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

Court in Scotland. (2) A person adjudged bankrupt shall be disqualified from being elected to or holding or exercising the office of provost, bailie, treasurer, dean of guild, deacon, convener of trades, or councillor. . . (3) The disqualification to which a person adjudged bankrupt is subject under the said section, as amended by this Act, shall be removed and cease if and when (*a*) the . . . decree of *cessio bonorum* with respect to him is recalled or reduced, or (*b*) he obtains his discharge from a competent Court. Section 6 provides—"Sections 33 and 34 of the Bankruptcy Act 1883 shall apply to Scotland, subject to the following provisions—(1) In each of the said sections the expression 'adjudged bankrupt' shall have the meaning assigned to it in the immediately preceding section of this Act. . . . (3) The said section 34 shall be deemed to apply to any person whilst holding the office of provost, bailie, treasurer, dean of guild, deacon, convener of trades, or councillor" . . .

This was a process of suspension and interdict at the instance of James Wallace Thom, residing in Aberdeen, against the Lord Provost, Magistrates, and Town Council of the burgh as representing the community of the burgh.

In October 1882 decree of *cessio bonorum* had been pronounced against the suspender in the Sheriff Court at Aberdeen, and a trustee appointed by the Sheriff. This decree had not at the date of the present process been reduced or recalled, nor had the suspender obtained his discharge.

In November 1884 the suspender was elected by the electors of Greyfriars Ward in the burgh of Aberdeen to represent them as a member of the Town Council for three years, and he thereafter acted as town councillor.

At a meeting of the Town Council on 5th January 1885 a resolution was, on a representation made by the town clerk, passed in the following terms:—"That having considered the representation of the town clerk, and the documents therewith submitted, the Town Council resolve that the office of Mr James Wallace Thom, as a councillor for Greyfriars Ward of this burgh, be, and is hereby declared to be, vacant, in respect that he has become disqualified in consequence of his being a person who is an adjudged bankrupt." The Town Council convened a meeting on 19th January to elect a councillor in the suspender's room.

The present note of suspension and interdict against the Provost, Magistrates, and Town Council was then presented. The suspender craved the Court to suspend the proceedings complained of, and to interdict the respondents "from electing or proceeding to elect any person a member of the Town Council of the said burgh to represent the Greyfriars' Ward of the said burgh as in room and place of the complainer, or from taking any proceedings or doing any act or deed whereby the rights and position of the complainer as the member of the Town Council still representing the said ward may be impaired or prejudiced, or the full and free exercise of his said office may be interfered with or prevented."

He averred that the resolution of the Town Council was unwarrantable and illegal. "(Stat. 7) Assuming that the complainer was, in the words of Scottish or English Act, 'a person adjudged bankrupt' at the date of his election in November 1884, he was not thereby disqualified from being elected, in respect that the Scottish statute only took effect afterwards on the 31st December 1884, and is not retrospective. (Stat. 8) By the combined provisions of the English and Scottish statutes the disqualification of bankruptcy must arise during the tenure of office of the bankrupt, and that was not the fact in the complainer's case. (Stat. 10) The respondents, neither at common law nor under the statutes, had power to declare that the complainer's office as councillor was vacant in respect of the alleged disqualification."

He pleaded—"(1) The resolution declaring the complainer's office of councillor vacant was *ultra vires* and null in respect that—1st, The Scottish statute founded on was not retrospective, and did not apply to or cover the complainer's case. 2d, The combined provisions of the Scottish and English statutes only apply to disqualification arising during the tenure of office. 3d, The respondents had no power either under statute or at common law to declare the complainer's office vacant. 4th, The complainer was not and is not an adjudged bankrupt in the sense of the statutes. (2) On these grounds, and in respect that he is still legally a member of the Town Council, the complainer is entitled to suspension and interdict as craved, with expenses."

