[14*th July* 1837.]

PETER M'CRAW, Collector of Poor's Rates in the Parish of South Leith, Appellant.—*Stephens*—*Milne.*

PETER HILL, Collector of Poor's Rates for the City of Edinburgh, Appellant.—*Dr. Lushington*—*Shaw.*

CHARLES CUNINGHAM, W. S., Factor for the Proprietors of the Waterloo Hotel, Edinburgh, Respondent.—*Attorney General* (*Campbell*)—*Forbes.*

Poor.—Held (reversing the judgment of the Court of Session) that the city of Edinburgh is entitled to levy and apply to the use of the poor of the city money assessed for the poor on the Waterloo Hotel, although the ground on which it is built is situated within the parish of South Leith, the same having been annexed by statute to and incorporated in the royalty, but not expressly disjoined from South Leith; and that the parish of South Leith is not also entitled to poor's rates from the proprietors of the hotel.

Process.—Circumstances in which a process of multiplepoinding was held competent, although it was alleged that there was not double distress.

Appeal.—Two counsel only are entitled to be heard on the same point although there be separate appellants under separate appeals. (Note, p. 797.)

2D DIVISION.

Lord Medwyn

THE question involved in this case was, whether the proprietors of the Waterloo Hotel, situated on the Regent's Bridge of Edinburgh, were liable to pay poor rates, both to the collector for that city and to the

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collector for the parish of Leith? It was admitted that the site of the building was originally situated in the parish of South Leith; and it was contended by Leith that it had never been disjoined from that parish, and annexed to any other. By a local statute (54 Geo. 3. c. 170.), passed in 1814, power was given to commissioners to acquire lands, &c., and "to make and erect a bridge over "the street called the Low Calton, and a street from, or "near from the east end of Prince's Street, in Edin-"burgh, to the Calton or Calton Hill, and from thence to "make a road or communication along the said Calton "and Calton Hill, till it join the eastern road to Leith, "near the Abbey Hill;" and they were also authorized to erect a new gaol. It was then enacted, "That when "the lands, grounds, and tenements, situated betwixt the "east end of Prince's Street, and the Calton Hill shall "have been acquired by the said commissioners, the "royalty of the city of Edinburgh shall be extended "over the same, and over the said new gaol; and the "lord provost, magistrates, and council, of the said "city, and their successors in office, shall have and en-"joy the same rights, privileges, and jurisdictions over "the same, as they at present have and enjoy over and "within the limits of the extended royalty by any law, "statute, or established custom; and from thenceforth, "the lord provost, magistrates, and council of the said "city, and their successors in office, shall and they are "hereby authorized and empowered to stent or assess "and levy from the proprietors and occupiers of all "such houses as are at present on the said property, "or shall be hereafter built and erected thereon, an "equal proportion of the cess, annuity, poor's money, "and other duties with that stented or assessed and

" levied by the lord provost, magistrates, and council " of the said city from the proprietors and occupiers of " houses in the extended royalty, in the same way and " manner, and with such and the same remedies at law, " in case of nonpayment, as are practised or com- " petent by any law, statute, or custom within the " said extended royalty: Provided always, that the " extension of the royalty over the lands, grounds, and " tenements aforesaid, is hereby made under all the " clauses, provisions, declarations, exemptions, and re- " servations in favour of his Majesty, and others, which " are specified and contained in an act passed in the " 7th year of the reign of his present Majesty, entitled " 'An act for extending the royalty of the city of " 'Edinburgh over certain adjoining lands;' as also " saving and reserving entire, to the society of Incor- " porated Trades of Calton, the whole rights, privileges, " and immunities, presently enjoyed by them as a cor- " porate body." That act (7 Geo. 3. c. 57.) declared, " That the said magistrates and town-council, from and " after the said 24th day of June in the year of our Lord " 1767, shall have and enjoy the same rights, privileges, " and jurisdictions over the said grounds hereby annexed " to and comprehended in the said royalty, as they do " now enjoy and exercise over and within the limits of " the present royalty by any law, statute, or established " custom, and shall and they are hereby empowered " to levy the same maills, duties, customs, and other " taxations within these annexed grounds in the same " manner, and by such actions at law, as the said " magistrates and town council are entitled to use by " any law, statute, or otherwise within the present " royalty, for recovery of such maills, duties, customs,

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" and taxations, as aforesaid." And it was enacted, that they should " have full power to appoint stent-" masters to levy from the proprietors and possessors of " all such houses as are built or shall hereafter be built " upon the foresaid grounds hereby annexed to and " comprehended within the said royalty, an equal por-" tion of the cess, annuity, poor's-money, and watch-" money payable by the city of Edinburgh, in the " same way and manner as the same are now levied " within the present royalty." But it was provided, " that the several lands hereby annexed to the royalty " of the city of Edinburgh shall, besides the cess to be " levied by the collector of the town, for, and in respect " of the houses and buildings, remain liable and be " subjected to the payment of a rateable proportion of " the cess and land tax, and other public taxes imposed " or to be imposed on the shire of Edinburgh, for, and " in respect of the ground, to be levied in the same " manner as formerly, any thing in this act to the " contrary notwithstanding;" and " that the aforesaid " grounds hereby annexed, to and comprehended within " the royalty of the city of Edinburgh, shall be, and " they are hereby for ever after disjoined, from the " parishes of St. Cuthbert's or West Kirk, and South " Leith, and are hereby annexed to the parish of " St. Giles within the city of Edinburgh." And it was also provided, " that the lands hereby disjoined " from the parishes of St. Cuthbert's and South Leith, " and the heritors thereof, shall remain liable and be " subjected to the ministers stipends, and other paro-" chial burdens; and that the tithes payable out of the " lands hereby annexed, shall be and the same are " hereby saved and reserved, to the true owners thereof

" in the same manner as if this act had never passed. " Saving also and reserving to his Majesty, and all " other person or persons concerned, all rights and " interests (other than the present extension of the said " royalty) which they had, have, or may have, in the " lands hereby annexed."

The Waterloo Hotel was built in the year 1821 by a number of persons who associated for that purpose, and was let to a tenant, Mr. Gibb, and managed by the respondent, Mr. Cuningham, as their factor. From that year, 1821, till the present dispute arose in 1828, the collector for Edinburgh had levied the rates for the poor from the tenant as occupant, on a rental of 6,500*l.* Scots. In that city the practice is to levy from the occupant, whether he be the tenant or proprietor; and the sum chargeable for the year 1827–8 was four per cent., or 21*l.* 13*s.* 4*d.* During the years from 1821, till 1827, no poor's rates had been levied by the collector for Leith from the hotel. The custom of assessing in that parish is, to put one half of the rate on the proprietor, and the other half on the tenant. For the year 1827–8, it was resolved by the proper authorities of Leith, to levy a rate of nine-pence per pound; and the sum charged as against the hotel was on a rental of 1,040*l.* sterling, or 39*l.* For one half of this sum (or 19*l.* 10*s.*) M'Craw, as collector for Leith, raised an action before the sheriff of Mid Lothian against the proprietors. No action was raised against the tenant.

In defence it was pleaded, that the statute 54 Geo. 3. had the effect to incorporate the ground, and consequently the hotel, on which it was built, within the city of Edinburgh; that the poor's rate was payable, and had been, since 1821, paid to Hill as the collector for that city; and

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that the hotel could not be assessed also to the parish of Leith.

In answer to this, it was maintained, that the statute did not disjoin the lands from the parish; and that, on the contrary, the statute was qualified by the provisions of the 7th Geo. 3., one of which was, a reservation to the parish of the poor's rates.

