No 8.

act 1551. But as, in some cases, the parish in which the poor person was born might not be known, in that event, the 74th act 1579, laid the burden of maintenance on the parish where they had resided the last seven years; and the same is more particularly explained by the 16th act 1663. Nor does the act 18th 1672, alter the law in this particular; on the contrary, it refers to the former statutes. And, by several acts of the Privy Council, between 1692 and 1698, particularly one in 1693, it is declared, that the parish in which the poor were born, shall maintain them, when that can be known; and, where that is not cartain, the parish where they last resided for the space of seven years; and these acts of the Privy Council were ratified in Parliament, by 43d act 1695, and 21st act 1698; and this very question was determined, 3d March 1757, Kirk-Session of Inveresk *contra* Kirk-Session of Tranent, No 7. p. 10571.

Lord Auchinleck Ordinary reported the question to the Court; and, before advising, the Court ordered inquiry to be made as to the practice; and, it appearing to be the general practice, that the parish where the poor person resided for the last three years was burdened with the maintenance,

"The Lords found, that John Baxter was entitled to be maintained by the parish of Roxburgh, as the parish where he resided during the immediate three years preceding his application for charity."

For the Parish of Crailing, *John Swinton*, 3tius. For John Baxter, *P. Murray*. Clerk, *Tait*.

A. E. *Fac. Col. No* 60. *p*. 296.

1770. *December* 6.

The Heritors and Kirk-Session of Hutton *against* The Heritors and Kirk-Session of Coldstream.

No 9.
The parish where the pauper has had his residence for the last three years, liable for his maintenance.

The Heritors and Kirk-Session of Hutton being apprehensive that John Whitelaw a pauper, and who had resided in the parish for nearly three years, would become a burden on them, applied to the Sheriff of Berwickshire for an order upon the parish of Coldstream, in which he had his last three years of residence, to enroll and maintain him. A proof having been taken as to the fact of residence, the Sheriff found the parish of Coldstream liable; and the cause having been brought into Court by suspension, the Lord Ordinary adhered.

In a reclaiming petition, the Heritors and Kirk-Session of Coldstream *pleaded:*

The great object, in questions of this kind, was to lay the burden of maintaining the poor equally upon the country. Making the place of birth liable, seemed to be a rule well calculated for that purpose; and such, accordingly, appeared to have been the intention of the legislature in the earliest enactments upon the subject. The act 1535, c. 22d which was ratified by statute

1551, c. 25th of the black acts, ordained, "that the poor shall be allowed to beg in the parishes where they were born." The act 1579, c. 74th ordained, that beggars, in the *first* place, have a right to be maintained in the parishes where they were born; and if these cannot be found out, where they last resided for seven years. The act 1663, c. 16th went upon the same principle, ordaining, that in taking up the list of poor persons, inquiry should be made where they were born, and where they have most haunted during the last three years. The act 1672, c. 18th referred to the former. But this matter was more expressly regulated by several acts of the Privy Council in 1692, 1693, 1694, and 1698, ratified and revived by two acts of Parliament, 1695, c. 43d, and 1698, c. 21st; one of which, 1693, declared, "the parishes to which beggars as above directed to repair, to be the parishes where they were born; and that not being certain, the parishes where they last resided for the space of seven years together."

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The decisions on this point had no doubt gone different ways. In that of the parish of Dunse *contra* that of Edrom in 1745, No 3. p. 10553.; the immediate three years preceding the application was made the rule. But in the question between the parish of Inveresk and that of Tranent, Fac. Col. 3d March 1757, No 7. p. 10571.; it was found, that the parish of Inveresk was bound to maintain the child in respect of its birth. In the late case betwixt the parish of Crailing and Roxburgh, No 8. p. 10573.; the parish of Roxburgh was no doubt found liable, "as the parish where he resided during the immediate three years preceding his application for charity;" but this was but a single decision, and the present case was materially different in one of the most important circumstances; the pauper was a native of Edrom, and he had lived forty years in the parish of Swinton. In 1757 he came to Coldstream, where he resided for four years; and since his departure, his residence had been as follows; two years in the parish of Swinton, from 1761 to 1763; two years in parish of Whitsom, from 1763 to 1765; one year in the parish of Ladykirk; and in 1766 he went to the parish of Hutton. From this deduction, it was clear that the pauper, in place of having resided in the parish of Coldstream for three years immediately preceding his application for charity, had not been in the parish for eight years; so that the case of Crailing did not apply, and though he had resided full three years in Hutton parish at that time, yet, in terms of the act 1663, he had most haunted in that parish for the three last years.

