

No 10.

up the river; for there is a void place left in the middle of the river, six feet broad, which will allow them sufficient passage; besides that the dike comes not to the surface of the water, so that they can leap over it; and they are building nothing but what they had the like before, only it was in another place, and is now sanded. THE LORDS considered, that to stop the work might be very prejudicial to the Town, seeing, in the winter speats (it being a rapid impetuous river), all they had built would be carried away if not perfected suddenly; and, on the other hand, the favour of fishings was very great; therefore they were resolved to grant commission to visit the ground, and examine tradesmen and other witnesses on the prejudice; and the question was, Whether to direct it to some of their own number, or to the Sheriff of the shire, and adjust the interrogatories? Others proposed, that the work might proceed, the Town finding caution to demolish, if in the event it were found inconvenient. A third sort moved to allow a conjunct probation to either party upon their damages. THE LORDS allowed them some few days to think on any expedients to facilitate the trial, but prejudice to either; and if not, they would appoint a visitation.

Fountainhall, v. 2. p. 276.

1713. November 22. CUNINGHAM against KENNEDY.

No 11.

THE LORDS will allow an heritor to build a dam-dike upon a river, for gathering the water to his mill, provided both ends of the dam-dike be made to rest on his own ground, and it be so built, as not to divert the water that comes over it, or goes from his mill, to return to the former channel, and go to another heritor's mill below.

Fol. Dic. v. 2. p. 273. Forbes, MS.

*** This case is No 7. p. 8903. *voce* MILL.

1735. February 12. Duke of GORDON against DUFF of Bracco.

No 12.

A SMALL stripe coming off from the main body of a river, about a mile above where it enters the sea, did gradually encrease till it became a branch of the river, upwards of 60 feet ever; as this branch was daily encroaching upon the neighbouring ground, the proprietor was advised to build a bulwark 30 feet into the channel, to throw that branch of the river into its former channel, or at least to confine him within bounds. This was opposed by the heritor whose lands lay on the opposite side of the river, for whom it was admitted, that a proprietor may *munire ripam*, face up and defend his banks from the en-

croachment of the water; but that he cannot alter its course, to throw it upon his neighbour's ground. *Answered*, Betwixt the branch in question and the main body of the river, there is three quarters of a mile of waste ground, and the bulwark can have no other effect, than to remove the channel a little nearer the main river, as the branch in question did run a few years before. THE LORDS found, that the proprietor, for defence of his grounds, had right to build the bulwark projecting into the channel of the river, not exceeding 30 feet, upon his giving bond with a cautioner, acted in the books of session, to indemnify his party from all damages which shall arise to his land on the opposite side of the river, by occasion of building the said bulwark, at any time within ten years after completing of the same. See APPENDIX.

No 12.

Fol. Dic. v. 2. p. 273.

1738. July 28. TOWN OF NAIRN against BRODIE, LORD LYON.

No 13.

THE river of Nairn, which runs into the sea through the property of the Town of Nairn, and at the mouth of which the Town had a stell fishing, having, upon a sudden speat, changed its course, and made a new channel for itself through the Lord Lyon's lands, the point of right came to be tried before the Lords, whether the Town of Nairn had right, by means of a bulwark, built within their own ground, to bring back the river to its former channel. It was *argued*, That a public river, having, of itself, changed its course, it cannot be brought back by any party pretending prejudice by the change, because such river is not the private property of any person. In *answer*, The case was figured of a harbour deserted by a river; but then a harbour is a private property, and he who has right to the end has right to the means. Upon a division it carried, that the Town of Nairn had right to build the bulwark. See APPENDIX.

Fol. Dic. v. 2. p. 274.

1741. June 25. FARQUHARSON against FARQUHARSON.

No 14.

It was found lawful for one to build a fence upon his own ground, by the side of a river, to prevent damage to his ground by the overflow of the river, though thereby a damage should happen to his neighbour by throwing the whole overflow in time of flood upon his ground. But it was found not lawful to use any operation in the *alveus*.

Whether lawful to make a fence against a river, though thereby a damage arise to another?

Kilkerran, (PROPERTY.) No 1. p. 452.