

C. W. F. C. C.

1957

*Mar. 6, 7
Apr. 12

THE TOWN OF LUNENBURG APPELLANT;

AND

THE MUNICIPALITY OF LUNENBURG RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA

Infants—Neglected children—Determination of child's settlement—Whether determination may be reopened on further application for declaration that child defective—The Child Welfare Act, R.S.N.S. 1954, c. 30, ss. 30(1), 83(2).

When the settlement of a child has been determined under s. 30(1) of the *Child Welfare Act* at the time that the child is found to be neglected, that determination cannot be reopened on a subsequent application under s. 83 for a declaration that the child is defective, even if the circumstances have changed between the two applications.

The purpose of s. 83 is limited to an inquiry into the alleged new condition of the child, *i.e.*, its defectiveness, in order that new and extended authority may be given to the Children's Aid Society as its guardian. Subsection (2) of s. 83 is designed to enable the judge to "deal with" the matter of its newly-alleged condition only, and does not entitle him to embark upon a new inquiry as to the settlement of the child.

APPEAL by the Town of Lunenburg from the judgment of the Supreme Court of Nova Scotia, *in banco* (1), affirming, on an equal division of the Court, the judgment of Currie J. (2), dismissing an application for a writ of certiorari.

*PRESENT: Rand, Locke, Cartwright, Fauteux and Abbott JJ.

(1) 38 M.P.R. 353, 4 D.L.R. (2d) 740 (*sub nom. In re Cooper*).

(2) 1 D.L.R. (2d) 771.

C. R. Coughlan, Q.C., and *Archibald Burke*, for the appellant.

R. A. Kanigsberg, Q.C., for the respondent.

The judgment of the Court was delivered by

RAND J.:—The question raised in this appeal is that of the settlement of a child committed to the care and custody of a Children's Aid Society as a neglected child who, later, on an application to the Court, is found also to be a defective child.

When under Part III of the *Child Welfare Act*, R.S.N.S. 1954, c. 30, a child is brought before a judge or magistrate for a declaration that it is a neglected child, the judge, under s. 30(1) must, among other things, determine its place of settlement. On the application in this case that was found to be the town of Lunenburg.

Subsequently an application was made under s. 83 to have the child declared a defective. On that hearing the magistrate ruled that the settlement already found was binding on him and he declined to enter upon a reconsideration of it.

Mr. Coughlan's contention is that on the subsequent application the question of settlement must, by subs. (2)^o of s. 83, be inquired into anew and be decided in the light of the then existing circumstances. The subsection reads:

In the case of a defective child, or a child believed to be a defective child, who has been delivered to a Society or to the Director under Part III, the judge may hold the examination as in subsection (1)* and may deal with the case and may make any order or finding on the report of a psychiatrist and the reports of the Society or the Director without the necessity of hearing any further or other persons or evidence.

The new circumstance was that between the two applications the settlement of the father had changed from the town to the municipality of Lunenburg.

It is argued that the original finding does not establish a fixed statutory settlement; that settlement is to be determined from time to time by the appropriate law, in which

*Subsection (1) of s. 83 reads as follows:

"(1) When any defective child, or a child believed to be a defective child has been brought before a judge for examination, the judge shall investigate the facts of the case and ascertain the age of the child, and his settlement, the name and religion of his parents or guardian, and the judge may authorize an examination of the child by a psychiatrist, who shall make an examination as to the physical and mental condition of the child and shall report the same to the judge, and at the same time file a copy of the report with the Director."

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case it would change with that of the parent or guardian. But it is agreed that there is nothing in the statute which permits the original finding on an application for that purpose to be reopened. That means that, apart from the effect of s. 83, the settlement of the child so found remains fixed regardless of the residence of his parent. It is then only the accident of a further application being made under s. 83 for the declaration of defectiveness that is said to permit a new determination; and this, it is argued, is required by the language of the section.

I am unable to accept that contention. The purpose of s. 83 is limited to an enquiry into the alleged new condition of the child, its defectiveness, in order that the society, the guardian, may be invested with a new and extended authority in relation to its custody. Subsection (2) is designed to enable the judge to act upon the reports of a psychiatrist and the Society or Director "without the necessity of hearing any further or other persons or evidence". Certainly this *ex facie* excludes evidence on the question of settlement. That the judge "may deal with the case" means no more than to deal with the matter of its newly-alleged condition. The word "examination" harks back to the same word in line 3 of subs. (1), not to the requirement that the judge shall "investigate the facts of the case and ascertain the age of the child and his settlement". The word is used consistently throughout the section in contradistinction to "investigate" and in spite of the conflict of opinion in the Court below I am unable to feel any doubt upon the meaning the language was intended to bear.

This in substance was the view of the statute taken by Currie J. on the appeal from the magistrate and by MacQuarrie J. and MacDonald J. in the Court below, and in my opinion it is the sound view.

The appeal must, therefore, be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: C. R. Coughlan, Bridgewater, and Archibald Burke, Lunenburg.

Solicitors for the respondent: R. A. Kanigsberg, Halifax, and R. C. Sterne, Lunenburg.
