

1851.
1st, 11th, 13th,
15th, 21st July.
1852.
26th March.

M'WILLIAM, . . . APPELLANT.
ADAMS, . . . RESPONDENT (a).

Able-bodied persons are absolutely excluded from relief under the Poor-Law of Scotland.

Pollock v. Darling over-ruled.

Ancient statutes are to be construed with reference to the state of things at the time of their passing.

It is a rule that several statutes on the same subject are to be read as *one* statute.

IN the year 1848, the Appellant, a boiler-maker, preferred his petition to the Sheriff-Substitute of Glasgow, stating that he was utterly destitute; that he was willing to work, but unable to find employment; and that his applications for assistance from the parish had been rejected. The petition, therefore, prayed an order requiring the Inspector of the Poor (the above Respondent) to administer relief.

The Respondent, by his answer, stated that "the petitioner was *an able-bodied man*," and consequently not entitled to relief.

The Sheriff-Substitute assoilzied the Respondent; but the Sheriff-Principal, upon appeal, disagreed with his Substitute, and decided in favour of the Appellant (b).

The Respondent thereupon carried the case by advocacy to the Court of Session; and Lord *Wood* having, as Ordinary, made "great avizandum" to the First Division,—that Court, after a hearing which occupied several days in December, 1848, requested their Lordships of the Second Division and the permanent Lords

(a) The report of the proceedings in this and the next case is concise; because, admitting their importance, the profession and the public have already had enough of them. Not only do they occupy a very large portion of the Second Series of Decisions in the Court of Session, vol. xi. p. 719, but it would appear that the "Judges' opinions" were published separately in Scotland, and form a considerable volume.

(b) The Sheriff-Principal found, however, that the right to relief was to last "only so long as the claimant should remain in destitute circumstances and unable to work, and was to be afforded and received in exchange for labour or otherwise, as the Parochial Board might see fit."

Ordinary to deliver their opinions on the whole case in writing.

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Of these "consulted Judges," it appeared that one, and one only, (Lord *Robertson*), held the claim for relief to be well founded; while the other eight (the *Lord Justice-Clerk (Hope)*, and Lords *Medwyn, Moncreiff, Cockburn, Cuninghame, Murray, Ivory, and Wood*), considered it unsustainable.

In conformity with the opinions of the majority, the First Division pronounced judgment negating the claim, altering the interlocutor of the Sheriff-Principal, and dismissing the Appellant's petition. But this decision of the First Division was not unanimous. Lord *Jeffrey* dissented—the other three Judges (the *Lord President (Boyle)*, and Lords *Mackenzie and Fullerton*) agreeing with the majority of the "consulted Judges;" so that the decision brought under review of the House may be represented as carried in the Court by a majority of *eleven to two*—the minority consisting of Lords *Jeffrey* and *Robertson*. And the effect was to determine that, in Scotland, an able-bodied person is not, in any circumstances, entitled to relief under the Poor-Law.

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The *Recorder (Hon. J. S. Wortley)* and Mr. *Roundell Palmer*, for the Appellant: It is admitted that the Appellant is destitute, and that he is willing to work, but that he can find no employment. He must either be relieved from the parochial funds or die of starvation. The result is the same as if he were subject to physical infirmity. It is the policy of the Legislature to give aid to distressed workmen and artisans; so that on the return of public prosperity they may be able to resume their occupations. Their industry is the wealth of the State. Accordingly, by the 8 & 9 Vict. c. 83, s. 68, it is enacted, that "assessments

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shall extend to occasional as well as permanent poor." The Appellant is of the former class. The decision of the present case, however, turns mainly on the ancient law of Scotland, which continues unchanged and unaffected by the recent statute. The right to relief by compulsory assessment began with an Act of the Scotch Parliament, passed in the year 1579 (*a*), "For punishment of strong and idle beggars, and relief of the poor and impotent." That statute is divisible into two parts—the first, for the suppression of vagabonds, being penal, must be strictly construed; but the second, for relief, ought to receive a liberal construction. In its beneficial operation it embraces all persons who are compelled to *beg*, whether able-bodied or not. The question is no longer open. Nearly half a century ago, in *Pollock v. Darling* (*b*), it was solemnly determined by a judgment, never since disturbed, that able-bodied persons might demand relief from the parish in seasons of calamity. That decision has been repeatedly recognised by the Judges (*c*). It has been approved of by text-

(*a*) Chapter 74.

(*b*) *Morr.* 10,591; *Fac. Coll.*, 17th Jan. 1804. In this case the Court of Session held "that those persons were entitled to relief under the Poor-Laws, who, though in ordinary seasons able to gain their livelihood, are reduced during a dearth of provisions to have recourse to charitable supply: And an extraordinary assessment may for that purpose be levied." This went on temporary calamity. The judgment was pronounced, with much discordance of opinion, by a majority of the Inner House, on the 19th of November, 1802, and after a rehearing was adhered to on the 17th of January, 1804. It has continued undisturbed for nearly half a century; but it would appear that eminent lawyers questioned its authority. Lord Brougham, in course of the argument in *McWilliam v. Adams*, said "he well remembered that the decision in *Pollock v. Darling* never gave satisfaction in the Parliament House." His Lordship added, "that Mr. Horner greatly distinguished himself in the case. He was on the winning side, and his friends expected that there would be an appeal to the House of Lords."

