

**THE LAW OF
SCOTLAND
REGARDING THE POOR**

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The law of Scotland regarding the poor by Alexander Murray Dunlop

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ALEXANDER MURRAY DUNLOP

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THE POOR.

BY

ALEXANDER MURRAY DUNLOP,

ADVOCATE.

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THE LAW OF SCOTLAND

RELATIVE TO

THE POOR.

CHAPTER I.

SUMMARY OF STATUTES AND PROCLAMATIONS.

I. THE law of Scotland relative to the provision for the poor is founded on statutory enactment.¹ The greater part of

¹ In the very valuable treatise on the Poor-Laws, by Mr Monypenny of Pitmilly, formerly one of the Judges of the Court of Session, it is, with much learning and ingenuity, contended that there is, "independently of the statutes confirming it," "an inherent right in the poor who have not the means of subsistence, to be supplied with the necessaries of life." I must necessarily feel much diffidence in venturing to oppose the opinion of an individual of so much learning, judgment, and experience, even if it were not supported by the dictum of Lord Stair, which he adduces in confirmation of it; but at the same time I feel called upon to state the grounds on which I have in my former editions, and in this, laid down the position, that "the law of Scotland, relative to the provision for the poor, is founded on statutory enactment." I may premise that I entirely concur with Mr Monypenny in reprobating, on general principles, "the idea of the statutory law in favour of the poor being an attempt to enforce by Act of Parliament the natural duties of charity and benevolence," although, in so far as the views of the framers of our Scottish statutes are concerned, they certainly proceeded on that notion. This is clear from the preamble to the enactment of a compulsory assessment by the Act 1579, which is in these words:—"And seeing *charitie wald*, that the pure, aged, and impotent persones, suld be as necessarilie provided als the vageboundis and strang beggars repressed, and that the aged, impotent, and pure peopill suld have ludging and abiding-places to settle themselves

our acts of Parliament, however, had for their chief object the suppressing of begging, and till the recent act of her pre-

intil, it is **THEREFORE** thought expedient, statute, and ordained," &c. In like manner, both in this statute and the proclamations, the imposing and complying with the assessment is termed a "charitable deed," and "Christian duty." Agreeing, however, so far, I cannot concur with his other proposition, that the poor have any *right* antecedent to statute and forming the groundwork of our legislative enactments, but conceive that these are founded solely on policy and expediency; with this special qualification, that whenever the Legislature, for the purpose of suppressing vagrancy by sturdy beggars, prohibited generally all asking of alms, or circumscribed the liberty naturally belonging to all poor persons, without means of subsistence, of calling forth in their own favour that feeling of charity which God for their relief hath implanted in the breasts of men, there did *thence* arise a *right, in equity*, on the part of the poor, to a provision, in lieu thereof, from the community, who, for purposes of general policy, deprived them of their natural liberty in the asking of alms, and in craving performance of that obligation of charity, which, however powerful in conscience and towards God, cannot be enforced by human laws, and that had the community not given effect to this right, they would have violated the clearest principles of justice. Such right, however, was not *antecedent* to the statutes, but arose from the enactments themselves, which rendered a provision for the impotent poor a necessary counterpart of the restraint imposed on their natural liberty and inherent right of appealing to the charity of their fellow-men; and indeed the Act 1579 would almost seem to leave to the pauper the option of exercising this liberty, or of accepting the provision in lieu of it, since it appoints the administrators of the funds "to see what they may be maid content, of their awn consentis, to accept daylie, to live unbeggand." The supposed antecedent right to support, on general principles of law, and independent of positive enactment, is rested by Mr Monypenny, following Lord Stair, on an obligation said to be "implied in property." Lord Stair first disposes of the obligation of charity, classing it among those natural obligations in regard to which, "though the obligation be to duties relating to man, yet there is no correspondent right or power of compulsion in the man, and so the creditor is God, and man is a third party to whose behoof the obligation is imposed, but who hath neither power of exaction for himself, nor of vindication for God. Such (he continues) are the obligations of beneficence generally, and particularly of charity to the poor, assistance to those in hazard, and relief of the oppressed; for natural reason will teach us, that though these do naturally oblige us, yet they in whose favour they are cannot compel us. For example, we are bound to give alms to the poor, yet none will affirm that the poor can extort it or take it by force. 'Tis true that in the *positive* law of any nation, or other association, there is in the very nature of

sent Majesty, that which now forms the principal subject of attention in relation to the poor, was comprised in a few sen-

the association, a duty of assistance for the common interest into which they are associate; but that *is not a natural, but a voluntary obligation*, flowing from the voluntary association or union. Likewise, all the people are bound to concur and assist legal execution, *and in some places to contribute by such a proportion to the poor, but these are only positive laws having the force and nature of contracts.*" In afterwards, however, treating of property, his Lordship observes, "Yea, there is *implied in property* an obligation to give, in cases of necessity, to those who have not wherewith to exchange, and cannot otherwise preserve their life but with the obligation of recompence when they are able; for human necessity doth also infer this; but it must be a real, and not a pretended or feigned necessity, &c. And" (continues his Lordship, somewhat inconsistently, as I venture to think, with his previous statement already quoted as to the obligation to contribute "a proportion to the poor," being in virtue of "*positive laws having the force and nature of contracts*") "this is the ground of the obligation to alimēt the poor, which, though it also floweth from the obligation of charity, yet, as it hath been shown before, that obligation hath no determinate bounds, but is left to the discretion of the giver, not of the demander, and so can be no warrant for taking by force and without the proprietor's consent." His Lordship would here seem to countenance the idea, that although, as previously laid down, a person in absolute want would not be entitled to take the property of another by force if he rested his doing so on the obligation of charity, yet would be fully justified by simply attributing his act to the enforcement of the obligation implied in property. But, passing this, I observe, that there can be no doubt that the possessor of property, or of any other means of relieving the necessities of his fellow-creatures, is under an obligation to do so; but the question is as to the *nature* of that obligation. Is it, in regard to the proprietor, a *civil* obligation consequent on the civil right of property, apart from the natural obligation which is incumbent on all men according to their means, whether of contributing property or service, but which is not of its own nature enforceable by the party in whose favour it exists? I venture, with great deference, to think that there is nothing in the civil right of property creating such an obligation on the one hand, or the correspondent right on the other. An individual without funds beyond what is necessary for his own subsistence, if by his personal services he can aid in saving another from starvation, or from death through any other means, is under an obligation to exert them for this end; but, undeniably, it is a merely natural obligation, and not civil or enforceable apart from positive enactment. Then what change does the possession of property make in the nature of the obligation incumbent on him? It affords him a mean which he did not before possess of contributing to the necessities of the poor man; but the obligation to employ this mean in his favour, is exactly