criminal) the respondent is not apprehended, but cited to appear and answer to the complaint. But the proper answer to the objection stated is, that there is no presumption that a law-abiding citizen will fail to render obedience to the citation of a competent Court. The assumption of the power, either by a Sheriff or any other authority, to order the apprehension of any citizen, which is not directly authorised by the law, is not to be allowed; and I think the Sheriff in granting the warrant in question assumed a power which he did not possess.

"If the warrant was illegal there can be no doubt the defenders are liable for instructing it to be executed."

The defenders reclaimed, and argued—It was not intended that the debtor should be cited in applications under section 4 of the Civil Imprisonment Act. If it had been, there would have been a provision to that effect as there was in section 6 with regard to applications for law burrows. The procedure to be followed was regulated by the 6th section of the Personal Diligence Act (1 and 2 Vict. cap. 114). The charge said that if the debtor did not settle within the days fixed he was liable to poinding or imprisonment. He could within these days lodge a *caveat* if he wished to be heard, but the Act certainly did not contemplate any formal citation. The debtor being in default, why should he get any further notice of threatened imprisonment? The Sheriff was a fitting judge of whether a warrant should be granted or not—*Strain* v. *Strain*, June 26, 1886, 13 R. 1029.

The pursuer was not called on.

At advising—

Lord President—I think the view of the Lord Ordinary in this case is unimpeachable. Under the Act 45 and 46 Vict. cap. 42, imprisonment is a competent means of enforcing a decree for aliment. This statute says in section 3 that "no person shall, except as hereinafter provided, be apprehended or imprisoned on account of his failure to pay any sum or sums decerned for aliment." Now, the provisions there referred to occur in the next section, which is divided into several sub-sections. Imprisonment is only competent in the case of a wilful failure to obey a decree for aliment, and in order to obtain a warrant the creditor must apply to the Sheriff. That infers the institution of a sort of summary process, and in that process it is open to the debtor to satisfy the Sheriff, if he can, that he is not able to pay the debt or to earn the means of paying it. It seems to be a condition of obtaining a warrant for imprisonment that the debtor in a decree for an alimentary debt should fail to satisfy the Sheriff that he is unable to pay or to earn the means of paying it. If that be so, imprisonment without fulfilling that condition, and apprehension in the same way, must be illegal, and I am therefore for adhering to the Lord Ordinary's interlocutor.

Lord Rutherfurd Clark and Lord Adam concurred.

Lord Mure and Lord Shand were absent.

The Court adhered, and ordered issues to be lodged for the trial of the cause.

Counsel for the Defenders—Wilson. Agents—Macpherson & Mackay, W.S.

Counsel for the Pursuer—Salvesen. Agents—Sturrock & Graham, W.S.

Thursday, March 7.

SECOND DIVISION.

MACPHERSON AND OTHERS (ANDERSON BURSARY TRUSTEES) *v.* SUTHERLAND AND OTHERS.

Testament—Construction—Uncertainty—Bursary—Persons Benefited.

A testator by his trust-disposition and settlement directed certain sums of money to be invested, and the interest paid in bursaries to deserving young men "either residenters in the parish of Alves, or in the parish and burgh of Elgin." Parts of the latter parish lay beyond the burgh, and parts of the burgh extended beyond the parish. *Held* that residenters in any part of the parish of Elgin, or in any part of the burgh, might be benefited.

The late William Anderson, Lossiewynd, Elgin, who died 10th May 1884, by his trust-disposition and settlement directed certain sums of money to be paid "to the ministers of the Established and Free Churches of Scotland in the parish of Alves, the three Free Church ministers and senior Established Church minister in the parish of Elgin, and to Robert Young, solicitor, to be held by the said ministers and their respective successors in office, and by the said Robert Young and his nearest heir-male for the time, who shall be resident in the county of Elgin, in trust to invest the same and to pay the yearly interest thereof for bursaries to . . . young men to be of good character and fair talents, either residenters in the parish of Alves or in the parish and burgh of Elgin, whose parents are respectable and in narrow circumstances (residenters in the parish of Alves to be preferred on equal terms)." A difficulty arose as to the meaning and construction of the words "in the parish and burgh of Elgin." The landward part of the parish of Elgin, which was of large extent and populous, was without the burgh, and on the other hand the burgh of Elgin extended in certain directions beyond the parish of Elgin into the adjoining parishes of New Spynie and St Andrew's. The parish was eleven miles or thereby in length, by an average breadth of about three and one-half miles. At the date of the will the population of the burgh within the parish was returned at 8600, of the burgh outwith the parish about 1100, and of the parish outwith the burgh about 1260. There were in the parish of Elgin in all three Free Churches and ministers, two in the burgh of Elgin, and the third in the landward part of the parish at Pluscarden, six miles or thereby distant from the burgh.

