MARCH 26, 1852.

WILLIAM M'WILLIAM, *Appellant*, *v.* ALEXANDER MAXWELL ADAMS, Inspector of Poor for the Parish of Glasgow, *Respondent*.
WILLIAM LINDSAY, *Appellant*, *v.* JOHN M'TEAR, Inspector of Poor of the Parish of Gorbals, *Respondent*.

Poor-Law Act 1845—Statute 8 and 9 Vict. c. 83—Pauper, Able-Bodied, Children of—Aliment—HELD (affirming judgment), *that an able-bodied man, utterly destitute, and unable to find employment, has no legal claim against the parochial funds, either for his own support, or for that of his children in pupillarity.*
Statute—Clause—Construction—Poor-Law Act 8 and 9 Vict. c. 83—Opinion, *That so far as prior statutes may countenance the doctrine, that able-bodied paupers are entitled to parochial relief in Scotland, §§ 78 and 91 of the statute operate a sufficient repeal to that effect.*[1]

Lindsay, an able-bodied cotton-spinner, aged about 50 years, applied to Thomson and M'Tear, the inspectors of the poor in the parish of Gorbals, for parochial relief to his four children who were all in pupillarity. The grounds of the application were, the utter destitution of the applicant, and his inability to find employment. Thomson and M'Tear, not denying these averments, rejected the application, on the ground that Lindsay, as an able-bodied man, had no legal claim against the parochial funds for the support of his children.

Lindsay presented to the Sheriff a petition, and the Sheriff held that the applicant Lindsay was entitled to relief.

The Lord Ordinary (Robertson) adhered to the judgment of the Sheriff.

Thomson and M'Tear reclaimed.

While this cause was in dependence, M'William, an able-bodied workman, utterly destitute, and unable to find employment, made an application for relief, on his own account, to the inspector for the poor of the parish of Glasgow. On refusal of the application, he presented a petition to the Sheriff, who held that the applicant was entitled to relief.

In an advocation, the Lord Ordinary (Wood), in respect of the dependence of the case of Thomson and M'Tear *v.* Lindsay, made great avizandum to the First Division of the Court. Both cases were heard together before the whole Court. The Consulted Judges having returned opinions, (for which see previous report,) the First Division of the Court (7th February 1849). sustained the advocation in M'William's case, and refused his application for relief.

An appeal was presented to the House of Lords against this judgment, which was maintained to be erroneous on the following grounds:—"1. Because it is an admitted fact that the appellant, though willing to work for his livelihood at any description of work, is unable to find any kind of work, in any part of the country, at which he can be employed.—Alison's Treatise on the Management of the Poor, 1840, pp. 181, 190. 2. Because, according to the sound construction and true meaning of the statute 1579, and the other Scottish statutes relating to the relief of the poor, a person in the situation of the appellant, who is admitted to be unable to earn his livelihood by any kind of work or employment, is entitled to claim relief from the parochial funds.—Aberdeen Council Records, vol. ii. pp. 124, 359, 372. 3. Because the practice which has followed on the statute 1579, and the other relative statutes, has been to construe them for the benefit of all those poor who 'must of necessity live by alms;' and this construction has been supported by decisions of the courts of law."—*Pollock* v. *Darling*, Jan. 17, 1804; Morrison, *voce Poor*, p. 10, 591; Hutcheson, 2d ed., vol. ii. pp. 37, 38, 51; Tait, 3d ed. p. 274.

Adams maintained in his case that the judgment was well-founded, for the following reasons:—"1. No claim for parochial relief exists at common law, and the appellant has no right to such relief under the act 1579, c. 74, by which assessment for the poor is authorized.—*Bradley* v. *Barrington*, 6 B. & C. 475. *Buchanan* v. *Parker*, Feb. 21, 1827; 5 Sh. 384. Acts 1427, c. 107; 1579, c. 74. 2. The statutes prior to that of 1579, c. 74, negative the claim of the appellant.—Acts 1424, c. 25; 1425, c. 66; 1503, c. 70. 3. The statutes subsequent to the act 1579, c. 74, also negative the appellant's claim.—Acts 1661, c. 38; 1663, c. 16; 1672, c. 18. 4. The appellant's claim is not supported by authority or usage. 5. And it receives no countenance from the act 8 and 9 Vict. c. 87."

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[1] See previous report 27 Feb. 1849: 11 D. 719; 21 Sc. Jur. 253. S. C. 1 Macq. Ap. 120: 24 Sc. Jur. 391. See also *Jack v. Isdale*, L. R. 1 Sc. Ap. 1, and *post* vol. II.

M'Tear supported the judgment upon the following grounds:—"1. The appellant, being an able-bodied person, is not entitled to obtain parochial relief either for himself or his children. 2. The right of the appellant's children to obtain parochial relief is dependent upon, and inseparable from, the right of the appellant to obtain such relief. 3. The claim of the appellant is not supported by statute."

The following was the argument (heard in July 1851) in *M'William* v. *Adams.*

J. S. Wortley Q.C., and *R. Palmer* Q.C., for appellant M'William.—The question here is,—whether a person who is able-bodied, and is both willing and anxious to work at anything, but, from no fault of his own, cannot get work to do, is entitled to temporary or permanent relief from the poor-law authorities. The claim of the pauper was made under 8 and 9 Vict. c. 37, § 72; and we have here to judge of the legality, not the amount of the relief. It is admitted that the appellant has *bonâ fide* failed to get employment, and that he is *rectus in curia.* Section 78 of the late statute expressly leaves the rights of able-bodied paupers where they were, so that we are thrown back to earlier statutes, of which the governing one is 1579, c. 74. Before 1579, there was an organized system of begging in Scotland, which was recognized by various statutes; and all children under 14, and aged people above 70, enjoyed a liberty or right to beg. At length this licence was abused, and the statute 1579 was passed to establish a mode by which all those who came within certain classes or descriptions, were to be punished as "idle vagabonds," while certain others were to have a legal relief. We maintain that the case of the appellant falls within the remedial, and not the penal, branch of the statute. It is plain that he is excluded from all the classes marked out for punishment, by the characteristic of "willingness to work,"—for the word "idle" in the penal list,—the only word applicable,—directly means "wantonly and wilfully idle." As to the remedial part of the statute, the words "aged, poor and impotent," have each a substantive and independent meaning. The word "impotent" also is as applicable to those who cannot get work to do, as to those who cannot do the work they get,—the cause of the work not being done, being in both cases equally out of the control of the person failing to do it. The word "decayed" may also be construed to include the appellant, as it implies here a decay in estate, or social position, rather than in physical powers. But the important words are, "those who must of necessity live by alms," which are the governing and taxative words, and indicate all those of the previous classes, or any class, who have, from whatever cause, no alternative but to starve or beg. As this is a remedial as well as a penal statute, the former part should receive all the more liberal construction, that the latter abounds in such stringent penalties. Unless such construction be accepted, thousands of industrious poor, who may be thrown suddenly out of employment in consequence of a panic or over-speculation in trade, would perish and be lost to society. The very mischief would thus be created, which the statute was intended to stop,—viz. the mischief of begging. The other side import into this case the theory, that the statute considered every person found not actually at work, as wilfully idle, and therefore liable to the tremendous penalties mentioned in its first part. But this is a gratuitous assumption, as well as a most harsh and inhumane one. In other words, it means, that it is an irresistible presumption of law, that every able-bodied person, willing to work, can find work to do. If so, then the pauper must come within § 93 of 8 and 9 Vict., and thus he will be punishable, not only for not getting work, but also for not maintaining his children, while he is actually starving himself,—which seems a monstrous conclusion. Again, it is said, that though the appellant's case may not come within the penal branch of the statute, it does not follow that it is included within the remedial branch, for it may be a *casus omissus.* To this we answer, that there is no conceivable state of human society where such cases may not occur. The statute of 1579 has every appearance of having been passed to meet poverty in all its varied forms, and to be an exhaustive measure. In support of the other view, it is said, that while the statute seems to copy all its other provisions from a contemporary English statute of Elizabeth, the provision as to the able-bodied poor is purposely omitted; but it is much more reasonable to suppose it was omitted, because it was superfluous, owing to the ample provision contained in the remedial portion. Besides, the subsequent statutes corroborate our view, that the case of able-bodied paupers was by no means absent from the mind of the legislature in those times. Thus the statute 1672 expressly mentions and provides for them. It was also said in the Court below, that it was only the permanent poor who were meant to be relieved by the statute 1579. But we see no real difference between temporary and permanent poverty. A broken leg or a fever is just as good a ground for relief, as a more enduring disability; and what would be the value of a poor-law which made such a distinction? The case of *Pollock* v. *Darling*, Mor. 10,591, is an express authority in our favour. The whole question was discussed fully at that time, all the statutes reviewed, and a solemn decision come to by a majority of nine to six of the then Judges. That decision has been treated as law.—2 Hutch. J. P. (2d ed.) 51; Tait J.P. (3d ed.) 274. It is true no other case is reported on the subject; but this is not to be wondered at, when we consider that, owing to the unpopularity of the practice of assessment in Scotland, which only arose towards the end of last century, the circumstances were not likely to occur. But in *Watson* v. *Heritors of Ancrum*, 7 Sh. 495, Lord Cringletie intimated