No action had been raised by the collector for Edinburgh; but the respondent, as factor for the proprietors of the hotel, assuming that a claim would be made by the collector for Edinburgh, brought a summons of multiplepoinding, to which he called the two collectors as the competing parties. In the summons he set forth, that he "had "been in the practice for above six years, of paying the "assessment of the poor rates applicable to the said hotel "to Peter Hill, Esq., collector of said poor rates, and "the property has been assessed from 1827, to 1828, in "the sum of 21*l.* 13*s.* 4*d.*, and which is charged against "the complainer, and payment demanded by the said "Peter Hill as collector aforesaid; that Peter M'Craw, "as collector of the assessment for support of the poor "in the parish of South Leith, has raised an action "against the complainer as factor, for the said pro-"prietors of Waterloo Hotel, concluding for payment "of 19*l.* 10*s.* sterling, being the alleged assessment laid "on the said proprietors for support of the poor, at four-"pence halfpenny sterling per pound, upon 1,040*l.* "sterling of rent for the said hotel, from Whitsunday "1827, to Whitsunday 1828, which assessment the "complainer is not in safety to pay to the said Peter "M'Craw, in respect of his having been in the practice "of paying these assessments, to the said Peter Hill,

" and who is also claiming 21*l.* 13*s.* 4*d.* sterling, as " assessment, from Whitsunday 1827, to Whitsunday " 1828, as appears from a certificate produced in the " process at the instance of the said Peter M'Craw, to " which reference is here made; and seeing the com- " plainer is threatened to be doubly distressed for pay- " ment thereof, therefore, the complainer ought to be " found liable in one, and single payment of said assess- " ment from Whitsunday 1827, to Whitsunday 1828, " to the person who shall be found to have the best " right thereto, with deduction, always of the expense " of this process, as the same shall be ascertained in the " course thereof; and the persons before named, and " all others having no right to said assessment, ought " to be prohibited and discharged from troubling or " molesting the complainer in the said matter in all " time coming."

M'Craw, the collector for Leith, lodged a claim without making any objection to the competency of the action; but Hill, as collector for Edinburgh, gave in defences, objecting, that it was incompetent, because, the claims were not for the same fund, but were quite distinct in themselves, the one being against the proprietors for 19*l.* 10*s.*, and the other against the tenant for 21*l.* 13*s.* 10*d.*; the former being founded on the ancient statutes of Scotland, and the latter on the 54 Geo. 3. cap. 170. But if the competency were sustained, then he claimed payment of the above sum of 21*l.* 13*s.* 10*d.*, in respect that the act of parliament not only conferred the right, but made it imperative on the magistrates of Edinburgh, to levy a rateable proportion of the city poor's money from the "proprietors and occupiers" of the houses built, or to be built, on the ground

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added to the royalty; that this right and burden was not made conditional on any exemption from poor's money formerly payable to Leith parish; and at all events he was entitled to a possessory judgment.

The sheriff conjoined the processes, and thereafter pronounced the following interlocutor: "The sheriff, "in respect the claimant Hill only alleges he has col- "lected poor's money from the property in question "for six years, finds him not entitled to a possessory "judgment. In respect of the 5th section of the statute "7 Geo. 3. c. 57., finds, that the grounds on which "the premises in question have been erected are not "disjoined from the parish of South Leith, nor annexed "to the royalty of the city of Edinburgh, by the said "statute: finds, that by the 8th section of the statute "54 Geo. 3. c. 170., the jail commissioners were em- "powered to acquire lands, tenements, &c. for the "bridge, road, and communication specified in the said "statute, and the areas on each side thereof, not exceed- "ing in whole 195 feet in breadth: finds, that in case "only a part of any house or other building were com- "prehended within the said space of 195 feet, the said "commissioners were by the 15th section of the said "statute 54 Geo. 3. bound and obliged, if required, by "the owner or owners of any such house or building, "to purchase the whole thereof: finds, that by the "18th section of the said statute 54 Geo. 3. the royalty "of the city of Edinburgh was extended over the lands, "grounds, and houses acquired under the 8th and 15th "sections of the said statute, subject however to all the "clauses, provisions, declarations, exemptions, and re- "servations in the statute 7 Geo. 3. c. 27., and in par- "ticular to the provision in the 12th section of the said

" statute 7 Geo. 3. that the several lands annexed to " the royalty of the city of Edinburgh shall, besides the " cess to be levied by the collector of the town for and " in respect of the houses and buildings, remain liable " and be subjected to the payment of a rateable pro- " portion of the cess, land tax, and other public duties " imposed or to be imposed on the shire of Edinburgh " for and in respect of the ground, and also to the " provision in the 16th section, that the said lands dis- " joined from the parishes of St. Cuthbert's and South " Leith, and the heritors thereof, shall remain liable " and be subjected to the minister's stipend, and other " parochial burdens: finds, therefore, that the pre- " mises in question, in so far as the grounds, on which " they are erected have been acquired under the 8th and " 15th sections of the statute 54 Geo. 3. are liable in " poor's rates to the claimant M'Craw, in respect of " the value of the ground on which the premises are " built, and to the claimant Hill, in respect of the value " of the premises or houses built on said ground, and " that any part of the said premises which may have " been acquired by the commissioners, but not in terms " of the said 8th and 15th sections, are liable in poor " rates to the claimant M'Craw, in so far as respects " the value both of the ground and of the premises " built on the ground. Before further procedure, grants " diligence" for recovery of certain documents.

On mutual petitions the sheriff depute recalled the interlocutor; and in respect he had a personal interest, having two shares of the Waterloo Hotel, he declined judging in the case, and remitted it to the sheriff substitute. The sheriff substitute pronounced the following interlocutor: — " The sheriff substitute, hav-

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" ing considered the conjoined processes, finds, that " the act of parliament 54 Geo. 3. c. 170., which " extends the royalty over the whole or part of the " ground on which the Waterloo Hotel has now been " built, does not disjoin that ground from the parish of " South Leith, and does not expressly provide that the " ground shall not be liable to the poor rates of that " parish; and therefore finds, that that ground, with " the houses built or to be built upon it, must be liable " to those poor rates, in the same manner as any other " ground in that parish: finds, that by that act of Par- " liament it is expressly provided, in section 18, that " the magistrates of the city of Edinburgh may levy, " from the proprietors and occupiers of all houses built, " or to be built, on the ground over which the royalty " is so extended, the same proportion of cess, annuity, " poor's money, and other duties, as within the extended " royalty; and finds that that right to poor money, is " not affected by the reservation contained in the con- " cluding part of the same section; and therefore finds, " that houses built, or to be built, on that ground, are " liable to poor rates as fully as any other houses within " the extended royalty; therefore, ordains the defender " Cuningham to pay to the pursuer M'Craw the sum " of 19*l.* 10*s.*, concluded for in his action, with the " lawful interest thereon, from Martinmas 1827, till " payment: dismisses the process of multiplepoinding " as inapplicable to this case, where both claimants are " entitled to full payment: reserving to the claimant " Hill to institute such action as he may be advised " against the pursuer Cuningham for payment, and " reserving to him his defences, with regard to the " extent of ground included within the royalty, the

" amount of the sum which may be demanded from " him, or otherwise, as he may be advised: finds " the pursuer Cuningham, liable in the expenses in- " curred by the other parties in the conjoined pro- " cesses," &c.

The respondent then brought the case before the Court of Session by advocation, when Lord Medwyn affirmed the judgment of the sheriff, by remitting simpliciter, and found expenses due to the appellants.

