stamped receipt on handing over the money. He is a mere messenger, and if no complaint is made at the time the presumption is that he has faithfully done his duty.

"The peculiarity of this case, however, is, that it is said that on this 31st of July Jane Ogilvy was insane and incapable of managing her affairs, and that the defender must have known this. No doubt the medical men, *on a review of all the facts*, now say that at that time 'she could not have been in her sound mind.' Still, the fact is that she was at large, in the management of her affairs, and legally entitled to do so. Every one seemed to be aware that her mind was to some extent affected. Dr Webster had told the defender to look after her; but it was not till the end of September that the doctors considered her mind to be so much affected as to require her to be removed to the asylum.

"Having got the money, the defender either handed it to Jane Ogilvy, or he did not. If he did not, then of course the pursuer should prevail in this action; but the evidence and the presumption point the other way — viz., that he did hand it to her. Let it be assumed that he did this, Is he to be compelled to pay it a second time? The pursuer himself does not carry his argument so far. His fifth statement is, 'that the defender failed to pay or account for the said sum of £296 to the said Jane Ogilvy,' thus assuming that if he had paid it to her he would be free. The defender may have acted imprudently in handing money to a person whose mind he knew was *to some extent* affected; but is he to be punished for his imprudence and his want of discretion? The pursuer says the money can't be traced to Jane Ogilvy. This is not surprising. She may have given it away, or lost it, or hid it, or destroyed it. But, assuming that the defender handed the money to his sister, the Sheriff cannot hold that he must now pay it again to her *curator bonis*.

"The question therefore again arises, has the pursuer established that he failed to pay it? There are two circumstances that are in the defender's favour on this point. The sister, who was at large, and constantly seeing people, and who seemed to take care of her money, never seems to have complained to any one that she had not got her money. Then the sister had got another deposit receipt for a larger amount, which the defender took from her and gave up to the pursuer. There are, no doubt, some somewhat suspicious circumstances in the case; but, on the whole, the Sheriff is of opinion that the pursuer has failed to prove his case."

The pursuer appealed to the Court of Session.

After hearing parties, the Court ordered the examination of the defender and his wife, which took place before the Lord Justice-Clerk. Thereafter, the Court ordered the examination of Miss Ogilvy in the asylum, and she was examined by a commissioner, and stated that the contents of the deposit receipt had not been delivered to her.

Parties were again heard on the report of the commissioner.

The Court, at advising, reversed the interlocutor appealed from, and decerned against the defender, with expenses in both Courts, on the ground that at the time of the transaction in question Miss Ogilvy was to the knowledge of the defender in a facile state of mind, and that the defender had failed to prove that he had discharged himself of his intromission with the sum in question,—Lord Benholme dissenting.

Counsel for Pursuer—Solicitor-General (Clark) and Watson. Agent—L. M. Macara, W.S.

Counsel for Defender—Macdonald and Lang. Agent—D. Sang, W.S.

Wednesday, December 10.

SECOND DIVISION.

[Bill Chamber.

CLARK *v.* THE BOARD OF SUPERVISION.

Poor Law Amendment Act 1845, § 56—*Inspector of Poor—Board of Supervision—Right to Dismiss—Jurisdiction.*

The Board of Supervision having resolved that the office of Inspector of Poor was incompatible with that of member of the School Board of the parish, called upon one of their inspectors, who held the double office, to resign the one or the other, and in consequence of his declining to do so threatened to dismiss him from the office of inspector. In a suspension at the instance of the inspector —*held* that the opinion of the Board was a competent exercise of the powers possessed by the Board under section 56 of the Poor Law Amendment Act; further, that the opinion was final and not subject to review by the Court, and that the Board were not bound to state the grounds on which their opinion was founded.

