

on the same grounds. In consequence of the Duke of Gordon being a minor, the guardians prevailed on the pursuer to delay the proceeding until he came of age.

1776.

GILLON

v.

MUIRHEAD, &amp; C.

A new action was then brought by the respondents to have it found that the Duke of Gordon had no right or title to erect cruives, braes, or other engines, and that the channel of the river ought to be laid open and all obstructions removed.

The Court of Session finally pronounced this interlocutor: “ Find Aug. 10, 1775. “ the defender, the Duke of Gordon, is not entitled to have cruives, “ braes, or dykes, upon those parts of the river Spey within which “ the crown had granted rights of fishing to other heritors before the “ date of the Duke of Gordon’s charter 1684. And therefore or- “ dain the cruives, braes or dykes already erected within that space “ to be demolished. And decern and declare accordingly. And “ find it unnecessary to determine at present that point relative to “ the floating of the timber.”

The Lord Ordinary ordered the cruives and dykes to be demolish- Nov. 2, 1775. ed. All have accordingly been removed, except the appellant’s Dec. 21, — cruive dyke.

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 reversed, and the cause be remitted\* to the Court of Session to proceed upon the foundation of the respective rights of the parties, ascertained and established by the interlocutor of the 14th July 1727, and declarations there made.

For the Appellant, *Al. Wedderburn, Alex. Murray, Robt. M’Queen, Arch. M’Donald.*

For the Respondent, *E. Thurlow, Henry Dundas, Ilay Campbell.*

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JOHN GILLON,	.	.	.	.	<i>Appellant ;</i>
CATHERINE MUIRHEAD & HUSBAND,	.	.	.	.	<i>Respondents.</i>

For report of this case, see Morison, p. 15286. It is said by Professor Bell (Com. vol. i. p. 76, n. 1.) that the case was affirmed on appeal; but the Compiler has not been able to find any such appeal, nor any trace of it in the Journals of the House of Lords.

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\* Under this remit, the Court of Session found the Duke entitled to a cruive fishing, and to erect cruive dykes, but so as to leave the river open to allow the respondents to float their timber down at certain seasons of the year. And, on appeal to the House of Lords, this judgment was affirmed. Vide vol. II. p. 582, ante.