[Heard, *July* 21, 1840. — Judgment, *Oct.* 6, 1841.]

WILLIAM ALLAN, Esq. of Glen, Appellant, (No. 20.)

[*Attorney-General — Pemberton.*]

PETER M'CRAW, Collector of the Assessment for the support of the Poor of the Parish of South Leith, and J. C. BEADIE and others, a committee of the Heritors of the Parish, Respondents.

[*Lord Advocate — Knight Bruce.*]

Statute. — Construction of.

2d DIVISION.

Lord Ordinary Jeffrey.

Statement.

IN 1756, Grant obtained from George Heriot's Hospital, a feu charter of lands in the vicinity of Edinburgh, containing a proviso, that in case the royalty of the city should be extended, so as to embrace the lands feued, he, "or the proprietors of the ground for the "time, should not only be obliged to build according "to a fixed plan, but likewise the houses to be built "thereon shall be subject and liable to pay the same "public burdens, as the other inhabitants of the city "are subject and liable to pay."

In 1767, the 7 Geo. III. cap. 27, was passed. That act recited among other things, that "the extending the "limits of the city of Edinburgh had been found neces-"sary, as well for the benefit of trade and commerce, "as for the conveniency and health of the inhabitants:" that the grounds in the act mentioned, were without the royalty of the city; and it was just and reasonable that

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the royalty should be extended over those grounds, in consideration of the great expense the city had been, and would be put to, and that the proprietors of the several parcels of ground after mentioned have either consented, or are bound by their titles to consent, that their respective lands shall be included within the royalty of the city. Upon this recital, it was enacted, that after the 29th of June, 1767, the royalty of the city should be extended over and comprehend certain lands specifically enumerated, including those feued to Grant, and described as feued from George Heriot's Hospital, and being lands "which have "been feued by the Governors of George Heriot's "Hospital, to the several persons after mentioned, "under an express condition and covenant, that in case "the royalty of the city of Edinburgh should at any "time thereafter be extended, so as to comprehend "their grounds, they, their heirs and assigns, or the "proprietors of the said grounds for the time, should "not only be subjected to build such houses as they "shall build thereon, agreeably to the plan to be con-"certed by the Town Council of Edinburgh, and other "managers for the time: but likewise the said houses "to be built thereon, shall be subject and liable to pay "the same public burdens as the other inhabitants of "the city are subject and liable to pay." The same clause then went on to enact, 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 com-"prehended 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, and taxations " as aforesaid."

By the second section, after reciting, that " 'sêve- " 'ral parcels of the lands feued out as aforesaid, by " 'the Governors of George Heriot's Hospital, and " 'comprehended within the said royalty, were granted " 'by the said Governors, and acquired by the pur- " 'chasers for the purpose of building thereupon country " 'houses and offices, with gardens and enclosures " 'adjoining; and it being reasonable that the parcels " 'so granted shall not be subjected to the city burdens " 'and taxations, so long as they shall continue to be " 'used and occupied in the manner, and for the pur- " 'poses originally granted;' be it therefore enacted, by " the authority aforesaid, that nothing in this act con- " tained shall be understood to subject to the said city " burdens and taxations, any country house or offices, " built or to be built on such parcels of land as afore- " said, in any case where the owner of such country " house is possessed in property of at least three acres " of ground, adjoining to such country house and " offices, including the areas of the same, and on which " there shall be no other buildings except the country " house and offices aforesaid."

By the 10th section it was enacted, " that the said " Magistrates and Town Council of the city of Edin- " burgh shall have full power to appoint stent-masters " to levy from the proprietors and possessors of all such

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" houses as are built, or shall hereafter be built, upon " the foresaid grounds, hereby annexed to, and compre- " hended within, the said royalty, an equal portion of " the cess, annuity, poors-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."

By the 12th section it was enacted, " That the seve- " ral 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 notwith- " standing."

By the 15th section it was enacted, " That the afore- " said 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 " parish of Saint Cuthberts or West Kirk, and South " Leith, and are hereby annexed to the parish of Saint " Giles within the city of Edinburgh.

