

1701. *November 15.* FALCONER of Newton *against* SCOT of Comiston.

No. 23.

The cruive-dike ought to be only three ells broad, and a foot and a half high above the water, as the stream runs at ordinary times from the 15th of April to the beginning of May.

THERE being mutual declarators between Falconer of Newton and Scot of Comiston, as to their salmon fishings on the water of Northesk, and the probation being advised, the Lords found, That Comiston, in his fishings acquired from Graham of Morphy, had not observed the distance of hecks enjoined to be in cruives by the acts of Parliament, viz. three inches wide, (though one of the old acts, by mistake, calls it five inches), for it was proved that Comiston's were not two inches wide; therefore the Lords decerned him to demolish the same, and to put them up of the wideness enjoined by law; and likewise found he had observed the Saturday's sloop, as appeared by the probation, and therefore assoilzied him from that part of Newton's declarator; and farther declared, that his cruive-dike ought to be only three ells broad, and a foot and a half high above the water, as the stream runs at ordinary times, from the 15th of April to May, neither when it is in spout, nor too shallow and low; and ordained the cruive-dike to be so altered and regulated, both in its height and breadth; and, in the last place, the Lords modified Newton's damage by these contraventions, conform to what was proved to have been the profit made by the salmon fishing in former years, according to the number of the barrels they made, which were proved to be worth 50 merks *per* barrel at that time. See the like controversy decided the 26th of January, 1665, the Fishers on Don and the Town of Aberdeen, No. 107. p. 10840. *voce* PRESCRIPTION; and in Stair's Instit. B. 2. T. 3. And in the foresaid cause of Newton's and Comiston's, the Lords found the cruive-dike behooved to be built sloping from the top till it was two feet beneath the water, and then from that perpendicular to the bottom.

*Fol. Dic. v. 2. p. 361. Fountainhall, v. 2. p. 123.*

1704. *February 26.*

MR. JAMES CARNEY of Phineven, and the HERITORS of the Water of SOUTHESK, *against* the MAGISTRATES of BRECHIN.

No. 24.

Unlawful to put sheeting upon cruives.

MR. James Carnegy of Phineven, and the upper heritors of Southesk, pursue a declarator against the Magistrates of the town of Brechin, for contravening the acts of Parliament anent salmon fishing, regulating the wideness of the hecks to three inches, and enjoining the Saturday's sloop; all which they have violated, and likewise fallen on a new method to stop the fish wholly from going up to spawn, by sheeting the cruives, *i. e.* putting a sheet daubed with pitch all alongst their cruives, by which it is impossible for any fish to pass through, which damnifies the superior heritors in a considerable sum yearly, and renders their fishing wholly ineffectual to them; and concluding they may be discharged that unwarrantable custom of sheeting, &c. Alleged for the town, That what they did in this case