WADDELL *v.* MACPHAIL.

The 9th section of the Reform Act requires a tenant to be in possession for twelve months previous to the 31st July. The respondent in this appeal entered to Millig Mill and grounds on the 1st August 1864, and as his claim to be entered on the register was not made till the 18th September 1865, he had practically been a full year in possession previous to making his claim, although on the 31st July last he wanted one day to complete the year. The Sheriff decided that the statute being an enfranchising statute was to be construed liberally, but the Court reversed and sustained the objection.

Saturday, Dec. 2.

M'CULLOCH *v.* FREELAND.

This is an objection to the qualification of a voter who is on the register, in respect that his claim is founded on a right of annuity of ten guineas contained in a disposition executed by three parties, and on which sasine was duly taken. The Sheriff sustained his claim, but to-day the Court, in consideration that the voter's right was really a debt heritably secured, and, as such, one on which there could be neither ownership nor possession, reversed and sustained the objection.

M'CULLOCH *v.* SMITH.

This case was similar to the foregoing, with the exception that in place of the expression "annuity" the phrase "liferent yearly ground annual" had been employed. Their Lordships held that the two expressions were synonymous, and therefore reversed the Sheriff's decision, which had found that the voter was entitled to be retained on the register.

M'CULLOCH *v.* MARSHALL.

John Marshall was sequestrated in 1840, and has never been discharged. After the date of the sequestration, a disposition dated in 1864 was granted by the voter's wife to him in liferent as alimentary, and for his liferent use allenarly. The deed shows that there was a son of the marriage. No procedure appears to have taken place under the sequestration, the bankrupt being left in possession of the subjects. The trustee under the sequestration was discharged, and no new trustee was appointed. The Sheriff having decided against the voter's claim to be retained upon the register, the Court reversed, holding that the fair presumption in this case was that the *jus mariti* had been excluded, that the wife's power of granting the disposition was unaffected by her husband's sequestration, and that the husband had full right to vote in virtue of the qualification conferred upon him by his wife. They therefore reversed the Sheriff's judgment, and repelled the objection.

DONALDSON *v.* YUILLE.

David Yuille was sequestrated in 1864 under the Bankruptcy Statute, 19 and 20 Vict., cap. 79. On 7th April 1865 he was discharged on composition; and the Sheriff holding that the bankrupt's reinvestiture having taken place at too recent a period to afford him the qualification necessary under the 7th section of the Reform Act, expunged his name from the register. To-day the Court adhered, and affirmed the Sheriff's judgment.

M'CULLOCH *v.* BUCHANAN.

This was also a case under the bankrupt statute. Thomas Buchanan stands on the roll in right of property belonging to his wife. The *jus mariti* is not excluded. The property was acquired previously to his sequestration, which was on the 12th October 1860; and in 1863 he was discharged without composition. The trustee was also discharged, but no new trustee was appointed. The Sheriff having decided that the voter's claim to be retained on the register was incompetent, the Court affirmed, holding that the bankrupt's discharge having been without composition, there was no reinvestiture; that the sequestration therefore still subsists; and that this result was not affected by the discharge of the trustee.

M'CULLOCH *v.* SERVICE.

This case was similar to the last, and was decided in the same way.

DICK *v.* WADDELL.

Alexander Dick claimed to have his name entered on the register of voters, in respect that he was tenant of the dwelling-house at Bellmont, Helensburgh, for the year from Whitsunday 1864 to Whitsunday 1865. The rent of the house unfurnished would have been £85, but he took it as a furnished house, and paid a rent of £132. On the 15th May 1865 he took it again as a furnished house for three months, and on the expiration of that time he took it for two months more, and during the currency of these two months he took it for one month more, and he understood that his possession must expire in November 1865, at which time the proprietor was to take possession. The Sheriff rejected his claim; but the Court reversed his judgment, and admitted the qualification of the claimant.

