

able for the aliment of the child accordingly; Parish of Coldingham against Dunse, No 13. p. 10582.; Buick against Parish of St Vigean's, 25th January 1800. (Not yet collected; See APPENDIX.)—Again, though the parent may not have acquired a legal residence in the parish where his child was born, still his residing there for one or two years, combined with the birth of the child, has been found to subject the *locus originis* of the child, and to exempt the parish where the parent himself would have been alimented; Parish of Melross against Bowden, 24th January 1786, No 16. p. 10584.

No 19.

Though, in the case of this child, the mother was a vagrant, her principal haunt or place of residence had been the burgh of Forfar for five or six years past. There she had at different times occupied two rooms, and had frequently been seen during that time walking about the streets of the town with her child. From the principles recognised in the case of the Magistrates of Irvine, (mentioned above) she would have been entitled to claim aliment from Forfar for herself; and the parish, bound to maintain the mother, must also maintain the child, according to the cases of Dunse and St Vigean's.

It occurred to one of the Judges, that a person pursuing no line of industry, could scarce acquite a legal residence in any place, having no *status* or situation of life there; but it was observed, that a legal residence may be obtained by a person not following any industrious occupation by residence alone; and that the parish must support such a one when he falls into indigence, as they had themselves to blame for permitting a vagrant to remain so long among them, as the act 1672, c. 18. was enacted, to afford relief from such oppression.

THE LORDS found, That the parish of Forfar is bound to relieve the parish of Rescobie of the maintenance of the child.

Lord Ordinary, <i>Meadowbank.</i>	For Rescobie, <i>Reddie.</i>	Agent, <i>Ja. Robertson, W. S.</i>
For Dunnichen, <i>Monypenny.</i>	Agent, <i>Alex. Cunningham, W. S.</i>	For Forfar, <i>Inglis.</i>
Agent, <i>William Inglis, W. S.</i>	For Aberlemno, <i>Baird.</i>	Agent, <i>Pat. Orr, W. S.</i>
Clerk, <i>Sinclair.</i>		

F.

Fac. Col. No 7. p. 14.

1804. January 17. POLLOCK against DARLING.

By the failure of the two successive crops of 1799 and 1800, Scotland was afflicted for two years with an extreme dearth of provisions. To relieve the lower classes of the community, by whom this calamity was most severely felt, the heritors of some parishes, where such a measure was found necessary, imposed, with the assistance of their kirk-sessions, an assessment under the poor-laws, payable one half by themselves, the other by the tenantry or householders of the parish.

In the parish of Dunse, a poor's-rate had been established for almost a century, there never being fewer than from one hundred to one hundred and twen-

No 20.

Those persons are entitled to relief under the system of poor-laws, who, tho' in ordinary seasons able to gain their livelihood, are reduced, during a dearth of pro-

No 20.
visions, to
have recourse
to a charita-
ble supply;
and an extra-
ordinary as-
sessment may
for that pur-
pose be levi-
ed.

ty persons on the roll. During the two years of scarcity, it was necessary to raise a further sum, to afford them meal at reduced prices; and it was also thought necessary to provide for many who were not upon the poor's-roll, but who from the pressure of the scarcity required a temporary assistance, the price of labour not bearing any proportion to the increased price of provisions. For the sake of distinctness, two lists were made up; the one containing this last class of poor, called the Industrious Poor; and the other containing the ordinary poor, who, from the circumstances of age and infirmity, independent of the peculiarity of the season, must have been maintained. The assessments for these two classes were also kept distinct.

John Darling, tenant in Chalkielaw, refused to pay his proportion of the assessment for those who were not the ordinary poor of the parish. He was cited at the instance of Adam Pollock, collector of the poor's-rates, before the Justices of Peace, who decerned against him, with expenses.

This judgment Darling suspended, and the case was reported to the Court, when the bill was passed, (6th March 1801,) 'to the effect of trying the question, but without prejudice to payment of the assessment laid and charged for in the mean time.'

Informations were ordered by the Lord Ordinary, upon hearing parties, and these he reported to the Court; on advising which a hearing in presence was ordered.

Darling

Pleaded, It is only from the statute-law that the poor derive their right to support from the public; and strict regard must be paid to the description of those paupers for whose relief provision is made, to the qualities entitling to this relief, and the condition with which it is burdened. For persons beyond this description, the heritors and kirk-session, who derive their powers solely from the Legislature, cannot exercise the right of assessing.

