Wednesday, March 20.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

PARISH COUNCIL OF CITY PARISH OF EDINBURGH *v.* PARISH COUNCIL OF GLADSMUIR.

Poor — Residential Settlement — Orders Dividing Parish between Two Others — Effect of Residence in Transferred Area —Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *secs.* 49 *and* 51—*Poor Law Amendment (Scotland) Act* 1894 (8 *and* 9 *Vict. cap.* 83), *sec.* 76.

Where by two orders under the Local Government (Scotland) Act 1889, taking effect at the same date, a portion of the parish of A was transferred to the parish of B (a new parish formed by the one order), and the remainder to the parish of C (a new parish formed by the other order), so that A ceased to exist as a separate parish, *held* (*aff.* judgment of Lord Kincairney, Ordinary) (*dissenting* Lord Kinnear) that a person who applied for relief on 2nd August 1898, and who prior to that date had resided in the area transferred to B for three and a half years before the date of the order, and for more than three years thereafter, had acquired a residential settlement in B.

Observations (*per* Lord Adam and Lord Kinnear) on *Parish Council of the City Parish of Edinburgh* v. *Parish Council of the City Parish of Glasgow* (*M'Graw's* case), January 7, 1898, 25 R. 385.

By Order No. XXI., dated 14th March 1895, the Secretary for Scotland provided that from and after 15th May 1895 that portion of the parish of South Leith which was situated within the municipal boundaries of the City of Edinburgh should cease to be part of that parish, and should form part of a new parish to be called the City Parish of Edinburgh, which was established by said order.

By Order No. XXII., of the same date, the Secretary for Scotland provided that from and after 15th May 1895 the remainder of the parish of South Leith should cease to be part of that parish, and should form part of the parish of Leith, a new parish established by said order.

David Grant, labourer, was born in the parish of Gladsmuir, Haddingtonshire, and on 28th August 1891 went to reside in Block A, Begg's Buildings, in the parish of South Leith, and resided there continuously until 2nd August 1898, when he applied for parochial relief for his wife, who had become insane. Begg's Buildings is situated in that part of the parish of South Leith which was as at 15th May 1895 transferred by the above-mentioned order No. XXI. to the new City Parish of Edinburgh.

The Parish Council of the City Parish of Edinburgh expended the sum of £41, 14s. 9d. in relief of Mrs Grant, and brought an action against the Parish Council of Gladsmuir for payment of that sum.

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

The defenders pleaded — "(1) The said David Grant and Isabella Flockhart or Grant, his wife, having acquired a settlement by continuous industrial residence for more than five years at Begg's Buildings, Edinburgh, and same being situated within the area in which pursuers are bound to aliment and maintain paupers—(*a*) the pursuers are themselves liable for said aliment; and (*b*) have no claim of relief therefor against defenders. (2) The pursuers are liable for and have no right of relief against the defenders for the sum sued for, in respect that David Grant and his said wife acquired a residential settlement within the pursuers' parish, and the defenders should therefore be assoilzied."

The sections of the Local Government (Scotland) Act 1889, under which the orders were made, and section 76 of the Poor Law Amendment (Scotland) Act 1845, are quoted in the preceding report.

On 12th July 1900 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds (1) that the pauper David Grant resided for three and a half years or thereby prior to 15th May 1895 in Begg's Buildings, in the parish of South Leith; (2) that at that date the portion of South Leith which includes Begg's Buildings was united to the City Parish of Edinburgh; (3) that said David Grant and his wife continued to reside in Begg's Buildings until they became chargeable in 1898; (4) that by said residence the said paupers acquired a settlement in the said City Parish: Therefore sustains the second plea-in-law for the defenders, and assoilzies them from the conclusions of the summons, and decerns," &c.

Opinion.—"I refer to my opinion in the case of *The City Parish of Edinburgh* v. *Lauder*, decided to-day (reported *infra*). This case is also an action by the City Parish as relieving parish of a lunatic pauper, Mrs Grant, who received relief on 2nd August 1898.

"In this case the facts are these—That David Grant, husband of the pauper, resided at Block A, Begg's Buildings, from 28th August 1891 to 2nd August 1898, *i.e.*, he lived in the same house, or at least the same buildings, for seven years. This residence was, however, divided into two parts by the unification order mentioned in my opinion in *Lauder's* case. Before the date of that order Block A, Begg's Buildings, was in the parish of South Leith. But it was included in the portion of South Leith disjoined by the order and united with the City Parish and the portions of the other parishes mentioned in the order to form the new City Parish.

