

which enabled him to take the work out of the contractors' hands was increased, or the chance of the contractors finishing the work within the stipulated time was diminished. There is no such obligation in this policy. Neither this policy nor any policy of the kind ever contains such an obligation, and for the obvious reason that it would not be received by either the employer or the contractor.

The defenders, to do them justice, did not maintain that they were entitled to have notice of the various failures to complete the work within stipulated periods, or to do certain quantities of work within stipulated periods, for I observe that the defenders' secretary in giving evidence is asked these questions and gives these answers—“(Q) You said it was material that you should know of the various stages of the progress of this work, or do you say that?—(A) I don't think I say that. (Q) You had no concern within what period the work was performed so long as the contract was well and truly done?—(A) We had no concern until we received notice of default.” I think that correctly expresses, in the words of the defenders' secretary, the extent of the obligation which was undertaken by them.

Accordingly, in my judgment, the Lord Ordinary has misconstrued the clause in the policy round which the controversy turns, and I should have thought it proper to remit to his Lordship to ascertain the amount of the defenders' liability, but as your Lordships' opinion is otherwise I propose that we should adhere to the interlocutor of the Lord Ordinary and assoilzie the defenders.

LORD MACKENZIE was sitting in the Extra Division.

The Court adhered.

Counsel for Pursuers and Reclaimers—Solicitor-General (Morison, K.C.)—Morton. Agents—Douglas & Miller, W.S.

Counsel for Defenders and Respondents—Wilson, K.C.—MacRobert. Agents—Cadell & Morton, W.S.

## HOUSE OF LORDS.

Tuesday, March 9.

(Before Earl Loreburn, Lord Kinnear, Lord Dunedin, Lord Atkinson, Lord Parker, Lord Sumner, and Lord Parmoor.)

EDINBURGH PARISH COUNCIL v.  
LOCAL GOVERNMENT BOARD  
FOR SCOTLAND.

(In the Court of Session, January 10, 1914,  
51 S.L.R. 192, and 1914 S.C. 241.)

Poor—Lunatic Pauper—Statute—Warrant for Removal of Pauper to England—Appeal to Local Government Board—Competency—Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 5

The Poor Law (Scotland) Act 1898, section 5, enacts—“(1) Whenever any

parish council shall have obtained, in terms of the Poor Law Removal Act 1862, a warrant for the removal from any parish in Scotland to England or Ireland of any English-born or Irish-born poor person who has not acquired a settlement by residence in Scotland, and to whom the immediately preceding section does not apply, such poor person, if he or she shall have resided continuously in such parish for not less than one year before the date of the application for relief (her deceased husband's residence, if necessary, being reckoned as part of her residence in the case of a widow), may, within fourteen days after intimation of the granting of such warrant and of the right to appeal in this sub-section mentioned, appeal to the Local Government Board, which Board shall without delay investigate the grounds of such appeal and determine whether it is reasonable and proper that such poor person shall be so removed. The inspector of poor of the parish whence the poor person is proposed to be removed shall be bound to intimate to the poor person the granting of the warrant and the right of appeal; and no warrant in terms of the Poor Law Removal Act 1862 shall be carried out until the expiry of the said fourteen days, or, if an appeal is taken, until it has been disposed of by the Board. (2) In the case of a poor person as in the preceding sub-section mentioned, the inspector of poor shall also be bound to send by registered letter a notice to the clerk to the board of guardians of the union or parish in England or Ireland named in the warrant of removal that if they desire they may, within fourteen days after the receipt of such notice, appeal to the Local Government Board against the removal, and shall with such notice transmit a copy of the depositions taken before the sheriff granting the warrant; and if the board of guardians shall so appeal, the Local Government Board shall without delay investigate the grounds of such appeal and determine whether it is reasonable and proper that such poor person shall be removed. No warrant in terms of the Poor Law Removal Act 1862 shall be carried out until the expiry of the said fourteen days, or, if an appeal is taken, until it is disposed of by the Board.”

Held (1) that the condition attached to the right of appeal conferred in sub-section (1), “if he or she shall have resided continuously in such parish for not less than one year before the date of the application for relief,” did not attach to the right of appeal conferred by sub-section (2) on the board of guardians; and (2) that the word “resided” was to be taken in its ordinary meaning of “lived” and not as requiring the intelligent residence necessary in the case of acquiring a settlement.

