



SHERIFF APPEAL COURT

**[2020] SAC (Civ) 23
ABE-A297-18**

Sheriff Principal M Stephen QC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL M STEPHEN QC

in appeal by

DEBORAH LOUISE HAY

Proposed Appellant:

in the cause

THE PARACHUTE REGIMENT CHARITY

Pursuers and Respondents:

against

MRS DEBORAH LOUISE HAY

Defender and Proposed Appellant:

Defender and Proposed Appellant: Simpson QC; R & R Urquhart, Solicitors

Pursuers and Respondents: Flannigan; Anderson Strathern, Solicitors

30 August 2019

[1] This is an action of count, reckoning and payment by the Parachute Regiment Charity, one of two residuary beneficiaries on the estate of the late Gregory William Hughes. The defender is Deborah Louise Hay, the Executrix on the deceased's estate. The deceased left a Will which he executed on 13 March 2014 some 9 months before his death on 14 December 2014. The issue which the sheriff at Aberdeen required to determine related to

Clause 3 of the Will and whether it contains a valid bequest and if so whether the legacy of that bequest had adeemed. The beneficiary of any legacy bequeathed by that clause is Katherine Hay, the daughter of the defender. The heritable property mentioned in Clause 3 had been sold in June 2014. The free proceeds of sale were paid to the deceased prior to his death.

[2] The sheriff heard parties on their preliminary pleas on 31 January 2019 when both parties were represented by senior counsel. The sheriff's interlocutor of 5 February 2019 disposes of the preliminary pleas and repels the defence. The sheriff has prepared a note giving his reasons for coming to the view that the defender is bound to fail in her defence to the action. The sheriff was satisfied that the bequest in Clause 3 was the deceased's interest in the heritable property which no longer existed at the date of death. The legacy in favour of Katherine Hay had adeemed.

[3] The sheriff continued the cause to be addressed on the terms of the final interlocutor and to allow the executry accounts to be finalised. The case next called on 21 March 2019 when parties were again represented by senior counsel. They were agreed that the defender should be ordained to lodge an accounting of her intromissions as executor with the estate. Parties addressed the sheriff on expenses. It was a matter of agreement that the pursuers were entitled to an award of expenses against the defender. The question for the sheriff was whether the defender should be liable as executor as proposed by her counsel or personally liable as argued for by the pursuer. In other words was the defender entitled to relief from the deceased's estate in respect for her liability in expenses? The sheriff issued an interlocutor on 26 March 2019 together with a note explaining his decision to find the defender personally liable for the expenses of the cause to date. The pursuers' motion for

sanction for the employment of senior counsel was continued to be heard on the procedure roll of 16 May 2019 by which time the accounting would be available.

[4] On 16 May 2019 the parties were represented by solicitors. Mr Flannigan appeared for the pursuers and Mr Smith, a local agent, appeared for the defender. The interlocutor pronounced following that procedural hearing is in the following terms:

"The Sheriff, on the Pursuer's unopposed motion and they being content that the executry account number 17 of process satisfies the Defender's obligation to account to the Pursuer for the whole sums due to the Pursuer in terms of the Will of the late Gregory William Hughes dated 13 March 2014 and registered in the Books of Council and Session on 11 March 2015, Grants decree for payment by the Defender to the Pursuer of the sum of Sixty Eight Thousand Five Hundred and Seventy Seven Pounds and Sixty Four Pence (£68,577.64) being the balance found due to the Pursuer as brought out in the said executry account, with interest thereon, payable by the Defender personally, at the rate of 8 per cent per annum from today's date until paid; Finds the Defender personally liable to the Pursuer in expenses of the cause as taxed; Allows an Account thereof to be given in and Remits same to the Auditor of Court to tax and Report thereon; on the Pursuer's opposed motion Sanctions the employment of Senior Counsel."

This interlocutor constitutes final judgment in terms of section 136 of the Courts Reform (Scotland) Act 2014 ("the 2014 Act"). In terms of section 110(1)(a) an appeal may be taken to the Sheriff Appeal Court without the need for permission against a decision of a sheriff constituting final judgment in civil proceedings.

[5] In terms of rule 6.3 of the Sheriff Appeal Court Rules an appeal must be made within 28 days after the date on which the decision appealed against was given. Section 116 of the 2014 Act provides that the effect of an appeal is to open to review all prior decisions in the proceedings.

