THE LORDS were of opinion, that the point was fixed in the case of Crailing, which had gone upon a special inquiry into the practice; and they therefore adhered to the Lord Ordinary's judgment. No 9.

Lord Ordinary, *Monboddo.* For the Parish of Hutton, *Blair.*
Clerk, *Campbell.* For the Parish of Coldstream, *Maclaurin.*

R. H. *Fac. Col. No 54. p. 155.*

1772. *November* 20. MR WILLIAM PATON *against* ADAMSON.

No 10.

IN an action against two parishes for aliment to an indigent person, the Sheriff of Roxburgh not only determined which of the two parishes were liable, but modified the *quantum* to be paid weekly, and decerned for payment of it out of the poor's funds. *Urged* in a reduction of this decreet, That the Sheriff had arrogated to himself powers which belong, by statute, exclusively to the minister, elders, and heritors of the parish, who alone are entitled to judge who shall be admitted to the poor's roll, and to fix their allowance for aliment. *Vid.* act 1663, c. 16th and act of Privy Council; August 11th 1692. THE LORDS sustained the reasons of reduction.

*** *N. B.* Although the Sheriff has no cognisance in the first instance in questions of this nature, it may be doubted whether he may not interfere upon a complaint, that the poor's laws have not been properly executed, seeing that the act of Privy Council, 31st July 1694, ordains the Sheriff, Justices of Peace, and Magistrates of royal burghs, to take trial how far the acts of Parliament and acts of Council have been obeyed.

Fol. Dic. v. 4. p. 85. Fac. Col.

*** This case is No 374. p. 7669.; *voce* JURISDICTION.

1773. *January* 19.

JAMES SCOTT, Collector of the Assessments of West-Kirk Parish, and the HERITORS and SESSION thereof, his Constituents, *against* JOHN FRASER, Wright in Cabbagehall, in that Parish.

No 11.
Heritors have power to assess, for maintenance of the poor, by the real rent, where that is expedient, although the practice may have been to levy by the valued rent.

A CHARITY Workhouse, built at the expense of the heritors and parishioners of West-Kirk, was opened in the year 1762.

The parish-funds being found insufficient to defray the whole expense of the house, the deficiency was made up by an assessment, which was at first laid on in proportion to the valued rent; one-half to be paid by the heritors, and the other by their tenants.

No 11. At a meeting of the heritors, ministers, and elders, upon 24th July 1769, they assessed the inhabitants, for the maintenance of the workhouse, for one year, in twopence *per* pound Sterling of real rent, both of lands and houses, one-half to be paid by the heritor, and the other by the tenant. This mode of assessment was afterwards agreed to be continued.

Fraser, and some others, proving refractory, and refusing payment of their quota, agreeable to this mode, because it was an unwarrantable innovation, an action was brought by the collector against Fraser, and other two heritors, for payment of the proportion imposed on them, and for having it found and declared, that the heritors of this parish are authorised to lay on this assessment. The other defenders having paid, the action proceeded against Fraser singly, who cited the statutes 1663, c. 16. and 1672, c. 18. as the governing laws respecting this matter, and from thence raised three several objections to the present mode of assessment; the first and second importing, that the meeting had not complied with the requisites of the statutes, previous to the laying it on: Whereto it was *answered*, That if, in this case, they have not strictly observed every minute form, yet having proceeded upon the material principles of equity, their proceedings ought to be supported. And the third, which was the chief one, being, that thereby the rule of assessment had been changed from the valued to the real rent, contrary to law as well as practice;

Pleaded in support of this last objection; The law adopts the valued rent, as the rule in imposing all sorts of taxes and parochial burdens, as well as in regulating every parochial question. As to the practice of the country, it is not pretended by the pursuer, that the real rent had ever been made the rule in any parish in Scotland; and, as to this parish in particular, he has admitted, that the valued rent alone had been followed.

Neither can the alleged hardship, or inequality, that arises from following the valued rent, in so far as thereby too great a proportion is thrown upon the rural part of the parish, enter into this question, which depends entirely upon this, whether a meeting has power, by law, to assess, according to the real rent, or be obliged to follow the valued? If they are, by law, obliged to follow the valued rent, any supposed inconveniencies, arising from that rule, cannot authorise them to depart from it: If it gives rise to inequality, it may be reasonable that it should be corrected by the proper authority, which is that of the Legislature, who will take care, in remedying the abuse, to fix certain rules that will do justice to all.

Answered; From the great increase of the parish, and, consequently, of the poor, from the number of houses lately built, and daily increasing, in the parish, the proprietors and possessors of which either paid no part of the assessment at all, or but a mere trifle, the burden became very heavy upon the heritors to landward, and their tenants; and some of the latter refused payment of the assessment laid on *anno* 1758. Upon this, a general meeting was called; and the meeting, by advice of several Gentlemen of the law, who were heritors,

agreed to alter the rule of assessment, and, for that purpose, to substitute the real in room of the valued rent; and, among other regulations, in imitation of the equity of the Magistrates of Edinburgh, in laying on their stent, they allowed to the heritors of houses a deduction of a fourth part of their rent. No 11.

