1610. *January* 10. LADY GALGIRTH *against* HUNTER.

No 3.
A lady conjunct fiar infeft in lands *cum sylvis nemoribus, &c.* in the *tenendas*, may cut woods though not infeft therein *per expressum.*

THE relict of umquhile young Galgirth, spouse now of ———, being pursued by Hunter and others, alleging them to have bought the wood of ——— from the Laird of Galgirth, for her spoilation of the trees of the said wood; it was *excepted*, That she did no wrong, beeause she was infeft by the pursuer's author, alleged feuar of the said wood, to them in conjunct fee with her husband in the lands of Park, whereof this wood was part and pertinent, and, by virtue of her infeftment, in possession, and so did no wrong. It was *answered*, That her infeftment of the lands gave her no right to the wood, which was *regalis*, unless she had been infeft therein *per expressum.* She *replied*, That woods and shaws were not *regalia*, but only forests, and it was sufficient to her to be infeft in her conjunct-fee lands *cum silvis nemoribus virgultis ;* in the clause *tenendas*, especially seeing the man who was common author to both parties was not seased in the woods *per expressum* Which answer the LORDS found relevant.

Fol. Dic. v. 1. *p.* 548. *Haddington, MS. No* 1721.

1682. *February* 14. The LADY LAMINGTON *against* Her SON.

No 4.

THE Lady Lamington pursued her son the Laird for the third of the coal of Penston and Hoprig, as due to her by reason of terce, whereunto she was served out of these lands. THE LORDS found, That terce was due only of the lands above ground, and that the Lady tercer had no right to the profits of coal, or any thing under ground, but in so far as was needful for her own use, and she could not break the ground to work coal and sell it to others, nor could participate of any profit gotten thereby, but only should have as much as might serve herself.

Fol. Dic. v. 1. *p.* 548. *Spottiswood*, (TERCE.) *p.* 336.

*** Kerse reports this case ;

FOUND no terce of coal-heughs *nisi ad usum proprium.*

Kerse, MS. fol. 90.

*** This case is also reported by Durie :

IN an action by the Lady Lamington against the Laird, for payment of the terce of the coal of certain lands, to the terce of which lands she was lawfully served and kenned, and thereby claimed the third of the profit of the said coal, which was win within the said lands; the LORDS found, that the Lady tercer

had no right to the profits of any coals win within the lands, by virtue of her right of terce, but only to so much as might serve for her own use, and not to any more of any part of the commodity made by the heritor thereof, and therefore assoilzied from that pursuit, except as said is *pro tanto*, so far as concerned her use for her own fire. No 4.

Act. *Nicolson* et *Belshes*. Alt. *Hope* et *Stuart*. Clerk, *Gibson*.

Durie, *p.* 345.

1666. *January*. CAMPBELL *against* STIRLING.

No 5.
A liferenter being infeft in lands *cum molendinis*, found to have right to a mill built thereon after the infeftment, but to the multures of the liferent lands only.

ARCHIBALD CAMPBELL of Ottar, by contract of marriage, and infeftment following thereupon, did provide Anna Stirling his spouse, to the lands of Kinnaltie by charter, carrying *cum molendinis et multuris*. At this time there is no mill upon the lands, but during the marriage he builds one, and after his death the relict possesseth both lands and mill; whereupon, she and her present husband and tenants, are pursued by this Ottar for the duties of the mill. It was *alleged*, Absolvitor, because the mill was built upon the husband's lands, which she liferented, being infeft *cum molendinis*, and *ædificia* built by the heritor *cedunt solo*, and consequently to the liferenter. It was *answered*, That mills being *inter regalia*, are not transmitted without an express disposition and infeftment, and the general clause of a charter cannot do it. *Replied*, That the general clause gives her good right, unless there had been a going mill the time of the infeftment; in which case, it might have been questionable, unless the lands and mill had been erected in a barony; but where there was no mill, and a new mill is built, the mill accresceth to the liferenter during the liferent, as well as if she had built it herself after her husband's death.

Which the LORDS found accordingly; withal the LORDS declared, That if, after building the mill, her husband did thirle any other lands thereto beside her liferent lands, that she is not to have the benefit of any such restriction.

Gilmour, *No* 180. *p.* 130.

*** Stair reports this case:

1666. *February* 16.—Laird of Ottar having infeft his wife in conjunct-fee or liferent, in certain lands *cum molendinis*, did thereafter build a mill thereupon, and the question arising betwixt the liferenter and the heir, who should have right to the mill? The liferenter *alleged*, *ædificium solo cedit*. The heir *alleged*, That a mill is *distinctum tenementum*, that cannot pass without infeftment, and the clause in the *tenendo cum molendinis* is not sufficient not being in the dispositive clause, nor any mill built then, and he offered to make up all the liferenter's damage by building on her ground.