

upon the merits than is really necessary for the disposal of the question which is before us, and I think it is enough for that purpose to say that as at present advised I am not satisfied by anything I have heard at the bar that the statute in question confers any power upon the Commissioners to obtain a provisional order enabling them to divest the old Burgh of Hamilton of its property in whole or in part, and to communicate a share of it to a totally different community. It may be that one ought to assume that what we do not see at the present moment may nevertheless appear at some future stage of the proceedings when this case comes into the Court of Session; but even assuming that it is possible that at that later stage some other considerations may be brought before us which will alter the provisional conclusion which I have expressed, still that is far from showing that it is so clear that the respondents are entitled to obtain this order for divesting the burgh of its property that there cannot even be raised a question about their right which it is proper to submit to judicial determination; because that is the ground, and the only ground, on which we should be justified in throwing out this application now. For that reason I am quite clearly of opinion that the note should be passed, at all events in so far as regards the first part of the application for the provisional order. That is the application for power to repeal the 25th section of the Act of 1878. I agree with what has been said by all your Lordships that the question arising under the second part of the application is attended with more apparent difficulty than the first. That is probably the nicer question in the case; but I have no hesitation in agreeing that, however that may be, that part of the prayer should be treated exactly in the same way as the other, and that we ought to pass the note—that is, we ought to adhere to the Lord Ordinary's interlocutor passing the note and granting interim interdict in the terms in which he has given it. I agree that we cannot stop this inquiry in part and allow it to go on in part, because that would be ordering a totally different inquiry for what has been directed by the Secretary for Scotland. It would, as your Lordship said, be another inquiry under the order of the Court of Session, and not of the Secretary for Scotland at all. The question cannot be split up in this way, but must be determined as one and the same question. As to the propriety of granting interim interdict it seems to me to follow of necessity from the nature of the question raised, that to allow an inquiry of this kind to go on while the competency is still in dispute, would be advantageous to no one, and most probably would be disadvantageous to all interests concerned. Therefore I agree with your Lordships.

The Court adhered.

Counsel for the Complainers—Balfour, Q.C.—Clyde. Agents—Ronald & Ritchie, S.S.C.

Counsel for the Respondents—Johnston, Q.C.—Salvesen. Agents—Carmichael & Miller, W.S.

Friday, January 7, 1898.

FIRST DIVISION.

PARISH COUNCIL OF CITY PARISH OF EDINBURGH v. PARISH COUNCIL OF CITY PARISH OF GLASGOW.

Poor—Residential Settlement—Effect of the Union or Transfer of Parishes.

Where part of a parish is transferred to another parish, the effect, as regards the acquisition or loss of a residential settlement, is the same as if the persons residing in the part of the parish so transferred had voluntarily changed their residence to the new parish; but where several parishes are united so as to form one parish, residence in any of the parishes composing the united parish, prior to the unification, will be regarded as residence in the united parish.

Section 76 of the Poor Law Amendment (Scotland) Act 1845 (8 and 9 Vict. c. 83) provided—"That from and after the passing of this Act no person shall be held to have acquired a settlement in any parish or combination by residence therein, unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common begging, either by himself or his family, and without having received or applied for parochial relief; and no person who shall have acquired a settlement by residence in any parish or combination shall be held to have retained such settlement if, during any subsequent period of five years, he shall not have resided in such parish or combination continuously for at least one year."

A special case was presented by (1) the Parish Council of the City Parish of Edinburgh, and (2) the Parish Council of the City Parish of Glasgow, in which the following was the joint statement of facts:—“(1) The Boundary Commissioners appointed and acting under the Local Government (Scotland) Act 1889 (52 and 53 Vict. c. 50), by order dated 28th September 1891, did, in pursuance of the powers conferred upon them by the said Act, order and determine, *inter alia*, that certain portions of St Cuthbert's Parish should form part of the then City Parish of Edinburgh. Said order came into operation on the 15th day of May 1892. (2) In pursuance of the powers contained in the said Local Government (Scotland) Act 1889, and particularly section 51 thereof, and also in the Local Government (Scotland) Act 1894 (57 and 58 Vict. c. 58), and particularly section 46 thereof, Her Majesty's Secretary for Scotland issued an order

