

The Lords found assythment due.

*Act.* A. Lockhart. *Alt.* R. Campbell. H. Dundas. R. Elliock.

*Diss.* Strichen, Justice-Clerk, Barjarg, Kennet, Hailes, President.

1767. *August* . JOHN BAXTER and The PARISHES of ROXBURGH, MAXTON, and ECKFORD, *against* The PARISH of CRAILING.

POOR.

Poor are a burden on the Parish where they have resided for the three last years.

[*Fac. Col. IV. 296 ; Kaimes's Select. Dec. 329 ; Dict. 10,573.*]

HAILES. I incline to think that the statutes rather point to the parish of nativity than the parish of residence ; but then the universal practice of the nation in maintaining the poor has been to consider the parish of residence as bound, not the parish of nativity. Laws relating to police may go into desuetude, or may be explained by general usage, in a sense different from what was probably the sense of the legislature. There are laws which prohibit any person from being in a tavern after ten o'clock at night : These laws have never been repealed, and yet no one will say that they are still in force. They relate to police, and they are abrogated by disuse. No one example can be given of the parish of nativity being bound to maintain the poor. Many certificates are produced to the contrary. The only example given is that of the Sheriff of Roxburgh, who sometimes makes the parish of nativity liable, sometimes the parish of residence. The last decision of the Court, *Parish of Edrom, 1745*, is for the parish of residence. The decision, *Parish of Inveresk 1757*, is not in point ; for *there* the case was of a little girl who had no choice of her residence, and was taken from parish to parish without any act of her will. Besides, she, from her tender years, could not have benefited the parish of her residence. I presume that the judges, who pronounced the decision 1745, had in their eye the general practice over the nation ; and this shows that the practice has been as inveterate as it is general. If the Court now alter that rule, the consequences will be dreadful. All the poor's houses in the cities of Scotland will be cleared of inhabitants. At Edinburgh the inhabitants are composed of persons from every county and parish. The poor were admitted into the workhouse, not on account of the place of birth, but of residence. Glasgow is supplied with inhabitants principally from the West Highlands. When these strangers become unable to labour, they are admitted into the poor's house. If the parish of nativity is to be the rule, they must all be sent to the respective places of their nativity. The cities which owe their prosperity and opulence to the labour of those strangers, will have no burden of them in their old age. And where are they to be sent ? To the Highlands and Islands, to places where the legal tax for maintaining the poor will not be suffi-

cient to maintain them, and where there are not inhabitants enough to supply them by private charity, were they so inclined. The consequence is, that all those unhappy people will be starved. The north was the *officina gentium* of old; it is now the *officina urbium*. It would be hard were all the industrious poor to be remanded back to their place of nativity as soon as their place of residence can no longer profit by their industry. The consequences are dreadful, and this perhaps may warp my judgment, when I give it as my opinion that the poor must be maintained by the parish of residence.

KAIMES. I incline for the rule upon residence during three years. The privileges arising from birth may be renounced: the great principle of charity is towards the neighbourhood. We invite foreigners into the country: can we suffer them to starve because not born with us?

MONBODDO. If I were here to make law instead of explaining it, I should be for the *locus domicilii*; but the law is direct for the *locus natalis*.

GARDENSTON. I, on the contrary, would be for the place of birth, as people generally pass the best part of their life *there*, and *there* form their connexions: but the law has so determined, and I have no latitude left.

AUCHINLECK at first said, that the Acts of Parliament ratified proclamations without telling what these proclamations were. The whole laws make the natal parish the rule. We cannot alter the law. That the question has not been tried oftener is owing to the spirit of charity which prevails in this nation.

But afterwards, upon a second hearing, he said:—I approve of the distinction between a law of property and a law of police: the former is immutable,—the latter varies with the age, and is changed according to times. The poor-houses at Edinburgh and Glasgow are a stronger proof of the opinion of the nation than a thousand certificates. If you send away the poor to the place of their nativity, you must detain the children in the place of their nativity, and so separate the parents from their infant children.

ALEMORE. The general thing complained of in this country was the run of sorners and sturdy beggars. The statutes were made for repressing of them. In 1600, residence or settlement was reckoned a good cause for providing of the poor “such as was born, or had residence for seven years.” The Acts 1661 and 1663 change seven years into three years. To dismiss the poor, God knows whither, would be inhuman or impolitic. The beggars to be sent elsewhere, are the idle vagrants. A person becoming indigent by age, accident, or disease, is not one of those meant by the laws.

PITFOUR. This is a case which has been disputed often; yet there is no discrepancy in the statutes concerning it. The first distinct statute is that of James V, 1535, by which the poor were to be provided in their own parishes. The distinction made between proper poor and vagrants is a mistake: the Act 1579 proves the contrary; the Act 1663 is clear; that Act is held as repeated in the Act 1672. By a reference therein, the proclamations which have the force of statutes are upon the same footing. Expediency is not so clear as the words of an Act of Parliament; besides, the expediency is on the side of the statutes. A settlement for the poor, by residence, is the great nuisance of the law of England; hence, every parish is set at variance with its neighbours. Lawsuits about settlements are computed to cost from 30,000 to 40,000 pounds sterling

per annum. This struggle to prevent settlements, by reason of their effects, is one great cause of the depopulation of England.