And by the 16th section it was provided, " That the " lands hereby disjoined from the parishes of Saint " Cuthberts and South Leith, and the heritors thereof, " shall remain liable and be subjected to the ministers' " stipends and other parochial burdens; and that the " tythes 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."

The father of the appellant acquired the lands feued to Grant, while there was yet but a mansion-house upon them, and pleasure grounds surrounding it. He possessed the lands in this condition until the year 1823. In that year he began to feu out the lands for building, and laid out large sums of money in preparing the lands by common shores and otherwise for this purpose.

From time immemorial, the Parish of South Leith, within which Grant's lands were situated, until they were disjoined by the 7 Geo. III., had been in use to levy an assessment for the poor, in respect of these lands, and the assessment was paid by Allan, Grant, and their predecessors, until the year 1830, in which year the Magistrates of Edinburgh exercised the powers of the statute, by having the boundaries of the lands ascertained by the Sheriff, and declared to be within the royalty of the city. From this time Allan refused to pay the assessment, on the ground, that an assessment for the poor had also been made by the city of Edinburgh, and that he was liable to the city, and to it alone. By this time the land had been nearly covered with houses.

In these circumstances, the respondents brought an action against Allan, concluding to have it declared, that they had a good right to assess the houses built on Allan's ground, for the support of the poor, and that Allan should be decerned to pay the half of the assessment falling upon him, as proprietor, from the year 1830, to the date of the action — the other half being payable by the occupiers of the houses.

Allan pleaded in defence, — I. That his property could only be liable for one rate, it being contrary to law, as well as to a true construction of the statute, to assess the same property twice for the same tax.

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II. At least, according to the true construction of the statute, he was liable in poors'-rate to the parish of South Leith only for the solum, but not for the houses, which were rateable by the city of Edinburgh.

The Lord Ordinary, (15th November, 1838,) on advising cases for the parties, repelled the defences, and declared and decerned in terms of the libel, and issued at the same time the following note.[1]

The appellant reclaimed to the Inner House, but his

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[1] "*Note.*— It is supposed that there can be no doubt that the clause in "the Act of 7 George III. c. 27, by which it is enacted that the lands "thereby disjoined from the parish of South Leith and the heritors thereof, "shall notwithstanding 'remain liable for ministers' stipend and other "'parochial burdens, in the same manner as if this act had never passed,' "means that they were to remain so liable to the parish of South Leith, and "as poors'-rates are certainly parochial burdens, it necessarily follows that the "defender is liable in some payment of poors' money to the pursuer. His "attempt to make out that this liability is only to the parish of St Giles, is "too extravagant to require any observation.

"It is equally certain, and does not seem, indeed, to be disputed, that he "must also pay, not only cess, annuity, and watch-money, but poors' money "for his annexed property, to the Edinburgh collector; and it necessarily "follows, therefore, that this property is liable to some extent to a double "assessment, or to contribute to the poors' funds in two separate parishes, "though finally disjoined from one, and annexed quoad omnia to the other.

"The defender, however, makes an anxious, and no doubt a very ingenious, "attempt to escape from the consequences that appear at first sight to flow "naturally from these premises. Founding upon certain alleged peculiarities "in the phraseology of the statute, he contends that it does not import a "double liability for poors'-money to the two parishes, but only a division of "his original liability between them; and admitting that he must now be "assessed (as he was always) both for his houses and the ground on which "they stand, he maintains that Edinburgh is only entitled to the assessment "due for the houses, and Leith to that for the solum on which they are "erected. The Lord Ordinary is sorry that he cannot give his sanction to "this elaborate hypothesis, and is afraid that there is nothing but the great "hardship of the case that could entitle it to a serious consideration.

