

FISHING.

1776. *November 22.* RAMSAY *against* KELLIES.

SALMON-FISHING is the only species of fishing in the sea which is universally allowed to be capable of a grant from the Sovereign. Whale-fishings in the sea are said to be common to all the subjects; and, in proof thereof, by Acts 1631, c. 39, 1690, c. 34, Act 1705, and 29th G. II, c. 23, all the lieges are encouraged to take fish in all seas, channels, firths, &c., and a premium given for catching them. This notwithstanding, it is asserted that there are many instances of grants of white sea-fishings *in mari*, from the Crown, particularly in Banffshire; and that several such are entered and valued in the cess-books, and have been computed in making up a freehold qualification.

As to lobsters, which keep nearer the shore, and frequently are on the rocks, claimed by coterminous heritors as their property, the law holds the fishing of them also to be open and patent to all the lieges. See G. II. *anno* 9, c. 33.

As to muscles: there are many grants of muscle-fishings;—and as to cockles, limpits, or other small shell fish, or bait, lying on the shore and rocks, betwixt flood mark and ebb, see *Earl of Errol against Udney of Udney*, 26th January 1762. See Property.

About twenty years ago, the late Lord Preston Grange obtained a grant from the Crown of the oyster-fishings in the Firth of Forth, opposite to his barony of Preston Grange; in consequence whereof he excluded others from fishing oysters within the limits of the grant, and raised a rent from the fishers. But the validity of the grant, as an exclusive right, has never yet been properly ascertained by any decision, though there have been questions concerning its limits both with Ramsay of Preston and the York Building Company; 30th November 1763.

But, whatever may be the issue of a question (when it shall be brought) concerning the power of the Sovereign to grant an exclusive right of oyster-fishing in this manner, the Lords, in a dispute betwixt *Ramsay of Preston* and some of the *Fishers of Prestonpans*, (22d November 1776,) were of opinion that a clause *cum piscationibus* in the *tenendas* of a royal charter, though followed with possession, did not convey the exclusive privilege of an oyster-fishing *in mari*, even although the lands had been a barony. It is different in the case of a salmon-fishing, or other subject which may be considered as part of the barony, and *annexa fundo*; which a fishing in the sea never can. At the same time, in this particular case, the possession was not exclusive; and the lands purchased by Ramsay were not the whole of the original barony, but only a part of it.