*Wednesday, March 20.*

## FIRST DIVISION.

[Lord Kincairney, Ordinary.

## PARISH COUNCIL OF CITY PARISH OF EDINBURGH *v.* PARISH COUNCIL OF LAUDER.

*Poor—Residential Settlement—Order Combining Parishes—Residences in Several Parishes Combined—Local Government (Scotland) Act* 1889 (52 *and* 53 *Vict. c.* 50), *secs.* 49 *and* 51—*Poor Law Amendment (Scotland) Act* 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 76.

Where by an order under the Local Government (Scotland) Act 1889 the old parish of A was united with a portion of the parish of B and portions of other parishes into a new parish to be called the parish of A, *held* (*aff.* judgment of Lord Kincairney, Ordinary) that a person who, in the six years before he became chargeable on 15th April 1893, had resided for two years in the old parish of A, and then for two years in the parish of B, and thereafter for nearly two years in the new parish of A, had not thereby acquired a residential settlement in the new parish of A.

By Order XXI., dated 14th March 1895, the Secretary for Scotland, acting under powers conferred by the Local Government (Scotland) Act 1889, provided that the City Parish of Edinburgh with that portion of the St Cuthbert and Canongate Combination situated within the municipal boundaries of the city of Edinburgh, and that portion thereof situated in the county of Midlothian and not in the burgh of Leith, should, with portions of certain other parishes, be united into a new parish to be called the City Parish of Edinburgh. The order came into operation on 15th May 1895.

On 15th April 1898 Charlotte Keddie or Blaikie, wife of Alexander Blaikie, applied to the Parish Council of the City Parish of Edinburgh for relief, which was granted, and she continued to be a burden on the rates. The Parish Council of the City Parish of Edinburgh expended the sum of £31, 10s. 8d. on her relief, and the sum of £1, 14s. 11d. on the relief of the said Alexander Blaikie, who died on 15th August 1898, and they brought the present action against the Parish Council of the parish of Lauder as the parish of Blaikie's birth, for declarator that the defenders were bound to relieve them of payments made on behalf of Mrs Blaikie, and for repayment of the above sums.

The defenders admitted that Blaikie was born in the parish of Lauder, and averred that he came to live in Edinburgh in 1887, and thereafter resided in the following places:—At 3 Broughton Street, in St Cuthbert's parish, from 1887 to 1890. At 7 Richmond Court, in St Cuthbert's parish, from 13th August 1890 to 28th May 1891. At 332 Lawnmarket, in said old City Parish of Edinburgh, from 28th May 1891 to 28th May 1892. At 91 West Bow, in the old City Parish of Edinburgh, from 28th May 1892 to 28th May 1894. At 2 St David's Place, in St Cuthbert's parish, from 28th May 1894 to 28th May 1896; and at 15 Sutherland Street, in the said United City Parish of Edinburgh, from 28th May 1896 to 15th August 1898.

In answer the pursuers stated—"The places and periods of residence here enumerated are admitted."

The pursuers pleaded—"(1) The said Alexander Blaikie having been born in the parish of Lauder, and not having acquired a settlement in any other parish, the defenders are bound to relieve the pursuers of the maintenance of himself, his wife and children, and decree of declarator should be pronounced accordingly."

The defenders pleaded—"The deceased Alexander Blaikie having acquired a residential settlement in the pursuers' City Parish of Edinburgh, he and his said wife became chargeable thereto, and the defenders are entitled to be assoilzied with expenses."

The provisions of the Local Government (Scotland) Act 1889, under which the order was made, and section 76 of the Poor Law Act Amendment (Scotland) Act 1845, are quoted in the report of the *Parish Council of Dunblane and Lecropt* v. *Parish Council of Logie*, *ante*, p. 502.

On 12th June 1900 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds that the paupers had not acquired a residential settlement in the City Parish of Edinburgh when they became chargeable: Therefore repels the pleas-in-law for the defenders, and sustains the first plea-in-law for the pursuers: Finds that no objection has been stated to the amount of the account sued for: Therefore repels the defences, and decerns in terms of the conclusions of the summons," &c.

*Opinion.*—"This action relates to the settlement of two paupers, Alexander Blaikie and his wife, who in April 1898 became chargeable to the City Parish of Edinburgh, and they sue the parish of Lauder, in which Alexander Blaikie was born, for relief. Alexander Blaikie died on 15th August 1898; his wife survives. The defence is that the City Parish is itself liable, because Alexander Blaikie had acquired a residential settlement in the City Parish. The question has arisen as the result of alterations in the boundaries of parishes in the vicinity of Edinburgh by an order by the Secretary for Scotland made under the powers conferred by section 51 of the Local Government Act 1889, and section 46 of the Local Government Act 1894. The difficulty is caused, to adopt the remark of the Lord President in *Borthwick* v. *Temple*, July 17, 1891, 18 R. 1191, by the Act of the Legislature 'in altering the law in so far as the division of the parishes is concerned without making any provision as to the effect of that alteration on the law of residential settlement.' Since that judgment the Local Government Act of 1894 has been passed, but that oversight, if it was an oversight,

has not been remedied. Questions as to settlements, therefore, occasioned by such alterations of parishes must apparently be solved by application of the provisions of the Poor Law Act to circumstance which were not in contemplation at its date.