This case is reported *ante ut supra*.

The pursuers the Edinburgh Parish Council appealed to the House of Lords.

At the conclusion of the appellants' argument—

EARL LOREBURN—In this appeal the real question is whether the Local Government Board had the power to determine that the removal of a pauper lunatic from Fife to London was unreasonable and improper. We have nothing to do with the value, so to speak, of the decision, provided they had jurisdiction and authority to give it. The question turns upon the Poor Law (Scotland) Act 1898, section 5, sub-sections (1) and (2), and I think I had better state what my view is of those two sub-sections very shortly and compendiously. I think the effect of them is this, that where there is a warrant for the removal from Scotland to England or to Ireland of any English-born or Irish-born poor person who has not acquired a settlement by residence in Scotland, and to whom the immediately preceding section does not apply, then when that occasion arises, first, the poor person can appeal if he or she resided continuously for a certain period in Scotland, and secondly, the guardians of the English or Irish parish which is to be charged can appeal, and the condition as to the continual residence does not apply to their appeal at all; in other words, the poor person can appeal if he or she has resided continuously, and the guardians can appeal whether or not the poor person has resided continuously, and that seems to me to be applied whatever meaning you give to the word "reside."

This point seems to have been, we were told, argued in the Court of Session, but does not appear to have been argued before the Lord Ordinary. But if it is decided, as I respectfully recommend your Lordships to decide it, then no other point of any sort, kind, or description arises. But the point in question was not noticed in the judgments in the Inner House. I prefer to rest my opinion upon that ground, which is a very short and a very simple ground, and to my mind a very plain ground; but I will add that if that be repelled, and the point which was raised and decided in the Court of Session falls to be considered, then I am of opinion with Lord Dundas "that the judicial construction of the words 'reside' and 'residence,' while fairly applicable to section 1, has no necessary nor justifiable application to other sections of the 1898 Act, such as that with which we are here specially concerned, which deal with quite a different aspect of Poor Law administration." I desire to adopt those words, and had I not been willing to recommend the dismissal of this appeal upon one ground, I should have been prepared to assent to that also.

LORD KINNEAR—I entirely agree with my noble and learned friend. I cannot help thinking that there is some little confusion introduced into the argument by the use of an inappropriate term and the technical construction of a particular word in the Poor Law Acts. The Acts to be construed are of course the Acts of 1845 and 1898. It

appears to me that the enactment in question is expressed in ordinary language, and for that very reason it is language which is open to construction. It has been construed over and over again, and there is no dispute, as I understand, as to the construction which the Court has put upon it, at least since 1845. But then the words are construed, not by picking out one particular word and affixing a technical signification to that word, so that whenever it occurs in any other discussion relating to the art of which it is said to be a technical term it must receive the same meaning; but the words are construed with reference to the subject-matter, and in particular, I think, with reference to the existing law, which the Act of 1845 assumes to be established, and with reference to the context in which they occur.

I have no doubt at all that, taking all these matters into consideration, it has been decided in Scotland that according to the true construction of the Act of 1845 the residence which is necessary to acquire a settlement must be the residence of a person capable from mental capacity of acquiring or of abandoning a civil status. It is not the residence of a lunatic. But then I think it follows that when you come to read the same word "residence" in a different context and with reference to a different subject-matter you must construe it as a word of ordinary language under these conditions, and see whether it must still retain the same meaning which the Court has ascribed to it in the first case I have considered.

Now I agree entirely with Lord Dundas, and I think that is the true ground of the judgment upon the point first of all considered, that when the statute comes to treat a totally different subject of judicial construction, the words "reside" and "residence" become inapplicable, and you must construe the language of the new enactment with reference to the new subject by itself. But then if I were wrong in that, I should agree with my noble and learned friend that the question is excluded altogether by the point which he stated first, upon the construction of the first and second sub-section of the fifth section of the 1898 Act. The first sub-section provides for the case of an English-born or Irish-born poor person who has not acquired a settlement by residence, and to whom the immediately preceding section does not apply. Such poor person may upon a certain condition appeal to the Local Government Board. Now I think that the words describing the case in which an appeal may be presented by a poor person are those, and those only, which I have already read. But then the section goes on to say, "if he or she shall have resided continuously in such first-mentioned parish for not less than one year before the date of the application for relief," he or she "may within ten days after the intimation of such order, and of the right to appeal in this section mentioned, appeal." That is not part of the description of the poor person who may be entitled to appeal. In other words, it is not part of a

case in which an appeal may be presented, but it is a condition upon which alone the poor person may appeal; and therefore I think when the statute goes on to provide for the same case as before, the case of a poor person as in the preceding sub-section mentioned, and omits the special condition which was applicable to the appeal of the poor person himself, the necessary construction is that the appeal which is in the second sub-section given for the first time to the Board of Guardians is free from the condition that was attached to the appeal by the poor person himself.

