

No 4.

and not to bailies of regality, but by special grant from their lord: And, though Sir William be named in the charter only heresable baillie of regality, yet having annexed to his heritable right all the privileiges competent to any lord of regality; his not qualifying according to law, could only deprive him of the exercise of jurisdiction *qua* baillie of the regality, such as holding of courts, the benefit of sentence-money, and other perquisites or dues of court, and could not cut him off from disposing of the casualty of escheats, which is no exercise of jurisdiction, but a part of his property that belongs to him, as to a lord of regality, though the rebel be judged, and his lands lie within another jurisdiction, June 26. 1680, Young *contra* L. of Raploch, No 26. p. 3635. Mackenzie, Crim. part 2 tit. 11.

THE LORDS found, That Sir William Bruce had right to gift single escheats fallen within the regality of Kinross; and that by not taking the oaths, he did not lose that right. See ESCHEAT.

Eorbes, p. 688.

No 5:

1714. November 25. BRUCE *against* Ld. RASHIEHILL and Others.

It was found, That the sea-greens in carges, which in spring-tides are entirely overflown, are not *inter regalia*, and therefore need not be established as a separate fee, but they may belong to the neighbouring heritors, as part and pertinent of their lands.

Fol. Dic. vol. 2. p. 328. Dalrymple. Bruce.

. This case is No 2. p. 9342. *voce* NOVODAMUS.

No 6.

1739. December 7. Duke of ARGYLE *against* Sir ALEXANDER MURRAY.

FOUND, that the benefit of mines, &c. granted by the act of Parliament 1592, is not to be restricted to freeholders, immediate vassals of the Crown, but extends to all proprietors of land within the realm, freeholders, though holding of subject superiors.

Kilkerran, p. 478.

. Lord Kames reports this case :

By a statute in Parl. 12. James VI. *anno* 1592, it is enacted, " That mines and metals, in so far as they are part of his Majesty's property annexed, or any other way, shall be dissolved, and to the effect the same may be set in feu; and that it shall be lawful to his Majesty and his successors to set in feu-farm to every Earl, Lord, Baron, and other freeholder within the realm, all and

whatsoever mines of gold, or silver, lead, copper tin, and other whatsoever, metals or minerals, which may be found within their own lands or heritages for payment to his Majesty of the tenth part of the gold or other minerals, which shall be found within his lands or heritages, free and without any deduction." Sir Alexander Murray, proprietor of the barony or Ardnamuchan, holding of the Duke of Argyle, who holds the same of the Crown, did, upon the above act of Parliament, obtain a grant from his Majesty of all the mines within the said lands. The Duke of Argyle conceiving, that the benefit of the act did not belong to the King's vassals only, applied for and obtained a second grant from his Majesty of the mines within the said lands. And these two grants being made the foundation of mutual declarators, THE LORDS found, That the benefit of mines and metals granted by the statute 1592, is not to be restricted to the freeholders who are immediate vassals of the crown, but does extend and belong to all proprietors of land freeholders, though holden of subject superiors; and therefore, that the grant to Sir Alexander Murray, obtained from his late Majesty, of the mines and metals within his own lands, doth carry the right to the mines and metals within the lands of Ardnamuchan, and others holding of the Duke of Argyle.

No 6.

Fol. Dic. v. 2. p. 328.

1740. November 3.

MILLER and Captain WILLIAM DALRYMPLE his tenant, *against* SWINTON and the MAGISTRATES and TOWN-COUNCIL of North Berwick.

No 7.

FOUND that the public streets of a burgh belong to the Crown, and that the magistrates and council have no power to appropriate any part thereof.

Fol. Dic. v. 4. p. 220. Kilkerran, (BURGH-ROYAL.) p. 99.

1750. January 4.

Earl of HOPETON *against* OFFICERS OF STATE.

No 8.

THE Earl of Hopeton applied, by petition, to the Commissioners of Treasury for a grant of mines and minerals within his lands in Scotland, in virtue of an act of Parliament made for that purpose in the year 1592, which they referred to the Barons of Exchequer, who reported in the words of the act, That it is lawful to his Majesty to make such grant to his subjects in Scotland, and he had always been in use to it.

The proprietors of grounds wherein there are mines, are entitled to grants thereof from the Crown.

The Earl of Hopeton insisted in a declarator before the Court of Session, against the Officers of State, that he had right to a grant, which they did not deny, but alleged it was improper to bring an action, and the same could not be sustained, unless it were that the said right was refused.