The complainer, Inspector of Poor of the parish of Portmoak, in the county of Kinross, was elected a member of the School Board of the parish of Portmoak under the provisions of "The Education (Scotland) Act, 1872." The respondents were the Board of Supervision for relief of the poor in Scotland, created by the Act of Parliament 8 and 9 Vict., cap. 83, entituled "An Act for the amendment and better administration of the laws relating to the relief of the poor in Scotland." On 8th May 1873 the respondents adopted and issued a minute with reference to the Education Act in the following terms:—"The Board having considered the provisions of the Education (Scotland) Act, 1872, are of opinion that it is inexpedient that inspectors of poor should act as members of school boards, as managers appointed under section 22 of that Act, or as officers appointed under section 70, being satisfied that such a union of offices is, or may be found to be, incompatible with the due and independent discharge of the duties attached to the office of inspector of poor. The Board accordingly direct the secretary to call upon every inspector who holds any of the three first-mentioned offices, either to resign it or the office of inspector of poor." A copy of this minute was transmitted to all parochial boards and inspectors of poor, and one was received by the complainer. On 12th June 1873 the respondents adopted and issued another minute with reference to the Education Act. The said minute proceeds on the narrative, "that considerable misapprehension exists as to the object and effect of the Board's minute of 8th May last, prohibiting inspectors of poor from acting as members of school boards, as managers appointed under section 22 of the Education (Scot-

land) Act, or as officers appointed under section 70 of that Act;" and then goes on to explain the grounds upon which they considered it to be their duty to issue the minute of the 8th of May 1873. On 31st July 1873 a third minute was adopted and issued by the respondents with reference to the Education Act. The said minute purported to give certain explanations with regard to a circular issued by the Board of Education on the 3d of July 1873, and concludes with a clause in the following terms:—"The Board have therefore to intimate to parochial boards and inspectors of the poor that the minute of 8th May is unrecalled, and that the Board consider themselves bound to act upon it." In July 1873 the attention of the respondents was directed by the chairman of the Parochial Board of Portmoak to the fact that the complainer, in disregard of the requirements in said minute, was acting as a member of the School Board of said parish. The complainer having, in answer to an application from the respondents, intimated that he declined to comply with the requirements in said minute, they, on 10th October last, intimated to him through their secretary that if his resignation, either of the office of Inspector of Poor or as a member of the School Board, was not communicated to the respondents within fourteen days, they would be compelled to dismiss him from the office of inspector. The complainer thereupon presented the present application, to have the respondents interdicted from dismissing the complainer from his office as Inspector of Poor of the parish of Portmoak, "on the ground of, and in respect of his having been elected and continuing to hold the office of member of the School Board." The respondents stated that it has been the invariable practice of the respondents, since they were constituted under the Poor Law Act in 1845, to prohibit inspectors of poor from holding any office or appointment in which there is any likelihood of their duties being in any respect antagonistic to or inconsistent with the due discharge of those of inspector, and that the respondents' right to do this has never been challenged.

On 22d November 1873 the Lord Ordinary (SHAND) issued the following interlocutor:—"The Lord Ordinary having considered the note and answers, Finds that the respondents, being of opinion that the complainer, while continuing to hold the office of a member of the School Board of the parish of Portmoak, and to discharge the duties of that office, is unfit to discharge the duties of his office of Inspector of Poor of said parish, are entitled, in virtue of section 56 of the Poor Law Act, 8 and 9 Victoria, cap. 83, to dismiss him from his said office of Inspector of Poor, refuses the prayer of the note: Finds the complainer liable in expenses; allows an account thereof to be given in, and remits the same to the auditor to tax and report.

"*Note.*— . . . . . It appears to the Lord Ordinary that the materials necessary for the decision of the question thus raised are as fully before the Court in the pleadings and productions as they would be on the note if passed. The result of a consideration of the argument addressed to him, and of the provisions of section 56 of the Poor Law Act, on which the question depends, is that, in his opinion, the respondents have the power which they claim, and he has accordingly refused the note of suspension and interdict.

"Under the Poor Law Act, the appointment of inspector of poor of any parish is made by the Parochial Board of the parish. The 32d section of the Act requires the board to nominate an inspector, and to fix the remuneration to be given to him, and forthwith to report to the Board of Supervision the name and address of such inspector, and the amount of the remuneration to be given to him. The duties of inspector are defined by section 55th of the Act, in terms of which the inspector is to take instructions from the Parochial Board and from the Board of Supervision, to both of which boards he is 'to report upon all matters connected with the management of the poor, in conformity with the instructions which he may receive from the said boards respectively, and to perform such other duties as the boards may direct,' beyond those specially enumerated in the statute, which it is unnecessary here to recapitulate.

