memorial custom regulated the constitution of incorporations, which, if once established, cannot be altered by the members.

1740. *February 5.* DUKE of ARGYLE *against* SIR ALEXANDER MURRAY.

[Elch., No. 1, *Regalia;* Kilk., No. 1, *ibid.*]

THIS cause we mentioned before, December 8, 1739. This day it came in by a reclaiming bill from the Duke, which, with the answers, was advised; and the Lords, after some debate among themselves, adhered to their former interlocutor.

The chief argument used for the Duke, was drawn from the Act of Parliament 71, *anno* 1457, allowing prelates, barons, and freeholders to subfeu their lands. Now, the question is, What is the meaning of the word freeholder in this statute? And this is determined by another statute, made only fourteen years after the Act 1592, *viz.* Act 12, 1606, whereby it is declared, that to extend the said Act 1457 to the vassals of subject-superiors, and thereby make the word freeholder denote any other than the immediate tenant, was expressly repugnant to the meaning of the Act; from which it appears that the fixed statutory meaning of the word freeholder, is the immediate tenant of the Crown.

To this it was answered,—That as the word freeholder was allowed to be ambiguous, and that it was taken sometimes in a larger sense, so as to comprehend all proprietors of land, and sometimes in a stricter, so as only to denote the freeholders of the Crown; for that reason, wherever it occurred, it ought to be explained *secundum subjectam materiam.* According to this rule of interpretation, the only meaning of the word, in the Act 1457, could be that of immediate vassal of the Crown; for that Act relates solely to the king and his vassals. It is said there, that the King was to begin, and give example to the *lave; i. e.* by allowing his vassals to feu out their lands, he was to give an example to other superiors to do the same; and the King promises to ratify the subfeu or assedation, which can only relate to subfeus from his own vassals, and not to subfeus from the vassals of other superiors, with respect to which, the King's confirmation would signify nothing. And notwithstanding the meaning of the word freeholder was so clear from the scope and tenor of the Act, yet the signification of it seemed to be so much fixed the other way, that this Act 1457 was understood to extend to all proprietors of land, not only by the common practice, and the opinion of the lawyers, but likewise by a judgment of this House, June 23, 1668; so that the widest acceptation of the word, for all proprietors of land, seems to be the most proper. But, supposing the meaning altogether doubtful; in this case, the scope and design of the law, the utility and expediency of it, and almost every clause of the statute, conspire to determine the signification to be that of proprietor of lands, whether holden of the King or of a subject superior.