

1777.

JOHN LIVINGSTONE MITCHELL, Esq. of Park-  
 hall, . . . . . *Appellant;*  
 THE GOVERNOR AND COMPANY of Under-  
 takers for raising Thames Water in York }  
 Buildings, &c., . . . . . *Respondents.*

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MITCHELL  
 v.  
 GOVERNOR AND  
 COMPANY FOR  
 RAISING  
 WATER, &c.

House of Lords, 21st March 1777.

CHARTER—SUPERIOR AND VASSAL—RIGHT TO COAL.—The ap-  
 pellant laid claim to the coal of his lands of Madiston, although  
 in granting the feu the superior had reserved the coal. Held  
 that neither by the clan Act, nor the charter from the Crown,  
 subsequent to the date of the superior's attainder, was the coal  
 granted to the appellant's ancestors, but that the right to the  
 same was vested in the respondents, as disponees of the Crown.

The lands of Madiston being part of the barony of Hain-  
 ing, belonged anciently to the Earl of Callender, and were  
 feued by the Earl to the appellant's ancestor (Marshall) in  
 1647, to be holden of the Earl and his successors.

In this charter, there was the following clause of reserva-  
 tion as to the coal mines: "Reservata liberate et privilegio,  
 " nobis, hæredibus et successoribus nostris, effodiendi et lu-  
 " crandi carbones, calcem, et lapides calcis, jactandi lie holes  
 " et sinks, faciendi lie shanks, vias et passagia, in et ad ead:  
 " infra aliquam partem terrarum supra desposit, pro solutione  
 " dictis Edwardo, suis filiis, orumque prædictis, quid damni  
 " et detrimenti per ead, super eorum terras arabiles sustine-  
 " bunt per decisionem dorum honestorum virorum, quorum  
 " unum per nos et alterum per illos eligendum."

In the subsequent charter and precepts from the family  
 of Callender to the heirs and successors of the said Edward  
 Marshall, the same reservation was repeated.

By the clan Act, 1 George I., it was declared, that those  
 vassals holding lands of superiors, who had been guilty of  
 high treason, if they "continue peaceable, and in dutiful  
 " allegiance to his majesty," they were thereby authorised to  
 hold the same of his majesty in fee and heritage for ever.

The Earl of Callender having been attainted of high  
 treason in 1715, the appellant's father took the benefit of the  
 statute, and obtained a charter from the Crown, and this  
 charter contained a clause of novodamus.

As attendant on the forfeiture of the Earl, the barony of

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Haining belonging to him, fell to the Crown. It was sold to the respondents, the York Buildings Company, "with the " town and lands of Madiston, with coals and coal heughs " of the same," &c.

A suspension and interdict was brought by the appellant against the respondents and their tenants of the coal, in which he made claim to the full right in the coal of these lands, under the circumstances above stated.

Jan. 31, 1776.

The Lord Ordinary pronounced this interlocutor: "Having considered this representation and answers thereto, and " state of the process, Find that the York Buildings' Com- " pany has right to the coal in the lands in question, and " that Mr Livingstone Mitchell has no right thereto; finds " that the York Buildings Company's tacksmen have right " to continue their possession of the said coal; assoilzies the " defenders from the process of declarator; finds the letters " orderly proceeded with, and discharges the caution for " damages found by the Earl of Errol, and James King (the " tenants), and decerns."

July 10, 1776.

On reclaiming petition, the Court adhered, and on a second reclaiming petition the Court again adhered.

Nov. 29, 1776.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged, that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *Henry Dundas, Al. Wedderburn, J. Dunning.*

For the Respondents, *E. Thurlow, Alex. Wight.*

1777.

BLAIR  
v.  
DOUGLAS, &c.

[Fac. Coll., Vol. vii., p. 194; et Mor. 14,577.]

DAVID BLAIR, Esq. of Dunskey, . . . . . *Appellant;*

Messrs DOUGLAS, HERON, and Co., . . . . . *Respondents.*

House of Lords, 30th April 1777.

PARTNERSHIP—ARTICLES.—In the articles of copartnery of the Douglas, Heron, and Co.'s Banking Company, it was provided that the heirs and executors of a deceasing partner should be obliged