COURT OF SESSION.

Thursday, May 28.

FIRST DIVISION.

[Sheriff of Forfarshire.

SEATON *v.* PARISH COUNCIL OF ARBROATH AND ST VIGEANS.

Poor—Inspector of Poor—Union of Parishes—Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *sec.* 51—*Local Government (Scotland) Act* 1894 (57 *and* 58 *Vict. cap.* 58), *secs.* 46 *and* 51—*Order by Secretary for Scotland—Transference of Existing Officers to New Parish Council.*

An Order pronounced by the Secretary for Scotland in terms of the Local Government (Scotland) Act 1889, sec. 51, and the Local Government (Scotland) Act 1894, sec. 46, uniting two parishes, and declaring that the officers and servants of the old parishes shall be transferred to the parish council of the new parish, is valid, both under the particular powers conferred by the Act of 1889, sec. 51 (*f*) read in conjunction with sec. 51 of the Act of 1894, and under the general powers conferred by sec. 51 (*g*) of the Act of 1889; and consequently the inspectors of poor of the pre-existing parishes continue to be the officers and servants of the parish council of the new parish.

Henry George Seaton raised an action in the Sheriff Court of Forfarshire against the Parish Council of the Parish of Arbroath and St Vigeans concluding for payment of £35, being three months' salary due to him.

The facts of the case were as follows:—In July 1889 the pursuer was elected inspector of poor and collector of poor and school rates by the Arbroath Parochial Board. He continued to discharge the duties of both offices down to 15th May 1895, when the Local Government (Scotland) Act 1894 came into effect. At the instance of the Town Council of Arbroath and other bodies, and after an inquiry had been held, the Secretary for Scotland, on 11th July 1895, pronounced an order under sec. 46 of the said Act uniting the parishes of Arbroath and St Vigeans. This order contained, *inter alia*, the following paragraph:—"(2) The Parish Council of Arbroath and the Parish Council of the now existing parish of St Vigeans shall cease and determine, and their whole powers, rights, duties, property, liabilities, debts, officers, and servants shall be transferred to the Parish Council of the parish constituted by this order."

On 16th July 1895 the defenders intimated to the pursuer that another person, the Inspector of St Vigeans, had been appointed inspector and collector for the united parishes, and expressed regret that the pursuer would be necessarily deprived of office. The pursuer replied by a statement of what he conceived to be his rights, and received in answer an excerpt from a minute of a special committee of the united Parish Council to this effect:—"The committee unanimously resolved to recommend that Mr Seaton be allowed his salary in full up to the 15th day of August curt., both as inspector of poor and collector of poor rates, and that a sum of £250 be paid to him in addition as in full of compensation and all other claims, whether legal or equitable." This offer the pursuer declined to accept; and the defenders having refused to pay him his salary from 15th August, he raised the present action.

The pursuer pleaded—"(1) The pursuer having as at the 15th day of May 1895 held office as inspector of poor for the parish of Arbroath and collector of poor and school rates, became by operation of section 50 of the Local Government (Scotland) Act 1894, an officer of the parish council of said parish. (2) Under section 51, sub-section 1, the pursuer and others similarly placed are declared to hold their offices by the same tenure, and upon the same terms and conditions 'as if this Act had not passed, and while performing the same duties shall receive not less salaries or remuneration, and be entitled to not less pensions (if any) than they would have received or been entitled to if this Act had not passed.' . . . . (7) The defenders as coming in room and place of the parochial board of the parish of Arbroath, and exercising the rating and other powers formerly exercised by the said parochial board, are liable in all obligations prestable against said board by all interested, and particularly to the pursuer for the sums sued for."

The defenders pleaded:—"(3) The pursuer's claim, if he any has, against the defenders, being one for compensation and not salary, the defenders should be assoilzied. . . . . (5) The pursuer's contract of service having been terminated by the combined operation of the said Order and the Poor Law Act, no salary is due to the pursuer."

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), sec. 51, enacts—"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:— . . . (*d*) for uniting several parishes or parts of parishes into one parish; . . . (*f*) for the proper adjustment and distribution of the powers, property, liabilities, debts, officers, and servants of any local authority, consequential on any consolidation, alteration of boundaries, or other act done in pursuance of this section; and (*g*) generally for doing any matter or thing whatever, whether similar or not to those above mentioned, which may be required or be expedient for the proper carrying into effect the purposes of this Act and the settlement of local differences."

The Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58), sec. 46, enacts that "an order of the Secretary for Scotland under section fifty-one of the principal Act . . . 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 whether county council, justice, sheriff, militia, parochial board, parish council, school-board, local authority, or other save as hereinafter provided. . . . An order of the Secretary for Scotland under the powers conferred by section 51 of the principal Act, or this section, may, without prejudice to the generality of the aforesaid powers, provide for all or any of the matters specified in sub-sec. (6) of sec. 49 of the principal Act."

Section 50 of the same statute enacts that all existing officers and servants of a parochial board shall after the 15th May 1895 become the officers and servants of the parish council.

Section 51 (1) enacts that "the officers and servants of any authority who hold office at the passing of this Act, and who by or in pursuance of this Act become officers and servants of a parish council, shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not passed, and while performing the same duties shall receive not less salaries or remuneration and be entitled to not less pensions (if any) than they would have received or been entitled to if this Act had not passed."

On 22nd January 1896 the Sheriff-Substitute at Forfar (ROBERTSON) found that the action of the defenders in depriving the pursuer of his office of Inspector of Poor of the Parish of Arbroath was *ultra vires* and illegal; that the salary sued for was due; and therefore decerned against the defenders in terms of the conclusions of the summons.

The defenders appealed to the Court of Session, and argued—(1) The amalgamation of the two parishes left no inspectors in existence, and consequently the Order of the Secretary for Scotland did not transfer the pursuer to the united parish. If it had, there would have been two inspectors jointly for one parish, which was illegal—*Board of Supervision* v. *Glasgow Parochial Board*, February 1, 1850, 12 D. 627. (2) The Parish Council of the united parish was entitled to choose the one inspector and to reject the other. Though the Poor Law Act 1845 (8 and 9 Vict. cap. 83), sec. 56, conferred the power of dismissing inspectors upon the Board of Supervision in certain cases, it contained nothing which took away the right of the parochial board, which appointed, to dismiss.—*Board of Supervision* v. *Parish of Dull*, June 9, 1855, 17 D. 827; *Clark* v. *Board of Supervision*, December 10, 1873, 1 R. 261, *per* Lord Shand, Ordinary; and *Board of Supervision* v. *Parish of Old Monkland*, January 17, 1880, 7 R. 469, referred to.

Counsel for the respondent was not called upon.

LORD PRESIDENT—It seems to me that the true ground of judgment in this case is to be found in the order by the Secretary for Scotland uniting the parishes of Arbroath and St Vigeans. I do not doubt that all that was done under this order, so far as it relates to the present question, was validly done, and within the powers of the Secretary for Scotland. The second head of the order in plain terms declares that the whole powers, &c., of the two Parish Councils shall be transferred to the Parish Council of the new parish. Now, applying those general words to the case of the person in question, it is past doubt that this gentleman was an officer and servant of the old parish of Arbroath, and if so he is transferred to the new parish, and becomes one of its servants. What duties then has he to perform, and what rights has he in that quality? They can be none other than those he was performing and enjoying under his former master, and section 51 of the Act of 1894 seems to me directly to apply, because, speaking distinctly and solely of those officers who held office at the time of the passing of the Act, it says—"Nothing done by this Act," or done in pursuance of this Act, "shall alter the rights and duties of those officers." Accordingly, the order of the Secretary for Scotland, not in so many words, but in effect, did distribute the duties of the inspectors who were transferred to the new parish, because by transferring them and declaring them to be servants of the new board, it defined their duties by the necessary statutory effect of that clause. It defined their duties as being those which had been done before. There is nothing at all repugnant in that conclusion, because it is manifestly entirely inappropriate to say that there is any illegality in a parochial board having two inspectors of poor. All that the decisions which we were referred to say is, that it would be illegal for a parochial board administering the Act of 1845 to appoint two inspectors, except under the limitations stated under section 55; but it never did, and never possibly could, make it impossible for the Legislature to authorise a competent authority, charged with the duty of effecting a workable fusion of two parishes, to continue the services of two existing inspectors. That is what has been done here, and accordingly, in my opinion, the order for the Secretary for Scotland can be supported on the ground that it effects the distribution of the offices; but, further, the very general words in the Act of 1889, which are incorporated and referred to in the subsequent statute, would support what has been done, apart from that precise definition of powers. Now, if I am right in this view, we are taken clean outside the question about the power of a parochial board to dismiss an inspector of poor on other grounds than his fault, and for this reason that we have not here any arrogation by the new board of such a power. They have not considered whether this person should be dismissed from the office he holds. On the contrary, they have assumed, contrary to the law of the case, that the office was abolished. All that they have done is to assume that the office he held had gone by the board, and that they were debarred from doing anything else than to appoint to the office a sole inspector for the combined parishes.

