

S E C T. VI.

Title requisite to carry a right to Salmon Fishing.

1623. July 15.

FORBES *against* MONYMUSK.

No 106.

IN the action betwixt Monymusk and Forbes of Barns, for the fishings on the water of Dee, the LORDS gave many instances where men had salmon fishings where they had no land on either side of the water by the space of many miles; and that the privilege and servitude of drawing their nets on their neighbour's lands depended upon their possession, and was to be sustained if it were possessed peaceably past memory of man.

Fol. Dic. v. 2. p. 104. Haddington, MS. No 2900.

* * * Kerse reports this case :

1623. December 18.—PRESCRIPTION of 40 years possession in salmon fishing sustained *ad hoc*, that they might draw in other men's lands than their own, albeit only infeft in a barony with salmon fishing upon a side of the water.

And when it was *replied*, upon interruption by a summons of ejection, the LORDS repelled it *quia nihil secutum*.

Kerse, MS. fol. 93.

1665. January 26.

The HERITORS of the FISHING of DON *against* The TOWN of ABERDEEN and Their FEUERS.

No 107.

A charter with a general dispositive clause *cum piscationibus* with 40 years possession was sustained, to give right to a salmon fishing.

THE Heritors having salmon fishing in the water of Don above Aberdeen, pursue a declarator of their right of salmon fishing, and that they ought to be free of the prejudice sustained by the cruives built at Aberdeen, and insist upon these particulars: That the Town of Aberdeen hath no right to cruives, but is only infeft *cum piscationibus et piscariis*, and within such a bounds which cannot carry salmon fishing, being *inter regalia*, much less cruives. It was *answered*, That such a clause granted to an incorporation or community, or being *in baronia* with immemorial possession is sufficient; and that there is a later right to the Town with power of cruives within the said bounds *uti possidebantur*. It was *answered*, That the pursuers had their cruives established before that time.