[30th May, 1845.]

JAMES REDDIE and others, acting in name and behalf of the Parliamentary Trustees of the river Clyde, *Appellants.*

SAMUEL HIGGINBOTHAM, surviving partner of Messrs. Todd and Higginbotham, *Respondent.*

Sale.—Vendor and Purchaser.—Where a sale of lands is compulsory under the powers of an Act of Parliament, the purchaser must pay the expence of the conveyance, unless the statute expressly throws it on the vendor.

THE appellants were trustees, having certain powers conferred upon them by a variety of statutes for the purpose of improving the navigation of the river Clyde.

The 17th section of the 3rd and 4th Victoria, c. 118, enacted "That whereas it is essential to the execution of the works "hereby authorized on the south side of the said harbour, "for enlarging the same, that the said trustees should acquire "and take a portion of the works at Springfield belonging to the "company of Charles Todd and Higginbotham, whereby the "said works will be severed and rendered of little use, the said "trustees shall be bound, and they are hereby required and "authorized to purchase the whole of the said works belonging "to the said company, with the ground on which the same "stand, and the ground between the buildings of the works, and "and also the ground lying between the same and the river, "belonging to, or claimed by the said company, or by the "representatives of Charles Todd, as an individual, and within "six months after the date of this Act, unless the said parties "shall consent, by writing under their hands, to prolong the "said period, to ascertain, or cause to be ascertained, in the "manner provided by this Act, the value of said works and

" grounds, and the amount of compensation to be paid to the " said Charles Todd and Higginbotham, or the representatives of " Charles Todd, on account of the same being required and " taken from them for the purposes of this Act, and to pay such " value and amount of compensation, with interest thereon at " the rate of *4l.* per centum per annum, from the expiration of " six months after the date hereof, till paid, to the said parties " respectively, or their assignees, in four equal instalments of " twelve, eighteen, twenty-four, and thirty months respectively, " after the date hereof; provided always, that, if it should be " necessary to ascertain such value and amount of compensation, " by jury trial, the jury or juries to be empannelled for that pur- " pose, shall consist of persons qualified as Commissioners of " Supply, in the counties of Lanark or Renfrew, or one or " other of them: provided also, that the said respective parties " shall be entitled to the occupation and use of the said works " and grounds, as tenants of the said trustees, for such period " as they may require the same, not exceeding two years and " six months from the date hereof, at the yearly rent of *4l.* per " centum of the value and amount of compensation ascertained " as aforesaid to be due to them respectively."

The 90th section empowered persons under legal disability to convey to the trustees, and gave a special form of conveyance under which it should be lawful for them so to do.

The 94th section regulated the manner in which the value of premises to be taken under the powers of the statute, was to be ascertained by the verdict of a jury.

The 96th section enacted, " that, in every case in which the " verdict of a jury shall be given for the same or a greater sum " than shall have been previously offered by the said trustees, " for the purchase of any lands or heritages to be used or taken " by them for the purposes of this Act, all the costs, charges, " and expenses of summoning such jury, and of witnesses, and " of counsel, and of the trial, and of the bond hereinafter

" mentioned, to be given by the party requiring such jury to be " summoned, shall be defrayed by the said trustees, and such " costs, charges, and expenses shall be settled and determined " by such sheriff."

The 99th section declared, that " it should be lawful for the " said trustees, and their agents, workmen, and servants, imme- " diately to enter, or, if they have entered, to continue upon " such lands or heritages respectively, and then and thereupon " such lands or heritages, together with the yearly profits " thereof, and all the estate, use, trust and interest of any person " therein, shall from thenceforth be vested in and become the " sole property of the trustees and their successors, to and for " the purposes of this Act for ever, and such payment, tender, " deposit, or investment, shall not only bar all title, claim, " interest and demand of the person entitled to or interested in " such lands or other heritages, but shall also extend to and be " deemed and construed to bar the courtesy of the husband " and terce of the wife of every such person, and all other " right, title, or interest of every other person whomsoever " thereon."

