

scriptus, cannot however desert that coal at pleasure, but may be reclaimed by the proprietor of the coal; and the President endeavoured to support this proposition by the words of the statute above mentioned, giving power to the master whom the coalier last served to require him back within year and day. But, upon a reclaiming petition and answers, this interlocutor was altered, and the Sheriff's interlocutor was adhered to, finding that the pursuer had no claim to the coaliers in question.

It occurred to me at advising, that the statute could not intend the privilege of reclaiming a coalier under a penalty to any but to the proprietor of the coalery to which the coalier is bound for life; because such privilege ought not to be given to any other, as it would be absurd to give any man a power of reclaiming a coalier who is not bound to him by law or paction.

The clause giving power to the master whom the coalier last served to require, clearly means the master to whose coalery the coalier was last a slave; and it may well happen that a coalier may be successively a slave in different coaleries. The coalery to which he is first a slave runs out; he is thereby free. For a man cannot be a slave in a coalery which no longer exists. The coalier enters to another coalery, which also running out, he may be successively a slave to many. What time may be requisite to enslave him to a new coalery seems a little uncertain. My reason for fixing upon year and day is the following. A native bondman is free, if suffered to remain quietly in a town for a year and day, Reg. Maj. L. 2. cap. 12, § 17. Therefore a coalier should be also made free, if his master demand him not back within year and day, supposing it to be known where he is. The above mentioned act appears to proceed upon this footing; for the requisition is confined to the year and day; and if this be right, the master has not even a *rei vindicatio* after year and day.

Sel. Dec. No 145. p. 201.

1761. January 22.

THOMAS DUNDAS of Quarrole, Esq; against JOHN KIRK, Overseer of the Coal-works at Grange.

MR DUNDAS, in the beginning of 1760, brought an action against John Kirk upon the statute 1606, for the re-delivery of some coaliers, who, he *alleged*, had been enticed away from his Coal-works, at Quarrole, by the defender; as also, for the statutory penalty of L. 100 Scots, for having detained each of the said coaliers, after having been legally required by the pursuer to deliver them up.

James Brown, one of these coaliers, had worked in the Grange coalery from September 1756, to October 1757; and, in November 1757, he began to work in Quarrole coal-work, belonging to Mr Dundas, and continued to work there pretty regularly till the end of March 1759, when he returned to Grange works.

No 8.

No 9.

The proprietor of a coal-work, in possession of a coalier for year and day, could reclaim such coalier, and recover the penalty of the statute 1606 from any third party, to whose coal-work he had betaken himself.

No 9. Henry Love had been employed in Quarrole colliery from August 1755 to April 1758; but from that period, till February 1759, he had not worked in Quarrole colliery; and, before the end of the year 1759, he went to work at the Grange colliery.

David Frew had never worked a year at Quarrole coal.

Observed from the Bench; That where the proprietor of a coal-work had been in possession of a coalier for year and day, it gave him such a right, as entitled him to reclaim the coalier from any third party, to whose work he had betaken himself

THE LORDS found, 'That James Brown had been year and day in the possession of Mr Dundas, and that the defender was liable to the pursuer in the penalty of L. 100 Scots; but, in respect the pursuer had not proved that Henry Love and David Frew had been year and day in his possession, they assoilzied the defender from the process, so far as concerned them.'

Act. Garden.

Alt. Lockhart.

J. M.

Fol. Dic. v. 3. p. 136. Fac. Col. No 9. p. 16.

1764. January 24.

ROBERT SPENCE of Stonelaw *against* JAMES SCOTT Weaver in Rutherglen.

No 10.
Coaliers, working at a coal during a lease, became bound to the coal, not to the lessee.

In 1739, coal having been discovered in some grounds belonging to the town of Rutherglen, and Robert Spence; James Scot tobtained leases from the town and Mr Spence, and began a coal-work, which he continued till 1755, when he gave it up, and wrought a coal, in the lands of Corsehill, which he had purchased.

James Scott, during his lease, engaged a number of grown-up coaliers, and trained up severals from their infancy. He wrought the coal in the lands belonging to the town of Rutherglen, as well as in those belonging to Mr Spence, but chiefly that in the latter.

In 1760, Mr Spence having resolved to carry on the coal-work at Rutherglen, which James Scott had left, insisted that he had right to all the coaliers that had wrought at the coal in his grounds during James Scott's lease.

This gave rise to mutual processes between him and Scott, concerning 13 coaliers, before the Sheriff of Lanarkshire. Scott claimed from Spence some coaliers that had gone back from his coal at Corsehill to the Rutherglen coal; and Spence claimed from Scott some coaliers, whom, though acquired by him during his lease, he still detained at Corsehill. The town of Rutherglen did not claim any of these coaliers; nor did any of them assert their freedom.

The Sheriff, after a proof had been led in Mr Spence's process against Scott, found it proved, 'That William Love, &c. did work as coaliers at the pursuer's