The respondent having reclaimed to the Second Division, their Lordships appointed the question to be argued in cases, and directed them to be laid before all the other Judges for their opinions.

The Lord President, Lord Justice Clerk, and Lord Jeffrey declined to judge, having an interest as proprietors in the Waterloo Buildings.

Lords Balgray, Gillies, Mackenzie, Corehouse, and Moncreiff concurred in the following opinion :—

" By the ordinary rules of the law of Scotland lands " or tenements may be in one parish quoad sacra, and " in another parish quoad civilia; but they cannot at " one and the same time be in two parishes both quoad " sacra and quoad civilia, or in two parishes quoad " sacra, or in two parishes quoad civilia. Every parish " is bound to maintain its own poor, and the poor of " lands or tenements united to it quoad civilia; but it " is not bound to maintain the poor of another parish or " of any part of another parish not united to it quoad " civilia. An act of parliament may expressly direct " that a parish or any part of a parish shall be assessed " towards the maintenance of the poor of two parishes; " but it is not to be presumed that in dubio this is the " intention of the legislature, first, because it is contrary

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" to the ordinary rules of law; secondly, because, with
" only one exception, it has not been hitherto done;
" and, thirdly, because it would neither be necessary nor
" equitable nor expedient.

" With regard to the maintenance of the poor,
" parishes are in three situations; they are either land-
" ward or burghal, or partly landward and partly
" burghal. In landward parishes the assessment is made
" by the heritors and elders; in burghal parishes by the
" magistrates and council, and in parishes partly landward
" and partly burghal by the heritors and elders in the
" one part, and the magistrates and council in the other,
" or in a joint meeting of both, or otherwise as usage
" may have sanctioned.

" Previous to the 54 Geo. 3. c. 170. the parish of
" South Leith was a landward parish, that is, no part of
" it lay within a royal burgh, and the assessment for
" the poor was imposed accordingly. By that statute
" part of it was brought within the royalty of the city
" of Edinburgh, and it thus became partly landward
" and partly burghal; for that part over which the
" royalty was extended was not disjoined from the parish
" of South Leith to be united to the parish of St. Giles,
" or any other parish within the royalty.

" By the 18th section of the statute, the magistrates
" and council of Edinburgh were empowered to assess
" the proprietors and occupiers of houses built or to
" be built on the lands to which the royalty was then
" extended in an equal proportion of cess, annuity,
" poor's money, and other duties with that assessed by
" them on the proprietors and occupiers of houses in the
" remainder of the extended royalty. But the statute
" does not direct in what manner the sum so assessed

" shall be applied. Now it appears to us that the " magistrates and council of Edinburgh are bound, " in the first place, to pay to the parish of South Leith, " or apply to the maintenance of the poor of that " parish, a part of this assessment, corresponding to the " proportion between what is now the burghal and what " remains the landward part of the parish; and that " the burghal part so assessed by the magistrates and " council cannot be assessed a second time by the heri- " tors and kirk session, because it has been already " burdened with its proper share of the expense neces- " sary for maintaining the poor of the whole parish. " It rather appears to us that the magistrates and " council, having acquired right vi statuti to assess at " the same rate as they do in the rest of the extended " royalty, may apply the remainder, if any, after satis- " fying the primary claim of the parish of South Leith " in maintaining the poor of Edinburgh, or for any pur- " pose to which the poor's money of the rest of the " extended royalty may lawfully be applied. On this " point however it is not necessary at present to " inquire, because the proprietors of the Waterloo " Hotel, the advocators in this process, do not object " to a proportional assessment equal to that levied in " the rest of the extended royalty.

" The most plausible argument in our opinion against " this view of the case is, that when the royalty was " extended by the 7 Geo. 3. c. 27. over part of the " parish of St. Cuthbert's, there was a provision in the " statute imposing a double assessment on it, by which " it pays poor's rates both in the parish of St. Giles " and in the parish of St. Cuthbert's. But there is this " material difference between the cases, namely, that

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" by the 7 Geo. 3. the lands to which it refers were
" expressly disjoined from the parish of St. Cuthbert's
" and united to the parish of St. Giles, by which they
" became primarily and indeed expressly liable to be
" assessed in the latter parish for the poor of that parish.
" But further, by a positive and anxious clause in the
" statute it is declared, that notwithstanding that lia-
" bility they shall remain liable for parochial burdens
" in the parish of St. Cuthbert's. In that case, there-
" fore, no room is left to argue from presumption or
" inference, from the analogy of law, or from the hard-
" ship and injustice of a double assessment, for the will
" of the legislature is expressed in terms which do not
" admit of dispute. But in this case there is no dis-
" junction of the lands from the parish of South Leith,
" no annexation, either quoad sacra or civilia, to the
" parish of St. Giles or any other parish, no direction
" to the magistrates and council how they are to apply
" the sum which they are empowered to assess, and,
" above all, no provision that the subjects shall be
" twice assessed; therefore the ordinary rule of law is
" let in, by which the burghal part of the parish of
" South Leith must pay its share of the poor's rates of
" that parish before any part of an assessment on it
" for the poor can be applied to any other purpose. It
" may be true that the framers of the act of the 54 Geo. 3.
" might have had a different object in view, and might have
" wished to impose as heavy a burden on the subjects in
" question as was imposed by the 7 Geo. 3. on another part
" of the extended royalty. If this were their object, we
" cannot regret that they failed to carry it into effect.

" On these grounds we are of opinion that the inter-
" locutor of the sheriff should be altered, and that the

" poor's rates levied by the magistrates of Edinburgh " from the tenements in question should be applied in " the manner we have pointed out, by which a double " assessment will be avoided."

Lord Fullerton delivered this opinion, in which Lord Cockburn concurred:—

" By the act of 54 Geo. 3. cap. 170. the grounds in " question were brought within the royalty of the city " of Edinburgh. They were not however disjoined " from the parish of South Leith, so that, although they " still remained a part, they became a burghal part of " that parish. It is expressly provided by the statute, " that the magistrates of Edinburgh should assess and " levy from the proprietors and occupiers of the houses " built on these grounds poor's money, in the same " proportion as that assessed and levied from other pro- " prietors and occupiers within the extended royalty. " In virtue of this clause there can be no question " that this now burghal part of the parish of South " Leith is subjected in payment to the magistrates of " Edinburgh, of the rates generally leviable within the " extended royaity of Edinburgh, and without reference " to the necessities of the poor within the parish of " South Leith. But the question raised in these actions " is, whether the advocators, the proprietors or occupiers " of a burghal part of South Leith, shall, in addition to " these burghal rates of assessment, also be assessed to " the full amount of the rates leviable in the remaining " or what may be termed the landward part of the " parish. My opinion is, that they are not so liable. " It would require some clear enactment to subject them " to a double burden so very unreasonable and unusual; " and it does not appear to me that the statutes con-

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" tain any provision which either expressly or even by " a fair implication warrants this conclusion.

" If it could be held, that in consequence of these " grounds still forming part of the parish of South " Leith the heritors and kirk session of that parish " could claim an interest in the funds levied from them " for the general support of the poor of the parish, I " should rather be disposed to concur in the opinion " expressed by some of the consulted judges, that this " claim must be made good, not in the form of a double " or additional assessment upon the advocators, but in " that of a demand against the magistrates for a pro- " portion of the assessment levied by them under the " statute. But, in the first place, I doubt whether the " claim in this form is admissible in the present pro- " cedure; and, secondly, it does not appear to me that " the parish of South Leith can, consistently with the " principle laid down as applicable to parishes partly " landward and partly burghal, have any claim for " or interest in the assessment for the support of the " poor leviable from grounds now forming a burghal " part of the parish. The very question raised and " determined in the late cases of the landward heritors " of Lanark and Dunbar[1] against the magistrates of " those burghs was, whether in parishes partly land- " ward and partly burghal the administration of the " poor laws should include the whole parish, or should " be split into two, the one applicable to the burghal, " and the other to the landward part of the parish. " The latter view was adopted by the majority of the " Court, after full consultation; and accordingly decree

[1] Landward Heritors of Dunbar v. Magistrates & Council of Dunbar, 11 S. & D. p. 879; since Reversed in 1 Shaw & Maclean's Ap. C. p. 134.

