

1765. *March 4.* FRASER *against* DUKE of GORDON.

No. 27.

The upper heritors on Lochness pursued the inferior heritors for correcting abuses in their mode of salmon fishing, and particularly the non-observation of the Saturday's slop. Urged in defence, The Saturday's slop had been in disuse in that river for above forty years. The Lords were of opinion, That laws made for the improvement of the salmon fishing cannot be abrogated *non utendo*; and they ordained the law with regard to the Saturday's slop to be observed in all time to come.

Fol. Dic. v. 4. p. 261.

* * This case is No. 50. p. 10742. *voce* PRESCRIPTION.

1769. *July 4.*

WILLIAM LORD HALKERTON, and other Proprietors of Salmon Fishings on the river of Northesk, *against* JAMES SCOTT of Brotherton.

No. 28.
Construction
of cruives and
cruive-dike.

THIS process for regulating the defender's cruives, was confined by the pursuers to seven articles. They complained of innovations and irregularities in the construction of the cruives, and contended, That, prior to a decision in 1763, regulating the defender's cruives, there were seven cruives placed in the dyke, at or near an equal distance from each other.

2. That since that decision, the defender had taken out all the above said seven cruives, and had placed three new cruives at the north end of the dike upon dry ground, or where water never runs but in time of speat or floods, so that no fish could pass through them but in time of great speats.

3. That the place where the cruives were formerly erected, had been rebuilt nearly of equal breadth and height with the other parts of the dyke; and that it was fortified in such a manner with wood, as to resist the utmost violence of the river.

4. That there was no cruive in the middle of the dike till the fishing season in 1767 was mostly over, and then one cruive only was placed in the middle of the dike.

5. That in the new erected cruives two iron rods had been placed and fixed to the inscales, by which the inscales were kept from opening wider than three inches, and of consequence no fish could push in against the current, unless they happened to strike exactly upon the middle of the opening; whereas, by law and common practice, the inscales ought to open and shut by the force of the current.

6. That, if any fish should get through these cruives, they were intercepted by another dike with an angle in it so barricadoed with whins and brush-wood, that it was almost impossible a single fish could get over it.