the case back to Mr Macpherson to complete his report.

LORD ADAM concurred.

LORD M'LAREN—I also am of the same opinion. It will not be supposed that in taking this course we are giving any encouragement to the notion that trustees who are empowered to apply money to charities or purposes of benevolence are to throw the administration of their trust upon the Court. But where a difference of opinion in matters material exists between the trustees and persons who would have a recognised title to appear and contest the administration, such as the chief local authorities of the district in which the charity is to be founded, where such a difference of opinion exists it would seem that trustees are entitled for their exoneration to obtain a judicial interpretation of the trust either under a declarator or under a petition to approve of a scheme. I think the reporter has very judiciously abstained from entering upon details in the meantime, and has brought before the Court the question whether the purpose to which the trustees propose to apply this money is a purpose consistent with the will of the testator, or whether the scheme proposed in the answers is what the testator intended. I have no doubt whatever that in proposing to establish such a cottage hospital as had been found useful in other parishes the testator meant an institution of the character which the trustees now propose to establish, and therefore I agree with your Lordship that after a further report we should give our sanction to the present scheme either as it stands, or, it may be, in an amended form, but substantially on the lines which the trustees have put before us.

LORD KINNEAR—I also concur. I think it was very proper, and it has been very useful, that the public bodies who have put in answers should appear in such a case and lay their views before the Court, but having considered these views, I agree with your Lordship that the scheme proposed by the trustees is entirely in accordance with the will of the testator, and that nothing has been brought before us which would justify us in refusing to give effect to that scheme or enforcing any different scheme upon the trustees. With reference to the competing schemes suggested by the respondents, I do not find it necessary to consider whether these are entirely contrary to the intention of the testator or not, but I have very grave doubt whether the first alternative which they propose is so exactly in conformity with the will as the trustees' proposal is, because it proposes to introduce a restriction upon the purpose to which the cottage hospital if established shall be devoted, for which I can find no authority in the will itself. And I have even a stronger doubt whether the second alternative suggested by the respondents is within the will at all, because whatever question there may be as to the particular kind of cottage hospital which the testator had in view I think there can be no doubt that it was at least a cottage hospital for the treatment of persons suffering from diseases, and that it was not intended to be either a poorshouse or an almshouse for the reception of poor persons who could partly contribute to their own support. I find nothing in the will to favour that second alternative at all, and I therefore agree that with the finding which your Lordship proposes the petition should be sent back to the reporter with instructions to proceed in the execution of the original remit.

The Court found that the scheme proposed by the petitioners was within their powers, repelled the answers, and remitted the case to the reporter.

Counsel for the Petitioners — Wilton. Agents—Davidson & Syme, W.S.

Counsel for the Respondents—A. S. D. Thomson — W. L. Mackenzie. Agents — Hutton & Jack, Solicitors.

Friday, May 31.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

DUNDEE COMBINATION PARISH COUNCIL *v.* SECRETARY FOR SCOTLAND.

Local Government — Parish — Division of Parish—Erection of Portion of Divided Parish into New Parish — Secretary for Scotland—Alteration of Parish Areas—Order—Ultra Vires—Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *sec.* 51—*Local Government (Scotland) Act* 1894 (57 *and* 58 *Vict. cap.* 58), *sec.* 46.

Held (*aff.* judgment of Lord Kincairney, Ordinary) that the Secretary for Scotland is entitled by order to divide a parish and to erect one portion of the parish so divided into a new parish without annexing it to another existing parish.

Local Government—Parish—Combination Parish under Poor Law (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83), *sec.* 16—*Local Government (Scotland) Act* 1889 (52 *and* 53 *Vict. cap.* 50), *sec.* 105—*Local Government (Scotland) Act* 1894 (57 *and* 58 *Vict. cap.* 58), *sec.* 54.

Held (*aff.* judgment of Lord Kincairney, Ordinary) that the expression "parish" in section 51 of the Local Government (Scotland) Act 1889 includes a combination parish constituted under section 16 of the Poor Law (Scotland) Act 1845.

