exceptions, to look to the terms of the issue; but, in the second place, it is necessary, in considering a bill of exceptions like this—where the exceptions are taken to the directions given after all the evidence has been led on both sides—to look to the case attempted to be made on the evidence by the pursuer and defenders respectively. The Court is not entitled to consider the evidence with the view of coming to a conclusion in point of fact itself, but for seeing, on the one hand, what is the nature of the case which the pursuer tried to make; and, on the other hand, what is the nature of the case of the defenders. Now the question raised in the issue was, whether—[reads issue]. And, as in many such cases, the whole question in dispute arose on the words, "through the fault of the defenders."

On the one hand, the pursuer contended that she had shown that the fault which led to her daughter's death was attributable entirely to the fault of the defenders or their servants; that the mash-house was the place where persons came to purchase draff, and that the mash-house was dangerous because of the shaft being unfenced. On the other hand, the defenders contended, as matter of fact, that the mash-house was not the proper place for such persons to come; that they were not allowed to come into the mash-house, and that the deceased was well aware of this rule, and came there notwithstanding. Now what is the direction given by the judge in these circumstances? He tells them, under that head of his charge excepted to under the first exception, that—[reads]. The chief objection, and the only serious one to it is, that it is equivocal and ambiguous, and therefore calculated to mislead the jury, or calculated to lead different jurymen in different directions, according to the meaning they might attach to the words. "Ought not to have been in the mash-house," implies the existence of fault somewhere, but that might be either entirely in the deceased herself, or it might be entirely in the defenders' workmen, or partly on the one side and partly on the other. Now, according to what may be the state of the fact on the evidence, a different result will follow. If it was entirely the fault of the deceased herself, the defenders are entitled to a verdict. If entirely the fault of the defenders or their servants, the pursuer will be entitled to a verdict. If partly the fault of both, the legal result is, that the defenders are still entitled to a verdict. And the jury had, in digesting this evidence, this most misleading direction, that if they were satisfied that the deceased ought not to have been in the mash-house on the occasion in question, the defenders were entitled to a verdict. And the difficulty is aggravated when you come to consider that one part of the jury may have thought it all the fault of one, a second part of the jury may have thought it all the fault of the other, while a third part may have thought it the fault of both, while yet they might all coincide in the verdict, which they certainly ought not to have done if they entertained these different views of the evidence. That is my reason for thinking it impossible not to allow the first exception. Then as to the second exception, I look on it differently, for that is a false proposition in law. It is—[reads]. Now it does not matter in what connection with the evidence you consider this proposition, nor under what circumstances, because the gist of this direction is, that the act of the servants of the defenders, which would otherwise and in the ordinary case have made the defenders liable, would not do so if the act were done in contravention of the defenders' order. Now this is unsound, because the act, whether done in contravention of the defenders' order or not, has nothing to do with the legal liability of the defenders.

The second exception, therefore, must also be sustained. But I cannot conclude without saying that I am exceedingly sorry to be driven to this conclusion, because we have seen the state of the evidence, and one cannot help seeing that the case is not sufficient to affix liability on the defenders; and that, if that evidence is repeated to a jury, the pursuer cannot get a verdict, because fault is disclosed on the part of the deceased herself, which is quite sufficient to free the defenders. But we cannot travel out of the bill of exceptions, and must deal with them as I have indicated.

The other judges concurred.

Exceptions allowed, and new trial appointed, reserving all questions of expenses.

Agent for Pursuer—W. R. Skinner, S.S.C.

Agents for Defenders—Morton, Whitehead, & Greig, W.S.

Thursday, June 13.

SECOND DIVISION.

LINDSAY AND LONG *v.* ROBERTSON AND OTHERS.

Mussel Fishings—Barony—General Title—Jus Publicum—*Possession—Agreements—Leases—Interim Interdict.* Circumstances in which interim interdict granted, pending the trial of the question as to rights of parties to mussel scalps situated on the shore between high and low water mark.