[6] On 10 July 2019 the defender's solicitors lodged a note of appeal with the Sheriff Appeal Court. The note of appeal states:

"1 The Appellant appeals against the decision of the Sheriff at Aberdeen concerning the sum due to the Pursuer by the Defender, the decision bearing to have been made on 16th May 2019."

Two grounds of appeal are stated. The first ground of appeal is that the sheriff erred in his interpretation of the Will and

"Whether the subject of the legacy was adeemed as at the date Mr Hughes died depends on whether the money Mr Hughes received was still in his possession as at the date of his death. This requires evidence to be led."

This ground of appeal challenges the sheriff's decision in his interlocutor of 5 February 2019.

The second ground of appeal states that the sheriff erred in deciding that the appellant is liable personally for the expenses of the proceedings. This ground of appeal challenges the sheriff's interlocutor of 26 March 2019.

[7] The decree of 16 May 2019 was extracted on 9 July 2019.

Motion to allow the note of appeal to be lodged late

[8] Against that background the defender's motion to allow the note of appeal to proceed, notwithstanding that it was lodged late, was opposed by the pursuers and called on 22 July 2019. The defender seeks relief under rule 2.1 to excuse the failure to comply with the time limit set down in rule 6.3. The written submissions in support of the motion are as follows:

"Following the hearing on 16 May 2019 the sheriff clerk enquired of both parties' agents as regards the position on interest. A response was provided by the appellant's agents on 6 June 2019. It was understood that the sheriff's interlocutor would be issued thereafter. An enquiry was made by the appellant's agent on 21st June to the Sheriff Clerk about the progress of the interlocutor. No response was received. No interlocutor was received by the appellant's agent. Instead, on 27th June 2019, an email was received from the Respondent's agents notifying the Appellant's agents of an application for a diet of taxation and enclosing a copy of the Sheriff's final interlocutor. That final interlocutor bears to have been made on 16 May 2019. Various enquiries were made by the appellant's agents of the Sheriff Clerk at Aberdeen over the next few days, the upshot of which was that the

appellant's agents were told that the only means of appealing were to apply by motion to be allowed to appeal late, relying on the general dispensing power in Rule 2.1. The appeal is being lodged 12 days after the appellant's agents first received notice of the sheriff's final interlocutor. In the foregoing circumstances it is submitted that the appeal should be allowed to proceed notwithstanding that it is being lodged late".

[9] In his oral submissions senior counsel referred to a chronology prepared on behalf of the defender which detailed relevant events between the procedure roll hearing on 16 May 2019 and the lodging of the note of appeal and motion. Of considerable importance is the fact that the decree was extracted on 9 July 2019.

[10] It appears to be a matter of agreement that on 17 May 2019 the day after the hearing a member of the sheriff clerk's staff contacted both agents by email. The email is in the following terms:

"Good afternoon, I write in respect of the above case, which called in court yesterday. The Sheriff has asked me to contact parties to confirm if interest was being sought - and if so the date from which it would be payable (presumably the date of decree, namely 17 August 2016). I look forward to hearing from (sic) as soon as possible to enable the interlocutor from yesterday to be prepared".

In response to that email the solicitor for the defender sought the advice of senior counsel and on 6 June 2019 a reply was sent to the sheriff clerk in the following terms:

"Having now heard from Senior Counsel our instruction is to intimate that our client's position is that judicial interest should apply from date of final decree only".

That response was copied to the solicitor for the pursuer and others within the firm of R & R Urquhart, solicitors who act for the defender.

[11] Counsel for the appellant emphasised the steps that had been taken by the defender's solicitors to enquire when the interlocutor would be issued. On 21 June a trainee solicitor with R & R Urquhart ("RRU") contacted the sheriff clerk depute who had written to the parties about the question of interest. This was done by email to the depute's email address.

