

The Lords discharged Clavers to stop him in his possession, seeing *turbatus et spoliatus est ante omnia restituendus*; but found Poury could not bring in the point of right to be discussed summarily on a bill, unless Clavers consented, who was just going for London. And, seeing some of the fishers had suspended, and others had advocated, they ordained the cause to be brought in in common form, on the discussing of these, or by a declarator. *Vide* 21st July 1687. *Vol. I. Page 455.*

*July 21.*—Fothringham of Poury's case against Northesk, Panmuire, and Clavers, mentioned 10th June 1687, was reported by Edmonston; and the Lords find his charter *cum piscibus* gives him a sufficient right and title to prescribe the assize-duty of nine fishes out of every boat that passes by Brughly-castle, once belonging to the Lord Gray, for their anchoring on the rock, and gathering bait on his sands, if so be he had possessed 40 years by virtue of that title: though it was ALLEGED,—*1mo*, The clause, *cum piscibus*, was no more than *cum piscationibus*, a mere liberty to fish. But if it had meant a duty out of other folks' boats, it would have been so conceived. *2do*, This cannot introduce a servitude upon my lands and tenants, not being exacted on the land, but at sea; and so the master's knowledge *et patientia*, to induce prescription, cannot be here presumed.

As for Clavers, he was 17 years of these 40 a minor, and so they must prove 40 years before that; likeas there were other interruptions.

Poury was ordained to produce his charters. *Vol. I. Page 468.*

1687. *July 21.* JAMES NICOLSON *against* SIR JAMES DICK.

JAMES Nicolson, bailie of Edinburgh, as assignee by Sir William Nicolson, pursues Sir James Dick, to count upon a ticket given by him to Sir John Nicolson, not to deliver up an assignation, made by the co-partners of the customs, to Captain Andrew Dick, till all was cleared with (and then follows his subscription,) "James Dick." ALLEGED,—This imported no more but till all was cleared with himself, being cash-keeper, and no ways relates to the other co-partners. *2do*, Sir William Nicolson was furious when this assignation was granted.

The Lords, on Saline's report, sustained Bailie Nicolson's title, Dick of Grange (for whose behoof Sir William Nicolson pursued it,) concurring with him; and found Sir James Dick's ticket implied an obligation on him to count to the co-partners; and therefore ordained him to exhibit his count-books on oath, and to count to them for the effects of that assignation which he acquired from Captain Dick. But he alleged, he was only to count for £42,000 Scots, which was the roup at which these effects were then valued.

*Vol. I. Page 468.*