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-

quired shall be imposed upon the owners and the other half upon the tenants and occupants of lands and heritages within the parish. 3rd. Tenants and occupants shall, with concurrence of the Board of Supervision, be classified as under —(1) Tenants and occupants of lands for tillage or grazing, including houses and buildings necessary for their management personally occupied or used by the farmer; (2) tenants and occupants of shops or other premises in which mercantile or manufacturing business is conducted; and (3) tenants and occupants of dwelling-houses, gardens, and pleasure grounds. In reference to each of these classes the following scale of rates shall be adopted—Whatever rate of assessment it may be necessary to impose on class 1st, double that rate shall be imposed on class 2nd, and quadruple the rate charged on class 1st shall be levied on class 3rd." The terms of this resolution were duly communicated to the Board of Supervision, and the Board intimated their approval thereof.

The assessment continued to be imposed in accordance with the said classification of lands and heritages until 3rd August 1888, when at a meeting of the Parochial Board a resolution was carried by sixteen votes to fifteen "that the existing classification for rating of tenants be discontinued, and all classes of property be rated alike," and the inspector was instructed to send a copy of the resolution to the Board of Supervision, and to ask if their consent was required. The Board of Supervision intimated that they could not "approve of the resolution of the Parochial Board." At a meeting of the Parochial Board held on 18th September 1888 it was moved that the said resolution adopted at the meeting of 3rd August should be rescinded as not having met the approval of the Board of Supervision. It was also moved that the former resolution be adhered to. The latter motion was carried by seventeen votes to sixteen, and the inspector was instructed "to forward the resolution to the Board of Supervision." The Board of Supervision intimated that they could not "approve of the resolution of the Parochial Board to impose the assessment without a classification of occupants in terms of section 36 of the Poor Law Act."

The assessment for the year 1888 having been imposed upon all classes of property alike in terms of the above resolution of 3rd August 1888, certain ratepayers in the parish appealed to the Parochial Board against the assessment, on the ground that it was illegal, and the present case was thereafter presented to the Court to determine the question whether the assessment was or was not illegal. The first party to the case was the Inspector of Poor for the parish of Fordoun, as representing the Parochial Board, and certain of the objecting ratepayers were the parties of the second part.

The following question was submitted to the Court—"Whether the assessment imposed in terms of the said resolution of 3rd August 1888 is legal, and can be enforced?"

By the 34th section of the Poor Law (Scotland) Act of 1845 it is enacted—"That when the parochial board of any parish or combination shall have resolved to raise by assessment the funds requisite, such board shall, either at the same meeting or at an adjournment thereof, or at a meeting to be called for the purpose, resolve as to the manner in which the assessment is to be imposed; and it shall be lawful for any such board to resolve that one-half of such assessment shall be imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages within the parish or combination, rateably according to the annual value of such lands and heritages, or to resolve that one-half of such assessment shall be imposed upon the owners of all lands and heritages within the parish or combination according to the annual value of such lands and heritages, and the other half upon the whole inhabitants, according to their means and substance, other than lands and heritages situated in Great Britain or Ireland; or to resolve that such an assessment shall be imposed as an equal percentage upon the annual value of all lands and heritages within the parish or combination, and upon the estimated annual income of the whole inhabitants from means and substance other than lands and heritages situated in Great Britain or Ireland; and when the parochial board shall have resolved on the manner in which the assessment is to be imposed, such resolution shall be forthwith reported to the Board of Supervision for approval; and if the manner of assessment so resolved upon shall be approved by the Board of Supervision, the same shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the Board of Supervision; and if the Board of Supervision shall disapprove of the manner of assessment so resolved upon as aforesaid, the parochial board shall, upon such disapproval being intimated, forthwith meet and resolve upon another mode of imposing the assessment consistent with law, and shall report such resolution to the Board of Supervision; and the manner of imposing the assessment so resolved upon shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the Board of Supervision." By section 35 of the same Act it is enacted—"That if at the date of this Act an assessment for the poor shall in any parish or parishes be imposed according to the provisions of any local Act, or according to any established usage, it shall be lawful for the parochial board or boards of such parish or parishes to resolve that the assessment in such parish or parishes shall be imposed according to the rule established by such local Act or usage; and such resolution, if approved of by the Board of Supervision, shall continue to be acted upon in such parish or parishes, and shall not be altered or departed from without the sanction of the Board of Supervision." By the 36th section it is enacted—"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."