The appellants took proceedings for having the value of the respondent's premises ascertained, and the jury summoned for that purpose found by their verdict that the appellants were liable to the respondent, as representing Todd and Higginbotham, in the sum of 43,733*l.* as the value of the premises taken, " and as compensation for loss and damage by the re- " moval of their works, and the loss and damage their trade and " business will sustain thereby."

The sum so found to be due was, under the 17th section of the statute, payable in four equal instalments. When the first of these became due the amount was paid, and it was then mutually arranged that 32,799*l.* 15*s.*, the balance, should remain a burden on the premises. A disposition under this burden was then executed by the respondent in favour of the trustees, the

REDDIE *v.* HIGGINBOTHAM.—30th May, 1845.

expense of which, including the stamp affixed to it, amounted to upwards of 550*l*. It was mutually alleged by the parties that this disposition was necessary to and was required by the other, but it was admitted by both that, according to the practice of the profession in voluntary sales, the expense of the conveyance is borne by the seller. In these circumstances the respondent brought an action against the appellants for payment of the expenses of the conveyance which had been paid by him to his solicitors.

The appellants pleaded in defence, that the pursuer's claim was not authorized by the statute, which confined him to the sum awarded by the jury, and that it was excluded by the practice of conveyancers, which imposed the expense upon him as the seller. The respondent pleaded in answer, that under the statute he was entitled to receive full indemnification without any deduction whatever, and that as the sale was compulsory, the expense of the conveyance could not be laid upon him.

The Lord Ordinary, (*Murray*,) on 13th January, 1843, sustained the defences and assoilzied the appellants, subjoining to his interlocutor the following note:—

"NOTE.—Both parties are agreed that the statute contains "no clause that provides for the payment of the conveyance in "question. It is therefore necessary to resort to some principle, "in order to decide how the expense in question should be paid. "If it had been a voluntary sale, the seller would, according to "ordinary practice, have defrayed the expense of the conveyance. "But the pursuer contends, that as it was a compulsory sale by "Act of Parliament, he had not the power of fixing his own price, "as voluntary sellers have, and that the price awarded by the jury "is to be regarded as mere compensation, and nothing more.

"It does not appear to the Lord Ordinary that he can, on the "ground that the sale was effected through the intervention of an "Act of Parliament, decide this matter otherwise than he would "have done, if the sale had been contracted for. A jury is en-

REDDIE *v.* HIGGINBOTHAM.—30th May, 1845.

"titled, in fixing the price, to take into view that the sale is not "voluntary, but enforced by Act of Parliament; and it is believed "they generally do so, and give at least as high a price as could "be obtained by any voluntary sale. But the price having been "fixed, he sees no other principle on which the case can be de- "termined, than viewing it as one in which there is no provision "as to how the expense of the conveyance shall be paid, and that "therefore it falls under the general rule, which attaches the pay- "ment of the conveyance to the seller. Whether the value fixed "in this case was as ample as it should have been, or not, the "Lord Ordinary has not even attempted to conjecture. But, on "general principles, he presumes it must have been as high as "could be obtained by any voluntary sale."

The respondent reclaimed to the Inner House, which, on 27th June, 1843, altered the Lord Ordinary's interlocutor, repelled the defences, and decerned for payment of 511*l.* as the expense of the conveyance, with interest and expenses.