The place of birth is the great rule : upon it, even the crime of treason depends. The *first* decision of this Court is not to the purpose ; for *there* the parties had no fixed residence. The *second* goes upon a misapprehension of the law, applying the clause as to birth, to vagrants only ; though, if the parish of birth is to take place in vagrants, *a fortiori* ought it to take place in indigent poor. The error of that *second* decision, 1745, was corrected by the *third* decision 1757.

Laws are not to be construed by what may happen in extraordinary cases. If the poor have children, they may chance to be separated : the father sent to one parish, the child kept in another. Should the poor have children, those children will maintain them. (Here it is supposed, 1. That it is a singular case for a poor man to have children : 2. That, if he has children, they will probably be grown up : 3. That the children of a poor man are able to maintain him.)

If work-houses are established, they must be governed by the law ; and the law says, that only the natives of the parish are to be maintained. I suppose that, in Edinburgh, the work-house is upon so extensive a plan, that the contributors are willing to maintain every poor person, though neither a native of the city, nor established *there* for three years. The certificates in process do not prove any immemorial usage : they only reach back for a few years.

COALSTON. The maintenance of the poor depends upon special statute. The place of birth may be more easily discovered than the place of residence. Am of the opinion last delivered : the question is to be determined by Acts 1662 and Acts 1672, and the proclamation 1693.

ELLIOCK. The statutes mentioning the place of nativity as liable, are in desuetude. By the universal custom, strolling poor are sent to the parish of birth, but industrious poor are uniformly maintained in the parish of residence. There is good reason for this : Manufactures cannot be carried on without cities ; cities cannot supply themselves with inhabitants. Inhabitants must be had from barren countries where subsistence is wanting. It would be a contradiction to take the inhabitants of barren countries, employ them in manufactures, and, when they become unable to work, send them back to the country which could not maintain them while they were able to work.

It is not the settlement of the poor, but the mode of taxation and the bad use made of the money levied, which is the nuisance in England. Thus, in the parishes of St James's, Westminster, at St Martin's-in-the-Fields, L.13,000 *per annum* is levied as poor rates, and yet all the streets are crowded with beggars. In St George's, Hanover Square, the gentlemen of the parish have got into the vestry, and have overawed the church-wardens : the consequence is, that the poor-rate is moderate, and the indigent are provided for without a strict inquiry whether they have obtained a settlement or not.

KENNET. The practice of the country is for residence, otherwise you must separate parents and children.

BARJARG. The laws are obscure, but practice is plain : the inconveniences of laying the maintenance on the natal parish are not partial but total.

PRESIDENT. I have no terror of the consequences, in determining that the

parish of residence must be burdened : there is more danger from a contrary judgment.—It would occasion great expense. I approve of a uniformity of decisions. I think the decision 1745 is the last in point : the decision in 1757 is not in point. I dread the consequences of a judgment contrary to that of Edrom. The greatest part of the people in the poor's house of Edinburgh have no title to be there, if birth is to be the rule : those very people whose industry has benefited the metropolis, must be sent to distant counties where their industry never reached.—The law distresses me. I had drunk it in as a principle of the law of Scotland, that residence is the rule, and never considered the law sufficiently. The practice is for residence being the rule.

At the second hearing he said :—The poor in Edinburgh are maintained upon the principle of residence. If the place of nativity had been the rule, the poor's house would never have been established. I am now satisfied, (from Lord Alemore's argument,) that the statutes which occasioned the difficulty, do relate to vagrants. All the certificates are on one side ; none on the other. This proves what the universal practice is. Nothing can be more just than that people should be maintained where they have bestowed their labour,—nothing more unjust than to throw helpless people into a helpless country : neither are we bound down in law, although the statutes should be considered as pointing out the place of nativity as the rule ; for desuetude and contrary usage may repeal a law. *Consuetudo optima legum interpres.*

JUSTICE-CLERK. I inclined at first for the parish of birth, *1st*, Because there seemed no ambiguity in the law ; *2d*, Because this introduces a more equal burden : the last decision, 1757, proceeded upon the principles of the proclamation 1693. I was however shaken in my opinion, and I took an opportunity of inquiring in many places, as at Glasgow and in the shire of Ayr, and I found that nobody had the idea of the place of birth being the rule : it strikes at the foundation of the laws of humanity, to suppose that a poor man must be maintained in one parish, his wife and children in another. I never understood that there was any complaint in England as to the establishing a residence :—it is the mode of the taxation, as has been well observed, that occasions the complaint.

GARDENSTON. I still think that the Legislature meant to make the place of nativity the rule ; but I have little doubt that those laws are altered by disuse. In matters of police, such alterations may be. From the observance of this rule, no bad consequences are to be dreaded. The place of residence has been established to be the place burdened, and yet no grievance has been felt in Scotland by the establishment of this rule.

“ The Lords found Baxter entitled to be maintained by the parish of Roxburgh,” (in which he resided for the last three years.)

*Act.* J. Swinton, *tertius.* *Alt.* P. Murray. *Reporter,* Auchinleck.

*Diss.* Pitfour, Coalston, Monboddo.