

No 39.

quhoun having produced no right to a cruive-fishing, he is not entitled to exercise his right of fishing by stobs and nets, as claimed by him previous to the year 1760, nor to interrupt the navigation either in the water of Leven, or in the mouth of Lochlomond; and in so far decerned and declared in the action at the instance of the Town of Dumbarton; and in the action of declarator at the instance of Sir James Colquhoun, assoikied the Magistrates and Town-council of Dumbarton from the whole conclusions thereof, and decerned; but remitted to the Lord Craig Ordinary, to hear the other parties thereupon, and to proceed and determine as to his Lordship shall seem just."—See SALMON-FISHING.

Lord Ordinary, *Craig*. For Sir James Colquhoun, *Dean of Faculty Erskine, Geo. Fergusson.*
 Alt. *Solicitor-General Blair, Rolland, Morthland.* Clerk, *Gordon.*

D. D.

Fac. Col. No 87. p. 192.

1796. June 14.

JAMES BRODIE *against* The MAGISTRATES and TOWN-COUNCIL OF NAIRN,
 The Earl of FINLATER, and DAVID DAVIDSON.

No 40.

When a person has a grant of salmon-fishing in a river, which, at the date of the grant, ran into the sea opposite to his own lands, upon its afterwards changing its course, and discharging itself into the sea opposite to the property of his neighbour, who has a right to the sea fishing there, the former continues to have an exclusive right to the fishing in the river, so far as it is distinguishable from the sea.

THE property of the burgh of Nairn, on the Murray Frith, is bounded on the east by the barony of Lochloy and Inchoch, belonging to James Brodie. In 1589, James VI. granted a charter to the Magistrates of the burgh, and their successors, confirming their former privileges, and particularly, that "lie zaires infra fluxum maris dicti portus construendi, ac super lie stellis, tam in aqua dulci quam salsa, infra omnes bondas et libertates, dicti nostri burgi piscandi, cum libertate de lie tug-net infra mare, aliisque omnibus privilegiis, asiamentis, libertatibus et commoditatibus in quibus ipsi, eorumve predecessores, aliquibus temporibus, retroactis in usu et possessione extiterunt infra dictum nostrum vicecomitatum de Nairn."

These fishings were afterwards feued out by the burgh, and now belong to the Earl of Finlater and David Davidson.

Mr Brodie and his predecessors have, from time immemorial, been infeft, "in all and sundry fishings of the said lands of Lochloy and Inchoch, as well of salmon as other fishings, as well in salt as in fresh waters."

The burgh, or their vassals, had been accustomed, besides their sea or stell-fishings, to possess exclusively the fishings in the river of Nairn, which ran eastward into the sea, opposite to, and considerably within, the property of the burgh; but as the coast consists of loose sand or gravel, the river frequently shifts its channel; and about twenty or thirty years ago, it came to run into the sea, at low-water, opposite to the property of Mr Brodie.

In order to settle a variety of questions which arose in consequence of this change in the course of the river, Mr Brodie brought an action of declarator against the Magistrates of Nairn and their vassals, in which a proof was led.

The boundary between the respective sea-fishings was fixed by the Court, according to the title-deeds of the parties, and the evidence adduced.

As to the fishing in the river, it was thought, that, at low-water, the defenders had an exclusive right to it, notwithstanding the change in the course of the river, agreeably to the decision, December 1752, Straiton against Fullarton, No 21. p. 12797. as varied by the judgment of the House of Lords, 8th April 1756; and that, at high-water, the fishing in the river, so far as covered by the sea opposite to the pursuer's property, was included under his sea-fishing.

THE LORDS unanimously found, "That the pursuer has no right of salmon-fishing in the river of Nairn, so far, and at such times, as the stream of water of the said river can be distinguished from the water of the sea."

Lord Ordinary, *Justice-Clerk.*

Act. *Solicitor-General Blair, M. Ross, Monypenny.*

Alt. *Geo. Fergusson, C. Hope.*

Clerk, *Gordon.*

D. D.

Fac. Col. No 222. p. 520.

1799. *June 20.*

JOHN ANDERSON *against* WILLIAM DALRYMPLE and Others.

WILLIAM DALRYMPLE, and others, were proprietors of the two upper storeys of a house in Prince's Street, Edinburgh, of which the sunk storey, and that above it, belonged to John Anderson. The two upper storeys entered by a stair, near the inner extremity of a common passage; at the same extremity of which, too, was the street entry to Anderson's property.

Anderson having converted a front room of his house into a shop, insisted to strike out a door to it from the passage, in a niche, or recess, which received the door, then placed on the outer extremity of it; and he applied to the Dean of Guild for liberty to do so.

This was objected to by Dalrymple, and others, and refused by the Dean of Guild.

In an advocacy, reports of tradesmen were produced by both parties. These were contradictory. But that of the builder of the house bore, that, foreseeing that it might be wished to convert the front room into a shop, he had placed a dormant of wood in the wall, at the very place where Anderson meant to make the door; that the bricks below it might be removed, without any danger to the wall, and the outer door of the passage be otherwise commodiously placed.

The bill was refused.

But another having been presented and passed, the Lord Ordinary remitted to the Dean of Guild to alter the former interlocutor, and allow Anderson's operations to proceed, with special instructions as to their execution, so as to be most commodious for both parties.

No 40.

No 41.

In a house of several storeys, belonging to different proprietors, having their entry by a common passage, no alteration can be made on it without the consent of the whole.