[HEARD 13*th March*—JUDGMENT 14*th August*, 1846.]

The RIGHT HONOURABLE FOX MAULE and others, Commissioners for improving the Harbour of Perth and the Navigation of the River Tay, *Appellants.*

SIR THOMAS MONCRIEFFE, BART., *Respondent.*

Property.—Parliamentary Powers.—Public Works.—Where parliamentary powers have been given for the construction of works, in a particular locality, with a power of deviation, and to purchase the lands requisite, if the power has been once exercised, but not to the extent of the limits allowed, it is exhausted, and it is not competent again to resort to the power for the purpose of enlarging the works to the extent of the limit allowed, and for that purpose to require an additional sale of land from the adjacent proprietors.

Public Works.—Parliamentary Powers.—When an Act authorizes the construction of a work, according to specified plans, and in a specified position, and gives a power of deviating to a fixed distance from that position, if a position has once been adopted, the power to deviate cannot afterwards be resorted to, so as, in fact, to create an extension of the works.

Ibid.—Ibid.—Where plans of projected works are referred to and adopted by the statute authorizing their construction, these plans are to be looked at in order to construe the general powers given by the statute, in regard to the nature, extent, and position of the works.

Expenses.—Where the appeal was against an interlocutor of a majority of the Court below, obtained by one of the Judges withdrawing his vote, no costs, in exception to the general rules, were given at dismissing the appeal.

BY the 4th and 5th William IV., cap. 67, powers were given to commissioners to be elected under the Act, for the construction of a tidal harbour at the city of Perth, with docks and other works, in the language of the preamble, "in such manner "and of such dimensions as the trade of the port may require."

By the 9th section of the Act, power was given to the

commissioners, "To cause, make, form, and erect a tide-harbour, "a dock or docks, either a dry or a wet dock or docks, as they "may find to be practicable, or judge expedient or advisable, "with a canal or canals, cuts, entrances, or other accesses "thereto, and all embankments, retaining-walls, locks, sluices, "draw-bridges or other bridges, buttresses, barriers, bulwarks, "quays, landing-places, or other works or erections they shall "deem proper or requisite, with roads, railways, towing-paths, "or other accesses or communications connected with, or in "their opinion, necessary for the same."

By the 10th section, the commissioners were empowered "To take and use such part of the property of the community "of Perth, and of the inch or island commonly called the Sand "Island, belonging partly to the said community of Perth, and "partly to Sir Thomas Moncreiffe, baronet, as may be found "necessary for the purposes aforesaid, or to make such bul- "warks, jetties, abutments, embankments, retaining-walls, "towing-paths, roads, railways, carriage-ways, locks, sluices, "bridges, or other works or erections in or upon the said inch "or island, or along the same, or in the bed or channel of the "river Tay, opposite to, running along, or contiguous to any "part of the said property or island, as they shall judge neces- "sary; also to take or use such parts of the lands, grounds, or "estate of the said Sir Thomas Moncreiffe, baronet, lying upon "the west side of the river Tay, and, with the previous consent "in writing of the right honourable and honourable the prin- "cipal officers of his Majesty's Ordnance, but not otherwise, "to take and use any part of the grounds upon which the Ord- "nance depôt at Perth is situated, and in the bed or channel of "the river Tay, opposite to or running along the east side of "the same, as may by the said commissioners be deemed "necessary for the purposes aforesaid."

The 17th section of the statute was in these terms:—"And "whereas a survey has been taken, and maps, or plans and

" sections have been laid down and constructed, showing the " position, nature and extent of the proposed tide-harbour, dock " or docks, canal or access thereto, lock thereon, and relative " embankments, quays, piers, roads, accesses, and other works " connected therewith, of the course of the navigation of the " river within the bounds of the said port and harbour of Perth, " fords therein, and position of the embankments necessary " for joining to the mainland the several islands before men- " tioned, and such maps, plans, and sections, together with " books of reference, containing lists of the names of the " owners and occupiers of the lands, tenements, fishings, and " other heritages thereby affected, have been deposited in the " office of the clerk of the peace for the county of Perth, and " also in the office of the clerk of the peace for the county of " Fife: Be it therefore enacted, That such maps, or plans and " sections, and books of reference shall remain in the custody " of the respective clerks of the peace of the said counties, and " all persons shall, at all reasonable times, have liberty to " inspect and peruse the same, or obtain copies thereof, or " extracts therefrom, as occasion shall require, paying to the " said respective clerks of the peace the sum of one shilling for " every such examination, or sixpence for every seventy-two " words of such copies or extracts; and the said commissioners, " in making the said intended improvements, shall not deviate " more than one hundred yards from the position of the said " dock or docks, and tide-harbour, or the course, line or direc- " tion of the said canal, roads, railways, or other accesses thereto, " or embankments connected therewith, as laid down and deli- " neated on the said maps, or plans and sections, without the " express consent and concurrence in writing of the owners and " occupiers of the lands, tenements, fishings, or other heritages " that may be affected by such deviation."

