

the said bridge, or the method of stretching a rope in the river, with bones tied to it, are illegal methods, intended for preventing or obstructing the fish from passing up the river, and are not only prejudicial to the superior heritors, but destructive of the fishings, and ought to be discontinued in time coming."

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Both parties petitioned against this judgment. The pursuers maintained, *1mo*, That as salmon fishings were *inter regalia*, and those rivers in which they could be carried on *flumina publica*, the right to the river and *alveus* thereof must be vested in the Crown: and as the Marquis of Annandale had no right from the Crown to erect a mill-dam in this river, the superior heritors were entitled, as it interfered with their fishings, to have it demolished. L. 5. D. De Divis Rer. L. 7. § 5. D. De Acquir. Rer. Dom. L. 1. § 12. D. De Flumen. *2do*, They were, at any rate, entitled to demand, that, in terms of the enactment 1696, c. 33. there should be an opening left in the said dike as wide as possible, and going as low as the bottom of the river. *3tio*, That the defenders' fishing, at the back of the mill-dam, which it was admitted they did with sailing nets, was a contravention of the above statute, which "discharges all fishing at such mill-dam dikes with nets stented or otherwise, or any other engines whatever."

The defenders, in their petition, maintained, That in all the different statutes relative to salmon fishings, viz. 1469, c. 38—1489, c. 15.—1503, c. 72.—1597, c. 261.—1696, c. 33.—1698, c. 3.—nets were mentioned as being legal engines; and, in some of them, nets set or stented were particularly noticed. The prohibitions, in these statutes, as to the use of nets, were, that they should not be set in forbidden-time, for catching the fish going up to spawn, and the young fry on their way to the sea—by the act 1696, that they should not be stented at dam-dikes: and as these were the only particular restrictions that were expressed, every other mode of using nets, more especially where it had been immemorially practised, was allowed. 21st December, 1750, Robertson *contra* Mackenzie, Sect. 3. *h. t.* 1760, Sir William Dunbar *contra* Brodie, respecting the fishings of Findhorn, (not reported.)

1772, February 21.—As to the pursuer's craving, relative to the demolition of the dam-dike, the Court adhered; but, before answer as to the proposed alteration, desired a report of neutral skilled men, in what manner it could be made, with the least prejudice to both parties. As to the defenders' mode of fishing at the back of the dam-dike, the Court also adhered; and as to what was craved by the defenders, adhered *simpliciter*.

Lord Ordinary, Pitfour.

For the Duke of Queensberry, Crosbie, Armstrong.

Clerk, Ross.

For the Marquis of Annandale, Sol. H. Dundas, Macqueen, Baillie.

R. H.

Fac. Coll. No. 123. p. 366.

1793. December 21.

SIR JAMES COLQUHOUN *against* DUKE OF MONTROSE and Others.

THE Lords found, That an heritor who had simply a right of salmon fishing in Lochlomond and the river Leven, was not entitled to exercise the same, by

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- No. 17. drawing nets with small meshes across the river, and fastening stakes very close to each other into the channel, so as to leave very little room for any fish to escape, and materially to impede the navigation of the river. See No. 19.

Fol. Dic. v. 4. p. 258. Fac. Col.

* * This case is No. 39. p. 12827. *voce* PROPERTY.

1797. February 25.

Lieutenant-Colonel DIROM, and others, *against* JOHN and WILLIAM LITTLES.

No. 18.

Fishing by
stent and
hang-nets
prohibited.

IN 1768, the superior heritors on the river Annan brought a declarator against the Marquis of Annandale and his tenants, complaining of the mode in which the inferior fishings were exercised.

The Court (No. 16. p. 14279.) found, "That although the Marquis of Annandale, the inferior heritor, and his tenants, have right to use all legal engines and methods for catching the fish in the river Annan, conform to law, and their possession, yet they have no right, either in time of actual fishing, or at any other time, to erect any engine, or use any other method, not for the purpose of catching fish, but for preventing or obstructing them from passing up the river; and therefore found, that the method used by them, of stenting nets across the river, either reaching altogether from side to side, or overlapping each other, in the manner mentioned in the proof, or stenting them across the arch of Annan Bridge, or of putting leisters with long shafts in the said bridge, or the method of stretching a rope in the river, with bones tied to it, are illegal methods, intended for preventing or obstructing the fish from passing up the river, and are not only prejudicial to the superior heritors, but destructive of the fishing, and ought to be discontinued in time coming."

In 1796, Lieutenant-Colonel Dirom, and other superior heritors on the river, presented a petition and complaint against John and William Littles, the lessees of the inferior fishings, in which they accused them of acting contrary to this judgment.

The defenders answered, That the fishing was exercised by them in the manner in which it had been ever since the date of the decree, and for time immemorial before, by means of "hang-nets," of which, and of the mode of using them, they gave the following description. The hang-net is fixed by one extremity on the shore, and then drawn diagonally downwards, across a smooth part of the river, and reaching not above one half the breadth of it. The other extremity of the net is left loose. The one side of the net is sunk by small pieces of lead, and the other supported by cork, so as to make the net stand perpendicular in the water; and when a fish comes against it, the net yields, and the fish is caught, by being entangled in it. They further contended, that, from the want of pools in the river proper for a draught-net, this was the only way in which the fishing could be carried on with advantage; and that being a mode of killing the fish, and not merely of