Local Government — Parish — Alteration of Parish Areas—Order—Local Inquiry — Procedure — Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *sec.* 51—*Local Government (Scotland) Act* 1894 (57 *and* 58 *Vict. cap.* 58), *sec.* 46.

In 1898 an application for a provisional order to alter the boundaries of a parish was presented by the county council of the county in which the parish lay, and was opposed by one of the local authorities concerned. A local inquiry under section 46 of the Local Government (Scotland) Act 1894 was ordered and held, at which the parties interested were heard. The result of the inquiry was an official intimation in February 1899 that the Secretary for Scotland was not at that time prepared to accede to the application.

In December 1899 the county council renewed their application, and brought under the notice of the Secretary for Scotland certain changes in the circumstances. The Secretary, without any additional local inquiry, but after considering a representation from the authority opposing, made the order asked for.

Thereafter the local authority who had opposed the granting of the order brought against the Secretary for Scotland an action for declarator that the order was illegal because the procedure prescribed by the statute had not been followed.

Held (*aff.* judgment of Lord Kincairney, Ordinary) that the procedure prescribed by the statute had not been violated, and that the provisional order was legal and regular.

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50) enacts as follows:—Section 1—. . . "This Act and the Local Government (Scotland) Act 1889 (hereinafter called the principal Act) shall, except as otherwise provided by this Act, be construed as one Act." . . . Section 51—"On the representation of a county council or of 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:— . . . (*e*) For dividing any parish in the county which by reason of its inconvenient extent, or by reason of its forming part of, or having within its boundaries, or lying partly within or partly without a burgh, or a police burgh, it seems expedient to divide, and for uniting all or any of such sub-divisions of the parish with other parishes."

Section 105—"In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say —. . . The expression 'parish' means a parish *quoad civilia* for which a separate parochial board is or can be appointed, and where part of a parish is situate within and part of it without any county or other area, includes each such part."

The Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58) enacts as follows:—Section 46—"An order of the Secretary for Scotland, under section 51 of the principal Act, for altering the boundaries of any parish or for uniting several parishes or parts of parishes into one parish by the creation of a new parish or otherwise, or annexing one or more of such parishes or parts of parishes to a larger parish, or for dividing any parish or for uniting any sub-division of a parish with any other parish, shall have effect for all purposes, whether county council, justice, sheriff, militia, parochial board, parish council, school board, local authority, or other, save as hereinafter provided. Before making any such order, the Secretary for Scotland shall consult with the authorities concerned, and upon the application of any one or more of such authorities, shall cause a local inquiry in terms of the principal Act to be held, and shall cause the proposed order to be published in the *Edinburgh Gazette*, and in such other manner as to make the same known to all persons interested, and shall consider all objections and representations respecting such order, and may, after the expiry of not less than forty days from the date of the publication of the proposed order in the *Edinburgh Gazette*, finally make the order and cause the same to be forthwith published in the *Edinburgh Gazette*, and such order shall thereafter have effect, as if enacted by Parliament, unless or until revoked or modified by subsequent order in terms of this section. In addition to the provisions of the principal Act any such order may be made on the representation of a parochial board or parish council, or the commissioners of a police burgh, or a school board." . . .

Section 54—"Expressions used in this Act have the same meaning, if not inconsistent with the context, as expressions used in the principal Act: Provided that, if not inconsistent with the context:— . . . The expression 'parish' means a parish *quoad civilia*, which is at the passing of this Act or may hereafter be constituted a separate parish for the purposes of settlement and relief of the poor, and includes a combination of parishes within the meaning of section 16 of the Poor Law (Scotland) Act 1845."

