

coal of Stonelaw, which is his property, before they wrought at the defender's coal of Corsehill; and, therefore, that they belonged to the pursuer, Spence, in property; and ordains the defender, James Scott, to deliver up the foresaid coaliers.' And, upon advising the counter process at James Scott's instance against Spence, the Sheriff assoilzied the defender, 'in respect that the pursuer was only tacksman of the Rutherglen and Spence's coals, which can give him no right to the coaliers; and in respect it appears from the evidence, that the coaliers so acclaimed by him, and that wrought at his property-coal of Corsehill, had, before that time, been working coaliers, bearers, and gatesmen, or winsmen, in the coal which was the property of the defender, Spence, or his predecessors.'

No 10.

Scott having brought the cause, by advocacy, before the Court of Session, the Lord Ordinary took it to report.

Pleaded for Spence; That, by the law of this country, a coalier is not bound to a person, but to a coal, being *quasi adscriptus glebæ*, by the act of the law, for the sake of public utility; consequently, a lessee can have no right to him after his lease expires.

If a lessee could transport a coalier from one coal to another, that might be hard upon the coalier, as some coals are more easily and profitably wrought than others; and it would be hard upon the coal-master, as a coal-work might be ruined by having the coaliers suddenly withdrawn from it, which was the very thing the law meant to prevent, by introducing the bondage of coaliers.

Pleaded for Scott; Coaliers are not *adscripti glebæ*, or slaves, but servants, bound to serve their master as long as he has work at coal to give them: There was neither coal-work nor coalier in Mr Spence's ground in 1739. The coaliers were all acquired during Scott's lease; and he has as good right to them as to the engines he erected, or instruments he provided.

The interlocutor of the LORDS was, 'Conjoin the two processes, and find the coaliers not bound to the tacksman, but to the coal in which they wrought during the currency of the tack; and remit to the Lord Ordinary to proceed accordingly.'

For Spence, *Montgomery*.Alt. *Lockhart*.Clerk, *Gibson*.*Fol. Dic. v. 3. p. 135. Fac. Col. No 128. p. 303.*

1764. December 5. SIR JAMES CLARK *against* KER and PENMAN.

A BOY who enters into a coal-work where his father is a bondsman, becomes a slave, not by consent, but from the nature of the slavery, which extends from father to son; and from which rule practice has introduced an exception with respect to children that abstain from working.

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No 11.
What made a
coalier a
bondsman.

No 11. The coal-work to which Ker and Penman, two lads under age, were bound with their fathers, being wrought out, these lads took employment in a neighbouring coal-work belonging to Sir James Clark, but without binding themselves as slaves. Having afterwards left the work, Sir James claimed them in a process as his bondsmen; and they were assoilzied upon the following medium, that if a man of full age, whether a freeman, or bound to another coal, enter into a coal-work without any paction of slavery, his working for whatever time will not make him a bondsman; and that the argument concludes *a fortiori* in favour of the defenders, who are under age.

Sel. Dec. No 227. p. 297.

1769. February 11.

CLARK, and Others, *against* HOPE.

No 12.

Coaliers might be employed at any coal possessed by their master.

MR ARCHIBALD HOPE, proprietor of the coal of Harrylaw, was lessee of the coals of Edmonstone, Monkton, and Woolmet, all belonging to different proprietors. And the question came to trial, in an action at the instance of some of the coaliers bound to these coals, whether they could be compelled to work at a coal different from that to which they were respectively bound? Or if, upon the work being stopped, they were entitled to an attestation of a reasonable cause of removing, in terms of the act 1606, c. 11.?

Pleaded for the pursuer; Coaliers are *adscriptitii glebæ*, bound to a particular coal; and, therefore, not transferable to another. So they are considered by Sir George Mackenzie, Obs. 1606, c. 11. and by Bankton, l. 2. 82. When a coalier consents to become bound to a particular coal, he considers the circumstances of it, its situation, its air, its easiness in working; and he cannot, without injustice, be carried from a coal where he can earn large wages, with ease to himself, and safety to his health, to another coal, where less is to be earned, where, perhaps, there is scarce room to work, or where the air is pestilential and noxious.

When the coal is wrought out, the coalier is free; but, if he can be carried to a different coal, though belonging to a different proprietor, his bondage must be perpetual. And it makes no difference that Mr Hope is lessee of all these coals. With respect to each of them, he must be considered as in the place of the different proprietors; and, as the proprietor of Edmonstone could not send one of his coaliers to work at the coal of Woolmet, so neither can the tacksman of both carry the coaliers of the one to the coal of the other.

Answered; The situation of coaliers is not to be determined by the strict principles which apply to the *adscriptitii glebæ* of the Romans, or *homines proprii* of Germany. Coaliers are bound to their *master*, and so they are considered in the statutes 1606, c. 11. and 1661, c. 56. They are obliged to serve *him*