

No. 7. 1743, Nov. 24. FAIRLIE *against* EARL OF EGLINTON.

EARL OF EGLINTON built a mill on the water of Irvine that made the water regorge somewhat on a superior mill belonging to Fairlie, and made it go the worse, which occasioned a process ; and Earl of Eglinton brought a proof by artists that the heightening Fairlie's mill-wheel ten inches and widening the trough and fall six inches would remedy the inconveniency, and offered himself to be at the charge of the alteration of Fairlie's mill ; and the question was, Whether Fairlie would be obliged in law to accept of that offer? and it was found by a majority that he might be obliged supposing it might be done with effect, and agreed to make an interim order to try whether the remedy proposed can be effectual. 25th January, Altered by President's casting vote, and 5th June adhered.

No. 8. 1748, July 5. MENZIES *against* DEANS AND TOWN OF ABERDEEN.

THE Lords found that Pitfodels cannot *opere manufacto* alter the course of the river. Here the river has been encroaching gradually on Pitfodels upwards of 10 years, for it is so long since the first bulwark is proved to have been built to hold it off. I was in the Outer-House, and knew not whether the judgment was unanimous. My opinion was that he could not alter it by building *in alveo fluminis* so as prejudge the town, which it would very probably have done, but then I thought, that on finding caution *de damno infecto*, as in the case Lord Braco and Duke of Gordon he might. 22d November Adhered.

No. 9. 1750. Nov. 2. M'KENZIE of Rosehaugh *against* ROBERTSON.

MR M'KENZIE had on the water of Erigh a timber work betwixt two rocks, that dams up the whole, and suffers no salmon to pass, commonly called the Keith of Rattray. Robertson of Balnakeilly, and others, heritors above him, pursued a declarator for having it removed, as contrary to law, with concurrence of the Procurator-Fiscal, at least to have it regulated in the same way as cruives. There was some question on the pursuers' title, but as one of the pursuers produced an infestment containing salmon-fishing from the Duke of Athole, who had the like infestment from the Crown, we sustained his title ; but in respect of the pursuer's infestments produced, as old as 1614 and 1682, in the salmon-fishings of the Keith of Rattray, ratified in Parliament 1685, and immemorial possession, we found that it cannot now be taken away, five to four. The President gave no opinion.

No. 10. 1752, July 3. SIR ROBERT GORDON *against* LORD LYON.

THOUGH by the 19th act, 22d Parl. James VI. an heritor of 10 chalders of victual can build but one pidgeon-house, yet Sir Robert Gordon having 46 chalders of rent lying contiguous within two miles, though he has already three pidgeon houses on it, may build a fourth within the said two miles.

No. 11. 1753, June 19. EARL OF HOPETOUN *against* MR WILLIAMSON.

MR HORN obtained leave from the Earl of Hopeton, and wrought a quarry in his grounds, while the Earl was working another, and Mr Horn wanting a rolling-stone, sent