

if a man, *bona fide*, finds it for his interest to shut up some cruives, much might be said; but, if he does this *mala fide*, I would bring him back to the immemorial number which I will presume to have been in the original grant. The more opens there are in the dyke there will be less danger from floods; so that that argument is but a pretence.

KAIMES. The privilege of a cruive is beyond the common rights of mankind, and therefore must be exercised as it was given. He who has this privilege may give it up if he will; but, if he use it, he must use it according to his right. The defender then must show that the diminishing the number of the cruives is for the advantage of the cruive-fishing.

ELLOCK. The defender cannot convert his cruive into a dyke or brae. If he thinks that his cruive-fishing is not worth his labour, he must throw down his cruive-dyke. I do not think that he uses the three cruives *bona fide*.

JUSTICE-CLERK. A cruive-dyke cannot be kept up without a cruive-fishing. If I could separate the evidence so as to see that the fishing was not diminished by taking away so many of the cruives, I would make a distinction; but this I cannot do, and therefore I am for removing every alteration which has been made to the detriment of the superior heritors.

KENNET. It is difficult to say whether three cruives or seven would be most for the benefit of the superior heritors.

(*Vide infra*, 16th November 1769.)

1769. June 28. GEORGE DUFF of Milntown *against* ALEXANDER BRODIE of Windiehills.

PART AND PERTINENT.

Kirk-seat carried by a Disposition of Lands.

[*Faculty Collection, IV. p. 853; Dictionary, 9644.*]

PRESIDENT. It was determined, in the case of *Kinghorn*, that the burgh has a right to a share of the church, and the heritors to another.

AUCHINLECK. Brodie had a right to a seat, as Laird of Milton, not as burgess of Elgin.

On the 28th June 1769, "the Lords found the pursuer entitled to the seat as part and pertinent of his lands."

*Act. A. Duff. Alt. J. Douglas. Rep. Barjarg.*