(*c*) *Paisley v. Richmond*, 29th Nov. 1821, 1 *Shaw & B.* 167; *Watson v. Ancrum*, 28th Feb. 1829, *Fac. Coll.*

writers (a). It has governed the practice which has since prevailed in the administration of the Poor-Law. No authority to the contrary can be cited on the other side. As regards the policy of the Act 1579, c. 74, its object was to prevent *begging*. To that mischief the able-bodied are, when destitute and out of work, as liable as the infirm and impotent. The test of interposition is *poverty*; irrespective of the causes which occasion it. The interlocutor of the Sheriff-Principal imposes a guard under the sanction of the statute—which will prevent any abuse of its benefits—by empowering the inspector to require the personal labour of the Appellant in exchange for his maintenance. It has been contended, on the other side, that the Act 1579, c. 74, is a copy of the English statute 14 Eliz. c. 5, which contains a provision expressly applicable to able-bodied poor, but not to be found in the Scottish enactment. The omission of that provision, it is said, shows that the Scottish Legislature did not intend that able-bodied persons, however destitute, should be publicly relieved. But in 1579, the kind of employment prescribed for able-bodied poor in England could not have been procured in Scotland. Subsequent Scotch statutes, however, make provision for this omission, and show that the support of unemployed operatives has ever been an object of legislative care. Thus the Act 1661, c. 38, requires a list to be made of the poor in every parish, and it directs the overseers to see that due punishment is awarded against such as, “being able, shall refuse to work.” So, again, the statutes 1663, c. 16, and 1672, c. 18, recognise throughout the distinction to be taken between those who are able and *willing* to work, and those who, though able, *refuse* to work. It is true there has been a reluctance in

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(a) Hutcheson's Justice, 2nd Ed., vol. ii. p. 51; Tait's Justice, 3rd Ed., p. 274.

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Scotland to provide for the poor by assessment. But it is a mistake to say that the Act 1579, c. 74, has ever fallen into desuetude. It would appear that it was put in force much earlier than generally supposed. Thus, from the publication of the Municipal Records of Aberdeen (*a*), we find that the burgesses of that corporation, reciting the Act, made provision by assessment at different periods, during the seventeenth century, for the support of able-bodied persons out of employment. The Appellant's claim, then, is supported by statute—is confirmed by decisions, and is sanctioned by usage. The judgment appealed from denying him relief ought, therefore, to be reversed (*b*).

Mr. *Bethell*, Mr. *Anderson*, and Mr. *Gregg*, for the Respondent: As the common law is confessedly silent on the subject of this appeal, the only question is, whether the claim be truly sanctioned by legislative enactment. Now, it is not a little remarkable, that, in the Scotch statute 1579, c. 74, all the provisions of the English statute 14 Eliz. c. 5 (*c*), (passed seven years before), are incorporated, except *one* clause, which contains a special direction for setting the able-bodied poor to work at the expense of the parish. The Scotch Act, in other respects, is on the model, and almost in the words, of the English statute. The Act 1579, c. 74, leaves out this precise and peculiar provision. What inference can legitimately be drawn from this omission, but that the Scottish Legislature did not intend that the able-bodied poor should, under any circumstances, be supported by compulsory

(*a*) Spalding Club, vol. ii. p. 124; Appellant's Case, p. 15.

(*b*) Lord Jeffrey's opinion in favour of the Appellant forms the appendix to Appellant's Case. Lord Robertson's, to the same effect, is set out in the Respondent's Case, p. 117.

(*c*) Intituled "An Act for the punishment of vagabonds, and for the relief of the poor and impotent;" a title nearly the same as that of the Scotch Act 1579, c. 74.

assessment (a). The Act 1579, c. 74, imposing, as it does, a tax upon the community, ought to be strictly, not liberally construed. The Appellant seeks relief under the second branch of the Act, which prescribes relief for the "poor and impotent;" but although admitted to be poor, he is certainly not impotent. The preamble plainly intimates that the evils contemplated by the Act are of a permanent character, such as old age, bodily ailment, &c.

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There is no method or machinery prescribed for the supply of work to the able-bodied, which the statute would have been sure to provide had the relief of that class been contemplated. This shows that the Appellant's claim cannot stand upon the Act 1579, c. 74, and it is equally certain that no other statute can avail him. The Act 1424, c. 25, is against him. Under the Act 1425, c. 66, the "being idle" was held to be criminal. The Legislature presumed that it was in the power of every one to obtain work. The Act 1503, c. 70, interdicted begging, except by "crooked folk, sick folk, impotent folk, and weak folk." So much for the statutes prior to the statute 1579, c. 74. Those subsequent are no less cogent. The Act 1661, c. 38, describes those entitled to relief, as the "aged, sick, lame, and impotent." The Act 1663, c. 16, visits the able-bodied poor with penalties of various kinds, slavery included. The Act 1672, c. 18, declares that those

(a) Lord Moncreiff's opinion, Respondent's Case, from p. 70 to p. 73. The Respondent's counsel also cited a Report of the General Assembly of the Church made to Parliament in 1839 (Respondent's Case, p. 85), in which it was stated that "the Scotch system of Poor-Laws introduced by the Act 1579, c. 74, appears to have been borrowed from the English statute (14 Eliz. c. 5). But a very material variation occurs in the particulars now to be attended to. In England, provision was made not only for the impotent poor, but also for those who were destitute of employment. In Scotland, on the contrary, a legal right in the able-bodied poor was never acknowledged." Lord Moncreiff's opinion, Respondent's Case, p. 85.