On 7th September 1900 the Parish Council of the Dundee Combination Parish raised an action against the Secretary for Scotland, and also against the County Council of the County of Forfar for their interest. The conclusions of the summons were (1) for declarator that a proposed Order, being proposed Order No. XLVII., given under the hand and seal of office of the defender on 17th August 1900, and advertised in the *Edinburgh Gazette* of 21st August 1900, for the purpose of detaching from the Dundee Combination Parish the landward part of the parish of Liff and Benvie, and forming the said landward part into a separate parish, and for other purposes, all as therein set forth, was illegal and *ultra vires* of the defender, and disconform to statute, and especially to the Local Government (Scotland) Act 1889, section 51; and further (2) for interdict against the defender making, issuing, submitting to Parliament, or otherwise proceeding with or following forth said Proposed Order in any manner of way.

The Dundee Combination Parish includes the parishes of (1) Dundee, and (2) Liff and Benvie, which were in 1879 combined by the Board of Supervision under section 16 of the Poor Law Act 1845; and had since been administered by the pursuers and their predecessors as one parish. In 1894 the County Council of the County of Forfar made a representation to the Secretary for Scotland for an order to divide the Dundee Combination Parish into three parishes under the names of (1) Dundee City, (2) Dundee Landward, and (3) Liff and Benvie. This application was refused by the Secretary. In 1898 the said County Council made a second representation to the Secretary for an order detaching from the Dundee Combination Parish the landward part of Liff and Benvie Parish, and creating said landward part into a separate parish. A local inquiry was held under section 46 of the Local Government (Scotland) Act 1894, at which the present pursuers and the Lord Provost, Magistrates, and Town Council of Dundee appeared, and maintained, *inter alia*, that the proposed order was illegal and *ultra vires* of the Secretary under the statute, inasmuch as the statute authorised detachment only as an incidental step towards effecting a new annexation or combination of parishes or parts of parishes. In a letter dated 18th February 1899 addressed to the County Council, after stating that the tendency of recent legislation was against adding to the number of administrative areas, and that small as the landward area was, it would, if the Dundee Extension Bill was passed, be still further curtailed, the Secretary intimated his decision as follows:—'His Lordship is therefore not at present prepared to accede to that part of the prayer of the Memorialists which would involve the creation of a new parish corresponding to the present landward Liff and Benvie. The case would be different if, along with the disjunction from Dundee, it were proposed to annex the landward area to a neighbouring parish. No such proposal is now before the Secretary for Scotland, and he must not, of course, be understood as suggesting that such annexation is otherwise than *prima facie* and on general grounds desirable. At present he cannot go further than say, for the information of your County Council, that on the production of a comprehensive and well-considered scheme the matter will be reconsidered.' In a letter dated 6th December 1899 the County Council of Forfar again approached the defender in reference to his letter of 18th February 1899. In said letter they detailed the steps taken by them to effect an amalgamation with a neighbouring parish, and explained that it had been found impossible to effect such an arrangement, and pointed out, *inter alia*, that the rejection of the portion of the 'Dundee Extension Bill,' referred to in the Secretary's letter of 18th February 1899, had removed the prospect of the contraction of the area of the parish. The Secretary thereafter, by letter of 12th May 1900, intimated that he was now satisfied that there were good grounds for giving favourable consideration to the application, and that he would shortly insert a proposed Order in the *Edinburgh Gazette* constituting the landward portion of Liff and Benvie a parish by itself. A copy of this letter was sent to the authorities interested, including the pursuers. At the request of the pursuers the publication was delayed to allow them to represent against it, which they did. The secretary, after consideration of this representation, caused the proposed Order to be published. No further inquiry was held, but it appeared that no request for further inquiry was made by either of the opposing authorities.

The proposed Order, which appeared in the *Edinburgh Gazette* of Tuesday, August 21st, 1900, was in the following terms:—

'LOCAL GOVERNMENT (SCOTLAND) ACTS.

Alteration of Parish Areas.

PROPOSED ORDER No. XLVII.

DUNDEE COMBINATION PARISH (New Parish of Liff and Benvie).