The email sent at 12.45pm states: "Good afternoon Colin Whittle has asked me to check if there had been any update from the Sheriff on the final interlocutor for this case?" It appears that no response was forthcoming. The pursuers' solicitors, Anderson Strathern, intimated their account of expenses together with the sheriff's interlocutor (dated 16 May 2019) by email on Thursday 27 June 2019. The defender's position is that the interlocutors were incorrectly dated 16 May and it was understood to have been finalised and signed on 6 June 2019 when the parties confirmed their position on the date from which interest should run. The solicitor for the defender had no record of receiving the interlocutor by email from Aberdeen Sheriff Court. The following day, 28 June, a trainee solicitor at RRU contacted Aberdeen Sheriff Court and spoke to a member of the sheriff clerk's staff. In an email of the same date the trainee solicitor points out that the interlocutor had not been received but understood that it was supposed to have been sent to RRU's email address on 6 June 2019 but had not been received. RRU had been made aware of the interlocutor by the pursuers' solicitors the previous day. In that email the trainee took issue with the backdating of the interlocutor to 16 May (being the date of the hearing before the sheriff) indicating "our client had intended to appeal the decision and this opportunity appears to have been lost." That email was followed later the same day by an email from Mr Whittle the solicitor at RRU who was acting for the defender which states:

"Following the email this afternoon from my colleague, Jennifer Baird, for the avoidance of doubt the position of Mrs Hay as executrix and as an individual, appears to have been prejudiced.

I trust that a period of 14 days will be given from your intimation - at long last - today in which to submit an appeal, and that this will be confirmed at the earliest possible opportunity.

Failing that, we must and do reserve the position of Mrs Hay in all respects".

The sheriff clerk depute responded on 2 July to the effect that the Sheriff Court had no function with regard to civil appeals in the Sheriff Appeal Court and referred to the Act of

Sederunt (Sheriff Appeal Court Rules) 2015 SSI 2015/356 making specific reference to rules 2.1 and 6.3. Mr Whittle acknowledged that email and the information provided on 8 July indicating that senior counsel had been instructed to prepare the appeal.

[12] Mr Simpson confirmed that he provided advice to his instructing solicitors on 4 July to the effect that an appeal should be lodged as soon as possible together with an application for relief under rule 2.1. He was then instructed to draft grounds of appeal and a motion in terms of rule 2.1 on 5 July. He returned the draft grounds and draft motion by email on 8 July and the appeal together with associated motion to allow it late was lodged with the Sheriff Appeal Court on 10 July 2019. Unfortunately, on 9 July 2019 the decree was extracted.

[13] Counsel for the appellant accepted that as a matter of generality there can be no appeal after an extract is issued (*Alloa Brewery Company v Parker* 1991 SCLR 70). Nevertheless, in this case the decree or final interlocutor was incompetently dated 16 May 2019. The earliest date the interlocutor could have been issued is 6 June 2019. Had the interlocutor been issued to the defender's agents an appeal would have been lodged timeously. The interlocutor dated 16 May 2019 was therefore invalid. The date of an interlocutor is of critical importance. It defines the time for appeal. The date of the final interlocutor is wrong. Mr Simpson accepted that the decree had not been extracted following the lapse of 28 days after 16 May and that the issue of extract on 9 July was consistent with the interlocutor having been issued to parties on 6 June. Mr Simpson did not suggest that the extract had been issued incompetently but a combination of factors including the incorrect dating of the interlocutor and the failure on the part of the court to intimate the interlocutor to the defender's agents rendered the interlocutor invalid. In these circumstances this court could look behind the extract and exercise its power to grant relief

in terms of rule 2.1 by allowing the period for lodging the note of appeal to be prorogated.

Reference was made to *Noble v Noble* 1990 SLT (Sh Ct) 15; *Millar v Millar* 1992 SLT (Sh Ct) 69; *Gaunt v Marco's Leisure Limited* 1995 SCLR 966 and *Wanderer's World Limited v Marco's Leisure Limited* 2000 SLT (Sh Ct) 79.

[14] In the event that the court allowed the motion the expenses of today's motion should be expenses in the cause.

[15] Mr Flannigan for the pursuers opposed the motion. Decree having been competently extracted no appeal can now be lodged nor is the court able to exercise its dispensing power. There was no incompetence or irregularity in the issuing of the extract and the motion should be refused in light of the decision in *Alloa Brewery Company Limited v Parker*. Counsel for the defender had not disputed that the extract had been competently issued.

[16] The interlocutor which bears the date of 16 May 2019 reflects the decision of the sheriff that day. The only reason for the delay in the issuing of the interlocutor relates to the date from which interest should run.

[17] The grounds of appeal are brief and relate essentially to the sheriff's interlocutor of 5 February 2019 which dealt with the substantive issue of the interpretation of the will and the second ground of appeal relates to the interlocutor of 26 March 2019 in respect of expenses. The grounds of the appeal do not state specific points of law on which this court could allow the appeal. Grounds of appeal could have been drafted prior to the final interlocutor.

