pressed. The judgment we now pronounce is that which I have already sufficiently indicated—to sustain the relevancy of the first charge of the libel as a charge of breach of trust and embezzlement, and with respect to all the other charges to find the libel irrelevant.

The Court accordingly repelled the objections to the relevancy of the libel as far as regarded the charge of breach of trust and embezzlement in the first charge; in all other respects found the libel irrelevant; and on the motion of the Advocate-Depute granted leave to desert the diet *pro loco et tempore.*

Counsel for the Crown—Solicitor-General Asher, Q.C.—R. V. Campbell, A.-D. Agent—Crown Agent.

Counsel for the Panel—Rhind—Hay. Agent—W. Johnston, Solicitor.

COURT OF SESSION.

Tuesday, February 24.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

WALLACE (J. BELL'S TRUSTEE) *v.* SHARP (E. M. BELL'S TRUSTEE).

Bankruptcy—Trust—Declaration of Trust on Eve of Bankruptcy—Conjunct and Confident.

In 1876 a father bought certain shares in a joint-stock company for his son, who had no funds of his own. The transfer and share certificate were in the son's name, and the latter was kept in the father's custody. The son's name was entered in the share register and list of shareholders. He attended the meetings of shareholders and received payment of dividends, which he applied to his own use. In 1884, when on the point of granting a trust-deed for creditors, the son granted a letter stating that the shares were "held practically in trust" for his father. Thereafter the estates of the father were sequestrated. In a question between the son's trustee and the father's trustee the latter maintained that the shares were truly the father's and held in trust by the son, and that the letter by the son above mentioned was proof by writ to that effect. *Held*—on consideration of a proof, in which the evidence of the son was that the shares were his own property, and not held by him in trust for his father, and that the letter was written by him in ignorance of the legal effect of the language used in it—that the father's trustee had failed to prove that the shares were the father's, and that the son's trustee was entitled to delivery of the share certificate.

Observations (*per* Lord Rutherfurd Clark and Lord M'Laren) on the case of *Matthew's Trustees* v. *Matthew*, June 28, 1867, 5 Macph. 957.

James Bell, iron merchant, Coatbridge, being insolvent, granted on 15th March 1884 a trust-deed for behoof of his creditors, in favour of John Wallace, accountant, Coatbridge.

The estates of Edward Mather Bell, tinplate manufacturer, Coatbridge, father of James Bell, were sequestrated in bankruptcy in June 1884, and Robert Sharp, iron merchant, Coatbridge, was appointed trustee thereon.

At the date of his granting the trust-deed James Bell's name stood on the register of the Coatbridge Tinplate Works (Limited) as owner of forty shares in the company. Those shares had been transferred to him on December 22, 1876, by the trustees of a Mr Campbell deceased. The transfer bore that the granters, "in consideration of the sum of £2625 sterling, paid to us as trustees foresaid, by James Bell, Esquire, residing at Cuparhead House, Coatbridge, do hereby transfer to the said James Bell the shares numbered 21 to 36, 331 to 342, and 403 to 414, all inclusive" [being those here in question], "standing in our names as trustees foresaid in the books of the Coatbridge Tinplate Works Company, Limited, to hold unto the said James Bell, his executors, administrators, and assigns, subject to the several conditions on which we held the same at the time of the execution hereof."

The certificate for those shares was dated December 29, 1876, and was in name of James Bell.

At the date of Edward Mather Bell's sequestration this share certificate in name of his son James Bell was in his (Edward Mather Bell's) possession and custody, into which it had been put from the time when the shares were transferred to James Bell. At Edward Mather Bell's sequestration it was taken possession of by Sharp as his trustee.

Wallace, as James Bell's trustee, raised the present action in the Sheriff Court of Lanarkshire at Airdrie against Sharp, as Edward Mather Bell's trustee, for delivery of the share certificate.

He averred that James Bell was the owner of the shares enumerated in the certificate, and that the certificate had been held by Edward Mather Bell on James Bell's behalf, and that he, as his trustee, was in right of the shares and entitled to possession of the certificate.

The defender denied that James Bell was the owner of the shares, and averred that they were bought and paid for by Edward Mather Bell and put by him in his son's name in trust for himself and for the purpose of enabling James Bell to attend and vote at the meetings of the company; that the transfer to James Bell was gratuitous.

