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.*

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## 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*

*Edinburgh beyond these lands, disjoined them for ever from the Parish of South Leith, and annexed them to the parish of Edinburgh, but it contained a proviso that they should nevertheless be liable, as before, to the poor-rates of South Leith.*

HELD (affirming judgment), 1. *That this proviso was repealed by* §§ 46 *and* 91 *of* 8 *and* 9 *Vict. c.* 83, *and that A. was now bound to pay only a single poor-rate to the Parish of Edinburgh.* 2. *That as lands can only be in one parish, and as* § 46 *of* 8 *and* 9 *Vict. c.* 83, *is general and absolute, no lands are now liable to a double rating, in whatever way such double rating may have originated.*[1]

The Parochial Board of South Leith appealed against the interlocutor of the Court of Session of 13th July 1849, maintaining that it ought to be reversed upon the following grounds:—

1. Because, previous to the passing of the Poor-Law Amendment Act (8 and 9 Vict. c. 83), the lands were liable to poor-rates, as well within the parish of South Leith as within the City parish of St. Giles; while according to the true construction of that act, this double liability has not been restricted to a liability for a single rating.—Dunlop's Parochial Law, App. Nos. 3 and 4; *Cochran* v. *Manson*, 11th Feb. 1823, 2 S. 201; *Buchanan* v. *Parker*, 5 S. 392; Dunlop's Parochial Law, (2d. ed.) p. 401. 2. Because, assuming that the respondent Mr. Allan is liable to be assessed, in respect of his lands and heritages, for the relief of the poor of only one parish, the parish entitled to levy and apply such single assessment is the parish of South Leith, represented by the appellants.

Mr. Allan maintained in his case that the interlocutor was well founded—1. Because, in accordance with §§ 46 and 91 of 8 and 9 Vict. c. 83, as well as other provisions of that act, the respondent, and the owners and occupiers of the lands libelled, were only liable to be assessed for relief of the poor in one parish or combination. 2. Because the lands and heritages referred to could only be liable in a single rating in the parish of Edinburgh, and not in that of South Leith, or (alternatively) in the parish of South Leith, and not in that of Edinburgh, but not in both parishes. 3. Because, whichever parish should be found entitled to levy the assessment, the respondent and other owners ought to be relieved from all claims at the instance of the parish not so found entitled.

The parish of Edinburgh supported the judgment on the following grounds:—1. As the lands libelled were disjoined from the parish of South Leith and annexed to the parish of St. Giles, within the city of Edinburgh (by 7 Geo. III. c. 27), the owners and occupiers are liable to be assessed for poor-rates in the latter parish. 2. The respondent Mr. Allan, as the proprietor, is liable for poor-rates to the City parish of Edinburgh, in respect of the obligation in the feu-charter granted by Heriot's Hospital to his predecessor Mr. James Grant, in 1756, and also in respect of the express enactments in 7 Geo. III. c. 27, annexing the subjects to the parish of St. Giles, and declaring them liable in parochial burdens to that parish. 3. The clause in 7 Geo. III. which disjoined the lands from the parish of South Leith and annexed them to that of St. Giles, has not been repealed by, and is not at variance with, 8 and 9 Vict. c. 83. 4. According to the sound construction of 8 and 9 Vict. c. 83, the subjects referred to, or the owners or occupiers, are liable for poor-rates within the City parish of Edinburgh, where the subjects are locally situate.

