

No. 19. ing, is illegal, and cannot be sanctioned by any usage; and therefore prohibit and discharge the said Sir James Colquhoun from constructing, or continuing to use any such engine; and in so far decern and declare conform to the conclusions of the conjoined actions; and assoilzie the said first mentioned heritors from the conclusion of Sir James Colquhoun's action, and decern."

Lord Ordinary, *Craig*. Act. *H. Erskine, Robertson, Boyle*, Agent, *William Callender*.
 Alt. *Solicitor-General Blair, Jo. Clerk, Monyfeunny*. Agent, *Arch. Ferrier, W. S.* Clerk, *Ferrier*.
 F. *Fac. Coll. No. 172. p. 388.*

SECT. III.

Cruives.—Saturday's Slop.—Act 1581. Cap. 3.

1665. *January 26.*

No. 20. HERITORS of the FISHING of DON, *against* TOWN of ABERDEEN.

CRUIVES may be transplanted within the bounds of the heritor's possession, the former cruive dikes being demolished, so that the fishing above be in no worse situation than formerly.

Fol. Dic. v. 2. p. 360. Stair.

* * This case is No. 107. p. 10840. *voce* PRESCRIPTION.

☞ The sequel of this case is also reported by Stair:

1665. *July 29.*

THIS day report being made concerning the cruives of Don, The Lords found, that there was no necessity to keep always open a mid-stream, notwithstanding the several acts of Parliament made thereanent; which, upon inquiry through the kingdom, they found to be in desuetude, and especially in these cruives, to be made past memory, with Saturday's slop only, and ordained the distance of the hecks to be three inches Scots measure, whereof 27 make an ell.

Fol. Dic. v. 2. p. 360. Stair, v. 1. p. 305.

1684. *March 18.*

WILLIAM BARCLAY of Balmacleun, *against* SCOTT of Comiston.

No. 21.

THE Lords find the mid-stream acclaimed by the pursuer's declarator to be in desuetude, and therefore assoilzie Comiston from it: Find, he must observe the

Saturday's slop not only in one of his cruives, but in all; and that the cruive-dike must be an ell and an half high above the water, as it runs in an ordinary current, from the 15th of April to the 15th of May, and must be built sloping, and not perpendicular; and that the hecks in his salmon cruives must be three inches wide, conform to the old acts of Parliament; and decern in this, as was regulated between the town of Aberdeen and the heritors on Don river, 26th January, and 29th July, 1665, as observed by Stair, *supra*.

Fol. Dic. v. 2. p. 360. Fountainhall, v. 1. p. 282.

No. 21.

1693. February 10. COBLE FISHERS OF DON.

THE Lords advised that tedious plea between the coble and cruive fishers upon Don, and they had found before, that this contract was of the nature of a real servitude that bound the singular successors, and was only a regulation of the *modus percipiendi fructus in-re communi*, and what proportion each should have; yet, in regard there were two non-subscribers who were declared free, the Lords now found the contract thereby dissolved, and that the whole other ten subscribers were loosed and free. The Lords were equally divided, and the President's vote carried it for breaking the contract, in regard the division of the fishes seemed impracticable where two were freed as not contractors, and that it would make great confusion how the expenses should be carried on with common charge. Then it fell to be considered, if the cruive dam-dike ought to be demolished, and removed from Balgonie's mill of Keithick; but the plurality of the Lords inclined that it should not, in regard that the cruive heritors had express privileges to set them in any part of the water they pleased; and in cognoscing his damage through the alluvion and the washing away of his banks, by the force of the water occasioned by the height of their dam, the Lords modified for each acre £100 Scots, as the price of it, at £6 yearly, making it 18 years purchase, and that this should be the rate proportionally of any skaith he should sustain that way in time coming; but decerned the coble and cruive fishers to pay the bygone loss equally amongst them, but found only the cruive-men liable for what damage he should sustain in time coming, seeing the contract of society betwixt them is now dissolved, and which communication exposed the coble fishers to perpetual fines before the privy-council for the cruive heritors, their irregular fishing; whereby the Earl of Kintore, Master of Forbes, and many of the upper Barons on Don water, did pursue them, and got them deeply fined as wronging and intercepting their fishings: And the Lords farther discharged either party to make use of a stent-net as that which had been the *origo mali* and bone of contention betwixt them.

No. 22.
Stent-nets un-
lawful.

Fountainhall, v. 1. p. 558.