The respondents maintained that assuming the complainer to have been validly elected, he was, on a sound construction of the statutes above quoted, disqualified from continuing to hold office, and no longer held it. They also pleaded—"(3) *Separatim*, The election of the complainer to the office of councillor of the burgh of Aberdeen was invalid and null *ab initio*, in respect that at the date of the election he was a debtor who had been 'adjudged bankrupt;' and that section 32 of the English Bankruptcy Act 1883 (46 and 47 Vict. cap. 52) was then in force and applicable to Scotland as provided in sub-section 3 of said section 32" [quoted *supra*].

The Lord Ordinary refused the note.

"*Opinion.*—I cannot say I have any doubt about this case, although I am glad to have had the advantage of a fuller argument on the question than was possible when it was mentioned the other day in the Bill Chamber. It appears to me to depend on the true construction of the 32d section of the Bankruptcy Act of 1883, because the provisions of the section of the subsequent Scottish Act of 1884 appear to me, so far as they apply to the 32d section of the Act of 1883, to be purely interpretative or explanatory, and I think the material parts of the interpretation are those which construe technical terms of English law, and words descriptive of English offices, for the purpose of making the enactment more clearly or readily applicable to the analogous offices and analogous conditions in Scotland. I do not think there is any difference of meaning between the introductory words of the 32d section of the Act of 1883, 'where a debtor is adjudged bankrupt, and those of sub-section 2 of section 5 of the Scottish Act, 'a person adjudged bankrupt;' or that there is any difference between either of those phrases and the other phrase which has been mentioned, 'where a person shall have been an adjudged bankrupt.' All three appear to me to describe exactly the same condition of things, and it is a condition which must be established when the question arises as to the effect of the statutory

disqualification. The 32d section provides that where a debtor is adjudged bankrupt he shall be disqualified from being elected, or holding or exercising certain offices, one of which is the office of town councillor. I agree with what has been said by counsel on both sides of the bar, that this is not a retrospective enactment at all. I think it is in form, and in the contemplation of the Legislature, a new disqualification, which is to attach only from the time when the Act of Parliament came into operation. But then assuming it to be a new disqualification attaching only from that time, the question is to what offices or cases does this disqualification apply? Now the disqualification is, in the first place, from being elected—that is, from being elected after the passing of this Act to the office, amongst others, of town councillor; and secondly, from holding or exercising the office of councillor. When the appellant was elected to the office of town councillor after the passing of the Act of 1883, he had been adjudged bankrupt in the sense of the statutes, and was still an undischarged bankrupt in the sense of the statutes; and therefore there can be no doubt whatever that the disqualification applied, provided the 32d section of the Act of 1883 could be construed, without the aid of the Act of 1884, so as to cover the case of a town councillor in Scotland with respect to whom a decree of *cessio bonorum* had been pronounced by a competent court. I am disposed to think that if the Act of 1884 had not been passed I should have held such a person to be adjudged bankrupt in the sense of the Act of 1883; and I should certainly have held the office of town councillor to be one of those to which the disqualification of section 32 applies. But if there were any difficulty in so reading the Act of 1883, it is entirely removed by the Act of 1884. I agree that this statute also is not retrospective. But the enactments which the 5th section interprets were already applicable to Scotland; and I do not think they can be construed in one way before December 1884, and in a different way after that date. But if they could, it would be immaterial, because if the appellant were not disqualified under the Act of 1883 from being elected, he became disqualified when the Act of 1884 came into operation from continuing to hold his office. For the statute appears to me to contemplate two alternative conditions—that of being elected while the disqualification attaches, or going on to hold or exercise an office after it has attached, although the election may have been perfectly valid and free from any disqualification at all. It follows, of course, from what I have said, that in my opinion the office which the appellant claims to hold is now vacant; indeed, it has never been duly filled, because this gentleman was at the time of the election disqualified, and therefore it is quite impossible to interdict the Town Council from proceeding to act upon that footing."