And the 19th section was in these terms:—" And whereas, " by the said recited Act, it is provided and enacted, that the " works thereby authorized should be executed and completed

" within the space of five years from the passing of the said " Act; and whereas the additional works now proposed will " require a prolongation of the time for the proper execution " thereof, more especially as the same will fall to be executed " progressively, as the trade of the port and harbour of Perth " will require the same, and as the produce of the rates and " duties hereby imposed will prove sufficient to meet the expense " thereof: be it therefore further enacted, that the time and " period for the execution of the works and operations by the " said recited Act and this Act authorized to be made, done and " performed, shall be, and the same is hereby extended to the " period of five years from and after the passing of this Act, for " deepening and improving the navigation of the river beyond " the bounds to which the said recited Act applies; and twenty " years from and after the passing of this Act, for the execution " of the other works and operations, such other works and ope- " rations being always to be executed upon lands, grounds or " heritages, which shall be at the time the property of the com- " munity of the city of Perth, or of the said commissioners."

In the month of February, 1835, the commissioners, by proceedings before the sheriff, under the authority of the statute, obtained possession of the lands " which it will be necessary " to take and use," which were, in fact, the whole of the lands delineated on the plan referred to in the 17th section of the statute, and forthwith commenced the formation of the works authorized by the Act. Part of the land so purchased was a portion of an island called Sand Island, the property of the respondent.

In the month of April, 1836, the commissioners presented a fresh application to the sheriff, in order to compel a sale by the respondent of another portion of Sand Island, not embraced in the plans referred to in the 17th section of the statute, and for the purpose, as alleged, of increasing the extent of the works delineated on the plans. The land so sought to be obtained was, however, within 100 yards from the line laid down in the plan.

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The respondent resisted this application; but the sheriff sustained it, and remitted the question of value to the knowledge of an assize. The respondent thereupon brought an action against the appellants, to have it declared "to be the "true meaning and construction of the foresaid statutes, that "the foresaid commissioners were only entitled to acquire such "parts and portions of the pursuer's lands as were delineated "upon the said plans, or maps and sections specified in the "said Acts: That the lands and grounds acquired and taken "possession of by the predecessors of the said defenders from "the said pursuer, under their application to the sheriff, of the "date 13th February, 1835, as aforesaid, were the whole lands "and grounds authorized by the said Act of 4 and 5 Will. IV. "cap. 67, to be taken from the pursuer, for the purposes therein "specified; and consequently, that the authority contained in "said Act to take lands and grounds from the pursuer is now "exhausted."

The Lord Ordinary, on the 10th December, 1842, decerned in terms of the libel, and subjoined to his interlocutor the following note:—

"*Note.*—The Lord Ordinary has, at different times, entertained different opinions upon this cause, and even yet he "does not pronounce the above judgment without hesitation. "Having regard, however, to the principle of strict construction, upon which statutes, such as that in question, fall to be "interpreted, and holding, if a doubt at all remains, that the "balance must be cast in favour of the protection of property, "and against the compulsory powers which encroach upon "private right, he has come to be satisfied, after the most "anxious and deliberate consideration he can bestow upon the "matter, that the safest line of judgment is that which he has "adopted.

"The grounds upon which he has arrived at this conclusion, "are shortly these:—

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" 1. It is not to be presumed in any case, (but quite the " contrary,) that the legislature, in conferring compulsory " powers, meant to leave the parties obtaining such powers " without any limitation in their use. On the contrary, it is " for the very purpose of declaring and enforcing such limita- " tions, that clauses referring to plans and books of reference, " from which the extent and nature of the statutory works may " satisfactorily be gathered, and confining the power of alteration " or deviation within certain bounds specifically set forth, have " come to be introduced.