" was pronounced in terms of the first conclusion of the " libel, in the action at the instance of the landward " heritors of Dunbar against the magistrates, ' finding " ' and declaring that the management and maintenance " ' of the poor of the landward district and of the " ' burgh are separate and distinct, and that the pur- " ' suers, as heritors of the landward district, with " ' their tenants, and other inhabitants thereof, are not " ' liable for the support of the poor of the burgh, but " ' for that of the poor resident within the landward " ' district allenarly;' and ' that the magistrates should " ' be bound to sustain and manage the poor of the " ' said burgh according to law.' According to the " principle of this judgment, then, a burgh or landward " district, though included in one parish, is necessarily " separated in regard to the administration of the poor " laws, and liability for poor's rates. It appears to me, " that the same principle must be applied to the present " case, in which one part of a parish, originally all " landward, has been made burghal by the operation " of a statute. From the moment of that annexation " the management and maintenance of the poor of the " remaining landward district came to be, in terms of " the above quoted judgment, separate and distinct. " The heritors are only liable for the support of the " poor resident within that landward district; and at " this moment, if the grounds in question came, from " some unfortunate vicissitude, to be peopled by paupers, " the whole burden of their support would fall on the " poor's rates of the city of Edinburgh, while nothing " could be claimed on that score from the remaining " landward heritors of the parish of South Leith. In " these circumstances it seems to me to follow, that the

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" annexation of the grounds in dispute to the burgh of " Edinburgh did, by necessary legal implication, dis- " join them, if not from the parish, at least from the " landward parish of South Leith, and placed them in " regard to poor's rates precisely on the same footing " as if they had originally formed or had been recently " erected into a separate royal burgh; and that while the " landward heritors are thus relieved from the burden of " supporting the poor within the district so detached, " the proprietors and occupiers in that district are " become burghal, and, subject to the special liabilities " of their new character, must be equally relieved from " that liability, which attached to them as landward " heritors of the parish."

Lord Medwyn gave this opinion:—" The question " here depends entirely upon the construction to be " put upon the statute 54 Geo. 3. c. 170., which, so " far as regards the grounds in question, has superseded " the common law relative to the support of the poor.

" This act empowered commissioners, to acquire cer- " tain portions of ground between the east end of " Prince's Street and the Calton Hill; and when so " acquired 'the royalty of the city of Edinburgh " 'shall be extended over the same,' and the lord " provost, magistrates and council 'shall and they are " 'hereby authorized and empowered to stent or assess " 'and levy from the proprietors, &c. an equal pro- " 'portion of the cess, annuity, poor's money, and " 'other duties with that stented or assessed in the " 'extended royalty; provided that the extension, &c. " 'is hereby made under all the clauses, &c. in favour " 'of his Majesty or others,' in 7 Geo. 3.

" Now, when this act was passed, these lands be-

" longed to the parish of South Leith; and how does " it affect them as to this matter? They are not ex- " pressly disjoined from the parish of South Leith, " neither are they annexed to any parish within the " city: all that is done is, that the royalty and juris- " diction of the magistrates of Edinburgh is extended " over them.

" Every portion of land or tenement of houses in " this country, must be situated within some parish or " other; and the inhabitants have certain rights and " are subject to certain duties, in respect of this eccle- " siastical division of the country. This is quite dis- " tinct from the civil jurisdiction to which every such " inhabitant is also subject; and it is quite conceivable " that there may be a change in the one, without any " change in the other. If, for instance, a village, " forming part of a landward parish, is constituted a " burgh of barony, the civil jurisdiction is changed, " while the ecclesiastical will remain as before; or if a " burgh of barony is erected into a royal burgh, the " powers vested by law in the magistrates of a royal " burgh, will modify the civil rights of the burghers, " while the ecclesiastical jurisdiction over them con- " tinues as before. Now I cannot understand how the " extension of the royalty of Edinburgh over the " grounds in question should withdraw them from the " jurisdiction of the minister and kirk session of South " Leith, as to every ecclesiastical matter falling under " the cognizance of that court, or from the jurisdiction " of the heritors and kirk session as to any thing which " is to be regulated by that body. A disjunction " from one parish and annexation to another, cannot " be made by implication. Such can only take place

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" by a decree of the competent court, or the special " enactment of Parliament. I have no doubt that the " heritors occupying the ground which originally be- " longed to the parish of South Leith still continue to " belong to that parish, and remain liable for paro- " chial burdens there, such as keeping up the church " and manse of South Leith; that their banns for mar- " riage must be proclaimed there; that in any case of " scandal the occupiers would be convened before the " kirk session of that parish; and that a pauper would " be entitled to claim relief from the heritors and kirk " session, and that he would have no claim against the " funds for maintenance of the poor of Edinburgh, " because he does not reside within any parish within " the city. No doubt there is no express declaration " in this act, as there was in the previous one referred " to (7 Geo. 3. c. 49.), that these lands were to " remain liable to the parochial burdens of the parish " of South Leith. But it was necessary to insert this " declaration in that previous act, because there the " lands were expressly disjoined from the parish to " which they formerly belonged, and were annexed to " a different parish, and this must have relieved them " of their former burden if it had not been otherwise " declared.

" The provisions of that act, as to this matter, are " quite unambiguous. It was enacted on a narrative, " that those whose property was to be brought within " its operation had 'either consented, or are bound " 'by their titles to consent;' so that for the advan- " tages of having their grounds brought within the " royalty, and streets built upon them, they consented " to pay burghal taxes, continuing at the same time

" liable to the burdens formerly payable by them as a " landward parish. While it was necessary in that " case to be thus explicit in expressing the agree- " ment of parties, there was no such necessity in " the present instance, since the grounds remain, as " before, a portion of the parish of South Leith, " although the royalty of Edinburgh is extended over " them; and the proprietors and occupiers must remain " subject to the same ecclesiastical jurisdiction as the " rest of the parish, and also be liable to legal paro- " chial burdens, as before.

