

C O A L I E R.

1619. March 7. LORD LOTHIAN *against* JAMES BOTHWELL.

No 1.

IN an action pursued by my Lord Lothian *contra* James Bothwell of Newbyres; the LORDS find, That the act of Parliament anent coal-heughs, was only to ganging coal-pits, and that it was lawful to parties to fee, hire, and conduce coal-hewers, where coals are given up, or not able to entertain the coal-hewers.

Fol. Dic. v. 1. p. 148. Kerse, MS. fol. 96.

1708. February 4. WALLAGE *against* CUNNINGHAM.

No 2.

SIR THOMAS WALLAGE of Craigie, advocate, pursues William Cunningham of Brownhill, on the 11th act 1606, and 56th act 1661, for seducing and detaining eight or nine of his coaliers, that were born in his ground, and had wrought in his coal-heughs some years ago, and whom he had required from him by way of instrument; and he having refused to dismiss them, he claimed the penalty of the act of Parliament, being L. 100 Scots for every man so detained. *Alleged*, This was the only remaining vestige of slavery amongst us, and liberty being *juris naturalis*, it is as little to be incroached upon as may be; and the pursuer is noways within the case of the acts of Parliament cited, which are in favours of those who have a going coal-work, which Sir Thomas has not had these seven or eight years past; and so having no employment for them, it was insnaring and invidious to require them back. *2do*, The act has an exception, unless they had been year and day out of their master's service; for then law presumes he has derelinqished his right, by his supine negligence, in suffering another man to possess them for year and day; and Sir Thomas can pretend no damage, seeing he had no use for them all that time; and though of late he has put down a coal-sink, yet not having required them back within year and day of their deserting his service, and of their working at his coal-heugh, he cannot claim them now. *Answered*, Liberty is indeed favourable; but what is the odds, whether they be slaves to Cunningham or him? yea, he has the better claim, being originally in his ground, and continue there still, not only *ratione nativitatis*, but *domicilii*; and though he had no work for them for some

Found that a master, who had given up working his coal, might reclaim his coaliers, when he began to work again after several years; they having left his service without a testimonial in terms of the act 1606.

No 2.

years past, yet by law, he was impowered to lend them, or sell them; and this property is founded on good reason, for coal being a great casualty in Scotland, our law wisely considered that rent could never be secured without such a severity; none being capable of learning that art, but such as are trained up to it from their infancy; and the act of Parliament is perverted, when it is interpreted, that the requisition must be within year and day from their leaving of my work, and their being in my actual possession and service; for then it were easy for coaliers to shake themselves loose of their true masters and owners, by absconding for a year, and running to the Newcastle coal-works, and then returning from the Keels after the year is run out; but the law has better provided, that I must require them before you have prescribed a right to them, by an annual possession without interruption; but *ita est*, I required them long before they had been a year in your service, which is all the act requires. THE LORDS found, That coaliers could not be hired without a testimonial from their former master; and that Sir Thomas having now a going coal, he might very well require them back to his service; and though they were several years away from him, yet they not having been a year in Brownhill's work, the requisition was good, and he must restore them.

By this instance, and some others that have occurred this session, such as the expounding our laws anent winter herding, cautioners being free after seven years, butchers not being grasiers, &c. it appears, what latitude Judges have in the interpretation of laws, sometimes by an extensive interpretation, ampliating them beyond what the words carry; and at other times, by a restrictive sense, limiting them from equity and circumstances appended thereto. So the Orator's opinion and observe was true, that laws in process of time *sub judicum potestate cadunt* by their several ways of expounding and applying them. See p. 2020.

Fol. Dic. v. 1. p. 148. Fountainball, v. 2. p. 426.

1725. June 22.

GEORGE LOCKHART of Carnwath, against DANIEL PECK, and Other TACKSMEN of the Coal of Saltcoats.

No 3.

In a process for restitution of a coalier girl, who had deserted her master's works, and gone to another coalery, the Lords decerned for restitution; but in respect there was proof that

CARNWATH insisted in a process against the defenders, for restoring back to him Kate Thomson his coal-bearer, concluding, That they also ought to be decerned in payment to him of the penalty contained in act 11th, Parl. 18th of James VI. because they had detained her after requisition.

A mutual proof was granted, upon advising of which, the LORDS, 8th June 1725, ' In regard that the pursuer's proof was pregnant, that the servant was in his service within year and day of the requisition; and that the defenders' proof was also pregnant, that she continued year and day in their service before the requisition, assoilzied from the penalty; but found that the property remained with the pursuer; and therefore ordained the defenders to deliver the servant