

“ on any part of the 20 years’ minority of Hugh, the son of John
 “ the second ; for though there is a disposition by John, the father
 “ to Hugh, who was at the time a child a year old, there is no evi-
 “ dence, nor by the words of the disposition, that it was delivered to
 “ any body on the child’s account ; and as it proceeds on the recital
 “ that the father was going abroad, which it was clearly proven he
 “ did not, every circumstance concurs to show that it was never out
 “ of the father’s power ; and as he lived till after the son’s majority,
 “ the minority of the son cannot aid the pursuer ; and, 2dly, The
 “ pursuer cannot plead on the twelve years’ minority of John the
 “ second, supposing these proved, as the right did not at that time
 “ stand in John, but in Balnagowan, as a proper purchaser ; and,
 “ therefore, upon the whole, sustains the defences, assoilzies, and
 “ decerns.”

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 —————
 DUKE OF
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 v.
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On representation, the Lord Ordinary adhered. And on reclaiming Dec. 11, 1773.
 petition to the Court, “ The Lords adhere to the Lord Ordinary’s in-
 “ terlocutor, in so far as it finds the interlocutor of the Court, of the
 “ 3d Feb. 1714, is a final interlocutor, and is to be held a *res judicata*,
 “ and in so far refuse the desire of the petition. But in respect of
 “ certain new productions, made on the part of the petitioner, and
 “ which were not before the Lord Ordinary, they remit to his Lord-
 “ ship to hear parties thereon.”

After memorials were given in, the Lord Ordinary, in a special Mar. 2, 1775.
 interlocutor, found prescriptive possession run ; and also that the
 minorities pleaded were not sufficient to interrupt that prescription.”

On reclaiming petition, the Court finally adhered to the Lord Or-
 dinary’s interlocutor.

Jan. 31, 1776.

Against these interlocutors the present appeal was brought to the
 House of Lords.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be
 affirmed.

For Appellant, *Alex. Wedderburn, Alex. Murray, Ilay Campbell.*

For Respondent, *E. Thurlow, Henry Dundas, Ar. Macdonald.*

ALEX. DUKE OF GORDON,	. . . . .	<i>Appellant;</i>
SIR JAMES GRANT, Bart., COLONEL JAMES GRANT,	}	<i>Respondents.</i>
COLONEL ALEXANDER GRANT, the EARL OF FIFE,		
and Others		

House of Lords, 22d March 1776.

CRUIVE DYKES—CRUIVE FISHING—FLOATING TIMBER DOWN A RIVER.—

Circumstances in which a party was held to have a cruive fishing, and entitl-
 ed to erect dykes for that purpose, but so as not to obstruct the floating down
 the river to the sea, the wood and timber belonging to the superior heritors.

This was a dispute between the appellant and the respondents be-

1776. ing heritors on the banks of the river Spey, as to the right of cruive fishing in that river claimed by the appellant, and which the respondents contended he had not; action was brought to declare their respective rights.
- DUKE OF GORDON
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GRANT, &c. It was stated that the former Duke of Gordon had raised action to have his right of tugnet fishing in the sea at the mouth of the river Spey, and likewise to have his right to a currach, cobble and spear fishing in the said river declared; but no conclusion was made as to a cruive or dyke fishing.
- July 14, 1727. The Court of Session then pronounced this interlocutor: "Find the Earl of Moray, and other pursuers, have the only right of salmon fishing in the river Spey, from the Pot upwards to the Burn of Inchneil; and that they may use the same with cobbles or currachs as they may think fit; and that the Duke of Gordon has no right of fishing within the bounds aforesaid. And also find that the Earl of Moray and the other pursuers have a right of fishing with currachs only from the Burn of Inchneil to Balhagartygaven; and that the Duke of Gordon hath right to fish with cobble, currach, or *otherways*, within the said bounds, and decerns and declares accordingly." The Court afterwards altered the words *or otherways*, to "or in any other lawful way," by interlocutor of July 27, — 27th July; and under this, the defenders contended that it could never mean to extend to a cruive or dike fishing.
- This interlocutor was affirmed on appeal.
- In 1733, however, a new action was raised by the respondents against the Duke, to have it found that he had no right to a cruive fishing, which he insisted on. In this action the Court finally pronounced this interlocutor: "Find that charter 1684, containing a novodamus, gives the Duke a sufficient title to cruives sub saxo de Ardewhish, reserving to the heritors to be heard before the Ordinary how far the said charter gives a right to cruives at any other part except only at the saxum de Ardewhish; and also how far the said charter could give a right to cruives, in prejudice of other heritors who had *anterior* rights of fishing upon the river sub saxo de Ardewhish; also adhere to the same interlocutor, finding that by law the Duke cannot build cruives upon sands or shoals in fresh water."
- July 15, 1737. The Lord Ordinary, in terms of the remit thus made to him, found that the Duke must "demolish and pull down all braes and dykes used by him upon the Water Spey above the saxum de Ardewhish." But no judgment was given upon the other points.
1756. Sir Ludovick Grant brought an action in 1756 against Sir Robert Gordon declaring his right to salmon fishing on the river Spey opposite to his lands, and that the defender had no right to erect cruives or yairs, braes and dykes, or other unlawful engines, for fishing in the water of Spey, to the prejudice of his right. To this action the Duke of Gordon, and the Earls of Findlater and Fife were afterwards sisted as parties; and Sir Ludovick brought also an action against them

on the same grounds. In consequence of the Duke of Gordon being a minor, the guardians prevailed on the pursuer to delay the proceeding until he came of age.

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GILLON

v.

MUIRHEAD, & C.

A new action was then brought by the respondents to have it found that the Duke of Gordon had no right or title to erect cruives, braes, or other engines, and that the channel of the river ought to be laid open and all obstructions removed.

The Court of Session finally pronounced this interlocutor: “ Find Aug. 10, 1775. “ the defender, the Duke of Gordon, is not entitled to have cruives, “ braes, or dykes, upon those parts of the river Spey within which “ the crown had granted rights of fishing to other heritors before the “ date of the Duke of Gordon’s charter 1684. And therefore or- “ dain the cruives, braes or dykes already erected within that space “ to be demolished. And decern and declare accordingly. And “ find it unnecessary to determine at present that point relative to “ the floating of the timber.”

The Lord Ordinary ordered the cruives and dykes to be demolish- Nov. 2, 1775. ed. All have accordingly been removed, except the appellant’s Dec. 21, — cruive dyke.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be reversed, and the cause be remitted* to the Court of Session to proceed upon the foundation of the respective rights of the parties, ascertained and established by the interlocutor of the 14th July 1727, and declarations there made.

For the Appellant, *Al. Wedderburn, Alex. Murray, Robt. M’Queen, Arch. M’Donald.*

For the Respondent, *E. Thurlow, Henry Dundas, Ilay Campbell.*

JOHN GILLON,	.	.	.	.	<i>Appellant ;</i>
CATHERINE MUIRHEAD & HUSBAND,	.	.	.	.	<i>Respondents.</i>

For report of this case, see Morison, p. 15286. It is said by Professor Bell (Com. vol. i. p. 76, n. 1.) that the case was affirmed on appeal; but the Compiler has not been able to find any such appeal, nor any trace of it in the Journals of the House of Lords.

* Under this remit, the Court of Session found the Duke entitled to a cruive fishing, and to erect cruive dykes, but so as to leave the river open to allow the respondents to float their timber down at certain seasons of the year. And, on appeal to the House of Lords, this judgment was affirmed. Vide vol. II. p. 582, ante.