

fluenced by the circumstance of the defender's being a member of the Town-Council, and a director of the hospitals.

“ The Lords found, That the defender Mr Carrick had a right to demand
 “ from the Magistrates of Glasgow, and their collector of their poors rates,
 “ inspection of the books kept by them, relative to the assessments for the
 “ poor, and to examine the same ; and therefore remitted the cause to the
 “ Magistrates of Glasgow, with these instructions, That they alter their in-
 “ terlocutor complained of, in so far as it refuses inspection of the said
 “ books ; and that they appoint their collector to give inspection thereof to
 “ the defender ; but, in the mean time, to decern against the defender for
 “ payment of the sum of L. 50 : 13 : 4 Sterling, as the assessment laid upon
 “ him for the year in question, and to allow the decret to be extracted for
 “ the same, without prejudice to his being afterwards heard in any action of
 “ declarator for repetition, if he shall be advised to insist therein, and reser-
 “ ving all defences against such action, as accords.”

Lord Ordinary, *Cullen.* Act. *Arch. Campbell sen.* Alt. *Hay.* Clerk, *Home.*

R. D.

Fac. Coll. (Appendix) No. 11. p. 20.

1806. *March 4.*

BROWN and ANOTHER, *against* KIRK-SESSION of Mordington.

MARY BROWN resided with her husband and family in the parish of Mordington, for more than three years previous to 1794.

At that time her husband and his family went to Berwick-upon-Tweed, where he carried on the business of a tailor till 1798, when he failed, and his effects were attached by his creditors. Soon after he left his family, and enlisted in a regiment in foreign service.

Mary Brown was under the necessity of applying to the parish-officers of Berwick for assistance, which was afforded to her in the mean time, though it appeared that her family had not, by the laws of England, acquired a legal settlement in Berwick ; and as, upon inquiry, it was found, that their last legal settlement was in the parish of Mordington, an application was made to that parish for relief, which was refused.

Upon this Mary Brown and the overseer of the poor of the parish of Berwick, raised an action before the Sheriff of Berwickshire, against the Heritors and Kirk-session of Mordington for an aliment. The Sheriff found that no claim lay against the parish.

NO. 4.

Residence of a pauper for three years in a parish in England, which does not by the English law entitle to a settlement, does not liberate a parish in Scotland, where a settlement had been previously acquired, from the aliment of the pauper.

NO. 4. The cause was afterwards removed to the Court of Session, by advocacy, and being taken to report by the Lord Ordinary, the pursuers.

Pleaded: Residence for three years in a particular parish gives a pauper a legal settlement, by the law of Scotland; Parish of Dunse against Parish of Edrom, 5th June 1745, No. 3. p. 10553; Baxter against Parish of Crailing, 7th March 1767, No. 8. p. 10573; Waddell against Kirk-Session of Hutton, 14th June 1781, No. 14. p. 10583. This obligation, when once constituted, remains in force, unless it can be shewn that the pauper has afterwards acquired a settlement in some other parish. It is not necessary that the three years residence must take place immediately before the application for charity; Runciman against Parish of Mordington, 24th January 1784. No. 15. p. 10583. The pursuer, it is true, resided more than three years in the town of Berwick, which, by the law of Scotland, would have entitled her to an aliment from that parish; but by the law of England, mere residence is not sufficient; Blackstone's Commentaries, B. 1. C. 9., 35th Geo. III., Cap. 101; and as the pursuer never fulfilled those requisites necessary to obtain a settlement in Berwick, the settlement acquired in the parish of Mordington remains in full force.

Answered: It is admitted that the parish of Berwick was bound to maintain this pauper until she be removed to some other parish where she had a legal settlement. But as there was no other parish in England where she had such a settlement, the parish of Berwick have no right to remove her out of the kingdom, but must continue to maintain her. No subject of England can be sent out of the kingdom without his own consent, except by the sentence of a Judge, as a punishment for a crime, or in the special case of persons accused of having committed crimes in one country, and escaping to another; 31st Charles II., Cap. 2. The power of removal is limited to the case where the pauper has a legal settlement in some other parish in England; Atkins against Ranwell, East's Rep. Vol. 2. p. 505.

The present case must be decided according to the law of Scotland, where the demand for maintenance is made; and, as the pauper has resided three complete years in Berwick, she can have no claim for a maintenance from the parish of Mordington. The pursuers must either argue this case throughout on the law of Scotland, or on the law of England. They are not entitled to adopt the one or the other, so far merely as it is favourable to their plea; and, if the law of England be adopted as the rule, no settlement ever was acquired by this pauper in the parish of Mordington.

The Lords appointed a case to be made out for the opinion of English counsel, from which it appeared, 1st, That by the law of England this pauper had not acquired a legal settlement in the town of Berwick-upon-Tweed; 2d, That every parish is bound to maintain the poor resident

whilst they are bound until they are legally removed to another parish where they have a settlement.

The Lords, upon considering the memorials, with the opinion of English counsel, (6th July 1805) repelled the reasons of advocacy, and remitted the cause to the Sheriff *simpliciter*.

Afterwards, however, upon advising a reclaiming petition, with answers, "The Lords alter their interlocutor complained of, and remit to the Sheriff, with instructions to ordain the defenders to enrol the petitioner and her two children upon their poor's roll, at such a weekly aliment as the case requires, and to modify the same."

There was great difference of opinion on the Bench. It was held by the Judges in the minority, that the obligation of maintenance constituted against a particular parish ceased *ipso facto* by the party residing anywhere else for three years, without application for charity; that if this obligation were to be sustained indefinitely, it would be productive of most ruinous consequences, especially to the parishes on the border; and that the regulations and distinctions of the English law with regard to the legal settlement of paupers, could not enter into the decision of this case. It was laid down, however, on the other hand, that an obligation once created against a particular parish, is only taken off by an obligation constituted against another; and, with regard to the inconvenience arising to the border parishes, the balance was nearly equal; for cases might often occur where they were benefited by the operation of the English poor-laws, by which a pauper, in certain circumstances, acquires a legal settlement by a shorter residence than required by the law of Scotland.

Lord Ordinary, *Hermann*.

Adv. *Baird*.

Agent, *George Tod junior*

Adv. *Cráigie, Monnypenny*.

Agent, *K. Mackenzie, W. S.*

Clerk, *Mackenzie*.

J.

Fac. Coll. No. 241. p. 541.

1806. June 11.

KIRK-SESSION of Gladsmuir, against KIRK-SESSIONS of Preston and Salton.

NO. 5.

THIS was a dispute between three parishes regarding the maintenance of an idiot pauper. The mother of the idiot was born in the parish of Gladsmuir, and was delivered of a female bastard child in the parish of Salton in 1791, where she then resided as a servant. The father of the child was unknown. Immediately after her birth, the girl was taken to the house of her grandmother, in the parish of Gladsmuir, where she resided till 1801, when her grandmother died. In the mean time, the mother went in 1795 to the parish of Preston as a servant, and in 1799 was married to

In the case of a bastard, the residence of the mother is the rule for ascertaining what parish is liable for the aliment of the child.