

C O A L I E R.

1619. March 7. LORD LOTHIAN *against* JAMES BOTHWELL.

No 1.

IN an action pursued by my Lord Lothian *contra* James Bothwell of Newbyres; the LORDS fand, That the act of Parliament anent coal-heughs, was only to ganging coal-pits, and that it was lawful to parties to fee, hire, and conduce coal-hewers, where coals are given up, or not able to entertain the coal-hewers.

Fol. Dic. v. 1. p. 148. Kerse, MS. fol. 96.

1708. February 4. WALLAGE *against* CUNNINGHAM.

No 2.

SIR THOMAS WALLAGE of Craigie, advocate, pursues William Cunningham of Brownhill, on the 11th act 1606, and 56th act 1661, for seducing and detaining eight or nine of his coaliers, that were born in his ground, and had wrought in his coal-heughs some years ago, and whom he had required from him by way of instrument; and he having refused to dismiss them, he claimed the penalty of the act of Parliament, being L. 100 Scots for every man so detained. *Alleged*, This was the only remaining vestige of slavery amongst us, and liberty being *juris naturalis*, it is as little to be incroached upon as may be; and the pursuer is noways within the case of the acts of Parliament cited, which are in favours of those who have a going coal-work, which Sir Thomas has not had these seven or eight years past; and so having no employment for them, it was insnaring and invidious to require them back. *2do*, The act has an exception, unless they had been year and day out of their master's service; for then law presumes he has derelinqished his right, by his supine negligence, in suffering another man to possess them for year and day; and Sir Thomas can pretend no damage, seeing he had no use for them all that time; and though of late he has put down a coal-sink, yet not having required them back within year and day of their deserting his service, and of their working at his coal-heugh, he cannot claim them now. *Answered*, Liberty is indeed favourable; but what is the odds, whether they be slaves to Cunningham or him? yea, he has the better claim, being originally in his ground, and continue there still, not only *ratione nativitatis*, but *domicilii*; and though he had no work for them for some

Found that a master, who had given up working his coal, might reclaim his coaliers, when he began to work again after several years; they having left his service without a testimonial in terms of the act 1606.