

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

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. Maadowal.

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.