"In the first place, such a partition or distribution of an assessment for the "poor, it is believed, was never before heard of, and if it was really intended "to be introduced by this statute, such an intention must have been very "clearly and unequivocally declared and asserted. Cases may no doubt "have occurred, where a house was exempted from assessment, while the "area or solum was liable, or vice versa. But where both are confessedly "liable, it is not to be imagined, without the most express and precise

reclaiming note was refused on 15th February, 1839, in these terms:—" The Lords having heard counsel " for the parties, and advised the cause, adhere to the " interlocutor of the Lord Ordinary submitted to re-

" declaration to that effect, that the assessment should ever be divided and " one part of it given to one parish, and the other to another. It may be " said to be as unprecedented, that one and the same property should in any " shape be made liable to assessments in two parishes, and it probably is so. " But the difference is, that there are clear and unequivocal words in the " statute, putting the fact of their being a double assessment beyond all " question; while there is nothing, either in its general policy and structure, " or in its particular expressions, to countenance the notion of such a partition " as is here suggested, except upon strained analogies, or fine drawn verbal " constructions.

" In the first place, the general policy of the act is undeniably to subject " those annexed lands contrary to the common rules of law, and apparently to " common equity, in the extraordinary burden of double assessments in rela- " tion to a variety of other charges, besides that of a provision for the poor, " and in all those others, it is plain there is no room for holding that there " was merely a splitting of the original burden, it being manifest, beyond " contradiction, that the whole of the original burden to the old parish or " county, is retained undiminished, and that of the city charges imposed, in " addition.

" Thus, to take the payment of cess, it cannot be denied that the defender " must continue to pay to the county collector the whole amount for which " he was chargeable for the properties in question before their annexation, and " over and above the same proportion of the city cess as he would have had " to pay if the property had always been within the royalty. In short, he " pays a full double assessment without relief or partition of any kind. That " the county cess is said to be charged for the land, and the city for the " houses, is plainly a matter of no consequence, if the result be as has now " been stated, and is in fact a mere verbal peculiarity, admitting of an easy " explanation. He pays the county cess according to his valuation in the " cess-books, which, though popularly said to be a valuation of the lands " belonging to him, did undoubtedly proceed upon an estimate of the true " worth and value of the houses and buildings on the lands at the time, as " well as of the lands themselves. The city cess, on the other hand, was " originally imposed as the land tax of the ground, as well as the buildings " constituting the original royalty, and although it is now levied from, or " constituted by, the owners or occupiers of houses, this is merely an arrange- " ment adopted for the sake of convenience, and to enable the burgesses, or " corporation at large, (who are the proper debtors,) to raise, in fair propor- " tions, the sum due for the solum of the royalty, with all that may be built " upon it, and the same end would have been attained, which was in view " when it was said that the defender's city cess should be paid in respect of " the houses belonging to him, if it had been merely declared (as it is declared " in the charter) that the cess due for his annexed property should be levied

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" view; refuse the desire of the reclaiming note, and " decern; find additional expenses due, allow an account " to be given in, and remit the same, when lodged, to " the auditor to tax, and report."

" in the same way with all the other cess within the royalty. It is also to " be observed, that though the cess is said to be levied according to the esti- " mated rental of the houses, there is no doubt that this includes also the " estimated rental or value of the areas on which they stand, or which may " be possessed along with them. The owner of a house is always the owner " of the area also, (for one who builds a house on ground held on lease, will " be only a tenant of the house also,) and undoubtedly the additional value " (or rent) which a house acquires, by occupying a large area, or even by " having a sunk area or garden beyond the walls, is always taken into view " in fixing the proportion in which it shall be assessed for the city cess.

" The case is, in all respects, the same as the rogue-money and road- " money, which the defender must continue to pay to the county without " abatement, for his annexed property, and the assessments for watching and " paving, which he must also pay, over and above, for similar objects within " the city. There is no partition here of the original charge, but a clear " duplication of them, exactly as objectionable, in point of principle, as the " double assessment for the poor.

