

The boundary between the respective sea-fishings was fixed by the Court, according to the title-deeds of the parties, and the evidence adduced.

As to the fishing in the river, it was thought, that, at low-water, the defenders had an exclusive right to it, notwithstanding the change in the course of the river, agreeably to the decision, December 1752, Straiton against Fullarton, No 21. p. 12797. as varied by the judgment of the House of Lords, 8th April 1756; and that, at high-water, the fishing in the river, so far as covered by the sea opposite to the pursuer's property, was included under his sea-fishing.

THE LORDS unanimously found, "That the pursuer has no right of salmon-fishing in the river of Nairn, so far, and at such times, as the stream of water of the said river can be distinguished from the water of the sea."

Lord Ordinary, *Justice-Clerk.*

Act. *Solicitor-General Blair, M. Ross, Monypenny.*

Alt. *Geo. Fergusson, C. Hope.*

Clerk, *Gordon.*

D. D.

Fac. Col. No 222. p. 520.

1799. *June 20.*

JOHN ANDERSON *against* WILLIAM DALRYMPLE and Others.

WILLIAM DALRYMPLE, and others, were proprietors of the two upper storeys of a house in Prince's Street, Edinburgh, of which the sunk storey, and that above it, belonged to John Anderson. The two upper storeys entered by a stair, near the inner extremity of a common passage; at the same extremity of which, too, was the street entry to Anderson's property.

Anderson having converted a front room of his house into a shop, insisted to strike out a door to it from the passage, in a niche, or recess, which received the door, then placed on the outer extremity of it; and he applied to the Dean of Guild for liberty to do so.

This was objected to by Dalrymple, and others, and refused by the Dean of Guild.

In an advocacy, reports of tradesmen were produced by both parties. These were contradictory. But that of the builder of the house bore, that, foreseeing that it might be wished to convert the front room into a shop, he had placed a dormant of wood in the wall, at the very place where Anderson meant to make the door; that the bricks below it might be removed, without any danger to the wall, and the outer door of the passage be otherwise commodiously placed.

The bill was refused.

But another having been presented and passed, the Lord Ordinary remitted to the Dean of Guild to alter the former interlocutor, and allow Anderson's operations to proceed, with special instructions as to their execution, so as to be most commodious for both parties.

No 40.

No 41.

In a house of several storeys, belonging to different proprietors, having their entry by a common passage, no alteration can be made on it without the consent of the whole.

No 41.

In a petition by Dalrymple, and others, it was *contended*, That the proposed alteration was contrary to the plan, on the faith of which they had purchased, and that it could not be carried into execution, without considerable danger and inconvenience to their properties, particularly without altering the situation of the outer door on the passage, so that they were entitled to prevent it.

Anderson, on the other hand, *maintained*, That he lay under no prohibition, express or implied, against using the room as a shop, and that, while his property would be much improved, by having a door separated from, and nearer to the street than that of his house, no injury of any sort could hence arise to the objectors, who, therefore, had no right to complain; 3d March 1784, Robertson against Ranken, *voce* SERVITUDE; 1791, Murray. *

The Court examined persons of skill in their own presence, and came to be satisfied, that the petitioners would not be hurt by the alterations objected to by them. But this notwithstanding, the general opinion was, that, as the petitioners had not merely a servitude *oneris ferendi* on the wall from which the door was to be opened, but a right of common property in the passage, no alteration whatever could be made on it without their consent.

THE LORDS " Altered the interlocutor reclaimed from, and remitted the cause *simpliciter* to the Dean of Guild, to refuse the original petition for John Anderson; but found no expenses due to either party."

A reclaiming petition was refused, (9th July,) without answers.

Lord Ordinary, *Meadowbank*.

For Anderson, *Hope, Monypenny*.
Clerk, *Gordon*.

Alt. *Burnett*.

D. D.

Fac. Col. No 129. p. 296.

1802. *May 18.*

MACNAIR *against* LORD CATHCART.

No 42.

Where property cannot be vindicated *in forma specificæ*, without great injury and devastation, the proprietor is obliged to accept an equivalent.

IN the year 1710, Sir John Schaw of Greenock, Baronet, disposed to Andrew Paterson, a tenement within the burgh and barony of Greenock, together with eight falls of ground adjoining, which were occupied as a garden. The boundaries of this piece of ground are ascertained, and described in the feu-contract. Paterson died about the year 1715, leaving three sons and one daughter.

His eldest son, Andrew, possessed these subjects, upon his title of apparençy, till his death in 1747. His youngest son died without issue; but his second son, James, had several children, the eldest of whom was George.

Andrew having left no children, and James being at that time out of the country, his sister Elizabeth, who resided in Greenock, entered into possession.

* Not reported.—See APPENDIX.