By the Act 24 and 25 Vict. cap. 37, entituled "An Act to simplify the mode of raising the assessment for the poor in Scotland," it is enacted—Section 1. "From and after the first day

of January One thousand eight hundred and sixty-two, so much of section 34 of the Act of the eighth and ninth years of Her Majesty, entituled 'An Act for the amendment and better administration of the laws relating to the relief of the poor in Scotland,' as makes it lawful for any parochial board of any parish or combination of parishes in Scotland to raise one-half of the funds requisite for the relief of the poor persons entitled to relief from the parish or combination by assessment upon the owners of all lands and heritages within the parish or combination according to the annual value of such lands and heritages, and the other half upon the whole inhabitants according to their means and substance other than lands and heritages situated in Great Britain and Ireland, or to raise such funds by assessment imposed as an equal percentage upon the annual value of lands and heritages within the parish or combination, and upon the estimated annual income of the whole inhabitants from means and substance other than lands and heritages situated in Great Britain or Ireland, is hereby repealed; and every parochial board of any parish or combination of parishes now raising such funds in terms of the parts of the said recited Act which are hereby repealed as aforesaid, shall, before ceasing to raise such funds, and within two months after the passing of this Act, resolve to adopt the first mode of assessment specified in section thirty-four of recited Act, and to classify lands and heritages equitably in terms of the thirty-sixth section of the said recited Act, and shall forthwith report such resolution to the Board of Supervision, which is hereby authorised and required to determine whether or not the classification so resolved on is equitable; and in the event of their considering the classification thereby made as not equitable, to vary or alter the same as to them shall seem just; and until the said first mode of assessment so resolved on, with relative classification, shall have been approved of by the Board of Supervision, the assessment for relief of the poor in any parish where the classification may not be approved of shall continue to be raised according to the mode now in operation in such parish; and after the proposed classification in any parish shall have been approved of by the Board of Supervision, it shall not be altered or departed from without the sanction of the said board: Provided always, that nothing in this Act shall be construed to prevent the parochial board of any parish or combination of parishes from collecting any such assessment actually imposed prior to the first day of January One thousand eight hundred and sixty-two according to the mode legally in force in the parish or combination at the date when such assessments were imposed."

It was contended for the party of the first part that the concurrence of the Board of Supervision was not necessary to entitle the Parochial Board to abandon altogether classification of lands. By the 36th section of the Poor Law Act of 1845 it was made lawful for the Parochial Board to classify lands with the concurrence of the Board of Supervision. The Board of Supervision, however, had no power to compel the Parochial Board to make a classification, and the Parochial Board might impose the assessment upon the owners and occupants of lands and heritages without any classification. That being so, it would require express enactment to prevent the Parochial Board abandoning a classification without any concurrence. The provisions of the Act of 1861 (24 and 25 Vict. c. 37) applied only to parishes which at the date of the Act were raising the funds requisite for the relief of the poor in the manner authorised in the 34th section of the Act of 1845, but repealed by the said Act of 1861.

It was contended for the parties of the second part that on a sound construction of the Acts referred to the Parochial Board were not entitled without the concurrence or approval of the Board of Supervision to discontinue or alter or depart from the existing mode of assessment, viz., one-half on owners and the other half on tenants or occupiers, according to rental with classification, and that as the resolution of the Parochial Board altering the existing mode was submitted to the Board of Supervision and disapproved of, the assessments imposed in terms of the said resolution were illegal, and could not be enforced. If the existing classification were regarded by the Parochial Board as unsatisfactory or defective their proper course was to have classified of new, and submitted the amended classification for the approval of the Board of Supervision.

At advising—

Lord President—There is here an anomaly and perhaps an inexpedient anomaly, that in certain cases the classification of lands and heritages is permanent in the sense that it cannot be altered without the approval of the Board of Supervision, and in other cases, according to Mr Low's contention, that the Board of Supervision is not entitled to interfere in the matter of continuing or discontinuing the classification. But anomalies are often produced by Acts of Parliament, sometimes expedient and sometimes inexpedient, and if we find such anomalies in statutes we must give effect to them.

How does the legislation stand on this question. In section 34 of the Poor Law (Scotland) Act 1845 there is a provision that "when the parochial board shall have resolved on the manner in which the assessment is to be imposed, such resolution shall be forthwith reported to the Board of Supervision for approval; and if the manner of assessment so resolved upon shall be approved by the Board of Supervision, the same shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the Board of Supervision." These are plain and simple words. They do not occupy much space, and are of no doubtful construction at all. In section 35 the same provision is repeated with regard to the assessments with which that section deals.