The poor who have a legal claim to support from the more opulent members of the community, are such persons only as are unfit to work for themselves, by reason of personal inability, such as is incident to youth or advanced years, or arises from bodily infirmity. Another characteristic is, that in as far as they are able to do any work, their labour is at the disposal of the parish. A third distinction between this class and all others who labour under temporary calamity, is, that when the contribution from the parish is inadequate to their support, they are to make up the deficiency by begging, for which purpose they are to be furnished with badges or tokens by the Magistrates or kirk-session. These distinguishing characters of the poor who are entitled to relief, occur in all the statutes, 1424, c. 25.; 1503, c. 70.; 1535, c. 22. In the act 1579, c. 74., the great enactment on this subject, the description, 'aged, impotent and 'puir people,' 'quhilkes of necessitie mon live bee almes,' points out the class to be relieved as those only whose subsistence depended on charity, and who were not in the usual habit of supporting themselves by the profits of their la-

bear. The acts 1592, c. 147.; 1597, c. 268.; 1600, c. 19.; 1617, c. 10. relate to the suppression of vagrants and masterful beggars. The act 1661, c. 38. directs overseers 'to make due trial and examination of the condition and number of such poor, aged, sick, lame and impotent inhabitants of the said parish, who of themselves have not to maintain them, nor are able to work for their living.' The act 1672, c. 18. appoints a list to be made 'of all the poor persons within the parishes, by name and surname, condescending upon their age and condition, if they be able or unable to work, by reason of age, infirmity or disease.' By the same statute, it is enacted, that if the contributions at the parish kirks are insufficient for their maintenance, 'a badge or ticket to ask alms at the dwelling-houses of the inhabitants of their own parish,' is to be given to them; and that such of the said poor persons as are of age and capacity to work, be first offered to the heritors or inhabitants of each parish, that if they will accept any of them, to become their apprentices or servants, 'they may receive them, upon their obligation to entertain and set to work the said poor persons, and to relieve the parish of them.' Towards the close of the seventeenth century, various proclamations were issued by the Privy Council, 11th August 1692, 29th August 1693, 2d August 1694, and 3d March 1698. These were afterwards ratified in Parliament. They all relate to enforcing the former laws, upon the spirit and principle of which they make no change. They were chiefly intended for the purpose of freeing the towns of idle and sturdy beggars, whose labour accordingly was adjudged over to whoever maintained them; Bankton, b. 1. tit. 2. § 60.; Erskine, b. 1. tit. 7. § 63.

The persons for whom the present assessment has been made, though in one sense *poor*, *i. e.* not rich, do not fall under the description of those for whom the Legislature has provided by the poor-laws. They are not rendered unable to provide for themselves by age or bodily infirmities; but the earning of their labour falls short of their wants merely from the accidental and temporary circumstances connected with the scarcity of provisions and consequent high price. The labour of these persons is not understood to be at the disposal of the parish, even when the parish affords them relief; and so far from availing themselves of badges for begging, they would perish rather than submit to the indignity attending it.

While the ordinary poor are to be supported in the mode pointed out by the Legislature, the calamities arising from a temporary and accidental circumstance, such as a failure of crops, must be left to the relief of private benevolence; a source which has never yet failed when no legal provision has been made for the poor. It is the exercise of our best affections, and one of the firmest bonds connecting the various classes of society together. When a man's exertions are to afford his only support, and when, by his good conduct alone, he can recommend himself to the notice of his superiors for assistance in an hour of distress, his usefulness to society will be much more conspicuous than that of one, who, whatever may have been his folly, his idleness, or his vice, knows he will at

No 20. last be supported by others. To many of those called upon to give this support, the hardship must be the greater, as they are very little, if at all in better circumstances than those for whom their own earnings must be diminished. It is not merely the landholder upon whom this assessment is laid ; but every denomination of householder and inhabitant is liable in this assessment. These last will soon, according to this system, be in no better situation than those they are now to assist ; and this evil must be one continually increasing.

