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COURT OF SESSION.

Wednesday, March 20.

FIRST DIVISION.

[Lord Low, Ordinary.]

PARISH COUNCIL OF DUNBLANE AND LECROPT v. PARISH COUNCIL OF LOGIE.

Poor—Residential Settlement—Order Transferring Part of Parish to Another—Residence in Transferred Area—Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), secs. 49 and 51—Poor Law Amendment (Scotland) Act 1845 (8 and 9 Vict. cap. 83), sec. 76.

By an order under the Local Government (Scotland) Act 1889, part of the parish of A was transferred to the parish of B, and B continued as a subsisting parish. A person, who had a residential settlement in A at the date of the transference in respect of residence in the transferred area, and who continued to reside there after the transference, became chargeable in 1895 more than four and less than five years after the date of the transference. *Held* (aff. judgment of Lord Low, Ordinary) that he had lost his residential settlement in A and had not acquired a residential settlement in B.

The Local Government (Scotland) Act 1889 enacts, section 49—"The Boundary Commissioners shall proceed as soon as may be after such commencement . . . to inquire into the circumstances of the counties, burghs, and parishes, and detached parts of counties and parishes, and shall frame orders for dealing with such counties, burghs, parishes, and detached parts, so that each burgh and parish . . . may be within a single county, and that no part of a county or parish be detached therefrom, and such order may provide for such alteration of boundaries, whether of the county or of any other area, as may seem necessary for the said purpose, and such alteration shall have effect for all purposes, whether county council, justices, sheriff, militia, parochial board, school board, local authority, or other case, as hereinafter provided."

Section 51—"On the representation of a county council or a town council the Secretary for Scotland may at any time after the expiry of the powers of the Boundary Commissioners by order provide for all or any of the following things—(d) For uniting several parishes or parts of parishes into one parish, or annexing one or more of such parish or parishes or parts of parishes to a larger parish; (f) For

the proper adjustment and distribution of the powers, property, liabilities, debts, officers, and servants of any local authority, consequential on any consolidation, alteration of boundaries, or other act done in pursuance of this section."

The Poor Law Amendment (Scotland) Act 1845 enacts (sec. 76)—"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."

By order of the Secretary for Scotland, dated 22nd August 1898, the parishes of Dunblane and Lecropt were united into one parish, to be called the united parish of Dunblane and Lecropt.

The Parish Council of the parish of Dunblane and Lecropt brought an action against the Parish Council of the parish of Logie, concluding for payment of £30, 7s. 6d. in respect of payments made by the former parish or by the parish of Lecropt as a separate parish on behalf of the widow and children of a pauper named John Carmichael between 15th May 1898 and 2nd December 1899.

The following narrative of the facts in the case is taken from the opinion of the Lord Ordinary (Low)—"In 1890 the Boundary Commissioners transferred to the parish of Logie a portion of the parish of Lecropt, the transference taking effect at 15th May 1891.

"In the latter year the Parochial Boards of Logie and Lecropt entered into an agreement, to endure for five years from 15th May 1891, to the effect that Logie should pay to Lecropt £20 a year, and that Lecropt should continue to maintain paupers having their settlement in the transferred area.

"On 18th August 1898, the agreement having come to an end, an Adjustment Order was issued by the Secretary for Scotland in the following terms—"The Parish Council of Logie shall assume responsibility for and shall relieve the Parish Council of Lecropt of all advances which the latter body may have made since 15th May 1898, or may be called upon to make, for or on account of any pauper whose claim is derived (1) from birth in the transferred area prior to the 15th day of May 1891, or (2) from residence for the statutory period in the said area prior to the last-mentioned date."

"The question in this case relates to the liability after 15th May 1898 (the date mentioned in the order) for the family of one John Carmichael, who became a pauper lunatic on 10th June 1895, which was during

the currency of the agreement. Carmichael was born in a part of the parish of Lecropt which was not transferred to Logie, and he had resided for some thirty years in the area which was transferred. He was relieved by Lecropt, and died in September 1895, leaving a widow and children who continued to be chargeable. I do not know, and I do not think it necessary to inquire, upon what ground precisely Lecropt relieved Carmichael, but they may have relieved him either because under the agreement they had become bound during its currency to relieve all paupers becoming chargeable within the transferred area, just as if it had not been transferred, or they may have relieved him as his birth parish, recognising the case as one which did not fall under the agreement.

