

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

coal of Stonelaw, which is his property, before they wrought at the defender's coal of Corsehill; and, therefore, that they belonged to the pursuer, Spence, in property; and ordains the defender, James Scott, to deliver up the foresaid coaliers.' And, upon advising the counter process at James Scott's instance against Spence, the Sheriff assoilzied the defender, 'in respect that the pursuer was only tacksman of the Rutherglen and Spence's coals, which can give him no right to the coaliers; and in respect it appears from the evidence, that the coaliers so acclaimed by him, and that wrought at his property-coal of Corsehill, had, before that time, been working coaliers, bearers, and gatesmen, or winsmen, in the coal which was the property of the defender, Spence, or his predecessors.'

No 10.

Scott having brought the cause, by advocacy, before the Court of Session, the Lord Ordinary took it to report.

Pleaded for Spence; That, by the law of this country, a coalier is not bound to a person, but to a coal, being *quasi adscriptus glebæ*, by the act of the law, for the sake of public utility; consequently, a lessee can have no right to him after his lease expires.

If a lessee could transport a coalier from one coal to another, that might be hard upon the coalier, as some coals are more easily and profitably wrought than others; and it would be hard upon the coal-master, as a coal-work might be ruined by having the coaliers suddenly withdrawn from it, which was the very thing the law meant to prevent, by introducing the bondage of coaliers.

Pleaded for Scott; Coaliers are not *adscripti glebæ*, or slaves, but servants, bound to serve their master as long as he has work at coal to give them: There was neither coal-work nor coalier in Mr Spence's ground in 1739. The coaliers were all acquired during Scott's lease; and he has as good right to them as to the engines he erected, or instruments he provided.

The interlocutor of the LORDS was, 'Conjoin the two processes, and find the coaliers not bound to the tacksman, but to the coal in which they wrought during the currency of the tack; and remit to the Lord Ordinary to proceed accordingly.'

For Spence, *Montgomery*.Alt. *Lockhart*.Clerk, *Gibson*.*Fol. Dic. v. 3. p. 135. Fac. Col. No 128. p. 303.*

1764. December 5. SIR JAMES CLARK *against* KER and PENMAN.

A BOY who enters into a coal-work where his father is a bondsman, becomes a slave, not by consent, but from the nature of the slavery, which extends from father to son; and from which rule practice has introduced an exception with respect to children that abstain from working.

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No 11.
What made a
coalier a
bondsman.