Whereas it has been represented to me by the County Council of the County of Forfar that I should issue an Order under section 51 of the Local Government (Scotland) Act 1889, and section 46 of the Local Government (Scotland) Act 1894, "detaching from Dundee Combination Parish the landward part of the parish of Liff and Benvie, and creating the said landward part of the parish of Liff and Benvie into a separate parish, or such other or further Order as to the Secretary for Scotland shall seem necessary or expedient in order to provide a remedy in the circumstances.

'And whereas, after consulting with the authorities concerned, and causing a local inquiry to be held, I am of opinion that it is expedient to give effect to the said representation.

'Now therefore, I, the Right Honourable Alexander Hugh, Lord Balfour of Burleigh, Her Majesty's Secretary for Scotland, do, in virtue of the powers conferred upon me by the Local Government (Scotland) Acts, order as follows:—

'(1) The portion of the former parish of Liff, Benvie, and Invergowrie, now forming a landward part of Dundee Combination Parish, shall cease to be part of Dundee Combination Parish, and shall form a separate parish to be called the parish of Liff and Benvie.' . . .

The pursuers averred as follows:—(Cond. 3) . . . This application (*i.e.* the application of 1898) was refused by the secretary. (Cond. 5) No fresh representation has since been made, and no scheme more or less comprehensive or more or less well considered has been put forward. But without any change of circumstances having taken place, and without any further inquiry, the pursuers recently received notice that a proposed Order relative to the landward portion of Liff and Benvie was to appear in the *Gazette*.

"(Cond. 7) Said proposed Order is illegal and *ultra vires* of the defender. The Secretary for Scotland has no power under

the statute to detach a portion of a parish and form such detached portion into a separate parish, except for the purpose of annexing it to another parish or part of a parish. Further, the Dundee Combination Parish is not a parish *quoad civilia*, and the parish of Liff and Benvie is not a parish for which a separate parochial board is or can be appointed, and neither of them therefore fall under the statute. Moreover the procedure prescribed by the statute has not been followed in connection with said proposed Order. In particular no local inquiry has been held."

The pursuers pleaded—"(1) The proposed Order being illegal, *ultra vires*, and disconform to statute, the pursuers are entitled to decree as concluded for. (2) The procedure relative to said Order not having been orderly carried out in terms of statute, decree of declarator and interdict should be pronounced, in terms of the conclusions of the summons."

The defender pleaded, *inter alia*—"(3) The proposed Order being legal and regular and within the powers of the defender the defender should be assoilzied."

On 2nd January 1901 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor—"Repels the pleas-in-law for the pursuers: Sustains the third plea-in-law for the defender: Assoilzies him from the conclusions of the action, and decerns."

Note.—"The parties to this action are the Parish Council of the Dundee Combination Parish, who are the pursuers, and the Secretary of State for Scotland, the defender. The summons concludes for declarator that a provisional order by the Secretary for Scotland, the object of which is to detach the landward part of the parish of Liff and Benvie from the combination parish and to form the detached part into a separate parish, is illegal and *ultra vires* and disconform to statute, and especially to section 51 of the Local Government Act 1889. The pursuers' pleas are (1) that the proposed Order is *ultra vires* and disconform to statute, and (2) that the statutory procedure has not been followed. These pleas raise the two questions which were debated.

"The pursuers' designation, the Parish Council of the Dundee Combination Parish, requires explanation. The parishes combined are the Parish of Dundee and the Parish of Liff and Benvie. The combination was effected in 1879 by a resolution of the Board of Supervision under section 16 of the Poor Law Act 8 and 9 Vict. cap. 83, by which the effect of a combination under that section is declared to be that the combined parishes 'shall be considered as one parish so far as regards the support and management of the poor and all matters connected therewith.' But the effect of that provision has been modified by the 21st and 22nd sections of the Local Government Act 1894 (57 and 58 Vict. cap. 58), by which parochial boards are abolished, and it is provided that a parish council shall come in place of the parochial board and be a continuance thereof, and shall exercise all the powers and duties of the parochial board which it supersedes. The pursuers are thus the Parish Council of the combined parishes, and conduct the management of the poor, not as their sole duty but as a part of the duties incumbent on them as such Parish Council, and the parish in which the Order will operate is just the area occupied by the combined parishes.

