

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, Monny penny*.

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.

NO. 5. a labourer residing in that parish. After the death of her grandmother, the idiot lived with her mother, in the parish of Preston, till her mother died; and her mother's husband being unwilling to maintain her, after applying to his own parish of Preston for aid, which was refused, carried her to the manse of Gladsmuir, where she was left, in the month of December 1803.

At this time the idiot had resided nearly three years in the parish of Preston, and her mother had acquired a settlement in that parish at the time of her death. The period of her residence in the parish of Gladsmuir with her grandmother, was upwards of eight years. She left the parish of Salton a few days after her birth.

An action was raised by the Kirk-session of Gladsmuir against the Kirk-session of Preston, before the Sheriff of Haddington, to be relieved from the maintenance of the pauper. The Sheriff found, that the burden of her maintenance lay upon the parish of Gladsmuir.

The cause was afterwards advocated, and the Kirk-session of Salton was cited as a party.

Upon the part of the Kirk-session of Gladsmuir, it was

Pleaded: It is a fixed point, that the burden of the maintenance of an adult pauper falls upon the parish where he has resided for three years previous to his application for aid. This rule proceeds on the presumption, that the parish so burdened has been benefited by his labour, and accordingly the last place in which there has been a continued residence for three years, though many years prior to the application for charity, fixes the burden on that parish; Runciman against the Heritors and Kirk-session of Mordington, Jan. 24. 1784, No. 15. p. 10583. It seems to follow, that the residence of infants, who are not able to contribute to the poor's funds, or to benefit the parish where they reside by their labour, cannot constitute a claim for aliment against the parish where they reside. In such cases, the residence of the father is held to be the residence of the child, and a man acquires a settlement not only for himself, but for his family; Kirk-session of Coldinghame against Kirk-session of Dunse, July 28. 1779, No. 15. p. 10582. Buick against Kirk-sessions of Arbroath and St Vigean's, Jan 25. 1800, No. 1. Appendix, *supra*. But in the case of a bastard-child, whose father is unknown, the law regards the residence of the mother, and imposes the burden of the maintenance of the child on the parish where she had acquired a settlement; Kirk-session of Rescobie against Kirk-sessions of Aberlemno, Dunnichen and Forfar, November 28. 1801, No. 19. p. 10589. In the present case, therefore, the parish of Preston, which was bound to maintain the mother, must be bound to maintain the child. And if no claim has been acquired by residence, the parish of Salton being the parish of her birth, must be bound to relieve the

parish of Gladsmuir of the maintenance of this pauper; Parish of Melrose, NO. 5. against Parish of Stitchell, 24th Jan. 1786, No. 16. p. 10584.

The parish of Preston Pleaded: There is no principle of law by which this child can be considered as having acquired a legal settlement in the parish of Preston. The statutory period of three years residence was not completed, so as to give her a claim in her own right; and she did not form any part of her mother's family, so as to give her a claim in consequence of her mother's settlement. In the cases of Coldinghame and Rescobie, the children lived in the same parish with their parents, but in this case the child resided in the parish of Gladsmuir, in the family of her grandmother, where, unquestionably, by her eight years residence in the parish of Preston, she acquired a legal settlement. By the mother's residence in the parish of Preston, she acquired a settlement for herself and her lawful children, who lived in her husband's family; but it is absurd to suppose that she could, at the same time, be acquiring a settlement for illegitimate children, residing in other parishes. In this case, the pauper seems to have acquired a settlement for herself in Gladsmuir; but if not, the parish of Salton where she was born, must be liable.

The parish of Salton

Pleaded: The statutes regarding the maintenance of the poor require three years residence to obtain a settlement in any particular parish. It is only when no settlement has been acquired, that the parish of the pauper's birth is obliged to maintain him. The law does not require any thing more than the mere fact of residence; for it is very seldom that any parish can ever be said to be benefited by the residence of such persons. This child resided eight years in Gladsmuir, and so acquired a settlement for herself; 1672, C. 18. 5th June 1745, Parish of Dunse, No. 8. p. 10573; Parish of Hutton, 6th December 1770, No. 9. p. 10574. But if she has not acquired a settlement for herself, her mother had a settlement in the parish of Preston, which was bound not only to maintain her, if reduced to indigence, but likewise her children. In every view, therefore, the parish of her birth is out of the question.

The Lord Ordinary, " Finds, That the Kirk-session of the parish of
 " Gladsmuir must be relieved of the burden of maintaining the pauper
 " Elisabeth Watt; and in respect that the said pauper, born in the parish
 " of Salton, is an idiot, and thus having no will of her own, could not ac-
 " quire for herself a legal residence any where, and that she never acquir-
 " ed a legal residence, by living in family with her mother in the parish
 " of Preston, finds, That the Kirk-session of the parish of Salton must be
 " burdened with the maintenance of this pauper, and ordains that kirk-
 " session immediately to relieve the kirk-session of the parish of Glads-

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;