" And, finally, there is the same duplication, without division or relief, of " what he must pay for the support of the clergyman in the two parishes. " He must continue to pay stipend (and additional stipend on every new " augmentation) to the minister of South Leith, exactly as if his property " had not been annexed to the royalty, and he must also pay, over and above, " his full proportion of the annuity tax for the clergy of the city, exactly as " if he had never been liable for any thing beyond it. The whole analogy " and scope of the act, therefore, is in favour of the construction, if it were " otherwise doubtful, upon the words which would subject him to a similar " duplication as to the assessments for the poor.

" But it does not appear to the Lord Ordinary that the construction is " doubtful on the words; and, on the contrary, he thinks there are expres- " sions in both the leading clauses on which the question depends, which " entirely exclude that suggested by the defender.

" Take first the clauses containing the defender's liability to South Leith, " which is more immediately the ruling clause in the present question. It " is there enacted, that notwithstanding the disjunction of his property from " that parish, and its annexation pro toto to another, he shall yet 'remain " 'liable and be subjected to parochial burdens, in the same manner as if this " 'act had never passed.' Now, in what manner was he liable to poor-assess- " ments in South Leith before the passing of the act? Was it only for the " naked solum which belonged to him within the parish, or for the complex " value of the solum, and all that was built or expended upon it, with the " effect of increasing its rental or value? It is supposed there can be no " doubt that it was for the last. Upon principle, the assessment should " always be according to the real rent, and it is to be made upon every heri-

The Appellant. — Property can be liable but to one parish in assessment for the poor; that is the general law, Dunlop's Paroch. Law, p. 230, Hill v. M'Craw, F. C. 44—to make it liable to two parishes, will require ex-

" table subject capable of yielding rent,—half upon the owner and half on " the occupant, the whole falling at last and substantially on the owner. The " defender, therefore, paid poor money to South Leith before the annexation, " not merely for this ground, but for the houses that stood on it; and if all " additional houses since built, had been so built without any such annexa- " tion, he would have been liable for an additional assessment in this his " original parish, in proportion to their value. But if the act has distinctly " provided, that he shall continue to pay exactly as if there had been no " annexation, how can he now propose to withdraw the value of those houses " (and, indeed, of all the houses previously existing on the lands, for there can " be no distinction,) from the claims of the present pursuer. To say that, " but for the annexation, there would have been no such houses, is but a sur- " mise in fact, or a suggestion in equity, and no ground for defeating the " clear words of a statute. But even in equity, it is a suggestion of very " little weight, since it is plain enough that the close proximity of the lands " to the original royalty, and the rapid increase of the town, would have pro- " duced just as much building in that quarter, although there had been no " annexation, or more indeed, if the poor-rates had any thing to do with the " matter, as they would then have been liable but to a single, instead of a " double burden. It is plainly impossible, therefore, now for the first time, " to restrict the Leith assessments to the naked solum, without entirely dis- " regarding the plain words of the statute, which declare that it shall be " continued in the same manner as if the act making the annexation had " never passed.

" What has now been said is enough to settle this question, since it is the " claim of the Leith collector only that is now to be disposed of. But the " words of the leading clause subjecting the annexed property to the Edin- " burgh assessment, are at least as strong and unequivocal. They provide " that the stent-master and collectors shall 'levy from the proprietors and " 'possessors of all such houses as are now built, or shall hereafter be built " 'on the annexed property, an equal proportion of the poors'-money, &c., " 'payable by the rest of the city of Edinburgh, in the same way and manner " 'as the same are now levied within the present royalty,' and by the terms " of the original charter to the author of the defender, engrossed and repeated " in the statute, it is provided that all such houses (that is, the owners and " possessors of such houses) shall be liable to 'pay the said burdens and tax- " 'ations which the other inhabitants of the city are liable to pay.' Now, " though it appears that lands within the royalty, if not occupied with houses, " or let as pertinents along with a house, are not subject to assessment in " this city, it is believed that it was never before surmised that the value or " rent of the ground on which the houses actually stand, was deducted from " the estimated rentals, according to which this assessment is imposed. The " fair annual value of the house, including its site and pertinents, is estimated

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Appellant's Argument.

