

NO. 5. " muir of that burden, which was imposed on them by the illegal conduct
 " of John Adamson, and to make payment to them of the sums which they
 " have expended in maintaining the pauper, since the said kirk-session of
 " Salton was called as a party to this action; assoilzies the kirk-session of
 " Preston, and decerns."

But the Court, upon advising a petition for the parish of Salton, with answers for the two other parishes, altered the interlocutor of the Lord Ordinary, and imposed the burden of the pauper's maintenance on the parish of Preston.

The Court held, that the case of Forfar (No. 19. p. 10589.) was a precedent as to the settlement of bastard children;—that the residence of the father in the case of legitimate children, acquired a settlement for his children;—and when the father was unknown, as in the case of bastard children, that the residence of the mother must be the rule.

Lord Ordinary <i>Methven.</i>	For Gladsmuir, <i>Jardine.</i>	Agent, <i>Walter Dickson, W. S.</i>
For Preston, <i>A. Bell.</i>	Agent, <i>R. Cathcart, W. S.</i>	For Salton, <i>Gillies,</i>
<i>R. Campbell,</i>	Agents, <i>Riddell & Gillon.</i>	Clerk, <i>Ferrier.</i>

J.

Fac. Coll. No. 251. p. 563.

1806. June 11. KIRK-SESSION OF EDINBURGH against BROWN.

NO. 6.
 In case of
 bastard children, the
 parish of the
 mother's residence, and
 not that of
 the supposed
 father, is
 liable for
 aliment.

IN March 1803, Margaret Bulloch was delivered of a bastard-child within the city of Edinburgh; and upon applying to Richard Richardson, the kirk-treasurer of the city for assistance, obtained an aliment. Upon inquiry, Richardson was informed that George Stephens, who resided within the burgh of Canongate, was the father of the child; With the concurrence of the mother, he instituted an action against Stephens before the Sheriff of Edinburgh; in which, after some opposition, he ultimately obtained decree for the usual sum of inlying charges and aliment. Upon this decree, Stephens was incarcerated; but having no funds, he was after some time released under the act of grace.

Thereafter the treasurer of the kirk-session of Edinburgh raised an action before the Sheriff against John Brown, the kirk-treasurer of Canongate; to be relieved of the expense which had been incurred in the aliment of Margaret Bulloch and her child. The Sheriff found the parish of Canongate liable, " as being the legal residence of the father."

The cause was advocated; and the Lord Ordinary remitted to the Sheriff, " with this instruction, that he alter the interlocutor complained of;

“ sustain the defences; assoilzie the defender, and find him entitled to NO. 6.
“ expenses.”

Against this judgment the Kirk-Treasurer of Edinburgh,

Pleaded: When the father is ascertained, there is no reason for making any distinction with regard to the maintenance of legitimate and illegitimate children. There can be no doubt, that the parish where the father has a settlement, is, in the case of lawful children, liable for their maintenance, although the mother's settlement be in another parish; Parish of Coldinghame against Parish of Dunse, 28th July 1779, No. 13. p. 10582. And as the father in this case has been ascertained, in the process before the Sheriff; and as it is not disputed, that his residence was within the burgh of Canongate; the kirk-session of that burgh must relieve the kirk-session of Edinburgh from the burden. The circumstance of the child being born in Edinburgh can make no alteration on this rule; Rescobie, 28th November 1801, No. 19. p. 10589.

Answered: In the case of natural children, the residence of the mother must regulate the question of aliment. The father of a natural child, is always more or less uncertain. The mother is therefore primarily liable, though to a certain extent she is entitled to obtain relief from the reputed father. And the obligation of the mother is, through her inability, transferred to the community.

The Court adhered. Two of the Judges were in the minority, and expressed an opinion, that when the father of the natural child was known, the parish of his residence ought to be liable in the first instance, it being to be presumed, according to the principle of the decision in the case of Runciman, that the parish of the father's residence was more benefited by his labour than the parish of the mother's residence by her labour. But the majority of the Court held, that the father of a natural child was in the eye of law uncertain; that the circumstance of decree for aliment having passed against a particular person, is not sufficient evidence that he was the father of the child; and that the parish of his residence was not liable for this debt, any more than for other debts of the supposed father.

Lord Ordinary, *Meadowbank.* Act. Solicitor-General Clerk, *Moncrieff.*
Agent, *Ja. Dickson.* Alt. *Baird.* Agent, *H. Bell,* W. S. Clerk, *Mackenzie.*

J.

Fac. Coll. No. 252. p. 566.