"At the date of the order Grant had not acquired a settlement by residence, and his birth settlement was liable for his maintenance. He had then resided in South Leith for less than four years. He resided in the new parish for about three years, so that he has no residential settlement unless these periods can be added.

"The periods of residence are continuous. The duration would have been more than sufficient but for the order. Had the whole of South Leith been joined to the united parishes, I should not have doubted, and as matters stand I am of opinion that this case must be held to be ruled in favour of the defenders by the case of *M'Graw*, being the first branch of the case of *The City Parish of Edinburgh* v. *The City Parish of Glasgow*. That case regarded the settlement of a pauper who had resided in the combination of St Cuthbert's and Canongate, and whose residence had been placed within the area of the new parish by the order. It does not appear very clearly from the report in the case of *M'Graw* that only a part of the combination of St Cuthbert's and Canongate was conjoined with the new parish. But it was so, and having that in view, the two cases seem the same."

The pursuers reclaimed, and argued—The case of *M'Graw*, reported in *Parish Council of City Parish of Edinburgh* v. *Parish Council of City Parish of Glasgow*, January 7, 1898, 25 R. 385, was decided on the assumption that the whole of St Cuthbert's Combination was included in the New City Parish of Edinburgh. That was not so in fact, but the case must be considered on the assumed facts on which the judgment proceeded, and therefore it was not an authority in the present case, as the Lord Ordinary supposed, where only part of a parish was transferred. The result of that must be, on the terms of section 76 of the Poor Law Act 1845, that no residential settlement was here acquired. That section required for the acquisition of a residential settlement that the pauper should have resided "five years continuously in such parish." Grant had not resided for five years either in South Leith or in Edinburgh, therefore his birth parish was liable—*Inspector of Poor of Galashiels*, v. *Inspector of Poor of Melrose*, May 12, 1892, 19 R. 758, and (second case) January 19, 1894, 21 R. 391; *The King* v. *Inhabitants of Oakmere*, 1824, 5 B. and Ald. 775; *The Queen* v. *Parish of St Martins*, 1846, 9 Q.B. 241.

Argued for the respondents—Orders Nos. XXI. and XXII. were of the same date, and wiped out South Leith as an existing parish. The case was therefore different from the *Galashiels* v. *Melrose* case (cited *supra*), where Melrose continued to exist as a separate parish after the order. When a parish was completely destroyed, either by absorption into another parish, or, as here, by absorption into two other parishes, the question of settlement must be considered as if the absorbed parish had never existed, and as if persons who resided in the absorbed area had all along resided in the parish into which their residence was absorbed. The *Edinburgh* v. *Glasgow* case (cited *supra*) was directly in point.

At advising—

LORD ADAM—This is an action brought by the Parish Council of the City Parish of Edinburgh against the Parish of Gladsmuir for relief of certain advances made by them on account of a pauper lunatic Mrs Grant. The facts relating to the personal history of the pauper are few and are not disputed.

David Grant, the pauper's husband, was born in the parish of Gladsmuir. On the 18th August 1891 he went to reside at block A, Begg's Buildings, in what was then the parish of South Leith. He resided there till the 15th May 1895, a period of 3 years, 8 months, and 2 weeks. On that date that part of the parish of South Leith in which Begg's Buildings was situated was by an order of the Secretary of State for Scotland transferred to and made part of the present City Parish of Edinburgh.

David Grant continued to reside after the transference in the same buildings until the 2nd August 1898, when the pauper became chargeable, a period of 3 years, 2 months, and 3 days.

It thus appears that David Grant when his wife became chargeable had resided continuously for a period of upwards of six years in the same buildings, which, had there been no transference, would have given him a residential settlement in South Leith.

The question, therefore, in this case is as to the effect of the transference on the continuity of the residence of David Grant. If it is to be considered as a continuous residence in the City Parish, then that parish will be liable, as in that case Grant would have acquired a residential settlement there. But if Grant's residence is to be considered as divided into two parts, one before and one after the transference, then Gladsmuir will be liable as the birth settlement, as in that case Grant would have resided in the City Parish for less than four years.

This necessitates an inquiry into the alterations made by the orders of the Secretary of State for Scotland on the areas of the several parishes affected by these orders.