The pursuer pleaded that he being, as James Bell's trustee, in right of the shares, was entitled to delivery of the certificate.

The defender pleaded: — "(2) The shares having been placed in name of James Bell in trust for the bankrupt, the defender is entitled to absolvitor. (4) The transfer to the said James Bell being a gratuitous alienation to a conjunct and confident person in defraud of prior creditors, is null and void under the Act 1621, c. 18. (5) The said shares having been bought and paid for by the bankrupt, and not having been validly or irredeemably conveyed away by him, form part of his estate, and now belong to and are vested in the defender as trustee thereon in virtue of the Act and warrant in his favour."

The defender produced the following letter by James Bell to Mr Wyllie Guild, C.A., who

had in March 1884 been making an examination into the affairs of Edward Mather Bell :—"*Coatbridge*, 10 *Mar.* 1884.—Dear Sir,—In reply to your enquiry as to the forty shares in the Coatbridge Tinplate Co. (Limited), standing in my name, I have to explain that I paid nothing for them, and that they are held practically in trust for my father. I undertake that I shall not transfer them to anyone without your knowledge. —Yours truly, JAMES BELL. The date (10th March 1884) was only five days before he signed his trust-deed. It was signed by James Bell himself, but the body of it was written by Mr Guild's clerk.

It appeared from the share ledger of the company (which comprised also the register of members, register of transfers, and annual list of shareholders) that the transfer of the forty shares in question in favour of James Bell was made on 29th December 1876, and that his name alone appeared in the list of members as holder of these shares for 1877, and every year thereafter down to 1884. It also appeared from the minute book of the company that James Bell was present at most of the meetings of the company from 1877 to 1884. It also appeared from the company's books that James Bell had drawn the dividends and obtained certain sums as interest on capital, and had granted receipts for interest and dividends.

Edward Mather Bell deponed—He acquired a number of shares from Mr Campbell's executors. The titles of these shares were taken in his own name and in the names of his two sons, James being one. Being asked what his intention was in taking these shares in the name of James, he further stated—"They were bought as an investment, and at the same time it was to give these young lads a holding in the company, and give me a power of voting. Did you give him these shares as his own absolute property?—Undoubtedly they would remain his property. After the transfer of these shares was registered the certificates were put into a safe at home. Were all the certificates handed to you, or were the certificates for the shares sent to the parties in whose respective names they were done?— . . . . I could not say who they were delivered to. They might be posted and they might not. All the certificates lay in my safe in my own house. They never were taken out till my sequestration. . . . It was from a general interest that I wished my son to hold shares. I always meant that he should be connected with the place. He did not pay any part of the price. . . . . You were examined in your sequestration on 20th June of this year, and you then said, 'The intention was that he was to get them in the event of my decease. While I lived I was to have the control of them if I needed them.' Is that correct?—That was my interpretation of the position certainly, but if the works had gone on prospering I have no doubt but that they would have been his property absolutely. Before your decease?—Quite so. . . . Did you consider after these shares were transferred to your son that you had no further hold upon or right to them?—Well, I would say that, for instance, if he had attempted to sell them I certainly would have objected and tried to oppose it, but I do not say but what he could have sold them. Why would you have objected?—Because they were purchased for the general good of the family interest."

James Bell deponed—He was living in his father's house when he acquired the shares in 1876. He had possession of the share certificate when the transfer was accepted. He handed it to his father for safe custody, to be kept in the safe in his house. He had no other property except these shares. He received profits out of the company in respect of them as long as the company continued to pay dividends. "I got the money, and from first to last I got the interest myself, and applied it to my own purposes. The shares were my own."

In regard to the expressions used in the letter to Mr Guild he stated—"It is not correct to say that they were practically in trust for my father. On what footing were they placed in your name?—My own. They belonged to me. My father did not reserve any right in them at all. I could have sold them if I had liked. . . . . What do you mean by the use of the word trust?—I did not mean to use the word trust. Trust was used. What did you understand to be the meaning of it?—Trust was talked about; but I did not understand, and do not rightly know yet. I know now, but I did not rightly understand what a trust was. I did not know that by using the word trust I was handing away a thing I had no right to do."

He further stated that he was sent for to come to Mr Guild's office in Glasgow, and there he signed the letter. It was at Mr Guild's suggestion that he did so. Mr Guild dictated the letter, and he signed it, but no pressure on him to do so was used. At the time his father gave him the shares he did not limit him in any way in regard to the use of them. He made no stipulation in regard to disposing of them. When he started in business for himself in 1879, and arranged a cash-credit, he had no doubt that he was absolute owner of the shares. He told his cautioners that, and they knew that he had no other estate.

