

1780. *February 16,*WALPOLE and ALISON *against* JOHN MONTGOMERY-BEAUMONT.No. 124.
Retention
competent to
a tenant.

By a contract of lease entered into between Mr. Alexander, proprietor of the coal of Blackhouse, and Mr. Montgomery-Beaumont, the latter became bound to furnish 30,000 tons of great coal annually, at the rate of 3*s.* per ton, and the whole panwood, under certain restrictions, at the rate of 2*s.* per ton. Mr. Alexander, on the other hand, obliged himself to make payment at the end of every fourteen days for the quantities of coal delivered during that period.

Mr. Alexander run in arrear to a considerable extent, and some time afterwards became insolvent. His estates in Scotland, including that of Blackhouse, were attached by adjudication at the suit of Messrs. Walpole and Alison, who, by virtue of this diligence, insisted against Mr. Beaumont for delivery of the quantities of coal stipulated in the lease.

Mr. Beaumont again contended, That he had a right of retention until the arrears already mentioned should be made up to him.

Pleaded for Walpole and Alison: Rights of retention in favour of tenants are ineffectual against singular successors; Erskine, B. 2. Tit. 6. § 39.

Answered: Clauses of retention being inconsistent with the nature of leases and the utility of the public records are not preserved by the statute 1449. That principle however is not applicable to the present case. Here the pursuers, by insisting on the contract made by Mr. Alexander, must subject themselves to the prestations incumbent on him. As he could not require the promised quantities of coal before satisfying Mr. Beaumont for what he had already received, the pursuers must be in the same situation.

The Lords found, "That Mr. Montgomery-Beaumont is entitled to retain the coals deliverable by him, and produce thereof, in time coming, ay and until the sums due to him are satisfied and paid."

Lord Ordinary, *Elliock.*
Alt. *Buchan Hepburn.*

Act. *Hay Campbell, Solicitor-General Murray.*
Clerk, *Tait.*

Fol. Dic. v. 4. p. 323. Fac. Coll. No. 104. p. 198.

SECT. VII.

Rights of the Tenant.

1583. *July.*HOME *against* HOME.No. 125.
He who is
rentalled a

William Home of Prendergust, having obtained a rental of five years tack of certain lands of the K. Highness's property, warned one Patrick Home, and certain others,