

monition and example would in this way be lost, while the expense of supporting the children would on the whole be considerably increased.

*Answered* for the Heritors of Bowden; The rule adopted in the instances above referred to, is inadmissible in the present case, where the poor persons have not resided for the requisite space of time in any parish. Hence, therefore, the parish of the birth, as the primary and general place of settlement, can alone be liable.

The inconveniencies which have been figured to arise from this cannot have any weight. It is not indispensably necessary that the children should reside in the parish from whence they derive their support.

The Sheriff-depute of the county had found the parishes of Melrose and Stitchesell liable respectively in the maintenance of the children born in the said parishes, 'in respect the children had not resided three years in any other parish.'

A bill of advocaation was preferred, which was refused by the Lord Ordinary. And after advising a reclaiming petition, with answers, the LORDS affirmed these judgments.

Lord Ordinary, *Monboddo*. For the parishes of Melrose and Stitchesell, *A. Fergusson*.  
For that of Bowden, *Claud Boswell*.

*C.* *Fol. Dic. v. 4. p. 84. Fac. Col. No 248. p. 381.*

1794. May 28.

The COLLECTOR of the Poor's Rates in the Parish of INVERESK against The  
MAGISTRATES OF MUSSELBURGH and SIR ARCHIBALD HOPE.

THE heritors and kirk-session of the parish of Inveresk some years ago imposed an assessment for the maintenance of the poor. The Magistrates of Musselburgh, who have mills within the parish, which they let in lease, and Sir Archibald Hope, the proprietor of extensive coal and salt works, also within the parish, refused to pay any part of the poor's rate for these subjects.

The collector appointed to levy it brought an action, concluding against them for a proportion of the assessment, corresponding to the yearly rent or value of these respective subjects, and

*Pleaded*; By the act 1579, c. 74, the whole inhabitants of the parish are to be taxed for the maintenance of the poor. By the subsequent statutes, 1663, c. 16, and 1672, c. 18, the assessment is directed to be made according to the old extent or valued rent, or otherwise, as the major part of the heritors shall agree. And this discretionary power of assessment is further confirmed by two acts of the Privy Council in 1692 and 1693, (Statute Law Abridged, voce Vagrant, p. 389), in which the heritors and kirk-session are simply authorised

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Proprietors of mills, and of coal and salt works, are liable to be assessed for the maintenance of the poor.

No 17. to lay on such an assessment as may be sufficient, without being confined to any rule.

Their powers being thus ample, it seems to be a question of equity and common sense, in what proportion those having interest in the parish ought to be assessed? Of consequence, with the exception of personal property, as being too uncertain to admit of fixed estimation, the rule will be, that each individual should contribute precisely according to the emolument that accrues to him from his property; 19th Jan. 1773, Collector of the assessments of West-kirk Parish against Fraser, No 11. p. 10577. There is no ground for distinguishing between an heritor whose revenue arises from the fruits of the surface, and another who derives his income from mines under it. Neither is there any reason why salt-works, from which a determinate and valuable revenue is derived, should not be rated; and mill-rents cannot be considered in a more favourable light than those which arise from lands or houses.

In England, coal-mines are rated by particular statute, 43 Eliz. c. 2; and it is indisputable, that there, mill-rents and salt-works would also be subject to assessment; Queen against Barker, H. 5. Ann. Lord Raymond, 1280; King and Whitney, Burrows 2634; King against Hill, 17 Geo. III. Couper's Reports, 613, King *versus* Millar; Couper, 619; Dalton, 165.

*Answered*; The act 1579, c. 74, is no doubt sufficiently broad to include the subjects in question; but it never was in force. In landward parishes, its powers were conferred on a 'judge to be constitute be the King's commission,' who was never named, and therefore they cannot be exercised.

Under the act 1663, no subjects are rateable except such as pay cess to Government; but it will not be pretended, that any of those in question are in that situation. The clause of the statute, giving a discretionary power to the heritors, relates to the *mode* of raising the assessment, not to the *subjects* upon which it is to be laid. And accordingly, such was the import of the judgment in the case of the West-Kirk against Fraser. It is indeed impossible that the Legislature could mean to give the heritors a right to transfer the tax from one subject to another, although it may very properly be supposed to have delegated to them a power of varying the mode of levying it, as circumstances might require.

It was separately pleaded for Sir Archibald Hope, That there was no instance in Scotland where either collieries or salt-works had been assessed; and that the specification of coal-mines in the English statute was a proof, that they could not by implication have been subjected to the tax.

The Lord Ordinary reported the cause on informations.

*Observed* on the Bench; The discretionary powers vested in the heritors by the statute 1663, are sufficiently broad to reach coal-works and the other subjects under consideration; and as all of them add greatly to the number of poor, it is reasonable that they should contribute to their maintenance. In rating

mills, however, a considerable deduction should be made from the rent for repairs.

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THE COURT unanimously pronounced the following judgment :

“ Find, That the coal-works, salt-works, and mills in question, are liable to be assessed for the maintenance of the poor; remit to the Lord Ordinary to proceed accordingly, to hear parties further upon the mode or rate of assessment, and the particular circumstances of each case, and to do as he shall see just.”

Lord Ordinary, *Craig.*

*Act. Fraser-Tytler, Davidson.*

For the Magistrates of Musselburgh, *G. Fergusson.*

For Sir Archibald Hope, *Hope.*

*R. D.*

*Fol. Dic. v. 4. p. 85. Fac. Col. No 120. p. 268.*

1797. December 2.

THOMAS LAURIE, Collector of the Poor's Rates for the City of Glasgow,  
*against* ROBERT DREGHORN.

IN Glasgow, a committee from the Town-Council, and from the Merchants and Trades-Houses, have, by immemorial custom, been annually appointed by these bodies for superintending the maintenance of the poor. The first step taken by the committee, is to make an estimate of the sum necessary for this purpose during the year of their management. They afterwards appoint a certain number of the inhabitants, (commonly 15) who are neither members of the Town-Council, nor of the committee for the poor, as assessors, to proportion it, upon oath, among the inhabitants at large, according to the best judgment they can form of their fortunes, exclusive of heritable property situated without the town.

Robert Dreghorn resides chiefly in Glasgow, but is not engaged in trade. The assessors for 1793 rated the value of Mr Dreghorn's heritable subjects within the town, and of his personal property, wherever situated, at L. 24,000 Sterling, which made his share of the assessment for that year L. 19.

Mr Dreghorn refused to pay this sum, contending, that poor's rates can only be levied on stock in trade and heritable property within the town, which last he admitted he was possessed of to the amount of L. 300 Sterling yearly, and for which alone he was willing to pay.

In an action brought against him before the Magistrates, in name of the collector of the poor's rates, for his full assessment, they found, “ That the Magistrates and Council of Glasgow, by whose authority the assessment in question has been ascertained, by means of sworn assessors appointed by them, for ascertaining each inhabitant of the city his proportion, according to his estimated wealth, of this necessary public burden for the maintenance of the city's poor, have title, by express statutes, to ascertain and levy the due proportions of such

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It is competent for the Magistrates of Glasgow to levy the poor's rates upon the inhabitants, according to the extent of their heritable property within the town, and of their personal property wherever situated.