

Thursday, December 19.

SECOND DIVISION.

ROBERTSON (INSPECTOR OF POOR,  
MOULIN) v. DEMPSTER (INSPEC-  
TOR OF POOR, GLASGOW).

*Poor—Relief—Poor Law Act 1845 (8 and 9  
Vict. cap. 83), sec. 70—Pauper's Right to  
Remove—Inducement to Leave Parish.*

A pauper having no settlement in Scotland received relief for three months from the City Parish of Glasgow. Under the erroneous impression that Glasgow would continue to relieve her, she voluntarily removed to the parish of Moulin, where she got relief. *Held* that Moulin had no claim against the City Parish of Glasgow for her support.

*Question* reserved as to the rights of Moulin if it had been proved that the pauper had been induced to leave Glasgow by the officials there.

Marie Berthoud or Schmidt, widow of Heinrich Schmidt, who died at Glasgow on 27th March 1888, received parochial relief from the City Parish there from the death of her husband until 29th June 1888, when she removed to Pitlochry. The rate of relief was at first 3s. a-week, but was raised to 5s. a-week after the birth of a posthumous child upon 11th June. She had no settlement in Scotland. Her removal was voluntarily made with the view of being near her sister, but she was under the impression that her relief would be continued from Glasgow.

The Parochial Board of Moulin, in which parish Pitlochry is situated, gave her 5s. a-week continuously from 6th July, but James Robertson, the inspector of poor of that parish, in the beginning of 1889 brought an action against Archibald Dempster, the inspector of Poor of the City Parish, Glasgow, to have him ordained to repay the moneys already expended upon her, and found liable for all future relief that might legally be paid to her.

The pursuer averred, *inter alia*, that the pauper had no wish or intention to transfer the burden of her maintenance from the one parish to the other, but was induced to give up her room and leave Glasgow on the assurance of the officials that her alimant would continue to be paid by the defending parish.

The pursuer pleaded—“(1) The pauper being a foreigner with no settlement in Scotland, was entitled to relief from the City Parish of Glasgow, where she had become destitute, so long as her destitution continued. (2) The pauper having transferred herself from Glasgow to Pitlochry with the knowledge of the defender that she would require relief on her arrival, and on his assurance that her alimant would be continued, the defender was guilty of a breach of duty in suffering her to leave, and the liability already imposed on the defender's parish was not thereby terminated. (3) A pauper is not entitled

voluntarily to transfer herself from one parish to another during the subsistence of destitution so as to liberate the parish from which she was at the time in receipt of relief, and the pursuer is entitled to decree as concluded for.”

The defender denied the above averment, and pleaded—“(3) The defender not having induced or encouraged the pauper to remove to Pitlochry with a view to shifting the liability for her maintenance, is entitled to be assoilzied.”

The Lord Ordinary (TRAYNER) allowed a proof, and thereafter assoilzied the defender from the conclusions of the summons.

“*Opinion.*—The averments made by the pursuer to the effect that the pauper was induced or aided to leave the City Parish of Glasgow and go to Pitlochry in order that the City Parish might be relieved of the burden of her maintenance are not proved. The pursuer conceded this after the proof, but maintained that he was entitled to decree notwithstanding, on these grounds—(1) That the pauper having obtained relief from the City Parish under the provision of section 70 of the Poor Law Act 1845 remained a burden on that parish until her settlement elsewhere was established, or until she was removed; (2) that the pauper voluntarily removing from the City Parish did not affect the liability of that parish for her support; and (3) that the pauper being thus chargeable to the City Parish, that parish was liable for the advances made to the pauper by the pursuer.

“There is no doubt that the pauper received relief from the defender under the 70th section. The pauper had no settlement, derivative or otherwise, in this country; she was in the City Parish, and destitute, and therefore had a claim on the defender which was admitted and met. It is also beyond doubt that no claim has been established against any other parish on the ground of settlement, and that the pauper was not removed from the City Parish under any legal authority. I am nevertheless of opinion that the pursuer has no claim against the defender for the advances made to the pauper. It appears to me that a pauper's right to relief under section 70 depends upon two conditions—presence in the parish and destitution. If either condition is wanting there is no claim. If the pauper therefore voluntarily leaves the parish, where being destitute she is in receipt of relief, her claim ceases, and if the pauper's claim ceases, no other parish relieving her has a claim against the parish she has left, because a relieving parish has a claim only where the pauper would have had a claim.

“I know of no authority for the pursuer's third plea-in-law. The receipt of parochial relief does not limit the pauper's liberty. She may go where she pleases, and the inspector affording her relief cannot prevent her. She may by removing from a parish lose her right to relief from that parish, but that will not hinder her acquiring a right to relief elsewhere if the statutory conditions are fulfilled.

