

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.

**No 8.** *Observed*, That in petitory actions it was indeed necessary to allege a wrong done, or a right withheld, but not in declarators.

THE LORDS repelled the objection to the pursuer's declarator, and found he had a right in terms of the act 1592, and that it was not lawful for the Crown to work the said mines, or set them in feu or tack to any other person.

*D. Falconer, vol. 2. No 120. p. 137.*

1760. *June 20.*

JAMES EARL OF MORTON *against* DAVID COVINGTREE of Newark.

**No 9.**  
The seaweed, of which kelp is made, belongs to the heritor whose lands lie next to the shore, in virtue of his grant thereof, with wreck and ware.

THE Earl of Morton stands infeft, upon a charter from the Crown, in the earldom of Orkney, and lordship of Zetland, with the lands, privileges, and pertinents, &c. thereto belonging, as well by sea as by land, with wreck and ware.

In Orkney, the lands are frequently distinguished by the denomination of penny-lands; and eighteen of these penny-lands are understood to compose what is called an urisland.

The Earl of Morton, in virtue of the above charter, is proprietor of fifteen penny-lands in the urislands of Watland and Skealon, in the parish of Deerness.

Mr Covingtree of Newark is proprietor of the lands of Newark and Air, extending to nine penny-lands, lying nominally within the said two urislands, under a charter from the crown of these and other lands, "cum omnibus mossis, moris, maresiis, wreck, wair, waith, &c. ac omnibus pertinentibus quibuscunque, tam non nominatis quam nominatis, tam subtus terra quam supra terram, procul et prope, ad prædictas terras pertinet."

The greater part of these lands, belonging to Newark, lie in a continued stretch along the sea-shore, and the Earl's lands, within or behind them; only a small part thereof extending to the shore, at the end of Newark's grounds; and, in some places, at a distance from the sea, part of their grounds are intermixed.

The tenants of both had been immemorially in use of carrying off the seaware cast in on the shore, for the manure of their lands.

This they used to divide in some proportion to their respective penny-lands; and the Earl's tenants of his inland grounds were suffered, by Newark's tenants, to come through his grounds, and carry off their shares of that wreck.

Of late, the manufacture of kelp was introduced into that country. The weed proper for making it, is not the loose ware thrown in by the sea, but what is there called tang, which grows upon, and adheres to the rocks, and is cut off from them at low water. Newark's tenants begun to carry on that manufacture successfully, upon the shore of his own lands; and thereupon the Earl's tenants attempted to do the same on those shores, but were interrupted.