an opinion favourable to the present claim.—See also *Heritors of Paisley* v. *Richmond*, 29th Nov. 1821. F.C.

Bethell Q.C., and *Anderson* Q.C., for respondent Adams.—It is material to consider what policy prevailed at the time the statute 1579 was passed. The evil then to be corrected was the vicious practice of begging, resorted to by stark and able-bodied persons. But it is necessary to consider the state of the law before 1579. The common law of Scotland gave no right to able-bodied men to seek relief. If it had done so, there were superabundant materials in those times for applying it; but there is no record of such a claim, and we may assume this to be the common law, especially as the other side have abandoned the contrary position. It is as the creature of statute, therefore, that we must view the right in question. The old statutes always treated the poor as of two classes—the idle, and the infirm or impotent; and the maxim on which legislation proceeded was, that every person able and willing to work can find work to do —where there's a will there's a way. The benefit of society requires this rule as a basis for legislation to proceed upon. There were only two important statutes before 1579—that of 1424, c. 25, which allowed some beggars to get tokens of licence, while it ordained others to labour; and that of 1503, c. 7, (and 1535, c. 22,) by which tokens were taken away from all except the "cruiked, sick, weak, and impotent," while the others were to be put to crafts, otherwise to be punished. There is nothing in the statute 1579 to mark out a third class. It merely appoints a provision where the previous statutes gave tokens of licence; it provided in a new way for those who had been previously provided for. Hence the words descriptive of "idle and masterful beggars" in the penal branch of the statute, are the same as those used for able-bodied labourers in 1424, c. 25. As to the remedial branch of the statute, the words "aged, impotent, and poor," used to describe those entitled to relief, are read disjunctively by the appellant, but we read them conjunctively. These words do not describe three distinct classes, but two only, —the word "poor" governing the two others. Thus we must read it as the "aged poor," and the "impotent poor," for neither the "aged," nor the "impotent," are entitled to relief unless they are "poor." We cannot, therefore, without absurdity, give each word a substantive and independent meaning. The word "decayed," also means here "decayed in mind or body," and not in estate, which is a secondary or rhetorical use of the word. As to the expression, "which of necessity must live by alms," this requires an antecedent, which is found in the classes previously described, so that it means those of the "aged poor," or of the "impotent poor," who must "live by alms." The appellant is neither "aged" nor "impotent," for the latter word implies physical inability only. The statute 1579 thus does not advance him at all. Of the subsequent statutes, that of 1661, c. 38, gives an accurate description of the poor to be relieved, and the able-bodied are excluded. In the statute 1661, c. 42, it was said, the word "burden" referred to the legal assessment for the purpose of relief, but we hold that it means the burden of "vagabondism," then prevalent. The statute 1672, c. 18, appoints correction-houses, and a list of both the idle and the poor to be made up; and it is a historical fact, that between 1579 and 1672 the mode of assessment was never resorted to, as the collections made by the kirk-sessions were sufficient to meet all demands. The proclamations of a subsequent date do not bear on this question. Then, as to the *casus omissus*, we say, that the fact that the statute 1579 copied the 14 Eliz. c. 5 in all its provisions, except as to the able-bodied, proves that the case was before the mind of the Scottish legislature, but was studiously and deliberately rejected.

[LORD CHANCELLOR.—Were those parts of the English statute which are not copied, afterwards repealed?]

Yes; but the argument is the same. Therefore, if we had no other light to guide us but the literal construction of the statutes, the appellant has no case. As to *Pollock* v. *Darling*, that was not a question between the pauper and the guardians of the poor funds, but between the kirk-session and a single dissentient ratepayer. It was a voluntary assessment.

[LORD CHANCELLOR.—How so? It was by a majority; it was not voluntary as regards the dissentient.]

The body who had the power to assess, did assess, and Darling, one of the tenants, objected to them exercising that power.

[LORD CHANCELLOR.—But, according to your argument, Darling was acting in furtherance of the law.]

No doubt. But the Judges at the time were very much swayed by the circumstance, that he was the only one, or nearly so, who objected to what was thought a popular course of conduct. The inspector of the poor triumphed there, and so he has done in this case hitherto.

[LORD CHANCELLOR.—Under what statute was the assessment made in Darling's case?]

It was under none in particular, but under all of them generally.

[LORD CHANCELLOR.—Do the Judges below dispute the authority, or merely deny the application, of that case?]

Both. It was a case of the industrious poor, who were fully employed, but could not earn sufficient to live upon, in consequence of the dearness of provisions. The decision was never acquiesced in, for though *Hutchison* and *Tait* say they consider it to be law, there are writers of

greater eminence, *Monypenny* and *Dunlop*, who represent it as having been an exceptional case, which proceeded on the ground of famine. The Judges in the majority were Craig, Woodhouselee, Methven, Meadowbank, Herman, Ankerville, Polkemmet, and Balmuto; while those in the minority were President Campbell, Rae, Armadale, Glenlee, Bannatyne, Dunsinnan, and Cullen. The private MS. notes of the Judges shew famine was the great disturbing cause of that judgment. As to the case of *Watson* v. *Heritors of Ancrum*, Lord Cringletie's interlocutor was reversed by the Inner-House. The *Heritors of Paisley* v. *Richmond*, so far as it goes, is in our favour; for though the Sheriff there had no jurisdiction, and his judgment was set aside, his opinion was with us. The practice of the country has always been against the appellant. Assessment always was, and is to this day, unpopular in Scotland, and for nearly two centuries after 1579, it was not resorted to,—the obvious deduction from which fact is, that if that statute had provided assessment to meet the claims of the able-bodied poor, it must have been put in operation in many cases. The opinions of the institutional writers point against the appellant.—Bankton, 1, 2, 60. Erskine, 1, 7, 63. Pitmilly's Poor-Laws, 3. Dunlop's Poor-Laws, (2d ed.) 334. *Pollock* v. *Darling* is the first instance of such a claim having been advanced, the grounds usually assigned being other than mere non-employment.—*Baxter* v. *Heritors of Crailing*, Mor. 10,573; *Runciman* v. *Heritors of Mordington*, Mor. 10,583; *Parish of Dalmellington* v. *Magistrates of Irvine*, Dec. 3, 1800, F.C. And, since *Pollock's case*, the same old principle is implied.—*Higgins* v. *Barony of Glasgow*, July 9, 1824, F.C. 588. If the appellant is entitled to relief at all, it must be only occasional and temporary.