dated 14th March 1895, uniting into one parish, to be called the City Parish of Edinburgh, the Parishes of St Cuthbert's and Canongate Combination, the then City Parish of Edinburgh, and portions of the parishes of North Leith, South Leith, Duddingston, and Liberton. Said last-mentioned order came into effect for all purposes connected with the election of parish councils, and on the 15th day of May 1895 for all other purposes. (3) James M'Graw, born in the City Parish of Glasgow, became chargeable as a pauper to the unified City Parish of Edinburgh on 8th September 1896. He resided at 29 and 28 West Port, Edinburgh, from August 1890 till he became chargeable—a period of six years and one week. The houses in which he so resided were till 15th May 1895 part of St Cuthbert's and Canongate Combination. On that date, in virtue of the said unification order, they became part of the unified City Parish of Edinburgh. The said James M'Graw's period of residence in said houses till the date of the unification order was four years and nine months. His subsequent residence in the same houses till the date of his chargeability was one year three months and one week. (4) Isabella M'Culloch or Ross, who was born within the City Parish of Glasgow, became chargeable as a pauper to the unified parish of the City of Edinburgh on 11th July 1896. Lockhart Ross, husband of the said Isabella M'Culloch or Ross, died on 9th December 1894 at 11 Pleasance, Edinburgh. He had resided at 9 and 11 Pleasance from 28th May 1895 till his death—a period of nine years and seven months. During the period of his residence, extending to six years eleven months two weeks, which preceded 15th May 1892, the area within which 9 and 11 Pleasance are situated was within St. Cuthbert's and Canongate Combination. At that date this area was, by virtue of the order of the Boundary Commissioners, mentioned in article 1 hereof, detached from said Combination and included in the City Parish of Edinburgh. The said Lockhart Ross continued to reside at 11 Pleasance till his death on 9th December 1894. Thereafter his widow, the said Isabella M'Culloch or Ross, continued to reside at 11 Pleasance aforesaid till 15th May 1895, when the said unification order mentioned in article 2 hereof came into operation, and thereafter till 28th May 1895, when she removed to and resided at 11 Big Lochend Close, till she became chargeable on 11th July 1896 as aforesaid. The house in which she resided at 11 Big Lochend Close was, prior to the said unification order, part of St Cuthbert's and Canongate Combination. Thereafter it formed and still forms part of the unified City Parish of Edinburgh. (6) The first party has made a claim against the second party for relief in respect of the said two paupers on the ground that the parish represented by the second party is their parish of birth, and that they have no other settlement. The second party disputes the first party's claim."

The contentions of the parties were—

"The first party maintains that the said James M'Graw had not, at the date when he became chargeable, resided for five years continuously in the City Parish of Edinburgh, and had consequently acquired no settlement there. The second party maintains that the said James M'Graw, in virtue of his residence in West Port, Edinburgh, for over five years, had, at the date of his chargeability, acquired a settlement by such residence in terms of the statute, and that the City Parish of Edinburgh is accordingly liable for the maintenance of this pauper. The first party maintains that the settlement acquired by the said Isabella M'Culloch or Ross in St Cuthbert's and Canongate Combination on 28th May 1890 in virtue of the five years' residence of her husband was lost on 16th May 1896 in respect that her husband, having on 15th May 1892 ceased to reside in the Combination of St Cuthbert's, and having never returned there up till his death on 7th December 1894, and she having thereafter continued to reside outside the Combination of St Cuthbert's, there was a period of absence of four years and a day from the Combination of St Cuthbert's, and that she acquired no other settlement of residence. The second party, on the other hand, maintains that at the date of chargeability the settlement acquired by the said Isabella M'Culloch or Ross had not been lost by the circumstance of the alterations on the parish boundaries above referred to, the place of residence of the pauper's husband having *de facto* not been changed subsequent to the said alterations of boundaries."

The questions submitted for the judgment of the Court were—"1. (a) Is the said James M'Graw chargeable to the first party? or alternatively (b) Is he chargeable to the second party? 2. (a) Is the said Isabella M'Culloch or Ross chargeable to the first party? or alternatively (b) Is she chargeable to the second party?"

Argued for the first party—The effect of the unification was to create a new parish, and the parishes which formed its component parts had ceased to exist. A pauper could not complete residential settlement in different parishes, the result of the union being the same as if he had physically changed his residence. The case was ruled by *Inspector of Galashiels v. Inspector of Melrose*, May 12, 1892, 19 R. 758; *Parochial Board of Borthwick v. Parochial Board of Temple*, July 17, 1891, 18 R. 1190. No right or liability was created until the five years necessary for constituting a settlement had expired. Accordingly, no liability was transferred from the old to the new parish unless the pauper had become chargeable—*Inspector of Galashiels v. Inspector of Melrose*, January 19, 1894, 21 R. 391. There was no inequity in this contention, for the composite parish consisted of a number of parishes, including certain county parishes, and why should the rate-payers in these be chargeable with a pauper in no way concerned with them? It was manifest in the case of a transfer of part of one parish to another (as in the *Galashiels* case) that no one could acquire a

settlement who had not lived the statutory period in one or other of the parishes, residence in the first not counting in estimating the period of residence in the second. But there was no distinction in principle between that case and the present, and accordingly till the pauper had completed the statutory period in this new unit, liability for him remained in his parish of birth. The same arguments would apply to the loss of a settlement, and in respect that the pauper had been absent from her parish of settlement for the statutory period, she had no other settlement but that of her parish of birth.

