

shall be advised, but in respect the objection of incompetency was never pleaded for the suspender till he applied for a suspension, Find him liable to the charges in the expenses incurred by them before the inferior court, and remit to the Lord Ordinary to proceed accordingly." And to this judgment they (14th June 1776) unanimously adhered.

Lord Reporter, *Covington.*

Act. *G. Wallace.*

Alt. *W. Craig.*

J. W.

1776. August 10.

DUKE OF GORDON against SIR JAMES GRANT.

The Duke of Gordon brought an action against Sir James Grant, heritor of a superior part of the river Spey, for contravention of the regulations enacted in the statutes regarding salmon fishing, and craving that the court should ordain observance of them under penalties.

The defender contended, that as the law has imposed no penalty for contravening these regulations, the Court can impose none, and that it is only competent to sue for damages: That although the Court had interfered to enact penalties in former instances, yet in the case of *Carnegie against Scott*, 30th June 1768, No. 84. p. 735, the decision of the Court of Session had been reversed.

The Court held, that the reversal of their judgment in the case of *Scott* had proceeded in consequence of a compromise, and that it was proper and necessary to enforce the regulations by penalties, which they accordingly did.

W. M. M.

1777. February 5.

WILLIAM MOWAT of Garth, against JOHN BRUCE STEWART of Sembister.

The lands of Garth in Shetland are about 20 miles distant from some islands or rocks on the east side of Shetland, called the Skerries. Near these islands is a considerable fishery, on account of which their shores and beaches are frequented by the fishermen. The fishers land their boats, erect huts within sea-mark, and cure and dry their fish. This they consider to be in conformity with the privileges of general fishery conferred by statute 29th Geo. 2d, Cap. 23.

The tenants and fishermen belonging to the estate of Garth had been in use, past the memory of man, of exercising this privilege.

The greatest part of these isles or rocks belonged to the sequestrated estate of *Girlista*, held in tack by Mr. Bruce Stewart.

No. 2.

No. 3.

The Court enacted penalties to enforce the statutable regulations respecting salmon fishing.

See No. 98. p. 7384.

No. 4.

Competent to sue in the Court of Session, declarator of the right of fishery conferred by the statute 29. Geo. 2. Cap. 23. and action of damages for infringing that right.