

The appellants brought an action of declarator in the Court of Session, whereby, for themselves and other owners of salmon fisheries in this river, they insisted to have it found and declared that they had good and undoubted right to fish with pock-nets, herrywater nets, stoup-nets and cobles, and all other nets and engines whatsoever, not expressly discharged or prohibited by law.

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MAGISTRATES
OF STIRLING,
&c.

The respondents, the Magistrates of Stirling, as owners of fisheries, and two others, also owners of the same, were cited to this action.

The defence stated by the respondents was, that the words of the Act did comprehend the appellants' fishings, and the mode of fishing by pock-net and herrywater nets, and, therefore, that their fishings by stoup-net were prohibited.

The Lords found "the Act of Parliament, 1698, is general, Feb. 25, 1763.
"regulating the fishing in the River Forth, and that the
"stoup-net being a species of pock-net, is within the pro-
"hibition of the Act, and that the pursuers (appellants), and
"all the heritors, are debarred by the said Act from fishing
"in the said river, above the Pow of Alloa, with pock-nets,
"stoup-nets, or herrywater nets, and assoilzie from that
"branch of the declarator and decern."

On reclaiming petition, the Court adhered.

July 14, 1763.
Feb. 11, 1764.

Against these interlocutors, the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged, that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellants, *Tho. Miller, C. Yorke.*

For the Respondents, *Fl. Norton, Al. Forrester.*

ALEXANDER BRODIE, Esq. of Lethen, . . . *Appellant;*

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SIR LUDOVICK GRANT of Grant, Bart. ;)
SIR ALEXANDER GRANT of Dalvey ; SIR } *Respondents.*
WILLIAM DUNBAR, Bart., and Others, }

BRODIE
v.
GRANT, &c.

House of Lords, 25th April 1769.

SALMON FISHERIES.—The boundary which divided the appellant's

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salt water fishings from the respondents' fresh water fishings on the River Findhorn, ascertained and fixed.

The present appeal arises out of the circumstances of the former appeal regarding the boundary between the salt water fishings upon the River Findhorn, belonging to the appellant, and the fresh water fishings of that river, belonging to the respondents.

The Court, in the former proceedings, had previously ordered a survey to be made, by an engineer, of the course of the river, and of the tide.

Accordingly, such survey, with the plan of the river and of the flowings of the tide, was made and reported upon oath, by Mr Peter Mey, named on the part of the respondents.

In making this survey, Mr Peter Mey was attended by both parties; and the accuracy of his plan, it was stated, had never once been questioned in the course of the former cause.

By this plan, the river falls into the sea at high water, in ordinary tides, at a place called the Banks of Cultyre.

The former decree had proceeded upon this plan, and the same was before the House of Lords, when that decree was affirmed.

But, instead of obeying the former decree, the respondents kept forcible possession of the fishing upon a large tract of the River Findhorn, below the boundary settled by the decree, and also by repeated acts of violence, prevented the appellant from exercising his undoubted right of fishing within that tract for three years from 1762 till April 1765, some months after the decree of the Court of Session had been affirmed by the House of Lords.

The appellant thereupon brought the present action for asserting his right, and sought reparation for the damage done him by this forcible possession and violence.

This action was raised in August 1762, and in November following, the present respondents brought their appeal to your Lordships, against the foresaid decree, settling the boundary between the fresh and salt water fishings.

As the judgment upon this appeal was a simple affirmance of the decree of the Court of Session, the only question that can possibly arise upon that decree in the present cause is,—Whether the line of the boundary thereby given, was sufficiently marked out in the decree; and if it was not, What is that line? and, consequently, supersedes the necessity

of entering into the matter of right previously declared by the decree of the Court of Session, and affirmed by the House of Lords. (Here the history of the fishings, and the procedure in the former appeal, was fully set forth.)

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Pending the discussion of that appeal, some proceedings were had in the action of molestation and damages; and the Court pronounced this interlocutor:—“Having advised the

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“state of the process, &c., and having also considered the proceedings in the former cause, and particularly the decret pronounced therein, which fixes the rule whereby the line or boundary of the defenders’ fishings falls to be ascertained, and that the pursuer extracted the decret without making any application to the Court for having such line or boundary fixed. Therefore, sustain the defences, assoilzie the defenders from this action, and decern; reserving to either party to ascertain that line as they shall be advised.” The

defenders (respondents) reclaimed against this interlocutor; and it was at this stage that they brought an action of reduction for setting aside the former decree of the Court with the judgment of the House of Lords, and for declaring it null and void.

