

No 19. pertinent of the lands of Nether Fardin *alias* Rigfoot, wherein the pursuer is infest in liferent.

For the Old Lady, *Stevenson.*

Alt. *Boswell.*

Clerk, *Gibson.*

Bruce, v. 1. No 24. p. 32.

1716. June 28.

Lady MARY BRUCE, and her Husband, *against* Colonel JOHN ERSKINE.

No 20.

A disposition to a house, yard, and parks, found to comprehend the coal within the same as part and pertinent.

THERE HAVING BEEN a submission entered into by Colonel Erskine for himself, as purchaser (by a decret of sale) of the estate of Kincardine, and in name of the creditors, on the one side, and Lady Mary Bruce, to whom the said estate was conveyed, by the late Earl her brother, and the Countess her mother, on the other side; there followed thereon a decret-arbitral, wherein, among other things, the Colonel is ordained to dispone to Lady Mary the house, yards, and parks, by virtue whereof she also claimed right to the coal within the same, which coal had been anciently in a separate author's hands from him that possessed the lands. This decret coming to be quarrelled in a suspension, among many other points, this touching the coal was objected against by the Colonel.

And it was *contended* for him, That, in the decret-arbitral, the coal ought to have been reserved for him, seeing, by the decret of sale, he had right to the whole coal of the estate of Kincardine; and that the arbiters had made an infringement upon the same, by finding, that Lady Mary had right to a part of the lands, without mentioning the coal; yet finding that the Colonel had right to the hail remainder of the estate; therefore the coal must be understood reserved to him.

Answered for the Lady; That the coal being part and pertinent, and she being found by the decret arbitral to have right to such lands, she must likewise have right to the coal thereof.

Replied for the Colonel; That it is no unusual thing that the coal will be thus separate, and that there are different proprietors of land and coal; and being originally separate in the present case, and *distincta tenementa*, a decret-arbitral with respect to lands only ought not to be understood to comprehend the coal.

THE LORDS found, that the house, yards, and parks, to be disponed to Lady Mary by the decret-arbitral, comprehended the coals within the same.

Act, *Boswell.*

Alt. *Sir Walter Pringle.*

Clerk, *M^r Kenais.*

Bruce, v. 2. No 7. p. 11.