R. Palmer in reply.—To assume that it is the theory of the Scottish statutes, that every person able and willing to work can get work to do, is simply begging the question. It is also going too far to say, that all able-bodied persons, under all circumstances, were prohibited from begging before the statute 1579, and that it was only for the classes of poor previously dealt with and recognized, that that statute provided an assessment as a substitute—a new fund for an old object. The earlier acts were broadly distinguished from the act 1579. They were not intended to suppress, but to regulate mendicancy, and provided no assessment or public mode of relief, nor any remedy whatever, except punishment in certain cases. That being their object and scope, it was impossible they could draw a line where begging on the one side was legitimate, and where, on the other, it became culpable. The thing chiefly in view was the state of propense and habitual mendicancy as a profession or calling. The general scheme of the act is, that those who could not "win their living otherways" were allowed to beg; but the sturdy or stark were to betake themselves to regular trades. There is nothing whatever on the face of the statutes, indicating the maxim, that those able to work could get work, and it is not to be imputed to the legislature without the strongest grounds. The statute 1579, unlike the prior statutes, aimed at intercepting mendicancy at its sources. The respondent says that none were to be relieved but the permanent poor; but the object of the statute would have been defeated if it had been confined to those cases. It was quite as necessary to provide against occasional soliciting of alms, as habitual, for it is the tendency of the one to grow into the other. We might therefore expect to find, rather than otherwise, a much greater comprehensiveness in the remedial provisions of the statute 1579. As the earlier acts provided for licences, which were in fact the legal title to beg, it was not to be expected there would be any distinct reference to a class to whom these did not apply, since the industrious poor would not think of leaving their work to go and beg; yet the common law right remained in favour of those who could not otherwise win their living.

[LORD CHANCELLOR.—Not a right—it was only said there was no law to prevent it.]

Then, if not a right, it was at least a common law *liberty*, and one, too, which was largely used, and which survived unless some statute took it away. And it will be found, that all the statutes from 1424, c. 25 to 1535, c. 22, leave this liberty untouched to persons in the circumstances of the appellant, and take it away only from wilful and habitual beggars.

[LORD CHANCELLOR.—But they say voluntary benevolence has been found always sufficient to meet cases like that of the appellant.]

No doubt; but that benevolence must be solicited, otherwise the objects of it would perish. Voluntary benevolence is alms, and to admit this, implies that the statutes did not curtail the licence to beg. The object of the statute 1579 was the utter suppression of mendicancy. Its penal portion contains three clauses, which, while they approach the case of the appellant, as clearly stop short of it.

[*Mr. Anderson.*—We do not insist that the appellant is within the penal clauses.]

Then, as to the remedial, we say that poverty was in itself a consideration which entitled to relief; and the clause wherein the Provost is ordered to make a catalogue of the said poor people, shews that able-bodied persons were included under that designation. Unless this construction be adopted, the able-bodied have only to be starved down to the point of physical impotency, in order to qualify themselves for relief,—which is a monstrous alternative, sufficient to outlaw many honest and industrious artisans. We say, then, that the relief provided by this act of 1579 was a compulsory substitute for the previous right of begging, which was thereby

taken away. This view is confirmed by *Pryde* v. *Heritors of Ceres*, 5 D. 568. In general, the subsequent statutes and proclamations prove—1. That the case of an able-bodied man thrown out of employment from no fault of his own, was not a *casus omissus;* and, 2. That the relief of the able-bodied poor who could not otherwise obtain a living, was considered as a charge or burden on the particular parish to which each belonged.

The following was the argument (heard in July 1851) in *Lindsay* v. *M'Tear*:—

Gregg for appellant Lindsay.—The appellant here is a poor man out of employment, and is admittedly unable to maintain his children. The fact of his being an able-bodied man, and therefore, as we shall assume, not entitled to get relief for himself, renders the case worse, for he will thus be still less able to give assistance to his children. Before the statute 1434, all children under 14, who were destitute, had a right at common law to beg. The statute 1579 made no change as to the classes of persons entitled, but merely substituted a new mode of raising funds.

[LORD BROUGHAM.—Do you hold that children *qua* children are impotent poor, and that their destitution is irrespective of their parents?]

Here it is admitted in the record that they are destitute, and that the father has nothing to give them. Children are impotent both in mind and body; and there is nothing in the statute 1579 to exclude them from coming under that class. There is nothing in the institutional writers on this subject, which is accounted for by the circumstances being so unlikely to arise, since it is the natural desire of every parent to provide for his own children. The only passages are in 1 Bankton, p. 157. Ersk. 1, 6, 56. Stair, 1, 5, 7. The last author says,—"When a parent cannot maintain his children, they can lawfully beg; and if they can lawfully beg, they can be relieved by the statute 1579." There are a few modern cases supporting these views.—*Willock* v. *Rice*, 10 D. 1259; *Wilson* v. *Heritors of Cockpen*, 3 S. 547; *Duncan* v. *Kirk-Session of Ceres*, 5 D. 552. The late statute, 8 & 9 Vict. c. 83, § 69, also implies a right in the children themselves to temporary relief. The father is the proper person to make the application for them, being their guardian.—Ersk. 1, 6, 54.

Rolt Q. C., and *G. Ross*, for respondent M'Tear.—The pleadings here contain contradictory allegations, for the father says he does not want relief for himself, but that he does for himself, —which, in fact, only means he does not want relief, and yet he wants it.

[LORD CHANCELLOR.—Is there anything to contradict the fact, that he did not apply for relief for himself? He merely says he sought relief only for his children,—that may have been because he was already receiving relief for himself.]

We are here trying a *bonâ fide* case, where the father is no doubt poor, having no capital or fund in hand, and he is not supposed to be receiving relief. But it is quite impossible to sever the parent from the children. He is bound by every consideration,—by the law of God and man,— to share whatever he has with them. There is no such thing countenanced in the law of Scotland, as the parent's reserving for his own sustenance what he thinks necessary, and leaving the children to starvation and exposure. There is no proof whatever of a common law right to beg. The passage cited in Bankton is a digression, and, at best, that writer is no great authority. *Willock* v. *Rice* only shews it was doubted whether the Court of Session could review the amount of relief given by the heritors. It was a case of mere temporary relief.

[LORD CHANCELLOR.—It was like this,—I'll give you relief this time, but don't come again.]

The other two cases are quite consistent with the supposition, that the parent was impotent and not able-bodied. By the statute 1579, beggars' bairns are specially provided for, and that implies that the children of able-bodied persons, not themselves requiring relief, were not included. The statute 1617, c. 10, also provides for orphans and poor children of indigent parents, but not by means of a compulsory assessment. Nor does the statute 1661, c. 38, which has provisions for "orphans and other poor children who are left destitute of all help," include the case of the appellant.

R. Palmer in reply.—The statute 1579 left to children that liberty to beg, which they had at common law before. Nor is that statute confined to children of those who are not able-bodied, —there being no such limitation. But, independently of that, children come within the meaning of the words "impotent" and "poor," who "must of necessity live by alms." There is nothing in the statute to exclude the case of children, who, through living with their father, would starve if not relieved. The statute 1619 provides for the useful employment and training of indigent children, whereby the parish may become afterwards relieved of their charge. Two conditions only were required,—1*st*, That they should be poor and indigent, and have no means; 2*d*, That they should be apprenticed with consent of their parents, if living.