This is an action of suspension and interdict brought by Sir Coutts Lindsay and Colonel Long, proprietors of land on the River Eden, the object of which is to interdict the fishermen of St Andrews from gathering mussels from the mussel-scalps on the north side of the river. The suspenders found upon a barony title with a general clause of fishings, which, they maintain, is a title upon which they can prescribe a right to mussels; and they found upon certain leases which, they say, are evidence of their possession, and of theirs only. The respondents, on the other hand, say they have a right to take mussels there, and anywhere else, between high and low water mark, or on the shores of navigable rivers, because it is *juris publici*, a right which inheres in every member of the State, merely as such, and forms no part of the hereditary revenues of the Crown which the Crown can gift to a subject. They further rely upon a grant of lands, with the mussel-scalps adjoining, made to the magistrates and community of St Andrews, which, they say, entitles any of the inhabitants, as beneficiaries under the grant, to take mussels from the adjoining scalps; and they contend that that grant carries them to any of the mussel-scalps on the river, because they form one continuous connected estate. The respondents also say that they have had possession of the scalps on the northern side of the river as well as the complainers. The complainers, besides their title and possession, found upon a compromise fixing the Eden as the boundary agreed to in a litigation between the town and the proprietors in the Sheriff-court in 1805. The complainers' predecessors, on the one hand, renounced their right to take mussels from the south side of the river, being that adjacent to the lands

comprehended in the grant to the town, that right having been asserted towards the end of the proceedings which resulted in the above compromise; and, on the other hand, the magistrates, as taking burden upon them for the community, renounced their right to gather mussels from the north side, being that in dispute in the present case.

The case came up before the Lord Ordinary on the Bills, who granted interim interdict, on condition that the complainers should supply the fishermen with mussels at the rate of 1s. per basket pending the trial of the question of right, and bind themselves to repeat the sums so obtained if they were ultimately found wrong.

The respondents reclaimed.

(D. F.) Moncreiff, A. R. Clark, and W. A. Brown, for them, argued—The most liberal construction that can be put on the complainers' titles is to read them as giving them the right of salmon-fishing; but under such a title, even with a clause of barony, it is impossible to prescribe a right of mussel fishing. The right to take mussels from the shore of the sea between high and low water, and in navigable rivers, is *juris publici*. It forms no part of the feudal estate of the Crown; it is vested in the Crown, as trustee, for the uses of the public. Notwithstanding the inalienable character of the right, a private grant to a subject has been sustained. But that is no invasion upon the public right, for it is done in the interests of the public; and the theory upon which such a grant has been sustained is that, in order to the protection of the subject, the public consent to its being gifted to the exclusion of the public, and their acquiescence is evidenced by their refraining to exercise their right for forty years. But to make such a grant effectual, there must be a concurrence of (1) express grant in the title, and (2) exclusive prescriptive possession. That was expressly held by Lord Barcaple in the case of the *Duchess of Sutherland* v. *Watson*. Upon a question of title, therefore, the respondents are in a better case than the complainers, whose title is not only doubtful, but plainly insufficient. In such circumstances, interim interdict should not be granted. The minute of agreement in 1805, relied upon by the complainers, was in no way binding upon the respondents, because it was of the nature of a compromise of a right to which they were not parties; and further, because it was *ultra vires* of the magistrates to alienate a right that was held for the common good of the burgh. The complainers' leases are by no means conclusive evidence as to their exclusive possession,—they were not inconsistent with a possession by the fishermen according to their wants; and in truth the probability of the respondents' possession was evidenced by the warrandice undertaken in the leases, which was only from fact and deed. *Separatim*, the respondents had a better title in their private grant, which was sufficient to carry them to any part of the river, the mussel beds forming one contiguous connected estate.

Young, Watson, and Balfour in answer—It is impossible to say that salmon-fishing is not a part of the feudal estate of the Crown. It is quite evident that it must be so, because in the case of *Grant* a grant was sustained to a private subject, and there was no reason in that if the right was not a part of the hereditary revenues of the Crown, capable of being granted out, and not inalienable, and *extra commercium*, as contended for by the respondents. If, then, it was a right capable of alienation, the only remaining question under title was, How could it be acquired? It was held, in the case of *Gammell*, that salmon-fishings could be acquired by prescriptive possession upon a title of barony with a general clause of fishings; and if salmon-fishings could be so acquired, there was no reason in principle why other rights of fishings should not be acquired in the same way. But even if this is not so, the judgment of Lord Barcaple in the *Duchess of Sutherland's* case could only be pleaded the length of saying that the question was still an open one; for the Court, after hearing argument in that case, considered the point which it raised so difficult that they ordered written arguments. But if the title is doubtful, there can be no doubt whatever as to the possession, for the complainers produce leases of the subject; and it is quite out of the question to say that the complainers got £400 of a rent for a subject which was, according to the respondents' contention, in the common occupation of the public. The respondents cannot in this process maintain the plea that the compromise of 1805 was *ultra vires* of the magistrates. But, at any rate, the complainers have been able to bring forward strong *prima facie* evidence of their possession; and even taking the title as doubtful, that is a reason why the possession should remain as it is until the rights of parties are definitively ascertained.