press enactment. The 10th section gives power to the magistrates and council of Edinburgh to levy certain rates from the annexed lands, among which "poors'-money," is enumerated. This plainly gives the right of assessment to the city. On the other hand, the 16th section,

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" by the stent-masters, merely as a criterion of the means and substance of " the owner or inhabitant, and in this view, the idea of distinguishing " between the fair value or rent of the house itself, and the plot on which it " stands, and of deducting the one from the other, must appear altogether " absurd and preposterous. No such thing, most assuredly, is ever thought " of in practice, either when a tenant agrees to pay an actual rent, or a stent- " master to settle a fair value. In truth, as already observed, no man can, " strictly speaking, be the proprietor of a whole house, who is not also the " proprietor of the ground it covers. And as this act expressly subjects both " proprietors and occupants to poor-assessments, (however they may be levied, " in practice,) it would seem impossible to distinguish between his proprietor- " ship of the ground and of the house which is built on it, while the condition " of the tenant or occupant would be equally inextricable. Those who occupy " the house must necessarily occupy the site of the house, and it can by no " possibility have any other occupant. Though the fact be so, however, they " are said, in common parlance, to be the owners and occupiers of a house " only, and the provisions of the statute are merely accommodated to this " mode of speaking. The question is indeed of little practical interest to " Edinburgh, since their collector can desire nothing more than that he should " be allowed to assess the owners and occupants in the extended royalty, 'in " 'the same way and manner' in which he assesses those in the old royalty. " But it appears to be quite plain that he cannot do this if he allows any " deduction to be made from the estimated or stented value of the houses and " sites actually occupied in the former, which unquestionably is not allowed " in the latter.

" The case would certainly be a hard one for the defender, if he could be " conceived not to have been aware of the meaning and effect of the contract " into which his author entered by accepting of his feu-charter, and consenting " to the statute in question. But it does not appear how he could have failed " to be aware of this, and volenti non fit injuria. He has cause certainly to " regret that he did not take the opportunity afforded by the proceeding in " 1809, to come to some such arrangement as was made by the statute of " that year with the heritors in a similar situation in the parish of St Cuth- " berts, the benefit of which the magistrates could scarcely have refused upon " equal terms, to him and the other annexed heritors of South Leith. The " necessity of the interposition of Parliament, however, in order to get such " an arrangement, goes strongly to confirm the decision which has now been " given as to those who are not within its advantage, as does also the late " judgment in the case of Burns against the Magistrates of Glasgow, in 1837. " But upon the merits of the case itself the Lord Ordinary has no serious " doubt. Expenses, it is thought, can scarcely be refused to a successful " collector of poors'-money. F. J."

Appellant's Argument.

while it declares that the lands disjoined from South Leith, and the heritors thereof, shall remain liable to "minister's stipend and other parochial burdens," contains nothing express as to "poors'-money," — all that can be relied on then is an inference from the words "parochial burdens." Inference, however, will not do; and even if it could, though poors'-money be a "parochial burden," the expression is preceded by the words "minister's stipend and other," plainly shewing, that by parochial burden was meant other burdens, ejusdem generis, with minister's stipend, such as repairs of the church, and of the manse, schoolmaster's salary, and the like. Moreover, these are burdens on the land, while poors'-rate is personal in respect of occupancy; and, accordingly, the 16th section makes the "lands" of the "heritors" continue liable for them, while the 10th section gives the right of assessment from "the "proprietors or possessors" of houses. But farther, the 16th section does not declare that the lands and heritors shall remain liable to the "parish of South "Leith." The liability is left quite general as to whose benefit it is to be for, and the meaning plainly was in reference to the lands spoken of, in the section of which, those in question formed a part. By that 2d section, the lands used as country residences were to be exempt from city burdens while so used; and the 16th section was intended to declare, that this exemption should not extend to minister's stipend and other parochial burdens proper upon lands used in this way.