[LORD CHANCELLOR.—That may mean the children of those receiving relief.]

There is no such restriction. The words are comprehensive, and should be taken in their broadest sense. As to the statute 1661, the words are "orphans and poor children," which imply that other children than orphans were meant. It is obvious that those whose parents can give them nothing, are as poor as if they had no parents. If a father neglects or deserts his children, the

parish will maintain them. If, then, he behave to them kindly, and take care of them, are they to be punished on that account?

Cur. adv. vult.

M'William v. *Adams.*

LORD BROUGHAM.—My Lords, it is admitted on all hands that this important question turns entirely upon the construction of the statute, there being no common law right whatever alleged. The act of 1579, c. 74, is therefore to be considered—and the opinion which we may form, touching its import, must govern the decision of the case. Does it or not apply to able-bodied poor persons who are not incapacitated from working, but are unable to find work, and are also unable to maintain themselves?

The act of 1579 was the first compulsory provision made for the support of the poor. Whatever had before been done by the legislature, was in restraint of that class, and not for their relief. But important light is thrown upon the act by attending to the provisions of those previous restraining statutes, and especially to the exceptions introduced into them. The purpose of the acts was to restrain mendicity and vagrancy; and it seems to have been throughout assumed, that begging was the only mode in which the poor could be relieved. It is therefore of great importance to observe to whom begging was permitted, by way of exception to the enactments for putting it down. These acts extend from the early part of the 15th to the middle of the 16th century; but I refer particularly to statute 1503, c. 70. The earlier act of James I., in 1424, c. 25, had directed that all persons who had no tokens permitting them to beg, shall be charged to labour on pain of burning in the cheek, and banishment. The act of 1503, c. 70,—"anent beggars and their qualities,"—after enforcing the observance of the older act, mitigates its severity by introducing the exception of impotent poor, as allowed to beg, in these words—"The Sheriffs and Magistrates shall thoyle none to beg except cruiked, sick, impotent, and weak folk." In 2 Thomson's Statutes, p. 25, we find that the word is not "sick," but "blind." Now, these classes of persons, disabled by bodily or mental infirmity, are alone suffered to beg—that is, alone held entitled to the only relief which at the time, and until 1579, was ever in contemplation of the legislature, how great soever might be the necessities of the parties. It may be observed farther, that at the same period, 1503, the English statute, 19 Henry VII. c. 12, for the punishment of vagrants, and entitled *De validis mendicantibus repellandis*, gives a similar relief to beggars who are unable to work.[1] Like the Scotch act, it mitigates the severity of the older statute, 7 Richard II. c. 5, (just as the Scotch act mitigates the severity of the old act of James I.,) requiring all beggars unable to work, to be passed to their places of birth, or of three years' residence, and not to beg except there by the 2d section, but lessening the punishment of vagrancy in the cases of "women great with child, married women in great sickness, persons impotent and of the age of 70"—(§ 8). The like resemblance is to be found between the provisions of 14 Elizabeth and the Scotch act of 1519. It may be observed in passing, that the severity of the treatment, both in the old English and Scotch acts, especially the latter, cannot be made available to the present argument. For if it be said, that whoever is not allowed to beg is exposed either to perish of hunger, or be severely punished, and that able-bodied paupers out of work are therefore so dealt with, inasmuch as they fall not within the exception,—the answer is, that the exception is wholly free from all ambiguity, and, consequently, that the only effect of the objection is to make the case of those persons, as never having been in the contemplation of the legislature. What provisions might have been made had their case been considered, we have no right to inquire. The meaning is plain, and we must construe the act by its plain intention. In all likelihood, its rigorous provisions were never enforced, and in those times the probability is, that the cases were few in which persons disposed to work could not find employment.

The act of 1579 had a twofold object, and its title is deserving of attention. It is for punishment of strong and idle beggars, and relief of the poor and impotent, not of the "poor," but the "poor and impotent." Next, the general preamble sets forth the expediency of providing for the relief of "the aged and impotent poor people;" and though the subsequent preamble to the second branch of the act, says that "charity would that the pure and aged and impotent should be provided," it seems reasonable to construe this as equivalent to the expression in the general preamble—namely, that "pure" is a qualification given to aged and impotent, and not that these are different classes—the poor, the aged, and the impotent.

The enacting part, like the second preamble, gives "aged," "pure," "impotent," separately. But if "pure" is to be taken as a separate class—that is, as designating persons who are not

[1] See the effect of the ancient English Statutes on Poor Law, stated 2 Paterson's Com. (Pers.) 16.

incapacitated by age or infirmity—this consequence follows, which I hold to be destructive of the argument in favour of the appellant's contention—the enumeration of aged and impotent becomes wholly superfluous and even insensible ; for if there is a class of poor entitled to relief, simply because they come within the description applicable to the whole enumeration—that of not being able to live without alms—then it follows, that aged persons, and impotent persons, unable to live without alms, are comprehended under the head of poor, and, consequently, to mention them apart from poor, and distinguishing them from poor, is not merely superfluous, but irrational. An aged person unable to live without alms, and an impotent person unable to live without alms, is as much a poor person unable so to live as an able-bodied person. The enactment comes therefore, by this construction, to be, not that the poor, aged and impotent, shall be relieved, but that every person whatsoever, whether aged and impotent or not, shall be relieved, provided he requires aid as being unable to live without alms ; and, indeed, "poor" need not be mentioned either, for the test, unable to live without alms, is sufficient as implying poverty. Consequently, the enactment should have been, that all persons who cannot live without alms shall have relief. Surely the specification of age and impotent, clearly shews that no such generality could have been intended. The use of the word "poor" is not open to the same objection of tautology, because if we read aged poor and impotent poor as the general description, the specifications afterwards applied to limit the sense of a somewhat vague word, give a test of poverty, and then we have such aged poor, or such impotent poor, as are so poor that they cannot live without alms. Some argument has been grounded, both in this case and in the former one of *Pollock* v. *Darling*, on the word "impotent." It has been plainly said, both by Mr. Hume in his argument as counsel in 1803, and more than implied by one of the learned Judges now, that impotent means unable to find work, or unable to gain a livelihood. This appears a wholly untenable position, not merely from aged being coupled with impotent, but because this sense is plainly excluded by the provision for the case of those who can do some work. "If," says the act, "the aged and impotent persons not being so diseased, lamed, or impotent, but that they may work in some manner of work," refuse to work, they are to be punished. Here "impotent" cannot possibly mean anything but incapacity to work through mental or bodily infirmity. Indeed, this part of the act appears to me almost decisive of the whole question, because the able-bodied poor plainly do not come within its scope ; and yet the diseased and aged who can work a little, are severely punished if they refuse. Yet no punishment is denounced against the able-bodied who refuse, who, of course, would be much more deserving of punishment. Nothing can more clearly prove that this class of persons was not at all in the contemplation of the legislature.

I regard the acts subsequently made, especially those of 1661, c. 38, and 1672, c. 18, not only as consistent with the construction put upon the act of 1579, but as aiding that construction. The act of 1661 directs a roll to be made of the "poor, aged, sick, lame, and impotent," and into this roll none are to be placed who are in any way able to gain their living—(clearly shewing that the poor there must mean only impotent persons)—and then it is said, that such persons shall be relieved, but describing them as not only destitute, but impotent—"who have not to maintain them, nor are able to work for their living." The act of 1672, establishing houses of correction, required lists to be made of the poor who are able to work, and the poor who are unable, "by reason of age, infirmity, or disease," to the end that the former may be sent to the correction house, the latter relieved by the kirk-session. Though these houses were never actually established, yet as the assessment prescribed a century before had never been carried into execution, this act shews that the intention of the legislature was to give the relief of the kirk-session to those whom the act of 1579 had pointed out under its second branch, while those falling within its first branch were to be treated more or less penally.

