the petition; and I think if the subsequent conclusions be examined it will be found that they are substantially to the same effect. It is true there is a direct conclusion of declarator to have it declared that the stock was the property of the bank, but I read that as merely leading up to what follows, and what follows is a conclusion that the bank, now represented by the liquidators, are not entitled to make any calls on the pursuer for payment of money in respect of the said stock before or unless and until the whole members of the defenders' company other than the pursuer have been fully discussed. As I take it, that does not raise a question merely *inter socios*, because it is a proposal that the Court shall interpose between the liquidators, as representing the creditors, and the pursuer, and put the pursuer in the position that he shall not have to pay calls at all, leaving the others to make up his share of the liability. I think the liquidators representing the creditors have plain right and interest to resist that conclusion, and that, in the view I have now stated, it really does not raise any question properly *inter socios*—at least, properly and exclusively *inter socios*.

I agree, however, with your Lordship in thinking that, in case any misapprehension should result from so dealing with this action, there should be such a reservation in the judgment of the Court as your Lordship proposes. The question may arise whether this gentleman has a right to relief *inter socios*; but I think it cannot arise now, and it would be premature to raise it now. The Statute of 1862 provides that the debts of creditors shall be dealt with in the first place, and discharged; that after that has been done, and not until that has been done, the liquidators may proceed to adjust the rights of contributories *inter se*. Then, and then only, will this question arise. I shall only say that it appears to me that when it does arise it will be a question attended with much difficulty. If this bank had not had the power to sell and purchase and hold its own stock, I should have had very little difficulty in coming to the same conclusion as that to which the Lord Ordinary has come on that general question—that if a person buys stock and puts his name on the register, even in a question *inter socios*, he would be bound by being on the register, because the directors had no right to enter into an arrangement of that kind. But the great peculiarity of this case lies here, that by article 32 of this bank's contract, by which all the partners must be held to be bound, power is given to the directors to purchase stock in the public market or privately; and it is provided that such shares so bought shall be held for behoof of the company in such way and manner as the directors may appoint. That being so, I think a serious question may arise in any future proceedings, namely, whether the circumstance that the company bought stock and put it in the name of an individual will bind the individual so put upon the register, in a question with the company, to remain the partner and have all the liabilities of a partner. I am not prepared to adopt the grounds of the Lord Ordinary in regard to this part of the case, and I merely think it right to say that that question, if it arise, may be a difficult and serious one, and that I concur with your Lordship in thinking it desirable that the interlocutor of the Court should contain the reservation proposed.

The Court refused the petition, and dismissed the action, reserving to the pursuer any claim of relief he might be able to establish against the bank or its shareholders after the debts of the bank had been paid.

Counsel for Pursuer (Reclaimer)—Balfour—Jameson. Agents—J. & J. Ross, W.S.

Counsel for Defender (Respondent)—Kinnear—Murray. Agents—Davidson & Syme, W.S.

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*Wednesday, June 4.**

SECOND DIVISION.

SPECIAL CASE—GREIG AND OTHERS *v.* THE THE LORD PROVOST AND MAGISTRATES OF EDINBURGH.

Poor—Assessment and Recovery—Interest on Arrears—Poor Law Act, (8 *and* 9 *Vict. c.* 83), *sec.* 88—*Summary Remedies not Exclusive of Ordinary Ones.*

The question, whether the municipality of a city owning the markets were liable to be assessed in poor-rates for them, not only as owners but also as occupants, was referred to an arbitrator, and by him, after a long interval of years, given against the municipality. Subsequently a demand was made by the parochial authorities for interest on the arrears of unpaid assessments for which the municipality contended they were not liable, as the parochial board had not availed themselves of summary powers conferred by the Act 8 and 9 Vict. c. 83, sec. 88. *Held* that the summary powers of the statute did not exclude proceedings at common law, and that interest at 2½ per cent. fell to be allowed.