"Some expressions in the case of *Borthwick* v. *Temple* may suggest a doubt whether the adjustment of such questions was not committed to the Boundary Commissioners. But since then the Court have entertained and decided two cases of the class—*Galashiels* v. *Melrose*, May 19, 1892, 19 R. 758; and *City Parish of Edinburgh* v. *City Parish of Glasgow*, January 7, 1898, 25 R. 385. The former of these cases has been considered and explained—and perhaps its apparent importance has been thereby somewhat diminished—in *Galashiels* v. *Melrose*, January 19, 1894, 21 R. 391.

"The order of the Secretary for Scotland which occasioned this question took effect on 15th May 1895. It ordered that portions of St Cuthbert's and Canongate Combination should cease to be part of that combination, and that portions of the parishes of North Leith, South Leith, Duddingston, and Liberton should cease to be parts of these parishes, and that these disjoined portions should, along with the City Parish, be united into one parish to be called the City Parish.

"The facts as to the pauper's residences, so far as of importance in this question of residential settlement, are, I believe, admitted, and are these. The pauper resided for about three and a-half years in St Cuthbert's parish, beginning in August 1887, about three years in the old City Parish, about one year from May 1894 to May 1895, and again for another year until May 1896 in St Cuthbert's Parish, but in a part of it not separated from the parish by the order, and for the two years immediately prior to becoming chargeable in the new City Parish.

"The question is, whether these residences or any of them can be so joined as to confer a residential settlement in the new City Parish. I am of opinion that that cannot be done. The case of *Galashiels* related to a settlement acquired before the alteration in the parishes of Galashiels and Melrose was made, and I think does not apply. Here there was no settlement acquired before the change in the parishes, or before the paupers came to live in the United Parish. The defenders, the parish of birth, relied chiefly on the case of *The City Parish of Edinburgh* v. *The City Parish of Glasgow*, and on the principle which they deduced from that case, namely, that when two parishes were united the new parish was held to continue the life of the old, and that residence in the old parish might be added to residence in the new, so as to make up a residence for the statutory period of five years. Conceding that principle, I do not see how it can be applied. The residences to be added must, I apprehend be continuous. But there cannot be made five years continuous residence in any one parish in this case.

"The effect of the first three years' residence in St Cuthbert's was wholly lost when the paupers went to the old City Parish, and the residence for three years in the old City Parish was lost when the paupers returned to St Cuthbert's, and that residence in St Cuthbert's could not be conjoined with the previous residence in St Cuthbert's. It may, perhaps, be that the residence in the united parish might be held to continue the later residence in St Cuthbert's, although I express no opinion to that effect, seeing that it was only a part of St Cuthbert's and not the whole of it which was joined to the united parish. But, assuming it to be so, the beginning of that residence cannot be put further back than May 1894, and the paupers became chargeable in April 1898, which gives a continuous residence in St Cuthbert's and the new parish of less than four years. There is no principle on which the residence in the old City Parish can be added to that.

"I am therefore of opinion that the parish of birth has not established that the paupers acquired a residential settlement in the City Parish, and that the pursuers are entitled to decree as concluded for."

The defenders reclaimed, and argued that if the places where a pauper had resided for the last five years were all united by the order into one parish, the pauper acquired a settlement in that parish, although he had not resided continuously in any one of the said places.

The argument for the respondents sufficiently appears from the opinion of the Lord Ordinary, *supra.*

At advising—

LORD ADAM—This is a case brought by the City Parish of Edinburgh against the Parish of Lauder for relief of advances made by them to two paupers—Mrs Blaikie, wife of Alexander Blaikie, and to Blaikie himself, subsequent to 15th April 1898. Mrs Blaikie became chargeable on that date, and Blaikie, who is now dead, on 26th April following.

The question in the case is, whether Blaikie had a residential settlement in the City Parish. If he had, the pursuers are not entitled to the relief sought. If he had not, then Lauder is liable to relieve them as the parish of his birth.

In considering this question we have to keep in view that by the order of the Secretary of State for Scotland, which came into effect on 15th May 1895, and with which we were concerned in the *Gladsmuir* case, a portion of the parishes of St Cuthbert's and Canongate Combination, the old City Parish of Edinburgh, and portions of certain other parishes, were united into one parish—the City Parish of Edinburgh.