*Rolt* Q.C. and *Anderson* Q.C. for appellants.—1. The question is, if § 46 of 8 and 9 Vict. c. 83, applies to these subjects, so as to discharge their liability to a double rating. It is a legitimate rule of construction to consider the position of the matter at the time this act passed, and also the preamble, as throwing light on the intention of the legislature—*Salter* v. *Johnson*, 1 Hare, 196. There was then an express contract subsisting between the parties, ratified by act of parliament in 1767, that these subjects should continue, as before, to pay the burdens of South Leith. The double rating being therefore created by contract, what was the Poor-Law Act of 1845 intended to do? It was not to relieve from special contracts, to vary the rights and liabilities of parties, but merely to provide new regulations as to the management and mode of assessment for the poor. The peculiar mischief to be guarded against under that act was the possibility of a double burden being created, in consequence of the different modes of rating therein pointed out. Sir John Leach, in construing a will, once said, that "the nature of the mischief to be provided against may often give to indefinite language a definite meaning," and that principle is often brought into play in interpreting the Stamp Acts. Here, therefore, the mischief to be guarded against fixes a definite and special meaning on § 46. Sections 34 and 35 pointed out three different modes of rating, by the operation of which a person might perhaps be called on to pay rates twice, or even thrice over; and §§ 46 and 47 were specially designed as provisoes to remedy this mischief, the former applying to the rating on lands, and the latter to the rating on "means and substance." The meaning of § 46, therefore, is only this—"there shall be no double rating by this act," but it leaves double rating created by special contract, and by other acts for other purposes, untouched. Section 91 carries the case no further. If,

[1] See previous report 11 D. 1391; 21 Sc. Jur. 532. S. C. 1 Macq. Ap. 93; 24 Sc. Jur. 401.

however, there be anything in the principles of construction to prevent effect being given to the contract, then the other side must shew, not only that their construction of the act may be true, but that it must be true, and that there can be no other construction. 2. If subsequent circumstances have rendered it impossible that the subjects in question can be bound to pay the rates of both parishes, South Leith must prevail. It stands on a double right; it was the original parish, and Edinburgh obtained nothing but by virtue of the contract entered into. Edinburgh got the benefit of having the lands included within the royalty, on the express condition, that the burdens of South Leith should be paid. The latter parish, therefore, is the one entitled.

*Sol.-Gen. Kelly* and *Arch. Broun* for respondent Allan.—We argue only against the double rating. It is a fallacy to say that the double rating was created by contract, because no one can by contract render himself liable to pay taxes, which can only be made payable by act of parliament. There was in fact no stipulation at all in the contract affecting the liability to South Leith. The contract was silent as to South Leith, and merely said, that if the lands should be afterwards included within the royalty of Edinburgh, then they must pay the burdens of Edinburgh. It amounted to nothing more than this, that inasmuch as the vassal accepted the feu-charter with this stipulation, he could not afterwards complain of being called on to pay the burdens of Edinburgh. It was a personal bar to his complaining. But, then, the same act (7 Geo. III. c. 27) which provided for these lands being included within the royalty of Edinburgh, completely severed for ever their connection with South Leith. The legislature, then, justly or not, determined, that though these lands were dissevered from South Leith, yet they were to remain liable to that parish for certain purposes, and it was that act, and it alone, which created the double liability. It was said, that § 46 of 8 and 9 Vict. c. 83 was nothing but a proviso. The language, however, is clear and absolute, and must take effect—*R.* v. *Poor-Law Com.* 6. Ad. & E. 7. If this clause had been intended to be a mere proviso, we should have had it in the usual form of a proviso. The whole question, therefore, must turn on the construction of the latter act, for there is no general or common law liability to be rateable for poor-law burdens. The case accordingly stands thus:—The 7 Geo. III. c. 27, which alone made these lands liable to pay rates to South Leith, while it dissevered them from that parish, says they must pay both burdens. The 8 and 9 Vict. c. 83, which extends to all the lands of Scotland, says these lands shall pay only one of the burdens; and, to make the matter more clear, it adds in § 91, that all statutes are repealed which are inconsistent with it. This act of 1845 therefore expressly repeals the act of 1767. We care not which of the parishes we are liable to, provided we are not liable to both.

