

any other title than the deceased owner's personal obligation to allow them to do so on certain conditions. Their right therefore rests upon contract, and it is settled law that the contract is not binding on an heir of entail who was not a party to it and does not represent a party. I do not think it material that what remains to be done in order to put the trees into a deliverable shape as timber, and not as growing trees, is by the contract to be done by the purchaser and not by the seller, because the purchaser can only do it by authority of the seller's mandate authorising him to enter upon the lands and carry out the operations for sawing and cutting the timber, and that mandate, as I hold, falls by his death, inasmuch as it has no effect as against his successor, the present heir of entail in possession. I therefore agree in the opinions delivered.

LORD PRESIDENT — I have had more difficulty in this case than your Lordships have had, but in the end I agree with the result at which your Lordships have arrived. But I found my judgment entirely upon the particular contract here, and holding the view I do about it I am able to concur entirely in the last sentence of Lord Mackenzie's judgment and in the exposition which your Lordship has just given.

The Court pronounced this interlocutor—

“Dismiss the appeal, affirm the interlocutors of the Sheriff-Substitute, dated 6th September 1911 and 14th November 1911 respectively, repeat the findings in fact and in law in the last-mentioned interlocutor, and of new declare the interdict already granted perpetual, and decern. . . .”

Counsel for the Pursuer and Respondent—Blackburn, K.C.—D. P. Fleming. Agent—Alexander Ross, S.S.C.

Counsel for the Defenders and Appellants—Constable, K.C.—Skelton. Agents—Duncan & Hartley, W.S.

Wednesday, June 26.

FIRST DIVISION.

(SINGLE BILLS.)

WHYTE, RIDSDALE, & COMPANY,
PETITIONERS.

Diligence—Decree—Charge on Court of Session Decree—Service of Charge by Post—Competency.

A charge upon a Court of Session decree cannot be served by post.

The holders of an extract-decree for £55 odd, obtained in the Court of Session against a defender resident in Thurso, presented a petition for warrant to serve the charge by post, or otherwise to grant warrant to a sheriff-officer to serve it.

The Court granted the latter alternative.

Observations (per Lord President) as to the scarcity of messengers-at-arms.

Whyte, Ridsdale, & Company, importers, London, the holders of a decree obtained in the Court of Session against a defender resident in Thurso, presented a petition to the First Division in which they craved the Court to grant warrant to serve the charge by post in the manner prescribed by the Citation Amendment (Scotland) Act 1882 (45 and 46 Vict. cap. 77), or otherwise to grant warrant to a sheriff-officer to serve it.

The petition stated—“That the petitioners have obtained decree in absence in an action at their instance in the Court of Session against William Murray, cycle agent, Thurso, for payment of £55, 9s. 11d. sterling with expenses, which decree they extracted on the 7th day of June 1912. That at the time of the passing of the Citation Amendment (Scotland) Act 1882 there were sixty-six messengers-at-arms practising in Scotland. There are now only thirty-four, of whom fifteen are in Edinburgh and Glasgow. That there is now no messenger-at-arms in Caithness, the nearest messenger-at-arms being in Inverness, a distance of about 100 miles. That the nearest sheriff-officer is in Wick, which is distant about 20 miles from Thurso.

“By the Court of Session Act 1868, sec. 19, services of summonses and citations of witnesses may be made by sheriff-officers in counties or districts of counties where there is no resident messenger-at-arms, but no provision is made for the execution of diligence in similar circumstances.

“By the Sheriff Courts (Scotland) Act 1907, sec. 49, it is provided that ‘Where a charge is necessary upon a decree for payment of money granted in the Small-Debt Court and the place of execution of the charge is more than 12 miles distant from the seat of the Court where such decree was granted, a charge may be given by post in the manner prescribed by the Citation Amendment (Scotland) Act 1882.’”

The prayer of the petition was as follows—“May it therefore please your Lordships to grant warrant to charge the defender the said William Murray upon the said decree by post in the manner prescribed by the Citation Amendment (Scotland) Act 1882; and further, to grant warrant to any sheriff-officer in Caithness on the expiry of said charge to carry into execution all legal diligence competent to follow upon said charge should the same expire without payment having been made; or otherwise to grant warrant to any sheriff-officer in Caithness to charge the said William Murray upon the said extract-decree at the petitioners' instance, and thereafter to carry into execution all legal diligence competent to follow upon said charge should the same expire without payment having been made; to dispense with the reading of the minute book, and to authorise a certified copy of the interlocutor to follow hereon to be used in place of extract; or to do otherwise as to your Lordships shall seem proper.”