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who are "unable to work, by reason of age, infirmity, or disease," shall alone be entitled to relief. *Pollock v. Darling* is but a solitary decision, and has never been regarded as settling the law. It was carried by a narrow majority—the *Lord President (Campbell)* and *Lord Justice-Clerk (Eskgrove)* forming part of the minority. It has been disregarded in practice. It has been reprobated by text-writers. Mr. Monypenny (*a*) (formerly a Judge of the Court of Session) has questioned it. And so likewise has Mr. Dunlop (*b*). The statute of her present Majesty (*c*) gives no countenance to the Appellant's claim. On the contrary, the 68th clause declares "that nothing therein contained shall be held to confer a right to demand relief on able-bodied persons out of employment" (*d*).

Mr. *Palmer*, in reply.

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LORD BROUGHAM :

My Lords, it is admitted on all hands that this important question turns upon the construction of the Act of 1579, c. 74 (*e*). No common-law right is alleged. The opinion, therefore, which we may form, touching the import of that statute, must govern our present decision. Does it, or does it 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?

My Lords, the Act of 1579, c. 74, was the first compulsory provision made for the support of the poor. Whatever had before been done by the Legislature was

(*a*) *Scotch Poor-Law*, p. 194.

(*b*) *Scotch Poor-Law*, last edition, p. 345.

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

(*d*) The opinions of the Judges in favour of the Respondent are set out in the appendix to the Respondent's Case.

(*e*) But see *infra*, pp. 131, 138, 151, 152, 153.

in restraint of that class, and not for their relief. But important light is thrown upon the Act by attending to the provisions of the previous restraining statutes, and especially to the exceptions introduced into them. The purpose of those 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 fifteenth to the middle of the sixteenth century; but I refer particularly to the statute made in 1503, c. 70. The earlier Act of James I., 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 allowed to beg in these words,—“The sheriffs and magistrates shall thoyle none to beg except cruiked, sick, impotent, and weak folk.” In the edition of the Statutes by the Record Commission, under the superintendence of Mr. Thomson (*a*), we find that it 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 the year 1579, was in contemplation of the Legislature, how great soever might be the necessities of the parties. It may be observed, further, that, at the same period, 1503,—the English statute 19 Hen. VII. c. 12, for the punishment of vagrants, and entitled *De validis mendicantibus repellendis*, gives a similar relief to beggars who are unable to work.

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(*a*) Vol. ii. p. 25.

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Like the Scotch Act it mitigates the severity of the older statutes of 7 Rich. II. c. 5, 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; but lessening the punishment of vagrancy in the cases of "women great with child, men and women in great sickness, persons impotent and of the age of seventy."

My Lords, the Scotch Act of 1579, c. 74, had a twofold object; and its title is deserving 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 that 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 "poor" is to be taken as a separate class; that is, as designating persons who are not 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 aged and impotent clearly shows 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 in the present case, 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

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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 recusant able-bodied 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, c. 74, but as aiding that construction. The Act of 1661, c. 38, directs a roll to be made of the "poor, aged, sick, lame, and impotent"—and in this roll none are to be placed who are in any way able to gain their living; (clearly showing 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, c. 18, establishing houses of correction, requires lists to be made of the poor who are able to work, and of 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 correction-houses were never actually established in Scotland, this Act shows that the intention of the Legislature was to give the relief of the Kirk Session to those whom

the Act of 1579, c. 74, had pointed out under its second branch, while those falling within its first branch were to be treated more or less penally.

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Some stress has been laid, both below and here, upon the provisions in the Act of 1579, c. 74, directing an inquiry as to the poor—"If they be diseased, or hail, 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 "hail 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 the 19 of Henry VII. in England. The Act 1579, c. 74, was made a few years after the 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, 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

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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 & 9 Vict. c. 83, s. 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 "able-bodied persons when out of employment." It is a proviso in the section extending the enactments to occasion 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 (*a*) lays it clearly down that those entitled to relief are the "indigent persons who are aged or disabled from work," and Bankton (*b*) describes those entitled to maintenance as "poor people that are not able to work." Mr. Bell (*c*) 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 a succeeding paragraph (*d*), 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

(*a*) B. 1, T. 7, § 63.

(*b*) B. 1, T. 2, § 60.

(*c*) Principles, par. 2153.

(*d*) Principles, par. 2155.

entirely out of our view many of the suggestions (arguments I can scarcely call them) which have been pressed into the discussion; views of expediency, appeals to humanity, considerations of risk and danger, and some topics of mere declamation. Everything that belongs to the Legislature, were the question 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 would 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 very difficult; still more so, to ascertain that this inability arises from no fault of his own. The construction, therefore, which assumes that the able-bodied are excluded, imputes no inconsistency to the lawgiver; it rests, on the contrary, upon a solid and intelligible distinction.

