

after twenty? He has the benefit of a review in another court: let him use that benefit. There is a difference between a court reviewing its own final decree and another court receiving an appeal after the *dies fatales*.

GARDENSTON. A minor is entitled to be restored where a tutor has injured his right by neglect. There was such a neglect here,—an overly pleading and not so much as a representation offered against the judgment. If the tutor had taken the opinion of the whole Court, he would have been exauctorated, and the minor would have had no pretext for restitution.

BARJARG. When a minor is injured from the circumstance of minority, he may be restored; but, if he is not injured from that circumstance, there is no remedy. The law does not favour minors more than others. The minor was *defensus*, for he got a judgment in the cause. If he has been *male defensus*, his recourse lies against his tutor.

KAIMES. Why should we extend the privileges of minors to the hurt of all the rest of the world? By the rule now sought to be established, a minor may bring as many appeals as he pleases, and may drop them as often as he pleases.

On the 10th February 1769, “the Lords found it not competent for the pursuer to insist for an alteration of the interlocutor of the 3d March 1767, as the same was not complained of within the reclaiming days;” adhering to Lord Gardenston’s interlocutor.

Act. D. Græme. *Alt.* A. Elphinston.

Diss. Strichen, Pitfour, Gardenston.

1769. February 11. JOSEPH CLARK and OTHERS *against* MR ARCHIBALD HOPE.

COALLIERS.

May be employed at any Coal possessed by their master.

[*Faculty Collection, IV. p. 337 ; Dictionary, 2362.*]

KENNET. All the different coals are existing; neither are any of them deserted. A master may aliment his coalliers in the interim while his works are interrupted. What should hinder him to aliment them by employing them in a work which is not more dangerous, nor less lucrative, than the work to which they are engaged?

MONBODDO. This is a point already decided, and well decided. There is no argument on the side of the coalliers, but the opinion of some lawyers, who compare coalliers to the *adscripti glebæ* of the Romans, and the *proprii homines* of Germany. What was the condition of those persons I do not well know. I think they are a relict of the *nativi*; which was the state of great part of the lower sort in Britain in former times. The *nativi* were not *adscripti*

glebæ by any means, not even the *villani*, who were a species of the *nativi*. There is no authority from the statutes to suppose that coalliers are *glebæ adscripti*. Our ancient constitution, which allowed of slavery, was better than our modern constitution, where the commons have too much liberty: we see this in our neighbouring kingdom; I hope we shall not feel it here. Formerly there were no *liberi homines* but the king's tenants, men of education, and of the noblest profession, that of arms; and in their hands was the power of the state.

HAILES. This is very learned and ingenious. But we ought to satisfy ourselves with determining the cases that come before us. I am of Lord Kennet's opinion, and for the reasons given by him.

PRESIDENT. Abstract points are to be avoided. It is dangerous to treat of them, as wrong inferences are sometimes drawn from them by bystanders. I must, however, observe that it is wrong to talk of coalliers as slaves. A coallier is not a slave, though bound to work at a particular work. No man can sell his coallier any more than he can sell his bound servant. The single point is, When a master has two coals, may he transpose the coalliers from the one to the other, if the one coal is as convenient as the other? I think he can: but he cannot sell, neither can he transfer his title to another man. Where there is a hardship, the law will give redress; but here there is no hardship.

ELLIOCK. As long as the master has work for the coalliers, so long must they work for him.

PITFOUR. In a question of liberty, we must incline to that side. If a coal is wrought out, the coallier may be at liberty to go where he pleases. There is no inconveniency in this, no licentiousness, for he will still work for wages; but, from the circumstances of the present case, I am of Lord Kennet's opinion.

GARDENSTON. I am a friend of liberty, but then it is of liberty according to law. Coalliers are no slaves. I should be sorry that there was such a creature in Britain. Coalliers are in no respect slaves; and, if I saw any attempt to oppress them, I would protect them as my fellow-citizens: but here there is no hardship.

On the 11th February 1769, "the Lords sustained the defence, dismissed the action, and assoilyied."

Act. T. M'Claurin. *Alt.* H. Dundas. *Reporter,* Pitfour.