*Bethell* Q.C. and *Donaldson*, for respondent the Parish of Edinburgh.—We assume there is no double rating, and argue only against South Leith. The act 1767 proceeded not on any contract at all, but on the footing of public utility. All the old Poor-Law Acts deal with the poor-rate as a local parochial burden; and the act 1767 shews, that it was the knowledge and intention of the owners, as well as of the legislature, that it would be a necessary rule of law, that these lands, the moment they were brought within the parish of Edinburgh, would be subject to the burdens of Edinburgh. The Poor-Law Act of 1845 proceeded on the policy of a uniform single assessment for each parish. All its provisions proceed on the notion, that the parochial authorities could not rate lands which are not within the precincts of their parish, and no provision is made by that act for rating lands lying out of the parish. It is impossible to say these lands lie in two parishes. They were dissevered from South Leith for ever by the act 1767. They are now in the parish of Edinburgh; and all that was left by that act of 1767 was a personal obligation on the owners to be rated in South Leith as formerly. This personal obligation being swept away by the act of 1845, the parish of Edinburgh must now have its own.

*Rolt* in reply.—The other side go on the assumption, that the double rating was not the result of the contract, but of a statute passed for the public good; but that statute itself clearly shews that the contract was its basis. As to § 46 of the act 1845, both it and § 47 occur in the middle of a series of sections extending from § 31 to § 51, all dealing with the mode of assessment, and therefore it is more reasonable to construe it as part of those sections, than to give it a general and absolute meaning. The result of the opposite construction will be, that we sustain a serious loss without any consideration, while Mr. Allan obtains a benefit for which he never paid us.

LORD CHANCELLOR ST. LEONARDS.—My Lords, the argument, as I understand it, on the part of the appellants, rests upon what is asserted to have been a contract, that there should be a double assessment—a contract, that the land in question should not only continue liable to the parish of South Leith, but that it should also become liable to the parish of Edinburgh. It would be very much to be regretted if, without some positive contract, clear and unambiguous, and sanctioned (as it would require to have been) by parliament, any given property should be chargeable to the full amount of the rates in two different parishes; for it being undeniable that this property is liable to be rated in the parish of Edinburgh, the contention is, that it is also liable to be rated in the parish from which it has been severed; or, in other words, that there is

at this moment, on the part of this property, a liability to pay twice over, rates to the poor for the two parishes. I say, my Lords, it would be very much to be regretted if that should turn out to be the law; but I believe that I shall be able to shew that there is no foundation for the argument which asserts that it is so liable.

My Lords, the property belonged to Heriot's Hospital; and, of that property, grants were made by the hospital of small quantities of land,—only, in fact, a few were for villa residences in the immediate neighbourhood of Edinburgh towards the parish of South Leith; and the hospital, anticipating that the buildings would be carried out beyond the natural limits of the burgh of Edinburgh, in the grants which they made, stipulated that the persons to whom the lands were granted should consent to this, that if the royalty of Edinburgh were extended to the property in question, not only should the buildings be made conformable to the regulations of the municipality of Edinburgh, but that they should be liable to the parochial burdens of the royalty of Edinburgh. Now there was no contract in one sense; but it certainly was a contract in another sense. It certainly was a contract, that a man who took that property should never object to a parliamentary enactment which would make him liable, not only to build the houses which he had erected on the land which he had taken, according to the directions of the city of Edinburgh, but that he would pay the burdens equally imposed on other property in the city of Edinburgh. He never could have retired from that. That contract was so far binding in that limited sense; but it required the sanction of parliament, and I can see nothing whatever, on the face of that contract, which at all touches the parish of South Leith. The property was in that parish; the liability was by law; the liability could only be discharged by law, that is, by an act of parliament. The parties, therefore, left that as they found it. They had no reason to suppose that the liability would be removed; and there was no stipulation in regard to it. The stipulation, therefore, is one for the benefit of the city of Edinburgh; and it is no stipulation, it is no contract whatever, even between those parties, (for it could in no other sense be termed a contract,) affecting the parish of South Leith, or giving any benefit to South Leith. It neither damaged nor benefited South Leith; but it left that parish to stand precisely on its own rights, as it did before these grants were made.