The consequences of construing statutes of this description, without regard to the defects in the

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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. It must be confessed, however, that the practice during this long period cannot always be cited as quite uniform; and this brings me to the case so much relied upon by the Appellant—the case of *Pollock v. Darling*, where, 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 case was 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 1579, and other Acts, authorised 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 the 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 irreconcilable, 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 by 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 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

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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 of *Pollock v. Darling* has never been acted upon.

On all these grounds, my Lords, I humbly move your Lordships that the judgment brought under our review by the present appeal be affirmed.

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LORD TRURO:

My Lords, I concur in the view which my noble and learned friend has taken of the case now under consideration; but, able and convincing as my noble friend's speech has been,—nevertheless, considering the importance of the question, I trust your Lordships will allow me to offer some additional remarks upon the several statutes to which reference was made during the argument urged at the bar.

My Lords, if the arguments, which have been addressed to your Lordships from the bar, shall have created a doubt whether the present system of Poor-Law in Scotland is perfect in its provisions, or is in all respects consonant with the present state of public feeling; or whether it may not have excluded the claims of persons whose circumstances entitled them to relief;—I must follow my noble and learned friend in reminding your Lordships that those arguments are not applicable to the questions now waiting your Lordships' determination—those questions being simply questions of construction of the existing statutes, as to what ought to be deemed to have been the intention of the Legislature from the language in which

the statutes are expressed; those statutes being chiefly that of 1579, c. 74, and that of the 8 & 9 Vict., c. 83.

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It has ever been held that, to construe aright an ancient statute, regard must be had to the general state of the law and of public sentiment at the time it passed; and, if it be a remedial statute, that it is proper to ascertain what were the evils which the Legislature proposed to redress, and to give that construction to the language of the statute, so far as it will bear it, which seems best adapted to effectuate the proposed amelioration.

Your Lordships have been told truly that, prior to the statute of 1579, c. 74, there was no compulsory law in Scotland to make a rate for the maintenance of the poor. They depended for the supply of their wants upon church collections and individual benevolence.

The absence of all legislative provision upon these subjects can only be accounted for upon the supposition that experience had shown that the sources to which I have referred were sufficient to supply the need of the deserving poor, and that there was no lack of employment for the industrious, whose character and conduct entitled them to public consideration.

This remark is the more deserving of concurrence, as the attention of the Legislature had been frequently addressed to the subject of the poor and of mendicancy. The evils deemed to require a remedy related as well to the wandering mendicancy of the poor unable to maintain themselves by reason of bodily or mental infirmity, as to the idle and profligate beggars. The class of remedies adopted to meet these evils were to provide competent maintenance for the impotent poor in their respective parishes, and to repress all able-bodied beggars by severe punishments.

The course of the statute-law seems to warrant the

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inference, that the Legislature acted upon the knowledge that the able-bodied poor could, except prevented by their own fault, always obtain employment by which to acquire the means of support. And if this inference be correct, it furnishes an answer to the remarks which have been made as to the cruelty of a construction which would entirely exclude that class of persons from relief; and I think it will be found that while the provisions of the several statutes were well adapted to effect the object of providing maintenance for the impotent poor at home, they are wholly deficient, upon the supposition that the able-bodied unable to obtain employ are to be considered as having been intended to be included in them. By the statute the poor entitled to support out of the parish-rate were required to remain in their parishes: and certainly that legislation would not appear to be wise which should give to the able-bodied a claim to support out of the labour of others, upon the ground of their being unable to obtain employ, without enacting some very efficient means to ascertain the truth of the alleged ground of the claim, and whether, if it existed, it was occasioned by misconduct.

In many cases in which the plea of inability to obtain employment might be true, unless regard should be had to the *cause* of that inability, (whether it was occasioned by dishonesty, intemperance, or other misconduct,) it would enable the worthless to live upon the industry of others, who might only have escaped poverty and destitution themselves by privation, frugality, and industry. Further, it cannot reasonably be doubted,—that, if in Scotland individuals whose conduct entitled them to be maintained at the expense of others, were unable to obtain employment, provision would have been made upon the subject, accompanied with regulations calculated to prevent abuse.

It seems to be admitted, that after the statute of 1579, c. 74, begging was altogether unlawful, with some exceptions irrelevant to the present case.

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The course of the argument, on the part of the Appellant, has been, that before the statutes begging was lawful; and that when those statutes rendered begging in the future *unlawful*, they substituted, for the right to beg, a right to relief out of the rate or fund which the statutes authorised to be raised.

The main question, therefore, for your Lordships' determination is, whether the old Scottish statutes did give a claim to parish relief to strong-bodied paupers unable to obtain employment; and assuming that, upon a correct construction of those statutes, such a right was given, a further question arises, whether the statute of the Imperial Parliament, the 8 & 9 Vict. c. 83, has entitled them to that relief.

As it has not been contended that begging was illegal by the common law of Scotland, let us see whether it was rendered illegal by the statutes which were in force at the time the Act of 1579, c. 74, passed.

The statutes then in force relating to begging were the Act of 1424, c. 25; the Act of 1425, c. 66; the Act of 1427, c. 103; and the Act of 1503, c. 70.

