

APPENDIX.

PART I.

PART AND PERTINENT.

1777. June 17. WILLIAM ROSE against JOHN RAMSAY.

No. 1.

AT Michaelmas Head Court, for the county of Banff, held 29th September 1775, John Ramsay, Esq; advocate, younger of Banff, claimed to be enrolled as a freeholder in that county, as having right to the liferent superiority of the lands of Sandley, &c. rated in the cess-books at L. 500 Scots. To this claim, an objection was made in name of William Rose of Ballivat, one of the freeholders, upon this ground, That Mr Ramsay had not right to the whole subjects, composing the *cumulo* of L. 500, the valued rent, there being a mill upon the lands of Sandley, not contained in his title. To this objection it was answered, That the mill of Sandley must pass as part and pertinent of the said lands, the petitioner having an undoubted title to the whole subjects composing the foresaid *cumulo*. The freeholders sustained the objection, and the cause was brought before the Court of Session, by a petition and complaint for Mr Ramsay.

Mills carried by a disposition of the lands with parts and pertinents. See No. 24. p. 9645.

For Mr Ramsay, it was argued, That though a mill may, by disposition, be made a separate tenement, yet where a proprietor builds a mill upon his own land, and grants a disposition of the whole of these lands, the mill in that case, without being particularly specified, is carried by that disposition along with the lands. Mills thus, though capable of being made *separata tenementa*, and though frequently put into that situation, yet where they never have entered into the title-deeds of the proprietor, nor have been the subject of a particular investiture or separate infeftment, are understood to pass as parts and pertinents of the lands, in the same way with any other building. The authority of Mr Erskine, B. 2. Tit. 6. § 5. was resorted to, to prove that mills are not of themselves to be considered as separate tenements from lands, unless expressly made so; and, in the present case, the mill of Sandley never having been mentioned in any of the former title-deeds, must be

No. 1.

carried as part and pertinent by the complainer's infestment in the lands themselves. It would indeed be somewhat extraordinary, if Lord Banff, after disposing the lands of Sandley to the complainer, precisely in terms of his own titles, should yet be understood to have retained the property of the mill, to which he could have no right, except upon the footing of these titles, conceived in the very same terms with the complainer's disposition.

On the part of Mr Rose and the freeholders, it was argued, from the authority of Lord Stair, B. 2. Tit. 3. § 71. ; and Lord Bankton, B. 2. Tit. 3. § 94., That mills cannot be carried as part and pertinent, being esteemed *separata tenementa*, and requiring a special sasine, unless the lands be *in baronia*. Mill-rents, as well as land-rents, were taken under consideration by the commissioners in making out the valuations of the different counties in Scotland ; and with regard to this very county of Banff, this is proved by the state or roll of the rents made out by the commissioners appointed by the act 1649, (to be found in the Register), in which mill-rents are particularly stated. The act of convention 1643, likewise specially directed the commissioners to take up all sorts of rents together, without restriction or limitation. And accordingly, in many valuation-rolls of the different counties of Scotland, mills are comprehended under the different *cumulo* articles therein stated. Mills, therefore, being thus entitled to a proportion of the valued rent, being *separata tenementa*, and not passing as part and pertinent, the complaint, it was argued, fell to be dismissed, and the judgment of the freeholders affirmed.

It was observed from the Bench : That this was not so much a question, whether mills are a subject of valuation, as whether they can pass by a general disposition of the lands. It is true, in general, that a mill is a separate tenement, and requires a separate sasine and distinct symbol, even when specially disposed. But still most cases of this kind are *questiones voluntatis* ; and if it appeared to have been the intention of the disponent to convey the mills along with the lands, provided they had not been established as separate and distinct tenements before, this general disposition will be effectual to carry them as part and pertinent. It was also observed from the Bench, by one of the Judges, with regard to the valuation of mills, that he had lighted upon a passage in the Rhymér's *Fœdera*, which proves that mills were extended in the reign of Alexander III. The Court reversed the judgment of the Freeholders, and found, That mills could be carried by a disposition of the lands with parts and pertinents.

For the Complainer, *Geo. Abercrombie, Blair*. For Mr Rose, *Alex. Murray, Elphinstone*.

J. W.