

Saturday, January 17.

FIRST DIVISION.

THE BOARD OF SUPERVISION *v.* THE
PAROCHIAL BOARD OF OLD MONKLAND.

Poor—Obstruction by Parochial Board in Execution of Poor-Law Act (8 and 9 Vict. cap. 83,) sec. 87—Power of Parochial Board to Reduce an Inspector's Salary.

An inspector of poor was appointed at a salary of £120 per annum, which was subsequently raised by successive additions to £200. He latterly had a sub-inspector, who assisted him in the outdoor as well as the indoor work of inspection. This sub-inspector resigned office, and the parochial board, instead of appointing a successor under the old arrangement, resolved to get a clerk to do indoor work only, the inspector being instructed to do the outdoor work himself. The inspector complained of this change to the Board of Supervision, whose visiting-officer was of opinion that the complaint was well-founded, and that one man could not efficiently perform the outdoor duties of the particular parish. The parochial board then resolved—"That as the inspector is now admittedly unfit to do the duties of his office efficiently, the board, instead of requesting him to resign, agree to appoint an assistant-inspector at a salary of £100 per annum; that the inspector's salary be reduced from £200 to £180;" and at a subsequent meeting, after remonstrances by the Board of Supervision, this resolution was "confirmed." *Held*, on a petition and complaint by the Board of Supervision, that the parochial board were guilty of a neglect of duty or obstruction in the execution of the Poor-Law Act, in terms of section 87 of that Act, and that the Court must therefore ordain them to rescind their resolutions above quoted, and interdict them from acting thereon.

Question—(1) Whether the salary assigned to an inspector of poor at the time of his appointment can subsequently be reduced? and (2) whether additions made to that salary can afterwards be taken away for sufficient cause?

On 1st November 1860 the Parochial Board of the parish of Old Monkland appointed Mr George Campbell to the office of inspector of poor of that parish at a salary of £120 per annum. This salary was several times increased prior to 1874, when it was raised to £200 per annum, with free house, garden, coal, gas, and water. At the date of his appointment Mr Campbell had no assistant, but for thirteen years prior to 1879 an assistant-inspector had been employed by the parochial board at a salary at first of £60, and latterly of £84. The inspector and the assistant-inspector formed the entire poor-law staff of the parish down to the date when the present dispute arose.

On 10th February 1879 Mr Campbell, the inspector, reported to the committee of management of the parochial board that he had been obliged to suspend the assistant-inspector, who

had thereafter resigned his situation, and that he had appointed an assistant temporarily. Thereupon the committee resolved, by a majority of 14 to 9, "that the assistant-inspector's resignation be accepted, that the temporary assistant appointed by the inspector be continued until a regular appointment be made, and that a committee be appointed to look out for a clerk to the inspector, and that the inspector be instructed to do the outdoor inspecting himself." The amendment against which this resolution was carried was "that an assistant-inspector be appointed, and that the temporary appointment made by the inspector be adopted."

Representations having been made to the Board of Supervision against this resolution, they remitted to their visiting officer, Mr M'Neill, to investigate and report upon the matter, and in the course of his investigation he met and conferred with a number of the members of the parochial board, with whom it was arranged the resolution should be reconsidered; but on 10th March it was resolved, by a majority of 17 to 13, to adhere to the resolution to appoint a clerk instead of an assistant-inspector. Thereafter a report was made to the Board of Supervision by Mr M'Neill, the conclusion of which was, that in his judgment the parish of Old Monkland could not be adequately administered without two assistant-inspectors and a clerk or book-keeper. A copy of this report was sent to the said parochial board, which on 8th May had a meeting for the purpose of considering it. At this meeting it was moved—"That in order to the efficient administration of the poor-law in this parish, the assistance pointed out in Mr M'Neill's report to the Board of Supervision, now read, be appointed to assist Mr Campbell, the inspector, in the performance of his duties, and that Mr Campbell be authorised to select and appoint such as soon as possible. Salaries not exceeding £60 or £70 for assistants, and £1 per week for a clerk or book-keeper; that the engagement be terminable on either side by a month's notice, &c.;" but by a majority the following amendment was adopted—"That as the inspector is admittedly now unfit to do the duties of his office efficiently, the board, instead of requesting him to resign, agree to appoint an assistant-inspector at the salary of £100 per annum; that the inspector's salary be reduced from £200 to £180. That the appointment of assistant, and reduction of inspector's salary, come into effect as from 15th May 1879, and that the present clerk, Mr Ferrier, be appointed assistant-inspector. That he be only dismissed by the board, and that three months' notice be given by him or the board to terminate his appointment, and that a junior clerk be also appointed to assist in the office work."