Mr. Bethel and *Mr. W. L. Russell* for the Appellants.—By the 17th section the appellants were compellable to take the whole of the respondent's premises, whether they required them or not. In this respect they were in a worse position than purchasers under statutory powers usually are—they were in some respects involuntary purchasers, though in others the respondents were involuntary sellers. In cases of voluntary purchase the rule in Scotland invariably is, that the vendor pays the costs of conveyance. For the case of involuntary sale, no provision is made by law. The claim in the present instance, therefore, for the costs of the conveyance, must be founded either upon express contract, or upon the terms of the statute. No evidence has been given of any contract to pay them, and as to the statute, the only conditions by which the appellants were to be bound, are fixed by the 11th section which gives right to take possession, "indemnification being always made in manner hereinafter men-

"tioned," no mention is made of a conveyance in the other clauses, and therefore there might, or might not be a conveyance, except for the 17th sect. which was introduced by the respondents themselves—this made a conveyance necessary, but it is silent as to the expenses of it. The probability is, that the party represented to the jury that a conveyance would be part of the taking under the 17th sect., and that he would have to pay for it, and that the expense was taken into consideration by the jury at awarding the compensation; what the jury might do, they must be presumed to have done Manning *v.* East. Co. Railway, 12 *Mees* & *W.*, 248; but whether the matter were altogether omitted before the jury or not is immaterial, the statute is the rule between the parties, and if it were intended by it to give these expenses, it has not been done. It is *casus improvisus*, therefore, which no Court can supply, for it is not competent to raise the claim by implication of any contract to pay the expense. King *v.* Gardner, 6 *Ad.* & *El.* 112; Queen *v.* Sh. of Warwick, 2 *Rail. Cases*, 681; *Exparte* Turner, 1 *Wil.* p. 305; *Exparte* Passmore, 1 *Yo.* & *Co.* 75.

Mr. Andrews and *Mr. Stuart* for the Respondents.

LORD CAMPBELL.—My Lords, in this case I believe it is not necessary to trouble the learned counsel for the respondents to address you. It seems to me, and I understand that my two noble and learned friends are of the same opinion, that the interlocutor of the second division of the Court of Session ought to be affirmed. There is no doubt in this case, my Lords, that the rights of the parties are to be decided entirely according to the Act of Parliament—we are to put a just construction upon the Act of Parliament—we are not to interpolate anything into it; and, however deficient its provisions may be, it is our duty as a Court of Justice merely to interpret it. But, looking to the Act of Parliament, I am clearly of opinion that the Lord Ordinary

miscarried, and that his interlocutor was properly reversed by the Second Division.

My Lords, this I think must clearly be taken to be a compulsory sale. The statute makes a contract between parties, and we are to put an interpretation upon that contract, and, according to the contract, it appears quite clear to me that the owners of the property were to grant a conveyance to the trustees. That is the clear spirit of the whole of the proceedings arising between the parties. Then, under these circumstances, the question arises upon whom was to fall the expense of preparing that conveyance, and I think there can be no doubt in the world that that expense must be borne by the trustees. It would be quite monstrous to say that that expense should be borne by the owners of the property which was to be taken, for in many cases, if it were so, where small slips of property are taken, there might be a greater sum to be paid by the owner of the property, than he would receive by way of compensation for his land.

Then, it being assumed that the expense of the conveyance must, in some shape or another be paid by the trustees, could that be taken into consideration by the jury? If the appellants be right, it must be supposed that it was taken into consideration by the jury in assessing the damages, and that mode of argument has very properly been adopted by the learned counsel for the appellants; for it appears to me to be the only mode of reasoning with any colour of justice, if upon a just interpretation of the 17th sect. the jury ought to have taken this into consideration. I think there is quite enough to show that the proper mode in which the owner of the property should obtain the expense of the conveyance, is by making it an item of the contract, and not by afterwards bringing an action for it. But when I look to the language of the 17th sect. I think it will not bear that construction, because it says, "the value of said works and grounds, and the amount of compensation to be paid to the said Charles Todd and Higginbotham, or representatives of Charles Todd, on

account of the same, being required and taken from them for the purposes of this Act." I do not think that that at all includes the expense of the conveyance, which could not then be ascertained. The amount of the stamp duty might be made matter of calculation, but the number and expense of the searches in the Register-office, the copies of deeds, and the consultations and opinions of counsel, the preparation and disposition of all those things could not by possibility have been made the subject of proof before the jury; and I do not think the jury would have been at all justified in taking that amount of expense into consideration. It is quite clear that the jury in this instance did not do so, and I think that the Sheriff who presided must be supposed to have directed them that they had no power to do so.