The opinion of the Court (the LORD PRESIDENT, LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE) was delivered by

LORD PRESIDENT—I should like to bring to your Lordships' notice a serious grievance of the lieges disclosed by the petition. The petitioners obtained decree in absence against a defender resident in Thurso. They extracted the decree and desired to do diligence on that decree. In old days there would have been no difficulty, because the serving of the charge would have been effected by a messenger-at-arms, but owing to the alterations introduced by the Citation Act of 1882 (45 and 46 Vict. cap. 77) the calling of a messenger-at-arms no longer pays. There are now only thirty-two messengers-at-arms in Scotland, fifteen of these being in Edinburgh and Glasgow. Thus there are many places where such a messenger cannot be obtained except at considerable expense. In the present case it would be necessary to incur the expense of bringing a messenger-at-arms from Inverness. The Act provides for the service of summonses by post, but there is no provision for the serving of a charge by post. Any alteration in the law must be brought about by Parliament. All that your Lordships can do is to grant the prayer of the petition so far as to authorise a sheriff-officer to act as a messenger-at-arms in the present instance.

The Court pronounced this interlocutor—

“Grant warrant to any sheriff-officer in Caithness to charge the defender William Murray, named and designed in the petition, upon the extract-decree at the petitioners' instance mentioned in the petition, and thereafter to carry into execution all legal diligence competent to follow upon said charge, should the same expire without payment having been made: Dispense with the reading of the minute book, and authorise a certified copy of this interlocutor to be used in place of an extract.”

Counsel for Petitioners—Hon. W. Watson. Agents—Macpherson & Mackay, S.S.C.

Wednesday, June 26.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

EDINBURGH MAGISTRATES *v.*
LORD ADVOCATE.

Statute — Crown — Police — Jurisdiction — Construction — Building Regulations — Exemption in Favour of Crown Property — Bar — Edinburgh Corporation Act 1906 (6 Edw. VII, cap. clxxiii), secs. 67 and 78.

The Edinburgh Corporation Act 1906, sec. 67, empowers the Corporation in certain cases to require that no houses or buildings shall be erected within

30 feet of the centre line of the street on which the ground abuts. Section 78 exempts from these provisions buildings “vested in or in the occupation of His Majesty either beneficially . . . or in trust for the public service.”

The Commissioners of His Majesty's Works obtained a warrant from the Dean of Guild for the partial erection of a building on ground held by them for behoof of the Crown. The building so far as then authorised extended to within 30 feet of the centre line of the street in front of it. No objection was taken by the Corporation to the erection of this, the first wing of the building, though the plans then produced showed the position of the building as completed. The Commissioners having subsequently proposed to complete the building by adding the other wing, the Corporation passed a resolution in terms of section 67 of the said Act, and thereafter raised the present action for its enforcement.

The Court *assolized* the defender, on the ground (*per* Lord President and Lord Kinnear) that the exemption in favour of the Crown was not limited to buildings actually in existence at the date of the Act, but applied also to future buildings; and (*per* Lord Johnstone) on the ground that the Corporation were barred from objecting to the completion of the building by having consented to the original plans.

Observations (per Lord President) as to the extent to which the Crown is bound by restrictions contained in local Acts.

The Edinburgh Corporation Act 1906 (6 Edw. VII, cap. clxxiii) enacts—Section 67—“*Distance Buildings may be kept back from Centre Line of Street.*—Where any ground, whether belonging to one or to more than one proprietor abuts on an existing street, and is for a continuous distance of two hundred yards or upwards along the street either unbuilt upon within a line parallel to and running at a distance of thirty feet from the centre line of the street, or not occupied within the said thirty-foot line by buildings of a greater height than fifteen feet, the Corporation may from and after the commencement of this Act require that no houses or buildings shall be erected within the said thirty-foot line: Provided that this section shall not apply to an existing street which has been formed or laid out under the provisions of the Edinburgh Municipal and Police Acts.”

Section 78—“*Exemption of Crown Property.*—Without prejudice to any existing right of His Majesty there shall be exempted from so much of the provisions of this Act as relates to buildings, structures, or works, every building, structure, or work vested in or in the occupation of His Majesty either beneficially or as part of the hereditary revenues of the Crown or in trust for the public service or for public services, as also any building, structure, or work vested in or in the occupation of any department