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

the other half on the tenants or occupants of lands and heritages, it shall be lawful for the parochial board, with the concurrence of the Board of Supervision, to determine and direct that the lands and heritages may be distinguished into two or more separate classes, according to the purposes for which such lands are used and occupied, and to fix such rate of assessment upon the tenants or occupants of each class respectively as to such boards may seem just and equitable."

It was admitted by the parties to this action that in 1846 the Parochial Board of St Ninians resolved to impose the assessment for the then ensuing year by assessing "the owners of all lands and heritages within the parish at the rate of £1, 15s. per £100 on the annual value of their lands and heritages; the tenants of the land at the rate £1 per £100 on the annual value of the land occupied; tenants of dwelling-house at the rate of £4 per £100; and the tenants of sale-shops, factories, and minerals at the rate of £2 per every £100 of annual value of the heritages occupied by each respectively." (Stat. 8) The classification of occupants for the purposes of assessment thus was:—Class I. Dwelling-houses. Class II. Sale-shops, factories, and minerals. Class III. Lands. The Board of Supervision intimated approval of this classification on May 1, 1846, by a letter stating that the Board had approved thereof. The classification thus sanctioned was given effect to and acted on by the Parochial Board for a number of years. In 1857, however, 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." This resolution was thereafter communicated to the Board of Supervision. In intimating it on behalf of the Board the Inspector stated that "the only effect of this will be that the tenants of minerals, instead of paying one-half as formerly, will pay the same rate as tenants of houses, factories, railways, fishings, &c.," and on 13th November 1857 the secretary wrote to the inspector of the parish stating that the Board of Supervision had approved of the alteration in the classification of rates resolved on at the meeting of the Parochial Board of St Ninians on 28th October 1857.

Thereafter the Parochial Board acted on the footing that the classification of 1846 had been changed, and that the classification had become—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. Acting on this classification, the Parochial Board assessed the complainers from 1857 onwards, as tenants and occupants, at the rate applicable to Class I., which was four times the amount of the rate on land used for agricultural purposes. It was according to this classification that the assessments were imposed, of which the complainers complained in this suspension.

The complainers averred—"(Stat. 11) No such classification as that represented by the said Parochial Board to be now in force in the said parish was ever sanctioned or approved by the Board of Supervision, and the foresaid assessments have not been regularly and legally imposed on the complainers in terms of the said Poor Law Act. The classification sanctioned by the Board of Supervision in 1846 has never been validly altered or superseded, and the complainers' undertakings in the said parish fall to be classified and rated as 'lands' under that classification. By the foresaid resolution of 28th October 1857 it was proposed only to distinguish the lands and heritages in the parish into two separate classes. The rates of assessment to be imposed on the tenants or occupants on each class respectively, as required by the foresaid section of the Poor Law Act, were not fixed or in any way referred to, and the Parochial Board never had any right or authority whatever to fix the rate of the one class at one-fourth of the rate on the other. The assessments imposed on the complainers by the said Parochial Board, and of which they demand payment as aforesaid, are in excess of what would fall to be imposed on them if the foresaid subjects were properly classified, or the assessments had been imposed in terms of the Poor Law Act, and are wrongful and illegal."

The respondent denied this averment and "explained that the intention and effect of the resolution adopted by the Parochial Board, and approved by the Board of Supervision in 1857, was to divide the whole heritages in the parish into two classes, viz.—(1) Lands used for agricultural purposes; and (2) all other lands and heritages; the former to be rated at one-fourth of the rate upon the latter. The complainers' railways, &c., not being lands used for agricultural purposes, have been properly assessed.

The complainers pleaded—"(1) The classification under or in terms of which the assessments, of which the respondent demands payment as aforesaid, were imposed on the complainers not having been sanctioned or approved of by the Board of Supervision, the said assessments are wrongful and illegal, and the respondent is not entitled to enforce payment thereof. (2) The said assessments being in excess of what would fall to be imposed on the complainers if the foresaid subjects were properly classified, or the said assessments had been imposed in terms of the Poor Law Act, the complainers are entitled to have the assessments rectified and the proceedings complained of suspended."

