

M I L L

1566. February 7. LORD FLEMING against LORD ROSS.

No 1.

ANE miln is not comprehendit nor cumis under the generall word or appellatioun of pertinentis; because ane miln requires ane speciall and severall sasine.

Fol. Dic. v. I. p. 574. Balfour, (PERTINENTS.) p. 175.

1667. February 5.

COUNTESS of HUME against TENANTS of ALCAMBUS and MR RODGER HOG.

No 2.

THE Countess of Hume being provided, by her contract of marriage, to the lands of Alcambus, Pyperlaw, and Windilaw, extended to twenty-four husband-lands, she gets a charter upon her contract, bearing, for implement thereof, to dispoine to her the lands and barony of Alcambus, &c. with a sasine taken at Alcambus. She thereupon pursues the tenants. Compearance is made for Mr Roger Hog, and other creditors, who bought these lands from Wauchtoun, who had bought them from the Earl of Hume, and *alleged* absolvitor from the mails and duties of the mill of Alcambus, because my Lady by her contract of marriage was not provided to the mill, neither was she infest therein, *per expressum*, and mills do not pass as pertinents, without special infestment; *2do*, Absolvitor for the rents of Pyperlaw and Windilaw, because my Lady's sasine, bears only infestment in the lands of Alcambus, and mentions not these lands which are particularly in the contract. The pursuer answered to the *first*, That by her charter, she was infest in the lands of Alcambus, with the mills, with other lands mentioned therein, &c.; *2dly*, That Alcambus bore, by her charter, to be a barony, which is *nomen universitatis*,

Though mills are distinct tenements and not carried as part and pertinent; yet in a barony, which is *nomen universitatis*, mills though not expressed are comprehended.

No 2.

and carries mills, albeit not exprest. To the *second*, It is offered to be proven, that Alcambus is the common known designation, and is commonly known to comprehend Pyperlaw and Windilaw, as parts and pertinents thereof, and that they are all holden of one superior, and lie contigue, so that they are naturally united, and without any further union in a barony or tenement, and a sasine upon any place of them serves for all. It was *answered* for the defender, to the *first* point, Alcambus was not a barony, neither doth the designation thereof by the Earl of Hume, make it a barony, unless it were instructed. *2dly*, The adding of mills in the charter, if the Lady had not right thereto by the contract, is a donation by a husband, and is revoked by his disposition of the lands of Alcambus, and mill thereof, to the Laird of Wauchtoun, the defender's author. The pursuer *answered*, that the charter was but an explication of the meaning of the parties, that by the contract the intention was to dispoise the mill, especially, seeing the mill hath no sucken but these husband-lands of Alcambus, which are dispoised without any restriction of the multure, so that the mill would be of little consequence without the thirle.

THE LORDS having compared the contract and charter, found that, by the contract, the Lady could not have right to the mill, albeit she would be free of the multures; and found that the charter did not only bear for implement of the contract, but also for love and favour; and so found the adjection of the mill to be a donation revoked; nor had they respect to the designation of the lands as a barony, but they found it relevant, if the Lady should prove that it was a barony, to carry the right of the mill, or that in my Lords infestments, there was no express mention of the mill, but that my Lady had them in the same terms my Lord had them; they found also, that reply relevant, that Alcambus was the name of the whole lands, to extend the sasine to the lands of Pyperlaw and Windilaw, though not named, and that they might be yet parts and pertinents of the tenement, under one common name.

Fol. Dic. v. 1. p. 574. Stair, v. 1. p. 436.

1670. July 27.

The LADY HALLIBURTON *against* The Creditors of HALLIBURTON.

No 3.

Though a mill cannot pass as a pertinent, yet when it is built after a purchaser's infestment, it accresces to

THE Lady Halliburton being provided by her contract of marriage to the mains of Halliburton, with the mill and pertinents, and her precept of sasine bearing warrant to infest her in the mains and mill, by earth and stone of the land, and by the clap of the mill; her sasine having the said precept engrossed bears her by virtue thereof to be infest by the earth and stone of the land, but mentions nothing of any symbol for the mill, or of any reason that sasine was not taken of the mill, because it was demolished; the mill being there-