

St. 3. 8. 71.

7. Ports with their petty Customs for upholding them granted by the King or acquired by long Possession Stair *foed.* 8. 61. McKenzie *Just Lib.* 2. Tit. 6. 8. 8.

8. The Privilege of selling up Hostleries with Chambers Stables and Provisions to Man and Horse at a reasonable Rate Act 2. A. Par. 1. Act 25. 16. 4. 1. overseeing them and regulating their Prices being committed to Magistrates of Burghs and Barons Act 18. Par. 4. 4. 5. is tacitly conveyed under Barony. But it doth not pass by other Infeftments unless expressly granted by the King immediately or by Progress that is where the last Heretofore and all his Predecessors up to the Sovereign, have that Privilege in their Rights 25 July 1628 Stewart contra Brewers in Glasgow. But in possession the Progress is presumed from an Infeftment cum Grievous Breach unless till it be reduced Stair *foed.* 8. 72.

9. The King is supposed to reserve to himself the Exercise of Jurisdiction within a Burgh when the Grant of the Burgh requires it.

Sect. 2.

What Things pass in ordinary Charters of Lands under the General of Ports and Pertinents thereof.

The Import of the Union of Ports and Pertinents is much disputed Some will have it to comprehend all Things as Pertinents. Others restrict it to Things contiguous or adjoining upon them. But properly such a Clause binds the Pertinents in ordinary Charters comprehends every Part of the Land denominated a *latet de centum* particularly Wood and Coal with all Things accustomed to follow the Lands, and not known to be *distincta tenementa*, or Parts of another Tenement, except what is reserved by Law as aforesaid, or by express Reservation. Such Ports or Pertinents are Names Places for Habitation Barns Stables and Lands or other Things possessed as Pertinents for the Space of 40 Years the not contiguous 1. March 1632 Forsyth contra Dury Craig *foed.* Lib. 2. Tit. 3. 8. 12. Tit. 8. 8. 15. Stair Lib. 2. Tit. 3. 8. 78 & 75. for a Competition for the Right to Coal in Lands; Infeftment in the Lands with Ports and Pertinents was preferred to a posterior special Infeftment in the Coal Act 30 January 1662 & 25 November 1662 L. Curry contra Sime Pertinents of Lands take in all the natural Fruits and Services Stair *foed.* 8. 73. Stewart Answers to Dirlot Doubts *Tit. Servitute* &c. As Pasturage in a Mill the discontiguous to the Lands disposed 14 Feb. 1660 Borthwick contra Borthwick. Patronages are also comprehended under the Word Pertinents Arg. Act 2. Par. 16. 4. 6. McKenzie *Observ. on d. Act 2.* Craig *foed.* 8. 22.

22.

Under a Disposition of Lands made by one having Right thereto cum Decimis inclusis the Tithes will be carried tho' not expressly disposed. But where Lands and the Tithes thereof are possessed by one diverse person his Disposition of the Lands would not convey the Tithes Craig *foed.* Lib. 2. Tit. 3. 8. 12. Lands and Tithes being *distincta tenementa* vide *supra* pag.

Mills do not come under the General of Ports and Pertinents Stair *foed.* 8. 71. Because they are esteemed as *separata tenementa* requiring a special Infeftment distinct from that of Lands. Craig (*foed.* Tit. 8. 8. 4.) insinuates, that no better Reason thereof can be given than prevailing Custom. For Mills are not inter Regalia, as Sir George McKenzie *Just.* Lib. 2. Tit. 9. 8. 16 would have them. Seeing any Heretofore may without Warrant from the Sovereign build a Mill on his own Land, and convey it to his Successors. But tho' a Mill already built cannot pass under Infeftment of the Land as Ports and Pertinents thereof. Yet a Mill built upon Land after the Infeftment Wife was sold in the said Land with the Mill and Pertinents or a Mill once standing there remained at the time of the Infeftment and received afterward was found to receive to the Wife without any special Infeftment in the Mill 29 July 1630 Lady Dalrymple contra Creditors of Holywell. And a Mill built upon the Wife's Infeftment Lands wherein she was intert cum masculinis in the Tenement only was found to belong to the Wife in her Infeftment Tho' with the Maltures of all that was granted without the Infeftment. But she was found to have no claim to any Maltures of her husband's other Lands 16 Dec. 1660 Lady Utter contra L. Utter. The Reason of both was because *Respectum* the Court tho' it was not judged sufficient to make up the Infeftment Damage by the building of the Mills. So that when we say that Mills are not carried under the General of Lands that is understood of Mills actually built at the time of the conveyance. Again no Heretofore can be hindered from the privilege of erecting a new Mill upon his own ground Craig *foed.* Lib. 2. Tit. 8. 8. 4. tho' past Memory of Man there was no Mill there before. We receive not any Thing to be a Mill till once it hath gone 29 Helms. The repairing of an going Mill is more favoured in Law than a new Erection. In so far as Wood and Stone may be laid upon one Mans ground to repair another Mans Mill, but not for building a new Mill to him. Nor yet is it allowed to any to build a Mill upon his own Property, in Emulation or at Prejudicium vicini, thereby to cut off the Water from an old going Mill belonging to his Neighbour Craig *foed.*

Steelbar Goods set with Lands to a Tenant to be restored at the expiring of his