At advising—

The Lord Justice-Clerk—The suspension and interdict now under our consideration seeks to interdict the respondents, who are fishermen living in St Andrews, from interfering with mussel scalps on the north shore of the Eden, alleged to be the property of the complainers, Sir Coutts Lindsay and Colonel Long, which mussel scalps are adjacent to their estates and adjacent baronies of Leuchars, Ramsay, and Earlshall. They are substantially on the foreshore, lying, as they do, between high and low water, with the exception of one scalp, which appears to be situated about the centre of the river at low water, and as to which they claim right to that portion which extends on the north of the *medium filum* of the stream. The complainers rest upon alleged exclusive possession of these mussel scalps, extending not only for seven years prior to their application, but for a period exceeding the years of prescription; and they refer to their titles, which convey a right of barony and fishings, as an adequate title to which their possession is to be ascribed. The respondents deny the allegation of possession, and, on the contrary, affirm that they were in possession of these very scalps at and prior to the date of the lodging of the complaint; and they plead their right as parties beneficially interested as grantees under a charter of the then Archbishop of St Andrews, of very ancient date, conveying, as they say, a right to the magistrates and inhabitants of St Andrews. They further plead a right in themselves, as members of the public, and the absence of any title which can be viewed as having conferred a right to mussel scalps.

The note has been passed to try the question, and there is no objection to that part of the interlocutor of the Lord Ordinary which passes the note; but the Lord Ordinary has continued an interim interdict, originally granted by Lord Curriehill when the note was presented, on certain conditions, and that is objected to; and the respondents insist that the interim interdict should be recalled. This is a question of importance to both parties, and we have heard a full and able argument upon the subject.

In this question, it appears to me that two points must specially be had in view. One is, the state of the possession at the time of the application; and the other is, the effect which the giving or withholding of the interim interdict may have upon the rights of the respective parties as they may be ultimately determined. If a settled state of possession is sought to be disturbed—a possession not precarious, nor sudden, nor recent, nor having its origin in violence—the law will incline towards the continuance of such possession as against the pretensions of parties seeking to disturb it; and if great injury to the rights claimed *hinc inde* should follow the license or withholding of possession, as opposed to an evil of lesser degree to be incurred by the opposite course, our leaning should be towards the course which involves the lesser hazard.

How stands the question of possession? We are not in a stage of the cause at which it is possible for us to come to a definitive opinion upon the facts as to that matter; but we have submitted to us, and we must judge of the matter upon such materials as we have. It is impossible for us to take averments on either side into view, unless in so far as supported by documents or facts established or admitted. Looking to documents before us, and judging of their effect in connection with facts which are not contradicted, and proceedings which do not admit of contradiction, I come, without difficulty, to the result that, in dealing with the matter of possession, whatever the effect of the possession may be, we must in this question hold with the complainers. To lay the foundation for a possessory judgment, exclusive possession of the subject for seven years before the application is enough—that possession seems to me to be established by the lease of these very mussel scalps granted by Sir Coutts Lindsay and Colonel Long in favour of the other complainer, G. Colville, whose right as tenant subsisted, although upon the eve of expiry, at the date of the application, coupled with the undisputed fact that payment of the full rent was made in terms of the provisions of that contract. The lease professes to give the full right of possession of the subjects to the lessee. I am unable to believe that any such rent could be agreed to be paid, if there were a conceded right on the part of the public, or any considerable portion of them, to take and use these scalps at their pleasure, and to remove mussels without paying for them. There would then be no certain source out of which the very large rent of £415 a year could come. Further, the tenor of the lease, which imposes severe conditions on the tenant in reference to the maintenanc eof the scalps, and the exclusion of acts by which, from the mode of gathering, evil might be done, necessarily implies entire power over the subjects embraced in the lease. But the possession conferred on the complainer Colville was a continuance of a possession under leases instructed to extend so far back as 1840, and of a possession evidenced by payments of sums as rents for these scalps. So far therefore as the fact of possession is concerned, we must, I think, proceed upon the footing of universal possession had on the part of the complainers, disturbed at or about the date of the application.

But the respondents appeal to the principle that possession without an adequate title must be disregarded, and they dispute the proposition that a title to a barony with fishings can be held to vest a right, though followed by possession, of whatever continuance.