[18] The pursuers' solicitors had been in touch with the defender's solicitors by email regarding expenses and interest following the appearance on 16 May. They were advised by the defender's solicitor on 10 July that there was an ongoing appeal. The defender's solicitors had not been in contact with the pursuers' agents with regard to the final

interlocutor following the appearance on 16 May 2019. The defender's solicitor would appear to have taken a leisurely approach to the question of appeal. He had delegated responsibility to counsel and had not acted promptly and properly with regard to the lodging of the appeal. The pursuers' agents had contacted Aberdeen Sheriff Court enquiring with regard to the extract decree which was required to enforce decree. The pursuers' agents had an account of expenses prepared which was intimated to RRU by email on 27 June. This followed previous attempts by the pursuers' agents to deal with expenses by agreement in an effort to avoid taxation and the expense of taxation.

[19] *Alloa Brewery v Parker* makes it clear that there can be no appeal after extract. The four authorities cited by the defender are special on their own facts and are all examples of extracts being incompetently issued allowing the sheriff principal to disregard the extract with the consequence that these particular cases can be distinguished from *Alloa Brewery*. The court could therefore consider whether to exercise the dispensing power to allow the appeal late. In this case it is accepted that there is no incompetency or irregularity in the issuing of the extract. The circumstances of this case do not justify this court recalling the extract and exercising its discretion. The facts in *Wanderer's World Limited v Marco's Leisure Limited* are quite different from the circumstances of this case. In *Wanderer's World* the sheriff clerk had accepted a note of appeal; the fee for the note of appeal and requested a note from the sheriff. In these circumstances the extract should not have been issued and could be considered improperly and incompetently issued. The appellant here is not in the same position. In the circumstances the motion ought to be refused.

Decision

[20] When this motion called before me on 22 July 2019 I heard lengthy and elaborate submissions as to the procedural background to the case together with RRU's communications with Aberdeen Sheriff Court. However, ultimately, the inconvenient fact for the defender is that extract decree was issued by the court on 9 July 2019 whilst the defender and her advisors contemplated lodging an appeal challenging the sheriff's decisions on matters he determined in February and March. The note of appeal was lodged with this court one day later.

[21] The general rule on the effect of extract on an appeal is set out authoritatively in *Alloa Brewery Company v Parker*. It is not competent to exercise the dispensing power in rule 2.1 of the Sheriff Appeal Court Civil Rules to allow an appeal to be marked late if the decree appealed against has been extracted. This court has applied that rule in previous, often deserving, cases. See *Hamilton v Glasgow Community and Safety Services* 2016 SC (SAC) 5; KS [2017] CSIH 68.

[22] Counsel for the defender and proposed appellant cited a number of cases in which *Alloa Brewery* had been distinguished on the basis that the decree had been improperly or incompetently extracted: in *Noble* the defender had timeously lodged an application for leave to appeal. Five days before that application was due to be heard the sheriff clerk issued an extract of the precise interlocutor which the defender sought leave to appeal. The sheriff principal recalled the interlocutor refusing leave to appeal and also recalled the extract as being incompetently issued. In *Millar* the defender asked the sheriff principal to allow him to mark an appeal out of time despite an undefended decree having been extracted. The sheriff principal granted the motion as the decree, and extract which

followed, was incompetent, the defender having timeously lodged a notice of intention to defend. The sheriff principal was

"satisfied in the particular and highly unusual circumstances of this case I can properly distinguish the decision of the Extra Division in *Alloa Brewery*, and competently exercise my dispensing power so as to allow the appeal to be marked although late."

