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. 2*dly*, 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 revocked 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 dispone the mill, especially, seeing the mill hath no sucken but these husband-lands of Alcambus, which are disponed 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 revocked; 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 infeftments, 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 HALLIBURTOUN *against* The Creditors of HALLIBURTOUN.

No 3.
Though a mill cannot pass as a pertinent, yet when it is built after a purchaser's infeftment, 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 infeft 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 infeft 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-

after built or re-edified, the creditors having apprised, did take infeftment of the mains by earth and stone, and of the mill by clap and happer; and now in a competition betwixt the Lady and them anent the rents of the mill, it was *alleged* for the Creditors, that they ought to be preferred, because they were infeft in the mill, and the Lady was never infeft therein, albeit her precept of sasine bore an express warrant to infeft her therein by clap and happer. It was *answered* for the Lady, that her infeftment of the land, with the mill and other pertinents, is anterior to the Creditors, and must extend to the mill, albeit she took no special sasine thereof, because there was no standing mill at the time of her sasine; so that the mill being built by her husband thereafter, *solo cedit*, and belongs to her as a pertinent; for though where a mill is before infeftment, it cannot pass as a pertinent without a special sasine, yet where it is only built thereafter, it accresces to any party infeft in the land, especially being infeft in the land, with the mill thereof.

No 3.
him, and therefore a liferentrix infeft on lands on which a mill was afterwards built by the proprietor, was preferred to a posterior appriser infeft expressly in the mill.

THE LORDS preferred the Lady, she proving the mill at the time of her contract and infeftment was not at all built, or having been built was demolished.

Fol. Dic. v. 1. p. 574. Stair, v. 1. p. 701.

*** A similar decision was pronounced, January 1666 Campbell against Stirling No 5. p. 8241. *voce* LIFERENTER; in which case the LORDS declared that if the husband who built the mill did thirle any other lands thereto, besides the liferent lands, the liferenter should have no benefit thereby.

1684. *February* 28. M'DOUGAL *against* M'CULLOCH.

M'DOUGAL of Logan pursues M'Culloch of ——, to demolish a mill he had built within his thirlage. *Alleged*, 1*mo*, A mill that has once gone 24 hours cannot be thrown down, *ob favorem alimentorum*. 2*do*, Though my lands be thirled to your mill, which is the mill of the barony, yet that cannot hinder me, unless my charter did expressly restrict me, to build a mill within my own lands, especially I having a clause '*cum molendinis et multuris*' in the *tenendas*; seeing I am willing to declare that none within your thirlage should grind at my mill, but only others who voluntarily were pleased to come; and that Craig was clear of this opinion, *L.* 2. *Dieg.* 8. *Answered*, That the building a mill within his thirle could be interpreted to be done with no other design but *in æmulationem vicini*, and that it was tempting those within the sucken to abstract, and go away to that nearer mill; and whatever was Craig's opinion *non refert*: Yet he seems only to mean where one was thirled for a dry multure allenarly, *ad annuam prestationem*, that one so thirled might *in suo molam edificare*. THE LORDS on the report of Lord Boyne, find that the defender ought not to have built a mill upon the thirled lands, and that *inest de jure*,

No 4.
Proprietor of thirled lands cannot build a mill within the thirle.