" 2. Such a limiting clause is accordingly to be found in the " present case, in the 17th section of the statute libelled; and " there appears no sound reason for holding that it was inserted " for any other than the usual purpose.

" 3. Indeed, if it had not been for some supposed conflict " between the enactments of this clause, and those contained in " a separate section (the 10th), it would have been impossible " to put any other construction upon it, or to deny to it its " usual effect any more in the case of the pursuers than in the " case of the numerous other parties having properties along the " whole line of the statutory works.

" In this state of matters, it cannot be held that the legis- " lature intended of purpose to insert contradictory and incom- " patible enactments; and as it is further impossible, by any con- " struction of the 17th section, to extend the limits thereby " assigned, so as to include *the whole* of that portion of the " pursuer's property, which the defenders *now* seek to take " under the 10th section, the consideration is necessarily forced " upon the Court, how far the words of the 10th section may " not, on the other hand, admit of a construction consistent " with the full and proper operation of the 17th section. Now,

" 5. The question being brought to this issue, the Lord " Ordinary has come to be satisfied, that as, in order to carry " out the statutory works, even as they are limited in the 17th

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" section, (more especially if regard be had to the line of " *maximum* deviation,) it was necessary that the defenders " should be authorized compulsorily to take *certain portions* of " the pursuer's property, falling within the general description " given in the 10th section. This, while it is quite enough to " satisfy substantially the statutory words, furnishes really the " true key to a reconcilement of the two clauses. The 10th " section, so far as affects the pursuer's said property falling " thus to be construed, just as if it had, in so many words, " authorized and empowered the defenders to take and use " *such parts* of the pursuer's portion of the Sand Island, as the " defenders shall judge necessary for executing the statutory " works, whether 'in or upon the said inch or island, or in or " 'along the same, or in the bed or channel of the river Tay, " 'opposite to, running along, or contiguous to any part of the " 'Sand Island,' the property so to be taken, and the works to " be constructed thereon, *always not going beyond the general* " *statutory line of operation, as defined and limited in section* 17, " *taking into account the extent of deviation thereby permitted.*"

The Court were equally divided in opinion as to the soundness of the Lord Ordinary's interlocutor; but upon the Lord Justice Clerk withdrawing his vote, they adhered to it.

The appeal was against these interlocutors.

Mr. Turner and *Mr. Anderson* for the Appellants.—It is not disputed that the appellants are acting *bona fide*, in requiring possession of the additional land desired. The only question is, in regard to their power to take it under the authority of the statute. The object of the statute, as set forth in the schedule, is not the construction of a harbour and dock of any particular dimensions, but a harbour and dock " of such dimensions as " the trade of the port may require." Necessarily contemplating, unless it could be presumed that the extent of the trade would be stationary, an increase of the dimensions from

time to time, as the increase of the trade might dictate. Accordingly, the works to be executed, are by the 9th section limited in extent only, by the opinion of the commissioners; they are to be such "as they may find to be practicable, or judge expe-"dient or advisable." And the power given them by the 10th section, in regard to the taking of lands, is to take such "as "may, by the commissioners, be deemed necessary for the pur-"poses aforesaid," that is, for the purpose of making such works as the appellants "may find practicable, or judge expe-"dient," in making a dock of "such dimensions as the trade of "the port may require." No powers could well be more ample or indefinite; and the object in view necessarily required that they should be so, as it was not possible to anticipate what the wants of the trade might grow to.

The object of the 17th section was not to limit the powers thus conferred; to produce the conflicting result of making that limited, which the previous sections had made unlimited, unless by the varying demands of trade. All the object of the 17th section was to fix the particular locality or "position" of the works, and having done so, to allow a deviation from that locality, of 100 yards from the given point; the powers in regard to the extent of the works in that altered locality, remaining as large as the previous sections had declared them to be. The appellants have adhered to the locality fixed by the plans referred to in the 17th section, they have not "deviated "from the position of the said docks" as delineated on the plan, nor do they seek to do so now; they adhere to that position: and all they desire to do is, to enlarge the works according to the increasing demands of the trade of the harbour; and there is nothing in this section which limits them from so doing.

