

- No. 17. drawing nets with small meshes across the river, and fastening stakes very close to each other into the channel, so as to leave very little room for any fish to escape, and materially to impede the navigation of the river. See No. 19.

*Fol. Dic. v. 4. p. 258. Fac. Col.*

\* \* This case is No. 39. p. 12827. *voce* PROPERTY.

1797. February 25.

Lieutenant-Colonel DIROM, and others, *against* JOHN and WILLIAM LITTLES.

No. 18.

Fishing by  
stent and  
hang-nets  
prohibited.

IN 1768, the superior heritors on the river Annan brought a declarator against the Marquis of Annandale and his tenants, complaining of the mode in which the inferior fishings were exercised.

The Court (No. 16. p. 14279.) found, "That although the Marquis of Annandale, the inferior heritor, and his tenants, have right to use all legal engines and methods for catching the fish in the river Annan, conform to law, and their possession, yet they have no right, either in time of actual fishing, or at any other time, to erect any engine, or use any other method, not for the purpose of catching fish, but for preventing or obstructing them from passing up the river; and therefore found, that the method used by them, of stenting nets across the river, either reaching altogether from side to side, or overlapping each other, in the manner mentioned in the proof, or stenting them across the arch of Annan Bridge, or of putting leisters with long shafts in the said bridge, or the method of stretching a rope in the river, with bones tied to it, are illegal methods, intended for preventing or obstructing the fish from passing up the river, and are not only prejudicial to the superior heritors, but destructive of the fishing, and ought to be discontinued in time coming."

In 1796, Lieutenant-Colonel Dirom, and other superior heritors on the river, presented a petition and complaint against John and William Littles, the lessees of the inferior fishings, in which they accused them of acting contrary to this judgment.

The defenders answered, That the fishing was exercised by them in the manner in which it had been ever since the date of the decree, and for time immemorial before, by means of "hang-nets," of which, and of the mode of using them, they gave the following description. The hang-net is fixed by one extremity on the shore, and then drawn diagonally downwards, across a smooth part of the river, and reaching not above one half the breadth of it. The other extremity of the net is left loose. The one side of the net is sunk by small pieces of lead, and the other supported by cork, so as to make the net stand perpendicular in the water; and when a fish comes against it, the net yields, and the fish is caught, by being entangled in it. They further contended, that, from the want of pools in the river proper for a draught-net, this was the only way in which the fishing could be carried on with advantage; and that being a mode of killing the fish, and not merely of

obstructing their passage, like stent-nets, it was not struck at by the interlocutor in the former action.

No. 18.

The complainers, on the other hand, maintained, that the hang-net had the same object, and nearly the same effect, with the stent-net; the former being stretched across that part of the river by which alone the salmon attempted to pass; and extremely detrimental to the complainers, both by the obstruction which it occasions, and, when the fish caught are left hanging in it, by frightening other salmon from coming at all up the river; and that, consequently, these nets were illegal, both in terms of the former interlocutor, and of the principle of the decision, 21st December, 1793, Sir James Colquhoun against the Duke of Montrose and others, No. 17.

The Lords, upon advising the petition, with answers, replies, and duplies, prohibited the defenders "from erecting any engines, or using any method, not for the purpose of catching fish, but for obstructing or preventing them from passing up the river; and, in particular, from using stent-nets or hang-nets, of any sort or denomination."

A petition, and additional petition, were (16th May, 1797,) refused without answers.

Act. Hay.

Alt. H. Erskine, Hope, Williamson.

Clerk, Menzies.

D. D.

Fac. Coll. App. No. 1. p. 1.

1804. July 4.

SIR JAMES COLQUHOUN, *against* The DUKE of MONTROSE and Others, and MAGISTRATES of DUNBARTON.

SIR JAMES COLQUHOUN having carried the judgment of the Court by appeal to the House of Lords, in the declarator of his right to salmon fishing in the river Leven, by means of stob-nets, (No. 39. p. 12827.) it was ordered and adjudged, (June 28, 1801,) "That the cause be remitted back to the Court of Session in Scotland, to review the interlocutors complained of with respect to the interest of the town of Dunbarton to insist in the present action; and to proceed, at the same time, to consider and pronounce upon the title and interest of the superior heritors; and also, generally to review that part of the several interlocutors which relates to the right of fishing claimed by Sir James Colquhoun; and more especially, as far as these interlocutors connect the right of fishing, as claimed by him, with his having, or not having, a right of cruive-fishing."

To apply this judgment, the cause was remitted to the Lord Ordinary, who allowed a proof to be reported to the Court. After hearing parties, memorials were ordered upon the whole cause, both in regard to the titles and interests of the superior and inferior heritors to object to the mode of fishing used by Sir James Colquhoun, as well as to the legality of the fishing itself.

So far as regarded the title and interest of the town of Dunbarton, the inferior heritor, Sir James

No. 19.

An inferior heritor, having a right of salmon fishing, may prosecute a superior heritor for using an illegal mode of fishing.