Some stress has been laid, both below and here, upon the provisions in the act of 1579, directing an inquiry as to the poor, "if they be diseased, or haill and abill in body." But I cannot regard this as very material. It may be with reference to the important provision already referred to, of partial inability to work, because an aged person may, if sound of body, be liable within that provision. It may also be with the view of excluding those not entitled to relief at all. And it is further to be observed, that the act also makes mention of the "haill and abill," who allege their having been "heried and burnt" in remote parts—but awards them no relief, though that might be a good ground of relieving if any able-bodied persons were within the act. Shipwrecked mariners are to have temporary relief so far as may enable them to reach their homes, and no more.

I have remarked on the act of 1503, c. 70, having been made the same year with 19 Henry VII. in England. The act 1579 was made a few years after 14 Elizabeth, c. 5, and it both has the same two objects in view, and follows the enactments very closely, with the important omission of the provision for setting the poor to work—that is, the provision for the able-bodied labourers. It is remarkable how closely some of the provisions of that statute are followed, even to the very words used. The 22nd and 24th sections of the English act are almost copied. The 23rd section, that for setting to work the able-bodied, is wholly omitted. It is difficult to

avoid the inference, that the omission was designed on the part of the Scotch Parliament. It is equally worthy of remark, that no provision has ever been made by the legislature in Scotland, for setting the poor to work, and no guards or checks whatever are provided for the due administration of relief, should it be given to the able-bodied poor.

Lastly, the proviso in the late act, 8 and 9 Vict. c. 83, § 68, deserves to be considered, (being in the opinion of some almost decisive of this case, and in the opinion of all it must be admitted to be important,) as indicating the jealousy of the legislature to guard against relief to "the able-bodied persons when out of employment." It is a proviso in the section extending the enactments to occasional relief; and to prevent the mere want of employment from bringing persons within the class of those entitled to such relief, the proviso in terms excludes them from whatever in the enactment is given. Of course this leaves their right untouched, so far as it is independent of the act; but the proviso indicates the general intention, to guard against extending it.

The authority of all text writers is in favour of the construction adopted by the Court below. Erskine, though he is somewhat inaccurate in his reference to two of the acts, (1535 and 1663,) lays it clearly down, that those entitled to relief are the "indigent persons who are aged or disabled from work;" and Bankton (1, 2, 60) describes those entitled to maintenance as "poor people that are not able to work." Mr. Bell (Prin. § 2153) confines the title to those who are unable to earn their subsistence by labour, "in consequence of any mental or corporeal weakness, disability, or permanent disease;" and he must have had *Pollock* v. *Darling* present to his mind, for he cites that case in the following article, § 2155, where he lays it down, that temporary distress from dearth, stagnation of trade, &c., does not entitle able-bodied persons to the benefit of this relief.

In dealing with this question, we are bound to lay entirely out of our view many of the topics (arguments I can scarcely call them) which have been introduced into this discussion—views of expediency—appeals to humanity—suggestions of risk and danger—and some topics of mere declamation. Everything that belongs to the legislature, were the question then open,—what ought to have been the frame of the act, or what ought to be done for its amendment, or what ground, if any, there is to revise and reconsider its provisions—with all such matters we can have no concern in this place, sitting in a court of law, and called upon to construe an act of the Scotch parliament. But it is not beside this question of construction to observe, that there is the greatest difference between the giving relief to all impotent poor, and giving it to all able-bodied persons who cannot find work,—and that there is not only no absurdity in the supposition, that the legislature intended to exclude the latter class while relieving the former, but that there exists the most obvious distinction between the two cases, inasmuch as the provisions of the one law might be easily enforced with the machinery afforded by the statute, while those of the other might be hardly capable of execution without a new set of enactments, and of very difficult execution with any that could be devised. The relieving officer may easily tell whether or not the applicant is disabled from working by infirmity. To ascertain that he is unable to find work, may be most difficult; still more so to ascertain that this inability arises from fault of his own. The construction, therefore, which assumes that the able-bodied are excluded, imputes no inconsistency to the law-giver; it rests, on the contrary, upon a solid and intelligible distinction. The consequence of construing statutes of this description, without regard to the defects in the machinery provided, have long been known in England, where the poor-law was originally framed, with the view of making all income contribute to the support of the indigent; but the want of any means whereby this assessment could be enforced, has (with the acts passed continually to suspend its operation) resulted in casting the whole burden upon one description of property, and on that alone.

The universal opinion of the country, and that of all text writers, had for upwards of two centuries been in favour of the construction which the Court below has now, by a very large majority of the learned Judges, sanctioned, although it must be confessed that the practice during this long period can hardly be cited as supporting the opinion, but only because the assessment under the original act had never been made till somewhat about a century ago. In 1802, however, in consequence of a dearth approaching to famine, an assessment was made for the support of an able-bodied labourer, and resisted, or at least a party called upon to contribute in reimbursement of the sums so expended, refused, and the Court of Session, by a narrow majority, held him liable. This was the case of *Pollock* v. *Darling*, decided first in 1802, and, upon reclaiming petition, again in 1803 and 1804. Seven of the fifteen Judges gave their opinion in favour of the liability, (the others accidentally had not been present at the different times when it was considered,) holding that "the act 1679, and other acts, authorized assessments for the relief of the industrious poor in time of scarcity, as well as for the support of the permanent poor." This is the note of that case taken from a truly venerable authority, that of the late Lord President Hope, who had been the leading counsel in the cause. Another of the counsel, Mr. Baron Hume, classes this decision under the head of "Power of assessment for industrious poor in time of famine." It is possible that the same learned Judges who so held, might not

have considered the same power to exist in cases like the present, where there can be no plain and undeniable ground for the claim, and where, instead of appealing to a fact of universal notoriety, in proof of his inability, the applicant only had to allege his not having succeeded in finding employment. This, I say, is possible, but I am not disposed to regard the case as less strong than the present would be, had the decision been otherwise. It might even be contended that the proposition which affirms a general right to relief because of dearth, is stronger than the one which confines the right to the peculiar circumstances of the applicant. My view of *Pollock* v. *Darling* is, that we cannot uphold it together with the present decision; that the two are irreconcileable, and cannot stand together. But the authority of that case is, in my judgment, exceedingly impaired, not only by the strong opinion against it of the two greatest lawyers then on the bench, Lord President Campbell and Lord Justice-Clerk Eskgrove, as well as by the strong opinion of Lord Pitmilly, and other writers on the subject; but above all, on the kind of reasoning on which those proceeded who pronounced the decision. One Judge holds, that periodical bad crops make such remedies expedient—another is influenced by viewing the interests of those who make the assessment, as an adequate check. But the most able and learned of those Judges who concurred in the decision, Lord Meadowbank, proceeds on the ground, that there would be "risk of insurrection if it were held that the legislature had left without a remedy the most perilous of all cases, that of the poor made such by scarcity." We thus perceive, that the prevailing alarm, and feelings of natural and praiseworthy compassion, appear to have influenced the consideration of the question, and to have affected what ought to have been a strictly legal argument in the construction of a statutory enactment. It is not denied that this decision has been far from commanding the assent of the profession ever since; and it is not denied that it has remained in practice a dead letter. It probably was considered only to apply in exactly similar circumstances, on occasions of great dearth, which happily have not recurred since 1800. Certain it is, that the case has never been acted upon.