LORD ORMIDALE observed that although the dwelling-house in respect of which the voter put in his claim was held in tenancy by different contracts, there was nothing in section 9 of the Reform Act to show that such fragmentary occupancy was beyond the scope of the statute. If there had been any allegation of fraud in this case such an occupancy might not do. But there was no room for suggesting that here; and looking to the meaning of the expression "yearly value" in connection with long leases under the Act, we must hold that "yearly rent," in cases such as the present, must be interpreted not as a stated sum payable by the year, but as the gross amount paid by the tenant during the year.

LORD KINLOCH concurred with his Lordship's remarks. This was not a question of successive occupancy in the sense in which that word was generally used. Successive occupancy meant the occupancy of different premises. But here the party had possessed the same premises for a good deal more than the requisite statutory period; and he could not think that the claimant's right could be affected by the successive acquirements under which this occupancy took place.

M'CULLOCH *v.* SHARPE.

The question of law involved in this case, and on which the objection to the voter's name being retained in the register was founded, was whether a voter was divested of his qualification to vote by the fact that one of his creditors was drawing the rents of the subjects in respect of which he claimed under a decree of maills and duties. The Sheriff's judgment, deciding that he was not so divested, was sustained by their Lordships, Lord Kinloch remarking that since mere evidence of debt was not sufficient to disqualify the debtor, it was not to be held that the fact of diligence having been done by the creditor upon this debt, was to have this effect; the more so that if the debtor was divested, as the creditor could not thereby obtain the qualification himself, the result would be to destroy all right to vote in respect of the subject in question.

JARDINE *v.* M'CULLOCH.

This case turned upon the question whether a proprietor was divested by a disposition *ex facie* absolute, but "alleged" (it is remarked in the special case prepared by the Sheriff) "to be qualified by a back-letter, in which it was stated that the disposition was a security only." The back-letter was unstamped. The Court holding that they were entitled to look only to the facts of the case as disclosed to them in the Sheriff's case, and that as there it was not so much as stated that a back-letter existed, though if it did it was null from want of a stamp, decided, affirming the judgment of the Sheriff, that the proprietor was so divested, and sustained the objection to his name being retained on the register.

EXPENSES.

The question of expenses in reference to the Dumbartonshire appeals was then gone into. Mr Monro

contended that, following the rule observed for the last two years, each case should be treated as standing by itself, and that no attempt should be made to strike a balance in favour of either party. His clients (the Conservative interest) had supported 12 appeals, and had been successful in 7; and in opposing appeals on the other side, amounting to 14 in all, they had been successful in 10. His clients had therefore, out of 26 appeals, been successful in 17.

Mr LANCASTER, in the Liberal interest, remarked that as in some instances several appeals had been disposed of in one argument, expenses should in such cases be given to the successful party as for one case only.

The Court held that though they must in point of form decide each case separately, yet considering that the same counsel and agents had been employed throughout, and that thus much discussion and time had been saved, they would modify expenses to £2, 2s. in each case.

Friday, Dec. 1.

SECOND DIVISION.

ADV.—JOHN WALKER *v.* GEORGE SIMPSON.

Sale in Bulk—Deficiency in Weight—Onus probandi. Held that in a sale of stacks of grain, with a guarantee by the seller that each stack would yield a certain quantity, the burden of proving a deficiency lay on the purchaser. Circumstances in which held that the purchaser had failed to prove the deficiency.

Sheriff Court Act—Adjournment of Diets of Proof. Observed that diets of proof had been adjourned without the special cause being embodied in the interlocutors, as required by the Sheriff Court Act.

Counsel for Advocator—The Solicitor-General and Mr Strachan. Agents—Messrs Maclachlan, Ivory, & Rodger, W.S.

Counsel for Respondent—Mr Shand and Mr MacLean. Agent—Mr John Leishman, W.S.

