

1762. February 5.

DUKE OF ARGYLE *against* THE CREDITORS OF TARBERT.

THE feu-charters of the estate of Tarbert, granted by the family of Argyle, contain, *inter alia*, the following *reddenda*.

“ Una cum nave sex remorum, tempore belli et pacis, quam navem sufficienter tenebuntur ornare armamento, omnibus necessariis, cum sex remigibus et nauclero, *lie steersman*, pro servitio S. D. N. Regis, et nostris nostrorumque hæredum et liberorum, ad transportandum nos nostrosque prædict. a Tarbert ad Strondour, Silvercraigs, et Lochgear; ac etiam ad quamque partem de Cowal, inter promontorium de Aird, et fretum de Ottar, propriis dict. Archibaldi M^cAlister, ejusque heredum, sumptibus et expensis, quotiescunque requisiti fuerint. Et similiter, dict. Archibaldus M^cAlister ejusque prædict. tenebuntur fideliter, firmiter, et secure, custodire, defendere, et tueri, dict. castrum et fortalicium, pro usu et utilitate nostra, nostrorumque prædict. ab invasionibus hostilium et inimicorum nostrorum, et recipere et custodire in dicto castro captivos, *lie prisoners*, sumptibus nostris, nostrorumque prædict. quodocunque mandatum acceperint a nobis, nostrisque prædict. aut nostris deputatis, a tempore in tempus. Et quod fideles et obediētes erunt nobis, nostrisque prædict. in omnibus aliis rebus incumbētibz ad officium custodiae dict. castri, sicuti reliqui capitanei et custodes aliorum nostrorum castrorum et domuum, infra vicecomitatum de Argyl, tenebuntur et solent præstare. Ac etiam, conservare et sustentare dict. castrum de Tarbert sartum et tactum, *lie wind et water-tight*, omni tempore futuro, sumptibus et expensis dict. Archibaldi M^cAlister, ejusque prædict. et hospitio recipere nos nostrosque supra-script. gratis, quodocunque ad dict. castrum venimus, sicuti alii custodes castrorum nostrorum facere solent.”

M^cAlister of Tarbert having allowed the castle to go into disrepair, the Duke of Argyle brought a process against him, concluding, that he should perform the several prestations contained in the above clause, and that they should be declared real burdens upon the lands.

In the course of the process, his Grace admitted, that so much of the *reddenda* as obliged the vassal to keep and defend the castle for the use of the superior against the invasions of his enemies, or for the reception of his prisoners, could not now be lawfully exacted, the same being against the public law of the kingdom: And even as to the claim founded on, the latter part of the clause obliging the vassal to support the fabric, and maintain it wind and water-tight for the reception and entertainment of the superior, *gratis*, whenever he should please to come to the said castle, which was still thought to be a lawful purpose, the pursuer agreed to pass from the upholding or repairing the old castle, provided the vassal became bound to uphold the mansion-house lately built on the feu in the same manner, and for the same lawful purposes. And further insisted, that the vassal should be bound to keep and maintain the boat properly ornamented, and manned with six rowers and a steersman, without arms, for transporting the superior and his family, in terms of the feu-right.

No. 5.

Obligation in a feu-charter to maintain a boat, and uphold the mansion-house, found not to fall under the act discharging personal services.

No. 5. M'Alister having become bankrupt, -compearance was made for his creditors, who objected, That these prestations of keeping up a house and a boat for receiving and entertaining the superior, and transporting him from one place to another, fell under the act 1mo G. I. Cap. 54. § 10. which discharges all personal services, and attendance of vassals upon their superiors, and ordains the same to be converted into an annual value in money, to be ascertained by the Court of Session, in case the parties themselves cannot agree upon it.

Answered for the pursuer : The Legislature did not mean to abolish all personal prestations in charters, but only such as formerly gave superiors an opportunity of convocating their vassals : This appears from the preamble of that clause of the statute which is referred to by the defenders ; and the enacting words are expressly confined to the services of personal attendance, hosting, hunting, watching, and warding ; all other prestations are reserved : Thus, it is an agreed point, that a vassal may still be obliged to perform harriage and carriage ; and, in the same way, the obligation to keep up an edifice on the feu for the reception of the superior, or to maintain a boat, appear to be prestations of that kind which may be lawfully exacted. The purposes for which they are intended are entirely innocent ; nor can they be productive of any of those inconveniencies which the Legislature seems to have dreaded from the personal services above described. It is the vassal's interest to keep up the house on the feu, supposing he were under no obligation so to do ; and the superior may have other reasons for inclining that the mansion-house should be supported, besides that of being received and entertained by the vassal ; for example, if the fee should happen to revert, or open to him in consequence of any of the feudal delinquencies : And, with regard to the boat, it cannot be disputed, that the purposes for which it is required to be upheld are highly reasonable and proper.

The Lords found, " That the pursuer's vassal in the estate of Tarbert is bound, upon his own proper charges and expenses, to keep and uphold a boat of six oars, and to provide the same with six rowers and a steersman, and all things necessary for the use of the superior and his family, in terms of the former feu-charters thereof ; and also, to keep the mansion-house, now built upon said estate, wind and water tight : And find, That the prestations are not personal services, and do not fall under the statute of G. I. founded on ; but that the future feu-rights of said estate ought to be burdened therewith, and to contain a *reddendo* in these terms ; and remit to the Lord Ordinary to proceed accordingly. But, with respect to that part of the *reddendo* of the former charters, whereby the vassal is bound to receive and entertain the superior and his heirs *gratis*, in his castle of Tarbert, in the same way as the other keepers of the pursuer's castles are bound to do, they remit to the Lord Ordinary to hear parties further, and to do therein as he shall see cause."

Act. *Ilay Campbell.*

Alt. *Burnet.*

Clerk, *Tait.*

Fol. Dic. v. 4. p. 278. Fac. Coll. No. 78. p. 171.