

No. 3.
Found in conformity with the above.

1606. *March.* LORD GAIRLIES *against* MAKULLOCH.

In a removing from salmon fishing, pursued by the Laird of Gairlies against Makulloch, it was alleged, that the defender was infeft in the lands adjacent to the water, with the clause *cum piscationibus in verbis dispositivis* before the *tenendas*; and, by virtue thereof, in possession past memory of man, (it being no coble fishing.) It was replied, that salmon fishings were *regalia*, and required express infeftment, and this fishing was a salmon fishing in water where the sea ebbed and flowed. In respect of the which reply, the Lords repelled the exception.

Fol. Dic. v. 2. p. 360. Haddington MS. No. 1080.

No. 4.

1610. *February 16.* CAMPBELL *against* CAMPBELL.

It was found, in an action of removing pursued by Sir Duncan Campbell, of Glenurchy, *contra* Alexander Campbell, Prior of Ardchatton, that a sasine of a barony, or third part of a barony or Lordship, dispoed to Glenurchy to be holden of the Earl of Argyle, did comprehend salmon fishings, albeit the barony was not holden of the King; specially in respect the sasine bear him to be infeft in the haill fishings, as well upon the sea as fresh waters, which was found to include salmon fishings.

Fol. Dic. v. 2. p. 360. Kerse, MS. fol. 73.

* * Haddington reports this case:

An infeftment of lands *cum piscationibus tam in mari quam aquis dulcibus*, found to be a sufficient right to salmon fishing, albeit it made no mention of salmon fishing, and that the land was holden of the Earl of Argyle.

Haddington MS. No. 1810.

No. 5.

1628. *March 26.* MAXWELL *against* PORTRACK.

AN infeftment of lands from the King, *cum piscationibus in aqua de Nith*, with continual use of fishing salmon in the said water, and debarring others therefrom, was found insufficient to defend against a removing at the instance of one who was infeft in the said salmon fishing *per expressum*.

Fol. Dic. v. 2. p. 360. Durie.

* * This case is No. 1. p. 10617. *voce* POSSESSORY JUDGMENT.

No. 6.

1701. *December 3.* FORBES *against* UDNEY.

THE Lords sustained a party's right to a salmon fishing, though his charter bore only *cum piscariis*, and not *salmonum piscationibus*, and this because of old the word

piscaria carried all sorts of fishings; and, in the present case, the sasines of the parties made it clearer, wherein the symbols for tradition bore boats, nets, cruives, &c. which are only applicable to salmon fishing. No 6.

Fol. Dic. v. 2. p. 360. Fountainhall.

* * This case is No. 40. p. 7812. *voce* JUS TERTII.

1773. *August.*

DUKE of QUEENSBERRY *against* VISCOUNT of STORMONT, and JAMES ROME, in Torduff, and JOHN ROME in Hills.

THE Duke of Queensberry brought an action against the Viscount of Stormont, and his tenants, Romes, for having it declared; that he had the sole right to the salmon fishing in the river, or frith of Solway, opposite to the lands of Torduff, Stocks, and Wylies, belonging in property to Viscount Stormont, and holden of his Grace as superior: That the defender, the Viscount, has no right thereto, and ought to be decerned to desist from all such fishing in time coming; and that Romes, the tenants and possessors of these fishings under him, should be decerned to remove therefrom.

The pursuer founded upon a charter of resignation under the great seal, in his favour, dated July 26, 1716, and seisin thereon, 29th September following. This charter contained salmon fishings in the Solway frith, opposite to the barony of Torthorwald, and of other lands, comprehending the lands of Torduff.

The defender produced a charter, dated 20th January 1649, granted by James Earl of Queensberry, as superior, to James Earl of Annandale, proceeding upon a decree of apprising, deduced against Fergus Graham of Blatwood; the dispositive clause of which charter is in these words: *Totas et integras praedict. decem libras terrarum de Torduff, cum pendiculis earundem vocat. Stocks et Wylies, cum piscariis et lie Skaris et Coups dictarum terrarum, aliisque piscariis et privilegiis earund. usitat. et consuet. cum omnibus et singulis adeficiis, &c.* He likewise produced a charter granted in 1687, by William Duke of Queensberry, in favour of David Viscount of Stormont, of the lands of Torduff, Stocks, and Wylies, which charter contains a clause of *de novodamus*; and, in the *tenendas*, the lands are declared to be held of the granter, 'in feodo et haereditate, ac libera firma, in perpetuum, cum venationibus, piscationibus, &c.

Thereafter, in obedience to an appointment of the Lord Ordinary, the defender gave in a condescence of the acts of possession consequent upon this right, namely, by the family of Stormont letting leases of these fishings to their tenants, at a certain rent, prior to the year 1669, and progressively down to the 1763, when the defender himself set the last leases, and which are still current, to the other two defenders, referring to the leases, and other written evidence; and it was stated, that, under these several rights, the tenants had uniformly and uninterruptedly possessed the whole fishings on the coast of the lands of Torduff, particularly the

No. 7.

A charter from a subject superior, mentioning *cum piscationibus* in general, joined with possession by the vassal, is sufficient to establish a right in him to a salmon fishing, though not expressed in his titles, in a question with the superior claiming the exclusive right, in virtue of a crown charter containing an express grant of the salmon fishing to him.