The statutes which passed in 1425 and 1427 referred to individuals living idle, having no ostensible source of support, and who were required to give an account of the means by which they maintained themselves; and I think those statutes afford no assistance upon the present question.

The material statutes were those which passed in 1424 and 1503, which were directed to the regulation of beggars; and the question is, whether they made it unlawful for able-bodied persons to beg between the ages of fourteen and seventy.

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The statute of 1424, c. 25, enacts that none between 14 and 70 years of age should beg, but only they who might not win their living other ways; and each was required to have tokens, and all who had not tokens were required to labour and pass to craft for winning their living, or to be burnt in the cheek and banished.

The title of the statute of 1503, cap. 70, is "Anent beggars and their qualities;" and it begins "Item anent beggars," and requires that the statute of James I. made upon stark beggars be kept; and it enacts that sheriffs, &c., should see that *this* Act (of 1503, c. 70) be executed and kept, and that they thoile nane to beg within their district, except crooked folk, sick folk, impotent folk, and weak folk, under pain of fine. The statute being entitled "Anent beggars and their qualities," purports to set forth or describe their qualities; and it distinctly enacts that none shall beg except the crooked, the sick, or, as it is said in the original (*a*), the blind, the impotent, and weak.

It must be especially observed that the word "poor" is not to be found in this Act, while it professes to describe every class of persons at that time entitled to beg; and, by the omission of that word, "poor," it refutes the construction that able-bodied persons, who could not obtain work, were intended to be comprised in the words "poor," or "the poor unable to win their living except by alms, or poor necessitated to live by alms." And indeed, where the word "poor" is used in relation to begging, it is always used in

(*a*) Mr. Thomson's Edition, vol. ii. p. 25.

connexion with the words, crooked, sick, binld, impotent, or weak.

The Appellant's counsel have referred to the word "impotent" in the statute, but that word is also associated with the words, crooked folk, &c., which, I think, manifests the meaning very plainly.

As it is a rule of construction, that several statutes upon one subject are to be read as *one* statute, the description or statement in this statute of the qualifications of the persons who might lawfully beg should be deemed to be a part of the other statutes *in pari materiá*; and, so reading the statute, it really requires ingenuity to discover a foundation for a doubt; and I consider it perfectly clear, that, by the Acts prior to the statute of 1579, c. 74, able-bodied persons could *not* lawfully beg.

Now, as it is clear that these earlier statutes interdicted able-bodied persons from *begging*, the next inquiry is, whether the Act of 1579, c. 74, entitled them to relief out of the poor-rates.

I think it may assist your Lordships in following the rambling and perplexed phraseology of the statute, if I should state what I apprehend will be found to be the meaning and effect of it.

I apprehend the meaning of the statute is, that all able-bodied persons, wherever found, who were living without labour, but had no visible means of support, and who could not give a satisfactory account how the means were acquired by which they were maintained, should be adjudged vagabonds, and be punished accordingly. The poor who lived by begging, wherever they might be, were to be called upon to return to their own parishes within forty days, and after the expiration of such forty days, a list was to be made of all the poor then found in the parish, who should live by begging, and those who did not belong to the parish were to be passed to their respective parishes. The poor belonging

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to the parish who were unable to work, were to be provided with homes and pecuniary allowances, and the able-bodied living without work, not having any visible means of subsistence, nor able to give a satisfactory account of the means by which they lived, were to be treated as vagabonds, &c., and punished.

Such, I think, will be found to be the substance of the statute of 1579, c. 74; but I will now detail more particularly its contents:—

The title of the statute is, "For the punishment of strong and idle beggars, and relief of the pure and impotent." The preamble states that the prior statutes of 1425 and 1429 had not been put into due execution, and it enacts, that, for suppressing strong and idle beggars, and for relieving the aged and impotent poor people, the enactments of that statute should be observed; and it directs that all persons be declared vagabonds, strong and idle beggars, who having neither land nor masters, nor using lawful merchandise, craft, or occupation, whereby they might win their living, nor could give reckoning how they lawfully got their living, and all common labourers being able in body, and living idle and fleeing labour, be adjudged and punished as such. It then provides that any person giving money or lodging, or any other relief to any vagabond or strong beggar, wanting a license of the Provost, &c., shall be fined; and that officers be appointed to search for and imprison vagabonds. And seeing that charity required that poor, aged, and impotent persons should be as necessarily provided for, as vagabonds and strong beggars repressed, and that the aged, impotent, and poor people should have lodging and abiding places throughout the realm to settle themselves in, it therefore enacts that hospitals be provided for the said aged, impotent, and poor people; and that inquisition be taken of all poor, impotent, and decayed

persons born within the parish, who of necessity must live by alms; and that the number of the poor people in every parish might be known, proclamation is to be made that they repair to their parish under pain to be punished as vagabonds; and a list is then to be made of the said poor people, containing, among other particulars concerning them, their form of trade and life; if they were diseased or hale and able in body, and what they get commonly per day by their begging, and such as were necessarily sustained by alms, to see what they will accept daily to live without begging; and to provide where they shall remain, by themselves or in house with others, with the advice of the parishioners; and a rate or tax is to be made annually for the relief of the said poor people. That the poor are to be passed from parish to parish to their homes, and license is given to them to ask alms for their passage. That the poor who should not abide in the places appointed, or should be found begging, are to be severely punished as described. That aged and impotent persons not altogether incapable of work should be appointed to such work as they could do, and should be severely punished in case of refusal to work. That each parish is to imprison vagabond inhabitants. Further, that where the collection for the relief of the poor will be an overburden, certain persons are to give license to such poor as they think fit to beg of the parishioners at their houses, but to beg of no others than parishioners. The Act then provides, that, as prisons might be so overburdened with prisoners that the people there could not maintain them, there should be paid a suitable sum out of the fund raised in the parish whence the prisoners should have been committed.

