

parish. All the articles except the last were occasioned by the extraordinary confluence of people to this parish to attend divine ordinances; and as the benefit which arose from thence to the poor of the parish has been very great, it is highly reasonable that the expense of providing what was necessary for such public services, should burden those who had the only pecuniary benefit from them.

The small salary given to the session-clerk, for his trouble in keeping the books and accounts relating to the poor's money, is also a natural burden upon that fund. And what was paid to the presbytery-clerk is agreeable to the practice of most parishes in Scotland, there being no other fund for the payment of this petty salary.

*Replied* for the pursuer; The poor of a parish have a *jus quasitum* to the money that is collected for their use; and the heritors, who are by law burdened with the support of the poor, are but subsidiarily liable, in so far as the poor's proper funds fall short. The church and church-yard might have answered all the purposes of public worship to the parishioners and others who resorted there for religious service; and it is unreasonable to charge the poor's money with an expense which might have been saved, if too much encouragement had not been given to the assembling of mobs of people, to the dishonour of religion, and the real hurt of the country.

It occurred as a doubt to some of the Lords, whether this action was competent to one single heritor of the parish.

“ THE LORDS found, that it is competent to one heritor to bring a process against the kirk-session, for accounting for their management of the poor's money; sustained the defence as to the articles laid out for the purchase and after-repairs of the tent; and also the articles paid to the session-clerk; and found that the salary paid to the presbytery-clerk was illegal; but, in respect of the universal custom, found that the defenders are to have allowance thereof for time bypast, but not in time coming; and repelled the defences as to the hail other articles; and ordained the balance in the defenders hands, after deduction of what is above allowed, to be paid to the poor's box of the parish; and decerned against the defenders, conjunctly and severally, for payment thereof; and ordained diligence to pass to that effect against the defenders, at the instance of the pursuer, or any of the heritors of the parish.”

Act. *Lockhart.*

Alt. *Craigie et Macintosh.*

Clerk, *Pringle.*

M.

*Fol. Dic. v. 4. p. 85. Fac. Col. No 35. p. 55.*

1757. March 3. KIRK-SESSION OF INVERESK against KIRK-SESSION OF TRANENT.

DAVID BUTLER resided several years in the parish of Inveresk, as a day-labourer, during which time a daughter, Jean Butler, was born to him. After

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Where the  
place of a  
beggar's birth  
is known, his

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his maintenance found to be a burden upon that parish, notwithstanding of his residing for the last three years in another parish.

his death, his wife and daughter removed to the parish of Tranent; where they lived, without charity, for more than three years. After the mother's death, the child became an object of charity; and a question arose, Whether the parish of Inveresk, where she was born, or the parish of Tranent, where she had resided more than three years, was bound to maintain her?

*Argued* for the parish of Inveresk, That by the act 18th Parl. 1672, it is declared, ' That exact lists shall be made in each parish, condescending upon the age and condition of poor persons; if they be able or unable to work, by reason of age, infirmity, or disease; and where they were born, and in what parishes they have most haunted during the last three years.'

And thus it was found, 5th June 1745, Dunse *contra* Edrom, No 3; p. 10553, " 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."

*Answered*, By act 22d Parl. 1535, the place of nativity is made the only rule with respect to the maintenance of poor: which is again repeated, act 25. 1551.—As the place of nativity might not always be known, it was provided by act 74. Parl. 1579, ' That all poor people repair to the parish where they were born, or had their most common resort or residence the last seven years.' This is more particularly explained by act 16th Parl. 1663, where the burden is imposed upon ' the parishes where such vagabonds or idle persons, who shall be found begging, were born; or in case the place of their nativity be not known, the parishes where they have had any residence, haunt, or most resort, for the space of three years immediately preceding their being apprehended.'

As by these acts, the rule was established, That the place of birth should be obliged to maintain the poor, and the place of residence only, where the other could not be known; so the act 18th Parl. 1672, will not be understood to have introduced any alteration, when it declares, ' That lists are to be made up in every parish, of the poor persons, condescending upon their age and condition; if they be able, or unable to work, by reason of age; and where they were born; and in what parishes they have most haunted during the last three years preceding the uptaking of the lists.'

This is further explained by an act of the Privy Council, 29th August 1693, ratified in Parliament, by which ' all beggars, vagabonds, and poor persons, are ordered to return to the parishes where they were born; and that not being certain, to the parish where they last resided for the space of seven years together.'

" THE LORDS found, that the parish of Inveresk is bound to maintain the child, in respect of its birth; and remitted to the Lord Ordinary to proceed accordingly,"

Reporter, *Justice-Clerk.* For the parish of Tranent, *Gardeu.* Alt. *Sir David Dalrymple.*  
Clerk, *Home.*

W. F.

*Fel. Dic. v. 4. p. 83. Fac. Col. No 19. p. 32.*