This resolution having been brought under the notice of the Board of Supervision by Mr Campbell and by certain dissentient members of the parochial board, Mr M'Neill was again directed to inquire into the matter; and on 28th June he reported that, "in answer to my inquiries I was informed by its proposer and seconder that the narrative in the resolution of the parochial board—viz., that the inspector is 'admittedly unfit' for his duty—proceeds merely on his repeated declaration of the inadequacy of his staff, and of the increasing population of the parish. In order, therefore, to convey its proper meaning, the

resolution should be qualified by the words 'without additional assistance,' or some others of similar import. The inspector himself maintains his entire freedom from failure of mind or body, and he handed to me the enclosed certificate. An assistant apparently suitable has been appointed, and a clerk will shortly be engaged, but the question of the proposed reduction of the inspector's salary remains, and I venture to think that the parochial board should be warned on the subject."

This report was not communicated to the parochial board, but on 12th July the following letter from the secretary to the Board of Supervision was sent to them:—

"Sir,—I am directed by the Board of Supervision to transmit to you the enclosed copy of a report by Mr M'Neill, visiting officer, dated the 28th ult., having reference to the resolutions of the parochial board, contained in their minutes of meeting of 8th May last. It consequently appears that there is no allegation that the inspector is unfit or incapable of discharging the duties of his office, and that it was not intended by the parochial board that any charge of unfitness should be preferred against him. In these circumstances, the Board are of opinion that the salary of the inspector, as fixed by the parochial board, cannot legally be reduced by the parochial board, and they venture to express a confident hope that the parochial board will, on reconsideration, voluntarily rescind their resolution in so far as it proposes to reduce the salary of an official who has been long in their service, and has, the Board believes, discharged his duties satisfactorily and to the best of his ability."

On 28th August, however, the parochial board resolved "that the board's former minute in regard to this matter be confirmed, and the clerk instructed to intimate this to the Board of Supervision."

In consequence the Board of Supervision presented this petition and complaint, which prayed the Court to find "that the resolution of the parochial board to reduce the salary of the said George Campbell from £200 to £180 was and is illegal; to ordain the said parochial board to rescind the said resolution, or otherwise to interdict and prohibit the said board from acting upon the same."

The Board of Supervision stated that "the power of dismissal being vested by statute in the Board, the Board have always held that parochial boards could not do indirectly, viz., by the reduction of salary, what they had no power to do directly; and they have required parochial boards to report the amount of the salary of the inspector separate from any other emoluments received by him from the parochial board for the discharge of other duties, such as the collection of rates, &c., so that no reduction could be made without their consent. The uniform practice of the Board in this matter has been of essential advantage in the administrative execution of the Act." They further submitted that "the parochial board in acting as aforesaid, and more particularly in respect that they have resolved to reduce the salary of the inspector, and have declined to rescind the said resolution, although required to do so by the petitioners, have refused to do what is by law required of them, and that an obstruction has arisen in the execution of the Poor-Law Act in the parish of Old Monkland."

In their answers the parochial board averred, *inter alia*, that "the inspector's staff is now also much stronger than it was in 1860. At that date, and for six years thereafter, the inspector had no assistant; for thirteen years prior to 1879 he had only an assistant; now he has both an assistant and a clerk. The expenses connected with this branch of the parochial administration have also correspondingly increased; and in increasing the inspector's salary from time to time the respondents had this object in view, amongst others, that such increases would enable the inspector to procure assistance in his work if that were necessary. In 1860 the only charge was the inspector's salary of £120. His salary in the beginning of the present year was £200, with free house, coal, gas, &c., and his assistant's salary was £84, making a total money payment of £284. Now, the inspector's salary is £180, with free house, &c., his assistant's salary is £100, and his clerk's £26, amounting in all to £306. While the population therefore has increased from 29,000 to 35,000, the salaries in the inspector's department have risen from £120 to £306, with free house, &c., which is worth about £50 additional, making £356 in all."

