

1772. November 20.

Mr WILLIAM PATON Minister, and Others, concerned in the maintainance of the Poor of the Parish of Eckford, *against* PATRICK ADAMSON, Egg-man in Rutherford.

IN an action brought against two parishes, for alimment to an indigent person, the Sheriff of the county of Roxburgh having not only determined which of the two parishes were liable in the burden, but likewise fixed the *quantum* of alimment to be paid by the parish burdened, at the rate of so much per week, according as the market-price of oat-meal should be at certain prices, and decerned for payment of such alimment out of the poors funds, a reduction was brought of the last part of the Sheriff's decree, as being *ultra vires*.

Pleaded, The Sheriff did wrong in proceeding to modify a liquid sum for the alimment, which the law did not warrant him to do. The statutes, which enforce the duty of alimmenting the indigent, have not committed this power to any judge, in the first instance, but to the minister, elders, and heritors of the parish, by which the indigent person is to be alimmented. They are best acquainted with the circumstances of those who reside in their parish; they know best whether or not those who apply for the benefit of the public charity, be proper objects of it, and what is necessary to supply their wants: Therefore, the legislature has empowered them to judge who are to be recieved upon the poor's roll; to impose the tax for maintenance of the poor, and to distribute that tax, according to the necessities of the several indigent persons who are entitled to share it. The act of Privy Council, 11th August 1692, confirmed by act of Parliament, which this, and all the other parishes of the county of Roxburgh, follow in the maintenance of their poor, particularly requires the heritors, minister, and elders of every parish to make a list of all the poor within the parish, to liquidate a yearly sum for maintenance, and to distribute the same among the poor, according to their several needs. So that it is clear, that no judge can interfere in the matter in the first instance.

Observed on the Bench; The matter of distribution *de jure*, as well as from expediency, belongs to the heritors and kirk-session. The Sheriff had no power touching it; and, therefore, the application and consequent decree, as to this particular, fall to be regarded as totally inept and incompetent.

THE LORDS sustained the reasons of reduction; and, in respect of the defender's being on the poor's roll, find no expenses due.' See POOR.

Reporter, Gardenston

Act. Adam Ogilvie.

Fac. Col. No 28. p. 73.

No 374.
Sheriff has no power to fix the quantum of parochial alimment to indigent persons, out of the poor's funds, and pass decree therefor, in the first instance.