Immediately after these two sections comes a section providing for the classification of lands and heritages, where the first manner of assessment mentioned in section 34 is adopted. It is there provided that "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." Now, it is not said there that that classification once adopted shall be permanent, nor that it is incompetent for the parochial board to alter or depart from it without the sanction of the Board of Supervision. The provision to that effect in the two previous sections are, it seems to me, of set purpose omitted from section 36. Of course it might be contended that the classification once fixed and approved of is permanent, but I am not inclined to adopt that suggestion, for I can hardly conceive anything more inexpedient. The condition of the lands and heritages in a parish may vary very much. The number of dwelling-houses, of houses occupied as farms, and of shops may vary in both directions, and it may become very expedient, almost necessary indeed, that there should be power to alter a classification which has become unsuitable. If this classification is not to be permanent, then it seems to me to be impossible to hold that the power to alter it is vested in anyone in the first instance except in the parochial board; and, if the right to alter it is vested in the parochial board without the approval of the Board of Supervision, it is a necessary result of the construction of the Statute of 1845 that the discretion is in the parochial board without the interference or intervention of the Board of Supervision at all.

If that is clear, as I think it is, how are we to import into that statute the provisions of the Act 24 and 25 Vict. c. 37, which are, I think, distinctly confined in their operation to a certain class of parishes and a certain class of parochial boards. The immediate intention of this latter statute is to abolish all manners of assessment save one, by which one half of any assessment is imposed on the owners, and the other half upon the occupiers of lands and heritages. From the time when this statute was passed, no manner of assessment was left save the first mode mentioned in section 34 of the older Act. All the rest are repealed, and then the statute goes on to provide that "every parochial board of any parish or combination of parishes now raising such funds in terms of the parts of the said recited Act which are hereby repealed"—these parochial boards are the nominative of the sentence, and what is said of them?—"shall, before ceasing to raise such funds, and within two months after the passing of this Act, resolve to adopt the first mode of assessment specified in section thirty-four of recited Act, and to classify lands and heritages equitably in terms of the thirty-sixth section of the said recited Act, and shall forthwith report such resolution to the Board of Supervision, which is hereby authorised and required to determine whether or not the classification so resolved on is equitable. That is the end of the sentence or first member of the clause, and it could hardly be maintained that so far the enactment applies to any parishes save those which previously assessed partly upon the means and substance of the inhabitants, and partly on lands, and which are ordered to assess for the future according to the first mode laid down in section 34 of the old Act, and what they are commanded to do is to assess according to that mode, and to accompany that assessment with a classification made in terms of section 36 of the old Act.

The clause goes on, Mr Kennedy thinks, to become more comprehensive, and to include parishes not contemplated in the earlier parts of it. If it were so, surely we should have had a separate section dealing with those parishes. But there is no separate section, and for the obvious reason that the rest of the section applies to the same subjects as are the nominative of the first section. It goes on—"Until the said first mode of assessment so resolved on, with relative classification, shall have been approved of by the Board of Supervision, the assessment for relief of the poor in any parish where the classification may not be approved of shall continue to be raised according to the mode now in operation in such parish"—*i.e.*, the parish shall continue to levy the assessment according to the means and substance of the inhabitants, or that and the lands, until the provision for converting the mode of assessment into the one now proposed can be carried through, and with it the classification of the lands and heritages. Now, can that clause be applied to any but those parishes which have hitherto levied on means and substance, and are hereby forbidden to do so any longer. Not one word of it can be applied to any other parish but one of that description. Then the section proceeds further—"And after the proposed classification in any parish shall have been approved of by the Board of Supervision, it shall not be altered or departed from without the sanction of the said board"—Can it be said that the whole subjects in the last part of the sentence are so extended as to apply to every parish of Scotland, when down to that the clause has dealt with nothing but parishes of the description already mentioned? I think not.

I am therefore of opinion that there is no benefit to be taken by the objecting ratepayers from the last statute, and we are thrown back upon the first statute. And for the reasons I have already stated, I think the classification of lands and heritages when once adopted must either be permanent—and that I think is a hopeless contention—or it is liable to be altered by the parochial board alone.

Lord Rutherfurd Clark and Lord Adam concurred.

Lord Mure and Lord Shand were absent.

The Court answered the second question in the affirmative.

Counsel for the First Parties—Low. Agent—W. B. Rainnie, S.S.C.

Counsel for the Second Parties — Kennedy. Agent—D. Lister Shand, W.S.