Mr. Solicitor-General and *Mr. Bethel* for the Respondent.—The recital of the 17th section—the statement of the appellants themselves—is, that the "extent," as well as the "position

and nature" of the proposed works, were shown upon the plans deposited; and the express enactment of the section is, that these plans shall remain in the custody of specified public officers, in whose hands the public are to have access to peruse and inspect them. And the concluding part of the section gives the projectors power to deviate from the position laid down on the plans, to the extent of 100 yards, but declares that they shall not do so, beyond that, without the consent of the owners of the land to be affected by the deviation. While it gives this power in regard to the "position" of the works, the section is silent in regard to the "nature" and "the extent" of the works; in regard to these no power of deviation is given. To what purpose could the power of inspection of the plans be given, but to enable the public to see the nature, position, and extent of the proposed works? And what advantage could the public derive by seeing the extent of the works, if the projectors were to be at liberty at any time within twenty years, (for so long the 19th section gives them,) to alter that extent? Giving, therefore, the 9th and 10th sections as broad a construction as the appellants contend for, these sections cannot be read without reference to the 17th section. In other words, the Act gives the appellants power to make such works as in their opinion the trade of the city of Perth may require, with this qualification, that the nature of the works must be the nature specified in the plans, and that the extent must not exceed, nor the position deviate from, the extent and the position specified in the plans, with an exception in favour of a deviation of the position to the extent of 100 yards.

If the 9th and 10th sections are not to be taken with reference to the 17th section, this monstrous consequence would follow, that the appellants might vary the nature and extent of the works at their arbitrary discretion, and take the lands of all and sundry for the purpose. And as the 19th section gives the appellants twenty years within which to

accomplish the works, the surrounding proprietors must, during that period, remain in uncertainty whether their lands will continue their own or become the property of the appellants; which is, in other words, to say, that for twenty years their lands must continue unsaleable to any one but the appellants, and inapplicable to any purpose but that of agriculture. Not only so, but during that period, the property of the adjacent proprietors would be at the mercy of the appellants, for no proprietor could maintain trespass against them. He could never be certain whether they or their servants were acting within or independently of the powers of the Act. A construction which would give powers so unlimited, and productive of such serious consequences to third parties, is one which no Court will adopt unless compelled by the express terms of the statute to be construed. Taking the 9th and 10th sections, however, in connection with the 17th, there is nothing in their express terms which gives the power contended for, while the obvious inference from the 17th section is, that the works authorized by the 9th and 10th sections are to be limited as to their position, nature, and extent, by the plans deposited, except that there may be a deviation in their position to the extent of 100 yards. This construction is confirmed by the 19th section. That section, while it gives the appellants twenty years to execute the works, declares that the works shall only be executed upon lands the property of the community of Perth, or of the appellants, plainly contemplating that the appellants should purchase the quantity of land required to the extent allowed by the 17th section; and having done so, they might have the advantage of twenty years' experience to ascertain what the nature and extent of the works should be.

Admitting this construction of the statute, however, to be doubtful, the House will give the benefit of the doubt in favour of the respondent, and against the appellants. In Blakemore v. Glamorganshire Canal Company, it was held that Acts

of Parliament, such as the one now in question, were of the nature of contracts between the promoters and the public; and as they are framed by the promoters themselves, the construction of them, so far as their terms make it doubtful or ambiguous, must be in favour of the public, and against the promoters.

Further, the appellants did, in fact, purchase lands to the extent and in the position specified upon the plans. Whatever, therefore, may be the proper construction to be put upon the statute, the powers given by it were exhausted; and it is not competent for the appellants to recur to the power a second time, or it may be for a third or a fourth time. In this, these parliamentary powers are not different from other powers. The appellants are authorized to take the lands they may require; but, having once exercised this authority, there is nothing in the statute which gives them power to repeat the operation from time to time. The legislature authorizes interference with the ordinary rights of property for a public purpose. That done, the adjacent proprietors are entitled to the enjoyment of their property without the fear of further disturbance.