The Sheriff-Substitute (MAIR), after finding that the shares were transferred to James Bell in terms of the transfer above quoted, found as follows:—"(2) That the sum of £2625 [the price of the shares] was advanced by Edward Mather Bell, father of the said James Bell, that at the date of the said advance the said Edward Mather Bell was solvent, and that therefore the advance by him on the said transfer was not to the prejudice of his prior creditors; (3) that notwithstanding that the consideration for the said shares was advanced by the said Edward Mather Bell, the shares were transferred absolutely to the said James Bell, and in his own right, and were not held in trust by him for Edward Mather Bell, and that the said James Bell has exercised all the rights of a shareholder of the said Coatbridge Tinplate Works Company down to the present time: Therefore repels the defence, and decerns in terms of the prayer of the petition, &c.

"*Note.*— . . . The first question then to be considered is, whether the shares were placed in name of James Bell in trust for his father Mr Edward M. Bell? On 22d December 1876 the trustees of the deceased Thomas Buchanan Campbell, by deed of transfer, in consideration of the sum of £2625 paid to them by James Bell, transferred to him 'the shares numbered 21 to 36, 331 to 342, and 403 to 414, all inclusive,' standing in their names

as trustees in the books of the Coatbridge Tinplate Works Company, 'to hold unto the said James Bell, his executors, administrators, and assignees, subject to the several conditions on which we held the same,' and the transfer is signed by James Bell as agreeing to take the shares subject to the same conditions.

"This was an absolute transfer to James Bell of the shares. James Bell was, in virtue of this transfer, duly entered in the register of members or shareholders, and in the books of the company, as the absolute proprietor of these shares. He was regularly entered in the same way in the annual lists of members or shareholders of the company, and his name appears in the list for the present year, 1884, as such shareholder. James Bell has since the transfer drawn on his own account the dividends or interests accruing on his shares, and attended meetings of the shareholders, and he has, in short, all along exercised all the rights and privileges of a shareholder of the company. So far, therefore, it cannot be said that the shares were 'placed in name of James Bell in trust' for his father Mr Edward M. Bell. The written evidence to which I have referred shows the contrary. But it is said that the consideration for these shares was advanced by Mr Edward M. Bell, and that is true. But the mere fact of this being done would not of itself create a trust. If the father is otherwise solvent, there is nothing to hinder him advancing money to his son to enable him to purchase shares in a company, especially in one in which the father himself has an interest. There have been cases where this has been done to enable the son to obtain a franchise qualification. It is said, however, that a donation is not to be presumed, and this is also true. But the best proof in support of the donation is (1) the absolute character of the transfer itself; and (2) the fact that all along James Bell enjoyed all the rights and privileges of a shareholder of the company. All this, however, does not exclude the defender, if he can, establishing by the writ or oath of James Bell that he (James Bell) held the shares in trust for his father. This is the only mode of proof allowed by the Act 1696, c. 25. James Bell has been examined, and he has sworn that the shares in question were transferred to him absolutely—that they were his own property, and that they were not held in trust for his father.

"But it is said that on 10th March 1884 he signed a letter addressed to Mr Wyllie Guild, accountant in Glasgow, acknowledging that the shares were held in trust for his father. This letter is as follows: [*letter above quoted.*]