The respondent pleaded—"(1) The classification under which the complainers have been assessed having been fixed by the Parochial Board, with the concurrence of the Board of Supervision, in terms of the Poor Law Act, the note should be refused. (2) The present classification and mode of assessment having been in force in the said parish since 1857, and the complainers having been assessed in terms thereof, without objection, they are barred from insisting on the present suspension."

A proof was led at which the only witness examined was Mr Skelton, the secretary to the Board of Supervision. He proved that among the documents produced was one dated 13th November 1857, containing the approval by the Board of Supervision in that year of the classification which the Parochial Board had adopted. It was in the terms quoted above.

It also appeared that in 1869 the Board had refused to approve a new classification. They did so because they were not satisfied with the manner in which the Parochial Board proposed to classify agricultural land.

A minute of the Board of Supervision, dated 18th November 1869, was produced, which bore, relative to the change in the classification of subjects proposed in September of that year, that "the Board decline to approve of the proposed change."

The Lord Ordinary pronounced this interlocutor:—"Finds that the Board of Supervision, on 12th November 1857, approved of a classification of rates submitted to them for approval by the Parochial Board of St Ninians, which was in the following terms—'That one uniform rate be assessed on the tenants and occupants of all heritages not being lands used for agricultural purposes:' Finds that this classification has been in observance ever since by the said Parochial Board: Finds that the assessments of which the Parochial Board demand payment were in conformity with this classification: Therefore repels the reasons of suspension, and decerns, &c.

"*Note.*—The classification approved of by the Board of Supervision in 1857 was most inequitable, and certainly was most unusual. To make warehouses and shops and railways pay at the same rate as dwelling-houses was to make a classification which disregards the two principles according to which a classification should be made. The Board of Supervision have no power to take the initiative and compel the Parochial Board to come to a resolution that would be fair and equitable. Their only power is to approve or disapprove of what the Parochial Board propose, and the only remedy in the hands of the suspenders is to attend a meeting of the Parochial Board, and induce them to send up a better scheme for the approval of the Board of Supervision.

"That the Board of Supervision did in the year 1857 approve of the classification made before them in that year is clearly established by the excerpts from their books, with the letters produced, and the evidence of the secretary of the Board."

The complainers reclaimed.

At advising—

Lord Craighill—This action arises at the instance of the North British Railway Company and the Forth and Clyde Junction Railway Company against the Inspector of Poor of the parish of St Ninians in the county of Stirling. The complaint sets out that the complainers are threatened to be charged at the instance of the respondent to make payment to him of certain assessments said to be exigible by him for the year from Whitsunday 1883 to 1884, amounting in all to the sum of £74, 12s. 2d. The ground upon which the complainers seek to have the charge suspended is that the classification under or in terms of which the assessments of which the respondent demands payment were imposed on the complainers without having been sanctioned or approved of by the Board of Supervision, and that they are therefore wrongful and illegal. They also plead that the assessments are in excess of what would fall to be imposed on the complainers if the subjects were properly classified.

There is no doubt that the Parochial Board are entitled to impose such assessments as this which is brought under the consideration of the Court, because the 36th section of the Poor Law Act (8 and 9 Vict. cap. 83) provides—"That where the one-half of any assessment is imposed on the owners, and the other half on the tenants or occupants of lands and heritages, it shall be lawful for the parochial board, with the concurrence of the Board of Supervision, to determine and direct that the lands and heritages may be distinguished into two or more separate classes, according to the purposes for which such lands are used and occupied, and to fix such rate of assessment upon the tenants or occupants of each class respectively, as to such boards may seem just and equitable."

That is, it is provided by this section that the Parochial Board, with the approval of the Board of Supervision, may do two things. In the first place, they may classify the lands and heritages; in the next place, they may fix the rates that shall be paid by one class and what shall be paid by others. There is no controversy with regard to this matter, for it is plain on the face of the Act of Parliament that the condition of the argument for the respondents as well as for the complainers themselves is that the Board of Supervision shall have given their authority to that which since 1846 has been done in the imposition of assessments on the different existing classes.