To this Special Case there were two parties—first George Greig, inspector of poor for the City parish of Edinburgh, and second, the Lord Provost, Magistrates, and Town Council of the City. The latter had since 1856 owned the General Markets of Edinburgh, situated near the North Bridge, and under their Act (8 and 9 Vict. c. 83) the parochial board assessed them as owners and occupants for the year ending Whitsunday 1857, and for each subsequent year to 1877. An assessment was also made upon them for school rates since 1874 in accordance with the provisions of the Education Act 1872. The council paid the assessments as owners but denied liability and refused to pay as occupants. In 1863 the two parties to the case agreed to refer the point in question, and a deliverance was eventually issued by Lord Gordon as referee on 14th December 1877, finding that the Town Council were liable to be assessed both as owners and as occupants.

On 19th May 1878 the principal sums in arrear were duly paid, but under express reservation of the question of interest, which had been raised. The form in which the annual notices were sent to the town council contained this clause:—"The last day allowed by the board for payment of the rates is , after which all rates in arrear will be recovered under a Sheriff's summary warrant."

The inspector of poor claimed interest at the

* Decided March 12, 1879.

rate of 5 per cent. per annum, but in the course of the discussion it was intimated that the rate claimed would be restricted to 2½ per cent. The town council maintained that no interest was due on poor-rates, but that failing payment these were recoverable with penalties in the same way and under the same restrictions as assessed taxes, and that in any view, as the question of liability was under reference, interest could only be claimed, even though chargeable, from the date of Lord Gordon's decision. They also submitted that no provision was made in the Poor Law Act for hearing the parties assessed, or for regulating the preliminary inquiries, or for adjusting differences or appeals, nor was there any provision as to payment of interest on the assessments imposed after these fell due. The 88th clause of the Act, which dealt with the recovery of assessments, was as follows:—"And be it enacted, that the whole powers and rights of issuing summary warrants and proceedings, and all remedies and provisions enacted for collecting, levying, and recovering the land and assessed taxes, or either of them, and other public taxes, shall be held to be applicable to assessments imposed for the relief of the poor, and the sheriffs, magistrates, justices of the peace, and other judges, may grant the like warrants for the recovery of all such assessments, in the same form and under the same penalties as is provided in regard to such land and assessed taxes and other public taxes; provided always that it shall nevertheless be competent to prosecute for and recover such assessments by action in the Sheriff Small Debt Court; and all assessments for relief of the poor shall, in case of bankruptcy or insolvency, be paid out of the first proceeds of the estate, and shall be preferable to all other debts of a private nature due by the parties assessed."

The question put for the opinion and judgment of the Court was—Whether the parochial board were entitled to interest of the assessments in arrear, and if so, from what date and at what rate?

Argued for the first party—When the canon law prevailed in Scotland, the presumption was against allowing interest; but this was now changed, and the presumption was in all cases the other way where the payment was improperly delayed—Erskine—Bell's Comm. The statute gave special summary remedies, but at the same time provided that these should be without prejudice to the ordinary mode of recovering by action. In various cases the Court had given 5 per cent. interest in actions for recovery of arrears of poor-rates—*Greig*—but in these cases the objection had not been stated.

Authorities—Erskine (Ivory's Notes) iii. 3, 76; Bell's Comm. (M'Laren's) 692; *Greig* v. *Heriot's Hospital*, March 28, 1866, 4 Macph. 675 (see Sess. Papers); *Inspector of North Leith* v. *Leith Dock Commissioners*, Nov. 26, 1852, 15 D. 95; *Glasgow Gas-Light Company* v. *Barony Parish*, Feb. 15, 1868, 6 Macph. 406; *Marquis of Tweeddale*, March 2, 1842, 4 D. 862.