"Now, down to the date of this letter there is not the slightest trace of a trust, and the date of it is just five days prior to James Bell granting the trust-deed for behoof of his creditors. James Bell was examined with reference to this letter, and it appears from his deposition that at the date of it his father's affairs were in the hands of Mr Wyllie Guild; that he was sent for to go to Mr Guild's office; that the letter was dictated by Mr Guild to a clerk in his office, and that it was at his suggestion James Bell signed it; that he did not understand the letter before he signed it; and that he did not understand he was signing away the shares. In the circumstances I cannot hold that this letter was, in the sense of the statute, an acknowledgment of trust on the part of James Bell. The letter itself must, in my opinion, be taken with the qualification or explanation given by James Bell in his oath. The letter, however, has some peculiarities. It is dated 'Coatbridge,' although written in Glasgow, and bears to be 'in reply' to some inquiry which does not seem to have been made. Besides, it is ambiguous in its terms. What do the words 'practically in trust' mean? They might mean something different from an absolute trust for the father. It is to be kept in view that at the time James Bell acquired the shares in the Tinplate Company his other brother also acquired some shares, his father in like manner advancing the money for him. The father was himself a large shareholder in the company at the time, and according to his evidence his object was to give his sons an interest in the company and at the same time to have their votes in matters concerning the company. Keeping all this in view, the words in the letter 'practically in trust' may have a meaning altogether different from that put upon them by the defender. It may be that what was meant by these words was, that although James Bell was the absolute proprietor of the shares, it was understood that he was not to part with them, but that he was to give his father the benefit of his vote as occasion required; accordingly, what follows in the letter to Mr Guild is quite consistent with this idea—'I undertake that I shall not transfer them (the shares) without your knowledge.' Now, it seems somewhat strange if these shares were all along held really in trust by James Bell, that instead of taking the letter from Mr James Bell Mr Guild did not get him to execute a transfer of them then and there for the benefit of the father's creditors. The inference to be drawn from his not getting this done is that if such a thing had been proposed to James Bell he would not have agreed to it. But assuming for a moment that the letter was unambiguous in its terms as to a trust in the person of James Bell, I have grave doubts as to whether it can be founded on by the defender. Previous, and down to its date, there can be no doubt James Bell was the reputed owner of the shares. If the effect of granting the letter was to take these shares from him, the fact of his granting a trust-deed five days afterwards for behoof of his creditors shows that the granting of that letter was to the prejudice of his creditors. In short, James Bell was then, or thus became, insolvent, and it is trite law that from the moment of constructive bankruptcy the debtor can do no act by which the situation of his creditors may be altered, even to the effect of establishing equality amongst them. At the very best, James Bell's father was in the position of a creditor of his son, and the effect of granting the letter within sixty days of the son's bankruptcy was to give a preference over his other creditors. In this view the letter was null and void.

"But on the whole matter, on this question of trust, I am of opinion that the defender has failed in his contention." . . .

The defender appealed to the Court of Session, and argued—He did not propose to contest the Sheriff-Substitute's judgment on the question of the solvency of Edward Mather Bell at the time the shares were transferred. He had in the letter of James Bell, which was a distinct acknowledgment of a trust already existing, a writ which proved the trust he alleged. As such

it was not struck at by the Act of 1696. It was not permissible within the sixty days to create a new debt, but it was permissible to acknowledge a debt previously constituted—*Matthew's Trustees* v. *Matthew*, June 28, 1867, 5 Macph. 957. Besides, he was not limited to writ for proof—*Wink* v. *Speirs*, December 3, 1867, 6 Macph. 77. It could not be taken from James Bell that he did not know what he was writing when he wrote "trust." The pursuer could base no intelligible argument on the use of the word "practically." The evidence of Edward Mather Bell, who had no interest whether the money went to his son's creditors or his own, was clear in favour of trust. A man did not borrow, as he said he did, in order to make a donation to his son.

The pursuer replied—All the documents were in favour of out-and-out ownership of the shares by James Bell, at least till the date of the letter, which, if anything, was an attempt to constitute a trust within five days of bankruptcy, and therefore illegal. The letter not being sufficient to do so, a previously existing trust could not be set up by parole evidence. The circumstances were not parallel to those of *Matthew's* case, for no pre-existent debt had been shown here. The use of the word "practically" was inconsistent with the idea of a trust in the legal sense, and showed the truth of James Bell's evidence when he said he understood that the shares were his own.

