is considered, and not one part of a clause merely, it is clear that the appellant can only enjoy under the fetters.

After hearing counsel, it was

Ordered that the interlocutors complained of be *reversed*, and it is declared and adjudged that the settlement of the half of the estate of Inverleith and Darnchester, belonging to Elizabeth Rocheid, does not contain a sufficient tailzie to fulfil the condition imposed by the settlement of Dame Mary Kinlock of her own fourth of the said estate, and consequently the pursuer is entitled to hold, possess, and enjoy the said one fourth part of the lands and barony of Inverleith and Darnchester, teinds, and others contained in the said deed of settlement, and that in fee simple, as heir male of the deceased Alexander Rocheid his father, and heir of provision of the said deceased Dame Mary Kinlock his grandmother, without being subject or liable to any of the conditions, provisions, restrictions, and clauses prohibitive, irritant and resolutive clauses in the said deed of settlement, executed by the said Dame Mary Kinlock.

For Appellant, *Ilay Campbell, J. Scott, J. Anstruther, Wm. Dundas.*

For Respondent. *F. Bower, Alex. Wight.*

[Mor. 2418.]

MAGISTRATES OF EDINBURGH, . . *Appellants;*
COLLEGE OF JUSTICE, . . . *Respondents.*

House of Lords, 23d March 1790.

COLLEGE OF JUSTICE—PRIVILEGES.—Held, that the members of the College of Justice were not liable in assessments for the support of the poor, within the city of Edinburgh.

This was a question, Whether the Members of the College of Justice had any exemption from being taxed for city poor rates. The Court of Session had decided they had a clear exemption, in virtue of privileges granted by the Parliament when the College was first instituted, viz. 1. The privileges granted to the College of Justice prior to the establishment of the poor law in Scotland, which was in

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MAGISTRATES OF EDINBURGH *v.* COLLEGE OF JUSTICE.

1579. 2. The general enactment of the statute law with respect to the maintenance of the poor. 3. The acts in favour of the College of Justice, subsequent to the establishment of the poor laws upon their present footing. 4. The usage which has taken place in time past.

The magistrates having resolved to assess the whole citizens without exception with a poor rate of 2 per cent., the Dean and Faculty of Advocates, as Members of the College of Justice, brought a suspension. The Lord Ordinary, of this date, (29th Jan. 1788), suspended the letters simpliciter.

The magistrates having appealed to the House of Lords,

Pleaded for the Appellants.—(Sir John Scott.)—The members of the College of Justice had submitted at various times to taxes imposed within the city. In particular, in 1690 they submitted to the tax called *hearth money*, paid by all the inhabitants of houses. Again, the act 1 Geo. I. they submitted to, by which the householders within the city are made liable to make good all damages which happen to houses by *mobs*. An outrageous mob in the memorable year 1760 destroyed a popish chapel, and all the members of the College, including advocates, clerks, writers, agents, &c., were assessed, and paid their assessment. Even in regard to the tax for the support of the poor, in process of time the College of Justice seem in part to have given up their privilege, and in part it seems to have been taken away by subsequent acts of supply, and ultimately lost by disuse.

The privileges granted by Parliament to the College of Justice, when first instituted, or at any time prior to the year 1579, could not be intended for establishing an immunity from assessment for the support of the poor, such assessment being unknown at that period; or if it could be supposed that the legislature meant, by anticipation, to confer upon that body a right of exemption from all taxes to be imposed by future statutes, the efficacy of such privilege must depend upon the terms of such future statute. Consequently, if these statutes were so broad as clearly to comprehend them, and made no exemption, or contained no saving clause as to the College; and still more, if the enactment was specially declared to be *without exception* of any person or class of persons, as was the case in the act 1579, this must operate as a repeal of the privilege, in so far as that act, or the tax it imposed, was concerned. As to the acts in favour of the College of Justice subsequent to the establishment of the poor rate, these can be of no avail to

the respondents, as they contain only a ratification of their former rights, whatever these were. And it is therefore upon the construction of these original acts that the present question depends, which, when examined, will be found not to entitle them to exemption from poor rate.

Pleaded for the Respondents.—By the terms of the letters patent establishing the College of Justice, the senators were exempted from the payment of every tax or public burden, and under the general words used, assessments for the use of the poor must be held to be included. So the matter stood when the act of Parliament 1537 passed, upon considering which, it will appear impossible that the legislature, in more anxious terms, could declare an immunity in favour of the judges from every taxation whatever. And again the act 1540 ratified, in the most ample terms, all the privileges granted to the College, either by the pope or the government of Scotland. From these first grants, it is clear, that there was created in favour of the College, both in general and in special articulate words, an exemption from payment of all contributions in general, and from contributions to the poor in particular. And though the senators only are mentioned in the letters patent, and act 1537, it has been shown that.the extension of the privileges to the other members of the College was coeval with the institution. And in all the subsequent acts the College is mentioned as comprehending the scribes, advocates, and other officers of the court. The act 1592, enforcing the payment of all taxations within burghs *from all manner of persons* inhabitants thereof, declared it should not be prejudicial to the members of the College of Justice, and their privileges and immunities whereof they had been in use. The act for the support of the poor was passed in 1579, and therefore that tax was unquestionably included in the general words of the act 1592. By the last, therefore, the College was virtually, though not expressly declared to be exempted from poor's rates; but the act 1597 is perfectly conclusive; it was declaratory, *that all who resided within the burghs* with their families, and had a certain income, should be subject to the help of the poor. It was occasioned by persons refusing to contribute, probably as not being burgesses; but here again it is provided, that the law shall not extend to any member of the College of Justice. The act of general taxation passed in 1597, in like manner exempted the College of Justice, and thus there were two acts in one year, both impos-

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ing taxation, and both specially exempting the College of Justice. Besides, there stands the most unequivocal immemorial use and possession in favour of the College, which of itself is decisive of the question.

After hearing counsel,

LORD CHANCELLOR said :—

" MY LORDS."

" There was no doubt, but that almost every exemption from public burdens was in itself odious; but in this case, the respondents had clearly made out a usage for nearly two centuries. It would be a difficult matter to overturn a custom, most likely originated when the members of the College had only transient habitations in the city, such as inmates ; but when they became settled householders, it certainly did appear partial to except them from parochial impositions. On the other hand, there were several other acts of Parliament, besides that for the support of the poor, from which they had continually claimed exemptions, and claimed successfully.—The argument, that it would injure *the charity*, was downright nonsense; it was, in other words, to say, that it would injure a fund for the support of idleness and dissipation :—Voluntary charity was indeed a noble principle, inasmuch as it distinguished its objects, and by selecting the worthy, and rejecting the unworthy, became highly useful to society. His Lordship moved the interlocutor be affirmed."

Accordingly, it was ordered and adjudged that the appeal be dismissed, and that the interlocutors be affirmed.

For Appellants, *Sir John Scott, Solicitor General, and Lord Advocate.*

For Respondents, *Mr. Wright and Mr. Tait, Wm. Adam.*

By the recent act 8 and 9 Vict. c. 83, this privilege, as to the poor rates, is done away with.

GEORGE STEWART, Younger of Grandtully, Esq., and HENRY HEPBURN, Slater in Perth, . . . } *Appellents;*

JOHN BELL, Slater in Muirend, and JAMES BELL, Slater in Scone, . . } *Respondents.*

House of Lords, 12th April, 1790.

LEASE.—A lease let to two parties, the whole slate quarries in the Hill of Birnam. No mention was made in the lease of the slate