

constitution; it was answered, That the argument proceeded upon an erroneous hypothesis in point of law, as if a right of cruive fishing could not be acquired by prescription, without a special infetment in cruives. The doctrine contended for was so far well founded, that a general grant of salmon fishing from the Crown would not be sufficient to confer upon the grantee a right to the cruives. That mode of fishing was not presumed to fall under the grant, unless so expressed, or something tantamount, to show that such was the intention of the grant. But although the grants made no express mention of cruives, nor even of salmon fishings, but only of fishings in general, yet if followed by a forty years possession of a cruive-fishing, that would be sufficient to establish a right of cruive fishing in favour of the grantee, as was decided 26th January, 1665, Heritors of Don against Town of Aberdeen, *infra, h. t.*

The law is the same with regard to teinds. See 5th July, 1748, Dunning against Creditors of Tillibole, No. 12. p. 6307.

The interlocutor of the Court ultimately adhered to was in the following terms: "Find, That the town of Inverness has been long since denuded of all their right of salmon fishing in the water of Ness by the grants made by the town in favour of the feuers of said fishing, and that the feuers have the sole right of salmon fishing in said river, by cruives, cobles, or other lawful ways, from the Stone of Clachnahagaig to the mouth of the river, where it joins the sea at low water, except the Duke of Gordon's fishing, and the fishing called the Friar's fishing, and decern and declare in the process at the instance of the feuers accordingly; but assoilzie the Magistrates of Inverness from the conclusions of declarator at the instance of the feuers relative to the fishing at the Long Man's Grave; and further assoilzie the said feuers from all the conclusions of the declarator at the instance of the Magistrates of Inverness against them, and decern."

For the Magistrates, *David Rae, James Grant.*

For the Feuers, *R. M^cQueen, Ilay Campbell.*

* * * This decision was in part reported by Mr. Wallace, who had not finished it at his death. It has been concluded by the Editor from the Session papers.

§ E C T. II.

Privileges accessory to, and inherent in, a Right of Salmon Fishing.—
Regulations for fishing.

1612. January 18. MATHEW against BLAIR.

SALMON FISHINGS, being *inter regalia*, are privileged; and they who are infet by the King therein have thereby right and privilege to draw their nets to the

- No. 9. nearest land, and slay their fish upon the same, and to infix pails and trees upon the land adjacent to the river, where the sea ebbs and flows, to dry their nets upon them, and mend their nets. And albeit the said land be bounded to the river, yet the heritors thereof must leave so much ley nearest the river side as is necessary for the foresaid uses of the said fishings, and must neither till it nor big dikes upon it, which may hinder the commodity of said fishing, in manner foresaid.

Fol. Dic. v. 2. p. 360. Haddington, MS. No. 2357.

1623. December 18. Lord MONIMUSK *against* FORBES.

No. 10.

FOUND, That a party who is infeft by the King in a salmon fishing, having no lands adjacent to the water, may draw his nets and dry them on either side.

Where one has lands on one side of the water, and another on the other side, with both of them a right to the fishing, it was found, that each may draw only on his own side.

Fol. Dic. v. 2. p. 360. Durie. Haddington.

* * This case is No. 106. p. 10840. *voce* PRESCRIPTION.

1746. July 16. FISHERS ON NORTHESK *against* SCOTT of Brotherton.

No. 11.

Cruives regulated under penalties in case of transgression.

ROBERT RAMSAY, merchant in Edinburgh, tacksman of the fishing of Edzell, Turnbull of Strickathrow, and Fullarton of Galry, having right to fishings, in consequence of their respective properties, all upon the river of Northesk, pursued Hercules Scott of Brotherton, having a right of cruives near the mouth of the river, for several alleged infractions of the law in the form of his cruives.

THE LORD ORDINARY, 9th December; 1743, found, That the defender's cruive-dike in question should only be half an ell Scots broad at the top, and only one foot and an half high above the surface of the water, in its common course, as it run from the 15th of April to the 1st of May, and that the said dike ought to be built sloping from the top, till it was two feet under the water. *2dly*, That the defender had right only to one cruive-dike, and that he ought to remove his side dike. *3dly*, That he ought to observe the Saturday's slop, viz. one ell wide of a sluice in each cruive, from six o'clock in the evening till Monday at sun-rising. *4thly*, That the hecks of the cruives ought to be three inches wide, conform to act of Parliament of James I. and former decisions in the debate mentioned. *5thly*, That the teeth or rungs of the hecks ought to be entirely removed in forbidden times to fish, and the same kept clear and void. *6thly*, That the defender was not obliged to keep or observe the mid-stream. *7thly*, That he ought to take down and model his cruive-dike, and to build it according to the above