The parochial board submitted—"In the whole circumstances, that the interference of the Board of Supervision is unnecessary and uncalled for; that there is no warrant in the Act of Parliament for the position taken up by the Board of Supervision; that the acts of the respondents complained of are fair and reasonable, and, having regard to the circumstances, not only just but generous to the inspector. The respondents further submit that the petitioners have no title to complain of the reduction in the inspector's salary."

The inspector appeared but did not lodge answers.

By the 32d section of the Poor Law (Scotland) Act (8 and 9 Vict. cap. 83) it was enacted—"That each parochial board shall . . . meet . . . for the purpose of appointing an inspector or inspectors of the poor in such parish or combination, and fixing the amount of remuneration to be given to every such inspector, and such meeting shall make up or cause to be made up such roll as aforesaid with the least possible delay, and shall nominate and appoint a fit and qualified person or persons to be inspector or inspectors of the poor in such parish or combination, and shall fix the amount of the remuneration to be given to every such inspector, and shall forthwith report to the Board of Supervision the name and address of such inspector, and the amount of the remuneration to be given to him, and shall at the same, or at another meeting to be held on a day not more than fourteen days thereafter, consider and determine as to the mode of raising the funds requisite for the relief of the poor in the parish or combination."

The 55th section provided *inter alia*—"Provided always, that in populous and extensive parishes or divisions of parishes the duties of inspecting and visiting the poor may be performed by assistant-inspectors or other competent persons, to be appointed and paid by the parochial board for these duties, and for whose conduct and accuracy the inspector of the poor shall be responsible to the Board of Supervision."

By the 56th section it was enacted—"That if any inspector of the poor shall fail or neglect or refuse to perform the duties of his office, or shall, in the opinion of the Board of Supervision, be unfit or incompetent to discharge the duties of his office, then it shall and may be lawful for the said Board of Supervision, by a minute or order, to suspend or dismiss such inspector, and the parochial board of the parish or combination for which such person is inspector shall forthwith proceed to appoint another person to perform the duties of inspector of the poor in the room of the inspector so suspended or dismissed."

By the 87th section it was enacted—"That in case any parochial board shall refuse or neglect to do what is herein or otherwise by law required of them, or in case any obstruction shall arise in the execution of this Act, it shall be lawful for the said Board of Supervision to apply by summary petition to the Court of Session, or during the vacation of the said Court to the Lord Ordinary on the Bills, which Court and Lord Ordinary are hereby authorised and directed in such cases to do therein as to such Court and Lord Ordinary shall seem just and necessary."

Argued for the Board of Supervision—A parochial board could not dismiss an inspector; that power was in the Board of Supervision only—8 and 9 Vict. cap. 83, sec. 56—*Board of Supervision v. Parochial Board of Dull*, June 9, 1855, 17 D. 828; *Clark v. Board of Supervision*, Dec. 10, 1873, 1 R. 261. The inspector was as much the servant of the Board of Supervision as of the parochial board. It followed therefore that a parochial board could not by indirect means dismiss an inspector. Yet that was what had been done here, for no more effectual, though indirect, way of getting rid of an inspector could be found than to reduce his salary. It was out of the question for the parochial board to say that their object was merely to rearrange the inspecting staff. Their minutes made too plain that they wished to dismiss Mr Campbell. An unofficial explanation was made to Mr M'Neill, but that explanation was itself repudiated. It was an equally unfounded argument to say that the increase of salary was made in respect of salary paid by the inspector to his assistant. The sub-inspector's salary was paid, as under the statute it ought to be paid, by the parochial board. [LORD PRESIDENT—I suppose you concede that the Board of Supervision has no discretion in fixing an inspector's salary? Not directly, but they could refuse to sanction an inefficient inspector, and an efficient inspector meant an adequate salary. The reduction of the salary therefore was *ipso facto* illegal.]

