

1800. December 3.

The HERITORS and KIRK-SESSION of the Parish of Dalmellington, *against*  
The MAGISTRATES, MINISTER and KIRK-SESSION of Irvine.

NO. 2.

JAMES WALLACE was born in the parish of Dalrymple, and resided in his father's house there till he was about nine years old. His father then went to the parish of Dalmellington, where he died, after a residence of above three years. James accompanied his father to Dalmellington, where he went into service. There was evidence of his having remained more than two years in this parish; but it was not clear that he continued in it for three years. After this he went abroad, and was not heard of for a long while. About 1783 he returned to Ayrshire, and became an itinerant dancing-master, in which character, till about 1797, he taught dancing for four or five months every winter in Irvine, but during this period he had no house of his own, but lived in lodgings, and taught in an inn.

A pauper who had taught dancing in a Burgh during fourteen successive years, for four or five months in winter, found to have acquired a settlement there by residence, although he never had a house in the Burgh, and followed his profession in other places during the remainder of the year.

In August 1797, Wallace, while in Irvine, became insane; and from that period till July 1799, he remained in that Burgh, where he was chiefly supported by his scholars and their parents; but there being a prospect of his becoming a burden on the poors' funds, the Magistrates and Kirk-session sent him to the parish of Dalrymple, which they considered as liable for his maintenance, as being the place of his birth.

This was disputed by the Heritors of Dalrymple, who presented a petition to the Sheriff of Ayr, in which they contended, that the maintenance of Wallace fell either on the Burgh of Irvine, in consequence of his residence there, or on the parish of Dalmellington, where his father at least, if not himself, resided for more than three years subsequent to their leaving the parish of Dalrymple.

The Sheriff found it proved, "That James Wallace was born in the parish of Dalrymple, and removed therefrom along with his father to the parish of Dalmellington, and resided there with his father for upwards of three years together; and therefore, and as it does not appear that after removing from Dalmellington, he the said James Wallace resided in any other parish for three years, found, that the heritors and kirk-session of Dalmellington, are bound to keep and maintain the said James Wallace upon the funds of that parish."

From this period, the parish of Dalrymple took no share in the litigation; but the heritors and kirk-session of Dalmellington brought an advocation, in which they contended, that the Burgh of Irvine was liable for Wallace's maintenance, and

Pleaded: The acts 1579, C. 74., and 1672, C. 18., do not require a constant residence in order to create a settlement. The first of these statutes lays the

NO. 2. burden on that parish where the pauper had "his most common resort" for the last seven years; and the latter ordains the minister and elders, in making up lists of the poor, to state "in what paroches they have most "haunted during the last three years preceding the uptaking of these "lists." Now, in this case, Wallace, for fourteen years past, has frequented Irvine more than any other place. In fact he has had as complete a residence there as his profession admitted of. Nor is it of any importance that he never had a house in Irvine, this not being requisite to constitute a settlement, as it will not be disputed, that a servant may acquire a settlement by residing in the house of his master.

Answered: Wallace, after his return to his native country, can be regarded in no other light than that of a vagrant or stroller, who had no fixed abode. He never came to Irvine *animo remanendi*, but only for a transient purpose; and it will not be pretended, that the day after he left it he could have been cited at his former lodging as being the place of his domicil. His residence at Irvine was not incompatible with a similar residence in another place, which, if the plea of the advocates were well founded, leads to this incongruity, that, in the course of the same three years, a person might acquire, by residence, a settlement in two different parishes.

The Lord Ordinary repelled the reasons of advocacy. But on advising a petition for the parish of Dalmellington, with answers, the Court thought, that from Wallace having uniformly resorted to Irvine for so long a tract of years during the winter months, his case resembled that of many descriptions of tradesmen, such as slaters and masons, who not unfrequently seek work at a distance in summer, and return to their homes in winter. On this ground, the Court nearly unanimously altered "the interlocutor re-claimed against, and found the parish of Irvine liable in the maintenance "of the pauper."

A reclaiming petition was refused without answers.

Lord Ordinary, *Meadowbank*.

For the Parish of Dalmellington, *Gh. Brown*.

For the Magistrates and Kirk-session of Irvine, *W. Robertson, Boyle*.

Clerk, *Home*.

*R. D.*

*Fac. Coll. No. 204. p. 471.*