servitude, on which point a proof had been allowed, that he was not entitled to any expense of that part.

It appeared to the Lords, that this Act of Parliament for encouraging the white-fishing deserved a liberal interpretation; and that the ground, or beach, where these fishers were in use to land, and erect huts, &c., was truly the species of ground pointed at in the Act of Parliament. It was a stony beach; and though rocks might, by force of money, be improved, yet this sort of ground could not; neither therefore could it be damaged.

Mr Bruce Stewart reclaimed; and, upon advising his petition, with answers, (7th February 1777,) the Lords adhered, and afterwards modified the damages and expenses of process, to be paid to Mr Mowat, to the sum of £80 sterling.

See, on this subject, Papers in the Election Complaint, *Lord Adam Gordon* against *James Duff, Sheriff-Clerk of Elgin*, decided *2d July* and *August* 1773.

1777. *January* . SIR JAMES GRANT, &c. *against* DUKE of GORDON.

IN a process for regulating the Duke of Gordon's cruives upon Spey, in the dispute betwixt his Grace and Sir James Grant, &c.; the Lords found that the rings of the hecks of the Duke's cruives behoved to be formed either in a round or oval shape: and if in an oval, That the longest axis of the oval behoved to be set in the line of the stream, and be placed at three inches from each other, and made only as strong as was sufficient to resist the force of the water. All this was to facilitate the passage of the fish, and in favours of the superior heritors. They found also, that the inscales behoved to be placed at the extremities of the cruive box, and to afford an entry into the cruives equal in wideness to the side of the cruive box next the sea: that they behoved to be taken out during the Saturday's slap, except in time of flood, when that could not be got done; but that, at that time, they should be fixed back to the sides of the cruive box: that the cruives should be placed on the bottom or channel of the river, and that the face of the cruive box should not project beyond the cruive dyke. And the Lords appointed these and certain other regulations to be observed by the Duke in placing and constructing his cruives, and to be completed before beginning of the fishing season, under the penalty of £50 over and above performance; and so to be continued under the like penalty to be paid by the Duke, his heirs, and successors, transgressing or opposing them, *toties quoties*, to such of the respondents, or their heirs or successors, who should sue for the same.

1777. *June* 25. SIR JAMES COLQUHOUN *against* CAMPBELL OF STONEFIELD.

SIR James Colquhoun, and his predecessors, stood infeft in the salmon-fishing and other fishings of Loch-Lomond, "*et ab illo lacu deorsum in fluvio de Leven ad mare saleum.*" In a question betwixt Sir James and Mr Campbell

of Stonefield, it came to be disputed what the boundaries of this fishing were,—whether they were the mouth of the river, where it emptied itself into the sea, or where the tide flowed, and the salt water met the fresh? As the proper contradictor in this process appeared to be the Town of Dumbarton, the Lord Monboddo, Ordinary, appointed Sir James to call the Town of Dumbarton into the process; to which the Lords adhered, (25th June 1777:) notwithstanding of the doctrine in Lord Kaimes's celebrated Treatise on the *Jus Tertii*, in which it is laid down, that, unless I can found upon a right in my own favours, I cannot found upon the interest of a third party as preferable to that of my antagonist. For, in this case, Stonefield founded on no right in his own favour, but only contended, that Sir James having no right to the fishing below where the tide flowed, it was not he, but the Town of Dumbarton, who had right to quarrel him.

FOREIGNER.

1775. *December* 6. CARMICHAEL *against* SCOTT.

CARMICHAEL, an Englishman, being debtor to Scot, a Scotchman *ratione originis*, but a merchant at Newcastle in England, *animo remanendi*, having come to Scotland, as he alleged partly for recovery of health, and partly in the way of business,—Scott suspected that he had left England in order to defraud his creditors. He emitted an oath accordingly,—which he transmitted to his agent at Edinburgh; and he finding Carmichael there, and not satisfied with the account he gave of himself, emitted an oath of credulity in common form,—that he believed him to be *in meditatione fugæ*;—whereupon the Sheriff granted warrant to apprehend and incarcerate him, until he should find caution *de judicio sisti*. Upon this warrant Carmichael was apprehended, and incarcerated accordingly. He presented a bill of suspension on juratory caution, which the Lords passed without caution or consignation. They thought, that, in this case, there was no proper forum constituted against Carmichael: Scot's being a Scotchman or not, made no difference. But to allow a stranger occasionally in Scotland, *sine animo remanendi*, to be summarily arrested for a civil debt, without evidence of fraud, other than the oath of the creditor, would be attended with consequences very prejudicial to commerce: *actor sequitur forum rei* is a rule proper to be observed in every case. In this case, the debt by Carmichael to Scott was acknowledged.