II. But, at all events, if the city and the parish of South Leith are both entitled to make an assessment, that by the city must, under the terms of the 10th section, be in respect of the houses, and that by the

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parish of South Leith can, under the terms of the 16th section, be only in respect of the solum, without regard to the increased value by reason of the houses. This is evident from the terms of the sections themselves, from the language used in other statutes, when both land and houses are mentioned, such as 25 Geo. III. cap. 28, section 53; 31 Geo. III. cap. 57, section 9, the language in the two being different — that in the one being applicable to persons in respect of their occupation of houses, and that in the other being applicable to lands; for minister's stipend is payable out of the teind, which is a charge upon land only. This is evident farthermore from the terms of the 12th section, where the distinction between land and houses is obviously pointed out, and by the terms of 25 Geo. III. cap. 28, section 53; 31 Geo. III. cap. 57, section 9. Any other construction of section 16 would be impracticable, as the poor's-rate is leviable one half from the proprietor, and the other from the actual occupant or inhabitant; but the tenants, when charged for their proportion, which has not yet been done, have the ready answer, that they are not inhabitants of the parish of South Leith, but by the 37 Geo. III. have become inhabitants of St Giles', in the city of Edinburgh. This distinction between a rate upon the solum, and upon the houses built upon it, is not novel, but has been recognized in Bruce, 28th November, 1810, 16 F. C. 54; Commissioners of Barracks v. Milroy, 21st November, 1815, 19 F. C. 28; and Officers of Ordnance, 14th June, 1825, 4 S. 89; Rox v. St Mary Leicester, 6 M. and S. 400; Rox v. Regent's Canal, 6 B. and C. 720; Sprot v. Heriot's Hospital, 7 S. and D. 682.

The Respondents. — I. "Annuity," not teinds, is

the fund out of which the clergy of Edinburgh are paid; and that a double assessment was intended by the 10th and 16th sections in regard to poors'-rate, is apparent not only from the terms of the sections themselves, but from the circumstance, that a liability for "annuity" is declared by the 10th, and for "minister's stipend" by the 16th, making a double assessment in this case beyond cavil. As to any allegation of hardship, it cannot enter into the consideration of the case; and if it could, it is answered by the circumstance, that the liability to Edinburgh is part of the contract under which the appellant bought his land, and that exemption from liability to South Leith was no part of that contract.

Respondent's Argument.

II. By the terms of the 16th section, the appellant is to remain liable for parochial burdens, as if the act had never passed. And in the parish of South Leith, which is a landward parish, previous to, and since the statute, no distinction has ever been made between the value of a house, and of the ground on which it stands. The assessment is laid on the real rent, is paid one half by landlord, and the other half by tenant; whereas, in Edinburgh, as in all burghs, the assessment is made upon the house, and demanded from the actual occupant, without regard to proprietorship or tenancy, and this will sufficiently account for the difference of phraseology between sections 10 and 16.

LORD CHANCELLOR.—My Lords, I think the interlocutors appealed from in this case, ought to be affirmed. The question is, Whether the lands of the appellant are liable to the payment of the poor-rate to the parish of South Leith, which depends altogether upon the construction of the act of 7 George 3. cap. 27, under which

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they have been taken within the royalty of the city of Edinburgh. The lands were situate within the parish of South Leith, and by section 10, all houses built, and to be built, upon the lands in question, are made subject to an equal portion of the cess, annuity, poor-money, and watch money payable by the city of Edinburgh, as the same was then levied within the then royalty. By section 12, the land, besides the cess to be levied by the collector of the town, for, and in respect of the houses and buildings, is to remain liable and be subjected to a rateable proportion of the cess and land tax, and other public taxes imposed, or to be imposed, on the shire of Edinburgh, for, or in respect of the ground, to be levied in the same manner as formerly. By section 15, the lands are declared to be, and are for ever after, disjoined from the parish of South Leith, and are thereby annexed to the parish of St Giles' within the city of Edinburgh, and by section 16, it is declared, that the lands thereby disjoined from the parish of South Leith, and the heritors thereof, shall remain liable and shall be subjected to the minister's stipends and other parochial burdens, and that the tithes payable out of the lands thereby annexed, shall be, and the same are thereby, saved and reserved to the true owners thereof, in the same manner as if the act had never passed, and by section 18, all rights and interests, (other than the extension of the royalty,) of all person, or persons, which they had, have, or may have, in the lands thereby annexed are saved. So that the lands in question are disjoined from South Leith by one section, which, if there had been no other provision, would have exempted them from the liability to pay poor-money to the parish; but by another section, they are to remain liable to the parochial burdens of South Leith, as if the act had never passed. If,