"By section 56th of the statute it is provided, 'That if any inspector of the poor shall fail or neglect or refuse to perform the duties of his office, or shall, in the opinion of the Board of Supervision, be unfit or incompetent to discharge the duties of his office, then it shall and may be lawful for the said Board of Supervision, by a minute or order, to suspend or dismiss such inspector, and the Parochial Board of the parish or combination for which such person is inspector shall forthwith proceed to appoint another person to perform the duties of inspector of the poor in the room of the inspector so suspended or dismissed.'

"It seems to result from these provisions of the Act, that while the appointment is made by the Parochial Board of the parish, the inspector, when appointed, has important duties to perform, not only to that board, but directly to the Board of Supervision, whose instructions he is bound to obey, and to whom he is to report in the management of the poor in the parish, and other matters, as and when required; and that although appointed by the Parochial Board, the power to suspend or dismiss him from his office, in the events mentioned in section 56 of the statute, is conferred, not on the Parochial Board, but on the Board of Supervision. The decision of the present question would probably be the same whether the sole power of dismissal is held to be vested in the Board of Supervision or whether such a power could be also shown to be held by the Parochial Board, either absolutely, or if circumstances should arise to justify its exercise. But it appears to the Lord Ordinary to be the sound construction of the provisions of the Act, and particularly of the provisions already noticed, that the Parochial Board having made the appointment, have not the power of dismissal of the inspector. An opinion to this effect was expressed by Lord Colonsay, when Lord President of the Court, in the case of the *Board of Supervision* v. *Parish of Dull*, 17 D. 827, and the Lord Ordinary understands that this view has been followed invariably in practice, and that in no case has the Parochial Board asserted or exercised a right to dismiss an inspector.

"The question between the parties is as to the extent of the power given by the statute to the Board of Supervision. The complainer maintained that this board can only dismiss him from his office of inspector on sufficient cause shown, and that the Court must determine whether the cause be or be not sufficient, if a question be raised on that subject. The respondents, on the other hand,

plead that the dismissal of the inspector is entirely in their discretion, depending only on their opinion as to whether he is fit or competent, or is unfit or incompetent, to discharge the duties of his office.

"Such unfitness or incompetency may arise from a variety of causes, of which physical or mental illness or infirmity are the most obvious. If the board should suspend or dismiss an inspector on the ground of unfitness or incompetency to discharge his duties arising from such a cause, it is the complainer's contention that he may raise the question before the Court whether the degree of infirmity be such as to render him unfit for his duties, and that the opinion of the Board is not conclusive on that question.

"It is not disputed that unfitness may arise from other causes, as, *e.g.*, in the case of ignorance of the Gaelic language, an inspector whose duties necessarily bring him much into contact with a gaelic-speaking population. The holding of another office, the performance of the duties of which are incompatible with the proper performance of the duties of inspector, it is also conceded, would be sufficient to justify dismissal as inspector on the ground of unfitness for that office, as for example, the holding of the office of medical man to the Parochial Board in the same parish; for it is obviously of importance, both in the interest of the ratepayers and the poor, that the inspector should form an independent judgment, and take his own course on many occasions in regard to matters which involve the performance of duties both by him and by the medical officer of the parish. There are other offices the duties of which are incompatible with the due discharge of his duties by the inspector as, *e.g.*, that of procurator-fiscal, ground officer on a large estate in the parish, governor of a poorhouse, and the like; and from the productions in process it appears that from time to time the Board of Supervision, in order to secure complete independence of action and the discharge of the duties of inspector with a single eye to the proper administration of the poor law, unaffected by influences arising from duties or interests which might affect unfavourably his judgment or conduct as inspector, have, with reference to such offices, intimated that the holder of them would be deemed unfit for the office of inspector, and that in these cases the resolution of the Board has been acquiesced in.