Mr. Turner in reply.—So far from the 17th section authorizing the limitation upon the powers given by the 9th and 10th sections contended for by the respondent, its effect is the reverse. That section declares, that the position marked on the plans shall not be deviated from more than 100 yards, which in other words, is to say, that, with that exception, the position of the works shall be that described upon the plans. But there is nothing in that section which requires that the nature and extent of the works shall be the nature and extent delineated upon the plans. The nature and extent, therefore, are left to be determined by the 9th section, where they are specified to be such as the appellants shall deem to be proper or requisite.

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And the power given by the 10th section is to take not such lands as *have been* found necessary, but such as *may be* found necessary, showing that the extent had not as yet been ascertained. The 17th section, in short, is entirely a deviation clause and no other.

LORD BROUGHAM.—My Lords, in this case the question arises between the trustees of the works in the port and harbour of Perth, and a worthy baronet, Sir Thomas Moncreiffe, heritable proprietor of an island called Sand Island, upon the river Tay; and the question is entirely as to the construction of the act under which the trustees hold, those trustees being formerly Mr. Kinnaird, and afterwards Mr. Fox Maule, who, as member of the borough, with others, is an official trustee, and in whose name the proceeding was instituted. The action was a declarator that there was no right in these parties to take the premises in question of Sand Island from Sir Thomas Moncreiffe, under the circumstances of the case; this led to a discussion of the provisions of the act which we have had occasion fully to look into.

The sections in question are the 17th section and the 10th section. If the 10th section had stood alone, one conclusion might certainly have been drawn from it, and one result might have been obtained in the argument; but that section is to be taken in connection with the important section, that is, the 17th, for the protection of the landowner, fixing the limits of the powers of the commissioners; and no doubt it is not necessary, as, indeed, three out of five of the learned Judges seem to have thought in considering the case, in which I agree with them, that we should take the 17th section as repealing or controlling the 10th section; but taking the two together, as we are bound to do, *in pari materiá*, in the very same matter in fact, the conflicting rights and claims of the trustees acting under the act, and of the proprietor, taking them together, we must construe the

clauses together, and I agree with Lord Moncrieff in holding that there is not any insuperable difficulty in combining the two together, and in construing the two together and in favour, therefore, of Sir Thomas Moncrieffe, and against the trustees.

My Lords, it is an observation made in the course of the argument here, certainly in the papers below, that when parties come before you relying upon a private or local act, that act being of their own preparing, every difficulty that arises upon its construction must be taken stringently as against them, rather than against the parties in conflict with them; if they leave anything out which is necessary to sustain their own rights, it is their fault that they made the omission, and they shall not be allowed by intendment, to supply the defect which they have left; if they leave anything ambiguous, anything raising doubts, then the benefit of the doubt shall be given, not to them, but to the party in conflict with them; it is for them to make the matter clear in framing that which is their own title deed, their own act; and just as you assume in every case, except in the case of the crown, most strongly against the granter of the deed, so you ought to assume in every case rather against the framers of an Act, who benefit under the Act, who act under the Act, and who are entitled under the Act, and who have framed their own title deed; you are to assume rather against them and to hold the construction rigorously against them, rather than against the other parties.

My Lords, the only doubt I had upon this case was, as respects the question of costs of the appeal; the appellant in this case stands in peculiar circumstances. In general our rule is, and I dwell upon this, that no doubt may be entertained of the general subsistence of our rule, where we affirm the judgment appealed from, to give costs as against the appellant or the plaintiff in error in the case of a writ of error. But in this case I should suggest humbly to your lordships to make an exception, and not to give costs as against the appellant, and

my reason is this. When an appellant comes to dispute a judgment, I assume, when I give the costs of the appeal against him and to the respondent or the defendant in error, as against the plaintiff in error, that he, the respondent or the defendant in error, is in possession of the judgment, and that the other party comes here to dispute the judgment actually delivered against him, and for his adversary. It is very fit that in that case the costs of the appeal or of the writ of error should be given against the party bringing it here, because he vexes the other party who is in possession of the judgment. But the very foundation of that rule is, that the other party is possessed of the judgment. Now, observe that that is only nominally the case here, for when Lord Ivory had given his interlocutor, which he came to with very considerable hesitation, he seemed to doubt, and he expressed himself as feeling a difficulty in the case, (it is not upon that ground that I am going to propose not to give these costs, but upon another ground). The parties against whom he gave judgment, the trustees, Mr. Fox Maule or Mr. Kinnaird and the others, carried it to the Inner House. Sir Thomas Moncrieffe then was possessed of the judgment of Lord Ivory, the Lord Ordinary; on a reclaiming note the judgment goes to the Inner House; there the Judges are equally divided. My Lord Justice Clerk is clearly of opinion, and very strongly of opinion, against the Lord Ordinary; Lord Medwyn concurs with the Lord Justice Clerk; Lord Meadowbank takes the other line and is with the Lord Ordinary, and is very clearly of opinion with the Lord Ordinary; Lord Moncrieff is of opinion, though perhaps not quite so unhesitatingly, as Lord Meadowbank; he says it is attended with difficulty, but he expresses a much clearer opinion than Lord Ivory had done. Lord Ivory appears to have doubted considerably more than Lord Moncrieff, but Lord Moncrieff says that the case is attended with considerable difficulty, but still he gives an opinion, and a very strong and decided opinion, against the