My Lords, if that be so, then the only mode in which the owners of the property can have the indemnification which the statute must be supposed to provide for them, is that when the disposition is to be executed, it shall be executed at the expense of the trustees. Looking to the 7th Article in the Condescendence, and the answer to it, I think that the fair result is, that the trustees asked for this disposition and the parties then came to an arrangement that the disposition should be executed.

But, my Lords, I do not think that that is very material, because I should apprehend that upon a just construction of of the Act of Parliament, the trustees were parties who were to have a disposition made to them, either at that moment, or at some subsequent time. If they were to enter into possession upon payment of the purchase money, still they had a right to make their title complete, by having a written conveyance executed by the former owners. Then at whose expense is that to be done? I think that the obligation is cast by the statute upon the former owner to execute such a disposition; I think that that is compulsory, but still it may be under an implied condition, that the expense shall be paid by the trustees. It is allowed that it would be so in England. Mr. Bethel allowed,

as he was bound to do, that in England it would be compulsory upon the former owners to execute the conveyance, but then it would be compulsory upon them to do so, on the condition being fulfilled that the disposition should be prepared at the expense of the party in whose favour it was to be executed.

Then, my Lords, the whole turns upon the difference between the custom in England and the custom in Scotland; if this property had been situated in England, the practice in England being that the purchaser shall be at the expense of the deed of conveyance, it is allowed that although the former owners would be compellable to execute the conveyance, it would be at the expense of the purchaser, it resolves itself then into this: is there any difference, because there is a practice in Scotland, that where there is a voluntary contract for purchase and sale, it is usual that the expense of the disposition should be paid by the vendor? My Lords, that custom cannot be at all supposed to be introduced into this Act of Parliament, that custom is only applicable to voluntary contracts between the parties, and not to a case of this kind where there is a compulsory sale, and where there is an indemnification intended, and where without the expense being thrown upon the purchaser, it would be quite impossible in many cases that that indemnification should be complete. For these reasons, I am of opinion that the law raises a promise on the part of the trustees, that they should pay for the expense of the conveyance which was to be executed in their favour.

This case differs totally from the King *v.* Gardner, and the other case of the Queen *v.* the Sheriff of Warwick, which were referred to, because there the only question which arose was as to the amount of the costs that were to be recovered, and it was only *qua* costs that they could be recovered; unless the Act of Parliament provided expressly and directly that certain sums were to be recovered as costs, they could not be recovered as costs. But here the case rests upon the ground that there is an

implied condition that this expense should be paid by the purchaser. It clearly would be so in England; and although in Scotland there is a practice that in the case of voluntary contracts of sale and purchase, that expense falls upon the vendor, that practice cannot be supposed to be applied to a compulsory sale under the Act of Parliament.

For these reasons, my Lords, I have come to the conclusion that the interlocutor of the Lord Ordinary was erroneous; that it was properly reversed by the second division; and that the interlocutor which has been appealed from ought to be affirmed with costs.

LORD BROUGHAM.—My Lords, I take exactly the same view of this case as my noble and learned friend. Now, I am very far from denying that the legislature might so have enacted as to cast the expense of the conveyance upon the seller, though compelled by the force of the act to sell. But then, I am equally clear, that in order to be of opinion that the act has cast that expense upon the seller—(a thing so absurd—a thing so contrary to reason and justice in itself—a thing, if I may so speak, so violent)—it must be clearly shown, there must be no doubt about it. It must not be left to inference or implication, it must be clear and plain, that the legislature so meant. The legislature, being supreme, may do any act it chooses, and it would be indecent to say that any act which the legislature, the supreme power of the State, did, was either unjust, unreasonable, or absurd. If I had found the legislature saying in so many words, or by perfectly clear and necessary inference from the words which they employed, that the seller, though compelled to sell, should pay the expense of the conveyance of the property to the purchaser, who was authorized by the act to buy for his own benefit, and not for the benefit of the seller. As my noble and learned friend has very justly remarked, it shows still more clearly the monstrous absurdity