From what I have stated, it is clear to my mind that the object of this statute was to put an end altogether to begging, by requiring that all poor should return

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within forty days after proclamation to their parish; and after the poor should have returned, that a list should be made and an examination instituted into the circumstances of each individual; and that the class who prior to the statute might lawfully have begged, and who belonged to the parish, were to be provided for by a rate, and constrained to abide in places appointed by the authorities.

Those who did not belong to the parish, who had lawfully begged, were to be passed to their respective parishes, having licenses to beg by the way, and being strictly enjoined to proceed without delay.

With respect again to those who had *unlawfully* begged, the only provision is for their severe punishment.

This statute of 1579, c. 74, seems framed rather with reference to permanent incapacity than temporary or casual want. Legalised beggars were to be recalled home, and agreements made with them as to the allowance for their future support, and they were restrained under punishment from quitting the dwellings to be provided for them. The partially incapable of work are required to work as far as they are able.

These arrangements would appear to have been intended as permanent; but they contain no provision entitling persons to relief who should be unable, or who should allege inability, to obtain employment, or to compel such persons to work if work should be provided for them; nor is there any protection against persons so pretending from either coming or continuing improperly upon the rate. And of all enactments for the relief of the able-bodied poor unable to get work at home, *that* would appear the most injudicious which should compel them to remain there, with the consequent right for themselves and their families to be supported in idleness, without regard to the fact

whether the inability to get work had or had not been the consequence of their own misconduct.

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Upon the most deliberate consideration of the state of the law at the time the statute of 1579 passed, I have come to the conclusion that it was unlawful for able-bodied paupers to beg; that *that* statute continued and enforced the legal prohibition; and that it gave such persons no claim or title whatever to parish relief; but on the contrary treated them *all* as criminals. I am also satisfied, that by all the statutes which have since passed, the same prohibition was continued and enforced by additional penalties, and that all of them were founded on the like policy, and were made in furtherance of it.

It is a strong circumstance, that, until the case of *Pollock v. Darling*, no authentic trace can be found of any doubt being entertained upon the subject, or any clear practical deviation from what I think the just construction of the Act; and it appears to me that that case ought not to influence your Lordships' judgment upon the present occasion.

The statute which your Lordships are called upon to construe is what may now not improperly be called *an ancient* statute; and you have all the lights to aid you in the construction of it which the Scotch Judges had in *Pollock v. Darling*, with the absence of the public calamity and pressure under which Scotland was suffering at the time of that decision, and which was so calculated to bias the judgment.

A judicial construction of an ancient statute, particularly when that construction has been long acquiesced in and acted upon, is entitled to great weight; but *Pollock v. Darling* is but a single decision—a modern decision, and not unanimous; and by it a construction was put upon the Act, not sanctioned by any former usage, and neither followed, nor generally approved;

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so that I think the authority of the case should depend rather upon the validity of the reasons assigned for the decision than upon the decision itself.

Your Lordships are aware that that case arose out of a dearth of food, amounting almost to a famine. The distress which caused the individual application for relief oppressed the whole class of labourers, who, it was notorious, were, by a public calamity, rendered unable by any possible exertion to support their families. The whole parish, with one exception, felt the necessity of extending relief by a parish rate to the unfortunate but blameless sufferers. The distress was too notorious to subject the parish to deception or fraud; and it was under these circumstances, upon the objection of a single parishioner, that the Judges of Scotland were called upon to construe the Act of Parliament. And your Lordships cannot fail to perceive that the topics mainly discussed rather belonged to an investigation into the question what would constitute a good system of poor-law, than to the meaning and intention of the Legislature as expressed in the statute to be construed;—topics much calculated to mislead the mind, inasmuch as they were intimately connected with modern views and feelings, varying altogether from those which prevailed when the statute passed.

The opinions of such of the learned Judges as held the pauper entitled to relief were powerful and eloquent. But their reasoning has not created any serious doubt in my mind as to the true construction of the statute; and I think that the decision was mainly influenced by the special circumstances to which I have referred.

I must remind your Lordships, that the Scotch statute was passed seven years after the English statute of 14 Eliz. c. 5; and it is quite obvious that the Scotch statute was framed with reference to the English statute, as

almost all the clauses which are contained in the English Act are to be found in the Scotch Act; and even minute expressions are the same in both, with the exception of the clause in the English statute, which entitles able-bodied persons under certain circumstances, to parish relief.

