

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 burghess, 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

writer, who raised the suspension, as a thing usually practised : And further pleaded, that as these three, as well as all the others, had voted, notwithstanding the passed bill, no damage was sustained against them : And lastly, that as the three coaliers themselves were not complaining, it was not competent for any other to complain.

THE LORDS had no regard to these answers, and found, ' That the filling up the names of three persons more than were contained in the bill, was a practice illegal and unwarrantable, and highly dangerous to the public ; and therefore found him incapable of exercising the office of a notary-public, deprived him of the said office, ordered the clerk to the admission of notaries to call in his protocol, and decerned him in the expenses of the complaint, and in forty shillings to the poor ; and granted warrant to macers and messengers to apprehend and imprison him, ay and while he should pay the above sums.' See No 7. p. 1841. See PUBLIC OFFICER.

Kilkerran, (COALIER.) No 2. p. 123.

1748. July 6. GIBSON of Hillhead *against* SCOTT of Kirklie.

JOHN GIBSON of Hillhead pursued Andrew Scot of Kirklie for delivery of four of his coaliers detained by him, and for the penalty of L. 100 Scots, incurred for not delivering each of them when required, in terms of act 11th, Parl. 18th, James VI.

Pleaded in defence, That John Gibson and William Wilson, two of the coaliers, had acquired their natural liberty, by being a year absent from the pursuer's heugh, and consequently he could not be bound to restore them ; which was repelled by the LORD ORDINARY, 14th February 1747, in regard it appeared by the defender's letters produced, he had been allowed by the pursuer to entertain them at a time his own work was not going : And the LORDS, 12th February 1747, refused a bill, in so far as it reclaimed against this part of the interlocutor.

John Ferrier and John Buchannan, two of the coaliers, had also been entertained on a tolerance, and being required had returned, though not immediately ; but afterwards, taking an opportunity of a quarrel with their master, went back to the defender, and being restored on a judgment of the Justices of Peace, the pursuer alleged they had again deserted, and were entertained.

THE LORD ORDINARY had further ' repelled an allegeance, that requisition of coaliers ought to be made personally, or at the dwelling house of the master at whose work they are working ; not only in regard that the practice is notourly known to be only to require them at the coal-hill, but that a process was brought within year and day of the requisition, and so far from compliance shewn with it, that the defender knowing John Ferrier and John Buchannan, two of the coaliers, to be the pursuer's, fraudulently endeavoured to

No 5.

No 6.

Coaliers having, by allowance of their master, gone to another coal-work, where they continued above a year, were found still reclaimable ; and the detainer, after requisition, was found liable in the statutable penalty.