“I think the cases of *Taylor v. Strachan*,

3 Macph. 34, and *M'Caig v. Sinclair*, 14 R. 539, are authorities against the pursuer's present contention."

The pursuer reclaimed, and argued—The facts must be carefully looked at. This pauper had no settlement, but she had received relief for three months from the City Parish of Glasgow. A pauper becoming chargeable to one parish, and being on the roll of that parish, does not while continuing to be a person requiring parochial relief relieve that parish of liability by going to another. The necessity of relief continuing the liability to relieve continues. The power of the pauper voluntarily to change the relieving parish was expressly reserved by Lord President M'Neill in *Taylor v. Strachan and Brown*, November 8, 1864, 3 Macph. 34. Here the pauper did not wish to change the liability. She went to Pitlochry under the impression that Glasgow would continue to relieve her—*M'Caig v. Sinclair*, March 4, 1887, 14 R. 539.

Counsel for the defender were not called upon.

At advising—

**LORD JUSTICE-CLERK**—If a pauper having no settlement in Scotland obtains relief in any parish, and thereafter voluntarily leaves that parish and goes to another, the parish he has left is not liable for further support to him unless the pauper returns to it in the same destitute circumstances.

In this case there is no doubt upon the evidence that the pauper left Glasgow voluntarily with the intention of residing near her sister in Moulin, and in the hope of getting some work there. When she came to Pitlochry, in that parish, she required parochial relief, and she is still in receipt of relief. That is quite a different case from that of a pauper who leaves the parish in which he has been relieved, not of his own wish, but because he has been induced to do so by the parochial authorities who desire to get rid of him, and so to free their parish of the burden of his support. If a case of that sort were satisfactorily proved, so that it were made to appear that the cause of the pauper's leaving the parish was the inducement or trick of the inspector of poor, a different result might follow from that which I have indicated, but such a case not being proved here, I see no ground for interfering with the judgment of the Lord Ordinary.

**LORD YOUNG**—I am of the same opinion, and I regret that this litigation should ever have taken place. I can quite understand the inspector at Pitlochry having some feeling of irritation if he was under the impression that the parochial authorities in Glasgow had induced the pauper to leave their parish, which was granting relief, and go to his. But if that impression ever existed, I cannot say, looking to the evidence before us, that it was well founded in fact.

This case is special, as every case of a person found destitute in a parish and having no settlement must necessarily be. She was found destitute in Glasgow, in consequence of the death of her husband,

leaving her with two young children and expecting a third, and received an allowance of 3s. a-week, increased to 5s. upon her confinement. There was plainly destitution, but it was presumably temporary until she was strong enough to earn something for herself. She was absolutely entitled to remove to another parish, and nothing could be more natural than that she should remove to where her sister was. According to her evidence, which I in no way impugn, she was anxious to know whether her allowance would be continued from Glasgow. She seems to have preferred getting help from there rather than from Pitlochry parish, although it does not occur to me why she should wish the Glasgow rate-payers to pay for her support rather than those of Pitlochry. She removed under the erroneous impression that the allowance would be continued, but I cannot read clause 70 of the Poor Law Act as obliging the pauper to remain in the relieving parish, or obliging the relieving parish to continue relief after the pauper leaves. A destitute person not only has an absolute right to remove, as the Lord Ordinary has found, but is entitled to apply to the parochial authorities of the new parish and to get relief. The fact that the first few shillings here were given to the pauper by Glasgow did not put Glasgow under the obligation of sending relief after her. She had ceased to be any longer a destitute person in that parish. If the Pitlochry authorities had said to her, "You are wrong in thinking Glasgow will support you here; you had better return to Glasgow," and she had gone, Pitlochry would still have had to give her relief while there, but Glasgow would have had to renew her allowance upon her return. But she was quite entitled to refuse to comply with their suggestion, and to insist upon staying where she was.

**LORD RUTHERFURD CLARK** concurred.

**LORD LEE**—I come to the same conclusion. The case touches certain questions of general importance.

The first of them is as to the case of a pauper leaving a parish in which he is getting relief as an admitted pauper, and going to another in consequence of some inducement held out to him by the officials of the parish from which he has been getting relief. I do not doubt that that is a matter of importance, and that an allegation to that effect must be carefully investigated. But this Court will not validly interfere with the administration of the poor law, or readily assume that an inspector who has no interest in the matter of a personal nature, and who is amenable for his conduct to a statutory board, would endeavour by a trick to affect the question of liability. But if there were clear proof of misconduct on his part in getting the pauper to leave his parish and go to another that his own might escape liability, I have no doubt of the materiality of that fact in the question whether the chargeability to such parish is altered. I only say that there is no satisfactory proof of that fact here.

