PAROCHIAL BOARD OF THE PARISH OF SOUTH LEITH, } APPELLANTS.

THOMAS ALLAN . . . . RESPONDENT.

PAROCHIAL BOARD OF THE PARISH OF EDINBURGH, ALSO } RESPONDENTS.

1852.
25th and 26th March.

Under the late Scotch Poor Law Act (8 & 9 Vict. c. 83), owners and occupiers of land cannot be rated to the relief of the poor in more than one parish or combination; and all contrary statutes and usages are repealed.

Where there were two Respondents, having distinct interests, the House allowed two counsel to be heard for each.

Proper course in such a case.

THE circumstances of this case are fully stated in the Court of Session Reports (*a*).

The suit was instituted by the Respondent Allan, to have it found and declared that certain lands and heritages, which had been rated to the relief of the poor in two distinct parishes (namely, the parish of Edinburgh and the parish of South Leith), were in truth only liable to be so rated in *one* of these parishes.

The Court below had, by an unanimous judgment of the Second Division, decided in favour of Mr. Allan, holding that the lands and heritages in question were subject to a single liability only; and that, inasmuch as they were situated within the limits of the City of Edinburgh, the obligation to pay rates was confined to that parish.

The parish of South Leith, considering itself aggrieved by this adjudication, appealed to the House of Lords.

The parish of Edinburgh, apprehensive lest it might lose the benefit of the judgment, appeared to support it.

(*a*) 13th July, 1849, Second or New Series, vol. ii. p. 1391.

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Mr. Allan simply resisted the attempt to fix him with a double liability. It was to him a matter of indifference whether he paid to Edinburgh or to South Leith; but he contended that he was not bound to both.

Mr. *Rolt* and Mr. *Anderson*, for the Appellants, the parish of South Leith.

The *Solicitor-General* (Sir *Fitzroy Kelly*) and Mr. *Brown*, for the Respondent Allan.

Mr. *Bethell* and Mr. *Donaldson*, for the Respondents, the parish of Edinburgh (*a*).

(*a*) At the close of the Appellants' opening, a question arose as to which of the Respondents should be heard *first*. It was determined in favour of the Respondent Allan.

Another question arose, whether one or two counsel should be heard for each of the Respondents.

The *Solicitor-General:* Here are three contesting parties, each having opposite interests. If the House shall be of opinion that Mr. Allan is liable to double rating, he will have two opponents (one of whom has already had the benefit of two speeches), to contend with. He ought therefore himself to have the like advantage.

The LORD CHANCELLOR: What are the counsel for the city of Edinburgh going to argue?

Mr. *Bethell:* The city of Edinburgh will be at variance with both the other parties, in the event of the House holding that there should be only a single rating, and that single rating in favour of South Leith.

Their Lordships, under the circumstances, determined that two counsel should be allowed to address the House on behalf of each of the respective parties.

The proper course in such a case as the above would have been, before the hearing, to present a petition stating in what respects the interests were distinguished, and praying permission to be heard by separate counsel. Such petition would have been referred to the Appeal Committee; and thus an opportunity would have been afforded of ascertaining how far, and in what respects, the interests clashed. Whereas, without such previous investigation, the House has no means of knowing whether counsel should be heard except by actually hearing them. Macqueen's Practice, 205.

Lord Chancellor's opinion.

The LORD CHANCELLOR (*a*), in moving for judgment, observed that the proposition of the Appellants was one which, if successful, could not be contemplated without some regret; because the result would be, to fix this property with a double liability, not only at variance with justice, but, as he thought he should be able to show their Lordships, contrary to law.

By certain charters from the governors of Heriot's Hospital, grants of property were made in 1756, for villa residences in the neighbourhood of Edinburgh; and it was stipulated that in the event of the Royalty being extended, so as to comprehend them, they should be subject to the parochial burdens of the city.

The property thus granted was, in 1767, by the 7 Geo. III. c. 27, disjoined from the parish of South Leith (to which it had been previously attached), and annexed to the parish of Edinburgh. That Act, however, left the property liable, as it had been before, to be rated for parochial burdens in South Leith.

But then came the General Poor Law Act of Scotland, the 8 & 9 Vict. c. 83, the 46th section of which provided that owners and occupiers of land should not be liable to be rated to the relief of the poor "in more than one parish or combination." And the question was, whether Mr. Allan, under the circumstances of the present case, was still subject to a twofold demand.

Now, the House would observe that Parliament had separated for ever the lands in question from the parish of South Leith, and had annexed them to the Royalty of Edinburgh. The words were express, that the severance was to be perpetual. These lands, therefore, being no longer within the limits of South Leith, their Lordships had to determine whether they were liable to be rated to the relief of its poor. Now, as a general doctrine, it was undeniable that, where the burden was,

(*a*) Lord St. Leonards.

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there, and there only, ought to be the benefit. And this would appear to have been the principle of the Poor Law enactment. It was evidently the policy of that measure to give each parish the power of acting for and within, and not beyond, its own dimensions. The machinery provided by the Act consisted of a Board chosen *by the Parishioners*, and the Lord Chancellor looked in vain for any powers to assess property lying out of the boundaries of the particular parish.

Lord Chancellor's opinion.

It was said, however, that local acts and usages were left undisturbed. But the LORD CHANCELLOR apprehended that the attempts made to render that argument available in the present case had failed.

By the Act, authority was given to combine parishes into unions. There was nothing to prevent South Leith and Edinburgh from having been thrown together, if such a consolidation had appeared expedient. In that case, there would have been a *common* assessment to the union. But the Legislature had left these parishes distinct; and that circumstance alone went far to show that there was no intention to keep up a separate obligation. The 46th section of the Act was express against any double liability; while the 91st was no less positive in repealing all statutes and usages at variance or inconsistent with its provisions. The decision appealed from was correct in holding that Mr. Allan was only subject to the demand of one parish; and his Lordship concluded by moving that the interlocutor should be affirmed with costs.

Lord Brougham's opinion.

Lord BROUGHAM was clearly of opinion that the grounds on which the Court below had proceeded were fully sufficient to support this interlocutor. It was impossible to get over the 46th section of the recent general Act. And with respect to the 91st section, he would make this observation, that the more

any former usages or statutes were at variance with that section, the more effectually were they struck at and displaced by its operation. That the assessment, therefore, must be for Edinburgh, and not for South Leith, was too clear to require any further discussion.

Interlocutor affirmed, with Costs.

ATKINS & ANDREW.—RICHARDSON, CONNELL, & LOCH.