By the 3rd section of an order which came into effect on the 15th May 1895, it was provided that the portion of the parish of South Leith situated within the municipal boundaries of the City of Edinburgh should cease to be part of that parish. Begg's Buildings were situated within this part of the parish, and therefore ceased to be situated in the parish of South Leith.

The order deals similarly with portions of other adjoining parishes, and then by section 6 provides that the City Parish of Edinburgh and the portions of the other parishes previously dealt with, including the portion of the parish of South Leith situated within the municipal boundaries of the City of Edinburgh, shall be united into one parish to be called the City Parish of Edinburgh.

It is necessary to have in view that by an order of the same date, and coming into effect at the same date as the order previously mentioned, and obviously a part of the same scheme for the rearrangement of the parishes, it was provided by section 5 that portions of various parishes therein specified, and including that portion of the parish of South Leith which is situated within the municipal boundaries of the burgh of Leith, and that portion of the parish of South Leith which is landward, shall be united with a parish to be called the Parish of Leith.

I understand that the portions of the parish of South Leith so dealt with in the two orders embrace the whole area of the parish, so that the effect of the orders is, that subsequent to 15th May 1895 no parish of South Leith existed, part being merged in the new Parish of Leith and part in the new City Parish of Edinburgh.

I may observe that under these orders the St Cuthbert's and Canongate Combination was treated in exactly the same way as South Leith, part of it becoming merged in the new City Parish of Edinburgh and the remainder in the Parish of Leith, so that it also became extinct.

The Lord Ordinary is of opinion that this case is ruled by the case of *M'Graw*, being the first branch of the case of the *City Parish of Edinburgh* v. *City Parish of Glasgow*, 25 R. 385, and so it would be if the facts as we know them had been fully before the Court in that case. But that was a special case, in which it appears to have been stated that St Cuthbert's and Canongate Combination had been united with portions of other parishes into one parish forming the new City Parish of Edinburgh, and the Court could only deal with the case on the facts as stated. But, however that may be, it would seem that the differences which might exist between a case where the whole of a parish was united to another parish, and a case where a part only of a parish was so united, were not in view of the Court in deciding that case. But the case is certainly an authority to this extent, that a parish which has ceased to have a separate existence by union with another parish must be considered, in a question of parochial settlement, as a still existing parish. I venture to repeat what I said in that case, that "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." It was held, accordingly, that parishes united were united subject to all their existing rights and liabilities at the time of their union, and that these were transferred to the new parish.

There is no difficulty in applying that principle where an entire parish comes to form part of another parish. But it cannot be applied in terms and without modification to the case like the present one, where the old parish is divided and one part united to one parish and the other part to another parish. We cannot hold that all the liabilities of the old parish pass to each of the new parishes. But I think it may be modified by apportioning, so far as that can be done, the liabilities of the old parish between the divided parts, and that this may be practically attained by treating for settlement purposes each part of the divided parish as if it had previously been a distinct parish. This would provide for the settlement of all questions of birth settlement, because it would always be known in what part of the area of the old parish a person had been born. It would probably also provide for most questions of residential settlement; but no doubt in that case a difficulty might arise from the necessary residence having been partly in one part of the divided parish and partly in the other.

Applying, accordingly, the rule of *M'Graw's* to the circumstances of the present case, the result is that the pauper has a residential settlement in the City Parish, and that Gladsmuir must be assoilzied.

The LORD PRESIDENT and LORD M'LAREN concurred.

LORD KINNEAR — I have considerable difficulty in this case, and am sorry not to be able to accept the conclusions at which your Lordships have arrived. The difficulty arises from the operation of the Act of Parliament in breaking up an entire parish into fragments, each of which is to be made part of some other parish without making any provision for the adjustment of rights of settlement, either acquired or in the course of maturing, in the extinguished parish. The rule for the adjustment of such rights proposed by Lord Adam is no doubt a very good one, and I am not able to suggest a better, but however convenient or equitable it may be, my difficulty in accepting the rule is that it is a rule of the Court's own making, and seems to me to encroach to an alarming extent on the functions of the Legislature. The Legislature says that a parish shall be broken up so as to leave no fragment of the original parish, but makes no alteration on the existing law of settlement, such as it is supposed would be necessary to make the system satisfactory and symmetrical. The conclusion is not to my mind that Parliament intended that the courts of law should complete the system by making new regulations for the acquisition of a residential settlement in the new circumstances. The Legislature either intended the rules laid down by the Poor Law Act to apply to the new state of things, or else failed to advert to the expediency or necessity of providing a new series of regulations, and in either case the Poor Law Act stands unrepealed and unaltered. In these circumstances the only duty of this Court