"The Provisional Order bears to proceed on section 51 of the Local Government Act of 1889 and the 46th section of the Local Government Act of 1894, and the first question is, whether these sections, either or both, authorise the Order, and whether the procedure adopted sufficiently complies with the directions in these sections.

"The pursuers' first contention was that the Order was *ultra vires*, because the division of a parish was not authorised unless it were combined with the annexation of the detached portion to some other parish. They maintained that the policy of the Acts was to promote the union and not the division of parishes, and that their contention was to be preferred as being in accordance with that policy; but I think the presumption is rather the other way. It may be that the general operation of the statutes will be to increase the average extent of parishes and diminish their number, although there is nothing in the statutes which indicates that result. But their primary object was neither to increase nor diminish the extent of parishes, but to remedy the inconveniences arising from existing arrangements and boundaries, whether arising from the separation of parts of parishes or from their extent, whether less or greater than was suitable, and to substitute such other arrangements and boundaries as would suit the requirements of the various localities, and it would seem strange that, if a parish were thought too large or too populous, so that it would be a clear advantage to divide it, a power to do so, conferred by the Legislature, could not be exercised merely because there happened to be no neighbouring parish to which it could be suitably annexed. It is to be remembered that the division of parishes was no novelty in the law, but had been provided for by various statutes, mostly of old date and relating to ecclesiastical matters, but one (7 and 8 Vict. cap. 44) so recent as 1844, the chief object of which was 'to facilitate the dividing and erecting of extensive or populous parishes and the erection of new parishes.' This Act, like the earlier Acts, regards chiefly but not solely ecclesiastical matters. So far as I know it is still in force and is, I suppose, referred to at the close of the proviso to section 51 of the Act of 1889.

These considerations, though not at all conclusive, are not, I think, wholly without bearing; but the real question is a question of construction of the statutes. The pursuers contended that it depends wholly on section 51 of the earlier Act, on which they contend the whole powers in regard to the division of parishes depend. They maintained that no additional powers of division of parishes were conferred by the Act

of 1894. I do not think so, but think both Acts must be read together; but it may be convenient to consider the 51st section of the 1889 Act in the first place and by itself.

"Section 51 empowers the Secretary for Scotland to provide for various matters, and *inter alia* for dividing 'any parish which by reason of its inconvenient extent or by reason of its forming part of, or having within its boundaries, or lying partly within or partly without a burgh, or a police burgh, it seems expedient to divide, and for uniting all or any of such subdivisions of the parish with other parishes.'

"The pursuers contended that this section, according to its sound construction, did not authorise division alone but only division coupled with annexation, which they argued was indicated by the use of the word 'and' and not 'or.' That may be a possible reading of the provision, but it seems to me that the more natural interpretation is to understand the words as authorising two things —division and annexation; not directing or requiring annexation, but only authorising it. Indeed, the words strictly construed barely admit of the pursuers' construction, for they do not speak of the union of all of the subdivisions effected, but of all or any of them, permitting and indeed expressing the view that there might be portions detached but not united.

"This question of mere construction may seem debateable. Still, I would have little difficulty in rejecting the pursuers' contention, if that were the whole of it. But the pursuers maintained with considerable force that the statute nowhere authorises the creation of a new parish any more than it authorises the creation of a new county, and that if it had been intended to authorise the creation of a new parish, provision would have been made for the conduct of its business and for the appointment and payment of the necessary officials, and it was argued that the section authorised only the division of a parish, not the erection of the divided part into a new parish. But as to that point the statute makes no distinction between one division and another. It does not speak of the detachment of one part from the rest, but only of division, which might conceivably be into equal parts, and it would be matter of easy inference to hold that each of these parts was to be a parish, and if once the statute is read as conferring power to create a new parish, the power to provide the necessary details must be implied, except so far as it is not expressed, in section 49.