“Now, on 15th May 1891 the transferred area ceased to be part of Lecropt, and became part of Logie, and thereafter Carmichael was resident in Logie parish. When, however, he became chargeable he had only resided in Logie for a period of four years and a few weeks—a period which lost to him any residential settlement which he might have acquired elsewhere, but which did not give him a settlement in Logie.”

On 22nd June 1900 the Lord Ordinary pronounced an interlocutor by which he assoilzied the defenders from the conclusions of the summons.

Opinion.—[After stating the facts, *ut supra*].—“These are the matters of fact to which the Adjustment Order must be applied, and the question is, whether in that state of the facts Carmichael’s claim to be relieved by Lecropt was derived from residence in the transferred area for the statutory period prior to 15th May 1891. I am of opinion that it was not. If Lecropt relieved Carmichael—not as his birth parish, but on account of his residence in the transferred area—it must have been because in their view the agreement bound them to deal with paupers in the transferred area as if it had never been transferred. Upon that view of the agreement Lecropt were bound to relieve Carmichael because he had been resident in the transferred area for five years prior to the date of his chargeability. The agreement, however, is now at an end, and the case must be dealt with in view of the actual fact that Carmichael resided for more than four but less than five years in Logie prior to the date when he became chargeable. That being so, it seems to me that his residence for the statutory period in Lecropt before he became resident in Logie could not be the ground of any claim against the former parish.

“I am therefore of opinion that the defenders are entitled to be assoilzied.”

The pursuers reclaimed, and argued—It was settled by the decision in *Parish Council of City Parish of Edinburgh v. Parish Council of City Parish of Glasgow*, January 7, 1898, 25 R. 385, that the transfer of an entire parish to another did not interfere with the residential settlements acquired in the parish transferred. That case established a principle which was applicable to a

case like the present where part of a parish was transferred, viz., that an area transferred was transferred with all its liabilities. On that principle Carmichael did not lose his residential settlement by the transference. He had always a potentiality of pauperism, and was therefore a liability of the transferred area at the date at which it was transferred. The defenders were therefore liable for his relief under the second head of the adjustment order quoted above. It was of no importance whether that order did or did not correctly represent the respective liabilities of Logie and Lecropt at common law; the Court could not correct an order of the Secretary for Scotland on a point of law.

Argued for the defenders—The Lord Ordinary was right. Liability to relieve a pauper must depend, in the absence of express contract, on birth or residential settlement. Carmichael, having been born in the portion of Lecropt which was not transferred to Logie, did not fall under the first head of the Adjustment Order. Nor did he fall under the second head, because that did not include all persons who had in fact resided for the statutory period of five years prior to 1891 in the transferred area, but only those who had so resided and had not afterwards lost their settlement. Now, Carmichael had a residential as well as a birth settlement in Lecropt at the date of the transference, because he had resided for more than five years in that part of Lecropt parish which was transferred. But after the transference though he lived in the same house he was no longer in Lecropt but in Logie, and he lived there for more than four years before he became chargeable. Therefore under section 76 of the Poor Law Act 1845 (quoted *supra*) he lost his residential settlement altogether. As he became chargeable before five years after the transference he had not acquired a new residential settlement in Logie. The necessary inference was that his parish of settlement was the parish where he was born. This result was in accordance with the case of *Inspector of Poor of Galashiels v. Inspector of Poor of Melrose*, May 12, 1892, 19 R. 758, and was not touched by the *Edinburgh v. Glasgow* case (cited *supra*), which only dealt with the case where a parish had ceased to exist after the order.

At advising—

LORD ADAM—This is a claim by the united parishes of Dunblane and Lecropt against the parish of Logie for repayment of a sum of £30, 7s. 6d., being the amount expended by them on the maintenance of a pauper Mrs Carmichael, the widow of John Carmichael, and her four children, from 15th May 1898 to 2nd December 1899. There is no dispute as to the amount if due.

