

No. 10. 1753, Aug. 7. ANDREW GRAY *against* JAMES GRAY, MILLER, &c.

JAMES GRAY exposed his lands to public roup, with the usual conditions, but at the same time gave Miller a written commission to offer at the roup the length of 2700 merks, and that he would take them off his hand, (which is commonly called a white-bonnet.) Andrew Gray offered at the roup, but Miller was preferred as highest offerer. It being that day or next asked by his neighbours, how he came to offer, since he had no money to pay the price, he told them honestly that he offered by commission from James Gray, and shewed his commission. Stewart also was present at the roup. Notwithstanding whereof, Stewart in four or five days took a disposition of the subject from James Gray, and was infest. Andrew Gray thereafter sued James Gray to perform the conditions of roup to him, as he was really the highest offerer; and after that process Miller assigned the articles of roup to Stewart. Then ensued a submission between the parties, wherein Miller among others was examined by the arbiters on oath; and he owned the commission from James Gray, but said he had also a verbal commission from Stewart to offer at the roup. The submission expired, and Andrew Gray sued all the three in Court, and proved the fact to have been as above stated. The Lords found it proved, that the offer by Miller was made by him as trustee for and by commission from James Gray the seller, and therefore that Andrew Gray was truly the highest offerer at the roup, and that it was fraudulent in James Gray thereafter to dispoise the lands to Stewart, and found that Stewart was partaker with him in the fraud, and therefore found both James Gray and Stewart obliged to convey to the pursuer the lands on payment of the price offered by him at the roup. *Nem. con.* Only Kilkerran doubted. 7th August, Adhered, and refused a bill without answers.

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SALMON FISHING.

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No. 1. 1742, (1746) July 16. SCOTT *against* FULLERTON, &c.

See Note of No. 35, *voce* JURISDICTION.

No. 2. 1748, June 15. TOWN OF PERTH *against* LORD AND LADY GRAY.

THE town had right to the salmon-fishing round the island of Sleples as old as Robert II. in 1375, and have immemorially possessed three shots on the north side of the island without any person interfering from the north side of the river. Opposite to the middle shot the water was on the north side foul with stones, and could not be fished, till 1741, that the tenants of Kinfauns adjoining that part of the river cleaned that water and set up a fishing, which behoved to interfere, or at least might interfere with the town's fishing from the island Sleples, because the nets of both must encompass the whole depth of the