own house, his goods, his life: *Res quæcunque perit suo domino* is a general rule. As to the fact, I do not see any gross fault on the part of Black.

AUCHINLECK. Suppose that only the floor had been damaged, instead of the room being burnt, would not Black have been liable? Had that been the case, his defence would have been as good as it is now, and yet it would not have been listened to. Hardie might have stopt the work. Any neighbour might have stopt it as a nuisance. Black then was doing an illegal thing. He ought to have been upon his guard in erecting the comb-pot. A certain thickness of clay was necessary for preventing the fire from going through to the wood floor, but this was obstinately neglected.

KENNET. The construction of the comb-pot was improper. The defender knew this, and yet would not have it obviated.

KAIMES. When a man does a wrong wilfully, he is liable for all consequences; but when from a *culpa*, he is no further liable than as to direct consequences. In the case of *Sir Ludovick Grant* and *Robertson*, where there was no *dolus*, only direct damage was found due. I am relieved by this consideration. In *locatio conductio*, a man must use the house let as if it was his own. Black would have done just as he did, if the house had been his own. Here the work stood a month, and no harm was done, so that the fire must have happened through the carelessness of servants. A master is liable for the carelessness of servants in the *negotium* where he employs them. If I am liable myself, I must be liable for him whom I employ.

GARDENSTON. This is a hard case on either side. I am not alarmed with the consequences. In this case the single question is, Where a damage by fire has arisen from the fault of a man professing a trade, and that too of one who was forewarned.

On the 3d March 1768, the Lords "found the defender liable in damages," and ordained an account to be given in; which they modified.

*Act.* D. Armstrong. *Alt.* A. Wight.

*Diss.* Coalston, Pitfour, Elliock.

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1768. *March 5.* LIEUTENANT JAMES GRIERSON *against* CATHERINE CAMPBELL and OTHERS.

## PRISONER.

**An Officer of the Navy is not obliged to assign his half-pay on a *cessio bonorum*.**

[*Faculty Collection, IV. p.* 130; *Dictionary,* 11,784.]

PITFOUR. I cannot understand the clause so strictly as to imply only *misfortunes* by fire, water, and the like. It means *all misfortunes* to which we are subject in common life. The half-pay is not the debtor's; it is for a particular purpose, like wages to a servant for service and clothes.

HAILES. The half-pay is not a subject affectable by creditors. How can the debtor assign it? To whom is the assignation to be intimated? Arrears of pay, or even of half-pay, may possibly be assigned, but half-pay in time to come cannot.

On the 5th March 1768, the Lords found the pursuer entitled to the *cessio*, and dispensed with the habit.

*Act.* G. Buchan. *Alt.* G. Ferguson.

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1768. *June* 21. THOMAS SMITH *against* THOMAS HAMILTON of Falla.

TACK.

An Heritor may search for Coal, notwithstanding the lands were let without any reservation to that effect.

[*Faculty Collection, IV. p.* 307 ; *Dictionary,* 15,266.]

MONBODDO. If the proprietor has a right to work coal, he need not reserve it. There is nothing in the several reservations which was not *ab ante* implied ; *quæ dubitationis tollendæ causa contractibus inseruntur jure communi non derogant.* Were it otherwise, writers of deeds would have the making of the law, by their inserting clauses wherever they are pleased to think there is any ambiguity in the law.

BARJARG. Where the damage done by working coal is incompatible with the use of the farm, the proprietor is not at liberty to work coal.

JUSTICE-CLERK. This is a point of great consequence. Mines must remain with the landholder. If not leased, the reservation is implied. When a probability of working coal occurs, parties will make a special reservation ; but very often mines and quarries cast up, of which the parties, when entering into the lease, had no suspicion. It is admitted, that in a large farm the landholder may work the coal. Why not in smaller? We cannot draw the line. The law secures the interest of the tenant by providing an adequate recompense for the damage occasioned by working the mines and quarries.

GARDENSTON. If the proprietor has right to the coal, he must have access to it.

COALSTON. The tenant has right to the surface; the proprietor to every thing besides the surface. Coal, lime, minerals are all under one rule. In the case of the *Commonty of Riddingwood,* the Duke of Hamilton was found to have right to the whole coal, although the commonty itself was subject to division.

PRESIDENT. *Unusquisque rei suæ moderator ac arbiter.* Landholders may give up their right; and, by the general practice, there are reservations deliberately made. The case of *Colquhoun,* mentioned by Stair, does not come up to this