Argued for the Parochial Board—The act of the parochial board was not *ipso facto* illegal. They were entitled to reduce an inspector's salary, at all events to the extent to which it had been increased during his tenure of office. And that was all that had been done here. No power had been directly conferred on the Board of Supervision to regulate the salary of inspectors. Indeed it was not plain what was the exact nature of the power contended for by the Board of Supervision. If it was illegal for a parochial board to reduce an inspector's salary, did the sanction of the Board of Supervision make it legal, or had the inspector acquired a vested right in his salary, of

which he could be deprived only by out and out dismissal? The question was, were the parochial board entitled in the circumstances of the case to make a reduction? In other words, were they liable under the 87th section of the Act? They were not. [LORD PRESIDENT—Surely it is an obstruction in the execution of the Act if the parochial board neglect to provide an efficient inspecting staff?] Undoubtedly, but here no inefficiency was alleged on either side. [LORD PRESIDENT—Your minutes say that Mr Campbell was inefficient.] That was subsequently explained; for the explanation made to Mr M'Neill had not been repudiated. The parochial board simply confirmed their former resolution, and that implied a confirmation of the explanation. They desired to rearrange their inspecting staff, and with that view took away part of Mr Campbell's salary to pay for an assistant. Originally he had no assistant, and he got an increase of salary in order that he might provide himself with assistance. It was therefore fair that he should surrender what was in fact but a small part of the entire increase. Even after the deduction the salary was more than a fair one looking to the salaries in neighbouring parishes of a similar character. Owing to the formation of railways which now intersected the parish, the inspector's outdoor duties were now much less laborious than they had been when he was appointed.

At advising—

LORD PRESIDENT—The inspector of poor in a parish is undoubtedly a public officer, and the duties which he has to perform in connection with the administration of the poor-law are not only important, but they are very difficult and often very disagreeable, and I think nobody can doubt that a man will not efficiently perform these duties unless he is acting under a sense of great responsibility. I therefore have considerable sympathy, I must say, with an inspector of poor whenever his conduct is brought under challenge, or whenever anything occurs to create a dispute between him and those who are his superiors in the administration of the poor-law.

The gentleman who is inspector of poor of the parish of Old Monkland has held that office for a considerable number of years, and has been, according to the admission of all parties, a very efficient officer. Down to 1879 it does not appear that there was any dispute or disagreement between him and the parochial board. They had recognised the value of his services by increasing the salary which had been originally assigned to him from £120 to £200; and some years previously to 1874, the year in which his salary was raised to that amount, an arrangement was made by which he had the assistance of an assistant inspector at the salary of £60. Now, that appointment was of course made by the parochial board in terms of the 55th section of the statute, and probably upon the suggestion of the inspector himself; and the salary also under that section was provided by the board. Now, I do not see any evidence that Mr Campbell, the inspector, complained that this staff was insufficient; and probably no dispute or difficulty would have arisen but for the accident that the sub-inspector got into bad habits, and the in-

spector, who under the statute is expressly declared to be responsible for him and responsible to the Board of Supervision, found it necessary to suspend him from his duties. This matter the inspector reported to the parochial board on 10th February 1879, and suggested that as he had been obliged to appoint an assistant temporarily without previous authority they should confirm that appointment and allow matters to go on as they had done before, upon the arrangement of his having a sub-inspector in place of the person whom he had dismissed. Upon that occasion it was moved "that the temporary assistant appointed by the inspector be continued until a regular appointment be made, and that a committee be appointed to look out for a clerk to the inspectors, and the inspector be instructed to do the out-door inspecting himself." An amendment was moved "that an assistant inspector be appointed, and that the temporary appointment made by the inspector be adopted," but the motion was carried by 14 to 9.

