

No 50.

The privilege of the Saturday's slap is not lost by the negative prescription.

1766. *March 4.* FRAZER of Culduthel, &c. *against* DUKE of GORDON, &c.

THE heritors of the upper fishings upon Lochness brought a process against the inferior heritors, for correcting several abuses committed by them in the face of public law, and concluding particularly that they should be obliged to observe the Saturday's slap. The defence was, that the Saturday's slap had been in disuse above 40 years; and that the pursuers had lost their right to challenge by the negative prescription. It was agreed on both sides that laws made for improving the salmon-fishing cannot be hurt *non utendo*, more than other laws enacted for the good of the public; but that the Saturday's slap was only a privilege granted to superior heritors, and did not tend to the good of the fishing in general. And therefore that this privilege may be renounced by the negative prescription as well as by express consent.

“THE LORDS sustained the declarator as far as it concludes that the defenders should be ordained to keep the Saturday's slap, according to the act of Parliament.”

We were not so learned in the natural history of salmon as to be able to pronounce clearly that the Saturday's slap is a public benefit for the salmon-fishing in general. But we see it enjoined by many statutes as publicly beneficial, even so much as that the transgression is made a point of dittay.

Fol. Dic. v. 4. p. 92. Sel. Dec. No 243. p. 316.

S E C T. VII.

Negative Prescription of Immunity from Servitudes.

No 51.

1682. *January 20.* COCKBURN *against* BROWN.

IN the declarator pursued by Major Cockburn *contra* Brown of Dolphington, for declaring his lands of Millrig to be free of a servitude of 16 souns of grass, which was alleged to have been constituted upon the lands of whereof Millrig is a pendicle, the LORDS, after a visitation and examination of witnesses, found the servitude sufficiently constituted by the writs produced, and the depositions of the witnesses, who proved 40-years possession of the pasturage of the said souns grass, not only upon the rest of the lands, but also upon Millrig; and that by receiving of eight merks yearly as Millrig's propor-