

No 11. The coal-work to which Ker and Penman, two lads under age, were bound with their fathers, being wrought out, these lads took employment in a neighbouring coal-work belonging to Sir James Clark, but without binding themselves as slaves. Having afterwards left the work, Sir James claimed them in a process as his bondsmen; and they were assoilzied upon the following medium, that if a man of full age, whether a freeman, or bound to another coal, enter into a coal-work without any paction of slavery, his working for whatever time will not make him a bondsman; and that the argument concludes *a fortiori* in favour of the defenders, who are under age.

Sel. Dec. No 227. p. 297.

1769. February 11.

CLARK, and Others, *against* HOPE.

No 12.

Coaliers might be employed at any coal possessed by their master.

MR ARCHIBALD HOPE, proprietor of the coal of Harrylaw, was lessee of the coals of Edmonstone, Monkton, and Woolmet, all belonging to different proprietors. And the question came to trial, in an action at the instance of some of the coaliers bound to these coals, whether they could be compelled to work at a coal different from that to which they were respectively bound? Or if, upon the work being stopped, they were entitled to an attestation of a reasonable cause of removing, in terms of the act 1606, c. 11.?

Pleaded for the pursuer; Coaliers are *adscriptitii glebæ*, bound to a particular coal; and, therefore, not transferable to another. So they are considered by Sir George Mackenzie, Obs. 1606, c. 11. and by Bankton, l. 2. 82. When a coalier consents to become bound to a particular coal, he considers the circumstances of it, its situation, its air, its easiness in working; and he cannot, without injustice, be carried from a coal where he can earn large wages, with ease to himself, and safety to his health, to another coal, where less is to be earned, where, perhaps, there is scarce room to work, or where the air is pestilential and noxious.

When the coal is wrought out, the coalier is free; but, if he can be carried to a different coal, though belonging to a different proprietor, his bondage must be perpetual. And it makes no difference that Mr Hope is lessee of all these coals. With respect to each of them, he must be considered as in the place of the different proprietors; and, as the proprietor of Edmonstone could not send one of his coaliers to work at the coal of Woolmet, so neither can the tacksman of both carry the coaliers of the one to the coal of the other.

Answered; The situation of coaliers is not to be determined by the strict principles which apply to the *adscriptitii glebæ* of the Romans, or *homines proprii* of Germany. Coaliers are bound to their *master*, and so they are considered in the statutes 1606, c. 11. and 1661, c. 56. They are obliged to serve *him*

in the work of coal, unless they can obtain a testimonial from him, or an attestation from a magistrate, thât he has no work to give them.

No 12.

The doctrine pleaded for the pursuers would go so far as to prove, that coaliers could only be employed at the individual coal to which they entered ; that they could not be carried to a different coal in the same estate ; nay, that they could not even be carried to a different seam, in an edge coal, where there are great variations in the space of a few yards.

But this doctrine has not been received by the Court. On the contrary, in February 1762, the Marquis of Lothian, having purchased a coal, was found entitled to carry the coaliers upon it to another coal belonging to him, at the distance of two miles. And a similar judgment was pronounced in 1763, in a question between Wemyss of Cuttlehill, and some of his coaliers.

As, therefore, the proprietor of a coal is entitled to remove his coaliers to any coal where he has work for them, the tacksman must be in the same situation ; and, during the course of his tack, have the same power over the coaliers as the proprietor would have had, if he had kept the coal in his natural possession.

‘ THE LORDS sustained the defences, and assoilzied.’

Reporter, *Pitfour*.
G. Ferguson.

Act. *Maclaurin*.
Fol. Dic. v. 3. p. 135.

Alt. *Solicitor Dundas*.
Fac. Col. No 86. p. 337.

* * * Observe, it is mentioned in the above case, that a similar judgment had been given in two former instances, viz. Marquis of Lothian in 1762, and Wemyss of Cuttlehill in 1763.

See Caprington against Geddie, Durie, p. 632. voce PACTUM ILLICITUM.

THE state of coaliers is now entirely altered. By act 13th Geo. III. c. 28, they are fully emancipated, and are only bound as common servants, or labourers.

See Cases relative to the Property of Coal, voce PART and PERTINENT.