When parliament came to deal with the question, and to extend the royalty, there was this singular provision. Of course extending the royalty, which was the object of the act, to these particular lands, made them liable to the responsibilities of property within the royalty of Edinburgh so extended; but it said nothing about South Leith; and it proceeded, as it must have proceeded, upon the contract of the parties, not to object to that extension. Parliament never could have been asked to bring persons in the parish of A into the parish of B, leave them liable to their liabilities under the parish of A, and impose upon them the liabilities of the parish of B. Of course no legislature could do anything so revolting as that, unless the parties who had purchased or taken the property had agreed by contract with the persons of whom they purchased it, or from whom they took it, that they would be subject to those double liabilities. Parliament, then, acting on the contract, made these provisions—first of all extending the royalty and extending the liability, and then severing "for ever" from the parish of South Leith, and annexing to the royalty of Edinburgh, the particular lands in question. The words are express, that the severance is to be perpetual. The words are, "for ever." Then comes that clause upon which this House, upon a former occasion, had to pronounce its opinion, that notwithstanding that severance, the persons who were the owners and occupiers of the land should be liable, amongst other things, to the parochial burdens of South Leith. Now, looking at the terms of that clause, mixed up as the expression "parochial burdens" is with ministers' stipends and with tithes, it might have been made a very considerable question, and I should not be surprised at that question being brought to your Lordships' House for decision, whether poor-rate did or did not fall within that description; because it is undeniable, as a general proposition, that where the burden is, there ought to be the benefit. It is said in this particular case, because fine houses have been built on this land, that the inhabitants of those houses would not desire to be relieved, but that they would be capable of affording relief to the poor—and that, therefore, South Leith loses, and the city of Edinburgh gains. It may be so by this particular arrangement; but, as a general proposition, wherever the burden is, there ought to be the benefit,—that is, a parish ought not to exact from land within another parish, irrespective of the poor to which it is not liable, poor-rate for the benefit of those within its own parish, and within its own locality. However, so far we have got beyond the power of dispute. Your Lordships will find, that according to that clause, at the moment I am now addressing your Lordships, this land is for ever severed; at this moment it stands severed and distinct; it is not, in any manner, within the limits, or liable to be considered as part, of the parish of South Leith.

Now, my Lords, upon the decision of your Lordships upon the words of that other clause, as to parochial liability, in *Allan* v. *M'Craw*, (2 Rob. App. C. 507,) this property did, for a considerable period, become subject to double rates—a grievance no doubt, and one which I must think was not within the purview of the parties. Probably, as it has been suggested, the burden at that time was very small; and the first act of parliament expressly exempted the property

from the liabilities of the act, whilst it continues in its original state, and did not impose the additional burden until it became chargeable, in respect of houses to be erected upon it.

Now, my Lords, then came the general Poor-Law Act (8 and 9 Vict. c. 83) for Scotland; and a good deal has been said, very much to the purpose, upon the policy of that act. Your Lordships, in deciding this point of law, can only look at the policy as bearing upon the particular provisions; but it is impossible to read this act of parliament without seeing, from the whole frame of it, that it was as much the policy of the act to make a given and limited provision for the poor, as it was to impose that liability upon the parishes, each parish acting for and within itself, and binding by its own powers, given to it by this act of parliament, the whole of its parishioners. The machinery directed in each parish is a parochial board chosen by the parishioners, and having the limited powers which are here given. Now, I look in vain in this act of parliament for any power, in any parochial board, to assess any land which is not within their own parish. Where, on the face of this general act of parliament, (without speaking of any particular provision,) is the power in any parochial board to assess poor-rates upon any land not within the parish? There is no such power given in the act of parliament.