Therefore nothing which I have said can be founded upon as affecting, one way or other, the rights of a parochial board, or a parish council in future in dealing with their inspectors of poor. I have no occasion to enter into the consideration of whether those officers hold office *ad vitam aut culpam*. The result is that the decision of the Sheriff should be affirmed.

LORD ADAM concurred.

LORD M'LAREN—I am of the same opinion. I see no reason to doubt that the order of the Secretary for Scotland is entirely in terms of and within the powers devolved upon that high officer by Parliament. Standing the order, it seems perfectly clear that the inspectors of poor of the pre-existing separate parishes were transferred, *i.e.*, their contract of service was transferred—to the united parish. It may be that it is within the power of the united parishes to effect some distribution of the services and duties of these officers. That may yet be arranged. I agree with your Lordship that there has been no attempt on the part of the new parish council to dismiss their officer. They do not claim to have dismissed him. In the record they express the opinion that his office had come to an end by force of the Act of Parliament in consequence of the union of the two parishes, and there could be no better proof that this was the view on which the parish council acted than this, that they made the pursuer an offer of £250 as compensation for the loss of his office. Such an offer would of course be an illegal application of the funds of the parish in the case of a person who had been lawfully dismissed. The case is really one of misapprehension of the true state of relations between the authorities of the new united parish and the officers of the pre-existing separate parishes.

LORD KINNEAR concurred.

The Court affirmed the interlocutor of the Sheriff-Substitute.

Counsel for Pursuer — W. Campbell — A. Orr Deas. Agents — Duncan Smith & Maclaren, S.S.C.

Counsel for Defenders — Sol.-Gen. Dickson—Clyde. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, May 29.

FIRST DIVISION.

WELCH'S EXECUTORS, PETITIONER.

Right in Security—Transmission of Personal Obligation against Universal Legatee not being Heir-at-Law—Conveyancing Act 1874 (37 & 38 *Vict. c.* 94), *secs.* 12 *and* 47.

The 47th section of the Conveyancing Act 1874 provides that "subject to the limitation hereinbefore provided as to the liability of an heir for the debts of his ancestor, an heritable security for money, duly constituted upon an estate in land, shall, together with any personal obligation to pay principal, interest, and penalty contained in the deed or instrument whereby the security is constituted, transmit against any person taking such estate by succession gift, or bequest, or by conveyance, when an agreement to that effect appears *in gremio* of the conveyance, and shall be a burden upon his title in the same manner as it was upon that of his ancestor or author, without the necessity of a bond of corroboration or other deed or procedure."

By section 12 it is provided that "an heir shall not be liable for the debts of his ancestor beyond the value of the estate of such ancestor to which he succeeds."

Held that the personal obligation in a bond and disposition in security transmits against a universal disponee, but that, although not heir-at-law, he is entitled to the benefit of the limitation of liability provided by section 12.

In an action raised in the Court of Chancery of the County of Lancaster by the Edinburgh Life Assurance Company and others against the executors of the late Ralph Dalyell Welch, the Court, upon the motion of the defendants, ordered a case to be prepared and remitted to the Court of Session, in terms of 22 and 23 Vict. c. 63, for the opinion of the Court upon certain questions of Scotch law.

The facts as appearing from the case were as follows:—In 1870 Miss Robina Thoms was possessed of certain lands at Rumgally, Fifeshire. In that year she granted a bond and disposition in security for £10,000 over the estate of Rumgally, in favour of the trustees of Mr William Rutherford; and in the same year she granted another bond over the estate for the same amount in favour of the trustees of Mr James Richardson.

The two bonds were subsequently assigned to the Edinburgh Life Assurance Company. On the death of Miss Thoms in 1871, Charles Welch succeeded to the estate of Rumgally, and he executed a bond of corroboration and disposition in security in favour of the holders of the two bonds, in which he narrated that "it had been agreed between the company and himself that the said sums of money should be and remain a debt and burden