

the original right; competent to patrons, of disposing of the vacant stipends within their parishes. No 65.

The intent and effect of such general clauses is well known, and thoroughly understood, viz. that the legislator having once set forth his resolution and intention, he, in order to avoid prolixity, and to secure against neglect, does throw in a general clause to comprehend every other similar act that has not been expressly repealed. And that general clauses have the effect to abrogate prior contradictory statutes, though these statutes are not *nominatim* repealed, the defender needs only appeal to the general clause now under review; for the statute, 10th Queen Anne, *cap.* 11. which contains this clause, does only repeal, *nominatim*, act 1690, *cap.* 23.; act 1695, *cap.* 15.; and act 1696, *cap.* 13. Yet the pursuer will not deny, that, prior to the enactment of this statute, the act 1695, *cap.* 27. was in full force; but that, since that time, it has been universally understood to be repealed by the above mentioned general clause, as coming under the spirit and intendment of that statute, though not under the express words. Accordingly, in the late abridgement of the statute law, it is narrated as one of those acts that were repealed by the statute 10th Queen Anne, *cap.* 11. whence the defender is entitled to plead a *res judicata* in his favour; for, if the general clause above mentioned shall once be found to repeal prior acts, as coming under the spirit of that clause, though not *nominatim* mentioned in that statute, then the defender does with confidence maintain, that the act now sued upon does fall under the spirit of that general clause, and must accordingly be found to be repealed thereby.

This question having been taken to report, as between the Synod and Shawfield, the Court sisted process till Shawfield, who acknowledged he was not patron, made the Crown a party to this action. The Crown was accordingly called. But, at resuming the consideration of the cause, there was no compearance made for the Crown, and Shawfield's interest was stated to be a gift of the vacant stipends in question.

THE LORDS repelled the defence, and found Shawfield liable for the vacant stipend, and for the expense of the extract.

Reporter, *Auobinleck.* Act. *Ilay Campbell.* Alt. *Walter Campbell.* Clerk, *Campbell.*  
*Fol. Dic. v. 3. p. 129. Fac. Col. No 5. p. 7.*

1773. January 23.

JAMES BRUCE-CARSTAIRS of Kinross, *against* ROBERT GREIG and Others, his Vassals, in the Parish of Kinross.

THE estate of Kinross, situated in the parishes of Kinross, Portmoag, and Orwell, had been mostly feued out many years ago; and, in particular, parts

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A clause in a feu-right, relieving from public burdens, found

No 66.  
not to free  
the vassals,  
from paying  
their propor-  
tions of the  
expense of a  
manse and  
offices for the  
minister of  
the parish.

thereof to the defenders predecessors, about the middle of the last century, by tenures after expressed ; and but an inconsiderable part of the property-lands remained with the family.

A new manse having been lately built for the minister of Kinross, a demand was made upon the defenders for payment of certain proportions of the expense thereof, according to the valuation of their respective lands ; wherewith they meanwhile complied, and paid the money : And having been sued in the Sheriff-court for arrears of the feu-duty, they pleaded compensation of their feu-duties to the amount of what they had paid towards building the minister's manse of Kinross ; for that the reparation of the minister's manse was a public burden, of which, by their charters, they were entitled to be relieved, in whole or in part.

The Sheriff having given a decree against them for the sums sued for, reserving action to them against the pursuer with respect to the compensation pleaded by them in their defences, they removed this action from the Sheriff by a bill of advocation, and also brought an action of repetition of the sums paid by them. These two actions having been conjoined, and the feu-rights of the defenders produced, they were conceived as follows :

Robert Greig is bound to pay a certain feu-duty, and perform certain services ; ' and that for all other burden or exaction that may be required ;' and the superior binds himself, and his successors, ' to relieve the said Robert Greig, ' and his above written, of all cess, and public burdens, minister's stipend and ' schoolmaster's-fees, payable forth of the lands in all time coming.'

John Dempster is bound to pay a certain feu-duty, and perform certain services ; ' and besides, to pay the third of all taxations and public burdens whatsoever, imposed, or to be imposed, on the said lands ; and that for all other ' burden, exaction, question, demand, or secular service, that can anywise be ' exacted or demanded forth of the said lands, ' for whatever occasion,' or any ' other manner of way whatsoever.

James Beveridge is bound to pay a certain feu-duty, and to perform certain services ; ' and besides, to pay the third part of all taxations and public burdens whatsoever, imposed, or to be imposed, upon the said lands ; and that for ' all other burden, exaction, question, demand, or secular service, that can be ' anywise exacted or required forth of the said third part of the said town and ' lands of Easter Tillochie, with the pertinents.'

The charter of James Belfrage runs in the same stile with that last mentioned.

James Stocks is bound to pay a certain feu-duty, and perform certain services ; ' and, in like manner, paying two parts of all taxations, public burdens, ' and impositions, imposed, or to be imposed, upon the said lands, and paying ' the schoolmaster's stipend of Kinross, upon their own proper expenses, and ' reporting acquittances thereof yearly ; and also, paying all their duties wil- ' lingly, without any process of law, and observing good neighbourhood, as be- ' comes an honest man, for all other burden, exaction, question, demand, or

‘secular service, which can anywise be exacted or required forth of the said lands, by any person whatsoever.’

Michael Henderson is bound to pay a certain feu-duty, and two sheep and two lambs yearly, for said lands of Turf-hills; ‘and relieving me and my foresaids of the two parts of all public burdens, imposed, or to be imposed, upon the said lands;’ and for some other lands mentioned in his writs, he is bound to pay a certain feu-duty, and perform certain services; ‘and sicklike, to pay two parts of all public burdens, imposed, or to be imposed, upon the said lands of Bouton and Westmost-acre; and relieving me and my foresaids of the two parts of all public burdens, imposed, or to be imposed, on the said lands of Turf-hills; and that for all other burden, exaction, or demand, which can be lawfully required forth of the said lands in time coming.’

Robert Marshall is bound to pay a certain feu-duty, and perform certain services; ‘and these for all other burdens, exactions, questions, demands, or secular services, which can be anywise exacted or demanded forth of the said lands, with the pertinents, in time coming.’

Although the expense of rebuilding the manse and offices was the only article presently in dispute, as the judgment of law behoved to be the same with respect to the expences of rebuilding or repairing the church, it was understood, in the argument before the Lord Ordinary, that one determination should be given upon the whole; his Lordship pronounced this interlocutor: ‘Finds, that the defenders, in consequence of their rights, have no claim of relief for any part of the expenses laid out by them in either rebuilding or repairing the church, manse, and office-houses belonging to the parish of Kinross; therefore repells the defence founded on that claim.’

Upon two successive reclaiming petitions and answers, ‘the Lords adhered to the Lord Ordinary’s interlocutors;’ not singly upon the import of the rights, but in respect of the instances that were given of the practice in the three several parishes over which the pursuer’s right of vassalage extended, downward from the 1729, of the vassals contributing their proportion of the expenses in question; which the Court held to be explanatory of the meaning of parties in a doubtful contract, which several of the Judges thought this was; and that, in any recent question upon it, the construction would rather have been with the defenders.

*Act. Dean of Faculty.*

*Alt. M'Laurin.*

*Clerk, Gibson.*

*Fol. Dic. v. 3. p. 130. Fac. Col. No 50. p. 131.*

\* \* \* This cause was appealed :

1775. Nov. 24.—The House of Lords ORDERED and ADJUDGED, That the interlocutors complained of, be affirmed.