

1707. *November 4.* BURNETS, Tenants of Leys, *against* The MAGISTRATES of ABERDEEN.

LORD Pollock reported the bill of suspension, and charge to set at liberty, at the instance of Burnets, tenants to Sir Thomas Burnet of Leys, against the magistrates and procurator-fiscal of Aberdeen. The case was: They were pursued for killing of red fish, young salmon or smolts, in forbidden time; and, having compeared personally, they acknowledged their fault, and came in will; whereon they were fined in £50 Scots each, and, having delayed to pay, were imprisoned in the tolbooth of Aberdeen: And now craved liberation, on thir reasons:---*1mo*, That the sheriff-depute of Aberdeen, by their order, had discharged their sheriff-officers to trouble or molest thir persons, on account of breach of these penal laws, against killing of red fish. *2do*, The fine was most exorbitant, seeing they could not exceed £10 Scots for that transgression.

ANSWERED to the *first*,—*1mo*, The magistrates of Aberdeen, by their rights and charters from the crown, were constituted justices of the peace on the rivers of Dee and Don, for punishing all transgressors of these just and necessary laws against the destroyers of the fry of fishes. *2do*, The sheriffs could only discharge their own parts of the fine, but not what belonged to the fiscal. *3tio*, This paper could never defend them, for it was dated in 1704; and the transgressions for which they were pursued were all posterior to that time. And, as to the *second* reason, the quantity of the fine was noways exorbitant; for there is a long tract of acts of parliament against this crime, as destructive to our salmon-fishing; and, by the 11th Act 1600, it is ordained to be punished as theft. And there is a most strict and peremptory law renewed against it, by the 33d Act, 1696, wherein, besides their fines, they are appointed to be delivered to the Flanders officers to serve as recruits abroad.

The Lords caused read the decret, and found it did bear their compearing personally and confessing the fault; and that, by their transgressions, and not punctually putting the laws in execution against them, the emoluments of the salmon-fishing were decayed near to the one half; and that the sheriff's declaration signified nothing in this case: and therefore repelled the first reason. And, as to the second, about the fines, the Lords found the practice not uniform through all the shires where salmon-fishing was killed; and it did not appear but the £50 was imposed for more transgressions than one; and therefore repelled the second reason by a plurality, and refused to set them at liberty. Some of the Lords moved, that, this crime being to be punished as theft, the inferior judges had no power to commute or alter it into a pecuniary mulct: But this was not regarded; because the constant practice has been to fine in thir cases; and King William's Act, above cited, determines how the fine should be divided.

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1707. *November 18.* CATHERINE EDMONSTON and STEPHEN OLIVER *against* THOMAS MOFFAT and JAMES SHAW.

Catherine Edmonston, and Mr Stephen Oliver, her husband, gave in a