Argued for second party—Admittedly there was nothing in the conduct of the paupers to constitute any claim against the parish of birth, and the only change, if change there were, had been made by the Legislature. The principle of residential settlement was that where a person had resided in a parish and contributed to it by his industry, and by the payment of rates, if he became a pauper he had a personal claim to be supported by that parish. The result of the first party's contention would be, owing to a mere adjustment of boundaries, to throw such a person back on his parish of birth, which would manifestly be an injustice. Such a view had never been taken in the case of unions made voluntarily before the date of the statute, and accordingly it would be necessary for the first party to show that the Legislature intended to alter the law of settlement, and to wipe out altogether residence in the former parish—in other words, to treat as non-existing the former units now combined into one. This was certainly not intended by the statute, but, on the contrary, the existing liabilities of the old units were transferred to the new unit, and accordingly residence commenced in one of the parishes before the union, and continued in the united parish, was continuous residence. [LORD ADAM—How long was this treatment of the City Parish as its original units to continue?] After the union it formed a new unit, and accordingly anyone born in it after that date was a member of the new unit, and not of anyone of the parishes out of which it had been created. In the case of *Inspector of Galashiels v. Inspector of Melrose*, the Court was not dealing with a case where two parishes had been combined and amalgamated, but where a portion of one parish had been disjoined from it and attached to another, the original parish being still left, so that there were two parishes with conflicting rights. Moreover, there importance was attached to the provision for the adjustment of liabilities which would rectify any inequities which might arise. (2) The same arguments applied to the question of loss of settlement.

At advising—

LORD ADAM—The parties to this case are the Parish Council of the City Parish of Edinburgh of the first part, and the Parish Council of Glasgow of the second part.

The questions of law submitted to us are

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whether the first or the second party is liable for the maintenance of both or either of two paupers, James M'Graw and Isabella Ross.

As regards M'Graw, he was born in the City Parish of Glasgow. That parish, therefore, will be liable for his maintenance unless it can be shown that he has acquired a residential settlement elsewhere, viz., in the City Parish of Edinburgh.

From the facts stated it appears that M'Graw resided in the West Port, Edinburgh, from August 1890 for a period of six years and one week, when he became chargeable as a pauper.

It further appears that until the 15th of May 1895 the West Port, where the pauper resided, was part of the St Cuthberts and Canongate Combination, but by an order of H. M. Secretary for Scotland, which came into effect of that date, the parishes of St Cuthberts and Canongate Combination, the then City Parish of Edinburgh, and portions of the parishes of North Leith, South Leith, Duddingston, and Liberton, were united into one parish, to be called the City Parish of Edinburgh.

It appears, therefore, that from August 1890 till 25th May 1895, a period of about four years and nine months, M'Graw resided in St Cuthberts and Canongate Combination, and that from 25th May 1895, till he became chargeable as a pauper, he resided in the new parish of Edinburgh, although he resided in the West Port all the time.

If these two periods can, in the circumstances of the case, be computed together, M'Graw will have acquired a residential settlement in the new City Parish of Edinburgh. That parish, however, maintained that this cannot be done, on the ground, as I understood, that the effect of the Unification Order was to create, for the first time, a new parish, with the result that the parishes which formed its component parts ceased to exist; that therefore the period of M'Graw's residence in the new parish could not be connected with his residence in the old parish of St Cuthberts, because St Cuthberts was not only a different parish but a parish which had ceased to exist. If this be so, it would lead to somewhat startling consequences, because if the previously existing parishes were to be considered as no longer existing, it would seem to follow that all settlements previously acquired in these parishes, whether by residence or birth, must also cease to exist. Suppose, for example, that a pauper who had a settlement in any of the united parishes became chargeable in any other parish in Scotland, that parish apparently could not obtain relief, because in the view of the City Parish of Edinburgh the parish which ought to relieve it has no longer a legal existence.