At advising—

Lord Craighill—The action brought before us by the present appeal is between Mr Wallace, the trustee for the creditors of James Bell, iron-merchant in Airdrie, and the trustee on the sequestrated estate of Edward Mather Bell, the father of James Bell, and what is to be determined is the right of property in certain shares of the Coatbridge Tinplate Works, Limited, which were acquired in 1876 by a certificate, delivery of which to the pursuer the Court is prayed to ordain in the petition in which the cases originated. The transfer was to James Bell. This transfer was registered in the books of the company as well as in all the annual lists of partners. He was set forth as the owner of the shares in question. Moreover, the only dividends which have been declared subsequent to 1876 were paid to James Bell, and were applied by him to his own uses and purposes. The certificate, however, was in the possession of Edward Mather Bell when his estates were sequestrated in June 1884, and his trustee when asked by Mr Wallace, the trustee for James Bell's creditors, for delivery of it, refused to give delivery, upon the ground that, though the transfer was in the name of Mr James Bell, he truly received the title only as a trustee for his father. The point for determination, therefore, is whether James Bell held the shares for himself, or only as trustee for his father. As the writs constituting the title are in favour of the former, the burden of proof of trust rests upon the trustee of Edward Mather Bell. This can only be discharged by such proof as is requisite by the law of Scotland—namely, the writ or oath of the alleged trustee. There has been no reference to oath, and the writing which is relied upon is the letter of 10th March 1884. By that time the affairs of Edward Mather Bell were in confusion, and Mr Wyllie Guild, accountant in Glasgow, was making investigation to ascertain what was their true position. In following out this inquiry he sent for James Bell, and the result of the interview was the writing and the delivery of the letter which has just been mentioned. There are two lights in which this letter possibly may be regarded. The first is, that it is the constitution of a trust; the second, that it is evidence of a pre-existing trust. Taking it to be the former, it will not serve the purpose of Mr Sharp, the trustee for the creditors of Edward Mather Bell, because within five days from its date James Bell granted a trust-deed for his creditors. The constitution of a trust, therefore, by this letter would be neither more nor less than the alienation by James Bell, to the prejudice of the creditors, of a portion of his property for the benefit of the creditors of his father. Were it a question between Mr Sharp and James Bell as an individual, the latter might be bound by the engagement contained in the letter, but he can make no engagement which would practically involve the alienation of part, or it may be the whole, of his estate to the prejudice of his creditors. Counsel for Mr Sharp, indeed, did not maintain that, in the circumstances of the case, the letter, if it was the constitution of a trust, and not merely evidence of a pre-existing trust, would be obligatory. What is its efficacy, then, viewed as evidence, for what it is worth, of a pre-existing trust? The letter does not prove such a trust. This was conceded, and so in order to get the benefit of this written acknowledgment it is necessary that the trustee for the father's creditors should prove the previous existence of the trust. This has been attempted, and it has been contended that all that is required has been accomplished. But I am of opinion that the thing to be proved has not been established. James Bell, according to my reading of his evidence, not only does not prove the existence of the previous trust, but swears the contrary; nor does Edward Mather Bell, the father, depone satisfactorily to the contrary of the son's deposition. These witnesses therefore do not prove the alleged trust, and what more is there in the way of proof? Simply the conduct of parties subsequent to the transference in favour of James Bell in 1876. Not merely was he alleged as the owner, and set forth in the annual lists of partners as the owner, but he appeared at the meetings of the company in that character, and, what is far more important, he received the dividends and used them without challenge as his own. These being the facts as bearing on the proof, my opinion is that the conclusion at which the Sheriff-Substitute has arrived is correct, and that his judgment ought to be sustained.

Lord Rutherfurd Clark—This is a question between the creditors of James Bell upon the one hand, and those of Edward Mather Bell upon the other. The question is to whom certain shares in a company called The Coatbridge Tinplate Company belong. The shares stand registered in the name of James Bell, and his creditors maintain that they belong to him and are his property. On the other hand, the creditors of Edward Bell maintain that these shares registered in the name of James Bell were held in trust by him for his father. There is thus on the part of the creditors of the two Bells a claim to shares which stand