"The 46th section of the Act of 1894 seems however to furnish what may be a more satisfactory answer. It is declared by the first section of that Act that it and the Act of 1889 shall, except as otherwise provided by the later Act, be construed as one Act. Hence the 51st section of the Act of 1889 and the 46th section of the Act of 1894 must be construed as sections of the same Act.

"Now, the 46th section of the 1894 Act is expressed in a manner which is unusual as regards this matter, for although the marginal note is 'Additional powers to alter parish areas,' yet it does not profess to confer additional power to divide or create a parish, but proceeds on the assumption that that power has been conferred by the Act of 1889, and it takes the form of declaring that the orders of the Secretary for Scotland for the purposes mentioned shall be effectual. It expressly provides that an order by the Secretary for Scotland for altering the boundaries of any parish, or for uniting several parishes or parts of parishes into one parish by the creation of a new parish or otherwise, shall have effect for all purposes. I do not think it necessary to quote the clause at length. It seems to me to meet the pursuers' chief objection as to the want of express power to create a new parish. It is true that the Provisional Order mentioned does not precisely correspond with the Provisional Order in this case, for that does not authorise the union of different parts of the combination parish (although it might have taken that form), but the erection into one new parish of one part of the combination parish, but I consider that in fair interpretation the words of the statute apply to it, and that it would be extravagant to hold otherwise.

"But the pursuers contend that the provision in section 46 proceeded on a misinterpretation of the previous section, and that therefore it should not receive effect. There are, however, several answers to this argument, of which the first is that the assumption in the section as to the meaning of section 51 of the Act of 1889 is not wrong but right, and further that it must be accepted as right as being a legislative interpretation of the Act of 1889 which the Court was bound to accept, for which position counsel for the defender quoted *The Attorney General* v. *Clarkson* [1900], 1 Q.B. 156, a decision which I would be disposed to follow. But the clearer ground seems to be that whether the assumption of section 46 as to the meaning of section 51 be right or wrong, and whether section 51 confers power to create a new parish or not, it is sufficient and conclusive that the statute declares that a provisional order creating a new parish shall receive effect. If once it be held that the provision of section 46, reasonably interpreted, covers this case, then there is no room for further argument, the statute is conclusive. For these reasons I am against the objection that the Provisional Order is *ultra vires*, because it proposes to divide a parish without uniting the portion detached to another parish.

The pursuers further, in support of their first plea, objected that the combination parish was not a parish to which the statute applied, or with which the Secretary for Scotland had authority to deal. But the interpretation clause of the Act of 1894 declares expressly that the expression parish 'includes a combination of parishes within the meaning of section 16 of the Poor Law (Scotland) Act 1845,' and I do not think that this express declaration can be got over by the other words of that interpretation clause. It is conclusive if it applies. The pursuers contended that it was only the interpretation clause of the Act of 1894, and not of the

Act of 1889, and did not interpret the word parish in that Act. But as the two Acts are to be read as one Act, then this interpretation clause in the later Act must apply to the former Act also, unless such application of it involves some inconsistency or contradiction. But I do not find any inconsistency. The two interpretation clauses appear to me to be consistent.

"Section 105 of the earlier Act interprets the word 'parish' as a parish *quoad civilia*, for which a separate parochial board is or can be appointed.' These words appear to include the Dundee Combination Parish if it be a parish *quoad civilia*. It was maintained that they do not, because the parish, as constituted by the 16th section of the Poor Law Act, was only a parish *quoad* the poor law. But it was not the less a parish *quoad civilia*, although not perhaps *quoad omnia civilia*, for the administration of the poor law is not *inter sacra* but *inter civilia*. But, as has been said, the Dundee Combination Parish Council is not now a body which does nothing but administer the poor law. It performs all the duties of a parish council. Certainly the Dundee Combination Parish is now a parish *quoad civilia*. Further, section 21 of the Act of 1894 provides that every reference in any Act of Parliament to a parochial board shall be construed as referring to a parish council. It would seem therefore that the 105th section of the Act of 1889, so far as it interprets the word 'parish,' should be read as if the words were 'a parish *quoad civilia* to which a separate parish council is or can be appointed,' words which, of course, include the Dundee Combination Parish. Perhaps the words as so read may not have much meaning or effect, but they are at all events not inconsistent with the interpretation clause of 1894, and it is, in my opinion, sufficient that the Dundee Combination Parish is covered by that clause. I am therefore of opinion that this objection should also be repelled, and that the Provisional Order falls within the powers conferred by the statute on the Secretary for Scotland.

