

1782.

[*Vide Mor.* p. 12820.]

GRANT
v.
DUKE OF
GORDON.

SIR JAMES GRANT and Others - - - *Appellants* ;
DUKE of GORDON, - - - - *Respondent.*

House of Lords, 20th February 1782.

CRUIVE DYKE—RIGHT OF FLOATING TIMBER DOWN A RIVER.—

Held that the superior heritors on the river Spey, in which the Duke of Gordon had a right of cruive fishing, had a right of floating down the river rafts of timber, and that the cruive-dyke, built across the river to serve the Duke's fishing, could not be allowed to hurt or obstruct the free exercise of that right.

The Duke of Gordon's right of cruive-fishing in the river Spey had been disputed by the other proprietors having rights of salmon-fishing on the river ; but the Duke's right thereto was finally fixed by sentence of the Court of Session, on remit to the House of Lords.

The appellants thereupon raised the present action, as proprietors of lands adjacent to the river Spey, concluding to have it found “ That they had right, at all times, to send
“ floats of timber down the river, and to the navigation
“ thereof, in every way of which it was capable, and to have
“ every obstruction to this right removed ; and that the
“ Duke of Gordon should be obliged to remove all dykes,
“ braes, and other bulwarks impeding the navigation ; and
“ should be prohibited from erecting such for the future.”

The plain object of this action was to get the cruive dykes destroyed, in which it appeared great alterations had recently been made, detrimental to the navigation of the river. Besides, the dykes at one time were composed of loose smooth stones, which gave way to the least force, so that the floats of timber, when coming down, met with little or no obstruction. Now, however, a solid and permanent massive wall was erected, reaching from bank to bank ; and the appellants, therefore, complained of it as an obstruction, not only to the navigation of the river, but to their right of floating timber down the river.

Jan. 18, 1781. Lord Gardenstone reported the case to the whole Lords, who, of this date, pronounced this interlocutor :—“ That
“ the Duke of Gordon has a right of cruive-fishing on the
“ river Spey ; but that Sir James Grant and the other pur-
“ suers, superior heritors on the Spey, have right and title

“ to pass with floats and rafts down the said river to the
 “ sea, from the 26th of August to the 15th May, and that
 “ from the 26th August to the end of March, they are en-
 “ titled to the exercise of the said right of floating indis-
 “ criminate, without any restriction or limitation, but that
 “ in the exercise of that right from the last day of March
 “ to the 15th May, the persons employed in the floating
 “ must give notice to the tacksman of the Duke’s cruive-
 “ fishing, or their manager personally, or at the wauk-mill
 “ of Fochabers, now called the fishing quarters, between
 “ sun rising and sun setting, and that at least four hours
 “ before the floats are to pass, that the Duke’s fishers, or
 “ others concerned in the cruives, may make a passage for
 “ the floats or rafts passing the cruive-dykes, and failing
 “ their opening a passage to the floats or rafts within four
 “ hours of such notice, allow the person attending the floats
 “ to open a passage for themselves on the cruive-dyke, and
 “ to pass freely without interruption.”

1781.

LORD
 MACDONALD
 v.
 M'LEOD.

The Duke reclaimed, and the Court pronounced this interlocutor:—“ That the superior heritors are only to float
 “ from sun rising to sun setting ; also that they are to pass
 “ the cruive-dyke *seriatim*, at the place pointed out to them
 “ by the Duke’s fishers, who are always to make the said
 “ openings, so as to allow the floats to pass freely and con-
 “ veniently.”

Against this interlocutor the present appeal was brought.
 After hearing counsel, it was
 Ordered and adjudged that the interlocutors complained
 of be affirmed.

For Appellants, *Henry Dundas (Lord Advocate), Ilay
 Campbell, Jas. Grant, Wm. Grant.*
 For Respondent, *Alex. Murray, Ar. Macdonald, Dav.
 Rae, J. Maclaurin, R. Dundas.*

LORD MACDONALD,	-	-	<i>Appellant.</i>
NORMAN M'LEOD, Esq.	-	-	<i>Respondent.</i>

House of Lords, 2d February 1781.

RIGHT OF PROPERTY—POSSESSION—PART AND PERTINENT—AC-
 CESSION.—Certain rocks or islands on the coast lay between the
 estates of two parties. In neither of their rights or titles were
 there any express mention of those islands or rocks in dispute,