in the appeal in the cause

(FIRST) FRASER ALAN SMITH and (SECOND) CATRIONA ANDREA AILSA SMITH

Pursuers and Respondents

against

(FIRST) MARTIN CHARLES LEDNOR and (SECOND) ISOBEL LENNOX SCOTT LEDNOR

Defenders and Appellants

Pursuers and Respondents: A Innes; Wright, Johnston & Mackenzie LLP

Defenders and Appellants: G MacColl KC; Stronachs LLP

19 June 2026

Introduction

[1] The respondents own Balfreish Farm, Nairn. Their title to the property is registered in the Land Register in Title Sheet NRN3566. The appellants own Balfreish House, Nairn. Their title is recorded in Title Sheet NRN3003. Both properties were formerly part of the same title, however, Balfreish Farm was broken off and disposed separately in terms of a disposition granted on 5 August 1977.

[2] Access to Balfreish Farm is taken via a track leading from the public road. The track falls within the title to Balfreish House. The 1977 Disposition created the following servitude right of access over that track:

“(First) the right to use for all the usual purposes all existing private roads and ways forming part of any other portions of the said Lands of Cantraydoune including Balfreish and Drumore of Cantray which are at present so used.”

[3] The servitude is recorded at Burden 1 in Title Sheet NRN3566. As for the burdened property, the servitude is recorded at Burden 3 in Title Sheet NRN3003.

[4] The track was “an existing private road [or] way” as at the date of the grant and recording of the 1977 Disposition. The previous owner of Balfreish Farm, (Craggie Farms Limited), used the track to take access to adjacent fields owned by it in connection with its farming business, and also for certain personal and recreational uses by family members of the owners. The sheriff held that access was taken on a year-round basis by the company.

[5] In May 2002, the then owners of Balfreish Farm and the then owners of Balfreish House entered into a minute of agreement which was subsequently recorded in the General Register of Sasines on 9 July 2002. This is recorded at Burden 2 in Title Sheet NRN3566 and at Burden 5 in Title Sheet NRN3003. The minute of agreement acknowledged the existing servitude granted in 1977 and extended the width of the servitude to 3 metres and 55 centimetres (or 140 inches). The minute of agreement recorded that the track was used by cars, agricultural vehicles, grain lorries and other heavy agricultural vehicles.

[6] Following the purchase of Balfreish Farm by the respondents in 2022, they sought to have a servitude right of access along the track formally entered into Title Sheet NRN3566 and NRN3003. An application to that effect was made to the Keeper on the basis that there had been prescriptive possession and use of the track by the respondents and their predecessors in title for more than 20 years. Affidavits in support of this position were

produced. The Keeper accepted the application. Title Sheet NRN3566 now states that the subjects are to be taken together with “a servitude right of pedestrian and vehicular (including with heavy vehicles) access over the private roadway tinted blue on the cadastral map [being the track]” and notes that this “servitude right of access was created by prescription and added to this title by application registered 23 June 2022”. This servitude was recorded as Burden 9 in Title Sheet NRN3003.

[7] A dispute emerged between the parties as to the use of the access track. The respondents commenced proceedings at Inverness Sheriff Court seeking to interdict the appellants:

“from interfering with or attempting to interfere with the Pursuer’s [sic] servitude rights of pedestrian and vehicular access, including with heavy vehicles, to their heritable property known as and forming Balfreish Farm, Cawdor, Nairn”.

The appellants counterclaimed, seeking declarators that: (i) Burden 9 in Title Sheet NRN3003 was a manifest inaccuracy; and (ii) the indication in Title Sheet NRN3566 that Balfreish Farm had the benefit of a servitude right of access created by prescription was also a manifest error.

[8] Following proof, the sheriff held it established that the appellants had interfered with the respondents’ servitude right of access and granted decree of interdict. Separately, he rejected the appellants’ counterclaim; he did not consider Title Sheets NRN3003 and NRN3566 contained any manifest inaccuracies.