and injustice of the construction put upon the act, or rather the inference raised that the smallest piece of land in point of value, and for which the jury must have given the smallest compensation, might have led to a conveyance attended by this very expense. There might be the same covenants, the same assurance to the purchaser from the seller in that case as in this, at an expense of five or six hundred pounds, four-fifths of which would go as stamp duty to the Government. Yet, even in that case—absurd, unreasonable, unjust and oppressive as it might be said to be, and properly said to be—if the legislature had actually used the words, then we must have submitted to the supreme power of the State, and it would not have been decorous to say, "You have done an unjust, unreasonable, or absurd thing." But then it must be very clear that it has done so; and is that clear in this case? It is confessed that the legislature has not said so in words, it is a mere matter of inference from the custom in Scotland being different from the practice in England, the custom in Scotland being, that unless a stipulation is made to the contrary, the seller pays the expense of the conveyance. But does that apply to a compulsory sale? For, unless the rule applies to a compulsory sale, we have no right to assume that the legislature would adopt it unless it has used express terms to show such adoption. I apprehend it does not follow, and that we have no right to assume that a rule which is intelligible enough, and operates no mischief in the case of a voluntary sale, was intended by the legislature to be adopted by them to compel a party who is bound to sell to bear the expense of the conveyance.

No doubt our practice seems a more reasonable one than that prevailing in Scotland, namely, that unless a stipulation is made to the contrary, the seller does not pay the expense of the conveyance. The purchaser prepares the conveyance for his own security, and pays for it. In England the mortgagee or lender prepares the security, as the purchaser would do, but the

mortgagor or borrower pays for it. In Scotland it turns out that the seller both prepares the conveyance, as I understand the practice, and pays for it. I do not quite see that that is a very rational arrangement, unless there is some reason for it, which I do not perceive, because I should say that the seller is not the person who can be so safely trusted in preparing a good title for the purchaser, as the purchaser himself would be; and it is no reason, because he pays for it that he should prepare it, any more than it is a reason with us, that because the borrower, who, like the purchaser, pays for the conveyance of the mortgage to the lender of the money, should prepare the deed. The mortgagee prepares the deed, though he does not pay for it. In Scotland, I should say, upon principle, that if the seller is to pay for the deed, the purchaser ought to see that he gives him a good title, and the purchaser ought to prepare it. I think that would be the best course to take, and I do not quite see how the present rule operates in practice. Suppose I am a purchaser, and the vendor pays the expense of my conveyance, I may say, "This is not right and sufficient, I must have this and that search. I must have this proof of decease. I must have that proof of people being out of the way; and between the various claimants I must be satisfied that I have a good title." Then I may send it back and have it again prepared and revised, and added to and improved for my security, but at the vendor's expense. That is what strikes me, as a person ignorant in Scotch practice, to be the natural and rational observation that arises. But, however, nobody doubts the fact. It is not denied that, according to the Scotch practice, the seller pays the expense and prepares the conveyance. The question is, has the legislature adopted that rule in this totally different case of a compulsory sale? The act is silent; and I am not at liberty to raise any such inference as that the legislature has adopted such a custom.