That being so, the question comes to be, whether or not the assessment in question is one for the levying of which we have not clearly the authority of the Parochial Board, and also the authority of the Board of Supervision. The authority of the Board of Supervision does not seem to me to require to be given every year. In this respect it stands in a different position from the passing of an annual minute by the Parochial Board itself. Once for all, as it seems to me, authority was given by the Board of Supervision, and then, according to my reading, there was fulfilment of the conditions of the Act of Parliament.

Now, it appears to me that in April 1846, the Poor Law Act having been passed in April 1845, the Parochial Board of St Ninians came to a resolution in which certain assessments were fixed. What they did is set forth in the minute printed in statement 7, annexed to the prayer, as follows:—"The Board then proceeded to impose the assessment for the ensuing year, and resolve, with concurrence of the Board of Supervision, to adopt the scheme of rates recommended by their Committee. The Board therefore did, and hereby do, assess the owners of all lands and heritages within the parish at the rate of £1, 15s. for £100 on the annual value of their lands and heritages; the tenants of land at the rate of £1 per £100 on the annual value of the land occupied; tenants of dwelling-houses at the rate of £4 per £100; and the tenants of sale shops, factories, and minerals at the rate of £2 for every £100 of annual value of the heritages occupied by each respectively."

Then in the 8th statement the complainers say—"The following classification of occupants for the purposes of assessment in the said parish was thus sanctioned by the Board of Supervision, and was for a number of years acted on and given effect to by the Parochial Board of the said parish, viz.—Class I. Dwelling-houses; Class II. Sale shops, factories, and minerals; Class III. Lands. The rate on Class III. to be one-half, and on Class

III. one-fourth of the rate on Class I."

Thus we have the authority of the Board of Supervision given to that which, by the minute laid before them for their approval, the Parochial Board endeavoured to accomplish. And things so continued till 1857. At that time it seemed fit to the Parochial Board to make a change on that which had been sanctioned and had been in existence, and what they did was to pass this minute, which is set out in statement 9, to the effect "that one uniform rate be assessed on the tenants or occupants of all heritages, not being lands used for agricultural purposes." The thing which the Parochial Board intended to do when this part of the minute was passed was to accomplish the results specified in the subsequent portion of the draft, and which is set out in the answer to statement 9—"The Parochial Board of St Ninians, at a general meeting held here this day, after due intimation, resolved so far to change the mode of classification of rating approved by the Board of Supervision 1st May 1846, so that a uniform rate shall be laid upon the tenants of all heritages, not being lands used for agricultural purposes. The only effect of this will be that the tenants of minerals instead of paying one-half as formerly, will pay the same rate as tenants of houses, factories, railways, fishings, &c."

Now, it can easily be seen that what was in the view of the Parochial Board to do was to reduce Class I. and Class II. into one class, and to leave the proportion which was payable by the lands or other heritages in Class III. to bear the same relation to other assessments as had been sanctioned by the minute of the Board of Supervision in 1846. That was undoubtedly their intention, but of course a thing may be well intended but yet for want of that which is necessary there may not be all that is required for its accomplishment. It is evident that this was so in the case in question. There is no secret about that matter. Before the Board gave sanction to this resolution inquiries were made. In terms of the notice a meeting was called which passed the resolution of 28th October. What were the terms of the minute adopted on that occasion? This looks strange now, but it is a thing which no reasonable person would have expected at the time. The Parochial Board sent an account of the proceedings to the Board of Supervision, which is published in a Stirling newspaper, seemingly to some extent substituting that report for the minute of the meeting itself or a certified copy. The secretary of the Board was communicated with in regard to a complaint by certain persons that that which was intended to be accomplished by a portion of the resolution to which their approval had been given was not attained. Various proceedings took place upon this matter, and various complaints were made, but I think there can be no doubt whatever as regards what was done when the Board of Supervision were charged with the knowledge of that which was intended to be accomplished, and therefore all that is necessary to determine is whether what was accomplished by the permission given is such as to satisfy the requirements of the section of the Act of Parliament referred to.