Submissions for the appellants

[9] The sheriff erred in both (i) granting the permanent interdict, and (ii) refusing the counterclaim. The sheriff only found that certain historic acts of the appellants had interfered with the respondents’ servitude right of access. The sheriff did not, however,

make any finding, in fact or in law, that it was to be apprehended that the appellants would, in the future, take steps to interfere or attempt to interfere with the respondents' exercise of the servitude right of access, far less make any finding that there was a reasonable basis upon which one might hold such an apprehension. There was no evidential basis to infer such a finding in fact or in law. As such, there was no proper basis for any grant of perpetual interdict against the appellants.

[10] The sheriff also erred in determining that acts by third parties, not the appellants, supported the making of permanent interdict against them. Furthermore, the scope and terms of the interdict were too imprecise. It was not clear what actions of the appellants were precluded by its terms.

[11] Both Burden 9 of Title Sheet NRN3003 and section A of Title Sheet NRN3566 state that the servitude right of access (upon which the respondents founded their claim in the present action) was created by prescription. That position was wrong in law. Separately, it was contrary to the finding of the sheriff who held the servitude was created by express grant in the 1977 Disposition, albeit he took the view that this grant was fortified by subsequent possession and use.

Submissions for the respondents

[12] Reliance was placed upon the sheriff's comment at para [86] of the judgment, namely: "There are reasonable grounds to apprehend infraction of the Pursuers' right of access". That comment demonstrated that the sheriff did consider future conduct by the appellants. The sheriff's note, when read as a whole, made clear his consideration of future anticipated conduct. It was not conceded that there was an absence of a relevant finding in

fact, however, if the court considered otherwise, it was invited to make a relevant finding in fact to reflect the conclusion noted in para [86].

[13] The criticism that the actions of third parties were not relevant to the question of perpetual interdict was incorrect. In finding in fact [18] the sheriff held that the appellants could have prevented the blocking of the servitude through control of parking on their property. As to the appellants' criticism of the specification of the crave for interdict, the crave only precluded interference with the servitude right of access by the appellants. Although an interdict must be precise, it need not set out every eventuality of potential interference.

[14] With respect to the counterclaim, the appellants' two craves did not solely take issue with the manner of creation of the servitude across Balfreish House; the craves queried the servitude existing at all. To allow both craves, in full, would lead to the servitude being removed from both title sheets. If the servitude was created by express grant in the 1977 Disposition, rather than by prescription in terms of section 3(2) of the Prescription and Limitation Act 1973 Act, section 3(1) of the 1973 Act was relevant in constituting the extent of the servitude and exempting it from challenge. Whether by section 3(1) or section 3(2), the servitude was created, or fortified, by prescription and, consequently, there was no manifest inaccuracy in either title sheet.

Decision

[15] Interdict is a forward looking, preventative remedy. It orders the cessation of a wrong which is ongoing, and/or orders that a wrong which is reasonably apprehended should not occur:

“...interdict is granted against a wrong which is in the course of being committed or where there is reasonable ground for apprehending that a wrong is intended to be committed.” *Inverurie Magistrates v Sorrie* 1956 SC 175, LJC Thomson at p179.

[16] Past wrongful acts can, of course, inform a court’s assessment of what may happen in the future. It follows that when a sheriff grants a crave for interdict they may make findings in fact detailing past wrongs.

[17] In this matter, the sheriff made the following relevant findings in fact:

“17. On or around 14th May 2023 Fraser Smith was the front seat passenger in a car being driven along the access road by his mother-in-law. Mr Lednor walked out in front of the car with his hand gestured to stop and stated we do not want you coming down here and that the right of access was only for agricultural use.

18. In the summer of 2023, a vehicle belonging to a wedding venue supplier blocked access the Pursuer’s property. This was a matter that the Defenders could have prevented through their control of parking on their property.

19. A wedding guest attending the wedding of the Defender’s (sic) son entered onto the Pursuers’ land with a campervan and parked it there. The vehicle was not moved until after midnight. This was a matter that the Defenders could have prevented through their control of parking on their property.