In support of that proposition, it is plainly impossible, in the state of the law and decisions, to affirm that the Crown cannot confer a right to mussel scalps. The right to mussel scalps has been held to be capable of being the subject of a Crown grant; and if the reasoning of Lord Kames in the case of *Grant* is true, it must be so, otherwise the general and indiscriminate use of a kind of subject which requires to be used and kept up with great care would lead to its destruction. The question is truly, not whether the Crown has the power to grant the right, but whether the right can be acquired by a grant of fishings in connection with a barony on the shore of which the scalps lie, followed by possession. The Dean's views are, that an express grant would have been sufficient. Mr Brown went further, and maintained that no such grant would be available unless forty years' possession followed. Now, as the matter stands, I am not prepared to pronounce either that such a title is certainly good or certainly insufficient. Your Lordships of this Division have ordered written argument upon the question, and we must therefore hold it an open and a difficult question. In order to withhold the benefit of proved universal possession, to the effect of denying to it the usual effect of maintaining the party in possession while the question of right is being tried, I should require to be satisfied that the title was bad. In this case, it is clear to my mind, not merely that exclusive possession has been had on the part of the complainers, but that it has been had in virtue of these titles. The proceedings in the question with the Magistrates of St Andrews in the beginning of the century prove that abundantly. Are we to invert a settled state of possession, founded upon a title which has not only formed the basis of that possession, but which was publicly and judicially rested on as giving the right of possession, and which has been followed by a state of possession, acquiesced in for more than half a century? The mere setting up of a pretension unheard of during that half century, which I hold to have been in abeyance for all that long period, would have a strange effect indeed if, while the validity of the pretension remains undetermined, it was to be immediately given effect to.

Further, I think that to recal the interim interdict would be attended with consequences extremely injurious to the interests of the complainers if ultimately successful. I do not think that the interests of the respondents could be prejudiced, in event of their ultimately prevailing, to any extent which could bear comparison with such a loss as the complainers would sustain.

The complainers, Sir C. Lindsay and Colonel Long, have been in receipt of rents, augmented from time to time, and for the ten years prior to Whitsunday last, amounting to no less than £415 a-year. Admit the respondents to take bait *ad libitum*, and without payment, and no rent could be collected. Admit these respondents and the whole public of Scotland, and these scalps might be at the end of the litigation in a ruined condition, rendering useless the expenditure which has been laid out on them already, and requiring time and outlay to restore them. I cannot hold that, in this question, we can assume that the respondents could take possession to the exclusion of the whole public, and so listen to statements as to regulations to be observed during the litigation. I think, in the first place, that—viewing the respondents as claiming under the grant—the magistrates, and not

the respondents, must be viewed as grantees, to the extent at least of admitting of arrangements being made by the grantees—the Council—as to possession, which, particularly when followed by possession, require to be shown in a proper process to be null. In the second place, I see nothing in the grant which, without proof of possession, can be held to extend to these scalps. In this way public possession must, I think, necessarily follow a recal of the interdict; and the consequences of that possession would or might be such as, I think, might be most serious.

On the other hand, the respondents, under the judicial undertaking of the complainers, embodied in the interlocutor of Lord Curriehill, and adopted by Lord Mure, are entitled to be supplied during the litigation at a shilling a basket—a sum said, and not disputed, to be the lowest price ever charged. Their possession, therefore, is secured as it stood during the past; and if they ultimately succeed, they have solvent parties against whom their claim for repetition may be made.

I am, therefore, for adhering to the Lord Ordinary's interlocutor.

Lord Cowan—The only question for the Court to dispose of at this stage is, whether the interim interdict granted by the interlocutor of Lord Curriehill, should be continued?

There has been a great deal of elaborate argument upon the legal effect and import of the titles on which the complainers found, and to which they refer their possession of the mussel beds in question. There is in their earlier titles a general grant of fishings, and in the charter of sale from the Crown, on which infeftment followed in 1783, the grant is of the "salmon and *other* fishings" belonging to the barony and estate of Leuchars. There is no special grant of mussel fishings,—that is conceded; but then it is contended that the general terms of the Crown title are sufficient to support the right, when followed by prescriptive possession and exclusive use and enjoyment under it, of the mussel fishings claimed. And, at all events, it is maintained that, in this question as to interim interdict, the possession which the suspenders have enjoyed cannot be alleged to have been without title, there being at least a *prima facie* title in the suspenders to which that possession may be ascribed.