This was an advocation of two conjoined processes from the Sheriff Court of Lanarkshire. The questions in dispute between the parties were the following:—Upon 4th April 1861, Walker had purchased from Simpson 17 stacks of grain (8 wheat and 9 oats), Simpson guaranteeing that there were 21 bolls of grain in each stack, and that should any stack contain more, he was to get credit for the surplus of any stack that should not contain that amount. The price was £425, of which Walker had paid £250 to account. Simpson, in one of the processes advocated, sued Walker for the balance, payment of which he resisted, upon the ground that there had been a short yield from the stacks to the extent of 65½ bolls, of the value of £75 odds. Walker brought a counter-action, in which he claimed payment of, *inter alia*, the sum of £77 as the value of the straw of the 9 stacks of oats which he alleged had been purchased from him by Simpson. These actions having been conjoined, a proof was allowed to both parties of their averments, which was led at considerable length at eight separate diets. Thereafter the Sheriff-Substitute and Sheriff, upon advising the same, found that Walker had failed to instruct his defence of short delivery of the grain and his claim for the price of the straw, and found Walker liable in the expenses of the conjoined processes. Walker thereupon advocated the actions; and parties having been heard in the advocation process, the Court to-day adhered to the Sheriff's interlocutors.

The LORD JUSTICE-CLERK, after narrating the contract, said in regard to the questions raised in this advocation, there was not much room for doubt. Under the contract the party who had the interest to enforce the guarantee of 21 bolls to each stack was not the seller but the purchaser. If the purchaser got more than the stipulated quantity of grain in each sack, the price to be received was not increased. The seller had no interest to enforce the guarantee, but merely to give delivery and receive the price. If the buyer meant to claim under his guarantee, it was his duty to preserve distinct and satisfactory evidence of the yield of grain from each each. The *onus* of proof lay upon him. Has he so acquitted himself as to ground the present claim? The Sheriff-Substitute has found that he has failed, and in this I entirely concur. The purchaser has altogether failed to make out either the weight or the measurement of the grain, so as to ascertain whether there was any deficiency. The weighing and measuring of the grain should have been attended to by some intelligent neutral and careful person, and that at the sight of both parties. This was not done. The weighing and measuring was gone about in the loosest manner. As regards three of the stacks of wheat, the buyer admits that no measurement or weight was taken of the grain thrashed therefrom. Besides, even as to the other stacks, the produce of which was weighed or measured, there is great uncertainty as to the weighing or measurement. I think the advocator has failed to make out his case in either view; and therefore I consider it unnecessary to examine the question as to whether weight or measurement was in the view of the parties when they entered into this contract. As regards the oat straw, the only question seems to be, Was this straw resold by Walker to Simpson? The burden of proof lay entirely on Walker; and it was incumbent on him to prove the sale. There is an entire blank in the evidence on the subject, except that of the seller himself; and therefore upon this matter I also hold with the Sheriff-Substitute that the advocator has failed to prove his case.

The other Judges concurred.

The advocation was therefore refused, with expenses.

In the course of the discussion the Court took occasion to call attention to the fact that the provisions of the Sheriff Court Act had not been complied with in this case, in so far as that whereas it was ordered in that statute that adjournments of the diets of proof should only be made on special cause shown to be embodied in an interlocutor of adjournments, the diets in this case had been adjourned, with one or two exceptions, of consent of parties only, and without any special cause being set forth in the interlocutors.

Saturday, Dec. 2.

FIRST DIVISION.

PET.—CHRISTINA FAIRGRIEVE, FOR ADMISSION TO POOR'S ROLL.

Poor's Roll. A girl refused the benefit of the poor's roll to enable her to advocate an action of filiation and aliment which had been decided against her in the Sheriff Court.

Counsel for Petitioner—Mr C. T. Couper. Agent—Mr R. C. Bell, W.S.

Counsel for Defender—Mr Millar.

The petitioner was pursuer of an action of filiation and aliment in the Sheriff Court of Haddington, which had been decided in her favour by the Sheriff-Substitute, and against her by the Sheriff-Depute. She proposed to advocate the Sheriff's judgment on juratory caution, and applied for the benefit of the poor's roll. A remit was made to the reporters, who certified that the applicant had a *probabilis causa litigandi*. The defender objected to the petitioner being admitted to the poor's roll. It was a case betwixt two farm servants, which had already been considered by two local Judges, and