Now, the effect of this resolution was to introduce a very important change into the arrangement for conducting the poor-law business of the parish. The inspector was no longer to have a sub-inspector to assist him in his duties generally. He was only to have a clerk to do in-door work, and he himself was to undertake the whole work of inspection out of doors, which as we all know is the serious and most laborious work of the office. Mr Campbell was not satisfied with this, and other people, members of the parochial board, were very much dissatisfied with it. The matter was accordingly brought under the notice of the Board of Supervision by letters and memorials to which it is not necessary to refer more particularly, and the Board of Supervision appointed their visiting officer, Mr M'Neill, to examine into the matter and report to them. The report of that officer was certainly very adverse to the arrangement which had thus been made, for he was of opinion that a larger staff than even Mr Campbell had suggested or desired was necessary in order to conduct the business of the parish properly. Directly on that report being made the Board of Supervision sent a copy of it to the parochial board for their consideration, and on 8th May 1879 a meeting of the board was held for that purpose. The point therefore for the consideration of the parochial board at that meeting was whether they should adhere to the arrangement which they had made in February 1879, or whether they should adopt the suggestion which had been made by the visiting officer, in whole or in part. It was upon this occasion that the resolution complained of was passed.

The motion proposed was one very much in accordance with the recommendation of Mr M'Neill's report—[reads motion as above]. But on the other side this amendment was moved—"That as the inspector is admittedly now unfit to do the duties of his office efficiently, the board, instead of requesting him to resign, agree to appoint an assistant inspector at the salary of £100 per annum; that the inspector's salary be reduced from £200 to £180. That the appointment of assistant and reduction of inspector's salary come into effect as from 15th May 1879," &c. . . . and it was this amendment which was carried.

Now, I do not see any evidence that the inspector Mr Campbell had ever said that he could

not perform the duties of the office with the assistance that he had had up to that time. The only complaint that he ever made was that by the resolution of 10th February 1879 a change had been made which would very greatly increase the labours of his inspectorship by confining the duties of his assistant to indoor work, but there was no complaint by Mr Campbell, that I have seen, that the staff he had had prior to that date was insufficient for the performance of the work. Now, keeping that in view, what was the meaning of this resolution which was carried—"that as the inspector is admittedly now unfit to do the duties of his office efficiently." That must mean either that Mr Campbell has become personally unfit to do the duties of inspector, or that he had represented that he was unfit to do the duties of his office efficiently, as he had done before with the aid of one sub-inspector. This is made still more clear by what follows, because the board, instead of requesting him to resign, reduce his salary from £200 to £180, and appoint a sub-inspector with a salary of £100—that is to say, the alternative which they represent as being before them is, whether they should request an inefficient officer to resign or reduce his salary? That this was utterly unfair and unjust to Mr Campbell is, I think, now admitted, if I am putting the right construction upon this minute, and notwithstanding all that we have heard from Mr Balfour as to its meaning, and notwithstanding a disclaimer of that meaning, which, however, was itself afterwards disclaimed, I think that is the only possible construction of that resolution.

Well, this resolution being come to, a protest was made by Mr Campbell very naturally against the reduction of his salary, and the matter was brought under the notice of the Board of Supervision, and the secretary of the Board gave instructions to Mr M'Neill, the visiting officer, to go and inquire into the allegation that Mr Campbell was unfit to do the duties of his office efficiently. Mr M'Neill then proceeds to inquire, and is told by the mover and seconder of the resolution, in the presence of a committee of the board, that he has misunderstood the meaning of that minute, and that the allegation that the inspector is "admittedly unfit" for his duties "proceeds only on his repeated declaration of the inadequacy of his staff and of the increasing population of the parish." Now, I do not think that is a very satisfactory explanation, even if it had been sincerely and honestly made, because Mr Campbell had not made any such complaint. There is no evidence of any complaint of the kind being made by Mr Campbell. He was content with the staff which he had; he only complained that the existing arrangement was disturbed by the minute of 10th February 1879. But Mr M'Neill was willing to be satisfied with this explanation, and reported it to the Board of Supervision, and the Board of Supervision, in a very conciliatory letter written by their secretary, stated to the parochial board that they hoped that the parochial board having given this explanation would see fit to rescind the resolution they had come to, which proceeded apparently upon very insufficient and inaccurate grounds. And what is the answer which the parochial board made to this letter? The whole of the documents having been read and entered *ad longum* in their minute of 28th August 1879, they carry a resolution simply in these terms, "that the board's

former minute" (the minute of 8th May) "in regard to this matter be confirmed, and the clerk instructed to intimate this to the Board of Supervision,"—that is to say, they repeat, in the same offensive terms in which it was originally conceived, the resolution contained in the minute of the 8th of May, and entirely withdraw or ignore the explanation which some gentlemen thought fit to attempt to give to Mr M'Neill of what was intended by that minute. It is impossible not to see that a very wrong feeling must have been at the bottom of that proceeding of 8th May, and that, at all events, the resolution they then carried was, in the knowledge of the parties who carried it, founded upon allegations which were not true in point of fact. It was not true that Mr Campbell was unfit to discharge the duties of his office efficiently, either in the sense of personal inefficiency or in the sense of his having complained that with his previous staff he could not carry on his duties.

