

1767. March 7. Competition, PARISH of CRAILING and of ROXBURGH.

No 8.

JOHN BAXTER, a poor man of 80 years, was born in the parish of Crailing, and remained in that parish the first 40 years of his life. In the last 40 he laboured for his bread in other parishes, and his last three years residence before he became indigent was in the parish of Roxburgh. All parties having interest being in the field, the Court, in an advocacy of the cause from the Sheriff, pronounced the same interlocutor that was given in June 1745, between the parishes of Duns and Edrom, No 3. p. 10553, which was to find, that the last three years residence, and not birth, is the rule; and upon that medium the parish of Roxburgh was found liable.

Fol. Dic. v. 4. p. 84. Sel. Dec. No 255. p. 319.

* * * This case is reported in the Faculty Collection.

JOHN BAXTER was born in the parish of Crailing, where he resided for about 40 years; he afterwards left that parish, and resided in the parishes of Eckford, Maxton, and Roxburgh, in each of which, he resided for more than three years. When past 80 years of age, and unable to maintain himself, he applied to the parish of Crailing, where he was born, to be admitted on the poors roll of that parish; and, being refused, brought an action before the Sheriff of Roxburgh, against that parish, in which it was admitted, that Baxter was born in the parish of Crailing. The Sheriff found that parish bound to maintain him.

The parish of Crailing presented a bill of advocacy; and the parishes of Eckford, Maxton, and Roxburgh, being called, the question came to be tried, whether the parish where Baxter was born, or that in which he resided the last three years, was bound to maintain him?

Argued for the parish of Crailing; The 18th act of Parliament 1672, lays the burden of maintaining the poor upon that parish in which they have resided for more than the last three years; and, as it is admitted that Baxter has resided for more than three years in the parish of Roxburgh, that parish must maintain him; and so was determined 29th June 1737, Kirk-Session of Inveresk *contra* Kirk-Session of Tranent, No 2. p. 10552; and again, 5th June 1745, Parish of Duns *contra* Parish of Edrom, No 3. p. 10553. And it was said, that the universal practice had been, to burden the parish where the poor had resided the last three years; and that altering that practice, and finding the parish where the poor person was born, to be the place where he must apply for maintenance, would be attended with numberless difficulties and inconveniencies.

Answered; The 22d act of Parliament 1535, fixes the maintenance on the parish where born; and this act is ratified, and the same again enacted by 25th

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act 1551. But as, in some cases, the parish in which the poor person was born might not be known, in that event, the 74th act 1579, laid the burden of maintenance on the parish where they had resided the last seven years; and the same is more particularly explained by the 16th act 1663. Nor does the act 18th 1672, alter the law in this particular; on the contrary, it refers to the former statutes. And, by several acts of the Privy Council, between 1692 and 1698, particularly one in 1693, it is declared, that the parish in which the poor were born, shall maintain them, when that can be known; and, where that is not certain, the parish where they last resided for the space of seven years; and these acts of the Privy Council were ratified in Parliament, by 43d act 1695, and 21st act 1698; and this very question was determined, 3d March 1757, Kirk-Session of Inveresk *contra* Kirk-Session of Tranent, No 7. p. 10571.

Lord Auchinleck Ordinary reported the question to the Court; and, before advising, the Court ordered inquiry to be made as to the practice; and, it appearing to be the general practice, that the parish where the poor person resided for the last three years was burdened with the maintenance,

“THE LORDS found, that John Baxter was entitled to be maintained by the parish of Roxburgh, as the parish where he resided during the immediate three years preceding his application for charity.”

For the Parish of Crailing, *John Swinton*, 3tius. For John Baxter, *P. Murray*. Clerk, *Tait*.
A. E. *Fac. Col. No 60. p. 296.*

1770. December 6.

THE HERITORS and KIRK-SESSION of HUTTON *against* THE HERITORS and KIRK-SESSION of COLDSTREAM.

No 9.
The parish where the pauper has had his residence for the last three years, liable for his maintenance.

THE Heritors and Kirk-Session of Hutton being apprehensive that John Whitelaw a pauper, and who had resided in the parish for nearly three years, would become a burden on them, applied to the Sheriff of Berwickshire for an order upon the parish of Coldstream, in which he had his last three years of residence, to enroll and maintain him. A proof having been taken as to the fact of residence, the Sheriff found the parish of Coldstream liable; and the cause having been brought into Court by suspension, the Lord Ordinary adhered.

In a reclaiming petition, the Heritors and Kirk-Session of Coldstream *pleaded*:

The great object, in questions of this kind, was to lay the burden of maintaining the poor equally upon the country. Making the place of birth liable, seemed to be a rule well calculated for that purpose; and such, accordingly, appeared to have been the intention of the legislature in the earliest enactments upon the subject. The act 1535, c. 22d which was ratified by statute