Argued for the second parties—(1) Interest was not due by the statutes under which poor-rates were recoverable—8 and 9 Vict. cap. 83, sec. 88, 5 and 6 Will. IV. cap. 64, sec. 13, 52 Geo. III. cap. 95, secs. 13 and 14. The method of recovery was either by poinding and sale or action in the Sheriff Small Debt Court. Here the latter had been adopted by the notices sent to ratepayers. (2) Even if the rates had been sued for, interest would have been due only from the date of action, and if concluded for in it—*Edinburgh & Glasgow Union Railway* v. *Carmichael*, May 7, 1842, 1 Bell's App. 366; *Shotts Iron Company* v. *Turnbull, Salvesen & Company*, Jan. 11, 1870, 8 M. 309 *Lanaghan* v. *Monkland Iron & Steel Company*, March 19, 1858, 20 D. 848. (3) Interest was not due in *mora*, because the *mora* was either that of the parochial board or of the arbiter, for which the second parties were not to blame. Besides, interest was only due in *mora* if profit was made by the party retaining the principal where there was no profit made by the second parties. The ratepayers who would now have to pay interest, if interest were found due, were a different class from the ratepayers who neglected to pay the principal. (4) At all events, if interest was due, it could only be at bank rates, or 2½ per cent. —Lord Deas in *Glasgow Gas-Light Company* v. *Barony Parish*, Feb. 15, 1868, 6 M. 406.

At advising—

Lord Justice-Clerk — It appears to me that this assessment is an ordinary debt created by statute, and having the ordinary incidents of a debt. Summary remedies were granted in order to give additional facilities and powers in the collection of these rates, but I cannot anywhere find anything to limit the rights which are conferred on the creditor of the rates by the ordinary rules of the common law of Scotland. According to these ordinary principles the creditor—in this instance the parochial board as represented by its inspector—would have been entitled to interest on these arrears, and I am unable to discover any provision in the Act under which he can be deprived of this right.

That being so, the next question which presents itself is—Whether there has been anything done of such a nature as to prevent the parochial board successfully making such a demand. The fallacy with reference to the terms of the notices annually issued by the board is not difficult to perceive. The board were quite entitled to frame these notices in the form we have before us, but they were not bound to take the summary steps for recovery of arrears which they threatened.

On the general question I think the demand is well founded, although I confess I should not have been inclined to allow interest at so high a rate as 5 per cent., and it has been a judicious course on the part of the parochial board not to press for this, but to intimate, as they have done, that they would feel satisfied with 2½ per cent.—a rate, I think, quite equitable in the circumstances.

On the whole matter I am of opinion the question should be answered affirmatively, the rate of interest allowed being 2½ per cent.

Lord Ormidale — The magistrates and town council here maintain that no interest is due, and to support their contention refer the Court to the 88th clause of the Poor Law Act (8 and 9 Vict. c. 83). My sole difficulty arose from thinking that it would be argued that an ordinary action was incompetent for the recovery of these arrears, the statute having provided a special and sole remedy. But we have been relieved of all such considerations by the concession made on behalf of the

second parties — that the parochial board were not tied down and restricted to the statutory remedy, but might proceed by way of ordinary action.

The question then comes to be, whether any grounds in equity exist for exemption? I confess there do not apppear to be any to my mind. There was certainly no *mora* on the part of the board, for the statutory notice was annually given to the municipality. The result of the arbitration was a decreet-arbitral against the second parties, and that result points to them as the cause of the delay and non-payment of the rates found to be due. The town council alone were to blame, and no delay would have occurred had it not been for the objection raised by themselves—an objection subsequently by the result shown to have been without due foundation.

Lord Gifford—I concur. The only difficulty I felt was as to the question under the statute, which seemed at first to have something in it, but the second parties failed to show that the special remedy provided by the Act was the sole one, and so at once the question became one of equity.

This was just a statutory debt, and when a debt is due, either by virtue of a statute or *ex contractu*, interest follows as a matter of course—nay when a debt is statutory it stands, I think, in a more favourable position than a contract debt. It would, again, be a great hardship on the other ratepayers were persons allowed to delay payment without incurring the penalty of interest, for this would amount to allowing those who have wrongfully delayed payment to make a gain thereby. No doubt the rate of the interest is a different matter, but some interest is the rule, and 2½ per cent. is about the lowest rate we could allow as a just increment. I accordingly acquiesce in your Lordships' opinions without any difficulty.

