

would no longer answer for the purpose of a cruive dike, as all the salmon would escape by this passage.

No. 29.

Besides these general points of law argued in this case, the pursuers founded on the words of a contract in 1724, as barring the Duke from erecting cruives. But the Court were of opinion, that the contract could not bear this construction, and was likewise derelinqished. The defenders founded on certain interlocutors in the process 1733, as decisive of the question against the upper heritors. But, as there were some of the upper heritors parties to the present process, who were not parties to either of the former actions, the Court thought the question still open to be tried at their instance.

The Court “repelled the objections to the Duke of Gordon’s right to cruive fishing *sub saxo de Ardiquish*, established by the charter 1684, as well the objections founded on the act 1581, as those founded on the interest of the superior heritors, or on the interest of the Earl of Fife, and in these terms repel the reasons of reduction.”

Act. Lord Advocate, *Ilay Campbell, Elphinston, James Grant.* Alt. Sol. General, *Rae, M’Laurin, Alex. Gordon, jun.*

*Fol. Dic. v. 4. p. 254. Fac. Coll. No. 33. p. 54.*

1783. January 21. LORD BANFF and Others, *against* EARL OF FIFE.

IN an action, at the instance of Lord Banff, and the other proprietors of fishings in the upper part of the river Doverton, against Earl Fife, owner of those below,

The Lords found, “That it was not necessary to remove the sole-trees or side-posts of the cruive boxes in forbidden time; the removing of the hecks and in-scales being sufficient” to answer the purposes of the law.

Act. *G. Buchan Hejburn, R. Dundas.* Alt. *Ch. Hay.* Clerk, *Home.*

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*Fol. Dic. v. 4. p. 261. Fac. Coll. No. 79. p. 123.*

No. 30.

Not necessary, in forbidden time, to remove the sole-trees or side-posts of cruive boxes, but only the hecks and in-scales.

1793. November 20.

The PROCURATOR-FISCAL of the TOWN of STIRLING, *against* JOHN GILLIES and Others.

By the act 1581, c. 111. which proceeds upon the narrative, that the former statutes relating to offences against the salmon fishing had not been carried into execution, the persons therein mentioned are appointed his “Hienes justices,” for the purpose of “taking up dittay,” and trying by jury offenders against these acts.

The statute then enumerates various rivers. With regard to some of them, this jurisdiction is given to private individuals; and with regard to others, to persons in public office, such as sheriffs and stewarts, or the magistrates of royal boroughs.

No. 31.

The act 1581, c. 111. is not now in force.