The first question which has been raised here is, Whether the resolution of the 8th of May is not absolutely illegal in respect that it is a resolution to reduce the salary of the inspector? Now, that is a very important question, and if it were necessary to determine it here, I confess I should have thought it necessary to take further time to consider our judgment. It is one question whether the salary which is assigned to a public officer at the time of his appointment—being an appointment *ad vitam aut culpam*—can afterwards be reduced, and it is another question whether additions to that salary made subsequent to his appointment can be taken away for sufficient cause. I can only say in regard to both of these questions that I am very glad to think that it is not necessary to determine them in this case, because I think there is quite enough to entitle us to interfere, and to call upon us to interfere, to rescind the resolution of the 8th May and the confirming resolution of the 28th August, because I cannot doubt that it is a piece of malversation on the part of this parochial board which under the 87th section of the statute we are quite entitled to set aside. Whether it is called refusal to do duty, or neglect or violation of a statutory duty, or an obstruction of the administration of the poor-law within this parish of Old Monkland, is quite immaterial. I am quite clear that there was here a failure or violation of duty on the part of this parochial board which the Board of Supervision have done well in bringing under the notice of the Court. Our power under that section of the statute is to do everything as to the Court shall seem just and necessary. It is a very large discretion vested in the Court undoubtedly, but what I would suggest to your Lordships as the proper deliverance under this petition and complaint is, that we should direct the parochial board to rescind their resolution of 8th May and 28th August 1879, and interdict them from acting thereon.

LORD DEAS and **LORD MURE** concurred.

LORD SHAND—I am of the same opinion. It would certainly not occur to me that in the ordinary case this Court should be induced to interfere in a question between the Board of Supervision and a parochial board in regard only to the reduction of salary of an inspector of the

poor or other official paid by the parochial board by from £200 to £180. But the complainers, the Board of Supervision, have stated in this petition, in the concluding paragraph, that "a salary of £200 is below what, judging from experience, the petitioners would expect to command the services of an efficient inspector for such a parish as Old Monkland, even if he were aided by a larger staff than one assistant inspector. In the existing state of circumstances a reduction of this already inadequate salary is unjust to the inspector, and is calculated to drive him from an office of which the parochial board has not the power to deprive him by direct dismissal." I attach great importance and weight to the fact that this Board, which is charged with the supervision of the proceedings of parochial boards, have thus stated their conviction as to the effect of the reduction of the inspector's salary in this case. But my judgment does not proceed upon their mere statement, for if we look at the evidence which has been adduced in support of it, contained in the visiting officer's reports and minutes of meetings of the parochial board themselves, the statement is amply borne out, and upon that ground I am of opinion that the petitioners were entitled to come to this Court to ask the remedy they have done, and that it has been shown there was obstruction on the part of the parochial board within the meaning of the section founded on. Accordingly, I agree in thinking that the prayer of the petition should be granted.

The Court appointed and ordained the Parochial Board to rescind their resolutions of 8th May and 28th August 1879, and interdicted them from acting thereon.

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 —Lord Advocate (Watson)—J. P. B. Robertson.
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Tuesday, January 20.

SECOND DIVISION.

WHITSON (CURROR'S TRUSTEE) v. CALEDONIAN HERITABLE SECURITY COMPANY.

Public Company—Winding-up—Effect of Agreement amongst Directors to take Unallotted Balance of New Issue of Shares—Where Alluded to in Report of Company.

The directors of a public company agreed among themselves to take up a certain unallotted balance of a new issue of shares. That agreement was expressed in the report to the annual general meeting of the company, which was approved of, issued, and thereafter engrossed in the minute-book of the company. C. was a director, and had been present at all the meetings at which the arrangements had been concluded, and at the general meet-