It is said that § 35 saves usages and local acts; and that, therefore, this case falls within that provision, because there was a local act which made this property liable to double rating. The provision is, "That if, at the date of this act, an assessment for the poor shall in any parish or parishes be imposed according to the provisions of any local act, or according to any established usage, it shall be lawful for the parochial board or boards of any such parish or parishes, to resolve that the assessment in such parish or parishes shall be imposed according to the rule established by such local act or usage." But, my Lords, it is perfectly clear that that means a general mode of assessment, and that it is not a clause applying to a particular property, a portion of another parish, or, I might say, a portion even of the same parish; but it is clear that it means a general provision under a local act or usage which should require not a parochial board, because it is a parochial board which is to be appointed under this act, which is to put this into operation if they find a usage; or if they find a local act which provides a particular mode of managing that particular portion of the duties imposed by this act, then, if they so resolve, they are to execute them in such parish according to the act.

Now, my Lords, before I proceed to consider that which has been particularly argued upon, viz. the construction of this act of parliament, I want to ask what is the summons here? The summons of the appellant puts him out of Court. It is utterly impossible to read it without seeing instantly that the whole of his case is without foundation. The summons is this, that these persons shew, by the "collector of the assessments for the support of the poor in the parish of South Leith, county of Edinburgh, appointed by the parochial board of the said parish," that certain persons who are named have been a parochial board and a committee of management, "of which committee John Car Beadie is convener," and so on: "That the said parish of South Leith is a landward parish, and the poor thereof are, according to law, supported by assessment, the one-half of which is imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages within the parish: That Thomas Allan, Esq., banker in Edinburgh, is owner of the lands and heritages particularly after specified, situated in Leopold Place, Windsor Street, and Elm Row, in or near Edinburgh, and as such, is liable" to the payment—that is, that having a right to assess within the parish, this is out of the parish, and therefore it shall be assessed. The case falls to the ground upon the summons; the parties state themselves out of Court. The moment you read that, you see that there is no case. Their right to assess is within the parish; they say the land in question is out of the parish; and then they say, therefore it is assessable.

But upon what act of parliament do they found themselves in this summons? Why, upon the general act of parliament. Where is the provision which authorizes them? If they have such a provision, it is under the early act of parliament; and the summons ought to have been of a totally different nature. They ought to have come before the Court below, and said: "We are not entitled to assess under this general act of parliament, but we are entitled to assess under our early act of parliament." That was their case, if they had any, and that would at least have put them upon ground which they might have stood upon, to have shewn whether or not their right was cut down by the subsequent act of parliament; but in the way that they have framed this case, they found themselves upon an act of parliament which does not touch their case; they profess themselves to be within it, and there is not a single provision which touches their case.

Now, there is a provision in this general act of parliament which tells strongly against any possible claim; and it is important, on a question of this sort, in advising your Lordships to affirm the interlocutor of the Court below, that it should be shewn clearly that there is no right to impose this rate. In § 16 of 8 and 9 Vict. c. 53, there is a power to combine together any parishes which it may be thought proper to bring into a common union; and there is to be one assessment, a common assessment, for any two or more parishes. How are they to be rated?—In respect of each individual ownership within the parish. If there was any exception, would it

not have applied, and was it not likely under the circumstances to have applied, to Edinburgh and South Leith,—and who then could have said that there was to be a double assessment? There was nothing to prevent South Leith and Edinburgh from being put together and forming one parish, and being liable as one parish, and one only, and no man within the parish being liable beyond the extent of his property, and being only put, as he ought to have been put, on a state of equality as to burden, as he had the benefit, with his fellow-parishioners.

Now, my Lords, that would satisfy my mind that there was no intention here to keep up any burden, such as is insisted on at your Lordships' bar. But it may be worth while to consider shortly what are the grounds upon which it is insisted that this act of parliament,—the provisions of which I have shewn to your Lordships never can be applied to this case, and every provision of which satisfies me that it was intended not to leave so injurious a clause operating upon any party,—it may be worth while to consider, how far the argument at your Lordships' bar can be maintained, even in the way in which it has been presented to your Lordships.