In virtue of the former decree, the appellant had begun to fish in the pools of Cultyre and Stockiebank, which the respondents had voluntarily surrendered to him two years before; but having attempted to take back these fishings, the appellant brought an interdict. By interlocutor of this date, he

Mar. 11, 1767.

was continued in possession of the fishings of Cultyre. Thereafter, upon advising the whole conjoined processes, the Lords pronounced this interlocutor:—“Adhere to their former inter-

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“locutor, and refuse the desire of the petition, in so far as it reclaims against the same, and repel the reasons of reduction at the defenders’ instance, and assoilzies the petitioners therefrom, and decern and ordain both parties, on or before the 1st day of December, to give into their boxes memorials upon the manner of ascertaining the boundaries of their fishings.”

The Court, on the merits of the cause, pronounced this interlocutor:—“The Lords having resumed consideration of

Jan. 28, 1768.

“the cause, with the plans or surveys of the fishings in question, and the notes or observations of Peter Mey, the surveyor thereupon; and having advised the memorials for the parties, upon the manner of ascertaining the boundaries of the fresh water fishings belonging to the defenders, they find the boundary of the fresh water fishings, that is, the place where the River Findhorn falls into the sea at high water, in ordinary tides, to be at that place or point on

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“ the last plan or survey drawn by the said Peter Mey, and
 “ given into process by special order of Court,—marked with
 “ the dotted ink line, shaded about with red, as it crosses or
 “ intersects the river at figure (6) on the east side of the
 “ river, below the Pool of Stockiebanks, and opposite to the
 “ middle of what is marked or delineated the Inch, upon the
 “ west side of the river, below the Pool of Stockiebanks,
 “ and opposite to the middle of what is marked or delineated
 “ the Inch, upon the west side of the river; and which place
 “ or point is marked by the Lord President, of this date, as
 “ relative hereto; and decern and declare the same to be
 “ the boundary of the said fresh water fishings, in time com-
 “ ing: And the Lords appoint the said plan marked as afore-
 “ said, to remain amongst the grounds and warrants of this
 “ decret in all time coming; and remit to the Sheriff-
 “ depute of the shire of Elgin and Forres, or his substitute,
 “ to set up proper marks on each side of the river, ascertain-
 “ ing the boundary of the said fishings, to be as above de-
 “ scribed.”

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

Journals of
 the House of
 Lords.

It was ordered and adjudged, that the said interlocutors of the 18th November 1766, and 18th November 1767, be affirmed. And it is hereby further ordered, that in the interlocutor of 28th January 1768, after the words (“ ordinary tides to be”), the words (“ at that place or point on the last plan or survey drawn by the said Peter Mey, and given into process by special order of Court, marked with the dotted ink lines shaded about with red, as it crosses or intersects the river at figure (6) on the east side of the river, below the Pool of Stockiebanks, and opposite to the middle of what is marked or delineated the Inch, upon the west side of the river, and which place or point is marked by the Lord President, of this date, as relative hereto”), be left out, and that the words (“ at the points according to the sketch No. I., upon the plan made by order of the Court of Session”) be inserted; and that after the word (“ and”) the words (“ upon the admission of the appellant in this cause at the bar”) be inserted; and that after the words (“ decern and declareth”), the words (“ same to be the”) be left out; and that after the words

(“in time coming,”) the words (“to be a line drawn
 “upon the north-west point of the banks of Cultyre,
 “across the channel of the river, through the middle of
 “Nicol Young’s hillock, so far as to include below it a
 “part of the pool of Cultyre, and, of course, the whole
 “pool of Stockiebanks, and every other part of the
 “river below Cultyre”) be inserted; and that after the
 word (“and”) the words (“the lands”) be left out; and
 that after the word (“plan”) and before the word
 (“mark”), the words (“to be”) be inserted; and that
 after the word (“marked”), the words (“as aforesaid”)
 be left out; and that the words (“by the Lord President
 “of the Court of Session as relative hereto, and”) be
 inserted. And it is hereby further ordered and adjudged,
 that this interlocutor, thus varied, be, and the same is
 hereby affirmed.

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For the Appellant, *C. Yorke, Al. Wedderburn, Ilay
 Campbell.*

For the Respondents, *Ja. Montgomery, Al. Forrester.*

SIR LUDOVICK GRANT, &c.,	.	.	<i>Appellants ;</i>
ALEXANDER BRODIE, Esq.,	.	.	<i>Respondent.</i>

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House of Lords, 25th April 1769.

This was a dispute about the right to the mussel-scalps in
 the river Findhorn.

A grant from the Crown to Ross of Kilravock, of the
 mussel-scalps in the River Findhorn, which is a public river,
 supported by long possession, was preferred before a similar
 grant of later date, in favour of the appellants.

For the Appellants, *Ja. Montgomery, Al. Forrester.*

For the Respondent, *C. Yorke, Alex. Wedderburn.*

JEAN MURRAY, otherwise CARLYLE, of Locharthur, and Husband,	.	.	<i>Appellants ;</i>
GEORGE CARLYLE, Son of the deceased THOMAS CARLYLE, in Travala, in Wales,	.	.	<i>Respondent.</i>

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 MURRAY, &C.
 v.
 CARLYLE.