Answered, Inability to earn subsistence, is the true and only distress which it is the object of a code of poor's laws to relieve. The causes which produce this disability, provided they be real, cannot be distinguished from each other. While it is admitted, that, by the statute-law, those who labour under old age, or lasting bodily infirmities, are entitled to relief, how should this obligation of the rich to the poor be discharged, where a family is perishing for want, if this should arise, not from want of health, but from a dearth of provisions ; not by a special visitation of affliction to the individual, but by a more extensive calamity, which presses upon a whole class of the community ? Vice may have brought on infirmity, and idleness may have created a disability to labour : Still such misfortunes would be relieved : And shall not assistance be afforded to the honest and industrious man who works diligently, and yet is unable, from the circumstances of the times, to save himself and his family from want ?

That all classes of the community, who, by their utmost efforts, are unable to earn a sufficiency of subsistence, are entitled, under the system of our poor-laws, to relief from others, is a position which does not stand in need of any general reasons of expediency for its support, nor any liberal construction of the statutes. That this was the actual intention, and is the express will of the Legislature, is deduced from the words in which the statutes are framed, and by the historical circumstances of the times which called for them. The aim of our Legislature was to substitute a public fund in all cases where alms would otherwise be necessary.

After domestic slavery had fallen into disuse, and the lower orders were emancipated, they were immediately exposed to casual distress ; and from the want of trade and manufactures, which might have absorbed an idle population, this country was infested with vagabonds of various classes. To restrain the nuisance of begging, the acts 1424, c. 25., 1503, c. 70., and 1535, c. 22., restricted the exercise of it to such as should be licensed. In these, no particular causes of poverty are specified ; but the necessity itself, common to all kinds of indigence, is distinctly expressed as a sufficient title to obtain a licence. After the dissolution of the religious houses, by whom the poor were chiefly supported, they were thrown altogether on voluntary charity, and brought into great distress. The state of the poor introduced the act 1579, which, with a few subsequent amendments, constitutes our code of poor laws. Its object is to repress mendicity by a regular assessment, and, under this plan, to relieve all those who are dependent on alms. At that time such was the

wretched state of husbandry, that every unfavourable spring or summer was followed with dearth; even local scarcities were aggravated into famine. Its constant attendant was pestilence. With this distress recurring every few years, a general law for the relief of poverty could not be prepared without intending to include this case. Accordingly the general description in 1579, is, "quhilkes of necessity mon live bee almes," without any enumeration of the varieties of indigence, or of the different causes by which a dependence on alms may be produced. That it intended every species of poverty, and more especially that arising from the increased price of provisions, is clearly evinced by the proclamations of council in the reign of William and Mary, occasioned by a dearth of provisions, which produced all the accumulated miseries of famine. They are emphatically termed "the seven ill years;" and to relieve the miseries of the common people, the Privy Council referred to the laws as already sufficient, and recommended Magistrates diligently to execute them in favour of all whose inability to live otherwise justified the application of them in each particular case. Practice confirms this interpretation; it is the known and indisputed usage to give relief to the industrious poor, under circumstances of temporary distress, from whatever causes it may arise; they cannot earn a complete livelihood to themselves without assistance; and that assistance, under the present system, till now has never been called in question. The seasonable administration of relief in cases of temporary indigence, often delivers those from dependence on alms, who would otherwise become at length a permanent burden on the public; so that it is adviseable in point of expediency.

Both in this country and in England, it has been found by experience, that the unavoidable disorders arising from poverty, could find no adequate cure by trusting to voluntary beneficence. A general assessment alone is calculated for a prompt, sufficient, and comprehensive relief, particularly for great and occasional distresses. The fund must be already provided, the system matured, and laws proportionate to the evil must be ready, otherwise the misery of the labouring classes of the community will run to such a height, that what has been refused in charity will be taken by force; and the voice of law being drowned, the clamours of nature, anarchy and insurrection will universally prevail.

THE COURT was not unanimous. Several of the Judges expressed their opinion, that this case did not fall under the provision of our existing poor-laws, and that any extension of them would be dangerous. But, upon the whole,

THE LORDS (19th November 1802) "repelled the reasons of suspension; found the letters orderly proceed, and decerned."

This judgment was submitted to review in a reclaiming petition; upon advising which, with answers, the COURT (17th January 1804) "adhered."

Lord Ordinary, *Armadale.*

Agent, *John Peat.*

Agent, *James Marshall, W. S.*

For Pollock, *Lord Advocate Hope, Hume, Horner.*

For Darling, *Solicitor-General Blair, Baird.*

Clerk, *Home.*

F.

Fac. Col. No 134. p. 294.

See KIRK-SESSION.—See APPENDIX.