

inquired into the case, certainly the valuation roll could not prove him alive against the fact that he was dead; and it was not within this Act at all that they could find any declaration that the valuation roll was conclusive proof as to when a man might enter into possession of a subject. He therefore thought that they could not fall back to the valuation roll of the year 1867 to the exclusion of other evidence. He thought in this case the objection ought to be repelled.

LORDS BENHOLME and MANOR concurred, and Mr Cauchie was ordered to be placed on the roll.

Agents for Appellant—J. M. & J. Balfour, W.S.
Agents for Respondent—Maitland & Lyon, W.S.

KINNA v. FROOD.

Act. Guthrie. Alt. Campbell.

Tenant and Occupant—Manse and Glebe—Valuation Roll. A party admitted to the roll, in respect it appeared from the valuation roll that he had been tenant and occupant of subjects of the requisite value and for the necessary period, although, in a proof led in the registration there had been a failure to prove that he had the qualification upon which he was enrolled.

The following special case was stated by the Sheriff:—"At a Registration Court for the county of Wigtown, held by me at Stranraer on the 1st day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., cap. 48, intitled 'The Representation of the People (Scotland) Act 1868,' and the other Statutes therein recited, William Shaw, solicitor, Stranraer, as agent and mandatory of James Kinna, residing at Machermore Castle, Minnigaff, near Newton-Stewart, a voter on the roll, objected, for the said James Kinna, to the name of the Reverend Bryce Frood, manse of Old Luce, being entered or retained on the roll as a voter for the said county. The said Reverend Bryce Frood has this year, for the first time, been by the assessor enrolled as a voter, as tenant and occupant of land, Auchenmanister, and manse and glebe of Old Luce.

"It was objected for the said James Kinna that the said Reverend Bryce Frood was not tenant and occupant of said manse and glebe, and that the land of Auchenmanister, of which he was tenant, was not of sufficient value. Mr Scott, for Mr Frood, objected to the notice of objection that it was ineffectual, as not being signed by the party Kinna himself, and also in respect that Mr Shaw's mandate was not a mandate to object to Mr Frood specially, but to object to all and sundry persons whom he might consider objectionable being entered or retained in the register for the county. I found that the said notice of objection, dated 4th September 1868, bears to be signed 'William Shaw, solicitor, Stranraer, mandatory of James Kinna, residing at Machermore Castle, Minnigaff, a registered voter for the county of Wigtown.' Mr Shaw is a procurator in this Sheriff-court, and is also holder of a mandate signed by Mr Kinna, and duly tested and dated 2d September 1868, authorising him to object this year in his (Kinna's) name 'to all and sundry persons whom you may consider objectionable being entered and retained on the register of voters for the county of Wigtown, to sign and lodge said objections as my agent, and to do everything thereabout that you may consider right and proper in following forth and maintaining said objections, and to refer to the oaths of all and sundry the persons objected to, as you may

see necessary, the verity of their respective claims, or such other matters as you may think fit.' I repelled the objection to the notice of objection, and Mr Scott craved a special case for appeal.

"It was proved that the said Bryce Frood, who is assistant and successor to the minister of Old Luce parish, has been tenant and occupant of the land of Auchenmanister, at a rent of £12, for the requisite period, but it was not proved that Mr Frood has been tenant of the manse and glebe. His name, however, appeared as tenant and occupant of the manse and glebe on the valuation rolls for the years 1867-8 and 1868-9, at the requisite value, and I therefore repelled the objection to the name of Mr Frood being retained on the roll of voters. Whereupon Mr Guthrie, for the objector, required a special case to be prepared, and both parties declared their intentions to appeal against the said decisions so far as adverse to them respectively.

"The questions of law for the decision of the Court are—(1) Is the notice of objection sufficient? and (2) Was the party entitled to be registered as a voter, in respect of it appearing on the valuation rolls of the county that he is, and has been for the necessary period, tenant of subjects of the requisite annual value."

The Court, without hearing opposite counsel, unanimously affirmed the decision of the Sheriff, and dismissed the appeal, holding that the valuation roll was conclusive proof of the value of the subjects.

Agents for Appellant—J. M. & J. Balfour, W.S.
Agents for Respondent—Maitland & Lyon, W.S.

MAITLAND v. M'CREIDIE.

Act. Campbell. Alt. Guthrie.

Valuation Roll—Owner. Held that subjects entered in the valuation roll under the name of one person, may be distinguished as belonging to another whose name appears on the roll as proprietor, so as to afford the necessary qualification.

The following special case was stated by the Sheriff:—"At a Registration Court for the county of Wigtown, held by me at Stranraer on the 2d day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., cap. 48, intitled 'The Representation of the People (Scotland) Act 1868,' and the other Statutes therein recited, Thomas M'Creddie, Stewarton, Kirkcolm, claimed to be enrolled on the register of voters for the said county, as owner of dwelling-houses, gardens, and pertinents, Stewarton, Kirkcolm. The claimant produced in support of his claim charter of *novodamus* by John Carrick Moore, Esq., in favour of the claimant, dated 14th December 1867, proceeding on the narrative of which a copy is hereto subjoined. On that narrative Mr Moore disposed of new to the claimant, and his heirs and assignees whomsoever, heritably and irredeemably, the subjects claimed on. Part of the subjects is entered in the valuation roll for the current year, and also for last year, in name of the claimant, but the part so entered is not of sufficient value. The remaining portion of the subjects claimed on were entered in the valuation roll in the name of Grace M'Creddie, the claimant's sister, until the present year, when the said remaining part of the subjects was entered in the claimant's name in the valuation roll 1868-9, at the request of Grace M'Creddie. According to the entries of value in the

valuation rolls applicable to the different parts, the whole are of the requisite value. John Maitland, gentleman, Balgreggan, a voter on the roll, objected to the said claim, on the ground that the claimant has not a sufficient title to the subjects claimed on.

