

## F O R E S T.

1680. June 24. The MARQUIS OF ATHOL against The LAIRD OF FASKELLIE.

THE Laird of Faskellie having obtained from the King an erection of his lands into a forestry, the Marquis of Athol, as heritable forester of a forest of the King's adjacent to Faskellie's lands, supplicated the Exchequer to stop Faskellie's signature, as prejudicial to the King and the lieges. The Exchequer recommended to the Lords to hear the parties, and to give their opinion what the import and privilege of a forest is by law, and whether it be prejudicial to the King's forestry that a new gift of forestry be past. The matter being heard and reported this day, it was *alleged* for Faskellie, That his signature being under the King's hand, ought not to be stopped, it being beyond question that the King hath power to erect forestries, and that he hath done it, and it were *mali exempli* to stop the King's free grants, upon pretence of inconveniency to other parties. *2do*, There is produced a charter granted by the King to the Laird of Strowan of his estate, containing both in the dispositive clause and in the *novodamus, cum nemoribus, forestis, &c.*; and Faskellie's estate is a part of that which was Strowan's. *3tio*, Athol and others having forestries already, they do thereupon confiscate all goods of his tenants that come within the bounds of these forestries, whereby they are obliged to herd their cattle in these vast bounds both summer and winter; nor can they thereby prevent, but they may go over the march, and so be confiscated; and therefore, Faskellie having also the privilege of a forestry, either party will permit the other to come and go upon the march. It was *answered*, That the point in debate is not what the King may do, but what, upon good information, he would do; so that it is most proper for the Exchequer to know the point of law from the Lords of the import of a forestry, and of the interest of the King and lieges in erecting of new forestries; as to which, it is clear, that forestries have been erected by our Kings upon their own property, and that they are *inter regalia*, and belong to no subject in property; but subjects have only the heritable right of keeping of forestries, which are the King's

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privileges of  
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No 1. property; so that the King, upon information, would not erect forestries upon other men's property, to the prejudice of his circumjacent vassals, who, having the rights of their estates from the King, without any burden but the *reddendo*, the King would never burden them by erecting new forestries, to herd their cattle all the year over, and by losing them by passing over the march, which is a heavy servitude, of which all the lieges are free; and, though the King's prerogative, as to his own property, might allow forests for deer, or where forests have been in constant possession and are past prescription; but to give new forestries to induce so great a burden, would never have been done by the King upon information. And as to Strowan's right of forestry, *imo, Non constat*, that these lands are a part of the lands in Strowan's charter, and if they be, they may make use of Strowan's right, but cannot thereon demand a new erection. But Strowan's right imports nothing, being only a right of his lands *cum forestis*, which doth not erect the lands in forestry, but gives the lands with any forest that was on them before, in the same manner as the other articles in that clause, of 'coal, woods, fishings, mills,' &c., which imports no more, but that the lands are given with these, if they be upon the lands, and are ordinarily repeated in charters, where no such things are; so then the Marquis of Athol being only keeper of the King's forest, he hath good interest to oppose the erection of this new forest adjacent.

THE LORDS having considered the debate, with the acts of Parliament anent forestries, viz. act 11, Par. 1535, and the 84th act, Par. 1579, and act 130, Par. 1592, they ordained a report to be made to the Exchequer, to this effect, that the import and privilege of forestries is, "That all cattle put in the King's forests be taken and brought to the King's prison to be escheat, two thirds to the King, and one third to the keeper of the forest;" and if other landed men have hained forests of their own, they may escheat the goods to their own use; and, by another act, there is a jurisdiction to the keeper of the King's forests, but no forests are allowed to private persons upon their own property, but such as have hained woods or forests (which must be inclosed with dykes) by the said first act; and, by the second act, instead of escheating the goods, other penalties are imposed against those whose goods come into inclosures, orchards, or parks of private persons; and that the opinion of the Lords is, that representation be made to the King against the granting of new forests, as prejudicial to the King's old forests, and to his lieges.

*Fol. Dic. v. 1. p. 325. Stair, v. 2. p. 775.*

*See No 3. p. 2463.*

*See APPENDIX.*