

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

river, or they would catch no fish, and therefore could only fish alternately. The town therefore raised declarator of the exclusive right, and Lady Gray as proprietor of Kinfauns produced a charter in 1672 of her lands *cum salmonum piscariis in aqua de Tay*, and likewise of the barony of Craigton with certain particular salmon fishings, and a general clause, and insisted that she had right to fish on the north side and to clear the ground. The Lords repelled the defence and found the town has the exclusive right of fishing that part of the river, *renit.* Justice-Clerk, Drummore, Strichen, Dun, Shewalton. *Pro* were Minto, Kilkerran, Monzie, Tinwald, Leven, *et ego*, and Arniston in the chair. November 2d, Altered, and a proof before answer.

No. 3. 1752, July 7. FULLERTON AND COLONEL SCOTT *against* STRAITON.

KINNEBER stands infest in the fishing in the water of Northesk *tam intra fluxum maris quam extra* opposite to his own lands of Wardroperton to the north of the river, and Colonel Scott is infest in them with the salmon fishing in the sea, and north of them are the pursuer Straiton's lands of Kirkside, in which he is also infest with the salmon fishing in the sea. The river has now altered its course, and does not enter the sea till it is opposite to the lands of Kirkside, who therefore pursued declarator that Kinneber could only fish the river opposite to his own lands, and that he alone had right to fish the mouth of the river. The case was reported by Kilkerran; and found that Kinneber had still right to fish the river though not opposite to his own lands; but in respect the pursuer had the right of fishing in the sea opposite to his lands, and which sea we reckoned all that was below the highest flood-mark, therefore we found that Kinneber could fish no farther down the river than the highest flood-mark at any time of the tide, and that below that highest flood-mark the pursuer had the right of fishing; and this construction of the sea was founded on what was said to have been the judgment of the House of Lords in a question betwixt Duke of Gordon and Earl of Murray touching the Duke's tug-net fishing in the Spey.—7th July.

Upon advising a petition against the interlocutor between these parties mentioned *supra* 7th July last with answers, we altered that interlocutor, and found that notwithstanding the change of the course of the river, Kinneber has right to fish to the lowest flood-mark; but found that when the sea covered the channel of the river, Kirkside had a joint right with him of fishing opposite to his own lands.—17th November.

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SASINE.

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No. 1. 1736, July 8. EARL OF SUTHERLAND *against* DUNBABS.

THE Lords repelled the objection to the two sasines, for they found that the act 1696 altered the act 1686; and they did not regard the alleged judgment of the House of Peers, in the case of Buchan and Braço, which was not before them, and concerning which the parties did not agree.