Now, then, the argument is this:—It is not denied that § 46 is very general in its terms. I entirely agree with what has been stated at the bar, that that finds its place among general regulations; and it has been ingeniously argued and insisted upon, as the foundation of the whole argument of the appellants, first of all, that there was a contract—which I have shewn your Lordships is no contract which would operate in this view; but assuming that there be that contract, it is then said that this was necessary in consequence of the general provisions of §§ 34 and 35, shewing the manner in which the assessment is to be made. Now I will shew to your Lordships that those sections would not authorize that imposition which is called for on the part of the appellants. But what is the reasoning? It is quite clear that, according to the true construction of those earlier sections, they would have authorized what was unjust, impolitic, and ought not to have been allowed, that is, double assessment on one man, at his expense, for the benefit of others, without any cause, without any reason, against justice, against sound policy, and without any foundation. Therefore it is provided that it shall not take place. Why is not that very clause in this very act of parliament, which is to apply to all Scotland, to apply to every man in Scotland, and every man's property in Scotland, not to particular individuals, but to the people as a nation, as it were, and to the whole of Scotland? Why should not that reasonable provision which properly applies to the cases which have been pointed out, and which is not restricted, have the general operation which the words enable your Lordships to give to it, if it was intended to provide for a similar abuse, if such an abuse did exist, in any other given case?

The next section, § 47, does not at all weaken the argument. It is only in furtherance of the same object, that you are not, even under the provisions of this act of parliament, to impose a double burden upon any man. Why should you impose a double burden upon any man, under any provision of any other act of parliament? If by accident such a thing has crept in, or if by mistake or injustice it has crept in, when you are making a general provision which applies to every man's property, and to every poor man, why should you not extend those words, or rather why are you to cut down those words? If you allow the words to have their proper operation, without giving a forced construction to every single word,—if you only allow the clause to be read as every man who reads it must understand it, without some explanation which may be foreign to the subject, giving it its natural stress, putting no forced construction upon a single word of it, allowing it to operate according to its plain and manifest terms, so that every man who runs may read,—it does precisely what ought in justice to be done—it gives equal burdens and equal benefits to every one of her Majesty's subjects in Scotland.

Now, my Lords, if there were any doubt upon this, which I hold there is not, then look at the last section, § 91. It is perfectly clear. Now, is or is not the provision in the early act of parliament, inconsistent with the provision in this act of parliament? My Lords, it comes simply to this:—If the legislature, in passing a general act, had committed so great an injustice as to leave this property liable to double burdens, it was absolutely necessary, in order to effect that unjust object, that provisions should have been expressly inserted to give effect to that intention. If you even shew that the intention was not to abrogate that former act, you have no means of carrying that intention into effect—you have no exception; and it would require an express exception, and a creation or a continuation of special machinery, to enable such intention to be carried into effect.

My Lords, I have thought it advisable, in addressing your Lordships, to go more into detail than is necessary, in order to shew to the party who is not successful at your Lordship's bar, that your Lordships have not come to this determination without a full consideration of the merits of the case. Viewing those merits on the part of the appellants, I think the case is free from all doubt; and I shall therefore move that the interlocutor of the Court below be affirmed with costs.

LORD BROUGHAM.—My Lords, I also agree that the Court below has come to the right conclusion in dealing with the construction of these acts of parliament. I consider the grounds upon which the Court below have decided the case, to be perfectly sufficient to support the interlocutor. Section 46 of 8 and 9 Vict. c. 83, is absolute that there shall not be double assess-

