

1764. June 19.

CHARLES MITCHELL, Supplicant.

IN the sale of the estate of Girlsta in Zetland, an act was pronounced for proving the rental and value of the lands, and a commission granted for taking the proof, with letters of diligence directed to messengers at arms as usual, for citing the witnesses.

The estate under sale, though scarce yielding L. 100 Sterling of yearly rent, lies scattered through the islands of Zetland; and the tenants living at great distances from one another, are in number 250. There is at present but one messenger in Zetland; and as he has by computation above 300 miles to travel by land and water before completing his circuit, he declined the execution without being allowed several months, with the sum of L. 40 Sterling for his fee and expenses. This produced an application to the Court of Session at the instance of the Creditors, praying an authority to employ Sheriff-officers to execute the diligence, who would perform the same expeditiously and at a very small expense. Which, considering the circumstances of the case, was readily granted.

Sel. Dec. No 217. p. 282.

. This case is reported in the Faculty Collection :

CHARLES MITCHELL of Baldbridge applied to the Court by an intimated petition, setting forth, That, in the process of ranking and sale, at his instance, of the estate of James Mitchell of Girlsta in Shetland, the Lord Ordinary had, in February last, pronounced an act for proving the rental and value of the lands, and granted a commission for taking the proof, which was extracted and sent to Shetland, with letters of diligence in common form.

That the estate under sale lies scattered through almost the whole islands of Shetland, which are numerous, and very much detached; so that the tenants, in number no less than 250, live at a great distance from one another.

That there is but one messenger residing in Shetland, who, having been applied to for executing the diligence, computed that he would have above 300 miles to travel by land and water before he could complete the necessary circuit, which he could not do in less than a month, and for which he would not accept of a less gratification than L. 40 Sterling.

That the debts on this estate exceed L. 9000 Sterling, and its yearly rent is scarce L. 100 Sterling; for which reason, the creditors were desirous to save so extraordinary an expense; and therefore the execution of the commission was delayed, that the Court might be applied to for relief.

That there are numbers of Sheriff-officers in every corner of the several islands, who could and would execute any diligence for a trifle; but it would

No 87.

Sheriff-officers were authorised by the court to officiate as messengers in executing diligence against witnesses and havers in a sale.

No 87.

have been irregular to have employed them on this occasion, the diligence issued from this Court being directed as usual to messengers at arms; but it was submitted, whether, in this singular case, the Court might not grant a new diligence, directed to these officers, or authorise the Sheriff-depute, or his substitute, to issue his precept for citing the witnesses. It is true, the act 1537, c. 58, provides, that all sentences and decreets of this Court shall be executed by the Sheriff or his depute, or by heralds, pursuivants, or macers. But, from a later act 1540, c. 74, it appears, that not only the Sheriffs, but their maires or officers, were then in use of executing the King's letters. By the practice of later times, such executions have become properly the duty of messengers; but it was thought the Court might dispense with it, in respect of particular circumstances. In the late act of sederunt, the Court had appointed intimation to be made even to parties by an advertisement in the newspapers; and as the persons here to be called are only witnesses, it was hoped their Lordships would grant some relief, which was prayed for, as to their Lordships should seem proper.

“ THE LORDS granted warrant to, and authorised the Sheriff-officers of the sheriffdom of Orkney and Shetland, or any of them, to execute the diligence against witnesses and havers, in place of messengers at arms.”

Pet. *Rac.*Clerk, *Ross.**J. M.**Fac. Col. No 136. p. 318.*1765. *January 19.*

SIR ROBERT GORDON of Gordonstone, Baronet; *against* JAMES GRANT of Knockando; WILLIAM ANDERSON and WILLIAM FORSYTH, Tenants to Knockando; and ALEXANDER and JAMES FINLAY, Tenants to Sir Robert.

No 88.

Not competent for the Court of Session to make regulations, or enact penalties for preventing muirburn.

SIR ROBERT GORDON brought a process against the said Tenants, setting forth, that, in May and June 1762, when no muirburn was lawful, they had kindled a muir near a valuable wood of his, on the hill of Molundy, without taking any precaution to prevent the spreading of the flames; the consequence of which was, that the fire reached the dike enclosing his plantation; caught hold of the turf on the top of the dike; scorched a number of trees in the outer rows; and would probably have consumed the whole, had it not been extinguished by a number of people assembled by him and others; and therefore concluding against the tenants for payment of damages and expenses; and that they should be prohibited from raising muirburn within such a distance of the pursuer's wood as their Lordships may think necessary for its safety, and decreed to observe such rules and regulations as the Lords should prescribe, and under such penalties as they should determine. Knockando was called in this process; but nothing was libelled or concluded against him.