Now, what the Board did—once they had all the deliberation that was necessary—was to instruct the secretary of the Board of Supervision in terms of the letter quoted in statement 9:—"With reference to your communication dated 30th ulto., I am to inform you that the Board of Supervision has approved of the alteration in the classification of rates resolved on at the meeting of the Parochial Board of St Ninians on 28th October 1857."

I do not know if there is any purpose in classifying two things together which the Act keeps separate. What the Act asks to be kept separate is the classification of certain lands and heritages, but whatever the Board meant to do I have no doubt that it was communicated by this letter, and that the Board of Supervision approved at once of the classification proposed as regards heritages. But then the question remains, even if it was approved, what did it result in? Now, my reading of the matter is this, that Class II. was put into Class I., Class III. remaining as before. Class II. under the new scheme was to bear the same proportion of assessment as previously had been the case. In short, I cannot say that I have any doubt whatever about the terms of the resolution of the Parochial Board, reading that in the light in which things were at the time; but I have far less difficulty when we reflect that what was intended can be ascertained from the conduct of all concerned since 1857. In 1869 the matter was expressly under the consideration of the Board of Supervision. It was proposed by some members of the Parochial Board that in place of being only one-fourth there should be an alteration. That matter was brought before the Board of Supervision, and in a passage in minute of November 1869 it is quite clear what the understanding and persuasion of the Board of Supervision was at that time as it had been for years before—how long it is not said. I refer to that as the sanction required by the Act of Parliament. If the resolution of 1857 had remained unsanctioned, it would have been a much more difficult matter. But, on the whole matter, I think it is only necessary to add that I am of opinion that the result arrived at by the Lord Ordinary is correct.

Lord Rutherfurd Clark—I am of the same opinion. When the matter was considered by the Parochial Board and the Board of Supervision in 1846 there were three classes of subjects which were to be assessed—(1) dwelling houses, (2) shops and factories, and (3) agricultural lands; and the rates fixed for these three classes were £4, £2, and £1 per £100. So matters stood until 1857. The Parochial Board then saw fit to adopt a change, and carried a resolution that in future one uniform rate was to be assessed on tenants and occupants of all heritages, not being lands used for agricultural purposes. Now, that certainly had a necessary effect upon the rates which had previously been levied. The only way in which it could have effect upon the rates previously fixed was this, that a uniformity was to be brought about by reducing the rate on dwelling-houses to £2, per £100, or by raising the rate of shops and factories, and so on, from £2 to £4. That was the uniformity that was intended to be attained, because the agricultural subjects were to remain the same as before. Now, one may have some difficulty in finding out in which of these two ways the uniformity was to be obtained—I mean on the mere construction of the minute. There

was more or less difficulty as to which way the object was to be attained, but I confess I think the better interpretation would be if we were to interpret this as meaning that the purpose was to destroy Class II. altogether so as to unite that Class with Class I. The result of that would be a union, a formation of two rates by the insertion of Class II. into Class I. If that be so, the result necessarily is that the ratio of rates between the two classes which remain is practically the same ratio as between Class III. and Class I. I do not say that that is absolutely the necessary interpretation. At the same time it is perfectly plain that a resolution of that kind could not be passed without affecting the rates. There must be some interpretation put upon it. There is no difficulty in seeing what the interpretation of the Board was. I think, having regard to the length of time which has elapsed, that we cannot doubt that the Board of Supervision must have put the same interpretation upon it as the Parochial Board themselves did. Indeed, I think they did so. I do not think therefore that we can disturb the practice that has prevailed since 1857 without any exception being taken to it.