20. The Defenders allowed their dogs to surround Catriona Smith’s vehicle. The dogs ran around the vehicle and were barking, causing Catriona Smith to stop her vehicle.

21. The Defenders have also raised drains which cross the access track without any prior warning, with the result that this blocks the use of the access track by the Pursuers.

22. The Defenders have used cameras to film the Pursuers taking access along the route.”

[18] The only finding in fact and law relating to the interdict granted in this case is in the following terms:

“The actions described in Findings in Fact 17 to 22 have each **had** the consequence of interfering or attempting to interfere with the Pursuer’s servitude right of access contained in parties respective titles.”

[19] The question we are being asked to address in this case is whether the sheriff was wrong to grant perpetual interdict in the absence of any indication in his findings of what actions could reasonably be anticipated in the future.

[20] Emphasis on the word “had” in the finding quoted is ours. The sheriff’s judgment was issued in September 2025: finding in fact 17 concerns an incident on 14 May 2023 referred to entirely in the past tense; finding in fact 18 to an incident in summer 2023 referred to entirely in the past tense; findings in fact 19, 20 and 22 refer to incidents on unspecified dates but entirely in the past tense; finding in fact 21 refers to an action taken by the appellants and referred to in the past tense. The sheriff does then go on to detail a consequence which, at first blush, may be construed as ongoing. However, this particular action is referred to within the judgment only during the evidence of the first respondent, at para [26] where the evidence is recorded as “Drains had been lifted along the route without telling the Pursuers in advance”. The past tense is used. There is no mention of it causing an ongoing issue. Counsel for the respondents at no stage suggested to us that finding in fact 21 highlighted an ongoing wrong. That clearly accords with the evidence. In any event, use of the word “had” in the finding in fact and law demonstrates beyond doubt that the sheriff had in mind only completed wrongs when deciding the facts of the case and their legal consequence. Interdict is not a remedy against a completed wrong (*Hill v Council of the Law Society of Scotland* 2000 SLT 1389). It follows that, looking at the findings in fact and finding in fact and law, it is not clear why interdict was granted.

[21] It was the appellants’ position that the absence of a finding anticipating future wrongs was a fatal flaw in the judgment. The respondents urged us to read the judgment as a whole and generously and conclude that the sheriff did in fact reach the view that future wrongs can be anticipated and was, consequently, correct to grant the interdict. Counsel for

the respondents sought to persuade us that if the following route was taken, it was manifest that the sheriff clearly had the future in mind. In para [86] of his note the sheriff states “There are reasonable grounds to apprehend infraction of the Pursuers’ right of access.” He states this directly after quoting a passage from the case of *Mowi Scotland Limited v Staniford* 2024 SLT (SAC) 167 which is forward looking in nature. The sheriff has clearly had regard to the test in *Mowi*. In his analysis in para [86] the sheriff makes his negative views of the first appellant’s evidence clear. This is supplemented in para [73] of his note wherein he states that, where the witnesses’ evidence differed, he preferred that of the respondents. In finding in fact 16 the sheriff refers to an ongoing business operated by the appellants. Taken together with the impression formed by the sheriff that the appellants did not accept that the respondents had been doing what they were entitled to do (noted at para [86]), it is clear that the sheriff concluded that the appellants would continue to interfere with the respondents’ right of access.

[22] There are issues with the overall approach the respondents invited us to take and the various constituent elements and we are not persuaded by that approach:

“The findings in fact should be stated in sufficient detail to explain and justify the decerniture.” MacPhail *Sheriff Court Practice* 4th Edition 17.06.

“A finding in law embodies the sheriff’s conclusion, or direction to themselves, on a relevant question of law, which should already have been focused in a plea-in-law.” Ibid 17.09.

[23] The plea-in-law for the respondents was as follows:

“The Pursuers being reasonably apprehensive that the First and Second Defenders will take steps to interfere with their servitude right of access the Pursuers are entitled to interdict as (FIRST) craved.”

The finding in fact and law noted at para [18] above does not direct itself to the legal remedy sought.

