

Ja. III.; Act 19, Parl. 1641; Act 35, Parl. 1, c. 2.\* *2do*, Were there any ambiguity in the word freeholder, it is sufficiently explained by other words in the statute, wherein mention is made of mines found within *their own lands and heritages*, and *within the lands pertaining to any subject of this realm*; of the Lord† of the ground, (which, by Skene, under the word *Feodum*, is rendered proprietor of the ground,) and *Owner of the ground*. So that the question comes to be, Whether Sir Alexander Murray's lands belong to himself, or to the Duke, his superior? *3tio*, By the preamble of the Act, it appears to have been intended for the benefit of all the lieges who should undertake to discover and work mines within their grounds, and is not alone calculated for the benefit of superiors.

The Lords found that the word freeholder denotes any proprietor of lands. Dissent. *Preside*.

N.B. The narrative of the Act 1592 bears, That all mines belong to his Majesty; which contradicts Act 12, Ja. I., and is either erroneous or relates to ancient times, before Malcolm II. feued out the lands of Scotland.

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1739. December 11. WILKIE against ———.

The question here was, Whether a sasine given within burgh, by the bailies, with the town-clerk subscribing as notary, to a singular successor upon a disposition and resignation, was of itself a good foundation of a possessory judgment, without any adminicle whatsoever, such as a disposition, procuratory of resignation, or precept of sasine?

The Lords found that it was; upon this principle, that any sasine whatsoever, though wanting adminicles, is so. It is probable that the Lords would sustain a sasine within burgh without adminicles, to be good *in petitorio* as well as *in possessorio*, as resting upon the faith of the bailies and town-clerk; which distinguishes it from sasines in landward. See Dec. *Wilson* against *Stuart*, July penult. 1629, (reported by Durie,) and the decision there quoted.

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1739. December 11. CREDITORS OF BALQUAN against MISS CUNINGHAM.

[Elch., *Faculty*, No. 5; Kilk., *ibid.* No. 2; C. Home, No. 134.]

It being established by decisions, that a reserved faculty of burdening an estate inserted in a disposition would not create a real right upon the estate

\* In the inscription of Parliament 7th, Ja. I., there are mentioned *libere tenentes, qui de rege tenent in capite*.

† This is the meaning of the word *Lord* in several statutes, Act 126, Ja. I., Act 18, Ja. II.