

LEITH HARBOUR COMMISSIONERS, . APPELLANTS.
 INSPECTOR OF THE POOR OF } . RESPONDENT.(a)
 NORTH LEITH, . . . }

1855.
 29th January.
 1st, 6th February.

Poor Law.—There is no authority in the Poor Law to rate a sum of money.

Payment.—A Court of Justice ought not to order payment from a wrong party, giving liberty to recover indemnification from the right party.

IN this case the Court of Session had found that an annual sum of 7,680*l.*, issuing out of the revenues of the harbour of Leith, and payable to the Remembrancer of Her Majesty's Court of Exchequer in Scotland, for the benefit of the creditors, clergy, and schools of Edinburgh, was liable to be rated to the relief of the poor of the parish of North Leith, and the Commissioners of the harbour were decreed to pay the same; but inasmuch as the harbour was not wholly situated in the parish of North Leith, they were allowed to claim indemnification from the parish of *South* Leith in respect of any over-payments that they might be compelled to make under the decree complained of.

Sir *Fitzroy Kelly* and Mr. *Anderson* for the Appellants.

The *Solicitor General* (b), Mr. *Rolt*, and Mr. *Dunlop* for the Respondents.

Lord Chancellor's
 opinion.

The LORD CHANCELLOR (c) :

There is no authority whatsoever in the Poor Law Act (d) to rate a sum of money.

(a) Reported below, Sec. Ser., vol. xv., p. 95.

(b) Sir Richard Bethell.

(c) Lord Cranworth.

(d) 8 & 9 Vict. c. 83.

In order to have made this an Interlocutor sustainable in point of form, it should have imposed a rate not upon the fund but upon the Commissioners, as being the owners and occupiers of the docks.

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NORTH LEITH.

*Lord Chancellor's
opinion.*

Another objection, which is quite unanswerable, is this, that here these gentlemen are rated in the parish of North Leith upon the whole of these docks, although only a part of them is situated in that parish; and the Commissioners are told, "You may recover such proportion, if it is improperly assessed, from the parish of South Leith." But, my Lords, a Court of Justice must not thus deal with the suitors who come to it for relief.

It appears to me, therefore, that both the form and the principle of this decision are entirely wrong; and therefore the course which I propose to take is simply to move your Lordships that this Interlocutor be reversed, but that the judgment of the House shall be so drawn up as not to prejudice the parties with respect to any rate that may be imposed hereafter.

The Lord BROUGHAM: My Lords, I entirely agree.

*Lord Brougham's
opinion.*

The Interlocutor of the Court of Session was reversed, with the following Declaration:—

That this Judgment of Reversal is not to prejudice or affect any question which shall hereafter arise as to the liability of the said Commissioners to be assessed for the poor, by virtue of the Act 8 & 9 Victoria, c. 83., for the harbour, docks, and subjects vested in them as owners, tenants, or occupiers, as in the pleadings is mentioned: And it is further ordered, That, with this Declaration, the cause be remitted back to the Court of Session in Scotland, to do therein as shall be just, and consistent with this Declaration and Judgment.

MATLAND & GRAHAM.—ROBERTSON & SIMSON.