

shooting grouse or muir-game. The burning of heath, such as was done here, could not improve the pasture. It was not a moderate or partial burning, but an entire burning of the surface of the whole ground, and was only resorted to in order to deprive the respondent of his just rights, and to prevent the exercise of hunting the deer, and to destroy his muir-game.

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After hearing counsel, and due consideration had of what was said on either side, the Lords find that the Duke of Atholl is entitled to damages on account of the muir-burning complained of. It is, therefore, ordered that the cause be remitted back to the Court of Session, to review all the several interlocutors complained of, and to do therein what may be meet and just, consistent with this finding and declaration.

For the Appellant, *Sir Saml. Romilly, John Haggart, D. MacFarlane.*

For the Respondent, *Wm. Adam, Ar. Fletcher.*

NOTE.—Unreported in the Court of Session.

(Division of Commonty.)

Major-General ROBERTSON of Lude, . . . *Appellant* ;
 His Grace the DUKE OF ATHOLL, . . . *Respondent.*

House of Lords, 5th July 1815.

DIVISION OF COMMONTY.—In an action for division of commonty, objections were stated to the procedure of the sheriff in taking the proof and other procedure before him under remit of the Court, but these were repelled.

The respondent and appellant, being proprietors of lands in the neighbourhood of each other, possessed a common right, or right of commonty, in a piece of ground called the common of Glentilt, as set forth in a previous appeal ; and this was an action of division of commonty brought by the appellant's father to have that common divided under the statute, which action was, after his father's death, insisted on by the appellant.

The parties' interested in the common were the appellant and respondent, together with the minister of Blair.

The Court remitted to the sheriff-substitute of Perthshire,

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who took a long proof in presence of the appellant and his agent. Under his authority the common was valued, and by his direction a survey and plan thereof was made out in the manner directed by the Lord Ordinary. The sheriff then pronounced a judgment ascertaining the extent of the common, agreeably to the evidence, written and parole, and dividing the same among the parties, in terms of the statute and the remit to him by the Court of Session.

June 30, 1810.

The sheriff having reported the whole of his proceedings to the Court, a state thereof was made up in the usual manner; and a remit made to the Lord Ordinary, who, of this date, pronounced this interlocutor: “ Having considered the
 “ foregoing state of the process of division of the common of
 “ Glentilt, the remit thereof by the Inner House to the Lord
 “ Ordinary, with the whole writings referred to in the said
 “ state and produced in process, depositions of the witnesses,
 “ plans of said common and contiguous grounds of those
 “ having interest in the same: Also having considered the
 “ whole conduct in this business of the sheriff-substitute of
 “ Perthshire, who, by appointment of the Court, acted as a
 “ commissioner in directing and superintending the proofs,
 “ the ascertainment of the marches by the help of Mr David
 “ Buist, land-surveyor, and other previous steps necessary for
 “ expediting the said division, with the final report made by
 “ the said commissioner, as to the manner in which he pro-
 “ posed the said division to be settled and adjusted; and
 “ having likewise considered the written objections given in
 “ for General Robertson, against the proceedings and report
 “ of the commissioner, with answers thereto for the Duke of
 “ Atholl, replies and duplies; and having heard a counsel for
 “ General Robertson, at considerable length, in support of his
 “ objections (the counsel on the other side having declined to
 “ say any thing in addition to their written argument) repels
 “ the whole objections to the proceedings and report of the
 “ commissioner, whether as to the bounds of the common,
 “ and marches between it, and the several property lands of
 “ the parishes, or as to the extent of the shares of the com-
 “ mon, to which the respective parties ought to be found
 “ entitled, or as to the allotments of the several shares in
 “ respect of contiguity to the parties’ other several lands, or
 “ as to any other matters objected to, ratifies, approves of,
 “ and confirms the divisions and allotments proposed, by the
 “ said commissioner’s report, which are explained and illus-
 “ trated by the engraved plan, made out and coloured by the

“ said land surveyor, under the commissioner’s direction,
 “ according to the testimony of the most creditable of the
 “ witnesses, and particularly of such of them as the General
 “ has no right to object to; of which engraved plan three
 “ copies are now subscribed by the Lord Ordinary as relative
 “ hereto; one to be given to the Duke of Atholl, another to
 “ General Robertson of Lude, and a third to be kept among
 “ the warrants of the decree: Finds, that the several allot-
 “ ments and shares of said commonty as above specified, are
 “ to belong to the parties in whose favours such allotments
 “ are respectively made, heritably and irredeemably, and to
 “ be held by them, and their heirs and successors, as parts
 “ and pertinents of their several property lands of consent:
 “ Reserves to General Robertson his proportional share of
 “ the marle that may be found in the mosses, until the same
 “ is exhausted, and finds, decrees, and declares accordingly.”
 On several reclaiming petitions by General Robertson, the
 Court adhered.

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 COCHRANE
 v.
 THE EARL OF
 MINTO.
 Nov. 18, 1810.
 Dec. 5, 1810.
 Nov. 29, 1811.
 May 22, 1812.
 Mar. 9, 1813.

Against these interlocutors the present appeal was brought to the House of Lords, but their Lordships affirmed the judgment of the Court below.

For the Appellant, *Sir Saml. Romilly, John Haggart, D. M'Farlane.*

For the Respondent, *Wm. Adam, Ar. Fletcher.*

ARCHIBALD COCHRANE of Askirk, *Appellant;*
 The Right Honourable GILBERT, EARL OF
 MINTO, *Respondent.*

House of Lords, 5th July 1815.

PROPERTY IN WATER.—Held that the respondent was entitled to the entire property or *solum* of a loch in which the appellant claimed also a proprietary right opposite to his lands. Reversed in the House of Lords, and held that each party’s interest in the loch extended *ex adverso* of his lands from the shore to the middle of the loch, and that each party might dig marle within his own division.

The appellant stood infest in “ All and whole the six-hus-
 “ band lands and mill of Askirk, with the astricted multures
 “ of the whole barony of Askirk, the five merk land of Kirk-