The complainer reclaimed, and argued—(1) On a proper construction of the Acts of 1883 and 1884 the disqualification must arise during the tenure of office. A councillor duly elected could not be deprived of office by reason of an alleged disqualification which came into existence before he was elected. On any other reading of the Acts sec. 34 of the Act of 1883 would be superfluous and unmeaning, for sec. 32 by itself was enough for an absolute statement of the disqualification imposed by the Act. No disqualification under the Scottish Act of 1884 attached to the complainer when he was elected, for that would be to give it a retrospective effect which was incompetent—Maxwell on the Construction of Statutes, pp. 257, 266; *Queen* v. *Vine*, January 27, 1875, L.R., 10 Q.B. 195. (2) The action of the Magistrates was illegal, because they could only proceed in the removal of a colleague by regular judicial process, as provided in the Municipal Acts 3 and 4 Will. IV. c. 76, sec. 25, and 16 Vict. c. 26, sec. 5.

Counsel for the respondents were not called upon.

At advising—

Lord Young—But for the provisions of the Statute 16 Vict. c. 26, I should have thought it quite clear that this election was bad, and that the place might be declared vacant on the ground of the nullity of the election. But then section 5 of that statute provides that "it shall not be lawful or competent to institute any action by way of reduction, declarator, suspension, or otherwise for reducing any election of a councillor, provost, or magistrate, or for having the same found null, or for interdicting any party who may have been elected councillor, provost, or magistrate, from acting as such, nor to execute any summons, nor intimate any suspension concerning the same, after the lapse of one month from the date of his election." The election here took place on November 1884, and assuming that the nullity was quite clear, that nullity was no ground for ejecting the elected councillor after the lapse of a month. It is true the case does not turn upon that. Perhaps I should say that but for that protection after the lapse of one month I should have thought the case clear against the election, and proceeding upon that view I ought to state why I think it clear. Clause 32 of the English Bankruptcy Act 1883 provides that "Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified from being elected to or holding or exercising the office of mayor, alderman, or councillor," and that statute came into operation on 1st December 1883. The second clause provides—"This Act shall not, except so far as expressly provided, extend to Scotland or Ireland," but then clause 32, in which the disqualification of being elected to or holding or exercising the office of a town councillor is indicated, provides—"The disqualification imposed by this section shall extend to all parts of the United Kingdom," and I am very clearly of opinion, and have no doubt whatever, that the Lord Ordinary is right in his opinion that decree of *cessio* unreduced and unrecalled, and from which there has been no discharge, is equivalent to adjudication in bankruptcy. In November 1884 the complainer was incapacitated from being elected to or holding office, but I am inclined to think that incapacity, which could not possibly amount to more than a nullity of the election, ceased to operate after the lapse of a month. But then the clause in the Act of 1883 goes on to provide that he shall be incapacitated, not only from being elected but from holding or exercising the office of town councillor. He is not entitled, however well elected, to sit although the period for challenging the election has gone by, and is not entitled to

