

1779. July 28.

The HERITORS and KIRK-SESSION of GOLDINGHAME *against* The HERITORS
and KIRK-SESSION of DUNSE.

No 13.

The place of the parent's residence for the last three years, and not that of the birth of the child, is liable for the maintenance of the child.

MARGARET SLEIGH had two children born in the parish of Dunse, while residing there. In a few months after the birth of the youngest, she and her husband removed to the parish of Coldinghame, where they continued to reside for more than three years. After her husband's death, she applied to the heritors and kirk-session of Dunse for an aliment to her children; and, upon their refusing it, presented a petition to the Sheriff, praying, that he would decern the parish to grant them a proper aliment. To this process the heritors and kirk-session of Coldinghame were afterwards made parties, and a question ensued, Whether the parish of residence, or that of the birth, was liable for the aliment? The Sheriff decerned against the parish of Coldinghame. In a suspension of this judgment brought by the Kirk-Session and Heritors.

Pleaded for the suspenders; In the case of an adult person claiming an aliment, the residence for three years, no doubt, fixes what parish is liable for it. The place where such a person resides is considered as benefited by his labour, and, therefore, the inhabitants of the parish are under a natural obligation to support him, when no longer able to work. But infant children, who are incapable of working, have no natural claim against the parish where they reside. The parish of their birth is originally liable for their maintenance, and must continue to be so till they are grown up, and have acquired a proper residence in another; Kirk-session of Inveresk against Kirk-session of Tranent, 3d March 1757, No 7. p. 10571.

Answered for the parish of Dunse; It is admitted, that in the case of adult persons, three years residence fixes the aliment on the parish where they reside. The infant children cannot be separated from their parents in this question. They are part of the same family, and the residence of the father is their residence.

THE COURT "found the parish of Coldinghame liable in the aliment of the two children within mentioned, born in the parish of Dunse; and in so far found the letters orderly proceeded, and decerned; but as to the *quantum* of the aliment, suspend the charge *in hoc statu*, and remit to the Heritors and Kirk-session of the said parish to modify said aliment *in prima instantia*; and to do therein as they shall see just."

Lord Ordinary, *Alva*. Act. *Wight, Blair*. Alt. *Ilay Campbell*. Clerk, *Tait*.

Fol. Dic. v. 4. p. 84. Fac. Col. No 88. p. 172.