" The extension of the royalty over the grounds in " question brings them within the civil jurisdiction of " the magistrates, rendering them subject to the burgh " courts, and confers upon the proprietors and occu- " piers the privileges of trade and other rights compe- " tent to the citizens of Edinburgh as a royal burgh. " But the act does not stop there; it further gives the " magistrates and council express authority and power " to levy an equal proportion of cess, annuity, poor's " money, and other duties, as in the previously extended " royalty. Now, this express power leaves no room " for doubt as to the power to levy; and it seems impos- " sible to hold that this can mean, that they are to levy " poor's money, but not to employ it in support of the " poor of the city, but are to pay it over to the kirk " session of South Leith. This would be such an " anomaly in the law, — as great, at least, as that of " assessing the same lands for the poor of two different " parishes,—that it would require an express enactment " to that effect. There is however no such enact- " ment. Besides poor's money, the magistrates are " empowered to levy annuity from the houses on these " lands; but neither is it said that they are to employ

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" this in paying the stipends of the ministers of the " city. This is left to the operation of law, which " appropriates the annuity leviable within the royalty " to that special purpose. Now, could it be maintained, that when the magistrates levy this annuity " they must pay it over to the minister of South Leith? " This certainly would not do, even were this a sum " levied out of teinds. Yet it is difficult to see any distinction between this and the levy of poor's money: " the same is true as to the cess which the magistrates " are authorized to levy; and it must further be remembered, that the cess, annuity, and poor's money are " not be levied in the proportions payable by the rest " of the parish, which would have been the case if the " right to levy had merely been transferred, but is to " be in an equal proportion with that levied from the " other proprietors and occupiers of houses in the extended royalty. Now, when the right to levy a fund, " which is legally appropriated to a special purpose, is " given to the legal administrators of that fund, no " special directions are necessary as to its appropriation. They are to employ it according to law; and " accordingly, as in the case of the annuity, which must " go to the ministers of Edinburgh, and the cess to the " proportion of that burden upon the city, the poor's " money, which the magistrates are empowered to levy " must be applied to the discharge of the burden imposed on them of maintaining the parochial poor of " the city. There is no warrant for any other application of it.

" It may at first sight appear a hardship, that these " lands, and the houses since erected on them, should " pay assessment for supporting the poor of their own " parish, and also the poor of the city to which they

" are annexed, quoad the civil jurisdiction; but in a " matter of contract or agreement and special enact- " ment such a consideration must not influence the " interpretation of an act of parliament; and consider- " ing the advantages to be derived by the original " owners of these grounds by the circumstance which " occasioned the extension of the royalty over them, " they might well consent to this addition to their paro- " chial burdens; and those who acquired the property " since cannot object to hold it under all the burdens " of an act of parliament which is specially referred to " in their titles.

" It may be noticed, that the 40 Geo. 3. c. 88. ex- " tended the royalty of Glasgow over certain lands " belonging to the barony parish, from which 'they " 'are for ever separated, and hereby annexed to " 'parishes within the said city.' The magistrates have " express power to levy 'an equal proportion of the " 'cess, trades'-stent, poor's rates, conversion of statute " 'labour, and other taxes,' within the annexed grounds, " as they levy within the present royalty; and then " they are expressly taken bound to pay the cess to " the county, and the statute labour and poor's rates " to the barony parish, effeiring to the annexed lands, " out of the funds of the city. It would have been easy " to have followed this example, and introduced such " an enactment in the present case, if such had been " the meaning and agreement between the parties.

" Upon the whole, I still entertain the opinion I had " when this case was before me in the Outer House."

Thereafter the Court on the 25th of June 1835 pronounced the following interlocutor:—

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"The Lords having resumed consideration of the "cases for the parties, with the opinions of the consulted "judges, find, in conformity with the majority of these "opinions, that the property of the Waterloo Hotel "over which the royalty of the city of Edinburgh was "extended by the statute 54 Geo. 3. c. 170. is not "liable in payment of poor's rates both to the city of "Edinburgh and the parish of South Leith; therefore "recall the interlocutor of the Lord Ordinary, advocate "the conjoined causes, alter the interlocutor of the "sheriff, and assoilzie the advocator from the conclusions "of the action at the instance of Peter M'Craw, "collector for South Leith, and decern: find that the "magistrates and town council of Edinburgh have "acquired, vi statuti, right to assess the proprietors and "occupiers of houses built or to be built on the lands "to which the royalty was extended, in an equal pro-"portion of poor's money at the same rate as they do in "the rest of the extended royalty; but that the fore-"said statute does not direct in what manner the sums so "assessed by the magistrates and council shall be applied: "find as the property has not been disjoined from the "parish of South Leith, nor annexed to any parish in "the city of Edinburgh, that the said magistrates and "council are bound to pay to the parish of South Leith, "or apply to the maintenance of the poor thereof, a "part of the assessment so to be levied by them corre-"sponding to the amount of the assessment for the poor "of the parish of South Leith payable for said property "along with the other portion of that parish, and that "they may apply the remainder of that assessment, if "any, after satisfying the primary claim of the parish

" of South Leith, in maintaining the poor of Edinburgh, " or to any purpose to which the poor's money of the " rest of the extended royalty may lawfully be applied: " therefore rank and prefer the claimant, the collector " of the poor's rates for the city of Edinburgh, to the " fund in medio, being 21*l.* 13*s.* 4*d.*, assessed by the " said magistrates on the said Waterloo Hotel, from " Whitsunday 1827 to Whitsunday 1828, and rank and " prefer the said Peter M'Craw, collector of poor's rates " for South Leith, as a rider on the claim of the said " collector for the magistrates and council of Edinburgh, " to the extent of 19*l.* 10*s.*, as the proportion of the " said assessment falling to South Leith, and decern " accordingly: find the claimants, Peter M'Craw and " Peter Hill conjunctly and severally liable to the " advocator in the expenses of process; allow an ac- " count to be given in, and remit to the auditor to tax " the same, and report: quoad ultra, find no expenses " due to either of the claimants; reserving entire all " questions as to any claim at the instance of the " parish of South Leith upon that part of the property " in question over which the royalty is not extended, " and to the proprietors their defences as accords."

The expenses were afterwards taxed at 141*l.*, and decerned for.

Separate appeals were entered by the collector for Leith and by the collector for Edinburgh.

Appellants.[1]—The process of multiplepoinding was incompetent. The magistrates of Edinburgh never

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1 Although separate appeals were lodged, both appeals were ordered to be argued at the same time, and a question arose as to the right of counsel to be heard. Each of the appellants appeared by two counsel.

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assessed or claimed from the proprietors payment of poor rates. They assess only the occupants, that is, the tenants of the property, and not the proprietor, who does not occupy the property or hold the natural and actual possession of it; they assessed Mr. Gibb, the tenant, and not the proprietors. The sum claimed by Edinburgh was 21*l.* 13*s.* 10*d.* from the tenant as occupant, while the sum claimed by Leith was 19*l.* 10*s.* from the proprietors. Therefore, it neither was nor could be true that the collector for Leith and the collector for Edinburgh were each demanding the same sum, and from one and the same party. The collector for Edinburgh claimed nothing, and alleged no claim against Mr. Cuningham as representing the proprietors, but only against Mr. Gibb, the tenant. On the other hand, the collector for Leith made a claim against Mr. Cuningham as acting for the proprietors, and none against the tenant. Thus the claims were not for a common fund in medio. Possibly the proprietors may be bound to pay both debts, or in other words, there may be two creditors for separate debts; but that is not the proper case for a multiplepoinding.[1]

Collector for Leith (on the merits). — Under the law of Scotland the system of poor laws is strictly parochial. Each parish is bound to afford relief to that description of persons whom the law holds entitled to relief as

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Both appellants concurred in maintaining that the multiplepoinding was incompetent, and thus if each had addressed the House on this point four counsel would have been heard. Lord Brougham stated, that the rule of the House was, that only two counsel could be heard on the same point. It was therefore arranged that the two leading counsel for the appellants should address the House on the question of the competency of the multiplepoinding, besides arguing their separate cases, along with their respective juniors, on the merits.

[1] Davidson v. Robertson, 4th July 1815, 3 Dow. 218.

paupers; and no parish is bound to afford relief to the poor who have a settlement in any other parish, nor is one parish bound to assist another parish.

The hotel is situated within the parish of South Leith, upon ground the proprietors and tenants of which have at all times been assessed in poor rates by the heritors and kirk session of South Leith, and who have paid the rates. No statute and no law has disjoined it from that parish, or declared that it shall not be liable for its share of the parish burdens incumbent on South Leith.