John Carmichael was born at Netherpton, in the parish of Lecropt. On the 10th June 1895 he was admitted to the poor roll as a pauper lunatic by Lecropt. Prior to that date he had resided at Keirfield in that parish for about thirty years continuously without having had recourse to begging or applied for or received parochial relief.

Carmichael died on 13th September 1895, when his widow acquired or retained his settlement, whatever that might be.

By an order dated 13th December 1890, which came into operation on 15th May 1891, the Boundary Commissioners of Scotland transferred a part of the parish of Lecropt to the parish of Logie. Thereupon the parishes of Logie and Lecropt entered into an agreement, to take effect from 15th May 1891 and to endure for five years, by which in respect of an annual payment of £20 to be made by Logie to Lecropt, the latter parish was to maintain the paupers having their settlement in said transferred area. The language used does not appear to be very accurate, because a pauper has not a settlement in any particular area of a parish, but in the parish itself. No doubt, however, the parties understood what was meant.

When the agreement came to an end in 1896 it appears that Lecropt took steps to have the liabilities of the respective parishes as regards their paupers adjusted. The result was that the Secretary of State for Scotland issued an Adjustment Order dated 18th August 1898, ordering as follows:—"The Parish Council of Logie shall assume responsibility for and shall relieve the Parish Council of Lecropt of all advances which the latter body may have made since 15th May 1898, or may be called upon to make for or on account of any pauper whose claim is derived (1) from birth in the transferred area prior to 15th May 1891, or (2) from residence for the statutory period in the said area prior to the last-mentioned date."

These proceedings seem to have settled all questions between the two parishes as regards liability for paupers, and put an end to all claims except such as could be established under the Adjustment Order. The claim now made by the pursuers for relief of advances made by them on account of Mrs Carmichael is accordingly insisted on in respect of that order, and the question which we have to decide is, whether the claim is derived from Carmichael's birth or residence for the statutory period in the part of the parish of Lecropt transferred to Logie.

Carmichael, as we have seen, was born at Netherton in Lecropt, but not in the part of the parish which was transferred to Logie. The question therefore is reduced to this, whether the claim for relief is derived from Carmichael's residence in the transferred area for the statutory period prior to 15th May 1891.

In order, therefore, to succeed in the claim it appears to me that Lecropt must show that Carmichael at the time he became a pauper and received relief had an existing residential settlement in Lecropt in respect of his residence in the transferred area for the statutory period prior to 15th May 1891.

Now, Carmichael had undoubtedly a residential settlement in Lecropt on the 15th May 1891, derived from his residence in the transferred area for the statutory period prior to that date, and after its transfer-

ence to Logie he continued to reside in the transferred area. He had resided there after the transference for four years and twenty-six days, when he became a pauper and received parochial relief. If this residence is to be considered as residence in the parish of Logie, the result is, as the Lord Ordinary points out, that Carmichael when he became a pauper had lost the residential settlement which he had acquired in Lecropt, but had not acquired a residential settlement in Logie, not having resided there for the statutory period of five years necessary to give a residential settlement.

Now, I do not see how this residence of four years and twenty-six days in the transferred area can be considered otherwise than as residence in the parish of Logie. The effect of the transfer was that the transferred area ceased to be part of the parish of Lecropt and became part of the parish of Logie, while Lecropt remained a distinct parish with its parish council, parochial machinery, debts, and liabilities as before. It cannot be held that Carmichael, while thus in fact resident in the parish of Logie, was nevertheless constructively resident in the parish of Lecropt because he continued to reside in a part of the parish of Logie which had once been a part of Lecropt.

The case of *Galashiels v. Melrose*, 19 R. 758, is a direct authority to the contrary, and in my opinion rules this case.

The result is that Carmichael when he became a pauper had no residential settlement either in the parish of Logie or in Lecropt, and that the parish liable for the advances made to him, and after his death to his widow and children, was the parish of his birth, which was the parish of Lecropt. The pursuers therefore can have no claim for relief for any part of these advances from the defenders, who were never liable for them.

I think the Lord Ordinary's interlocutor should be adhered to.

The LORD PRESIDENT, LORD M'LAREN,
and LORD KINNEAR concurred.

The Court adhered.

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