hold office, not by reason of the election being set aside as a nullity, but by reason of his being a bankrupt who has not been restored in accordance with the statute. Now, at the time the Town Council passed the resolution that the office was vacant—in January 1885—the complainer was incapacitated from holding or exercising office, and that, I agree with the Lord Ordinary, irrespective of the Scotch Act of 1884 altogether. The Act of 1884 provides that in the application of section 32 of the Bankruptcy Act of 1883 to Scotland—it was already applicable, the Lord Ordinary states, and I agree with him, for Scotland is part of the United Kingdom—the following among other provisions should have effect:—"The expression 'adjudged bankrupt' shall include a person whose estate has been sequestrated, or with respect to whom a decree of *cessio bonorum* has been pronounced by a competent court in Scotland." That makes it quite clear, although I agree with the Lord Ordinary that it is clear enough without it, that a person against whom a decree of *cessio bonorum* has been pronounced by a competent court in Scotland is "adjudged bankrupt" and incapacitated from being elected without any reference to the period within which the election might be set aside, and is also incapacitated from holding or exercising the office of town councillor. Now, there is no other provision in the Act of 1883, except clause 34, for getting quit of a man who is incapacitated from holding the office and exercising the duties of it. I think clause 34 is quite sufficient for the purpose, although the expression is not exactly accurate. It provides that if a person be adjudged bankrupt whilst holding the office of councillor, his office shall thereupon become vacant, and I think the true meaning of that is, that if a person who is holding office becomes a bankrupt—is a bankrupt without reference to the date of his becoming so—if these two things coincide—his holding office *de facto* and being an adjudged bankrupt—he is disqualified from continuing to hold office. I think these two things coincided between his election and January 1885, when the Town Council passed its resolution and resolved to proceed on the footing that the office was vacant. The reclaimer was then *de facto* holding office, and was adjudged bankrupt, and both the English Statute (or rather the United Kingdom Statute) and the Act of 1884 were in operation—he was *de facto* holding office, and was *de facto* and *de jure* adjudged bankrupt. The office was vacant, and there was no other way of explicating matters. That was a reasonable and sufficient way. The Town Council declared it vacant, and proceeded to fill it up, and are proceeding to fill it up if they are not interdicted. I make these observations because I am anxious to clear away the idea that we are now, after the lapse of a month, declaring the election null, or that full attention has not been given to every part of the case. With the explanations I have added I may say that I entirely agree in the obviously carefully considered and well reasoned judgment of the Lord Ordinary.

Lord Craighill—I am of the same opinion, and in coming to that opinion I proceed on the grounds which have been so satisfactorily set forth by the Lord Ordinary. The first contention that has been maintained on behalf of the reclaimer is, that because decree of *cessio* was pronounced against him so long ago as 1882, and the English Act was not passed till 1883, nor the Scotch Act till 1884, he is not to be regarded as coming under the operation of either or both these Acts. I think it would be a very extraordinary result to say that he would be entitled to sit and act and exercise the powers of a town councillor because he had been declared a bankrupt or a process of *cessio* had gone out against him before this statute was passed. It would be very strange if that were the result. I should think the further back one went in determining whether or not a party, in respect of having been declared bankrupt, is or is not a disqualified person, the longer he remains in a bankrupt condition the less fitted he is to be elected or hold the office of town councillor. It seems to me the words of the Act of Parliment make this perfectly plain. It is not that decree of *cessio* went out against him, but whether at the time he was elected he was one who had been adjudged a bankrupt. That that was the interpretation of the statute is, I think, clearly borne out by the case referred to by Mr Nevay, in which it was found that one who had been convicted of felony long before the Act of Parliament was passed was still one to whom the provisions of the Act of Parliament applied. I hold that the suspender here is subject to this Act of Parliament. There are two things which the Act provides. The first is, that one against whom a decree of *cessio* has passed shall not be elected—he is disqualified from being elected, and secondly, over and above that he is disqualified from holding office. The Town Council are entitled, and it is their duty, to take cognisance of an invalid election, and can at any time take the matter up, and if they find a man who is *de facto* holding office, and pretending to act in the capacity of a town councillor, they are entitled to apply the provisions of the Act of Parliament. If they find a man who is adjudged bankrupt—who is disqualified under the Act—and whose place is therefore vacant, they are entitled to apply its provisions, and appoint another in his stead. I therefore think the Lord Ordinary's interlocutor should be affirmed.

Lord Rutherfurd Clark—I am also of opinion that this reclaiming-note should be refused. It is sufficient for my judgment that I think the statute is clear on this, that no bankrupt can hold the office of town councillor, and therefore that the action of the Town Council was quite in form.

The Lord Justice-Clerk was absent.

The Court adhered.

Counsel for Complainer—Campbell Smith—Nevay. Agent—W. N. Masterton, L.A.

Counsel for Respondents—J. P. B. Robertson—Jameson. Agents—Gordon, Pringle, & Dallas, W.S.