

to them, they could not be obliged to demolish them, if it were even true, which was not admitted, that they proved hurtful to the pursuer's superior fishing; because every man is entitled to use his own property as he pleases, provided he does not use it *in æmulationem vicini*; and the only mischief the pursuer suffers by the gallows is, that the defenders are enabled to see the fish, and to catch them, before they pass the boundary.

Answered, The bridge in question is 226 feet long. It is supported by three stone pillars, and thirteen pillars of wood, by which the course of the water is greatly interrupted, and the salmon frightened from coming up that stream; and by the means of speats or land-floods, this channel of the river may, by the obstruction of this bridge, be much filled up, which would lead the salmon into the other branch belonging to a different proprietor. Besides, this is a navigable river, and therefore an article of public right; upon which it is not lawful to erect a private bridge, as is expressly decided in the civil law, l. 4. D. De flum.

With respect to the gallows and ladder, it is a machine erected eighteen feet and a half high, the water near it is shallow, and it is impossible it should fail to frighten the fish when coming up; and the island upon which it is erected is not the separate property of the defenders, but common to them and the town of Paxton; and the gallows stands within the line of the pursuer's fishing.

"THE LORDS, at first, found, That the defenders had no right to erect a bridge betwixt the banks of the river and the said island; and ordained them to demolish the bridge already erected by them there, and discharged them from erecting any bridge there in time coming; but assoilzied them from the conclusion of the declarator as to the gallows."

But upon a reclaiming petition,

"THE LORDS assoilzied the defenders from the conclusion of the declarator as to the bridge, and adhered as to the gallows."

Act. *And, Pringle, Scrymgeour.*

Alt. *Montgomery.*

W. J.

Fol. Dic. v. 4. p. 172. Fac. Col. No 42. p. 69.

1761. August 6. WILLIAM ROBERTSON against JOHN GIBSON of Durie.

WILLIAM ROBERTSON took a feu of a piece of ground from Mr Gibson of Durie, in order to erect a saw-mill and iron-mill upon it. Above this mill there was a dam and dam-head; and in order to secure the water, Mr Robertson got in his feu-right a privilege "of employing all the water running from the foresaid dam-head to the sea, or what more water he can bring in from the foresaid dam-head, by widening and deepening the said lead to the saw or iron-mills, excepting so much of the said water as shall be requisite for the service

No 23.

After a feu of the water of a dam for the use of a mill, the original proprietor cannot put a cruive into the dam-head.

No 23.

of the said corn-mill called the Rass-mill, or of any other corn-mill to be built in place of the said Rass-mill." Further, Mr Gibson obliged himself, " That he should not set or assign, or otherways dispose of the water from the dam-head of the Rassmill-lead to the sea, or any other water within its privilege, to any persons for the service of any saw or iron-mill." *Lastly*, Both parties obliged themselves, " jointly to repair and keep up the dam-head of the said Rassmill-lead, and to be at the equal half of the charges in repairing and keeping up the same during the continuance of the saw or iron-mills."

Mr. Gibson put a salmon-cruive into the dam-head ; the effect of which was, that when the sluices of the cruive were open, there was a waste of water ; and the sides of the cruive being built higher than the dam-head, prevented the ice from getting over, which would otherways have been carried off in time of speats. Mr Robertson brought an action to have this *novum opus* removed.

" THE LORDS ordered the cruive to be removed."

Act. *Dalrymple*.Alt. *Lockhart & Rae*.*J. M.**Fol. Dic. v. 4. p. 174. Fac. Col. No 60. p. 144.*1762. *July 30.*GRAY of Balledgarno *against* MAXWELL of Bogmill.

No 24.

A man must not use his property so as to hurt another, but is not bound to make a ditch in his own land for carrying off his neighbour's water.

AN aqueduct in the Carse of Gowry, admitted to have been *opus manufactum*, carries water from a marsh in the lands of Balledgarno down to Bogmill, belonging to Alexander Maxwell. This aqueduct, having been partly filled up by mud settling in it, carried off less water from the marsh than formerly. Mr Gray, in order to have his marsh thoroughly drained, brought a process against Maxwell proprietor of Bogmill, and also against the heritors through whose grounds the aqueduct ran, concluding against the former, that he should clean the whole aqueduct from the mud that was settled in it ; and against the latter, that supposing the proprietor of the mill not to be bound, each of them should clean so much of the aqueduct as is within his ground.

He began with Mr Maxwell, who said in defence, That in the present state of the aqueduct he had sufficiency of water for his mill, and that he was not bound to clean it for the benefit of the pursuer.

In advising a long proof, the principles that govern this case were stated as follows. When a man obtains liberty to carry an aqueduct for the use of his mill through a neighbour's ground, it is implied in this servitude, as in every subject of property, that it must not be used *in damnum vicini* ; and therefore it is incumbent on the person to whom the aqueduct belongs to keep the dykes entire, that the water may not run out and overflow the neighbouring grounds ; l. 8. § 5. Si servitus vindicetur, July 1637, Parson of Dundee *contra* Inglis, *voce* SERVITUDE. For the same reason, if the aqueduct happen to be filled up