Lindsay v. *M'Tear.*

My Lords, in the *second* case which stands before your Lordships, in order that I may not have occasion to trouble you further, I will say, that I consider it as disposed of if your Lordships should dispose of the first by affirming the judgment appealed from, and that then that case would have no grounds whatever to stand on. The ground of the application of a confessedly able-bodied pauper, who does not pretend that he is unable to support himself, but who merely applies for relief to himself on the ground and in respect of his having children unprovided for, is disposed of by your Lordships being of opinion, if you shall so think, that the Court below came to a right decision against the right of an able-bodied pauper to obtain parish relief. It is enough to say on this subject, that the statute of 1661, c. 38, to which I have already referred in the course of the argument upon the general question, appointed the Justices to make trial and examination of poor, aged, sick, lame, and impotent, and such as are not able to maintain themselves, (that I have already commented upon,) nor are able to work for their living; and also (another head of inquiry) of all orphans, or other poor children who are left destitute of all help. That is the legislative intendment of poor children. It cannot approach to correctness of expression to say, that the children of a person who is an able-bodied pauper, and who does not contend that he is himself unable in one way or another to support himself, come within the description of children left destitute of all relief. I entirely agree with the learned argument of the Court below, that it is impossible to separate the case of the father from the children, and that, if any provision is to be made in such cases, it must be made by new acts of the legislature.

My Lords, I shall therefore move your Lordships that the judgment of the Court below in this case be affirmed.

M'William v. *Adams.*

LORD TRURO.—My Lords, I entirely concur with the general view which the noble and learned Lord has just taken of the question in this case. As I understand, the question mainly turns upon what the noble Lord has adverted to, the act of 1579. My Lords, this case has been argued with very considerable ability and eloquence, but a good part of that argument applied, as it appears to me, not to the question before the House. The question involved in this case is simply one of construction. The question is, not what is a good system of poor-law, nor whether the present system is perfect, or is open to greater or less objection,—but the question simply is, what is the fair and proper construction of the language which the legislature has employed in the acts of parliament which create a body of law applicable to this subject, regard being had, not to any opinions which may be entertained of modern improvement, but having regard to the period at which the law itself was enacted. Nothing, I apprehend, tends more to mislead the mind in the construction of an act of parliament, when it is one of considerable antiquity, than to pass entirely from the period at which the act passed, down to a later period, when various modifications have taken place in political and other views, and when the language employed at

that period would not convey, if adopted at the present day, the same ideas and associations which were intended to be conveyed at the time. Many topics of feeling were addressed to your Lordships, and my noble and learned friend has most correctly stated that much of that sort of eloquence was applied in the case of *Pollock* v. *Darling*. They are considerations of use only on occasions like the present, for one purpose,—they may in many respects stimulate the mind to attention in endeavouring to discover what is the language which is used, but beyond that, they are observations and matters more fit for the legislature when constructing the law, than for a Court of Judicature called upon to expound that law. Therefore it is necessary to guard the mind against a great deal that is urged upon questions of this sort, which affect the poor and which affect children,—as in the present case, when the mind is apt to yield very much to that persuasion which arises from calling up, either the wants of the one class, or the defenceless unprotected state of the other.

My Lords, as I have before stated, this question turns mainly and principally on the Scotch statute of the year 1579. The other statutes, those which passed before, are only of use to possess your Lordships of what was the state of the law antecedently to the particular statute which you are construing, in order that you may be the better able to appreciate the objects which were intended to be accomplished by the particular statute of 1579; and the statutes which passed afterwards, are only of use to ascertain whether they have extended the provisions of the statute of 1579, or have given any such declaratory construction to those acts of parliament, as ought to influence your Lordships in saying what is the present state of the law. Now, my Lords, the course of argument has been, that prior to the year 1579, there being no compulsory rate providing for the poor, begging was a course sanctioned by statute, and that there was nothing in the common law against it; and it is said, that the present appellant was a person who, upon reference to the acts of parliament, would be found entitled by law to beg prior to the statute of 1579. That statute professed to put an end to begging, and divided those who were in the practice of begging, into two classes—what may be called the criminal, and the unfortunate; and then it provided a remedy, by a rate, for one of those classes. It attempts to repress the one class of beggars, namely, the idle and criminal beggars, and it seeks to give more permanent and satisfactory relief to those who were considered deserving of the sympathy of the public, and deserving of protection; and the argument has been, that the present appellant was a person falling within the second class of the persons mentioned in that statute—that he was entitled to beg prior to the statute—and that, when begging was rendered altogether unlawful, he was one of those who were entitled to the substituted mode of providing for distress, namely, by a rate. But, my Lords, I apprehend (and such has been the course of the argument of my noble and learned friend) that it is quite a mistake to suppose, that the present appellant ever did stand in the situation of being entitled to beg.

Much was said of the state of the record in this case. It was said, that the want and distressed state of the appellant is admitted on the face of the record. In one sense it may be so treated; but when the appellant founds his claim to relief upon the statement of certain facts, the answer given to it amounts to this—"Your facts may be all true, but they are irrelevant; you state that you are in want,—that you are in this or that state of circumstances,—and you cannot get work." The answer given to that is—"Whether the fact be so or not, you are an able-bodied person, and, therefore, if every fact you state be true, yet the law does not entitle you to come on the parish for relief." Whether it is proper and expedient that able-bodied persons should be entitled to parish relief, is a question on which probably different opinions may be entertained; but it is a question with which this House has nothing to do, sitting as a Court of Judicature. The question is, whether the legislature has or not provided relief for such persons. My Lords, my noble and learned friend, who has gone so ably through the several statutes, certainly seems to me to have established a conclusion at which I had arrived before I had the advantage of hearing his judgment—namely, that prior to 1579, able-bodied persons were not entitled to beg, but only the impotent, and others of the description which my noble and learned friend has several times repeated. The argument on the part of the appellant admits a great part of this, and endeavours to bring itself within it; but he says, "I am entitled to be considered a person who cannot gain my living as an impotent person." But, on a review of the statutes, it will be found that an attempt to give that meaning to the word "impotent" must wholly fail; because it is always put in association with other words which palpably import that "impotent" applies to the state of the person, and not to the collateral and outward circumstances; and every epithet which is applied to persons who are authorized by law to beg, denotes the absence of power on the part of the individual to maintain himself through bodily infirmity, and in no instance applies to those who, being able to work, are yet unable to obtain work. What precaution could you have in the case of a person who says, "I cannot get work?" Or what means have you of ascertaining the extent of the endeavours which he has made? The individual says, "I have been to such and such towns, and I cannot get work." It would be attended with very considerable trouble and expense to a parish, to go round to all the towns to which the individual says he has been, and has failed to get work. Besides, much depends upon

the character of the person who cannot get work, and upon a variety of circumstances. It is much more easy for an individual to say he cannot get work, than it is to satisfy you that he is a person who ought to be maintained at the public expense, for that reason. The Judges below, who appear to me to have displayed that learning and that pains and attention in this case which might be expected from the high character which belongs to them, have enumerated in their judgment the various classes of persons who might come forward—literary gentlemen, and gentlemen of very different classes in vast numbers, who might very often fail in getting the only work for which persons would suppose they were fit, and it would be, I apprehend, perfectly impossible for a parish to protect itself against claims of that class. But the judicial duty that is cast upon this House is, to look at the language of the statute, and see whether that language is open to any fair and reasonable doubt. I own I should have thought it is not. I am, however, inclined to hold that opinion tenderly, out of respect to the very learned persons who have entertained a different impression on that subject, though they form such a very small minority.