[24] We were invited to overlook this clear issue and, instead, piece together quite an elaborate jigsaw in support of the respondents' argument. In inviting us to do so counsel did not refer to any authority. That is perhaps unsurprising: what authority there is may forgive a lack of formal findings in fact, but not findings in law. We do accept that a judgment can be looked at as a whole. For example, in *NJDB v JEG* 2012 UKSC 21 where Lord Reed said at para [31]:

“...It is of course essential that the court's findings on any relevant matters of fact should be made clear, but that can be done within the ambit of a judgment whose primary focus is upon the central issue, and which in consequence demonstrates the nexus between that issue and the findings of fact.”

[25] Crucially, the fact finder must, somewhere in their judgment, make it clear that they know what the central issue is in the case they are dealing with. The central issue in an interdict case is the existence of an ongoing wrong, and/or the apprehension of a wrong. When we look at the judgment as a whole, and the parts to which we were directed on behalf of the respondents in particular, can it be said that the sheriff's primary focus was on that central issue? Had he referred to the test for interdict as set out in *Inverurie Magistrates v Sorrie* (*supra*, para [15]) it would have provided considerable assistance. The only case the sheriff refers to is *Mowi Scotland Limited v Staniford* (*supra*). The issue in that case was whether harm had to be caused in an action for interdict. It was not focused on ongoing or anticipated wrong. That latter element had been easily established in *Mowi* as the defender had freely stated an intention to continue his wrongful actions. In the appeal before us, when the sheriff states in para [86] of the judgment “Harm need not be established”, his focus is not on the central issue of the likelihood of future wrongs.

[26] In para [86] of the judgment the sheriff notes that he did not accept the first appellant's versions of events. Again, however, all references to the attitude of the first

appellant are in the past tense. There is nothing that can be taken to refer to ongoing issues or which assists with regard to what can be anticipated to occur in the future. The bald statement “There are reasonable grounds to apprehend infraction of the Pursuers’ right of access.” is not enough. Such a conclusion requires context and reasoning. As previously stated, whilst past actions can certainly inform a court of what may be likely to occur in the future, the reason for the likelihood requires to be expressed. This is a fundamental problem for the respondents in their invitation to us to piece together the sheriff’s rationale from various parts of the judgment.

[27] We cannot agree that finding in fact 16 (“The Defenders operate a wedding venue business from Balfreish House...”) allowed the inference to be drawn that future wrongs would occur. The appellants asserted that the sheriff erred by determining that acts by third parties and detailed in findings in fact 18 and 19 (detailed at para [17] above), supported the making of permanent interdict against them. In the context of this case, we have sympathy with that argument. The sheriff found that the appellants had identified parking areas and non-parking areas in connection with their business (finding in fact 16). He, therefore, found that they had taken steps to control parking. The respondents are effectively urging us to infer from findings in fact 18 and 19, and by reference to control of parking in particular, that the appellants had knowledge of, or were complicit in, vehicles being parked in non-parking areas. We cannot draw such an inference when we have regard to the findings in fact, or the judgment as a whole. We are satisfied that findings in fact 18 and 19 could play no part in a decision to grant interdict against the appellants. A finding of complicity or, at least knowledge, on the part of the appellants would have been necessary to render these incidents relevant to the orders sought. In the context of this action the flouting by third parties of parking controls put in place by the appellants was irrelevant to

consideration of whether an interdict should be granted against the appellants. It follows from this conclusion that we cannot infer from finding in fact 16 that, because the appellants continue to run a business from their premises, future wrongs can be anticipated.

[28] Finally, we were directed again to para [86] of the judgment where the sheriff stated that “It was clear to the court that the Lednor’s (sic) did not accept that the Pursuers were doing something they were entitled to do.” Again, use of the past tense is significant. There is nothing in that statement which assists with regard to what can be anticipated to occur in the future.