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Lord Justice Clerk and Lord Medwyn, and with Lord Meadowbank.

Then the Court was equally divided, and they had two courses to take—either to retain that equal division and to send for the consulted Judges, which they did not do, or to adopt the course which they did adopt, and which brings the case here; the Lord Justice Clerk saying, I withdraw my vote as a judge, and leave you to be two to one in favour of the interlocutor of the Lord Ordinary, in order that it may go to the House of Lords.

Now, my Lords, this is stronger than a recommendation of a judge to appeal, which is always looked to as material in weighing the question of costs—it is stronger—it almost makes it inevitable. It says, there is no judgment properly against you, the appellant; but there is an equal division of opinion which would have led to an adherence to the Lord Ordinary's interlocutor. What we have to consider is that this case is sent here by the Lord Justice Clerk withdrawing his vote; without that it might not have come here; and I must say, with great deference to that learned Judge, that I do not think that he took quite the right course. I think that the expense is so much greater, and the delay is so much greater, of coming here, that it would have been a great deal better if he had adhered to his opinion, and then they must have called in the consulted Judges. I think it is to be regretted that he took this course, for if they had called in the consulted Judges, the probability is not very great, that there would have been in that case an equal division—that six would have been one way and six the other is highly improbable; and I think that it would have been better upon the whole, than sending the case here; for it is rather disagreeable that a case should come up here without necessity. In all probability, or at least we have a right to suppose that there would have been an acquiescence in a real judgment, which this can hardly be said to be, at all events if

there had been a real judgment, and it had come up here, the party who came to this Court would have risked the costs, and would certainly have had to pay the costs, if the judgment had been affirmed.

My Lords, I have thought it right, with a view to other cases, and as bearing upon the appellate jurisdiction of this House, to enter at large into this matter. I have no doubt upon the case, and I have come to the conclusion, that we ought to affirm the interlocutor of the Court below, but without costs.

LORD CHANCELLOR.—My Lords, it is impossible not to feel that there is very great difficulty in the provisions of this Act; but, at the same time, when they are properly considered, I do not think that the construction to be arrived at is a matter of so much doubt, because one construction would lead to a result which I believe was never found in any enactment connected with a subject of this description, namely, the power to take property for a public purpose, so large without any limit, except the limit of the island itself, as to the purposes to which it is to be applied.

Now, these works obviously were not intended to embrace, as originally projected, the whole of this island; and yet if the 10th section were to be the rule of the powers of the commissioners, there would be no restriction whatever. The 9th section would authorize them to make a dock and tide-harbour, and the 10th would enable them to take whatever land was necessary for that purpose. Now, when the property of individuals is taken for a public purpose, the Act of Parliament which passes for that purpose, carefully specifies what the property is which is to be liable to the powers of the Act; and on the part of the appellant the contest is, that the provisions of this Act impose no restriction whatever upon the commissioners, but that they might take whatever property they might from time to time

think necessary, for the purpose of making the harbour and dock to the extent of the limits of that island, the dock being not limited or described by the deed of settlement, that is to say, they construe this clause without reference to the 17th. We have, then, in the 9th and 10th clauses a parliamentary enactment, that the commissioners may be at liberty to make these works, and that they may take what land they think proper for this purpose. But then, in the 17th clause we find what these works are, and to what extent they are to be carried; and if the proper construction of the 17th clause be to construe it as limiting the 9th and 10th clauses, the supposed peculiarity of this Act entirely disappears; and we have, though in a different shape from that which is the usual course adopted,—namely, first describing the work which is to be effected, and then describing the property which is to be taken for the purpose of effecting the prescribed work,—we have the 17th clause referring to certain plans deposited as required by Parliament.