I wish carefully to abstain from expressing any opinion as to the sufficiency of the general grant of fishings contained in the baronial title, founded on by the complainers, to vest in them a proprietary right in the mussel scalps or banks to which this application for interdict applies. That will fall to be disposed of under the passed note. All that is necessary at present is to state the grounds on which, as it appears to me, the Lord Ordinary has done right in continuing the interim interdict.

1. That there has been *possession* for a long period of time, on the part of the complainers, of these mussel beds, is established by the leases produced in process, the last of which is for ten years from Whitsunday 1857, at a yearly rent of £415, and which bears to have been granted by the lessors as heritable proprietors of the "mussel scalps and others" now in question.

2. This possession is, I think, sufficiently connected for the purposes of the present discussion with the legal proceedings and relative agreement entered into between the predecessors of the complainers and the magistrates of St Andrews in January 1805, whereby, on the one part, the magistrates renounce the right of the city fishers and inhabitants to gather mussels from the mussel beds or scalps situate on the *north* side of the *medium filum* of the river Eden, being the beds or scalps in question; and, on the other part, the predecessors of the complainer renounce and give up all right to the mussel beds or scalps situate in the *south* side of the said *medium filum*. This agreement had reference to the respective rights claimed by the parties in these mussel beds under the Crown titles now founded on by the complainers, and the charters in favour of the magistrates, community, and inhabitants of St Andrews, to which the respondents refer in their answers. And the agreement having been submitted to the Sheriff, his authority was interponed thereto, and decerniture was pronounced in terms of it on 24th January 1805.

3. In this state of matters it is impossible for me to doubt that the complainers have shewn a sufficient title, on which their possession has been based, to justify them in asking for an interdict *ad interim*, so as to preserve the *status quo* until the conflicting and competing claims and rights of the parties shall be definitively ascertained and settled. The case appears to me to be peculiarly one for the remedy sought, for whenever the existing state of possession is interfered with, pending the ascertainment of the legal rights of parties, interdict to preserve matters as they stand is the proper remedy which the law prescribes.

4. The respondents, however, allege that their right to gather mussels does not depend solely upon the charters in favour of the burgh, community, and inhabitants of St Andrews; but that they have right *vi publici juris*, as lieges of Her Majesty, to take these mussels in spite of any title from the Crown, in virtue of which the complainers or the burgh of St Andrews itself may assert or allege proprietary rights. And, on the same footing, it is maintained for them, that the agreement of 1805 by the magistrates was *ultra vires*, as they had no power to enter into any agreement which should compromise the right to gather mussels from these beds, possessed by and granted *publico jure* in the inhabitants of St Andrews and in the lieges generally of the realm. These are important pleas, and will be for discussion in the future argument of parties. I express no opinion upon them. It may be shown that a Crown grant of fishings will not establish an absolute exclusive patrimonial right in mussel beds. And, as the validity of Crown grants of white fishing in the sea has been thought challengable, it may be that, as bait for such white fishing, the same principle should be held to apply to mussel beds. All these pleas are for argument. I cannot, however, recognise their relevancy in the only question before us, viz., whether the interim interdict should be continued. To me it appears sufficient to say, that those pleas, if well founded, will not be prejudiced by our giving to the complainers the interim remedy which they seek.

5. As regards the minute lodged by the complainers, and to which reference is made in the interlocutor of the Lord Ordinary granting the interdict, it appears to me that no objections can be taken by the respondents. The Court has no doubt large powers in regulating interim possession in such a case as the present, and may refuse the interdict asked, did it appear that the granting of it would cause hardship or oppression to the respondents. But what the complainers have bound themselves to by their minute is, to sell mussels to the respondents and others of the fishermen resi-

dent in St Andrews "at the lowest price at which they have ever sold mussels." It was not denied at the debate, that the price stated truly was the lowest price at which sales had been made as alleged by the complainers. And this being the case, I am of opinion that this matter has been rightly disposed of by the interlocutor granting the interim interdict.

On these grounds, I am of opinion that the reclaiming note should be refused.

Lord Benholme concurred. The complainers' title was impeached. There is no doubt the Crown can grant a right of property in the scalps. This has been recognised in cases, and in the Act of 10 and 11 Vict., making the taking of oysters from private scalps a theft. Whether the general title will carry scalps is *sub judice*.

Lord Neaves concurred, but desired to reserve his opinion even as to the possibility of appropriating scalps, and said that the preamble of an Act could never alter the law.

The Lord Ordinary's interlocutor was accordingly adhered to.

Agents for Complainers—Dundas & Wilson, C.S.