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The clause which has that effect in the English Act is, as might be expected, accompanied by a series of clauses regulating the title so given, and preventing its abuse. The Scotch statute omits entirely the whole of that class of provisions. In the English Act, parishes are bound to provide labour for the able-bodied poor who are unable to obtain employment adequate for their support by their own efforts, and power is given to enforce the performance of the work, but I repeat there is no such direction in the Scotch Act; although the Scotch Act does contain regulations, as my noble and learned friend has remarked, for providing employment for sick and others not *wholly* incapable of work. It is difficult indeed to suppose that, while the attention of the Scottish Legislature was directed to the providing labour, and enforcing its performance by sick and partially disabled persons, it omitted by accident and oversight, not only the clause directly applicable to the providing labour for able-bodied paupers, but also omitted every regulation which such an enactment would have rendered necessary to prevent the abuse of the able-bodied poor being supported in idleness, at the expense of others, many of whom might be little less poor than themselves.

The difference between the Scotch and the English Act in this respect seems to me to be decisive as rebutting any intention on the part of the Scotch Legislature in favour of the able-bodied pauper unable to obtain employment; because while the English statute was

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in remembrance, containing a series of express regulations upon so important a subject, if the Scotch Parliament had really intended to adopt the policy of the English statute in that respect, I cannot believe that it would have left that intention to be collected by implication, without any regulation or guard by which the abuse to which such a burden would be exposed could be prevented.

For these reasons I repeat my concurrence in the opinion of my noble and learned friend, that at the time the statute of 1579, c. 74, passed, it was unlawful for the able-bodied to beg, and that by the provisions of that statute they acquired no claim to relief out of public rates, or otherwise.

The subsequent statutes, I think, confirm this construction of the statute of 1579, c. 74. Those subsequent statutes are, the Act of 1597, c. 272; the Act of 1661, c. 38; the Act of 1663, c. 16; and the Act of 1672, c. 18.

The statute passed in 1597, c. 272, ratifies the previous Acts against strong and idle beggars, vagabonds, and Egyptians; with this addition that *stark* beggars and their bairns should be employed in common works. This Act is only material, because it is referred to in the subsequent Act of 1663, c. 16, and will assist in its construction.

By the statute of 1661, cap. 38, justices are required twice a year to make a list of the poor in every parish, but not to include those who were in any way able to get their own living. And overseers were appointed to examine into the condition and number of such poor, aged, sick, lame, and impotent persons of the same parish, who have not to maintain them, *nor are able to work* for their living, such persons to be enrolled and provided with convenient dwellings. The overseers were to call for collections for the maintenance

of the poor, and if any so provided for should go abroad to beg, or refuse to do work which they were able to perform, they were to be punished.

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This Act is very important, as it more distinctly expresses the poor who were to be provided for by a rate, and describes them as poor, aged, sick, lame, and impotent persons, not having to maintain them, nor were able to work for their living. Thus meeting every branch of the argument on the part of the Appellant, by coupling every description of poor persons entitled to relief, whether aged, sick, lame, or impotent, with the incident of not being able to work for their living.

This Act is in all respects conformable to, and was made in furtherance of, the previous Acts.

It has been, however, contended, upon the part of the Appellant, that a statute which passed in 1663, c. 16, proves that able-bodied persons unable to get work were entitled to parish relief, because the parishes to which the persons belonged, who should, under the authority of the Act, be seized by manufacturers and compelled to work, were bound to make certain payments to the said manufacturers, on account of the parishes being relieved by the employment of the persons seized.

I think the argument is founded upon an unwarranted assumption that the individuals, so liable to be seized and compelled to work, were entitled to parish relief.

The Act recites that the former Acts for the restraint of strong beggars and vagabonds had been ineffectual by reason that there were few or no common works in the kingdom to employ the said idle persons, and it then enacts that it shall be lawful for all persons or societies, having manufactories, to seize vagabonds found begging, or being masterless or out of service,

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and not having wherewith to maintain themselves by their own means and work, and to employ them for their service if they should see fit—and the parishes who were thereby relieved of the burden of them are subjected to certain payments to the persons or societies employing persons seized, and to make a rate in the parish for such repayment.

Your Lordships will observe that the statute professes to be made in furtherance of, and in order to render more effectual, former statutes; and that the persons who were made liable to seizure under the Act are described as beggars and vagabonds, and are treated as criminals. They are made liable to be seized and detained during their lives, compelled to work without wages, and in fact made slaves for life. And it cannot be reasonably assumed that the law at the same time treated a class of persons as criminals liable to be made slaves for life under the most severe restrictions, and yet entitled such persons when at large to support at the expense of the parish.

Although it does not appear what the burden was, from which the parish would be relieved by the seizure and employment by manufacturers of the persons referred to, yet it cannot be presumed that it was the burden of supporting the seized persons when at large out of the parish rate. The burden indeed might be some pecuniary charge for their support in prison while under punishment, the public authorities being charged with the duty of apprehending such persons, and committing them to prison, and being fineable for default in the discharge of that duty.

Whatever might be the burden referred to in this Act from which the parishes would be relieved, no statute, practice, or law has been cited showing that the burden was an allowance out of the poor-rate to able-bodied paupers.