"The pursuers' second plea is that the procedure required by the statute was not followed. The averment in support of that plea is extremely meagre. It is not stated in what the defect in the procedure consisted, and I greatly doubt whether the averment is relevant. But it is not necessary to consider that matter closely, because I am of opinion that the objection has not been supported. It depends to some extent on the circumstances in which the order was published. The procedure is prescribed in section 46 of the Act of 1894, and differs somewhat from the procedure required in the former statute. Section 46 requires that the Secretary for Scotland shall consult with the authorities concerned, and on the application of one or more of such authorities shall cause a local inquiry to be made, and shall cause the Order to be published, and shall hear objections and representations.

"Now, in 1898 an application for a provisional order to the same effect as that which the Secretary of State has issued was presented by the County Council of Forfar and was opposed by the Dundee Combination Parish. A local inquiry under section 46 was ordered, and was then conducted by Sheriff Johnston, and the parties interested were heard. The result of that inquiry was an intimation by official letter of 18th February 1899, that the Secretary for Scotland was not at that time prepared to accede to the petition.

"The County Council of Forfar have renewed their application, and have brought under the notice of the Secretary certain changes in the circumstances. The Secretary has not thought it necessary to order an additional local inquiry. It would, I think, have been out of the question to do so; and he was under no obligation to do so, for no one has suggested such a step or asked for inquiry. That being so, I fail to see in what particular the statute has been violated. He has, it is true, not heard the Dundee Combination Parish again, but it must be assumed that he was fully informed on the whole matter before, and when an objection is taken to the procedure adopted by an official of the position of the Secretary for Scotland, I am of opinion that a failure to comply with the imperative directions of the statute must be made perfectly clear before an order by him can be set aside on that ground. I find nothing of that kind in this case, either in the record or the facts."

The pursuers reclaimed.

The arguments sufficiently appear from the note to the Lord Ordinary's interlocutor.

At advising—

LORD JUSTICE-CLERK—In this case the question turns upon the reading to be put upon section 51 of the Local Government Act of 1889, taken along with section 46 of the Act of 1894 amending it. The reclaimers contend that the action taken by the Secretary for Scotland in dividing up the Combination Parish of Dundee into two divisions, and forming a new parish of the part taken off under the name of the Parish of Liff and Benvie was *ultra vires*—that he had no power to divide a parish, but only to take a part of a parish and attach it to some other parish. The contention is based on the words of the 51st clause, giving the Secretary for Scotland power for dividing "any parish in the county which by reason of its inconvenient extent, or by reason of its forming part of, or having within its boundaries, or lying partly within or partly without a burgh, or a police burgh, it seems expedient to divide, and for uniting all or any of such sub-divisions of the parish with other parishes." The reclaimers maintained that if the Secretary for Scotland does one thing he must do both, that "and" is to be taken as an imperative conjunction and not as copulative merely of two separate powers, of which he may exercise the first by itself, and only carry out the second if he sees fit in the special circumstances of the particular case to do so, he acting in the public interest.

Had the question depended entirely upon the 51st clause of 1889, I should have held that there was no ground for this contention of the pursuers. The words of the section are, I think, quite capable of being read in the sense in which they were applied by the defender, and the construction which the pursuers put on the clause is strained and unnatural. I concur with the Lord Ordinary in his remarks on this part of the case.