Now, as to what is said of those cases of the King *v.* Gard-

ner, and The Queen *v.* The Sheriff of Warwick, I agree with my noble and learned friend, that they really have no bearing upon the present case at all, because there it was a question of costs to be paid. The question was, whether a certain amount of costs, or a certain other amount of costs, was to be paid; and as I understand the case, which I have had an opportunity during the argument of looking into, it was not left to inference or implication from what was done, but the legislature had actually dealt with the subject of the costs. It was argued on one side, that it was very unjust and unreasonable, and hard upon the parties not to give them so much more than was allowed; but the Court said, "We cannot do anything, the legislature is silent." But this case is totally different. It is admitted on all hands here, that the compensation awarded by the jury, did not touch the expense of the conveyance. It is admitted on all hands, that that compensation could not touch the expense of the conveyance—for, as I threw out early in the argument, how could they tell what the expense of the conveyance was, until after it was ascertained? It is also admitted that no evidence whatever was offered upon the point. Consequently there is every reason to believe that the jury had not it at all under their consideration; and from looking at the words of the act, I do not think they authorize the jury to take it into their consideration.

Therefore it appears to me perfectly clear, I own, that in this case the interlocutor of the Court of Session was right in altering that of the Lord Ordinary. I must observe, before concluding, that I have no manner of doubt that the party here had a right to a conveyance. It would be monstrous to say that he was to take only that conveyance by force of the Act of Parliament, which would give him no written title. He had a right to a conveyance under the Act; and if he did not get the conveyance, he might have applied for it under the Act. I take it for granted that the clause in the Act is merely an

REDDIE *v.* HIGGINBOTHAM.—30th May, 1845.

anxious provision, as it were, to give easy possession; but the right of the purchaser to the conveyance being under the Act, it was compulsory upon the seller, and therefore the common rule of the seller paying for the conveyance does not apply.

Upon the whole, therefore, I am of opinion that the miscarriage was on the part of the Lord Ordinary, and that the interlocutor of the Court altering it, ought to be affirmed, with costs.

LORD COTTENHAM.—My Lords, I think there is very considerable embarrassment in this case, from the very imperfect provisions of the Act, and from the rule prevailing in Scotland being diametrically opposite to the rule in this country, namely, that in ordinary cases of contract between party and party, the seller pays the expense of the conveyance. The first question is, whether that rule is applicable to a case of compulsory sale; because if this is to be treated and considered as a compulsory sale, I think it is perfectly clear, from all the provisions of the act, that the case of the appellant cannot be supported.

Now, in an ordinary sale, where parties agree between themselves as to the purchase-money, if the rule is known, it is not very material what way it exists, because the parties arrange amongst themselves as to the money to be paid, according to the rule prevailing one way or the other. If the seller has to pay the expense of the conveyance, of course he expects something more for the estate, and if the purchaser has to pay the expense of the conveyance, he expects to give something less, because the seller is relieved from the expense; therefore it is not very material, where the parties are agreed amongst themselves, as to the sum to be paid. But when you come by Act of Parliament, and compel a party to part with his property, and you propose to indemnify that party against all loss which he may sustain by being so compelled to part with his property, the rule certainly has no application. It would be obviously

productive of great injustice, if in such a case the owner of an estate were compelled to part with it, and to pay the expense of conveying it to the person to whom, under the Act, he was bound to convey it. It appears to me, therefore, that although one certainly would have been very glad if authority had been found for dealing with this subject, the reason for the rule, which applies in ordinary cases, cannot possibly be applied in the present.

Then we must go to the Act and see whether that gives any light. And now that the expense of the conveyance is not expressly provided for is admitted on all hands. If it had been a subject matter for the consideration of the jury, or I would say if it might have been made a subject matter for the consideration of the jury, that would have gone a great way towards establishing the case of the appellant, but I cannot read the clause which has been so much commented upon, namely, the 17th clause, without being perfectly satisfied that the framer of that clause and the legislature in enacting that clause, had no such subject matter in contemplation at all. What the jury are to inquire into and assess is, "The value of the works and grounds, and the amount of compensation to be paid on account of the same being required and taken for the purposes of the Act." Now, if the jury were told by the presiding officer, that they were to set a value upon the injury that the party would sustain on account of the works and grounds being "required and taken for the purposes of the Act," would it ever enter into their contemplation that they were to assess the amount of what the conveyance would come to? It is quite obvious that it was meant that they were not only to assess the value of the works and grounds, but to compensate the party for the inconvenience and loss which he would sustain by those grounds and works being taken from him. Whether it is a manufactory, or whatever the nature of the works may be, undoubtedly the taking of them would be a great injury to the party occupying them, and

