

1763. June 20.

SIR HARRY MONRO of Foulis, Bart. His Majesty's Chamberlain of the Earldom of Ross, against THOMAS M'KENZIE, Esq. of Highfield.

MR. M'KENZIE of Highfield is the crown's vassal in the lands of Drumderfit, part of the earldom of Ross, which, in the exchequer rent-roll, stood charged with the following feu-duties, viz. £11 16s. Scots money, 2 chalders 8 bolls 2 fir-lots 2 pecks bear, 4 bolls oats, 1 mark, 1 mutton, and 57 hens; and Highfield and his predecessors had been in use to pay for the above particulars, conform to the exchequer-conversions.

Upon inspection of Highfield's charter, it appeared, that the article of bear was two bolls one firLOT two pecks higher by the exchequer rent-toll than by the *reddendo* of the charter; and that 80 loads of peats deliverable at the castle of Dingwall were omitted in the exchequer rent-roll, though specified in the *reddendo* of the charter.

Highfield being charged for payment of the arrears of this feu-duty, conform to the exchequer-rental, and usual conversions, obtained suspension upon this ground, that upon the article of bear he was charged with a higher quantity than was payable by the *reddendo* of his charter. This suspension came to be discussed before the Lord Auchinleck, and the only question debated was, with respect to the said additional 2 bolls 1 firLOT 2 pecks bear, and with respect to 80 loads of peats deliverable at the castle of Dingwall, mentioned in the charter, in place of which, the charger alledged the additional bear had been immemorially paid, and received by the crown, out of favour to the vassal.

The Lord Ordinary found the letters orderly proceeded as to all the other articles; but made avisandum to the Lords with the 2 bolls 1 firLOT 2 pecks bear, and the firing; and ordered memorials to be given in upon these points, viz. What is the import of the *reddendo*, so far as concerns the fuel? What influence the moss being exhausted in the vassal's lands, and so incapable to afford firing, will have? and also, What influence the castle to which they were to be carried, being now no more, has?

Pleaded for the suspender: That it was notorious in the country, that the castle of Dingwall has been long destroyed, and that there is not one stone of it now left. Neither can it be denied, that there are no mosses belonging to the lands of Drumderfit, out of which these peats could now be furnished; and therefore they cannot now be demanded. The moss from which the peats were to be got being now exhausted, and the house to which they were to be carried being no more, there are no *termini habiles* for making the demand; nor can the vassal, in these circumstances, be obliged to pay an equivalent, seeing *per eum non stat*, that the service is not performed.

Answered for the charger: That it is of no importance in the present question, whether there were ever mosses on these lands, or whether they are now exhaust-

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Where, from the *reddendo* in a vassal's charter, he is bound to pay a certain quantity of peats, What will be the effect of the moss being exhausted in the vassal's lands, and so incapable to afford firing? What will be the effect of the castle or house being destroyed, to which they were to be carried?

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ed. Neither the superior nor vassal had in view any particular moss or mosses out of which the peats were to be paid ; nor is it even said they are to be out of mosses on the estate. All that the parties had in view, was, to secure to the superior a certain number of loads of peats ; and the vassal is left to buy them, dig them, or procure them the best way he can.

Neither is it of any importance, that the house to which they were to be carried is now no more : the place where it stood is perfectly well known, and the vassal can suffer no detriment, as he is not obliged to carry them one foot further than the place named in his charter.

“ The Lords suspended the letters, so far as concerned the 2 bolls 1 firlet 2 pecks bear ; but found the suspender liable in the payment of 80 loads of peats.”

*Act. Monro.*

*Alt. Ferguson.*

*Reporter, Lord Auchinleck.*

*Fol. Dic. v. 4. p. 278. Fac. Coll. No. 111. p. 258.*

See APPENDIX.