But if there were in fact any difficulty arising from the wording of the 51st clause of the 1889 Act, it would in my opinion be completely set aside by the 46th clause of the Act of 1894. By that clause it is enacted that "An order of the Secretary for Scotland under section 51 of the principal Act for altering the boundaries of any parish or for uniting several parishes or parts of parishes into one parish by the creation of a new parish or otherwise, or annexing one or more of such parishes or parts of parishes to a larger parish, or for dividing any parish, or for uniting any sub-division of a parish with any other parish, shall have effect for all purposes, whether county council, justice, sheriff, militia, parochial board, parish council, school board, local authority, or other, save as hereinafter provided."

Now, if this clause is to be read along with the provisions of the Act of 1889, it would be very difficult to say that the Secretary for Scotland, in carrying out his duties under section 51 of that Act, would not be entitled to do what is expressly stated as one of the things he can do in this 46th section of the later Act. But it is expressly enacted by section 1 of the Act of 1894 that "this Act, and the Local Government (Scotland) Act 1889, shall, except as otherwise provided by this Act, be construed as one Act." Reading the two Acts as one, it seems to me to be impossible to maintain that the Secretary for Scotland has not the power in carrying out section 51 of the Act of 1889 to exercise the power which he is stated to have in section 46 of the Act of 1894, to divide a parish. Taking the Acts as one, his power to do what was done here is, I think, quite plain, if the parish in question which he proposed to divide was a parish to which these sections applied. But the reclaimers maintain that section 51 of the Act of 1889, does not apply to a combination parish. I am unable to see why it should not, but any difficulty about that matter is removed by the fact that the interpretation clause of the Act of 1894 declares that "parish" shall include a combination of parishes within the meaning of section 16 of the Poor Law Act, and if the Acts are to be read as one Act this interpretation applies, unless there is something which in either Act precludes its application. There is nothing of that kind in the Act of 1889.

I do not think it necessary to notice the objection to the detail procedure, except to say that I concur in the observations of the Lord Ordinary. The reclaimers' case on that point has no real strength. There was no failure to hold inquiry, and no refusal of inquiry to any party. When the Secretary for Scotland had held an inquiry, and had intimated that he was not then prepared to take action, the matter stood over, and when he was applied to later to reconsider the matter, it was for him to judge whether he had need for further inquiry. In this case he did not consider that he did require further information. He received representations from the reclaimers and considered them, but neither they nor any other party asked for further inquiry.

I would move your Lordships to adhere to the Lord Ordinary's interlocutor.

LORD YOUNG—I agree with the Lord Ordinary and your Lordship that this action is altogether unfounded, so I do not think it necessary to add anything further to what has been said by your Lordship and the Lord Ordinary. I think it is as unfounded as any action I have ever seen. That is a strong thing to say, but I do not think I ever saw an action more unfounded than the present.

LORD TRAYNER — On reading the two Acts of 1889 and 1894 together, I am of opinion that what was done by the defender was within his competency. I am further of opinion that the procedure required by the cited Acts to be followed was duly observed. I therefore think the Lord Ordinary's interlocutor should be affirmed.

LORD MONCREIFF — I am of the same opinion, and I am quite satisfied with the grounds of judgment of the Lord Ordinary. I think it would have been sufficient to found upon section 51 of the Act of 1889. Under that section the Secretary for Scotland has power to divide and erect into a separate parish, but the later Act puts that beyond doubt. As regards the procedure, I think that the Secretary for Scotland doubted at the first hearing whether it was the policy of the Act to create a new parish, and he gave the parties, in whose favour the Lord Ordinary has decided an opportunity of saying whether they would have the parish annexed to some other parish. In that matter I think the reclaimers had no interest whatever, because their interest was to prevent division of the parish, and if part was taken off it did not matter to them whether it was erected into a new parish or annexed to another. When the Secretary for Scotland found that annexation was impracticable he reconsidered the matter to which the local inquiry was directed, and changed his mind. He thought that the objections on the ground of policy had been overcome and granted the original application. He was entitled to do that. Besides, before deciding finally he heard a representation on the subject.

The Court adhered.

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