"Has the Board of Supervision the power which they claim, at their discretion thus to dismiss the inspector of a parish? or is the Supreme Court entitled to review their judgment, and, on the statement of the inspector that he discharges his duties faithfully and efficiently, to enter into an inquiry as to whether the Board's discretion has been properly exercised, and, if of a different opinion from the Board, to cancel their resolution or order? The Lord Ordinary is of opinion that under the statute the Board of Supervision has the power they claim, and that this Court cannot interfere with them in its exercise, and at least cannot do so when their judgment is honestly exercised, and is not alleged to proceed from corrupt motives. The words of the statute are, 'that if any Inspector of the Poor . . . . . shall, in the opinion of the Board of Supervision, be unfit or incompetent to discharge the duties of his office,' then the Board may dismiss him. The complainer is unable, consistently with his view of the statute, to give any satisfactory explanation of the effect of the words, 'in the opinion of the Board,' here occurring. He either denies all effect to these words, or at least maintains that their effect must be limited to this, that the soundness of the board's opinion in any particular case will receive effect, but may be challenged by the party interested, and the Board put to justify their opinion before the Court, or the complainer entitled to show that it is not well founded. The Lord Ordinary cannot adopt this view of the statute. If this were the true meaning of the statute, the words, 'in the opinion of the Board,' might as well have been omitted from its provisions. The enactment would then be to the effect that if the inspector should be unfit or incompetent the Board might dismiss him, and their resolution would be the subject of complaint to the Court, just in the same way and to the same effect as the complainer maintains such a complaint can now be made. The complainer's construction of the statute thus gives no force to these words. They must, however, receive their full effect in the interpretation of the Act, and, in the view of the Lord Ordinary, their effect is, that the test of the power of dismissal is not whether the inspector is or is not fit for his duties, but whether in the opinion of the Board he is fit. The opinion may be sound or doubtful. It may rest on elements on which parties may fairly differ; and it may be that many persons judging of the Board's reasons may think them insufficient, but the single question with which it appears to the Lord Ordinary the Court has to do is, whether, in point of fact, the Board is of opinion that the inspector is unfit for his duties? If it be established as matter of fact that that is the Board's opinion, their resolution must receive effect. It is said that this construction of the statute involves the recognition of a much larger power in the Board of Supervision than is reasonable, and that unless there be some such check as review by the Court will give, the power may be harshly or at least unreasonably exercised, as the complainer says it has been in the present case. On this subject the Lord Ordinary will only observe, that even if the power should appear to be unreasonable in the sense of being too extensive, the Court must give effect to the plain language of the statute; but he may add, that even on the question of expediency it seems to him to be more fitting that a Board which is charged with the important function of conducting the general administration of the Poor Law in this country, and is composed of members and officers selected for their offices because of the legal and administrative qualifications they possess, should have the power of forming and acting on an opinion as to the fitness of persons to hold the office of inspector of the poor without being required to justify that opinion to the Court if its soundness be questioned, than that the Court, which has not the same experience enabling them to estimate the effect of circumstances as influencing the conduct of inspectors of the poor in the daily discharge of duties, should be called upon to say whether the Board's opinion is justified in any particular instance.

"In the view of the Lord Ordinary, the Board of Supervision, having honestly formed their opinion, is not bound to state the grounds of it even to the inspector concerned, and he refrains from entering on the grounds which the Board in the present case have stated as having actuated them in their resolution. The subject is one on which he is satisfied that they are in circumstances in

which he believes they are fully better able to form a sound opinion than he is.

"The Lord Ordinary is not aware of any authority in the law of Scotland bearing directly on the present question; but in England similar questions have occurred, and the Court has refused to interfere with the discretionary power which they held to be vested in public bodies under provisions of the deed or statute under which they acted.—*The Queen* v. *The Governors of Darlington Free Grammar School*, November 27, 1844, 14 Law Journal, Queen's Bench, 67; and *in re Teather and the Poor Law Commissioners*, January 15, 1850, 19 Law Journal, Magistrates' Cases, 70. In the latter of these cases a relieving officer was dismissed from his office by the Poor Law Commissioners of England and Wales, under a provision of the English Poor Law Act in its terms very similar to those of the Scotch statute, and the Court, following the general principle laid down by Chief-Justice Tindal in the case of *The Darlington School*, held that they could not interfere with the discretionary power of the Commissioners.

