

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.

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assessments ; and in respect of said assessors' apportionment of the sum of L. 19 on the defender Mr Dreghorn, and *separatim*, as Mr Dreghorn has not denied that the extent of his fortune locally within the city, and of his personal estate wherever situated, which are the legal measures of such public burdens, which last is not subject to such a burden without the city, are adequate to sustain his proportion of the said assessment, according to the same proportion imposed on the like estates of the other inhabitants, repelled the defences, and decerned for the sums libelled."

The defender brought this judgment under review by advocacy, and

*Pleaded*; Assessments for the maintenance of the poor can only be imposed by statute, and there is none which authorises a tax for that purpose upon personal property.

It is true the act 1579, c. 74, gives power to the Magistrates of burghs, to stent the 'hail inhabitantes, according to the estimation of their substance;' but as few persons at its date were possessed of money or goods, except in the place of their residence, it cannot be reasonably supposed that the Legislature meant by this expression to lay any imposition on personal property situated elsewhere.

Besides, this statute was not enforced, and the act 1592, c. 155, expressly limited taxations within burgh, to those 'exerceaned merchandice, or having 'change within the same.'

No doubt this was altered by 1597, c. 279, so far as to make every person living within burgh, worth 2000 merks, or L. 100 of yearly rent, liable along with the other inhabitants. It is clear, however, from its preamble, that the 2000 merks, or the L. 100, were to arise from property within the town; accordingly, the subsequent act 1597, c. 280, enacts, that the inhabitants shall only be stented in proportion 'to their rents and holdings within burgh.' See also 11th January 1678, Town of Aberdeen, No 16. p. 1866; 21st November 1695, Town Council of Glasgow, No 40. p. 1897.

And there is an evident expediency in confining the application of the burden in this manner. The assessors may ascertain with tolerable precision the value of the heritable property and stock in trade belonging to each individual within burgh; but when they attempt to fix the amount of a man's whole personal property, their computations must necessarily be liable to much uncertainty, an evil which can only be removed by a full disclosure of a man's affairs, rather than make which, many mercantile people would submit to great oppression.

*Answered*; The act 1579, c. 74, so far from not having been enforced, is expressly ratified by 1698, c. 21, and is at this day the fundamental statute in regard to poor's rates within burgh; by it the tax for maintenance of the poor is appointed to be levied according to the estimation of the *substance* of the contributors; a phrase which the common use of our language will not admit of being applied exclusively to heritable property. The defender indeed allows,

that it reaches stock in trade, which certainly does not fall more directly under it than any other sort of personal property.

The statutes 1592, c. 155, and 1597, c. 180, have no relation to poor's rates, their object being solely to ascertain the persons in burghs liable in national taxes; and the statute 1597, c. 279, merely ascertains the description of persons to be assessed for the maintenance of the poor, but makes no alteration on the act 1579, c. 74, in so far as it relates to the kind of property according to which they are to contribute.

The alleged inexpediency of this mode of assessment, if at all well founded, applies more strongly to taxing mercantile stock, than personal fortune not employed in trade. A person, though engaged in great commercial concerns, may be worth nothing; but the extent of a man's fortune, when realised, is commonly pretty well known to his fellow citizens. The danger of disclosing his affairs too, is incomparably greater to the one than the other. Supposing, however, there were objections to this mode of taxation, it is surely better than allowing persons like the defender, with large personal fortunes, not employed in trade, to be almost wholly exempted from paying any share of the poor's rates.

The Lord Ordinary "remitted the cause to the Magistrates, and found the defender liable in expenses."

On advising a reclaiming petition, with answers, the Court thought the mode of assessment complained of was sanctioned both by the 1579, c. 74, and by immemorial usage. But it was at the same time observed, that although persons in the defender's situation should be obliged, in one shape or another, to contribute to the support of the poor, as nearly as possible in proportion to their fortunes, the rule adopted in Edinburgh, of making every person pay according to the rent of the house which he inhabits, is perhaps preferable, as affording a *datum* sufficiently accurate, and in no case liable to partiality.

THE LORDS unanimously adhered.

Lord Ordinary, Swinton.

Act. Lord Advocate Dundas, Arch. Campbell, Connell.

Alt. Solicitor-General Blair, Tait.

Clerk, Sinclair.

R. D.

Fac. Col. (APPENDIX.) p. 15.

1801. November 28.

KIRK-SESSION of Rescobie, against KIRK-SESSION of Aberlemno, KIRK-SESSION, of Dunnichen, and KIRK-SESSION of Forfar.

In the month of September 1800, a child about two years of age was exposed at the door of a house in the parish of Rescobie. While the child was taken care of in the mean time by the kirk-session of that parish, it was found that the child was born in the parish of Aberlemno: That his father was unknown:

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A bastard-child is to be maintained by the parish where the mother has