

2011 Napier Decision — Extracts & Commentary

Purpose: to capture the principal extracts and analytical points arising from Sheriff Napier's 2011 decision (and subsequent appeal support), being the only identified instance in which the Crown advanced a court-facing argument on the premise that Shetland is part of Scotland.

Full decision (hyperlink): [110817 Napier Decision whole.pdf](#)

Extracts and Points for TSNS Foundation Corpus

1 **1) Jurisdiction challenge stated:**

"he [the accused] argued that the Sheriff Court at Lerwick had no competence or jurisdiction to deal with the matter as the offences were alleged to have occurred in Shetland which is not subject to the jurisdiction of the Scottish courts (including the Sheriff Court) not being and never having been incorporated into Shetland."

2 **2) Sheriff frames status as a historical question and fixes a date:**

"if the question of when did Shetland become part of Scotland? is one to be determined from a historical perspective then the answer to the question when did Shetland become part of Scotland? Is on 20 February 1472"

3 **3) Crown's support explicitly tied to Brian Smith article:**

"In support he [Procurator Fiscal Duncan Mackenzie] referred me to the article entitled "When did Orkney and Shetland Become part of Scotland?" by Brian Smith in New Orkney Antiquarian Journal Vol. 5"

4 **4) Sheriff declines detailed historical examination:**

"I do not propose to discuss these in detail. Such detail is of more interest to historians than to a 21st century jurist."

5 **5) The Shetland Report quoted, but key preface point omitted:**

Observation: the decision quotes heavily from *The Shetland Report* but does not mention the Chairman's preface: "Above all, the Report is not intended to, and does not, give advice or opinions on the desirability of any of the Models set up. That would be to usurp the responsibilities of the people of Shetland".

6 **6) Burden of proof question sidestepped:**

Observation: the Sheriff records the contention that, once jurisdiction was challenged, it was for the Crown (or the Court) to 'prove' jurisdiction, criticising reliance on American sources but not refuting the principle on Scots-law authority; the issue is treated as unresolved and bypassed through institutional/pragmatic reasoning.

7 **7) Treaty of Breda referenced, but significance understated:**

Observation: while noting the clause "leaving open in all time a Danish claim to the Northern Isles", the decision does not engage with the treaty's significance in ending Scottish monarchic attempts to assert right to Shetland and in confirming the continuing force of the pawning arrangements.

8 **8) '500 years ago' dismissal, without engaging Stair/Green position on pawning document:**

Observation: the concluding reasoning dismisses "the actions of kings and queens 500 years ago" while not engaging with the proposition in *The Laws of Scotland* (Stair) that the 1468–69 pawning/impignoration document is the founding title by which sovereignty in Shetland is said to stand.

Summary inference (stated cautiously): The decision accepts jurisdiction by reference to historical narrative, usage and institutional continuity; the only identified court-facing 'support' advanced for the 1472 premise is a secondary historical article, while deeper title instruments and burden-of-proof analysis are not determined in the decision.