

crown-charter, because that is filled up at the seal. The case is different as to a charter from a subject. There is no common right here; because the pursuer has had, properly speaking, no possession at all. The whole tenants of his estate fished *tanquam quilibet* without acknowledging him.

AUCHINLECK. The argument of the Duke of Queensberry proceeds upon a mistake in our feudal law: some decisions there are which seem to favour the error; a charter is but one deed, comprehending in it the dispositive clause, *tenendas*, and *reddendo*. Originally, the *tenendas* contained the most material circumstance of all, the substitution of heirs: so matters stood till the reign of James I. The Barons of Exchequer have got into the practice of neglecting to revise the *tenendas* clause. Their predecessors must have done otherwise, because the *tenendas* bore the right of the grantee. It would be strange to argue, from the carelessness of the Barons of Exchequer, that the doers for private people are equally careless.

On the 4th August 1773, "The Lords found that Lord Stormonth, by his titles, joined to possession, has right to the salmon-fishings; and therefore assailed."

Act. G. Clerk, Ilay Campbell, R. M'Queen. *Alt.* A. Murray, H. Dundas, D. Græme.

1773. July 1. LORD ADAM GORDON *against* JAMES DUFF.

MEMBER OF PARLIAMENT.

Subjects to be valued.

[*Faculty Collection*, VI. 244; *Dictionary*, 8656.]

AUCHINLECK. Here boats were furnished to the tenants by the proprietor. This is no feudal property, but merely a rent arising from the furnishing. If one should have a coach-house, and let it with coaches and chaises, this would be no feudal property, as to the profit of coaches and chaises.

GARDENSTON. This is an imaginary valuation. By the same rule, a right of catching fowls in the air might be valued, as a right of catching fish in the sea.

PITFOUR. There can be no valuation of fishing, unless the fishings are held of the Crown: How can a white fishing be held of the Crown?

AUCHINLECK. The sasine is good, were there any thing to be seized in.

On the 1st July 1773, "The Lords repelled the objection to the sasine, but sustained the objection, that the fishing-boats was no feudal subject."

Act. H. Dundas. *Alt.* Ilay Campbell.

1773. August 6.—COALSTON. I doubt how far the King has a power of granting an exclusive right of white-fishings.

PITFOUR. Not in the sea, but in creeks.

ALVA. Have persons on whom such rights have been conferred, ever pretended to exclude others?

JUSTICE-CLERK. I will not inquire into the general question. There is a just foundation for a rent established on houses, boats, and fishing. From the conveniency of situation, fishers can afford to give a rent. Here is a fixed standing rent. There are such rents on many parts of the coast of Scotland.

On the 6th August 1773, "The Lords found that the freeholders had done right in enrolling Mr Duff."

Act. H. Dundas. *Alt.* D. Rae.

Diss. Alva. *Non liquet*, Coalston.

1773. November 17. SIR JOHN NISBET and OTHERS *against* The KIRK-SESSION of WESTKIRK.

KIRK SESSION.

Heritors have no vote in the election of a Precentor and Session-clerk.

[*Fac. Coll.* VI. 228 ; *Dictionary*, 8016.]

KENNET. The Act 1696 gives no right to the heritors, neither does practice give them a right. My only doubt is, whether the session is not barred from their exclusive right of election by the agreement 1770.

HAILES. I think that the session did not surrender its right, and that it could not surrender its right.

COALSTON. There are no words in the agreement strong enough to bind the Kirk-Session in time coming.

On the 17th November 1773, "The Lords assoilyied;" adhering to Lord Auchinleck's interlocutor; and found expenses due since that time.

Act. Ilay Campbell. *Alt.* J. M'Laurin.

1773. November 30. JOHN COWAN and COMPANY *against* HENRY and KATHERINE STORARS.

MUTUAL CONTRACT.

[*Dictionary*, p. 9142.]

AUCHINLECK. This subject was moveable, and fell under the *jus mariti*. The aliment was *ex pietate*; for the subject did not, at that time, bear interest.