Now, when attention is paid to the statute of 1579, it appears to me to be very distinct in its provisions. After reciting the previous law at great length, and after declaring the justice and propriety of providing for the unfortunate poor, as well as the expediency of putting an end to vagrancy, it speaks of finding a place of lodging and abiding place for individuals whom it is thought expedient to provide for, and then it afterwards gives authority to the overseers of the parish to appoint houses and places for those who are to be supported by the parish, to remain in. Now, it certainly strikes one as rather an odd course of legislation, to confine an able-bodied person to a place where he cannot get work. One would think some other provision would be made for such an individual, because, if a man cannot get work in his own parish, to say that he is to remain there, seems to me to be burdening the parish with the man for the rest of his life; and it tends to shew what was the class of persons, that is, that they were permanent poor, not likely to have occasion to leave their homes, either in respect of bodily infirmity, or their powers of work in any respect, rather than the class of able-bodied persons. After having directed, with reference to these persons, that the Lord Chancellor should inquire into the state of the hospitals—that he should see they were restored to their original foundations, for the help and relief of the said aged, impotent, and poor people—(wholly beside able-bodied persons), it then proceeds to state, that proclamation shall be made at the Cross of Edinburgh, commanding all persons to return to their respective homes within 40 days, and that after the 40 days shall have expired, then the overseers of the particular district shall make a list of those persons, and then, having made that list, they shall make the inquiries which my noble and learned friend alluded to, in the district, and, among other inquiries, that which was adverted to, namely, which or whether any of them are diseased or hale in body. Then it is said, that the hale in body are to be included in the list. So they are—but for what purpose? Why, for the very purpose of excluding them from relief. The list is to contain all the poor—all who have been begging, and are called home by the proclamation; but when they are there, it is to be ascertained which are the hale in body, and which are the impotent and diseased and infirm; and then the provision goes on, not for those who are hale in body, but for the other persons, and those other persons are then to be provided for in the manner to which the act refers. In various parts of this act and the other act, it is distinctly provided, that those individuals, the hale in body, who are begging, are to have a certain time allowed to get work and to get masters; and if they do not do that, they are to be punished with great severity.

Now, my Lords, with regard to the observation as to the not allowing persons who may be in a condition unable to get work, to be maintained at the expense of the parish, out of the rate, I cannot help saying, that I think, looking at some of the provisions of this act, probably the absence of that tenderness which might prevail at the present day, is not so apparent as that it should influence the construction of the plain language of the act of parliament. The question really, therefore, which has been brought to the attention of the House, is, whether, in the construction of these acts of parliament, an able-bodied man, a man in sound health, can be considered as impotent, and as a person who, by any of those causes which are allowed to operate, is prevented from working. I own it appears to me that there is no ground for that; and that appears to me to be the substance of the argument.

My Lords, it has been said most correctly, that as far as one can discover, no doubt appears to have arisen on the law contained in the several acts of parliament, up to the case of *Pollock* v. *Darling*. Now it will be remembered, in considering the weight due to that authority, that this is a question of the construction of an act of parliament. The House have therefore the language with which it becomes its duty to deal, before it; and the case which is brought before, and which will receive attention from the House, is a case, not of cotemporaneous exposition of an enactment,—not of the construction of a statute near the time when it passed, when the individuals who discharged the duty of construing it may be supposed to have had some advantages in that construction which the House does not now possess, by the proximity of time,—but it is a decision taking place but a very few years ago, of an old act of parliament,—the Court divided in opinion.

although a majority undoubtedly adopt the construction which the appellant contends for,—and also, it is a case which arose under very peculiar and special circumstances. It was not the case of an individual applying to receive parish relief; it was a case where the whole parish apparently, with one exception, were of opinion that such circumstances had arisen as rendered it expedient that there should be a rate for the relief of persons whose circumstances and situation were too notorious to admit of any deception or fraud. There, there had been what amounted to a famine, and it was perfectly well known throughout the place, that the laborious and the industrious by no exertions could earn money enough wherewith to maintain life. Such appears to have been the state of circumstances at that time,—a time when everybody wished, at all events, that there should have been some provision to meet so extraordinary and lamentable a state of things. It therefore came before the Court under circumstances not admitting of fraud; for when the parish made the rate, they would have the case of every individual who should come before them, under their consideration; and it was under these circumstances that the Judges in Scotland were called on to construe the act of parliament; and I own that the argument which was then used, and the course which was taken in that investigation, did undoubtedly comprise many topics much more expedient, as it seems to me, and proper to be urged to the legislature for altering the law, than as legitimately the materials for construing the law as it then stood. You would rather suppose that you were hearing a discussion of what was the proper system of poor-law,—what were the occasions which should be provided for in the course of human necessity,—rather than looking to the dry language of several Scotch acts of parliament. What fell from those learned Judges,—powerful, able, and eloquent I own,—appears to me very much calculated to mislead the mind from the construction, though it might lead the mind to yield to a great public necessity, without much regard to the precise language of the statute. Not being, therefore, a cotemporaneous exposition—not being a unanimous exposition—being a decision taking place under very extraordinary and special circumstances, and more effect given to those extraordinary and special circumstances than even one would expect, in the course of the reasoning of the learned Judges—the case undoubtedly does not stand so high in authority in these respects as most of the Scotch authorities would stand before the House. After all, it is the duty of this House to construe for itself. This is not a course of decision; this is not a decision which has been acted upon, and which has entered into the interests of individuals, so that they could be in any respect prejudiced or damaged by this House holding a doctrine and adopting a construction at variance with the decision; nothing of the kind. The House has all the materials before it, which the Judges had in arriving at that construction; they have all the materials, without any of the topics which would prejudice the mind, which then prevailed.

Looking, therefore, at the act itself, I should say, with a mind imbued with a due degree of caution in respect of its having been considered by those very learned and able persons, that the act of parliament would not admit of any fair and reasonable doubt, that this House is very much relieved from the embarrassment of a decision supposed to be adverse, by the particular and special circumstances to which I have referred.

It therefore seems to me that the argument, as I have before stated, distinctly turning on an endeavour to bring the appellant's case within certain terms in the act of parliament, utterly fails; and after the very able and elaborate argument of my noble and learned friend, I should not usefully occupy your Lordships' time in travelling through those acts of parliament. I think those before it in no respect lead to the conclusion, that able-bodied persons were intended to be cast on the parish for support; and I see nothing in the acts of parliament which passed subsequently, which at all tends to qualify the language of the previous acts.

My Lords, I will also make a few remarks upon what strikes me as of considerable importance,—that is, the statute of 8 and 9 Vict. c. 83, and the sections to which my noble and learned friend has referred. I should, however, beg to remark, when I pass from 1579 to the proximity in point of time to the passing of the English statute, the obvious connection between the two statutes, by the adoption of almost all its clauses and its even minute expressions, how is it to be accounted for, that, copying a statute, with so much fidelity and exactness as it has done, the particular clause which related to the providing of labour for able-bodied men should be omitted? Is there any clause which would be less likely to be omitted from accident or inadvertence? You not only find the clause itself omitted, but you also find an entire absence of all those guards and regulations in that particular case, which would have been essentially necessary if such a thing had been intended by implication. Nothing would require more care than the framing of the restraints, and the checks and the guards in relation to the poor, many poor having to support persons probably not the least poorer than themselves. But here is an entire omission of that particular clause, and an entire omission of all regulations necessarily applicable to such a state of things, if it had been intended to exist. But with that clause brought to the attention of the Scotch legislature, it cannot be supposed that it could have been intended to be left to implication, to construction, to be collected and gathered from uncertain and equivocal parts of the act of parliament, when it was merely necessary to insert a short and distinct clause found in the act of parliament. But not only do you find, as my noble and

learned friend has observed, an absence of all regulations regarding the labour of able-bodied persons, and so dealing with them as to get rid of them as soon as their absolute necessities had ceased, but you find a providing of labour for the partially sick, the partially impotent, and the partially disabled—all that you find.