To make the valued rent the rule of assessment, would, in the present case, be to throw a burden that ought to be borne in as equal proportions as can be devised, almost wholly upon the landed heritors, and their tenants, though they are few in number, in comparison of the other inhabitants, and have still fewer poor among them, even in proportion to their numbers.

In the parish of West-Kirk, the houses have, of late, greatly increased, and are still increasing; so that the rents of the houses are nearly three times more than the rents of the lands; whereas, the valued rent of the lands is near ten times more than the valued rent of the ground of the houses which is valued; so that, if this rent was to be the rule, the rural tenants would pay near forty times more, in proportion, than the others, though these last furnish almost the whole poor. It is believed, that, in no parish in Scotland, where a town makes the principal part of the parish, the valued rent is admitted as the rule of assessment; for, in this case, (however well it may answer in parishes purely rural,) it would be very oppressive upon the country heritors, and their tenants.

The defender does not quote, nor, indeed, allege, that there is any law expressly requiring this; he reasons only from practice, or remote and uncertain analogies.

There is clearly no law that limits the rule of assessment to the valued rent. The act 1663, c. 16. plainly gives the heritors a discretionary power in this matter; and, though that act never took effect, yet, its general rules, not abrogated, may very well be adopted. The act of Privy Council 1692, ratified by law, which the defender erroneously chuses to consider as obsolete, does, in effect, do the same thing, as it appoints the heritors, &c. to lay on an assessment, without confining them to any rule; and, from such discretionary power, properly exercised, very great benefit may arise; whereas, there can be no danger from the abuse of it, as the parties thereby cessed will have always ready access to this Court for redress.

Observed on the Bench; The proclamations of the Privy Council are undoubtedly part of our law in this matter; and in them there is no limitation as to the mode of laying on assessments for maintenance of the poor. Where the valued rent can, it ought to be followed as the rule. This is a new case, where it would be unconscionable and unequal to lay it on by valuation; and the discretionary power, which heritors have by these acts of Privy Council, was properly exercised here *ex necessitate*.

"The Lords adhered to the Lord Ordinary's interlocutor,"* upon two several reclaiming petitions and answers.

Act. *Alex. Murray.* Alt. *M'Laurin et Henry Erskine.* Clerk, *Robertson.*

* See the note next page.

No 11.

N. B. The pursuer, in his answer to the last petition, joined issue with the defender's request to the Court, at any rate, to lay down regulations for fixing the time of holding meetings that shall have power to make assessments, and other particulars; but the Court waved their interposition, which, it was observed, had been refused in other cases; and that, if they chanced to differ among themselves, it would be more proper to resort to the judge-ordinary in the first instance.

Fol. Dic. v. 4. *p.* 84. *Fac. Col. No* 47. *p.* 124.

*** The reporter has omitted to mention what the interlocutor of the Lord Ordinary was to which he says the Court adhered.—THE LORD ORDINARY found, that the Heritors were at liberty to levy the assessment for the maintenance of the poor upon the real rent in the parish, notwithstanding of any former practice of levying it upon the valued rent.

1775. *June* 15.

KIRK-SESSION of DUMFRIES *against* KIRK-SESSIONS of KIRKCUDBRIGHT and KELTON.

No 12.
The poor of the parish where the wager was laid, is entitled by the act of Parliament of 1621, to the surplus of money won upon a horse-race above 100 merks.

IN the question betwixt Maxwell and the Representatives of Blair, whether a bill granted for L. 150 Sterling, as the balance of L. 200 won upon a horse-race, was actionable? which the Lord Ordinary had found it was, and passed a decree for payment of the principal sum, and interest in favour of the pursuer; the Court, upon a review, having been of opinion that the act of Parliament 1621, c. 14, founded on by the defenders, could afford no defence, and that it was not in desuetude; and ordained the clerk to this process to intimate to the kirk-sessions after mentioned, that they may appear for their interests in this cause, (as reported No 65. p. 9522, *voce* PACTUM ILLICITUM.) The pursuer preferred a reclaiming petition, praying the Court to find that the above act of Parliament was in desuetude, and to adhere to the interlocutor pronounced by the Lord Ordinary; but the defenders having declined to answer it, appearance was made for the Kirk-sessions of Dumfries, Kirkcudbright, and Kelton, who put in answers: And for shewing that the statute was not in desuetude, the following decisions were cited; Park against Somerville, 12th Nov. 1668, No 1. p. 3459.; Straiton against L. of Craigmillar, 19th July 1688, No 55. p. 9506.; Hill against Ramsay, 9th February 1711, No 1. p. 10551. relative to money won at cards and dice; and Sir George M'Kenzie's observations on the statute 1621.

The Court, from these instances, were confirmed in their opinion, that the act was in observance. It was also remarked on the bench, that this was a wise and salutary law, entitled to a liberal interpretation; not prohibiting, but confining gaming and racing within proper bounds, and only benefiting the poor, at the expense of sharpers, and so lessening the incitement to them to