The Court answered the question in the affirmative, and allowed interest at the rate of 2½ per cent. per annum on each assessment from the date when it became due.

Counsel for First Party—Dean of Faculty (Fraser) — Rettie. Agents — Curror & Cowper, S.S.C.

Counsel for Second Parties—M'Laren—Mackay. Agents—White-Millar, Allardice, & Robson, S.S.C.

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*Wednesday, June 4.**

SECOND DIVISION.

[Lord Craighill, Ordinary.

CUMMINGS *v.* MACKIE AND OTHERS (SKEOCH'S TRUSTEES).

[*Ante*, p. 268]

Writ—Witness—Statute 1681, *cap.* 5—*Acknowledgment of Subscription.*

Where a party who was not present at the time of signing, afterwards subscribes as witness to the signature, it is sufficient compliance with the provisions of the Statute 1681, c. 5, if he receive from the granter of the writ an acknowledgment of his signature, in whatever manner given, whether by words or by acts.

Jury Trial—Bill of Exceptions—Issue—Statute 1681, *cap.* 5.

Where the following issue was sent to trial:—"Whether A B and C D, the alleged witnesses to the said trust disposition and settlement, or either of them, did not see the said W S subscribe the same, and did not hear him acknowledge his subscription?" and the presiding judge directed the jury in law that "if there be at the time of the witnesses subscribing any sufficient acknowledgment by the party of his signature, in whatever form that acknowledgment may have been made, that is all which is required," counsel for one of the parties excepted to the ruling, on the ground that the direction, even if good law, was inappropriate to the special issue. *Exception* (*dub.* Lord Ormidale) *disallowed.*

This was an action at the instance of Mrs Jane Skeoch or Cumming, and her husband John Cumming, against John Mackie and others, accepting and acting trustees under a trust-disposition and settlement executed by the deceased William Skeoch on April 3, 1878, in which the pursuers sought to reduce the said disposition. The grounds of reduction were sufficiently set forth in the first plea-in-law for the pursuers:—"(1) The deed called for being to the great hurt and prejudice of the pursuers, the same ought to be reduced, in respect that—1st, At the date thereof the said William Skeoch was of unsound mind and incapable of making the same, and the same is not his deed. 2d, The said deed was impetrated from the said William Skeoch while in a weak and facile state of mind, by undue and improper pressure and influence exercised over him, and by fraud and circumvention. 3d, The said deed was granted under essential error. 4th, The alleged signature of the said William Skeoch to the said deed was neither made nor acknowledged in presence of the instrumentary witnesses, and the witnesses did not subscribe as such in presence of each other. 5th, The said deed is also vitiated and erased *in substantialibus*, and is defective in the solemnities required by law, and is otherwise defective and insufficient as a valid legal instrument."

The issues for the trial of the case as finally adjusted (*ante*, p. 268) were as follows:—"(1) Whether Malcolm M'Lean and John Gordon, the alleged witnesses to the said trust-disposition and settlement, or either of them, did not see the said William Skeoch subscribe the same, and did not hear him acknowledge his subscription? (2) Whether at the date of the said trust disposition and settlement the said William Skeoch was in a weak and facile state of mind, and easily imposed on," &c.

The case went to a jury on the 4th and following days of March 1879, Lord Craighill being the presiding judge. His Lordship in charging the jury directed them in point of law, with regard to the first of the above issues, that "if there be at the time of the witnesses subscribing any sufficient acknowledgment by the party of his signature, in whatever form that acknowledgment may have been made, that is all which is required." Pursuer's counsel excepted and demanded that his Lordship should direct the jury "that the witnesses must have heard the party acknowledge

*Decided May 30, 1879.