In *Gaunt* the sheriff principal considered the circumstances in which the extract came to be issued. Neither of the parties had applied for extract and it had been wrongly issued. The sheriff had made avizandum on the question of expenses but the sheriff clerk had not intimated the sheriff's decision on expenses to the parties and neither party was aware of the sheriff's decision which constituted final decree. In *Wanderer's World v Marco's Leisure Limited* the pursuers had lodged a note of appeal against decree of absolvitor which had passed following a peremptory diet at which they had failed to appear. Despite accepting the appeal, the fee and requesting a note from the sheriff, the sheriff clerk failed to mark the lodging of the appeal on the interlocutor sheet and an extract was subsequently issued. This was held to have been irregularly issued allowing the sheriff principal to consider the appeal and distinguish *Alloa Brewery*. Plainly, these authorities turn on their own specific facts and circumstances and all can be seen as examples of circumstances where there had been errors or irregularity in the issuing of the extract. Mr Simpson did not go as far as to suggest that the extract in this case had been incompetently issued but instead submitted that the final interlocutor dated 16 May 2019 was invalid as it bore the wrong date: the interlocutor had plainly not been issued on 16 May as the sheriff required agreement of the parties as to interest otherwise it might have been necessary to have another appearance. The date of the interlocutor defines the time for appeal days beginning to run. Mr Simpson appeared to suggest that the circumstances in this case could be equated with being a reserved

judgment similar to the situation which arose in *Gaunt*. *Gaunt*, of course, was decided prior to the Ordinary Cause Rules being promulgated in 1993 and is from an era when there was no automatic extract. In my opinion, the circumstances of this case are far removed from a reserved judgment or a case at avizandum. The parties were both represented before the sheriff on 16 May. The sheriff granted decree in accordance with the executry accounts which had been presented and which brought out a balance due to the pursuer of £68,577.64. The sheriff gave his decision from the bench *ex tempore*. His decision proceeded from his earlier interlocutors of 5 February and 26 March 2019 dealing with the merits and expenses respectively. The interlocutor of 16 May 2019 put these decisions into operation and additionally dealt with the question of sanction for the employment of senior counsel. It appears that the only matter which was not discussed or dealt with on 16 May was the question of interest and the date from which interest would run. Had this been dealt with in court on 16 May the sheriff was entitled to expect those appearing to address him there and then without reference to senior counsel. Thus, the parties were fully aware of the sheriff's decision on sanction for senior counsel and the final interlocutor has its basis in a series of interlocutors issued earlier by the sheriff. The circumstances of this case appear to me to be far removed from the circumstances described by the sheriff principal in *Gaunt*.

[23] It appears to be a matter of agreement that the interlocutor was issued immediately after the parties advised of their position on interest. The defender intimated her position on interest by email of 6 June and the interlocutor was issued the same day but bearing the date of the hearing when parties appeared before the sheriff (16 May 2019).

[24] I am not persuaded that the interlocutor of 16 May is invalid due to it being accorded the date when the sheriff heard parties and made these final orders. The date of the interlocutor is the date on which the sheriff pronounced on decree and made a finding for

expenses together with sanction of senior counsel. However, the delay in issuing that interlocutor had an unsatisfactory result with regard to the question of appeal. When the interlocutor was issued on 6 June three quarters of the days for appeal had already passed. The effect of that for the defender is not to deny her right to appeal but rather to place her in the position of having to rely on the court using its dispensing power to allow a late appeal. In view of the background any such motion lodged prior to extract would be likely to succeed on its merits. Accordingly, the suggestion made by Mr Whittle in the email of 28 June 2019 that the defender appears to have been prejudiced, may be correct, but not irredeemably so. The observation made by the trainee solicitor on the same day that "Our client had intended to appeal the decision and this opportunity appears to have been lost" is not necessarily a correct assessment of the situation in which the defender was placed. The defender had a remedy and that was to lodge the appeal without further delay together with a motion seeking relief from strict compliance with rule 6.3 of the Sheriff Appeal Court Rules.

[25] However, crucially no appeal was lodged until 10 July by which time the decree had been extracted. The pursuers' solicitor was entitled to request extract and the sheriff clerk entitled to issue extract once the appeal days had passed following the issue of the interlocutor on 6 June 2019. There is no suggestion that the extract was issued prematurely or in the face of an appeal. The sheriff clerk in Aberdeen correctly calculated the appeal days from the date of the interlocutor being issued to parties however it is likely that the interlocutor was automatically issued by the Integrated Case Management System (ICMS).