The next Act is that of 1672, c. 18, which recites in the usual general terms the inefficiency of the former statutes, and describes the evil of the want of places where the parties could be put to work, and then provides for the establishment of correction-houses, to which beggars, vagabonds, and idle persons within burghs might be sent. And it ordained that the contributions for maintaining the poor, appointed by the fifteenth Act of the third Session of the King's first Parliament, an Act concerning beggars and vagabonds, should be applied to the use of the said correction-houses at certain rates for each person. And the statute then distinguishes the class of persons liable to be sent to those correction-houses, from those who were to be maintained by the contributions at the parish kirks for the poor; and required a list to be made in each parish of the poor, with a statement if they were able or unable to work by reason of age, infirmity, or disease, and their parish. And while provision is made for this one class, it enacts that such of the said poor as were of age and capacity to work, were to be first offered to the heritors or inhabitants of each parish, upon their obligation to entertain and set to work the said poor persons. The rest of the poor were to be sent to the correction-houses with a quarter's allowance and clothes, and afterwards quarterly pay. Coal masters and others have power to seize vagabonds and beggars, and put them to work and correct them.

Nothing is to be found in this Act to entitle the able-bodied to relief, the persons entitled thereto being distinctly described as those who through age and infirmity were not able to work.

Those who were able, and under thirty years of age, were to be employed by the inhabitants as servants, with the obligation to set them to work, but without wages, and the rest were to be sent to the house of

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correction; how long to be there kept is not in this Act stated, but penalties are imposed in case of their escape.

These are all the Acts that have been referred to, and there is nothing in them varying the effect or construction of statute 1579, c. 74; or to give colour to the position that the able-bodied were entitled to aid out of the poor-rate.

The several proclamations of the 11th and 20th August, 1692, of 30th July, 1694, and of 3rd March, 1698, are no otherwise material than as tending to carry the several Acts of Parliament into effect.

I have hitherto considered the question with reference to the Scotch Acts of Parliament alone, and the conclusion which I have expressed is founded simply upon the construction of the statute of 1579. But I think your Lordships will be of opinion that the statute of 8 & 9 Vict. c. 83 has a most material bearing upon the present question.

That statute established a new authority, and provided for the making a new poor-rate; and it contains various provisions and regulations in regard to the mode of making the rate;—a parochial board, and a supervising board, and officers are appointed to administer the rate, and the statute declares how it shall be applied.

The claim of the present Appellant is founded upon this statute. The appeal against the refusal of the inspector to grant relief refers to the clause of this statute to show the jurisdiction of the Sheriff over the question, and the liability of the officer to that jurisdiction.

After directing the application of the rate, according to a list, in terms which might have been argued to entitle able-bodied paupers to participate in that application, the statute contains a proviso, which, in express terms, declares that such statute shall not confer any

right or claim upon any able-bodied person to be put upon that list.

It has been said, on the part of the Appellant, that the only effect of the proviso was to prevent able-bodied paupers from acquiring any new right under the statute, but that such persons were left with all the rights which by law formerly belonged to them, none of those rights being expressly taken away.

I think this argument is open to a decisive answer. The rate in which the Appellant claims to participate was made under the authority of this Act alone. The Act directs how this new statutable rate shall be applied; and declares, in effect, that no able-bodied person shall have any right or claim under the Act to be included in the list of persons entitled to participate in the rate. I should have thought it quite clear that no one could claim to participate in a rate made under the authority of this Act, but those to whom the right was given by the Act; and that although existing rights are not abolished in terms, yet after this statute no means would be left to render them available, or, at all events, not under this Act; and as I have before stated, the appeal professes to be prosecuted under the authority of this Act, and not under any former law or right.

But the matter does not rest here; for the 91st and last clause of the Act expressly repeals all such Acts, laws, and usages as are at variance and inconsistent with that Act; and it cannot be successfully contended that a law and usage, by which able-bodied persons were entitled to be relieved out of the poor-rate, would not be at variance and inconsistent with this Act, which expressly declares that no such person shall have any right or claim to be inserted in that list of participants in the rate.

To allow the rate made under this Act to be applied

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to the relief of a list of persons which included the names of able-bodied paupers, would certainly be inconsistent with this statute; and the present appeal is expressly to attain that object.

I am much inclined to the opinion that this appeal might properly have been decided upon the construction of this latter statute alone. But from the nature and general importance of the question, it would seem to be more satisfactory that the House should consider the state of the law independently of that statute. I repeat, therefore, that, under the old law, the Appellant, in my opinion, has no case; and at the same time I entertain a strong impression, that even if he had such a case, this statute of her present Majesty would furnish a decisive answer to it.

I have only further to express that my opinion entirely concurs with that of my noble and learned friend, that the judgment of the Court below ought to be affirmed, and that the appeal should be dismissed (*a*).

Interlocutor affirmed.

(*a*) At the close of Lord Truro's observations, Lord Brougham said he must candidly admit that his noble and learned friend had raised two doubts in his (Lord Brougham's) mind; one with respect to the inconsistency—the repugnancy of the House's present decision with that in *Pollock v. Darling*; and the other as to the effect of the late Act of the Queen (the 8 & 9 Vict. c. 83); which might have induced him to argue the case a little higher than he had done. But those doubts went to fortify, not to weaken, his opinion in favour of now affirming the judgment of the Court below.

CONNELL & HOPE.—LAW, HOLMES, ANTON, &
 TURNBULL.