

No 10.

up the river; for there is a void place left in the middle of the river, six feet broad, which will allow them sufficient passage; besides that the dike comes not to the surface of the water, so that they can leap over it; and they are building nothing but what they had the like before, only it was in another place, and is now sanded. THE LORDS considered, that to stop the work might be very prejudicial to the Town, seeing, in the winter speats (it being a rapid impetuous river), all they had built would be carried away if not perfected suddenly; and, on the other hand, the favour of fishings was very great; therefore they were resolved to grant commission to visit the ground, and examine tradesmen and other witnesses on the prejudice; and the question was, Whether to direct it to some of their own number, or to the Sheriff of the shire, and adjust the interrogatories? Others proposed, that the work might proceed, the Town finding caution to demolish, if in the event it were found inconvenient. A third sort moved to allow a conjunct probation to either party upon their damages. THE LORDS allowed them some few days to think on any expedients to facilitate the trial, but prejudice to either; and if not, they would appoint a visitation.

*Fountainhall, v. 2. p. 276.*

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1713. November 22. CUNINGHAM against KENNEDY.

No 11.

THE LORDS will allow an heritor to build a dam-dike upon a river, for gathering the water to his mill, provided both ends of the dam-dike be made to rest on his own ground, and it be so built, as not to divert the water that comes over it, or goes from his mill, to return to the former channel, and go to another heritor's mill below.

*Fol. Dic. v. 2. p. 273. Forbes, MS.*

\*\*\* This case is No 7. p. 8903. *voce* MILL.

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1735. February 12. Duke of GORDON against DUFF of Bracco.

No 12.

A SMALL stripe coming off from the main body of a river, about a mile above where it enters the sea, did gradually encrease till it became a branch of the river, upwards of 60 feet ever; as this branch was daily encroaching upon the neighbouring ground, the proprietor was advised to build a bulwark 30 feet into the channel, to throw that branch of the river into its former channel, or at least to confine him within bounds. This was opposed by the heritor whose lands lay on the opposite side of the river, for whom it was admitted, that a proprietor may *munire ripam*, face up and defend his banks from the en-