The proper view of the matter appears to me to be that the parish of St Cuthberts and the old City Parish of Edinburgh, which are now united in the new City Parish of Edinburgh, must be considered, as regards this question of settlement, as still existing parishes. I think the parishes united

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are united subject to all their existing rights and liabilities at the time of their union, and that these are transferred to the new parish, which succeeds and represents them, and which, so to speak, carries on their life. I think, therefore, that a period of residence commenced in one of the united parishes before the union, and continued in the united parish after the union, must be considered as a continuous residence in a question of settlement, and therefore that M'Graw has acquired a residential settlement in the new parish.

As regards the case of the pauper Ross—the facts are that she was born in the City Parish of Glasgow, and became chargeable as a pauper on 11th July 1896.

It is not stated where her husband, Lockhart Ross, was born, and that does not appear to be material.

Lockhart Ross resided, and the pauper presumably with him, in the Pleasance, from 28th May 1885 till the 15th May 1892, a period of six years eleven months and two weeks. Up to this time the area of the Pleasance was situated within the St Cuthberts and Canongate Combination, and Ross had therefore then acquired for himself and his wife a residential settlement in the combination. At that date, however, this area was, by virtue of an order by the Boundary Commissioners, detached from the Combination, and included in the then City Parish of Edinburgh. Ross continued to reside in the Pleasance, which had been thus transferred, until his death on 9th December 1894—that is, a period of two years seven months and two weeks.

I think that the effect of the transference of the Pleasance from the Combination to the City Parish—as regards Ross's settlement—was just the same as if Ross had voluntarily left the Combination and gone to reside in the City Parish. The settlement, however, which he had acquired was liable to be lost by non-residence, *i.e.*, by non-residence for one year continuously in the Combination, during the period of five years subsequent to his ceasing to reside in it—that is, subsequent to 15th May 1892.

The question, accordingly, in this case appears to me to resolve into this—did Ross, or after his death did his wife, reside in the Combination for one year during the period of five years subsequent to 15th May 1892? and the answer to that question depends on the effect of the subsequent unification of the Combination and City Parish, which we have had to consider in M'Graw's case.

That unification took effect, as we have seen, on 15th May 1895. But if I am right in thinking, as I have said in M'Graw's case, that residence in the united parish must be held as equivalent to residence in any of the parishes composing it, then the pauper Ross has not lost her settlement in the Combination because she resided in the united parish, and therefore constructively in the Combination, from 15th May 1895 till 11th July 1896, when she became chargeable.

But there is this further specialty in the

case, that on 18th May 1895 the pauper changed her residence from the Pleasance to Big Lochend Close, which previous to the unification was in the Combination, and continued to reside there till she became chargeable, so that if the Combination in this question of settlement is to be treated as still existing, the pauper *de facto* resided within it for the period requisite to retain her settlement therein.

I am therefore of opinion that the pauper Ross is chargeable to the City Parish of Edinburgh.

LORD M'LAREN—I concur in all respects in Lord Adam's opinion. The effect of the union, as I conceive, is that each parish expands so that the whole of the aggregate area is City Parish, and is also St Cuthberts. If this principle be once admitted, there can be little doubt as to the consequences which follow. The necessary consequence is that the union makes no change in the settlement of anyone who has a settlement in either of the parishes.

THE LORD PRESIDENT and LORD KINNEAR concurred.

The Court affirmed the first alternative of both questions.

Counsel for First Party—Balfour, Q.C.—Guy. Agent—R. Addison Smith, S.S.C.

Counsel for Second Party—Shaw, Q.C.—Deas. Agents—W. & J. Burness, W.S.

Tuesday, January 4.

FIRST DIVISION.

DREW, PETITIONER.

Company — Rectification of Register — Paid-up Shares — Companies Act 1867 (30 and 31 Vict. cap. 131), sec. 25.

Shares bearing to be fully paid up were issued to A in pursuance of a written memorandum of agreement between him and the company, and in payment of certain options sold to the company by him, but the company omitted to file the contract with the registrar, in pursuance of sec. 25 of the Companies Act 1867. A brought a petition praying for the rectification of the register by striking out his name as holder of the shares in question, and that the company should be ordained, after filing with the registrar the memorandum of agreement or some contract to the same effect, to issue to him fully paid-up shares of the same nominal value and number as those he already held. The Court, after a remit to a reporter, granted the prayer of the petition.

This was a petition at the instance of Henry Drew, 33 Monmouth Road, London, for the rectification of the register of the United Industrial Corporation, Limited, incorporated under the Companies Acts 1862