Another case was mentioned to us in argument which does not require decision here. That is the case of a pauper who has become chargeable under section 70, and who leaves the parish where he has become so chargeable for some merely temporary purpose, or it may be owing to some mistake, and while so absent is found destitute and obtains relief in another parish. I do not give any opinion that in such a case the chargeability to the parish within which he became a pauper and was receiving relief, would cease. The pauper would be still a pauper on the roll of that parish. But this case is not one of that description. This woman appears to have given up her ticket, and there is no proof that she left otherwise than voluntarily, although she appears to have had a mistaken idea that the allowance would be continued by the City Parish. The obligation imposed by the 70th section to continue relief does not interfere with the pauper's right to remove to another parish.

The Court refused the reclaiming-note and adhered to the judgment of the Lord Ordinary.

Counsel for the Pursuer—Guthrie Smith. Agents—J. L. Hill & Company, W.S.

Counsel for the Defender—Dickson. Agents—W. & J. Burness, W.S.

Friday, December 20.

FIRST DIVISION.

BRUCE v. HENDERSON AND OTHERS.

Process—Special Case—Competency—Value of Cause—Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 63—Jurisdiction—Crofters Holdings Act 1886 (49 and 50 Vict. cap. 29).

A landlord and three crofter tenants applied to the Court by special case to determine which of certain alternative sums were due by each of the tenants respectively as rent under a decision of the Crofters Commissioners.

As none of the sums in question exceeded £25 the special case was dismissed as incompetent.

William Arthur Bruce of Symbister was proprietor of certain crofts in the crofting parish of Dunrossness, in the county of Zetland, of which Henry Henderson, John Sinclair, and Alexander Shewan were tenants. The tenants each lodged with the Crofters Commission an application to fix a fair rent.

The Commission on 6th November 1889 dealt with the application as follows:—

	Present Rent.	Fair Rent.	Total Arrears.	Arrears Cancelled.	Arrears Ordered to be paid up.
Henry Henderson, South Scousburgh,	£6 10 0	£5 0 0	...	...	...
John Sinclair, North Scousburgh,	6 0 0	4 4 0	£6 3 6	£4 3 6	£2 0 0
Alexander Shewan, Scatness,	8 15 0	6 15 0	5 0 0	5 0 0	...

The arrears were dealt with as at Martinmas 1888. In Shetland it is the custom to pay rent yearly at Martinmas.

The parties disagreed as to the date when the above decision began to take effect, and a special case was presented for the opinion of the Court as to whether the rent in each case payable at Martinmas 1889 was subject to abatement, and also whether the rents were made payable half yearly by the Crofters Holdings (Scotland) Act.

When the case was moved in Single Bills the Court sent it to the summar roll in order that its competency might be determined.

Argued for the parties—The questions between the first and second parties could be most cheaply determined under the present special case, nor was there anything against the competency of such a proceeding, for the Act of 1868, sec. 63, did not fix any pecuniary limit below which a special case was to be incompetent. Though the questions between the parties might be determined in an Inferior Court, yet as they had selected the Court of Session there was no incompetency in the matters in dispute being determined by means of a special case—*Morton v. Gardner*, February 24, 1871, 9 Macph. 548.

At advising—

LORD PRESIDENT—This is just an attempt to get the Court to exercise jurisdiction in a case where it has none.

The three crofters mentioned in this proposed special case were owing certain rents to the first party, their landlord as at Martinmas 1889, and the question between the parties is of very small amount.

In the case of Henderson the question is whether he is to pay £6, 10s. or £5; with Sinclair, £6, or £4, 4s.; and with Shewan, £8, 15s. or £6, 15s. Now, these sums can be recovered in the Court of ordinary jurisdiction but certainly not in this Court, and the proposal that we should decide whether the larger or smaller sum is to be paid is just to ask this Court to determine three small-debt litigations.

It is clear on the Statute of 1868 that nothing was intended to be made the subject of a special case except questions which could be raised by some other form of process in this Court, and this is not such a case.

LORD ADAM—I am entirely of the same opinion. The Statute of 1868 when introducing special cases did not contemplate extending the jurisdiction of this Court to a class of cases which prior to that date it could not competently have dealt with.

Here we have three small-debt actions by a landlord against his tenants, and it is proposed by grouping the three together to render competent a proceeding which could not for a moment have been entertained if any one of these actions had been brought separately. It would not in my opinion have made matters any better if twenty tenants had been grouped together, and I accordingly think that this special case should be dismissed as incompetent.