

would no longer answer for the purpose of a cruive dike, as all the salmon would escape by this passage.

No. 29.

Besides these general points of law argued in this case, the pursuers founded on the words of a contract in 1724, as barring the Duke from erecting cruives. But the Court were of opinion, that the contract could not bear this construction, and was likewise derelinqished. The defenders founded on certain interlocutors in the process 1733, as decisive of the question against the upper heritors. But, as there were some of the upper heritors parties to the present process, who were not parties to either of the former actions, the Court thought the question still open to be tried at their instance.

The Court “repelled the objections to the Duke of Gordon’s right to cruive fishing *sub saxo de Ardiquish*, established by the charter 1684, as well the objections founded on the act 1581, as those founded on the interest of the superior heritors, or on the interest of the Earl of Fife, and in these terms repel the reasons of reduction.”

Act. Lord Advocate, Ilay Campbell, Elphinston, James Grant. Alt. Sol. General, Rae, M’Laurin, Alex. Gordon, jun.

Fol. Dic. v. 4. p. 254. Fac. Coll. No. 33. p. 54.

1783. January 21. LORD BANFF and Others, against EARL of FIFE.

IN an action, at the instance of Lord Banff, and the other proprietors of fishings in the upper part of the river Doverton, against Earl Fife, owner of those below,

The Lords found, “That it was not necessary to remove the sole-trees or side-posts of the cruive boxes in forbidden time; the removing of the hecks and in-scales being sufficient” to answer the purposes of the law.

Act. G. Buchan Hepburn, R. Dundas. Alt. Ch. Hay. Clerk, Home.

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Fol. Dic. v. 4. p. 261. Fac. Coll. No. 79. p. 123.

No. 30.

Not necessary, in forbidden time, to remove the sole-trees or side-posts of cruive boxes, but only the hecks and in-scales.

1793. November 20.

The PROCURATOR-FISCAL of the TOWN of STIRLING, against JOHN GILLIES and Others.

By the act 1581, c. 111. which proceeds upon the narrative, that the former statutes relating to offences against the salmon fishing had not been carried into execution, the persons therein mentioned are appointed his “Hienes justices,” for the purpose of “taking up dittay,” and trying by jury offenders against these acts.

The statute then enumerates various rivers. With regard to some of them, this jurisdiction is given to private individuals; and with regard to others, to persons in public office, such as sheriffs and stewarts, or the magistrates of royal boroughs.

No. 31.

The act 1581, c. 111. is not now in force.

No. 31. In particular, it is given to the steward of Monteith, and his deputies, for the heads of the rivers of Teith and Forth, and to the sheriff of Stirling, and the provost and bailies of Stirling, “ for the remanent of the waters of Forth, Teith, Gudie, Carron, Allane, and Dovano, and their graines ;” and to the sheriff of Linlithgow and his deputies, and the provost and bailies of that burgh, “ for the waters of Avon and south side of Forth, within the bounds of that sheriffdom.”

In 1789, the procurator-fiscal of the town of Stirling presented a petition and complaint to the magistrates, against John Gillies and others, fishermen at the villages of Kincardine and Longannet, situated in the county of Perth, and on the side of the Forth, on account of certain trespasses against the acts relating to salmon fishing, alleged to have been committed by them on the coast adjoining to the places of their residence. The defenders declined the jurisdiction of the magistrates of Stirling, who overruled their plea. Of this judgment they complained by bill of advocacy, which having been passed, besides disputing how far the jurisdiction of the magistrates of Stirling ever extended to the places of their residence, they

Pleaded: The act 1581, which appears to have been very disagreeable to the great families possessed of heritable jurisdictions, (1594, c. 224. ; 1597, c. 265.) has been long in disuetude. Few instances have been pointed out, where processes have been carried on before the magistrates of Stirling for such trespasses. The earliest of them is in 1748, and they are of no weight in point of precedent, because the mode of trial by jury, as directed by the act, was not then followed. Indeed, the statute in question, as being a commission of Justiciary, was virtually abrogated by the act 1592, c. 128. annulling all such commissions ; and also by the acts 1600, c. 11. and 1606, c. 5. by which offences against the salmon fishing are declared punishable as theft, and consequently fell to be tried before the ordinary judges : And, at all events, the act was taken away by 20 Geo. II. c. 43. abolishing heritable jurisdictions.

Answered: The act in question has been confirmed by subsequent statutes, 1696, c. 33. ; 1705, c. 2. : the jurisdiction conveyed by it has often been exercised by the magistrates of Stirling, and was not abolished by 20 Geo. II. as it reserves entire the privileges of royal boroughs.

The Lord Ordinary reported the cause on informations.

Observed on the bench: All extraordinary jurisdictions, such as those created by the act in question, are now at an end. The enactments of the statute are altogether unnecessary in the present state of the country. Indeed, as the powers conveyed by it are in general bestowed upon individuals, without mentioning their heirs, it must have been intended merely as a temporary regulation. It is in respect similar to the branch of the act 1685, c. 20. appointing masters of the game.

The Lords unanimously assoilzied the defenders.

Lord Reporter, *Dreghorn.* Act. *Moir.* Alt. *Dean of Faculty.* Clerk, *Gordon.*

*Fal. Dic. v. 4. p. 261. Fac. Coll. No. 73. p. 159.*