is to apply the law of the Poor Law Act to the actual facts and see if there is any difficulty in determining the rights which have now arisen, or whether the provisions of the Poor Law Act are not plainly applicable to the new facts. It appears to me that in the application of the plain words of the statute there is no difficulty in arriving at a consistent and logical result. The Act of 1845 says that no person shall be held to have acquired a settlement by residence unless such person has resided in a parish for five years continuously and without begging or receiving parochial relief. The question therefore is, has the pauper in question resided, subject to these conditions, for five years in any parish, so as to give him a residential settlement there—and the answer must be in the negative. He has not lived for the requisite period in South Leith before it was absorbed, and has not lived long enough in the new parish—the City Parish of Edinburgh—to acquire a settlement there since his involuntary change of parish. He has, then, no residential settlement, because he has not satisfied the statutory conditions, and the only consequence is, that in any question of relief it is necessary to fall back on his settlement of birth. This does not appear to me to be a very startling proposition, and it is in accordance with the views of the Court in the case of *Melrose*. The Lord Ordinary says that the importance of that decision is diminished. I am not sure that I understand this observation, but whether the importance of the case is great or small the principle involved is perfectly clear and of general application. If a man has ceased to reside in a parish, it is of no consequence whether his cessation of residence was caused by his removing from the parish or by operation of an Act of Parliament by which the house in which he lives and the ground on which it is built has been severed and part of the parish where he resides is detached from that parish and thrown into another. In either case his residence in the original parish comes to an end, and his rights of settlement must be determined with reference to that fact. In *Melrose's* case the only question was whether the residence of a pauper in a parish to which the piece of land on which he actually had his home had been newly attached upon a change of boundaries had destroyed his previously acquired settlement. It was held that it had not, because the period of time since the union of the land in question with the new parish had not been long enough to deprive the pauper of his settlement. The pauper had a residential settlement in Melrose, which would have been lost if he had left Melrose for Galashiels and lived in Galashiels for a sufficient time. But as matter of fact he did not live in the latter parish for a time sufficient to deprive him of a settlement already acquired. I think the general rule there followed is as clearly applicable to the present case. Nor do I think there is any authority opposed to this view, although I appreciate the observation of the Lord Ordinary that the case of *M'Graw* would have been such an authority had it been decided on the facts as actually existing. But it was a special case, and was decided on the facts set forth in the statement of the case. The scope of the decision as an authority is accordingly limited to a decision on the facts as assumed. I do not think the Court considered in the case of *M'Graw* the question we have here to deal with, but I see the force of Lord Adam's observation that the considerations to which he gave effect in his opinion in the case of *M'Graw* present obstacles to the adoption of the view which, in my opinion, is the just view in this case.

It is true that we are not concerned with the case of a right actually acquired, but still if we proceed on the recognition of the fact that South Leith no longer exists, no doubt the same principle applies as if a completed settlement had been acquired. I do not see any serious difficulty in applying the statutory rule to such circumstances. The effect of the statute in putting a stop to the acquisition of a settlement by residence, or in bringing a settlement already acquired to an end, is not a result of such a startling character as to justify a Court in refusing to apply the plain words of the statute. After the parish ceases to exist as a separate entity there are no rates, no parochial authority, and therefore no claim of relief can be made good in the absence of these constituents. What really takes place is this—a pauper had a right to relief against a certain parish, that parish has gone out of existence, and the consequence is that there is no longer a debtor in the claim for relief. The pauper is entitled, in the first instance, to relief in the parish where he is found, but that parish has no recourse against a non-existing parish in which, before it ceased to exist, the pauper had acquired a residence, but must fall back on the parish of birth. That may or may not be equitable, and may or may not disturb the symmetry of this parochial system, but it is the effect of an Act of Parliament, and in my opinion the Court have no power to redress the inequity if such there be, or to restore the symmetry of the system.

What we have to do is therefore to apply the plain words of the statute, from which it follows that legally the pauper had no residential settlement in South Leith, which had ceased to exist, or in the City Parish, which had not existed for the requisite period. This being so, I am not able to concur in the result which your Lordships have reached.

The Court adhered.

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

Counsel for the Defenders and Respondents—W. Campbell, K.C.—Clyde. Agent—John Elder, S.S.C.