

74. Parliament 6th, James VI. ratified by 21st act, session 7th, 1st Parliament, King William.

No 2.

THE LORDS found, That no action lay at the instance of the kirk-session of Inveresk against the kirk-session of Tranent.

C. Home, No 65. p. 113.

1745. June 5.

OVERSEERS of the Poor, in the Parish of DUNSE, against The HERITORS of the Parish of EDROM.

No 3.

It not being clear by acts of Parliament, whether a three or a seven years residence entitles a poor person to the charity of the parish; the matter was brought before the Court, by a suspension of a decree of the Justices of Peace, in order to have a rule fixed.

“ Found, That the parish in which persons indigent, or becoming indigent, have resided, during the immediate three years preceding their application for charity, is bound to subsist and alimnt such indigent and poor persons.”

Fol. Dic. v. 4. p. 83. Rem. Dec. v. 2. No 65. p. 102.

* * * Kilkerran reports this case :

ONE M'Caul, an indigent person, who had been born in the parish of Edrom, but who for six years last past had had a fixed residence in the parish of Dunse, brought a process before the Justices of the Peace of the shire of Berwick against the minister and treasurer to the kirk-session of Edrom, for having an alimentary provision settled by them upon him and his family; which the Justices very improperly sustained, and modified half-a-crown a-week, and decreed.

This decree being brought before the LORDS by suspension, and at discussing thereof, appearance made for the parish of Dunse, the question turned upon these points; *imo*, Whether the place of the person's birth, where that is known, ought not to be burdened with his maintenance, whatever time he may have resided elsewhere; or whether residence for a certain period does not entitle to maintenance; and *2do*, If it does, Whether it be three years or seven years residence that entitles to it?

The first of these points was but faintly insisted on by the parish of Dunse, as it was plain, that the act 16th, Parl. 1. Session 3d, Charles II., which only burdened the place of the person's residence with his maintenance in case the place of his birth was not known, respected only the case of vagrants and vagabonds, who had no fixed residence any where: And the debate turned chiefly on the second point, Whether the three or the seven years residence was enough?

No 3.

By the act 74th, Parl. 6th, James VI., no less than seven years residence entitled an indigent person to be put upon the roll; but by the act 18th, Ses. 3d, Parl. 2d, Charles II., three years are fixed upon in place of seven. But then it was *contended* for the parish of Dunse, That by a subsequent proclamation of Council, *anno* 1693, entitled, Proclamation anent Beggars, the words whereof are, "And appoints all beggars within this kingdom immediately to repair to the several parishes where they were born; and where the parish or place of their birth is not known, that they repair to the parishes where they have last resided the space of seven years together;" which is ratified by act of Parliament of the 1st September 1698, and of the 17th July 1695, therein referred to, the rule of seven years residence was again re-established.

But as the acts 1698 and 1695 ratified the foresaid act of Charles II., as well as the said proclamation 1693, which therefore could not be thought to have been intended by the legislature to be ratified further than it was consistent with the statute, as neither indeed could it be supposed that the Privy Council meant by their proclamation to repeal an act of Parliament, notwithstanding the loose terms of the proclamation, and general terms of the statute ratifying it, the LORDS found, "That the parish in which persons indigent, or becoming indigent, have resided during the immediate three years preceding their application for charity, are bound to subsist and alimēt such indigent and poor persons; and therefore suspend the letters." And in regard that the procurator for the charger appeared also for the parish of Dunse, in which the charger had resided upwards of three years, "found the parish of Dunse liable to subsist and alimēt him, and decerned the heritors of the parish to meet and stent themselves accordingly."

Kilkerran, (Poor.) No 1. p. 405.

D. Falconer also reports this case :

A DISPUTE arose, which came to a process, betwixt these parishes, which of them should be burdened with the maintenance of a poor man who was born in the parish of Edrom, but had resided for more than three years before his application for charity in the parish of Dunse.

The LORD ORDINARY, 16th January 1745, "Found that the parish in which persons indigent, or becoming indigent, had resided, during the three immediate years preceding their application for charity, were bound to subsist such indigent and poor persons.

Pleaded for Dunse in a reclaiming bill, That by act 16th, Parl. 1st, Ses. 3d, Charles II., and by proclamation of Council, *anno* 1693, confirmed by act of Parliament *anno* 1698, the place of birth, not that of residence, gives title to maintenance.

Answered, These laws, in so far as they make the place of birth the rule, relate only to vagrants, who having no residence, are to be charged on the place

where they were born, or if that do not appear, where they last resorted for three years. Formerly such had no provision made for them at all, but were to be punished, act 74th, Parl. 6th, Ses. 6th, James VI., but were afterwards charged on their place of birth; and then by act 18th, Parl. 2d, Ses. 3d, Charles II., on the place of their resort, preferably to that of their birth.

No 3.

2dly, *Pleaded* for Dunse, If residence is to be the rule, it must be fixed at seven, not three years residence, by the above mentioned act of James VI., and the proclamation and act of King William, and these acts of King Charles II., as appears by their rubricks, relate only to vagrants.

Answer'd, It were absurd that a vagrant should by ordinary resorting, gain a title to maintenance in less time than a settled inhabitant; and the acts of King Charles give rules in the body of them concerning the settled poor: The proclamation could not affect these statutes, and the act of King William refers to, and confirms them; so that it cannot be thought to have confirmed the proclamation any further than it was agreeable to law.

THE LORDS adhered.

Pet. Swinton, sen.

Resp. Williamson.

Clerk, Forbes.

D. Falconer, v. I. p. 92.

1749. June 15. POOR GRINZEAN *against* GIBB.

A PERSON being on the poor's roll found not liable in expense, although he appeared to have been litigious, and was admitted to have some subjects pertaining to him; in respect it was not thought consistent with the rules and constitution of the Court, that a person on the poor's roll should be decerned in expense.

No 4.

Fol. Dic. v. 4. p. 86. Kilkerran, (POOR.) No 2. p. 407.

* * * A similar decision was pronounced 20th November 1772, Paton *against* Adamson, No 374. p. 7669, *voce* JURISDICTION.

1751. February 15.

The HERITORS of the parish of Humbie *against* The MINISTER and KIRK-SESSION of Humbie.

THE kirk-session of Humbie is possessed of a stock of poor's money, said to have from time to time been saved out of usual collections for the poor, to the extent of about 11,000 merks: And certain of the heritors being informed of some inaccuracies in the present management of this fund, after enquiry made, first before the Justices of the Peace, and afterwards before the presby-

No 5.
Found, That the heritors have a joint right and power with the kirk-session in the administration of all