LORD M'LAREN—In all questions as to the validity of assessments I think there is a great difference between a complaint on the ground that the assessing body has exceeded its powers and a complaint of some failure in the expression of the powers which Parliament has conferred. If in this case, for example, the Parochial Board, in the exercise of its powers, had proceeded to make a classification of their own, while the Act of Parliament only authorised them to classify tenants and occupants for this purpose, then, of course, no length of usage would have legalised such proceedings. But the case we have to deal with is one where the Board, with the consent of the Board of Supervision, have, in point of fact, made a classification which is perfectly legal—I mean that the varying rates of assessment are not in themselves inconsistent with the declarations of the statute. But no doubt the resolution under which the present scheme was instituted omits one of the elements which ought to have been expressed in order to execute the purposes of the statute. Now, there being here nothing more than an omission to express fully what the statute authorises, there is no substantial breach of the statute; and I think it is permissible to take into account the usage that has followed on the resolution as interpreting that resolution itself. The whole difficulty then disappears, because the assessment had been made with the sanction of the Board appointed by Parliament for the purpose. Factories pay one rate, and agricultural subjects a lower rate; that is how it has been put on. I am quite satisfied also that the mode in which this resolution of 1857 has been worked is in accordance with what was intended by the Board, as given in explanation by their clerk to the secretary of the Board of Supervision. Therefore, while concurring with the Lord Ordinary in his opinion that the classification is inequitable, I think we cannot give a remedy by suspension, and the suspenders therefore must be left to use their remedy as proprietors and occupants in the parish to obtain such relief from the Parochial Board as they can give.

The LORD JUSTICE-CLERK and LORD YOUNG were absent.

The Court adhered.

Counsel for Complainers—R. Johnstone—Strachan. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Respondents—Mackintosh—Low. Agent—John Turnbull, W.S.

Saturday, February 28.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

THOM *v.* MAGISTRATES OF ABERDEEN.

Burgh—Election of Town Councillor—Disqualification—Bankruptcy—Cessio bonorum—*Bankruptcy Act* 1883 (46 *and* 47 *Vict. c.* 82), *secs.* 32 *and* 34—*Bankruptcy Frauds and Disabilities (Scotland) Act* (47 *and* 48 *Vict. c.* 16), *secs.* 2, 5, *and* 6—*Removal of Town Councillor*, 16 *Vict. c.* 26, *sec.* 5—(*Invalid Municipal Elections Act* 1852).

A person against whom decree of *cessio* had been obtained in 1882 was in November 1884 elected a member of a town council, being still undischarged. *Held* that, assuming him to have been validly elected, he was disqualified, by the Bankruptcy Act 1883, and the Bankruptcy Fraud and Disabilities (Scotland) Act 1884 (which came into operation on 1st December 1884), from continuing to hold office.

Opinions that under the former of these Acts the election was invalid.

Section 2 of the Bankruptcy Act 1883 (46 and 47 Vict. c. 52) provides—"This Act shall not, except in so far as expressly provided, extend to Scotland or Ireland." Section 32 provides—"(1) When a debtor is adjudged bankrupt, he shall, subject to the provisions of this Act, be disqualified from . . . (*d*) being elected to or holding or exercising the office of mayor, alderman, or councillor; (2) the disqualification to which a bankrupt is subject under this section shall be removed and cease if and when (*a*) the adjudication of bankruptcy against him is annulled, or (*b*) he obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part." Section 34 provides—"If a person be adjudged bankrupt whilst holding the office of mayor, alderman, or councillor . . . his office shall thereupon become vacant." (3) The disqualification imposed by this section shall extend to all parts of the United Kingdom." Section 2 of the Bankruptcy Frauds and Disabilities (Scotland) Act 1884 (47 and 48 Vict. c. 16) provides—"This Act shall commence and come into operation from and immediately after the thirty-first day of December Eighteen hundred and eighty-four." Section 5 provides—"In the application of section 32 of the Bankruptcy Act 1883 to Scotland the following provisions shall have effect—(1) The expression 'adjudged bankrupt' shall include the case of a person . . . with respect to whom a decree of *cessio bonorum* has been pronounced by a competent