are indeed very strong, and there is no getting over them. The words *duly negotiated* apply to all the subjects in the statute. It was inaccurate in the writer to the signet to issue summary diligence.

On the 5th August 1775, "the Lords passed the bill without caution."

Act. W. Baillie. *Alt.* A. Miller.

Reporter, Covington.

1775. *August* 8. SIR JAMES GRANT and OTHERS *against* DUKE of GORDON.

SALMON-FISHING.

Powers of the Crown in granting a right in cruive-fishing.

[*Faculty Collection, VIII.* 54; *Dictionary*, 14,297.]

COVINGTON. I would have doubted as to the clause of *novodamus* having so strong an effect, had it not been for the judgment of lawyers, and the decisions of the Court. Supposing the grant to be effectual, the question is, whether the Crown could grant it, after having made a grant of a currach fishing in the same bounds? There is no part in this river which is not covered with a salmon fishing of one kind or other. I would not choose to inquire into the extent of the king's power. At the same time I do not think that the Crown established cruives in any river in Scotland, unless it should be said that the grant in question, 1684, is an exception from this. The Crown cannot abuse its right, if it has one, in prejudice of the subject. It cannot ruin a salmon-fishing by turning the course, or shutting up the mouth of the river, by means of which the fish would be prevented coming up to spawn. Cruive-fishings are in some degree hurtful, and must therefore be construed in the strictest manner. It is admitted that the Crown cannot do any thing to hurt a general right of fishing. The right of the Cumins of Erneside is general. Heritors, whose estates lie adjacent to rivers, have a natural right to demand a grant of salmon-fishing *ex adverso* of their lands to the middle of the channel. Grants are generally so conceived; but, as this is attended with inconveniency from joint possession, the heritors on each side agree to fish promiscuously. It is said that, although the superior heritors had rights, yet that the Crown could grant other rights to the inferior. But here the Crown was in some degree denuded by the fishing exercised in the way of currach. That sort of fishing has been treated as contemptible; yet it was the most ancient, and, from the price paid for it 150 years ago, appears to have been a valuable fishing. In order to lessen its importance it has been always supposed that a grant of a currach fishing means only one currach. *That* is a mistake. One currach may be innocent; twenty will be destructive. Thus, one stoup net is so innocent as to be below the notice of the law, yet many were so hurtful as to require a special statute abolishing them.

GARDENSTON. There is only one point in this cause which admits of doubt, and

that is, how far it is in the power of the Crown to grant this fishing by cruives. There never would have been a grant of cruives if consequential damage was to be attended to. *This*, as to the right of the superior heritors; but the case of *Lord Fife* is different: he has a limited grant of fishing within the same bounds. Yet, although he has a currach fishing, nothing hinders the Crown to grant every other species of fishing.

MONBODDO. *Lord Fife's* possession has only been by *currach*, the Crown having granted one mode of fishing, may still grant a more extensive right.

COALSTON. I proceed on the supposition that the charter, 1684, having a *novodamus*, in virtue of a sign-manual, is equivalent to an original right. The only difficulty in this cause is, as to a cruive-dyke erected on a part of the river where the Duke of Gordon had not the sole right. When the Crown has once granted a right on a particular station, it cannot grant a second right to disappoint the first. The Crown never makes an original grant limited in point of mode. Such limitations have been introduced by subsequent conveyances and partitions. Here there is a right of currach-fishing: that right cannot be defeated by any subsequent grant. Were it otherways, the consequences would go exceedingly deep. In many rivers of Scotland there are grants of salmon-fishings, and no cruives. If the Crown could superinduce cruives, there would be a strange alteration of property, and many valuable estates would be annihilated.

KAIMES. Although an heritor has a right of fishing, the Crown may still grant cruives in an inferior station, but not within the same bounds. Within those bounds the Crown could not have granted a currach, and much less a cruive.

ALEMORE. All grants of fishing originally related to the persons who possessed the lands. I do not think that, after a grant of fishing is made, any thing remains with the Crown. Cruives are an ancient mode of fishing, but they were never the favourites of the law. I do not believe that there are any late grants of cruives, perhaps not for two centuries back; for I observe a statute in 1581, which orders all cruives to be pulled down, where there is not both charter and possession for them. From that time I believe the Crown never made an original grant of cruives, unless in the single case whereof we now treat. *There* there is *charter* but no *possession*.

JUSTICE-CLERK. The *Duke of Gordon's* plea would be to introduce a new system, and, by means of a latent right in the Crown, to annihilate the estates of many landholders. The Act 1581 shows that the Crown had made grants of cruives of which the nation complained, and strong measures were then taken, as appears from the statute itself. Why did the legislature speak of *possession* at that time if it had had any notion of a reserved right in the Crown.

AUCHINLECK. All grants of *salmonum piscationes* give a right to all the salmon that the grantee can catch. I do not think that the Crown can, after making a grant of *salmonum piscationes*, make a grant of a currach, or coble-fishing, and much less of a cruive.

PRESIDENT. Different rights are granted by the Crown. The Crown may enlarge a mode of fishing, but it cannot interfere with the rights of others.

COALSTON. I imagine that there has been no original grant of cruives since the Act 1581; which strongly confirms Lord Alemore's observation.

On the 8th August 1775, "the Lords found the Duke of Gordon not entitled to a cruive, and decerned it to be removed, and found it not necessary to determine as to the right of navigation in the river."

Act. H. Dundas, &c. *Alt.* D. Rae, &c.

N.B. I imagine that the pursuers, in general, did not exult much in this victory, for they are left at the mercy of the Earl of Fife, who may convey his right to a currach-fishing to the Duke of Gordon for a valuable consideration; and so leave the superior heritors without any weapons of defence against the Duke's cruive-fishing.

1775. *August* 9. ALEXANDER STEWART *against* JOHN ISAT.

COMMUNITY—BURGH-ROYAL.

Magistrates of a borough having power, by special grant, to levy a duty on beer and ale, may not charge it unequally on the persons liable in such duty, under the pretence that though an ease be given to some as to the duty in question, yet a general parity is preserved in respect of their subjecting themselves to another tax, *viz.*, the payment of a certain dry multure to the town.

[*Faculty Collection, VII.* 98; *Dictionary,* 1993.]

JUSTICE-CLERK. *Prima facie* it would require some very cogent reason to prevent levying a duty below what the law authorises. If the magistrates have acted arbitrarily they may be corrected; but they have acted according to the best rules of Police, in order to establish an equality. They cannot give up the multures, their ancient patrimony, unless by levying the impost duty unequally. They cannot make an equality between those liable to multures and those not liable.

COVINGTON. If this impost duty is now part of the common good, the Magistrates may levy it just as they please. Upon this ground the judgment in the case of the *Toll at Bothwell Bridge* proceeded.

ALEMORE. Before the Act of Parliament, some of the people paid multures; others not. Did not they who were exempted from multures enjoy a natural advantage? Here a weapon is put into the hands of the magistrates for the good of the community; if they take off any part of the duty, they must do it equally. I think that the manner of levying on Isat is against law. I do not see where this can stop. As to the Toll at Bothwell Bridge, the practice was fixed by long possession; besides, an equal rule was observed; some inhabitants were not burdened, while others were relieved.

KAIMES. What is done here is intended for introducing the most perfect equality.

COALSTON. Two important questions occur here,—1*st*, Whether magistrates have an arbitrary power? 2*dly*, Of levying unequally in order to make an equality? On the whole, the first question is of infinite moment, and of very great