registered in the name of James Bell, and unless they prove the existence of that trust in a legitimate and legal manner, of course the creditors of the father cannot take the shares. But a letter was obtained from James Bell on the 10th March 1884, in which, as I shall show, he acknowledges the existence of a trust in favour of his father, and founding upon that letter, the trustee of the father claims the beneficiary interest in these shares which stand in the name of James Bell. Now, assuming that there is no question on the terms of the letter, I do not doubt that that letter is proof of trust as against James Bell, and if the father were vindicating these shares the letter would be a sufficient evidence of trust as against the son. Probably, if the question had arisen, as Mr Mackintosh put it, between the father and the son, or the father's trustees, and the son as an individual, we might or might not have required further evidence than what was furnished by the letter itself. But the case, as I have said, does not arise between father and son, or even between the father's creditors and the son, but between the father's creditors and the son's creditors. I find that this letter, which practically would have the effect of striking out of the son's sequestration—or trust if he is not sequestrated—those shares and putting them into the father's sequestration, was a letter which he granted when he was insolvent and within five days, not of notour bankruptcy, but of declared insolvency—declared by the execution of a trust deed. Now, I am not going into the doctrine laid down in the case of *Matthews;* nor am I going to say that the granting of this declaration was in breach of the Act 1696; but I think it plain that this letter could only be effectual in favour of the father's creditors if it were true in point of fact that the trust did exist at that time, and that the son in consequence of the existence of that trust was bound and entitled to grant such a document. The question therefore really turns on that question of fact, whether the alleged trust did or did not exist? Now, in examining questions of this kind I confess I am not very much inclined to believe that a document by one within or near the period of his actual insolvency is a very pregnant proof of the fact which it sets out, whatever may be its form. It is undoubtedly a document which surrenders a part of the bankrupt's estate, and although he may be entitled to surrender it, if it be really a trust in his person, his statement that it was a trust must, I think, be received with all manner of caution. His own statement is certainly not proof of a trust in such circumstances. While, therefore, the document cannot itself be taken as proof of the trust as against the creditors of James Bell, which it might have been in the case of James Bell himself, when we inquire what is the other evidence of the existence of this trust, we find that the evidence is confined in the first place to the testimony of two individuals. One of these individuals is James Bell himself, and his statement is that there never was a trust—that these shares all belong to him—and that he granted this letter which was prepared for him by Mr Wyllie Guild in ignorance of its meaning. Now, I do not know how far we are to assume that James Bell was ignorant of what the phrase "holding in trust" meant. But at all events the effect remains that if we examine into the parole evidence we find him saying that there never was a trust. Therefore if that be so he acknowledges that he never was entitled to grant the letter of 10th March 1884. If the fact be in accordance with his evidence, then that letter was not only a letter he was not entitled to grant, but it was a direct fraud upon his creditors, which the law would cut down. Then the next question is, What is the evidence of the other witness—the father? I confess, on examining his evidence, I am at a loss to know exactly as to what his position was as to these shares—whether they were meant to be out and out given or granted to the son, to become the son's property during the son's life, or subsequently to be given to him by testament. I would rather gather from the father that these shares were really the son's, although the father might have some control over them—that is, that they might be given to the son, but that the son should not part with them in order that the shares might be used for the purpose for which they had been acquired, viz., to give the family some power in the Tin Plate Company. But I cannot see any distinct statement even of the father that these shares were, as his creditors now pretend they were, during the whole period his exclusive property. If that be the state of the parole evidence, what is the state of the other evidence? Why, those shares were transferred so far back as 1876, and from that date downwards they have been treated in the most unreserved manner as the property of James Bell. If the trust did exist, as is suggested by the creditors of the father, then of course the income of the trust estate should have passed into the hands of the father, the beneficiary under that trust. But instead of its doing so it is a matter of admission on both sides that the income of the trust-estate was retained and used by James Bell for his own purposes. Anything more conclusive against the existence of a trust I cannot see. The case therefore presents in effect a total dissimilarity from the case of *Matthews* to which I have been referred. In that case the husband on the eve of bankruptcy had acknowledged that he was a debtor to his wife in certain sums he had received from her at previous times. The Court had no hesitation in believing the husband and the wife, and the effect was that, as the documents set out, that the husband really was a debtor in sums of money he had received from her. They therefore sustained her ranking on that estate. But here I have only what is no satisfactory proof to me, what the document in this case sets out—viz., that there was a trust in the son for the benefit of the father. I think the whole evidence in the case goes to show very clearly that there was no such trust at all, and that therefore the document cannot be sustained as against the creditors of James Bell. I am of opinion that the judgment should be adhered to.

Lord M'Laren—It would be unfortunate if a party on the eve of insolvency should be able to grant a document in favour of a conjunct and confident person declaring that an important part of his estate belonged to that person and not to himself, and that such document should be taken, as in a case of solvency, as evidence of the property in that part of his estate. It would be equally unfortunate if a party, not standing towards the grantee of such a document in the relation of debtor to creditor, should be prevented,

in contemplation of insolvency, from acknowledging that he held certain property in trust under a trust previously created. I do not think the case of *Matthew's Trustees* was intended to preclude inquiry into such circumstances as we have here, and I was impressed with a remark made by Lord Rutherfurd Clark in the course of the argument, that the true doctrine of that case was, that while such a document is not cut down indiscriminately by the operation of the Act of 1696, which annuls all deeds granted in favour of creditors within sixty days of bankruptcy, yet the same result may be brought about by the operation of the common law of bankruptcy or of the earlier statute of 1621, if it can be shewn that the document was in truth granted to a conjunct and confident person after insolvency.