ment; and it is without any exception. Now it is said, that the earlier act, 7 Geo. III. c. 27, does give a double assessment. I will even take it thus,—and it is impossible to put it stronger for the contention of the appellant:—Suppose that the act 1767 had in express terms enacted that certain heritors, owners, and occupiers of land (naming the lands) should be liable to a double assessment,—should be liable to be assessed for the parishes both of Edinburgh and of South Leith,—then I come to the act of 1845, and I find in § 46, that no owners or occupiers of lands are to be liable to a double assessment, or to an assessment in more parishes than one. Then comes § 91 of that act, which might not have been necessary had there been no contradiction, or apparent contradiction, or no inconsistency, or apparent inconsistency, between the provisions of that act and the previous acts. What does § 91 say: It states in express terms, that all provisions, laws, statutes, and usages, are to be considered as repealed, in so far as they are contradictory to, or "inconsistent with the provisions of this act." And it is worth considering, in inserting this proviso or this (as it were) saving clause, for the provisions of the act itself, (in that the legislature, so far as it might be contended that they were inconsistent with the provisions of the former acts, and that, therefore, they did not intend to repeal the provisions of the former acts), expressly mentions one local act saving that from repeal, and that all those laws, statutes, and usages, which are inconsistent with the provisions of the present act, shall be taken to be repealed, save and except an "act for the liquidation of the debt owing by the Charity Workhouse of the city of Edinburgh." It saves that act from repeal. All other acts generally inconsistent with the provisions of this act, are taken to be repealed. Therefore the parties setting up the earlier act as against this act, are in this dilemma,—that in proportion as the earlier act may be found to be more clearly inconsistent with the provisions of the 46th section, in exactly the same proportion is it clear that it falls within the 91st section; for, in that operation, it became a provision at variance and inconsistent with the provisions of this section.

My Lords, I think, with my noble and learned friend, that there is very great difficulty in seeing how, under the 35th section, the parish of South Leith could assess, for it says they are to assess, and that is the power which is given,—"It shall be lawful for the parochial board or boards of such parish or parishes to resolve that the assessment in such parish or parishes shall be imposed according to the rule established by such local act or usage,"—that is, supposing there is a local act or usage, then this parochial board is to be entitled here to make its assessment according to such local act and usage. But it is such assessment in the parish. "In the parish," here means, in this parish, or in any other parish to which any local usage or any local act may extend. I do not think it is necessary, however, to go into that topic at all. I consider that, taking the 46th section with the 91st section, and comparing the provisions which are set up as favourable to double assessment, by the contention on the part of the appellants, there is no room whatever for doubt. Then, that the assessment must be for Edinburgh, and not for South Leith, I think is too clear to require any further discussion.

*Interlocutor affirmed with costs.*

Second Division.—Lord Wood, Ordinary.—Atkins and Andrew, *Solicitors for Appellants.*—Richardson, Connell, and Loch, *Solicitors for Respondent Allan.*—Dodds and Greig, *Solicitors for Parochial Board of Edinburgh.*

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## MARCH 29, 1852.

JOHN HUTCHINSON, *Appellant*, *v.* Mrs. FERRIER or GORDON and Husband, as representing the late Charles Ferrier, Accountant in Edinburgh, *Respondents.*

Stamp—Proof—Lease, Missives of—*A question having arisen in an action of damages for wrongful possession of a piece of ground, and for using right of passage by it to a woodyard belonging to the defender, the pursuer, who claimed as tenant of the piece of ground under the town of Edinburgh, and who averred that he had been kept out of possession wrongfully, proposed at the trial to prove his right of tenancy by production of a series of letters from the chamberlain of the town of Edinburgh. These letters were objected to as incompetent evidence, in respect of want of stamp, and the presiding Judge sustained the objection.*

HELD (affirming judgment) *that the ruling of the Judge was correct; and* Opinion, *That the letters, even if competent evidence, were insufficient to prove the right of tenancy.*[1]

The late John Hutchinson, merchant in Leith, was proprietor of a piece of ground used as a woodyard, lying between the road leading from the south end of Morton Street to the Easter Road and Leith Links. On Hutchinson's death in 1830, his son, R. D. Hutchinson, succeeded

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[1] See previous report 13 D. 837; 23 Sc. Jur. 379. S. C. 1 Macq. Ap. 196: 24 Sc. Jur. 404.