Well, now, finding therefore that the legislature at the time contemplated provisions for labour —that its attention was addressed to the subject—that it enforced it with not very much humanity—for it will be found, that as to the poor and the sick, and so on, who were only able to do a certain amount of work, the omission to do that work when it was provided was punished with extreme severity,—therefore there was nothing of forbearance or tenderness to be found in that statute with regard to labour. I think that the omission of all those regulations in the clause itself is decisive on the subject.

Now, to turn to 8 and 9 Vict. c. 83 : That statute established a new authority for making a rate. It contains various provisions in regard to the mode of making the rate, the establishing a parochial board and a supervising board, and other officers, to administer that rate ; and having provided for the making of the rate, and the administering of the rate, it then proceeds to declare how the rate shall be applied. The present appellant applied under the authority of that statute, for he appealed against the inspector, stating the clause in that statute as the ground to give jurisdiction to the Sheriff, and to render the inspector amenable in respect of being an officer created by the statute. That statute, therefore, directs its application ; and after directing its application, it proceeds to say—"Provided always that this statute shall not confer any right or claim upon an able-bodied person to be put upon that list." But that is not all. It is argued that that clause only gave the party a right ; it took no right away, and therefore left it to be ascertained whether he had such a right in other ways than by the act. Well, but when the rate he seeks to be paid out of is a rate created by that act, the direction and application of it being expressly directed, it goes a very long way to declare that that act shall not confer any right upon any such person. When you come to the last clause, § 91, it repeals all acts, laws and usages, inconsistent with that act,—and not only that, but at variance with it. Is there no variance between a state of the law which gives an able-bodied man a right to come on the rate, and one which does not give him that right? By this act of parliament, he clearly had no right ; yet the rate to be created by this act of parliament must be administered according to the regulations of the act of parliament, and no law is to continue after that act, which is at variance with it.

I own it appears to me, that the act is of very considerable importance, and I think that the House might very reasonably have acted on that act of parliament ; but, at the same time, the question is one of very considerable and general importance. It is much more desirable that it should be decided by this House on the general merits which the appellant seeks to present, and on the grounds on which he puts his case,—namely, that he had a right antecedent to that act, and that the particular form of language of that act has not taken it away. The House is able to come to a satisfactory conclusion on that part of it, and therefore it may be unnecessary for the House to deal with 8 and 9 Vict. c. 83,—though I own, with reference to other acts framed in somewhat similar language, I consider, that if there had not been grounds for the conclusion to which my mind has come, and which my noble and learned friend has submitted to the House for adoption, I should have deemed this statute of very considerable importance.

Upon the whole, my Lords, I am of opinion, and humbly submit to your Lordships, that the judgment of the Court below ought to be affirmed, and this appeal dismissed.

Lindsay v. *M'Tear.*

My Lords, with respect to the *second* case, to which my noble and learned friend has referred, that is also an important case. The individual says—I can support myself ; I do that with difficulty ; I cannot support my children ; I therefore pray that I may be admitted to have relief for my children out of the rate. Generally speaking, one would say, if a man can manage to support himself he should impart somewhat of that which he has, to the support of his children ; but the answer to it is,—While, by law, the father and children form one family,—while the father is one who has not deserted his family,—who no longer fills in any respect the parental character,—the law does not distinguish between the father and the children. The family is represented by the father,—and so distinctly is it, that the very relief which is measured to the father is regulated by the state of the family. A man who has several children, as much receives relief in respect of those children, as of himself. Therefore it is said, that you may use your name on behalf of your children,—but in truth, it is you. Well, but says the father, "If the circumstance of my children presenting their claim through me, is any objection, I pray the House to remit the case, that somebody else may do it." There would be very little use in that, because it is not a case in which any matter of technicality would be likely to be urged. The broad facts of the case are those to which the law would be administered, the question being, whether, a father and his children forming one family, the law notices the children as distinct

from the father. I apprehend clearly it does not. It does not on general principles; but in this particular case, it is to be observed, that wherever the law also gives certain powers—certain authorities and rights; and, in general, you can find who are entitled to relief by looking to see whether they are in a condition to be amenable to that authority and those rights, which are the guards and protections to the parish who have to administer the relief. The parish officers who administer the relief, have right to appoint the place for the disposition of those who are to receive the bounty of the parish, or to receive relief. Well, but have the overseers a right to take the children out of the custody of the father? Can they exercise any control over the father, or interfere with his parental rights and authorities in any respect? I apprehend they cannot. If the father was to receive relief, the children would follow, and there would be a power of dealing with the whole. But there is no one provision to be found in the act of parliament which is at all adapted to the case of the children of a person receiving relief, the person himself not being entitled to that relief. Undoubtedly, there ought to be presented to the House very clear and distinct authority for such a proposition. I apprehend it will be found, in principle to be entirely new, and to be founded on general principles of very considerable importance; and it is one, I think, which cannot in any respect find sanction in any part of this act of parliament. I therefore think the party has wholly failed in presenting any ground to the House for shewing, that either in the name of the father, or in the name of any other person, children can be entitled to be considered as distinct and separate from the family of their father, while that father can support himself, and while he is individually not entitled to be supported by the parish. The previous case which has been decided, is a case which meets the present. The parent in this case is also an able-bodied person. Now, whatever were the grounds upon which the legislature thought fit not to include able-bodied persons as persons to be relieved from the rate, it is upon grounds which, I apprehend, would apply just as much to the children as to the parent. It must be on the ground that, considering no doubt all the consequences of such a rule of law, upon the whole, the public interest was best served by protecting persons from an obligation to support an able-bodied man, even at some of the inconveniences which must result from that; because, as is observed in the course of these pleadings, it very often happens that individuals who have been frugal and industrious and saving,—saving with a view to meet the hour of calamity themselves,—many have that withdrawn from them in order to support an individual who has been, by habits of self-indulgence, brought into a very different condition.

The question in this case, therefore, is not a question of humanity,—not a question of kind and tender feeling,—but, Are the overseers authorized to apply this rate to the benefit of this individual? I think that by law they are not so authorized; for the party himself not being entitled to relief out of the rate, I think that the children share the position of the parent in that respect, and that, therefore, this appeal, like the former, ought to be dismissed.

LORD BROUGHAM.—My Lords, my noble and learned friend, I must candidly admit, has raised a doubt in my mind as to two matters; but as the doubt, if well founded, would greatly strengthen the argument which I supported before your Lordships in favour of the affirmance, and against the appeal, it is unnecessary for me to go further than to admit, that with respect to the inconsistency, the repugnancy, of this decision with that of *Pollock* v. *Darling*, I am inclined to doubt rather more than I did when I addressed your Lordships: and with respect to the effect of the late act (8 and 9 Vict.), I am rather inclined to think, that I should have argued that a little higher in support of the judgment of the Court below, and the proposition which I took the liberty of stating. Therefore, upon those doubts it is not necessary to dwell, because if they are perfectly well founded, they only go to affirm, rather than to weaken, the argument on which I ventured to submit the proposition to your Lordships.

Interlocutors affirmed.

First Division. — Dunlop and Hope, *Solicitors for Appellants.* Law, Holmes, Anton and Turnbull, *Solicitors for Respondents.*

MARCH 26, 1852.

THE PAROCHIAL BOARD of the PARISH of SOUTH LEITH, *Appellants*, *v.* THOMAS ALLAN and the PAROCHIAL BOARD of the BURGHAL PARISH of EDINBURGH, *Respondents.*

Poor-Law Act 1845—Double Rating—Statute—Clause—Construction—*Lands in the parish of South Leith were feued to A,—the feu-charter containing a stipulation, that if the lands should ever come to be included within the extended royalty of Edinburgh, the vassal should be bound to pay the public burdens levied in Edinburgh. Thereafter a statute extended the royalty of*