The territory transferred by the statute 54 Geo. 3. to the royalty of Edinburgh, may no doubt have acquired certain privileges, or its inhabitants may have been placed under certain liabilities; but such new privileges or new liabilities can have no effect on the present question so long as the territory continues to form a part of the parish of South Leith. The hotel may be liable to a rate both to Edinburgh and Leith, but the liability to the latter could not be discharged except by a disjunction.

But the act of 54 Geo. 3. makes no disjunction from the parish of South Leith; it merely authorizes commissioners to acquire a certain small territory there, over which the royalty of Edinburgh and its taxations were to be extended; and at the same time it is "pro-
" vided always, that the extension of the royalty over
" the lands, grounds, and tenements foresaid is hereby
" made under all the clauses, provisions, declarations,
" exemptions, and reservations made in favour of his
" Majesty and others, which are specified and contained
" in an act passed in the seventh year of the reign of
" his present Majesty, intituled 'An act for extending
" 'the royalty of the city of Edinburgh over certain

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" ' adjoining lands ;' " but that act expressly declares, with reference to certain other lands, that while it extends over them the royalty and taxations of Edinburgh, these lands and the heritors thereof shall remain liable to " the ministers stipend, and other parochial " burdens," as if that act had never passed. Now, as the heritors of South Leith saw this clause of reservation inserted in the new statute, they could not understand or suspect that their rights over the territory in question were affected, or that it was necessary for them to oppose before Parliament the new local act, or demand any more explicit reservation of their rights.

That such was the meaning of the legislature is clear from the circumstance, that when the royalty of Edinburgh was in 1809 extended over a separate portion of land, the territory so added was expressly disjoined from the parish of St. Cuthbert's, of which it formed part, and annexed to the parish of St. Andrew within the city. This being done, it became necessary to provide for the interest of the heritors and kirk session of St. Cuthbert's, who would thus be deprived of one of their resources for the support of the poor. Accordingly, the magistrates of Edinburgh were ordained to pay, from the general funds of the city, 100*l.* per annum, and contingently a larger sum, to indemnify the parish of St. Cuthbert's for its loss of territory.

This is direct proof that in framing the statute of 1814, it neither was nor could be intended by the local parties, or the legislature, that the territory then added to the royalty was to be relieved of the parish burdens incumbent on the rest of South Leith. There was no disjunction from that parish; there was no annexation to a parish in Edinburgh; and there was no pro-

vision made to indemnify South Leith for the loss of a valuable part of its territory. It follows therefore that the original liability remains in force.

But it has been objected, that it is inconsistent with the general law of Scotland that property locally situated in one parish should be liable in poor rates to two different parishes.

The answer is, that the peculiarity is, not that the hotel is liable for poor rates to South Leith, but that the magistrates of Edinburgh should have any claim against it for poor's rates. That peculiarity is the result of a special statute, which does not liberate that property from the burdens for which it is liable to the parish in which it is situated.

It has been also alleged, that there may be a disjunction of a portion of territory from one parish, and annexation of it to another parish, quoad poor rates, although, quoad ultra, matters remain in statu quo; that this may be held to have occurred with regard to the property purchased under the statute of 1814, over which the royalty of Edinburgh was extended; and that by the unlimited power of Parliament a particular portion of territory may be placed in a new and singular situation, both as to local privileges and local burdens. In such a case it is a question of fact what the legislature has done. The statute, in point of privilege, extended the royalty of Edinburgh over a certain territory, and, in point of burden, imposed the Edinburgh taxations on the proprietors and occupants thereof; but the statute did not disjoin that territory from the parish of South Leith in any respect, either quoad sacra or quoad civilia. All these matters were left on their original

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footing, so far as the territory in question is concerned, and consequently the right of Leith to exact poor's rates remains in full force.

It has been said by two of the judges, that in the cases of Lanark and Dunbar it was held by the Court of Session, that the magistrates, must in these burghs, assess the inhabitants in poor rates to support the poor within the burgh, and that the heritors, and kirk session must assess the proprietors and occupants, of the landward part of the parish, for the support of the poor in that landward part exclusively, and that some such rule might be applied to the territory in dispute, whereby it might be considered as separated from the landward parish of South Leith. It is no doubt true that the Court of Session did adopt the notion alluded to, but the House reversed that judgment.

Collector for Edinburgh (on the merits).[1]—Both the words and the meaning of the statute 54 Geo. 3. are quite explicit. It enacts "that the magistrates of Edin-
" burgh shall be and they are hereby authorized and
" empowered to stent or assess and levy from the pro-
" prietors and occupiers of all such houses as are at
" present on the said property, or shall be hereafter
" built and erected thereon, an equal proportion of the
" cess, annuity, poor's money, and other duties with
" that stented or assessed and levied by the lord
" provost, &c. from the proprietors and occupiers of
" houses in the extended royalty, in the same way and

[1] It was admitted at the bar, both by the collector for Leith and by the respondent, that the judgment, in so far as Edinburgh was concerned, was erroneous. Although this was admitted, yet, according to the rule of the House, it was necessary for the counsel on behalf of Edinburgh to show that in point of law it was so.

"manner, and with such and the same remedies of "law in case of not payment, as are practised or "competent by any law, statute, or custom within the "said extended royalty."

The exclusive right to assess, and to assess with reference to the extent of the demands of the royalty, is assumed in the opinion of five of the consulted judges. Their lordships have said, "It rather appears "to us that the magistrates and council, having acquired "right vi statuti to assess at the same rate as they do "in the rest of the extended royalty, may apply the "remainder," &c. The two other consulted judges said, "In virtue of this clause there can be no question "that this now burghal part of the parish of South "Leith is subjected in payment to the magistrates of "Edinburgh of the rates generally leviable within the "extended royalty of Edinburgh, and without refer-"ence to the necessities of the poor within the parish "of South Leith." The interlocutor appealed against also virtually admits the same principle.

The right to assess being thus admitted, and the rate to be levied being "poor's money," and this being to be levied from the proprietors and occupiers of the subject in question "in the same way and manner" as the money for the poor is levied from the proprietors and occupants of subjects within any part of the royalty, and it being admitted that the latter money is for behoof of the poor, it seems to be a most extraordinary conclusion arrived at by the consulted judges, that "the statute does not direct in what manner the "sum so assessed should be applied;" and a still more

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extraordinary proposition, that "the magistrates and "council of Edinburgh, are bound in the first place, to "pay to the parish of South Leith, or apply to the main-"tenance of the poor of that parish, a part of this "assessment, corresponding to the proportion between "what is now burghal, and what remains the landward "part of the parish."

Under this construction the city of Edinburgh, so far from deriving benefit, would be subjected only to trouble and expense; and the property to which the royalty was thereby extended, must be held to have obtained the privileges of the royalty, and the benefit of the large sums expended under the statute and creating its value, without any corresponding burden on it or advantage to the city. A duty would also be imposed on the city of a nature which the administrators of a public community could not take upon them, if desirous to do so. If it shall be held, that while the sole statutory right to assess is vested in the magistrates of Edinburgh, they are bound to account to third parties, possibly for every shilling which they are entitled to levy, they must be held to be liable in strict diligence as factors or agents, in recovering thé sums for which they are bound to account, and the funds of the community thereby subjected in security or realization of claims competent to third parties, and in which these parties alone may have the real or substantial interest. But the construction put on the statute, and the result arrived at, is still more anomalous, when it is recollected that the Court expressly find, that the hotel is not liable to pay poor's rates to both Leith and Edinburgh, and yet they

ordain the respondent to pay 19*l.* 10*s.* to Leith, and 2*l.* 3*s.* 10*d.* to Edinburgh, or, as expressed in the interlocutor, to pay 21*l.* 13*s.* 10*d.* to the collector for Edinburgh, who is to give 19*l.* 10*s.* to the collector for Leith. Thus the leading principle of the interlocutor is contradicted by the decerniture; and the mode of applying is greatly more at variance with the law of Scotland than even the view adopted by the collector for Leith, that the respondent is liable to a double assessment.