LORD DUNEDIN—I concur with the opinion of the noble and learned Earl that the logical way of disposing of this appeal is to hold that the appeal given to the Board of Guardians is absolute. That view of course is destructive of the suggestion which was made by Lord Salvesen in his opinion, that it would be more reasonable if the two appeals had been alternative—a suggestion which I venture to think would never have been made if the learned Judge had been at all conscious of the grievance which this Act of Parliament was sought to remedy. But as regards the other point, which I do not think logically arises, I have nothing to add to the judgment of Lord Dundas, which is entirely satisfactory to me.

LORD ATKINSON—I concur with Lord Dundas in the construction which he has placed upon section 5, sub-section (1), and if I may I beg to adopt it. I also concur with the three noble and learned Lords who have preceded me as to the proper construction of sub-section (2) of section 5.

LORD PARKER—I also concur on both points.

LORD SUMNER—So do I.

LORD PARMOOR—I concur on both points.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Pursuers (Appellants)—The Dean of Faculty (Scott Dickson, K.C.)—Roberton Christie, K.C.—Dallas. Agents—R. Addison Smith & Company, W.S., Edinburgh—Grahames, Currey, & Spens, Westminster.

Counsel for the Defenders (Respondents)—The Solicitor-General for Scotland (Morison, K.C.)—Pitman. Macrae, Flett, & Rennie, W.S., Edinburgh—John Kennedy, W.S., Westminster.

## COURT OF SESSION.

Thursday, January 28.

### FIRST DIVISION.

#### WHITE v. DUNBAR MAGISTRATES AND OTHERS.

*Process—Petition and Complaint—Delivery of Documents—Competency.*

The chamberlain of a royal burgh, on the instructions of the town council, retained in his custody certain documents belonging to the burgh. The town clerk brought a petition and complaint against the town council and the burgh chamberlain, averring that he had the sole right to the custody of documents belonging to the burgh, and craving the Court to ordain the chamberlain to deliver the documents to the petitioner. *Held* that the petition and complaint was incompetent.

On 27th November 1914 Robert White, Town Clerk of the Royal Burgh of Dunbar, with the concurrence of the Lord Advocate, presented to the Court a petition and complaint against the Town Council and against Andrew C. Ramsay, the Burgh Chamberlain, craving for delivery of certain documents belonging to the burgh.

The petitioner *averred, inter alia*, that he attended a meeting of the Finance Committee of the Town Council on 9th February 1914, and took notes for the preparation of a minute of the meeting. Three letters were at the date of the meeting in the possession of the Chamberlain, were submitted by him to the meeting, and were thereafter retained by him. The petitioner was unable to prepare the minute of the meeting, as the said letters had been retained by the Chamberlain. The said letters were all documents of the burgh, and should have been in the charge and custody of the petitioner. The said minute ought in the usual course of business to have been laid before the Town Council at their meeting on 11th February 1914, but for the reason stated the petitioner was unable to prepare and submit a minute to the Town Council. The custody of the letters was considered at the meeting of the Town Council on 11th February 1914, when the Council resolved that the Chamberlain should allow the Town Clerk to have the use of any papers dealt with at finance meetings for the purpose of preparing a minute of such meetings, but that the documents after the purpose of the Town Clerk therewith was served should be returned to the Burgh Chamberlain. In accordance with this resolution the Town Clerk obtained from the Chamberlain and returned to him the three letters mentioned. At a meeting of the Finance Committee held on 8th December 1913 the Chamberlain, who was not a law agent, was instructed to prepare a memorial for the opinion of counsel in connection with a dispute which had arisen regarding the rating of certain properties in Dunbar, and to instruct Edinburgh