therefore, the poor-money be a parochial burden, and if the property in question would have been liable to such poor-money if that act had never passed, the case comes within the very terms of the act.

It was argued, that the poor-rate is not a parochial burden. It is a rate to be paid by the heritors or owners, and by the occupiers of lands within the parish. It is therefore parochial, and that it is a burden, will not be disputed; and the 16th section accurately describes it as a parochial burden, to which the lands and the heritors thereof, were, before the passing of the act, liable, and were to remain so, after it had passed.

If the act had never passed, the lands in question, and any houses built upon them, would have been liable to this rate. If the same lands, and the houses built upon them, are not now liable to it, how is the provision of the act carried out, which declares, that the lands shall remain liable to it in the same manner as if the act had never passed?

The argument, however, that though the land may be liable, the houses are not so, does not require this comment upon the terms of the act to refute it. A distinct parliamentary enactment might, no doubt, subject the land upon which a house is built, and the house itself, to different rules and liabilities. But, in this case, there is no such distinct parliamentary enactment, and the general rule of law must therefore prevail, which considers the house as an accretion to, and as part of, the land on which it is built. This appears to me to be so clearly the true construction of the act, that I cannot but think that the question would not have been raised, had it not been for the case of M'Craw v. Cunningham, reported in 2d Shaw and M'Lean, 773, upon which there was a great difference of opinion. The

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question in that case did not turn upon the same act of parliament as the present, but upon an act of 54th George III. chapter 170, under which the lands there in question were included in the royalty of the city of Edinburgh. It is true that the act declared, that the extension of the royalty over the lands there in question, was made under all the clauses, provisions, declarations, exemptions, and reservations, in favour of his Majesty and others, which are specified and contained in the act of 7th George III. Whether that decision was right, as to the extent to which the latter act incorporated the provisions of the former, is not material; because it was assumed, and, indeed, the decision proceeded upon that ground, that the provisions of the act of 7th George III. as to disjoining the lands from South Leith, and holding them nevertheless liable to the parochial burdens of that parish, did not apply to the lands taken into the royalty under the 54th George III.; and in deciding that case, the Judges of the Court of Session assumed, that if the case had been under the 7th of George III. the lands would have been clearly liable to the parochial burdens of South Leith; and I do not find any thing in the speech of the noble and learned Lord, who moved the judgment of this House, throwing any doubt upon that proposition.

The case of Burns v. Ewen and the Magistrates of Glasgow, is also inapplicable to the present. That case arose under another act of parliament, which separated the lands there in question, from the parish of which they had formed part; but there was no provision as to their remaining liable to the parochial burdens of that parish. The question was, whether such liability was to be inferred from a clause compelling the city of Glasgow to relieve the occupiers of poor-rates, payable by

them, as having been part of the parish before the passing of the act. The holding that, under such circumstances, the liability continued, would be a strong authority in favour of the respondent in the present case; but the holding that it did not, would be no authority in favour of the appellant, who has not an inference to contend with, to be deduced from other provisions of the act, but a positive enactment, as to the construction of which I do not see any room for doubt. I am therefore of opinion that the interlocutors appealed from are correct, and I move your Lordships to affirm them with costs.

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Ordered and Adjudged, That the petition and appeal be dismissed this House, and that the interlocutors therein complained of be affirmed with costs.

Judgment of Court.

ARCHD. GRAHAM — SPOTTISWOOD and ROBERTSON, Agents.