In that view, then, this case presents no difficulty to my mind, because while it is not unreasonable to suppose that James Bell should grant a letter acknowledging that he was ready to reconvey the shares to his father when required to do so, yet the acknowledgment merely displaces the presumption that the shares were the property of the person in whose name the certificate was taken, and leaves it open to proof who was the beneficial owner of them. I do not think the statement in the letter operates against the credibility of James Bell. The letter was written without legal advice, and I see nothing in it to show that James Bell did anything more than say that he was prepared to make over the shares to his father if required, from whom he had gratuitously received them. Being himself on the eve of insolvency, he had no interest that the money should go to his father's creditors rather than his own; and when examined he gives a candid account of the matter, and I am willing to accept his statement that he really did not know whether it was to be kept for his own creditors or be made over to his father's creditors. I am not surprised that one not a lawyer should be ignorant of the possible effect of such a letter.

It appears to me to be established from the evidence that the conveyance of this stock by Edward Mather Bell to his son originally was a gift and not a trust; and that being so, the letter by James Bell was no more than a gratuitous alienation by a party insolvent to the prejudice of creditors, and therefore reducible.

The Lord Justice-Clerk and Lord Young were absent.

The Court pronounced this interlocutor:—

"Find in fact that the shares in question, according to the tenor of the certificate granted to James Bell, were his property, and that the trust alleged by the defender for James Bell's father Edward Mather Bell has not been proved: Find in law that the pursuer is entitled to delivery of the said shares: Therefore dismiss the appeal; affirm the judgment of the Sheriff-Substitute appealed against; of new ordain the defender to deliver up to the pursuer as trustee for the creditors of James Bell the certificate specified in the prayer of the petition," &c.

Counsel for Pursuer (Respondent)—Comrie Thomson—Jameson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Defender (Appellant)—Mackintosh Graham Murray. Agent—John Macpherson, W.S.

Tuesday, February 24.

SECOND DIVISION.

[Lord Fraser, Ordinary.

NORTH BRITISH RAILWAY COMPANY AND FORTH AND CLYDE JUNCTION RAILWAY *v.* REID (INSPECTOR OF POOR OF ST NINIANS).

Poor—Poor-Rate—Assessment—Poor Law Act 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 36.

From 1846 a parochial board assessed occupants in the parish of N. under section 36 of the Poor Law Act of 1845, on the following classification—Class I. Dwelling-houses; Class II. Sale-shops, factories, and minerals; Class III. Lands. The rate on Class II. to be one-half, and on Class III. one-fourth, of the rate on Class I. This classification was approved of by the Board of Supervision, and was acted upon till 1857, in which year the parochial board resolved "That one uniform rate be assessed on the tenants or occupants of all heritages not being lands used for agricultural purposes." The Board of Supervision intimated approval of this change. Thereafter the parochial board, in imposing its assessments acted on the following classification—"Class I. Houses, shops, factories, or other buildings or premises, minerals, railways, fishings, shootings, and other heritages. Class II. Farm or land used for agricultural purposes. The rate on Class II. to be one-fourth of the rate on Class I." It assessed the undertakings of a railway company in the parish at four times the rate imposed on agricultural land. In 1884 the railway company objected to the assessment as wrongous and illegal, on the ground that the classification had not been sanctioned by the Board of Supervision, and was not in terms of the Poor Law Act, and suspended a charge to pay it. *Held* that the classification had been approved of by the Board of Supervision, and acted on by all parties, and that though it might be inequitable the Court could give no remedy by suspension.

This was a suspension by the North British Railway Company and Forth and Clyde Railway Company of a threatened charge at the instance of the respondent, the Inspector of Poor of St Ninians, to pay certain sums of poor, school, and registration and sanitary assessment.

The value of the former company's undertaking in the parish was £437, that of the latter £1801. By arrangement between the companies the former paid the public and local rates and taxes due from the latter, doing so out of the gross traffic receipts. The rates in question were payable one-half by owners and one-half by occupants.

Section 36 of the Poor Law Act 1845 (8 and 9 Vict. c. 83) provides—"That where the one-half of any assessment is imposed on the owners, and