"An argument was founded on the opening words of the 56th section, to the effect that if the conduct of the inspector consisted in actual failure, neglect, or refusal to perform the duties of his office, the Board's resolution to dismiss him might be reviewed by the Court, because the words, 'in the opinion of the Board,' are not made applicable to that case, but only to the case of unfitness or incompetency; and it was said that if this be true of the opening part of the section, it must apply to the whole. It appears to the Lord Ordinary, however, that according to the sound construction of the statute, the words 'in the opinion of the Board' must be held to apply to cases of actual refusal or neglect by an inspector to perform his duties. Any such neglect or refusal would render the inspector unfit to discharge the duties of his office, and this unfitness is a matter of which, by the words of the Act, the Board are to be the sole judges.

"It was also argued that the resolution complained of was beyond the powers of the Board, inasmuch as it was intimated as a general rule to be followed, irrespective of the particular circumstances of any case in which it could be shown that it would be unreasonable or unjust to apply it. But the Board have stated that in the particular case they are of opinion that the complainer is unfit to discharge the duties of his office so long as he remains a member of the School Board, and the Court must proceed on the footing that this is the opinion of the Board in the particular case. Apart from this, however, the Lord Ordinary cannot say that he sees any impropriety in the Board forming a general resolution on such a subject, to be given effect to as particular instances arise. Thus the general resolution disqualifying the holders of some of the offices above alluded to, such as medical man of the parish for the office of inspector, as unfit to discharge the duties of that office, seems to be unobjectionable, and could not prevent the Board giving effect to their resolution in particular cases when they arose. Whether the resolution complained of be a sound exercise of judgment is, however, a matter on the consideration of which the Lord Ordinary holds, for the reasons already stated, he is not entitled to enter."

The complainer reclaimed to the Second Division of the Court.

The argument submitted by both parties is fully stated in the note to the Lord Ordinary's interlocutor. The only additional argument founded on by the complainer in the Inner House was to the effect that the regulations issued by the Board of Supervision in the present instance, even if sufficient to justify the action of the Board had they been legally enacted, were not binding, inasmuch as by the 7th section of the Act it is provided that regulations made by the Board of Supervision cannot take effect previous to their receiving the sanction of the Home Secretary, and such sanction had not been obtained in the present case.

Additional authority cited by the complainer—*The Queen* v. *The Guardians of Braintree Union* 1 Adolphus and Ellis, Q. B. 142.

At advising—

Lord Justice-Clerk—I am glad to have heard full argument on this important matter. The question is, whether the Court can interfere at the present stage with what the Board of Supervision has done, and what the Board has done is to call upon the complainer to resign either his office of member of the School Board, or his office of Inspector of Poor; and thereafter, on his declining to comply with that requirement, to find him unfit to hold the latter office. Their power to do so is founded upon the 56th section of the statute, which gives power to dismiss or suspend inspectors in certain circumstances—[*reads section*].

I don't hold that that provision confers an arbitrary power of dismissal. It does not. It is a power of dismissal for satisfactory causes, *i.e.*, causes satisfactory to the Board. They are bound to form an opinion, but when formed that is conclusive.

The second argument is founded upon the view that the Board of Supervision, in dismissing the complainer, were acting merely in pursuance of general rules, contained in minutes of the Board, and were not applying their attention to and dealing with the particular case of the complainer's unfitness. If this had been the first time the question had arisen I would have liked to hear farther argument on that point, for there might be a good deal to be said for the position that a disqualification arising solely out of general regulations was not a disqualification within the meaning of the Act. But I find that it is by no means the first time that a similar course has been taken by the Board of Supervision. Ever since the passing of the Act the Board has been in use to do this very thing—viz., to make general resolutions for their own guidance in judging of the qualifications of any particular individual for the office of inspector, and I am not prepared, therefore, in this case, to interfere, by way of suspension, with the discretion of the Board in the matter.

As to the argument founded on the terms of section 7 of the statute, there appeared at first to be some difficulty. But I think it is now apparent that the regulations passed by the Board of Supervision in the present case were not regulations in the sense of this section. I think they were merely a proclamation of what they meant to do. On the whole, I am for adhering to the interlocutor of the Lord Ordinary.

The other Judges concurred.

Counsel for Complainer—Lancaster and W. A. Brown. Agent—D. Curror, S.S.C.

Counsel for Respondent—Millar, Q.C., Watson, and Asher. Agents—Murray & Falconer, W.S.