

have made no difference, for still the creditors would have had no preferable right.

BRAXFIELD. The father conveyed an area, and the husband was to provide his wife in a liferent; this means, of a building to be erected on the area. The only question is, Whether any challenge can lie on the head of fraud? There is none, for the provision was reasonable when the husband made it.

PRESIDENT. It is plain that the father meant to secure his daughter in a liferent, as she was accordingly infeft without delay. This is good against creditors.

On the 13th June 1777, "The Lords preferred the woman to the maills and duties for her liferent."

Act. A. Elphinston. *Alt.* J. Morthland.
Reporter, Ankerville.

1777. June 17. JOHN RAMSAY *against* WILLIAM ROSE.

PART AND PERTINENT.

Mills carried by a disposition of the lands with parts and pertinents.

[*Faculty Collection, VII. 410; Dict., App. I., Part and Pert., No. 2.*]

BRAXFIELD. The objection is, that the claimant had no right to the mill, which is a *separatum tenementum*. Two questions may arise,—1st, Whether any part of the valuation ought to be stated to the mill? 2dly, Whether the complainer has right to the mill? If he has, the first question is unnecessary to be determined. The general rule certainly is, that a mill does not pass as part and pertinent; but I doubt as to the application of it to this case. All such questions are *quæstiones voluntatis*. So, in the case of teinds, whenever it appears to be the intention of the disponer to convey teinds, they will be held as dispoed,—See *Dunning against Creditors of Tullibol*, in Falconer's Decisions. If once a mill is established as a distinct tenement, it cannot be conveyed as part and pertinent: but here it does not appear that this mill was ever considered as a distinct tenement. Here the proprietor conveyed just what was in his own titles.

On the 17th June 1777, The Lords sustained the complaint, and ordered the claimant to be enrolled.

Act. R. Blair. *Alt.* A. Elphinston.