

1765.

LORD ERSKINE,  
&c.  
v.  
MAGISTRATES  
OF STIRLING,  
&c.

[Fac. Coll., Vol. iii., p. 248; et Mor. 14,268.]

THOMAS, LORD ERSKINE of Alva, and JOHN  
ERSKINE of Balgownie, . . . . . *Appellants* ;

THE MAGISTRATES AND TOWN-COUNCIL  
OF STIRLING; MICHAEL POTTER of  
Easter Livylands, and ROBERT GALLO-  
WAY of Burrowmeadow, . . . . . } *Respondents.*

House of Lords, 20th March 1765.

SALMON FISHING IN THE FORTH—ACT 1698.—Held that the appellants were prohibited by the above Act from using a stoup-net, which was a species of pock-net, in their fishing salmon in the river or Firth of Forth, and that they were not entitled to use either pock-net or herrywater net, in said fishing, contrary to the said Act.

The river Forth takes its rise a considerable way to the west of the town of Stirling, where there is a bridge to which the tide flows; and the river is there navigable for small vessels; from thence it runs eastward for twenty-four miles by many windings, to the town of Alloa, which is only four miles distant by land; here it becomes navigable for large ships, and runs, increasing in breadth, mixed with salt water, until it is joined on the south bank by the River Carron, where it is lost in the sea, or Firth of Forth.

Royal Char-  
ters, 1620,  
1699, 1741.

The appellant, Lord Erskine, was entitled by royal grants, “to the salmon fishings and other fishings whatsoever, in and upon the river of Forth, descending from the Abbey Boat of Cambuskenneth, to the mouth of the river Carron.” This includes the space of twenty-five miles of the river, or thereabouts.

Jan. 4, 1598.

The other appellant, Mr Erskine, stood infest in the lands of Poppletrees, lying in the barony of Cowie, and shire of Stirling, “together with a stoup-net and fishing therewith, upon and in the water of Forth, in the places used and wont, or thereabouts, within the bounds of the said lands.”

Sasine 1618.

The respondents stated that, an Act of Parliament passed in 1698, against pock-net fishing upon the water of Forth, which prohibited all salmon fishing whatsoever in the Firth of Forth by such pock-nets, herrywater nets, or other engines, and appointed the Sheriff-principal of the county of Stirling, and the bailie of the water of Forth, to suppress said unlawful fishing.

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.

1765.  


---

LORD ERSKINE,  
&c.  
v.  
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;*

1769.

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