The Heritors and Kirk-Session of Hutton *answered*;

As it was the purpose of all laws relative to the maintenance of the poor, merely to enforce the duty of private charity, it had been the object of the legislature to follow out, as nearly as possible, the ideas which would naturally arise upon the subject. Every one in the distribution of private charity, was naturally prompted to relieve those objects of distress who were in his neighbourhood, and whose want and necessity were best known to him. Residence ac-

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cordingly came to be the chief circumstance which entitled a person to the charitable support of a particular parish; and as to the accidental circumstance of a person's being born in a certain parish, it plainly created no connection, and gave no natural claim to charity, either legal or voluntary. This rule was sanctioned by views both of expediency and equity; for if the idea of making the parish of the birth always liable, instead of the parishes in which the pauper had resided, was adopted, it would have the effect not to equalise, but to relieve, the inhabitants of towns, who were in general best able to bear the burden, and to lay an unreasonable load upon the country parishes.

The legilature had accordingly proceeded upon these ideas. The first essay towards establishing a system of poor laws was the act 1579, c. 74th; the great object of which was to oblige the whole poor in Scotland, to repair instantly to the respective parishes which were liable for their maintenance. Seven years residence was accordingly expressly noticed as a legal and ordinary settlement as much as the place of birth; and from a minute examination of the statute, it appeared that the place of birth was only made liable when the pauper was residing there at the time, or when he had not resided for seven years together in any other parish. By statute 1661, c. 38th it was still clearer, that at that time residence alone was understood to found the obligation, without regard to the place of nativity; and as to the act 1663, c. 16th which seemed to point at making the parish of residence only liable *subsidiarie*, it was said by Mackenzie, in his Observations, that it never had been observed, and of course could be of no avail in the present question. By the act 1672, c. 18th, though a new plan was adopted, by establishing correction-houses, the idea of making the parish of residence liable was still kept up; and it even supposed that three years haunting in a town was sufficient to found the right, though the pauper happened to be born in a different parish. The acts of Privy Council in 1692, 1693, &c. could not have the force of laws, more especially when contradictory to former statutes; and that of the 29th August 1693, which rendered the place of residence liable only *subsidiarie*, never had been followed, but a practice directly the reverse uniformly observed; the parish, where the pauper had last resided for three years, being held to be *primo loco* liable.

The decisions upon this point were express. Parish of Dunse *contra* Parish of Edrom, No 3. p. 10553.; and in the case, parish of Crailing *contra* parish of Roxburgh, No 8. p. 10573., a deliberate judgment had been pronounced, in order, it was understood, to fix the point in time to come. The argument reared upon the pauper's residence in the parish of Coldstream not having been immediately preceding the present application, was a critical quibble; an obligation was *de facto* imposed upon the parish of Coldstream, which, once legally constituted, must subsist till it was transferred to some other parish, by the pauper's residing there three years at a time, and thereby acquiring a new settlement.

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The Lords were of opinion, that the point was fixed in the case of Crailing, which had gone upon a special inquiry into the practice; and they therefore adhered to the Lord Ordinary's judgment.

Lord Ordinary, *Monboddo*. — For the Parish of Hutton, *Blair*.
Clerk, *Campbell*. — For the Parish of Coldstream, *Maclaurin*.

R. H. — *Fac. Col. No* 54. *p.* 155.

1772. *November* 20. Mr William Paton *against* Adamson.

No 10.

In an action against two parishes for aliment to an indigent person, the Sheriff of Roxburgh not only determined which of the two parishes were liable, but modified the *quantum* to be paid weekly, and decerned for payment of it out of the poor's funds. *Urged* in a reduction of this decreet, That the Sheriff had arrogated to himself powers which belong, by statute, exclusively to the minister, elders, and heritors of the parish, who alone are entitled to judge who shall be admitted to the poor's roll, and to fix their allowance for aliment. *Vid.* act 1663, c. 16th and act of Privy Council; August 11th 1692. The Lords sustained the reasons of reduction.

*** *N. B.* Although the Sheriff has no cognisance in the first instance in questions of this nature, it may be doubted whether he may not interfere upon a complaint, that the poor's laws have not been properly executed, seeing that the act of Privy Council, 31st July 1694, ordains the Sheriff, Justices of Peace, and Magistrates of royal burghs, to take trial how far the acts of Parliament and acts of Council have been obeyed.

Fol. Dic. v. 4. *p.* 85. *Fac. Col.*

*** This case is No 374. p. 7669. ; *voce* Jurisdiction.

1773. *January* 19.

James Scott, Collector of the Assessments of West-Kirk Parish, and the Heritors and Session thereof, his Constituents, *against* John Fraser, Wright in Cabbagehall, in that Parish.

No 11.
Heritors have power to assess, for maintenance of the poor, by the real rent, where that is expedient, although the practice may have been to levy by the valued rent.

A Charity Workhouse, built at the expense of the heritors and parishioners of West-Kirk, was opened in the year 1762.

The parish-funds being found insufficient to defray the whole expense of the house, the deficiency was made up by an assessment, which was at first laid on in proportion to the valued rent; one-half to be paid by the heritors, and the other by their tenants.