

to Carnwath's coal-grieve at Dryden, betwixt and the last day of June inclusive, under the penalty of L. 100 Scots, by and attour performance.

The defenders, in a reclaiming bill, prayed, That the Lords would find their delivering back the servant at the coal-heugh of Saltcoats sufficiently exonerated them, and that they were not obliged to transport her to Dryden, because they had no authority to compel her to return, since she was found to be Carnwath's property; and they likewise contended, That since the act of Parliament required the delivery back of the servant in 24 hours after requisition, it necessarily imported that the delivery was to be made at the possessor's coal-heugh; because, if the coalier to which the deserter belonged should be at the distance of 200 miles, the thing would be impracticable.

The coal-bearer likewise gave in a petition, praying, That the Lords would decree her her liberty, in respect that the case appeared doubtful as to the possession and requisition, and because of some cruel usage she had met with in Carnwath's service; and in support of her plea the following laws were quoted, *l. 122. compared with l. 125. ff. De regulis juris; and § 2. Inst. De his qui sui vel alieni juris sunt.*

THE LORDS had no regard to Thomson's petition, because the severity she had been used with did not appear to have been greater than what she deserved, on account of a former desertion. And to the tacksman's petition it was answered, That the interlocutor of the Lords sufficiently authorised them to transport her to the pursuer's coal-heugh, and would warrant the several Magistrates, through those jurisdictions they were to pass, to grant their concurrence: That the argument from the act of Parliament was of no moment; because, at the date of that act all the coaleries in Scotland were so near one another, that 24 hours might answer the end; and though now it might happen, that a coalier was at a greater distance, yet if the restorer was *in cursu*, no doubt he would be excused from the penalty.

The pursuer concluded with an observation, That the question was of considerable import to all the coal-masters in Scotland; for of late they had sustained considerable losses by the insolence of their servants, which, he alleged, was occasioned by the encouragement and countenance they met with at the coal-works of Saltcoats, upon their desertion from other works.

THE LORDS adhered to their interlocutor the 8th of June 1725.

Act. Alex. Lockhart.

Alt. And. Maodowal.

Clerk, Dalrymple.

Fol. Dic. v. 3. p. 135. Edgar, p. 182.

1743. June 22.

ANDERSON and Others, Suspenders, against SIR JAMES WEMYSS of Bogie, Charger.

It was the opinion of the Court at passing a bill of suspension, That where a coal fails, the coaliers are not cessible to another coal-master: And the like was

No 3.

she had been year and day in her new service before requisition, they assoilzied from the penalty, notwithstanding she had been detained after requisition.

If delivery of the coalier within 24 hours, in terms of the act of Parliament happened to be impracticable; the penalty would not have been forfeited, if the delivery had been made without delay.

No 4.

No 4. said to have been found some years ago between Mr James Smith and certain coaliers ordered by the Laird of Arnot to work at Mr Smith's coal.

Kilkerran, (COALIERS.) No 1. p. 122.

1747. *January 16.*

No 5.

Coaliers
found capa-
ble of voting
at an election
in a burgh.

The BURGESSES of Rutherglen *against* ANDREW LEITCH, Provost.

A NUMBER of coaliers belonging to a coalery in the neighbourhood of the town of Rutherglen, whereof Provost Leitch was tacksman, having been admitted burgesses, the incorporated burgesses, who looked on this as an indignity to the town, and a project to carry an approaching election of Magistrates, procured a suspension against the coaliers, who, notwithstanding, voted at the leeting of the eight unincorporated burgesses, out of whom, by the set of the burgh, four counsellors are chosen by the Provost and Bailies.

The election of the said four counsellors being challenged by summary complaint, the grounds the complainers *insisted* on were, That coaliers were incapable to vote ; that as they were by statute bound to work six days in the week, it therefore depended on their masters, whether they should be permitted to attend the meeting or not ; and if so, it no less depended on him for whom they should vote, and it was inconsistent that any one should have a right to vote who had not his personal liberty : The case of town-pensioners and beedmen was also appealed to, who were not allowed to vote ; and the objection to coaliers was said to be stronger.

It was *answered*, That where one has a right to vote as a burges, or any other right, it did not appear why he should forfeit that right by becoming a coalier, more than by becoming a soldier, who is as much bound to obey the command of his superior officer, as a coalier is bound to obey his master ; and men's natural rights are not to be taken from them, because of the possibility that another may abuse his power and influence over them.

THE LORDS found, ' That coaliers who are burgesses were not to be debarred from voting at the leeting of the unincorporated burgesses.'

On occasion of this suspension, an incidental complaint was given in by Andrew Leitch, against Robert Hall notary, one of the unincorporated burgesses, setting furth, That he, as a writer, being employed to send for the said suspension, had, after the past bill, with a sist upon it, was returned to Rutherglen, containing the names of fifteen coaliers, with his own hand added the names of other three. In his answer, he admitted the fact, but excused himself on pretence of a mere error in judgment, as the three were in the same case with the others, and only not contained in the bill when it passed the Ordinary's hand, from the writer's not knowing their names, and that he had not done the thing in a hidden way, but openly, believing no harm in it, and by advice from the