Blaikie came to reside in the City Parish on 28th May 1896, and resided there till he became a pauper on 15th April 1898, that is, a period of less than two years. In order to make out the necessary statutory period of residence it is proposed to add to this a previous period of residence by him of two years in St Cuthbert's Parish from 28th May 1894 to 28th May 1896. It is not stated on record, but I gather from the Lord Ordinary's opinion, that it was not in that

part of St Cuthbert's which is now part of the City Parish. If that be so, then, in accordance with the judgment we have just pronounced in the *Gladsmuir* case, that cannot be done. But supposing it to be otherwise, it makes no difference in the result, because the conjoined period of residence would still be under four years.

Lauder, however, proposes further to supplement the residence by adding to it Blaikie's residence in the old City Parish of Edinburgh for two years from 28th May 1892 to 28th May 1894. I think this is quite inadmissible. The old City Parish was then a distinct parish by itself, and any benefit which Blaikie might have derived from his residence there towards acquiring a residential settlement came to an end when he went to reside in St Cuthbert's, where he began a new course of residence which might have resulted in his acquisition of a settlement in that parish. On what principle it is proposed now to revive this old residence in the old City Parish I do not understand.

I am of opinion, with the Lord Ordinary, that Blaikie had not a residential settlement in the City Parish, and therefore that the pursuers are entitled to decree.

The LORD PRESIDENT and LORD M'LAREN concurred.

LORD KINNEAR—I also agree, and only wish to observe that whether the rule laid down by your Lordships in the *Gladsmuir* case (*ante* p. 505) or the rule which I then contended for be followed, the result in the present case would be the same. If they had produced different results I should have followed the rule now established by the *Gladsmuir* case, and would be constrained to admit that my own rule has been thereby displaced. But it is more satisfactory to find that our judgment here is in accordance with either view of the question on which we differed in the former case.

The Court adhered.

Counsel for the Pursuers and Respondents—Lees—Addison Smith. Agent—R. Addison Smith, S.S.C.

Counsel for the Defenders and Reclaimers—Guthrie, K.C.—Gunn. Agent—George Cowen, S.S.C.

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## HIGH COURT OF JUSTICIARY.

*Monday, February* 18.

(Before the Lord Justice-General and a Jury).

H. M. ADVOCATE *v.* FRASER.

*Justiciary Cases—Evidence—Admissibility of Evidence—Evidence of Wife against Husband—Culpable Homicide of Child—Prevention of Cruelty to Children Act* 1894 (57 *and* 58 *Vict. c.* 41), *secs.* 1 *and* 12.

On an indictment charging a panel with culpable homicide of his child aged twelve months, or alternativey with a contravention of section 1 of the Prevention of Cruelty to Children Act 1894, *held* that under the provisions of section 12 of that Act and relative schedule, the wife of the panel was a competent (though not a compellable) witness, not only on the statutory charge, but also on the common law charge of culpable homicide.

Section 12 of the Prevention of Cruelty to Children Act 1894 (57 and 58 Vict. c. 41) enacts—"In any proceeding against any person for an offence under this Act, or for any of the offences mentioned in the schedule to this Act, such person shall be competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence." The schedule enumerates certain statutory offences, and concludes as follows:—"Any other offence involving bodily injury to a child under the age of sixteen years."

On February 18, 1901, Joseph Fraser was tried on an indictment charging him with culpable homicide of his child aged twelve months, or alternatively on the facts libelled with a contravention of section 1 of the Prevention of Cruelty to Children Act 1894 (57 and 58 Vict. c. 41).

The Advocate-Depute proposed to call the wife of the panel as a witness for the Crown.

Counsel for the panel objected, and argued that the wife of the panel was not a competent witness. Although section 12 of the Prevention of Cruelty to Children Act 1894 made the husband or wife of the accused a competent witness on the statutory charge, the evidence of the spouse could not competently be adduced in support of the common law charge of culpable homicide. Section 12 dealt simply with proceedings for an offence under the Act, or for any of the offences mentioned in the schedule to the Act. The offences enumerated in the schedule were certain statutory offences, and all these enumerated offences were of the class of offences in which the fact that the victim was under sixteen years of age was of the essence of the crime. The concluding words of the schedule, "any other offence involving bodily injury to a child under the age of sixteen years" must be interpreted as including only offences *ejusdem generis* with the preceding offences particularly enumerated. The charge of culpable homicide was not *ejusdem generis*, in respect that it was a common law and not a statutory offence, and that it was a crime in which the age of the victim was not of the essence of the crime. In England the provision of the statute had been construed in this limited way—*Regina* v. *Elizabeth Roberts*, 18 Cox's Criminal Cases, 530. This was a British statute, and it was highly expedient that the practice in the two countries should be uniform in this matter.

Argued for the Crown—Certain of the statutory offences particularly enumerated