And here, my Lords, I must observe, that the course which I think the Court below have very properly taken, in referring to these plans, is not at all inconsistent with the course which this House lately took in a railway case, (North British Railway, *v.* Tod, supra p. 199,) where we thought that plans not referred to in the Act, could not be looked to for the purpose of putting a construction upon the Act, because this 17th clause refers to particular plans deposited in a particular place, and refers to them for the purpose of construing the enactment comprised in the 17th clause. Having referred to them by a word which seems to have very much puzzled the appellant, namely, the word "extent," it was laboriously endeavoured to be proved throughout the papers, that that was erroneously introduced into the Act, and that all that was intended was, to describe the position and the line of the intended work, and not its extent; but the enactment, unfortunately for the argu-

ment, is this: "And whereas a survey has been taken, and maps "or plans, and sections have been laid down and constructed, "showing the position, nature, and extent of the proposed tide "harbour." And then comes the enactment upon which the question turns: "And the Commissioners in making the said "intended improvements, shall not deviate more than 100 "yards from the position of the said dock or docks, and tide "harbour." Here then we are told that on referring to certain plans, we may see the line and position and extent of the intended works, and that the parties shall not deviate more than 100 yards from the works so described.

Now, that power of deviation which was relied upon on the part of the appellant, it is quite clear has no reference to the matter now under your lordships' judgment, because the commissioners made the works; and the moment they made the works in the prescribed line and position to be found in these maps, there was no longer any question as to the deviation. They might have made those works, not exactly in the line prescribed in these maps and plans; that is to say, they had the power of going 100 yards more on one side or other of the line, but the result of the argument of the appellant would have been this, that the 100 yards meant as the deviation was to be taken as 100 yards extension on one side or the other; that is not the meaning of the clause, or the power given to deviate within the prescribed limit of 100 yards. Their work would not still be of the same extent. All that is meant is, that the work must not necessarily be precisely in the same position, but it may be in some other position within 100 yards of the position as described upon the maps or plans.

If this 17th clause is to be considered as a description of the works referred to in the 9th and 10th clauses, the whole enactment is consistent. The 17th clause referring to the plans, tells us what the works are, and then the power contained in the 10th clause is to take the lands necessary for the purpose

aforesaid: to be sure, these are not purposes, strictly speaking, aforesaid, because they are to be found in the 17th section; but they are works described in the same Act, and the powers to be taken must be taken with reference to the works described, though in a subsequent section. Then taking these two sections together, we know what the works are. The question of deviation does not at all apply in the present case; the works so described were completed shortly after the Act passed, and now the appellants say, that, under the 10th section, disregarding the 17th, they have a right to go to any part of this island, and take it for the further extension of the works. My opinion is, that the 17th section regulates the 9th and 10th sections, and that they are not at liberty, therefore, to go beyond the works which are described in the maps and plans referred to in the 17th section.

LORD CAMPBELL.—My Lords, I am entirely of the same opinion; and I must go a little further, and say, that if the commissioners had the power, originally, of doing what they now claim to do, my opinion is, that, in the just construction of the Act of Parliament, the option having been made to take less than the parties might have taken at first, they cannot come successively and go to the full limits to which they might have gone originally. It seems to me, that such an Act of Parliament gives the commissioners the power, only, of once taking a portion of the land of another, having it valued, and taking possession of it; and that that option having been once exercised, the commissioners cannot afterwards vex the proprietor of the land, and at successive times go to the full extent which the Act might have authorized, if in the first instance the full power had been exercised.

LORD BROUGHAM.—My Lords, I ought to state that I entirely agree with the last observation of my noble and learned friend who has just spoken; and at the hearing of this cause, I

threw out that more than once to the counsel in the course of the argument.

Interlocutor affirmed without costs.

It is ordered and adjudged, That the said petition and appeal be, and it is hereby, dismissed this House, and that the said interlocutors therein complained of be, and the same is hereby, affirmed.

SPOTTISWOODE and ROBERTSON—DEANS, DUNLOP, and HOPE, Agents.