Agent for Respondents—Andrew Beveridge, S.S.C.

Thursday, June 14.

INSPECTOR OF POOR OF KINGLASSIE PARISH *v.* KIRK-SESSION OF KINGLASSIE.

Poor—Disposition—Kirk-Session—Parochial Board—Poor Law Amendment Act, § 52. Held that a disposition of lands in 1726, in favour of the minister of the parish and three elders of the session "and their successors in office from time to time as minister and elders of the said kirk-session *for the use and behoof of the poor of said parish*," fell under the provision in the 52d section of the Poor Law.

The question in this case is whether a certain farm, purchased in 1726, belongs to the heritors and kirk-session, on behalf of the legal poor of the parish of Kinglassie, or is vested in the kirk-session exclusively, and for the purpose of distribution, according to their discretion, amongst the poor persons in the parish, whether possessing a legal right of relief or not.

The funds with which this purchase was made appear to have been certain accumulations from donations, collections, fines, and other sources, which are described in the minutes of the kirk-session as being in "the poor's-box" of the parish. The active administration of these funds had been taken by the kirk-session of the parish. But the minutes show that, posterior to the Proclamation of 11th August 1692, by which the heritors and kirk-session had the duty of providing for the relief of the poor laid on them jointly, the heritors of Kinglassie had more or less intervened in the administration of the poor funds. In 1726 it appears that part of these funds were applied to the purchase of the farm of Ramore by the minister and a committee of elders, with the approval of the kirk-session and heritors.

The disposition itself has not been recovered, but its terms are shown by those of the instrument of sasine which passed on it, and of a charter of confirmation afterwards granted by the superior. The disposition was in favour of the then minister, and certain elders specially named—"elders and members of the kirk-session of Kinglassie, and their successors in office, from time to time, as ministers and elders of the said kirk-session, for the use and behoof of the poor of the said parish."

It was maintained, on behalf of the defenders, that the terms of the disposition import a conveyance to the kirk-session as a separate administrative body, altogether apart from the heritors of the parish, and for the purpose of a discretionary distribution amongst poor persons in the parish, whether legally entitled to relief or not. They maintained that the disposition bore this import so clearly that it was not open to be interpreted, far less controlled, by intrinsic evidence. The pursuers, on the other hand, contended, and the Lord Ordinary (Kinloch) held, that the history of the fund must be looked at, and that it was clear from the evidence that the property was not intended to be dealt with in a different way from the poor funds of the parish generally. His Lordship found that at and prior to the passing of the statute 8 and 9 Vict., cap. 83, the property libelled belonged to the heritors and kirk-session of Kinglassie, for behoof of the poor of the said parish.

The defenders reclaimed.

Macdonald (with him Gifford) was heard for them.

W. M. Thomson (with him Young) was heard in answer.

In consequence of the difficulty of the question, the Court ordered written argument to be laid before the whole Court. All the consulted judges accordingly returned opinions, with the exception of the Lord President. The following is the opinion of Lord Curriehill:—

"In the year 1726 a piece of land called Ramore was purchased by the kirk-session of the parish of Kinglassie, and the disposition thereto was taken in the name of four individuals, viz., the then minister of the parish and three elders of that session 'and their successors in office, from time to time, as minister and elders of the said kirk-session, *for the use and behoof of the poor of said parish*.' By the statute 8 and 9 Vict., c. 83, § 52, which was passed on 4th August 1845, it is enacted that when any property 'shall, *at the time of the passing of this Act*, belong to or be vested in the heritors and kirk-session of any parish, or the magistrates or magistrates and town council of any burgh, or commissioners, or trustees, or *other persons on behalf of the said heritors and kirk-session*, or magistrates, or magistrates and town council, under any Act of Parliament, or under any law or usage, or in virtue of any gift, grant, bequest, *or otherwise, for the use or benefit of the poor of such parish or burgh*,' such property shall be held to belong to the parochial board established by that statute, and shall be thenceforth administered by that board as therein set forth. The pursuers, the parochial board of the parish of Kinglassie, as established under that statute, claim that that farm of Ramore shall be declared to belong to them, and shall be conveyed to them, or be administered for their behoof, in terms of that enactment.

"In order to dispose of this demand, it appears to be necessary to ascertain whether or not the words, *the poor of the parish*, as used in the disposition of 1726, have the same meaning as that in which they are used in the statute 1845? If they have, the action is clearly well-founded. But if they have not—if the class of persons so designated in the *disposition*, according to the true meaning of the phrase as there used, are a different class of