Respondent.—1. The process of multiplepoinding was not only a competent process, but it was the only competent process which in the circumstances of the case could have been brought, and in which the respective interests of the parties could best and most easily be adjusted. The respondent was exposed to double distress. That the property under his charge was liable in poor rates, was never disputed; but two parties claimed payment of them. The question was, which of the parties was entitled to make this demand, and to which of them would the respondent be in safety to pay. The collector for the city was not made a party to the original action raised by the collector for South Leith; but it was obviously necessary that he should be a party, as an attempt was thus made to apply to another parish the assessment which had been previously levied by and applied for the poor of the city. The only competent way in which all parties could be brought into the field to debate their respective preferences was a process of multiplepoinding. If the respondent had not defended the action at the instance of the collector for Leith,

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but allowed decree to be passed against him, then he would have been allowing a fund to which the city of Edinburgh laid claim, and which they had hitherto drawn, to be carried off by another, and that in a process in which the city of Edinburgh, had not been called to defend their rights. The respondent would thus have been exposed to similar proceedings at the instance of the collectors for the city. There was no competent way in which this could be avoided, except by a process of multiplepoinding. The demand that was made by Leith was for a parochial assessment; precisely the same demand was made by the city of Edinburgh; and the only way in which the interest of the respective parties could be adjusted was by calling them both into the field by that form of process which was adapted precisely for cases of this description. The respondent, in common form, craved in that process to be found liable only in once and single payment. No doubt it was competent for either party claiming the fund in medio to object to that conclusion, and to maintain that each of them were entitled to that fund; but this point could only be settled by a decision of the whole question on the merits, and a finding that the property was liable, not in a single, but in a double assessment. This involved the whole merits, and points out clearly the necessity of all parties being brought into the field to discuss these merits, which could not with propriety be discussed in separate proceedings, or in absence of any of the parties claiming the fund. Besides, this process was conjoined with the original action, and no appeal was taken to the Court of Session, nor to this House, against the interlocutor of conjunction.

2. By the law, as well as the universal practice of Scotland, a property cannot be liable to assessment for the poor or other parochial burdens to two parishes at the same time. While every parish is bound to maintain its own poor, it can only do so by an assessment on property within the parish. It cannot assess for that purpose property situated in another parish, neither is it bound to maintain the poor of another parish. A property may be partly situated in one parish and partly in another, and in such a case it may be liable to be assessed proportionally for both; but this is no deviation from the general law. Such property cannot be assessed to its full amount for both parishes, but only for the proportion to each parish corresponding to the value of the portion of the property that may be situated within that parish.

The statute 54 Geo. 3. contains no enacting terms declaring that the property in question is to be subject to a double assessment, and to pay poor rates both to the city of Edinburgh, and parish of South Leith. This being an unusual burden, and at variance with the general law of Scotland, and universal practice of the country, it could only be imposed by clear enacting terms in the act of parliament. But the statute, while it authorizes the magistrates of Edinburgh to levy poor rates from this property in the same way as it is levied on other properties within the extended royalty, does not say that South Leith shall levy poor rates as formerly for that parish. There is no clause declaring that both these parishes shall be entitled to levy poor rates from the proprietors and occupiers of the buildings erected or to be erected on the ground acquired under the act by the

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parliamentary trustees. But there being no express enactment to that effect, mere inference is not sufficient to impose a public and permanent burden. From the moment the ground was acquired by the commissioners, the buildings erected, or to be erected on it, changed their character. They no longer formed part of the county, but came to be included in the royalty. The inhabitants became citizens of Edinburgh; no longer subject to the exclusive jurisdiction of the sheriff of the county as formerly, but to the jurisdiction of the magistrates of the city of Edinburgh. Before that event took place, the property was liable in cess and other county rates; but afterwards the buildings became liable in cess, not to the county, but to the city. While the collector for the city was from that time entitled to levy cess, it has never been pretended that the collector for the county was also entitled to levy cess at the same time for the same buildings. In the same way the poor rates were formerly levied by the collector for South Leith parish, but from the moment the act came into operation, the right of levying these rates was transferred to the city of Edinburgh.

When the act declares, that "from thenceforth" the magistrates of Edinburgh shall be empowered to levy poor rates, its plain meaning is, that in whomsoever the right may have been before, it was "henceforth" to be in the magistrates of Edinburgh. The right of levying this assessment was thus transferred from one party to another, but the assessment remained the same. It required no special enactment, that the right of the collector for South Leith should thereby cease, for that right ceased as a matter of course, in the same way as

the jurisdiction of the sheriff, and the liability for county rates ceased.

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LORD BROUGHAM.—My Lords, this case was an appeal from the Court of Session upon the construction of several acts of parliament, and the question raised in the Court below, and which now stands for your Lordships decision, was, Whether that part of Edinburgh comprised in the act of parliament is liable to be rated to the poor of the parish of Leith and also of Edinburgh, or whether it is liable to be rated only once; and if liable to be rated only once, whether the rate by Edinburgh or the rate by Leith be the proper rate; and if the rate by Edinburgh be the proper rate, whether or not Leith has any lien as it were over the produce of the rate to the extent of obtaining from the citizens of Edinburgh its portion of the rate levied by Edinburgh. The three parties, therefore, are the owners and occupiers of property within the part of Edinburgh comprised in the act, the town of Edinburgh, and the parish of Leith. To the owner and occupier of property it is quite immaterial, so that he be rated only once, whether the rate is to be applied to Leith or to Edinburgh. So to the town of Edinburgh it is quite immaterial whether or not the owner shall pay a rate to the parish of Leith, provided he has to pay twice; then to the parish of Leith, on the other hand, it is quite immaterial whether he shall pay a rate to Edinburgh or not, provided he has to pay to Leith; or if he shall pay to Edinburgh and not to Leith in the first instance, it is quite immaterial to them, provided that

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Leith shall obtain from the town of Edinburgh its portion of the rate.

My Lords, in construing this act of parliament, especially when it is taken together with other acts affecting these premises, very considerable difficulty has arisen; and I by no means intend to say that the case is free from all doubt, although certainly upon the whole, after the best attention I have been able to give to the arguments, and the best consideration of the various clauses,—some of them I must confess in the different acts apparently made without those making them having at the time exactly in view the former provisions of other acts of parliament—upon the whole I am of opinion that the Court below have come to a right decision, and have adopted a sound construction of the acts in reversing the decision to which the Lord Ordinary originally came; which decision of the Lord Ordinary confirmed the liability of these premises to be rated twice over; their Lordships on the contrary holding by a great majority, almost unanimously, that the proper construction of the acts is, that a single rate only shall be levied.

But, my Lords, there is one part of this judgment of the Court below in which I certainly cannot concur. Their Lordships held that the rate is leviable only once, and that, that rate is leviable by the city of Edinburgh; but then they considered that the city of Edinburgh was liable to pay to the parish of Leith, a certain proportion, —not very clearly defined, I think, in the interlocutor,— yet a certain proportion of the rate, and to appropriate to its own use any surplus which might remain after paying that proportion which Leith has a right to receive.