"I admitted the claim. Whereupon the said John Maitland required from me a special case for the Court of Appeal, and, in compliance therewith, I have granted this case.

"The question of law for the decision of the Court of Appeal is—Whether the claimant has a sufficient title to the subjects claimed on, although not entered as owner of the whole in the valuation roll for the year ending at Whitsunday last 1868?"

The Court affirmed.

Agents for Appellant—Maitland & Lyon, W.S.

Agents for Respondent—J. M. & J. Balfour, W.S.

COWAN v. MARTIN.

Act. Campbell. Alt. Guthrie.

Tenant and Occupant—Valuation Roll—Insufficient Value. Circumstances in which (altering judgment of the Sheriff) a party was admitted to the roll, notwithstanding that for the year 1867-68 his name appeared in the valuation roll as tenant and occupant of subjects of insufficient value, and did not appear in the current valuation roll at all.

The following special case was stated by the Sheriff:—"At a Registration Court for the county of Wigtown, held by me at Stranraer on the 2d day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., c. 48, intituled 'The Representation of the People (Scotland) Act 1868,' and the other Statutes therein recited, John Cowan, innkeeper, Kirkinner village, claimed to be enrolled on the register of voters for the said county as tenant and occupant of inn or dwelling-house, garden, and stables, Kirkinner village.

"The following facts were proved:—That the claimant has been tenant and occupant of the subjects claimed on for the requisite period, and at the requisite value; but on the valuation roll for the year ending at Whitsunday last, 1868, the subjects were entered as of the value of only £13, 13s, and in the valuation roll for the current year ensuing Whitsunday last, as of the annual value of £15. In the return to the assessor by the landlord's factor for the year ending Whitsunday 1868 the subjects were returned as of the annual value of £15, with a note bearing—'The above £15 is rather high; the tenant, J. Cowan, having the half of the garden from R. Vans Agnew without paying him any rent.' The assessor stated to me that this note having appeared to him intelligible, he continued the valuation of the previous year, £13, 13s., in the roll for 1867-68. For the current year no return was made. David Martin, notary-public, Newton-Stewart, a voter on the roll, objected to the said claim, on the ground that the subjects were entered in the valuation roll of 1867-68 as of the annual value of £13, 13s.

"I rejected the claim. Whereupon Mr Charles Scott, as counsel for claimant, required from me a special case for the Court of Appeal; and in compliance therewith I have granted this case.

"The question of law for the decision of the Court of Appeal is—Whether the claimant is not entitled to be enrolled in respect that the subjects do not appear on the valuation roll for the year ending Whitsunday 1868 as of sufficient value?"

The Court unanimously reversed the decision of the Sheriff, and directed the name of the claimant to be added to the roll.

Agents for Appellant—Maitland & Lyon, W.S.

Agents for Respondent—J. M. & J. Balfour, W.S.

Saturday, November 14.

FIRST DIVISION.

MITCHELL (WEIRS' TRUSTEE) v. MACKENZIE.

Bankrupt—1696, c. 5—19 and 20 Vict., c. 91—Bond and Disposition in security—Back-bond—Cash credit account—Cautionary obligation. A bond and disposition in security by one merchant to another narrated an instant advance of £5000, but a back letter admitted there was no advance, and that the bond was in security and for relief of all business transactions between the grantor and grantee. The back letter was not recorded. *Held*, in a reduction by the trustee on the sequestrated estates of the grantor, that the bond fell under the Act 1696, c. 5, and was not exempted from the application of that Act by 19 and 20 Vict., c. 91 sec. 7.

This was an action at the instance of Moncrieff Mitchell, trustee on the sequestrated estate of William Weir Brothers & Company, wholesale wine and spirit merchants in Glasgow, and coalmasters, Fifeshire, and of the individual partners, against James Mackenzie of Glentore and Waterhead, merchant in Glasgow, asking reduction of—(1) a bond and disposition in security granted by William Weir in favour of Mackenzie, proceeding on the narrative of an instant advance of £5000 by Mackenzie to Weir; (2) certificate of registration thereof; and (3) back letter by Mackenzie, of the same date as the bond, stating that the bond appeared to be for cash advanced and instantly lent, but that the fact was that the bond and disposition in security and the subjects therein referred to, were conveyed to, and were to be held by, him and his heirs and assignees, only in security and relief to him of all business transactions between Weir and his firm.

The defender pleaded, *inter alia*, "the bond and disposition in security is a valid and effectual security to the defender for relief of the obligations contained in, and the debt due under, his guarantee to the National Bank of Scotland."

The Lord Ordinary (BARCAPLE) repelled the plea, adding this note:—"It is admitted that there was no advance of £5000 made by the defender, as stated in the bond and disposition in security granted to him by William Weir, one of the bankrupts. But he maintains that it is an effectual security to that extent for relief of his obligations under a guarantee granted by him to the National Bank for payment of the sums which might be due by Mr Weir's firm of Weir Brothers & Company to the bank at any time, on account of discount of bills. This guarantee, which was limited to £7000, was granted in 1857, and the bond and disposition in security in 1861. On getting the bond the defender granted a back letter to Weir, acknowledging that there had been no advance, and that the bond was held by him in security and relief of all business transactions between Weir and his firm and the defender and his firm. The defender