

river, or they would catch no fish, and therefore could only fish alternately. The town therefore raised declarator of the exclusive right, and Lady Gray as proprietor of Kinfauns produced a charter in 1672 of her lands *cum salmonum piscariis in aqua de Tay*, and likewise of the barony of Craigton with certain particular salmon fishings, and a general clause, and insisted that she had right to fish on the north side and to clear the ground. The Lords repelled the defence and found the town has the exclusive right of fishing that part of the river, *renit.* Justice-Clerk, Drummore, Strichen, Dun, Shewalton. *Pro* were Minto, Kilkerran, Monzie, Tinwald, Leven, *et ego*, and Arniston in the chair. November 2d, Altered, and a proof before answer.

No. 3. 1752, July 7. FULLERTON AND COLONEL SCOTT *against* STRAITON.

KINNEBER stands infest in the fishing in the water of Northesk *tam intra fluxum maris quam extra* opposite to his own lands of Wardroperton to the north of the river, and Colonel Scott is infest in them with the salmon fishing in the sea, and north of them are the pursuer Straiton's lands of Kirkside, in which he is also infest with the salmon fishing in the sea. The river has now altered its course, and does not enter the sea till it is opposite to the lands of Kirkside, who therefore pursued declarator that Kinneber could only fish the river opposite to his own lands, and that he alone had right to fish the mouth of the river. The case was reported by Kilkerran; and found that Kinneber had still right to fish the river though not opposite to his own lands; but in respect the pursuer had the right of fishing in the sea opposite to his lands, and which sea we reckoned all that was below the highest flood-mark, therefore we found that Kinneber could fish no farther down the river than the highest flood-mark at any time of the tide, and that below that highest flood-mark the pursuer had the right of fishing; and this construction of the sea was founded on what was said to have been the judgment of the House of Lords in a question betwixt Duke of Gordon and Earl of Murray touching the Duke's tug-net fishing in the Spey.—7th July.

Upon advising a petition against the interlocutor between these parties mentioned *supra* 7th July last with answers, we altered that interlocutor, and found that notwithstanding the change of the course of the river, Kinneber has right to fish to the lowest flood-mark; but found that when the sea covered the channel of the river, Kirkside had a joint right with him of fishing opposite to his own lands.—17th November.

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SASINE.

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No. 1. 1736, July 8. EARL OF SUTHERLAND *against* DUNBABS.

THE Lords repelled the objection to the two sasines, for they found that the act 1696 altered the act 1686; and they did not regard the alleged judgment of the House of Peers, in the case of Buchan and Braço, which was not before them, and concerning which the parties did not agree.