

writer, who raised the suspension, as a thing usually practised : And further pleaded, that as these three, as well as all the others, had voted, notwithstanding the passed bill, no damage was sustained against them : And lastly, that as the three coaliers themselves were not complaining, it was not competent for any other to complain.

THE LORDS had no regard to these answers, and found, ' That the filling up the names of three persons more than were contained in the bill, was a practice illegal and unwarrantable, and highly dangerous to the public ; and therefore found him incapable of exercising the office of a notary-public, deprived him of the said office, ordered the clerk to the admission of notaries to call in his protocol, and decerned him in the expenses of the complaint, and in forty shillings to the poor ; and granted warrant to macers and messengers to apprehend and imprison him, ay and while he should pay the above sums.' See No 7. p. 1841. See PUBLIC OFFICER.

*Kilkerran, (COALIERS.) No 2. p. 123.*

1748. July 6. GIBSON of Hillhead *against* SCOTT of Kirklie.

JOHN GIBSON of Hillhead pursued Andrew Scot of Kirklie for delivery of four of his coaliers detained by him, and for the penalty of L. 100 Scots, incurred for not delivering each of them when required, in terms of act 11th, Parl. 18th, James VI.

*Pleaded* in defence, That John Gibson and William Wilson, two of the coaliers, had acquired their natural liberty, by being a year absent from the pursuer's heugh, and consequently he could not be bound to restore them ; which was repelled by the LORD ORDINARY, 14th February 1747, in regard it appeared by the defender's letters produced, he had been allowed by the pursuer to entertain them at a time his own work was not going : And the LORDS, 12th February 1747, refused a bill, in so far as it reclaimed against this part of the interlocutor.

John Ferrier and John Buchannan, two of the coaliers, had also been entertained on a tolerance, and being required had returned, though not immediately ; but afterwards, taking an opportunity of a quarrel with their master, went back to the defender, and being restored on a judgment of the Justices of Peace, the pursuer alleged they had again deserted, and were entertained.

THE LORD ORDINARY had further ' repelled an allegeance, that requisition of coaliers ought to be made personally, or at the dwelling house of the master at whose work they are working ; not only in regard that the practice is notourly known to be only to require them at the coal-hill, but that a process was brought within year and day of the requisition, and so far from compliance shewn with it, that the defender knowing John Ferrier and John Buchannan, two of the coaliers, to be the pursuer's, fraudulently endeavoured to

No 5.

No 6.

Coaliers having, by allowance of their master, gone to another coal-work, where they continued above a year, were found still reclaimable ; and the detainer, after requisition, was found liable in the statutable penalty.

No 6.

seduce them from his service, by entering into contracts, mentioned in the debate, in direct contrariety to the act 1606; and therefore adhered to a former interlocutor, finding the defender liable in the penalty of the said act, and to restore them to the pursuer; and repelled an allegiance founded upon complaints of these coaliers against the pursuer, in respect the defender ought immediately, at least to have dismissed them from his work, upon the requisition, or raising the process, leaving them to prosecute their complaints as accorded of the law.

*Pleaded* in a reclaiming bill, That Buchannan having preferred a complaint before the Justices of Peace for such usage, as was a sufficient ground for leaving his work, brought proof thereof, and obtained a judgment, fining this pursuer in 40s. Sterling, and ordaining him to find caution to keep the complainer skaitless in time coming; on performing which, ordaining the complainer to return to his work, which he complied with; and therefore there could be no penalties due for detaining him, while he had a just ground of withdrawing; there could also no penalties be due for not restoring on demand coaliers who were employed by tolerance from their master, in respect the act of Parliament had only in view fugitives, although damages in this case might be due; neither could any penalties be due upon a requisition at the coal-hill, which was no sufficient certification to the master.

*Answered*, That the act prohibited entertaining coaliers without a testimonial from their master, or an attestation of a sufficient cause of removal made by a Judge; so that a complaint afterwards made and proved, was no defence for not putting the coalier out of the work, upon requisition, which was sufficient at the hill: The act also simply prohibited the hiring coaliers without such testimonial, which a person detaining them after requisition, though he had a testimonial at first, plainly offended against, as that was then at an end.

THE LORDS adhered to the Lord Ordinary's interlocutor, in so far as it found the defender liable in the penalties of the act of Parliament for each of the two coaliers, John Ferrier and John Buchannan.

Act: *Brown.*Alt: *Lockhart.*Clerk: *Gibson.*

It had also been *pleaded*, That the penalty of the act could not be due for Gibson and Wilson, who, at the requisition, had been year and day out of the pursuer's service: To which it was *answered*, That being away by allowance, their desertion only commenced from their being required to return, which the Ordinary took to report, and the report is not yet made.

*Fol. Dic. v. 1. p. 136. D. Falconer, v. 1. No 272. p. 365.*