A special case was submitted by the Bursary Trustees of the first part, and by two intending candidates for the bursaries, who resided, the

one in the landward part of the parish of Elgin (outside the burgh of Elgin), and the other in the burgh of Elgin but in the parish of New Spynie, of the second part, and they requested the opinion and judgment of the Court upon the following questions—"Must the persons entitled to the benefits of the bequests falling to be administered by the first parties be residenters in that part of the parish of Elgin which is also in the burgh of Elgin? or, Are the terms of the bequest to be construed so as to include residenters in any part of the parish of Elgin, and also residenters in any part of the burgh of Elgin?

Argued for the first parties—The testator meant that candidates must reside both within the parish and within the burgh of Elgin. If this were a description of land it would certainly need to satisfy both conditions.

Argued for the second parties—This was a charitable bequest and was to receive as liberal a construction as possible. The testator meant to benefit residenters in the parish of Alves, in any part of the parish of Elgin and in any part of the burgh of Elgin. He clearly did not intend to limit the parish of Elgin to that part of it, which was within the burgh, for he made the Free Church minister at Pluscarden one of the bursary trustees, and in case any in the burgh who were not also in the parish should be excluded, he was careful to add "and burgh of Elgin" — *Bogie's Trustees* v. *Swanston, &c.*, ("*Mars*" *Training Ship* case), February 5, 1878, 5 R. 634.

At advising—

Lord Justice-Clerk—It cannot be doubted that the expression used in this will is somewhat ambiguous. These bursaries are to be given to "residenters in the parish of Alves, or in the parish and burgh of Elgin." Giving the words a fair construction I have come to the conclusion contended for by the second parties. The first area benefited is the parish of Alves, and the second area is a parish too. It is difficult to see why the testators should benefit the parish of Alves, and then limit the parish of Elgin to that part of it that lies within the burgh. His idea seems rather to have been to benefit both parishes. Then he puts in "burgh of Elgin" to prevent the burgh being sliced across, and the part which is not in the parish being excluded. That, I think, is the fair interpretation of the deed.

Lord Young—There is nothing here to induce me to think that the testator intended to confine his bounty to residenters in that part of the burgh which is also within the parish of Elgin. He was not partial to one part of the town rather than to another. I am therefore averse to the construction which would limit the bounty to a bit of the town. The other construction is more consistent with his probable intention, but it is also more consistent with the strict and grammatical construction of the words used. He wishes to benefit residenters in any part of the parish of Elgin, but as part of the burgh is outside the parish, and residenters there might be excluded, he adds "and burgh of Elgin."

Lord Lee—This clause undoubtedly requires construction. There is nothing in it to limit the burgh to that part of the burgh which is also within the parish. What the testator was endeavouring to do was to describe the district to which his bursaries should extend, and I think that district is composed of three parts, viz., the parish of Alves, the parish of Elgin, and the burgh of Elgin, and upon that ground I am, like your Lordships, for answering the second question in the affirmative.

Lord Rutherfurd Clark was absent.

The Court answered the first question in the negative and the second in the affirmative.

Counsel for the First Parties—Glegg.

Counsel for the Second Parties—Orr. Agents Macpherson & Mackay, W.S.

Thursday, March 7.

FIRST DIVISION.

PAROCHIAL BOARD OF FORDOUN *v.* TREFUSIS AND ANOTHER.

Poor Law—Classification—Poor Law Acts, 8 *and* 9 *Vict. cap.* 83, *secs.* 34 *and* 36; 24 *and* 25 *Vict. cap.* 37, *sec.* 1.

By the 36th section of the Act 8 and 9 Vict. cap. 83, it is enacted that where a certain mode of assessment is adopted "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 rates of assessment upon the tenants or occupants of each class respectively as to such boards may seem just and equitable."

A parochial board having adopted the mode of assessment referred to, directed, with the concurrence of the Board of Supervision, the lands and heritages in the parish to be distinguished into separate classes, for which they fixed different rates of assessment. Subsequently the parochial board resolved to discontinue the classification, and to rate all classes of property alike, and to this resolution they adhered notwithstanding the disapproval of the Board of Supervision. In a special case presented for the parochial board and certain ratepayers who objected to the new assessment, *held* that the assessment imposed in terms of the resolution of the parochial board was legal and could be enforced.

At a meeting of the Parochial Board of the parish of Fordoun held on 2nd October 1847 it was resolved as follows—"1st. That from and after the 26th day of November next, or as soon thereafter as may be practicable, the funds for the support of the poor in this parish be raised by assessment. 2nd. That the mode of assessment to be adopted shall be that first narrated in the Act 8 and 9 Vict. cap. 83, namely, one-half of the sum re-