carrying on his business there, beyond the market price of the works and grounds to any other person. That obviously is what the legislature intended by this provision, and that would appear to be the natural course to be adopted. We have the verdict before us, and the grounds of that verdict show that the jury had that in contemplation, and that they had not in contemplation any injury or damage beyond that. The verdict is, "Find the pursuers liable to" the other parties "in the said sum of 43,733*l.* sterling, as the price or value foresaid, and as compensation for loss and damage by the removal of their works, and the loss and damage their trade and business will sustain thereby." It is very distinctly stated in the finding of the jury, and very clearly expressed in the language of the act itself.

Then here is a party who has no means of getting compensation from the jury, to whom the jury had not assessed any compensation for the obvious injury which he sustains. The question is whether the Act intended to put him in that situation in which as has been before observed by my noble and learned friends, in many cases he might have to pay a very large proportion of what he would have to receive.

Now it is hardly necessary to advert to a particular provision in the act, because it is perfectly well known; but the 11th clause shows the obvious intention of the legislature in passing all these acts, and contains expressions which will meet the justice of the case, and which are not capable, as I conceive, of the interpretation which has been put upon them by the learned counsel for the appellants. By that clause the parties are to take the ground, "indemnification being always made to the owners, "lessees, and occupiers of such lands." If it had stood there, of course there would have been no question that the parties were to have full indemnification against all loss that they might sustain, and so beyond all doubt the legislature intended; but then there are these words, "in manner hereinafter provided." That refers to the scheme of machinery by which the indemnity

is to be ascertained, and the amount of the compensation found by a competent tribunal to which it is referred; it is not a qualification of the nature and extent of the indemnification, but refers to the mode in which the act is to be worked out; it cannot be supposed that any other construetion was intended, because if so, it would not be full indemnification, but would be only a partial indemnification, and there would be only such partial compensation as the other provisions of the act might grant. It is quite clear that the act intended full and ample compensation and indemnification, and the words which I have observed upon, refer only to the machinery by which the act is to be carried out.

Then the whole spirit of the act and the tenor of the expressions used, are, that the party whose lands are taken, shall have full compensation; in one view of the case if the appellant's argument were right, he would have that compensation. The question, therefore, is not to be decided upon the real merits of the case, but it is to be decided upon the very terms, the expression, and scope of the act. It is quite obvious that if the party, the owner of the estate, is to pay the expence of the conveyance, he must sustain some injury. The jury have no power to ascertain, or give to him the amount of that expense. If, therefore, he is not to have it from the person in whose favour the conveyance is prepared, he must bear it himself, and by bearing it himself he must be a loser, provided the jury have done alone the duty of putting a fair value upon the property under consideration.

It appears to me, therefore, that this case is not at all regulated by the general rule in Scotland, and not at all effected by the cases which have been referred to; and that looking at the general scope of the act, and the real justice of the case, the vendors, the parties who were the owners of the estate, are entitled to the expense of the conveyance from the party purchasing it. For these reasons, my Lords, it appears to me that

REDDIE *v.* HIGGINBOTHAM.—30th May, 1845.

the interlocutor of the Lord Ordinary was erroneous, and that the interlocutor appealed from should be affirmed.

Ordered and adjudged, That the Petition and Appeal be dismissed this House, and that the Interlocutors, so far as therein complained of, be affirmed with costs.

RICHARDSON and CONNELL—G. and T. W. WEBSTER, Agents.