

1755. *March 5.*Earl of EGLINTON *against* The JUSTICES of the PEACE for the COUNTY of AYR.

No 7.

Colliers are not comprehended under the act which requires labouring men to repair the highways.

THE Justices of the Peace for the county of Ayr summoned the colliers of the Earl of Eglinton to work on the highways, in terms of the act 16th Parl. 2. Sess. 1. Charles II. and of the act 5to Geo. I. c. 29. ; and, on their failure, fined them.

The Earl of Eglinton *insisted*, in a declarator, That the persons employed in his collieries were exempted from all service for the reparation of the highways; and he *pleaded*, That colliers are, by law, *adscripti glebæ* ; and, particularly, are, by the act 56th, Parl. 1. Sess. 1. Charles II. obliged, under certain penalties, to work at the collieries to which they belong, "for all the six days of the week, except at Christmas." Now, it cannot be supposed that the Legislature would thus bind colliers to one work, and yet call them away to another. The act 16th Parl. 2. Sess. 1. Charles II. respects "tenants, cottars, and other labouring men ;" these terms, according to their common acceptation, comprehend not colliers. Were colliers diverted from their proper work for six days yearly, irreparable damage might ensue to their masters. Hence it is that the exemption here pleaded has been established by universal custom.

Answered for the defenders ; Colliers are indeed bound to a constant attendance on the service of their masters ; but this obligation exempts them not from any public service to which the law may subject them. The statutes contain no exception in favour of colliers. They respect all persons who gain their livelihood by labour. They have been extended by the Court to ferrymen, and to the inhabitants of royal burghs, 24th July 1750, Hamilton against the Inhabitants of Kirkaldy, No 5. p. 13159. ; and ought, by parity of reason, to be extended to colliers. Neither will this be greatly prejudicial to their masters, who by paying the moderate legal composition, may have them exempted from all service on the highways.

"THE LORDS found, That colliers, gatesmen, windlassmen, and watermen, are not comprehended or meant to be included in any of the acts of Parliament anent repairing the highways ; and therefore the pursuers, the colliers, gatesmen, windlassmen, or any other the colliers, gatesmen, windlassmen, and watermen, belonging to the pursuer the Earl of Eglinton's coal-works, are not subject or liable to give any service or attendance at the repair of the highways within the county of Ayr, or to pay any sums of money towards those repairs in all time coming."

Reporter, *Milton*. Act. *Sir D. Dalrymple & Lockhart*, Alt. *W Wallace*, sen. & *Montgomery*.
Clerk, *Justice*.

D.

Fol. Dic. v. 4. p. 201. Fac. Col. No 150. p. 224.