The first part of the interlocutor to which I can see upon the whole no objection, for the reasons already stated, and which I should therefore submit to your Lordships ought to be affirmed, is, that "the Lords "having resumed consideration of the cases for the "parties, with the opinions of the consulted judges, find, "in conformity with the majority of these opinions, "that the property of the Waterloo Hotel, over which "the royalty of the city of Edinburgh was extended "by the statute 54 Geo. 3. c. 170., is not liable in pay-"ment of poor's rates both to the city of Edinburgh "and the parish of South Leith. Therefore, recall the "interlocutor of the Lord Ordinary, advocate the con-"joined causes, alter the interlocutor of the sheriff, "and assoilzie the advocator from the conclusions "of the action at the instance of Peter M'Craw, col-"lector for South Leith, and decern." The inter-locutor next proceeds to "Find that the magistrates, and "town council of Edinburgh have acquired vi statuti "right to assess the proprietors and occupiers of houses "built or to be built on the lands to which the royalty "was extended in an equal proportion of poor's money, "at the same rate as they do in the rest of the extended "royalty; but that the foresaid statute does not direct "in what manner the sums so assessed by the magis-"trates and council shall be applied." Now to that also I see no objection; it may not be absolutely necessary; but the material part, affirming the right of the single rating, and excluding double rating, stands as it should; and to the addition I see no objection; but I object to what follows: "Find, that as the property "has not been disjoined from the parish of South Leith,

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" nor annexed to any parish in the city of Edinburgh, " that the said magistrates and council are bound to " pay to the parish of South Leith, or apply to the " maintenance of the poor thereof, a part of the assess- " ment so to be levied by them, corresponding to the " amount of the assessment for the poor of the parish " of South Leith payable for said property along with " the other portion of that parish, and that they may " apply the remainder of that assessment, if any, after " satisfying 'the primary claim of the parish of South " Leith, in maintaining the poor of Edinburgh, or to " any purpose to which the poor's money of the rest of " the extended royalty may lawfully be applied; there- " fore rank and prefer the claimant, the collector of the " poor's rates for the city of Edinburgh, to the fund " in medio, being 21*l.* 13*s.* 4*d.*, assessed by the said " magistrates on the said Waterloo Hotel from Whit- " sunday 1827 to Whitsunday 1828." That which is consequential upon the first part of the interlocutor will stand; of course to that there is no objection; but the second part of the consequential directions, which is applicable to the other part,—to the part that takes in Leith, as it is termed in some of the pleadings, by way of a rider to Edinburgh, in proportion to the amount of its population,—that part of course must follow the fate of the part objected to, namely, " and rank " and prefer the said Peter M'Craw, collector of poor's " rates for South Leith, as a rider on the claim of the " said collector for the magistrates and council of " Edinburgh, to the extent of 19*l.* 10*s.*, as the pro- " portion of the said assessment falling to South Leith; " and decern accordingly."

Now, my Lords, the short reason upon which I hold that it is impossible that this part of the assessment can stand, is, that it is really making an act of parliament. Their Lordships have stated, and justly stated, that the application of the rate by the magistrates and town council is not provided for by the act of parliament; but it does not follow from thence that you are in a decree of the Court, which deals with the law, to supply the defect of the act, and to make a regulation for which there is no warrant to be found within the four corners of the statute. It is indeed also contrary to all principle of rating; this species of rating is new; it is a thing of which one has not heard; and I am not aware, in all the acts which have passed in various sessions for making rates of different descriptions, that there is a single instance of one district rated for the use of another district, and that other district claiming and being allowed to be let in as a rider on the first rated district. Now, if this is, generally speaking, not to be admitted, it is peculiarly not to be admitted in a case like the present, where the question is as to the amount of rate and the mode of applying that rate, not with a view to Leith, but with a view to Edinburgh. It is the wants of Edinburgh that are to be the criterion of the rate to be imposed on these premises; it is in respect of the exigency of the case in Edinburgh, that is to say, the wants of the poor in Edinburgh, and the means of Edinburgh, to provide for those wants. Leith is to obtain a portion of that; and the portion of Leith is to be estimated, (of course it ought to be estimated at least,) not according to the exigency of the case of Edinburgh, but according to

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the exigency of the case arising from the state of the poor in Leith.

My Lords, those reasons, and several others, are very distinctly stated in, I think, the seventh reason which is annexed to the case of one of these parties, and in that seventh reason, to be found on the twenty-third page, though there are some things which one cannot go along with, yet certainly the rest of the argument is unanswerable for reversing this part of the finding.

My Lords, this, I must say, in justice to all parties, was not a point that could be given up as part of the finding. One party could not safely give it up, namely, Leith. Leith would, I think, very willingly have given it up, not to be encumbered with the burden in the arguments, if it had been sure that there would have been a reversal in the rest of the case, and that either a double rating would have been allowed, or a rating to Leith would have been allowed. But then, as it was possible that the interlocutor might have been affirmed, and that no double rating might have been allowed, and that Edinburgh would be entitled to levy the single rate, it became those parties to secure themselves against consequences; and they could not give up this part of the finding, inasmuch as by retaining it they made sure of obtaining their proportion, in case, upon other grounds, the judgment of your Lordships should be against them, and the judgment of the Court below affirmed. But I think it was pretty clear, in the course of the argument, that not much reliance was placed upon this part. It is a part of the decree too which their Lordships, in the reasons given, do not afford any satisfactory

defence of. They state that the statute does not direct in what manner the sums so expended shall be applied. One of the findings expressly denies, that there is any warrant in the act of parliament for doing it. This part is far less material than the general finding which I recommend your Lordships to affirm,—that there should be a single rating, and that, that should be for the sake of Edinburgh.

My Lords, I move your Lordships that this interlocutor be affirmed, with the exception of the finding relating to the payment of a certain proportion to Leith, and the consequential finding to ascertain that portion which Edinburgh is to pay over to the parish of Leith.

The House of Lords ordered and adjudged, That the said interlocutor of the 25th of June 1835, in so far as it finds that " as the property has not been disjoined from " the parish of South Leith, nor annexed to any parish in " the city of Edinburgh, that the said magistrates and " council are bound to pay to the parish of South Leith, or " apply to the maintenance of the poor thereof, a part of " the assessment so to be levied by them, corresponding to " the amount of the assessment for the poor of the parish of " South Leith payable for said property, along with the " other portion of that parish, and that they may apply the " remainder of that assessment, if any, after satisfying the " primary claim of the parish of South Leith in maintaining " the poor of Edinburgh, or to any purpose to which the " poor's money of the rest of the extended royalty may " lawfully be applied," and also in so far as such interlocutor ranks and prefers " the said Peter M'Craw, collector " of poor's rates for South Leith, as a rider on the claim of " the said collector for the magistrates and council of " Edinburgh to the extent of 19*l.* 10*s.* as the proportion of " the said assessment falling to South Leith," be and the

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same is hereby reversed: And it is further ordered and adjudged, That in all other respects the said interlocutor of the 25th of June 1835, and the other interlocutors complained of in the said appeals, be and the same are hereby affirmed: And it is further ordered, That the said Peter M'Craw do pay or cause to be paid to the respondent the said Charles Cuningham the costs incurred by him in respect of the said appeals, the amount thereof to be certified by the clerk assistant: And it is further ordered, That the said causes be remitted back to the Court of Session in Scotland to proceed therein as shall be just and consistent with this judgment.

Alexander Mundell—Richardson and Connel—Spottiswoode and Robertson, Solicitors.