[29] The evidential basis for the decision of a fact finder should, with some very limited leeway, be found in their findings in fact. In this case, on the basis of evidence he preferred and found established, the sheriff was able to decide that, in the past, on a few limited occasions, the appellants had interfered with the respondents’ servitude right of access. That did not justify the granting of an interdict. The justification for a remedy granted should be found within their findings in fact and law or findings in law. The findings in fact and law in this case does not address the law applicable to the remedy sought. We agree with the appellants’ proposition that, in the context of this judgment, the absence of a finding about ongoing wrongs and/or anticipated wrongs is fatal. The appeal against the decision to award interdict is therefore granted.

[30] Given our decision that interdict should not have been granted at all, we no longer require to address the appellants’ point concerning the precision of the interdict.

Counterclaim

[31] The sheriff made the following findings in fact and law in respect of the counterclaim:

2. “There is no manifest inaccuracy in the Land Register of Scotland in respect of Title Number NRN3003 in that Section D (Burdens) under Entry No.9 narrates that those subjects are burdened by, ‘a servitude right of pedestrian and vehicular (including heavy vehicles) access over the private roadway edged brown on the cadastral map benefitting subjects Balfreish Farm, Nairn, registered under title number NRN3566 constituted by prescription, as intimated to the Keeper on 23 June 2022’, (‘the 2022 Servitude’).”
3. “There is no manifest inaccuracy in the Land Register of Scotland in respect of Title Number NRN3566, in that (i) Section A (Property), under ‘Description’, narrates that those subjects benefit from the 2022 Servitude, namely by inclusion of the words, ‘...and a servitude right of pedestrian and vehicular (including heavy vehicles) access...’, and (ii) Section A (Property), under ‘Notes’ narrates that ‘1. The said servitude right of access was created by prescription and added to this title by application registered 23 June 2022.’”

[32] The route by which he reached this conclusion is not clear. It is at odds with the following findings in fact:

- “7. Balfreish House is burdened by an express servitude right of access in terms of a Disposition by Alexander Irvine Mackenzie and Others in favour of Craggie Farm Ltd recorded [in] GRS (Nairn) on 5 August 1977.
8. The express servitude right of access in the 1977 Disposition states;

(First) the right to use for all the usual purposes all existing private roads and ways forming part of any other portions of the said Lands of Cantraydoune including Balfreish and Drumore of Cantray which are at present so used.’

The terms of the 1977 Disposition and the plan accompanying that Disposition do not expressly show that there is a servitude right of access along the access track leading towards Balfreish House.
9. The express servitude right of access in the 1977 Disposition is not registered in the Title Sheet for Balfreish Farm, NRN3566”

[33] Neither party took issue with these findings in fact, even though number 9 is not entirely accurate as the servitude is noted on the Title Sheet (*supra* para [3]). Significantly, it was accepted by both parties, at the hearing before us, that the servitude right was, indeed, created by the 1977 Disposition.

[34] Findings in fact 10 - 12 are very much based on the evidence of Glen Allingham. He gave detailed evidence of the uses to which Balfreish Farm and the access road were put by Craggie Farms Limited, the purchasers of the farm in terms of the 1977 Disposition.

Acceptance of this evidence and the consequent findings in fact culminated in the sheriff stating in para [82] of the judgment “By 1997, I am satisfied that prescriptive possession had determined the extent and burden of the right, per section 3(1)(b) of the 1973 Act.”

[35] Before us, neither party took issue with findings in fact 10 - 12. The appellants argued that having made all of these findings, the sheriff should have reached the view in law that the entries inserted into the Land Register in 2022 were manifestly inaccurate. The respondents contended that he reached the correct conclusion in law.

[36] Our concluded view is that there is an obvious tension between the sheriff’s finding that section 3(1)(b) of the Prescription and Limitation Act 1973 applied to the circumstances and finding in law that there was no manifest inaccuracy in an entry in the respective titles stating that the servitude right of access was created by prescription alone.

[37] Parliament set matters out in the Prescription and Limitations (Scotland) Act 1973 in the following way:

“3.— Positive servitudes and public rights of way.