[26] The submissions made both in writing and orally in support of this motion focus significantly on communication between the defender's solicitors and the sheriff clerk in Aberdeen. The defender complains that an email sent on 21 June was not responded to and

that the interlocutor was not received electronically from the court. The court service now use ICMS to provide a digital platform for managing civil actions. This interacts with parties' agents and the system will send interlocutors electronically where a reliable email is provided. This is to assist parties and their agents in the conduct of civil proceedings. However, that service does not derogate from the solicitor's duty to obtain an interlocutor and check it for accuracy particularly when a party has been present or represented at the hearing where the interlocutor was pronounced. Parties are responsible for obtaining interlocutors, especially, crucial interlocutors. A final interlocutor falls into that category. It is for the parties, not the court, to have regard to the importance of time limits for appealing. The time limits for appeal have been extended with the establishment of the Sheriff Appeal Court for civil appellate jurisdiction in January 2016. It is for practitioners to acquaint themselves with and to understand appellate procedure and follow the Rules and Practice Note which are designed to provide a comprehensive code for solicitors and all litigants to follow. It is noteworthy that the defender's solicitor sought advice from the sheriff clerk regarding this appeal which, of course, falls within this court's jurisdiction not that of the local sheriff court. As I have alluded to already this court has had jurisdiction in civil appeals from sheriffs for more than three and a half years and practitioners ought to be familiar with the court's rules and practice. It is unworthy of the defender's solicitor to complain about the administration of the sheriff court. Much has been made of the email of 21 June sent from RRU to an individual sheriff clerk depute (the depute who had written on 17 May at the sheriff's behest). There are obvious risks in communicating solely with a named individual. The depute may well have been on leave or unwell. This serves to emphasise that undue reliance on email is unwise. Responsibility for taking the necessary steps to protect the party's interest in the event of an appeal lies solely with the party's legal

representative. More could and should have been done by the agents of the party seeking to appeal in order to be satisfied as to the interlocutor and to avoid the consequences of extract.

[27] The critical consideration is to analyse the steps taken by the defender's solicitor to lodge an appeal once the court's interlocutor was brought to his attention. Leaving aside the question of the steps which could have been taken to engage with the sheriff clerk's staff about the interlocutor, it is known that by 27 June the defender's solicitor was aware of the interlocutor. Without any obvious urgency senior counsel was asked to advise and having advised on 4 July that an appeal should be lodged as soon as possible, was then instructed to draft the appeal and what form of intimation should accompany the appeal. The draft was emailed to RRU on 8 July. As already mentioned the grounds of appeal are in general terms, brief and with no specific propositions of law suggesting where the sheriff had gone wrong. The brevity may be borne out of the urgent circumstances but nonetheless it is difficult to avoid the conclusion that the solicitor dealing with this case ought to have had the requisite knowledge of the case to draft such grounds of appeal without requiring to instruct senior counsel. The decision to instruct senior counsel is, however, a matter for the defender's solicitor. Such general grounds of appeal may well be apposite in circumstances of great urgency. Grounds of appeal can, of course, be amended (see Chapter 16 of the SAC Rules 2015). The grounds of appeal relate not to the final interlocutor but to earlier interlocutors. As it appears to have been the defender's settled intention to appeal then grounds could have been drafted awaiting the final interlocutor. I consider that the submission made by Mr Flannigan to this effect has considerable force. The final interlocutor was of importance principally to fire the starting gun for an appeal. Nothing in the final interlocutor itself could have come as any surprise to either party. It is difficult to avoid the conclusion that the defender's solicitors adopted an approach which was

incompatible with the urgent situation which presented. The decision to remit or delegate his duty to counsel is symptomatic of such an approach especially when the circumstances called for an appeal to be lodged without delay. The delay which did arise resulted in the defender's representatives being "caught in possession" when the extract was issued on 9 July with no appeal lodged. The general rule is that when a decree has been extracted it is not competent to exercise the dispensing power to allow an appeal to be marked late. This is the situation in this case. The authorities to which I was referred are examples of circumstances where the decree was extracted incompetently or irregularly. It was not suggested by counsel that this extract had been incompetently or irregularly issued. Instead, it was suggested that the interlocutor which bore the date of 16 May was invalid as it was only issued on 6 June. I reject that proposition mainly as the date of the interlocutor is the date on which the sheriff pronounced decree and dealt with all other outstanding matters save the date from which interest should run. The sheriff clerk and the digital case management platform took account of the fact that the interlocutor, though dated 16 May, was actually issued on 6 June and the extract was properly issued more than 28 days later on 9 July. In these circumstances there is no basis upon which *Alloa Brewery Company v Parker* and the rule that there can be no appeal following extract can be distinguished or avoided. The motion, therefore, falls to be refused.