

plaints being served, the Lords found the Clerks entitled to their fees, as if decreet had been extracted, and also entitled to the expenses of the application. But, in fact, the chief compulsitor which the Clerks have for payment of their fees is retention of the pieces, *i. e.* the papers produced in process.

It is established, that papers produced in process by third parties, as havers, are not subject to this hypothec: it is confined to papers produced either by pursuer or defender; but these are subject equally. A defender, though he be assoilyied, and though he produced his papers by force of the pursuer's application and process, is no more entitled to receive them back again than if he had been condemned, or had himself been pursuer. This, at first sight, seems hard; but the regulations 1695 make no distinction between pursuer and defender. See *23d June 1762, Petition Bennet and Others, Feuars of Muthill.*

The feuars of Mearns Muir brought a process of declarator against Sir Robert Pollock, Oswald of Fingleton, and Others, for having it found that the pursuers had the sole right and property of said Muir, exclusive of the defenders; but the defenders prevailed and were assoilyied, but were refused expenses.

The Feuars, vassals of Sir Michael Stewart, wanted up their papers from the Clerks, being threatened with a process of non-entry. The Clerks refused to deliver them; and, on advising petition and answers, the Lords refused the petition, (August 1771.) The Feuars allowed the force of the hypothec, but they insisted that the defenders, who were assoilyied, were bound to extract, and so to loose the hypothec. The Lords did not think so,—they did not see reason to force a defender to extract a decreet of absolvitor unless he chose it. They therefore left parties to settle with the clerks as they best could.

In this case the Clerks offered not only to accept a composition, but they offered to accept a composition from each feuar separately, as his papers were delivered up.

One extract from either side is in every case sufficient.

1765. July . POOR JOHN M'KAY *against* M'LEODS.

WHERE a pursuer, or defender, on the poor's roll recovers expenses from the other party, the practice is, that in his account he charges the fees which he ought to have paid to the Clerks in the course of the process, and which he would have paid, had he not been on the poor's roll, and these expenses he recovers from the other party, and pays to the Clerks. If it was otherways, the benefit of the Clerks giving down their fees would redound not to the poor man but to the rich. And the Court has repeatedly found, That, where advocates serve a poor man gratis, as being on the poor's roll, in case he prevail, and gets expenses, the advocates are entitled to their fees; and no reason occurs why the same thing ought not to hold with regard to the Clerks; and so the Court found July 1765.

In the same case, they also repelled the objection to the fees of enrolments in the Ordinary's hand roll,—fees with representations,—and with answers, to the Clerk's servants ; as being contrary to the regulations 1695, 1696.

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## COALLIERS.

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1769. *February 11.* ARCHIBALD HOPE *against* WILLIAM LEITCH, Grieve of Lord Abercorn's Coal-Work.

EVERY person versant in coal-works knows how many and various are the interruptions which occur in the management of a coalliere. An accident of this kind having happened in the coal-works of Edmonstone, under lease to Mr Archibald Hope, several of his colliers deserted, and went in quest of work in other collieries, declaring that they would not work one inch beyond the march of ground in which Edmonstone coal was situated, to which they had respectively engaged ; and this, notwithstanding that Mr Hope offered them as good bread and equally convenient work in a neighbouring coal belonging to him, either in property or under lease.

The Lords gave judgment against the coalliers upon that point, (11th February 1769.) Coalliers are not so properly *ascripti glebæ* as *domino* ; and if a master is entitled to retain colliers, on his alimentering them,—why may not he do so, upon giving them work equally advantageous and convenient at a neighbouring coalliere ?

For the above see 4 *New Coll.*, p. 337.

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## COMMUNION ELEMENTS.

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1777. *February 19.* MINISTER of JEDBURGH *against* The HERITORS.

THIS day, the Lords modified to the Minister of Jedburgh, for communion elements, £100 Scots. The parish is large,—contains about 5000 people,—and the communion is in use to be celebrated twice in the year. The above is the highest sum given in any case. The Lords gave the same in the case of *Paisley*.