- (1) If in the case of a positive servitude over land —
 - (a) the servitude has been possessed for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
 - (b) the possession was founded on, and followed the execution of, a deed which is sufficient in respect of its terms (whether expressly or by implication) to constitute the servitude,
 then, as from the expiration of the said period, the validity of the servitude as so constituted shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.
- (2) If a positive servitude over land has been possessed for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from

the expiration of that period, the existence of the servitude as so possessed shall be exempt from challenge.”

[38] The position is stated in Cuisine and Paisley, *Servitudes and Rights of Way*, paragraph 10.05 as follows:

“...the 1973 Act deals with two situations: where there is a grant and where there is not. In the first case, the possession over the prescriptive period is used to explain or fortify an existing grant, whereas in the second it constitutes the grant...”

The findings in fact together with mention of section 3(1)(b) of the 1973 Act indicate that the sheriff came to the view that the servitude was constituted by the founding deed (the 1977 Disposition), all be it fortified by prescription. Section 3(2) relates to a situation where a servitude is created by prescription alone.

[39] Section 65(1) of the Land Registration etc (Scotland) Act 2012 states:

“A title sheet is inaccurate in so far as it-
(a) misstates what the position is in law or in fact...”

The current entries in the relevant property title deeds are clearly inaccurate, referring as they do to the constitution or creation of the servitude by prescription alone, rather than by a deed thereafter fortified by prescription as outlined in the uncontested findings in fact. The entries stating that the servitude was created by prescription misstates the position both in law and in fact.

[40] The question we must answer is whether the misstatements amount to “manifest inaccuracies” such that the craves of the counterclaim ought to have been granted. The Registers of Scotland’s own online guidance (last updated on 27 March 2026) states that “manifest” means “perfectly clear and not reasonably disputable.”

[41] The 2022 entries in the titles noting the servitude being created by prescription were, of course, made at the behest of the respondents. They presented the affidavits and made the application to the Keeper. It stands to reason that the counterclaim is, therefore,

opposed by them. However, the argument placed before us on behalf of the respondents was not compelling. It amounted to asking us to overlook the admitted inaccuracy in the entries about how the servitude was created because, otherwise, the consequence would be a reduction in the scope of the servitude, or, removal of the servitude altogether. Avoiding such an outcome seems to have informed the sheriff's approach to the counterclaim. His decision to refuse the counterclaim leaves the servitude described as a "right of pedestrian and vehicular (including with heavy vehicles) access", but also leaves its constitution described as "by prescription". This contradicts his findings that the running of prescription had fortified the servitude granted in the 1977 Disposition. We are not persuaded to refrain from interfering with such an obvious inaccuracy, which is wrong both in law and in fact, regarding creation of the servitude because the respondents perceive it will cause them some difficulty in exercising the servitude which exists by virtue of the 1977 Disposition, and, was acknowledged and expanded by a minute of agreement in 2002. The inaccuracy is perfectly clear, and, in our view, not reasonably disputable.

[42] Neither party moved us to find that the 2022 Land Register entries were manifestly inaccurate in part only. We were urged to either uphold the sheriff's decision on the craves of the counterclaim in whole or decide that the craves should have been granted and that the entries should be declared manifestly inaccurate as a whole. We agree that is the correct approach.

[43] We agree with the appellants' proposition that, in light of the sheriff's findings, there is a manifest inaccuracy in the entries registered on each title on 23 June 2022. The appeal in relation to the counterclaim is upheld.

Disposal

[44] We will allow the appeal and recall the sheriff's interlocutor of 11 September 2025.

We: (i) repel the respondents' third plea-in-law in the principal action; (ii) uphold the appellants' third plea-in-law in the principal action; (iii) assoilzie them from the craves of the principal action; (iv) repel the respondents' second and third pleas-in-law in the counterclaim; (v) uphold the appellants' first and second pleas-in-law in the counterclaim; (vi) grant decree as craved in the counterclaim; and (vii) find the appellants entitled to the expenses of: (a) the principal action; (b) the counterclaim; and (c) the appeal against the respondents.