tenants a claimant whose only title is that of sub-tenant cannot be put upon the roll. We have such an exclusion here, and in the face of that, and there being no evidence of the consent of Lord Cardross to a sub-lease, the claimant has been put upon the roll. But there is nothing to show acquiescence by Lord Cardross, and besides that the claim is made by a servant who seems to occupy in that capacity only.

The Court remitted to the Sheriff-Substitute to expunge the respondent's name from the roll.

Counsel for Appellant (Objector)—Maconochie. Agents—Russell & Dunlop, C.S.

Counsel for Respondent—Brand. Agent—R. R. Simpson, W.S.

Monday, November 13.

[Sheriff-Substitute of Peeblesshire.

GAIRNS *v.* BLACKWOOD.

Election Law—County Franchise—Qualification—Tenant—Trust—Beneficiary.

Testamentary trustees were tenants of a farm, and one of them, who was also one of the beneficiaries under the trust, occupied and managed the farm, accounting to the trustees for the profits of it. *Held* that he was not entitled to be entered on the register of voters as joint tenant and occupant of the farm.

At a Registration Court for the county of Peebles William Blackwood objected to the claim of George Jackson Gairns to be entered on the register of voters as "joint tenant and occupant" of the farm of Old Posso, in the parish of Manor. The following were the circumstances of the case:—John Gairns, the claimant's father, who died in 1875, had been tenant, under Sir John Murray Naesmyth of Posso, of the farm and lands of Posso, Kirkhope, and Newholmhope under a lease which excluded all assignees and sub-tenants, legal or conventional, without the consent of the landlord. By minute appended to the tack the landlord passed from this seclusion in so far as to allow the tenant to assign the lease *mortis causa* in favour of any one or more of his sons he might think proper. John Gairns was also tenant, under a different landlord, of the farm of Kirklawhill. His lease thereof excluded assignees. He died in 1875 leaving a trust-disposition and settlement by which he conveyed to certain persons as trustees, with powers to assume new trustees, and to the disponees and assignees of said trustees—"All and sundry lands and heritages, and other heritable estate of every description, including my leases of the farms of Kirklawhill and Posso, which leases are to be held by my said trustees and destined as after mentioned; as also my whole moveable or personal estate of every description, including the farm stocking upon my two farms aforesaid; and I hereby give to my said trustees such full and unlimited powers of sale, and receiving and discharging the prices, administration and management, and every other power, as could have been exercised by myself when alive." In the second place, he directed his trustees to hold Kirklawhill and the stocking thereof for behoof of his eldest son and heir, and make over to him, within twelve months of his own decease that farm and the stocking of it, or in the event of his eldest son preferring the lease and stocking of Posso, then that farm and its stocking; or if the proprietor of Kirklawhill should refuse to allow it to pass to the trustees, and insist on its going to the heir-at-law, then his eldest son was to be content with Kirklawhill, and the trustees should "manage the farm of Posso and the stocking thereon for the use and benefit of my younger children other than my heir-at-law." In the third place, he directed his trustees, as soon after his death as circumstances permitted, to obtain a valuation of the stock at Kirklawhill and Posso, and of certain heritage in Biggar belonging to him, and having ascertained the amount of the money belonging to him at his decease, and his other funds and effects, to hold the same for payment to his children by his first marriage of certain sums in discharge of his obligations to them under his marriage-contract, and to divide what remained into as many parts as there were children of both marriages, and pay these shares to the sons then of age, and daughters then married, at the first term of Whitsunday or Martinmas after his death, and the shares of such as were minors on their reaching majority, "and the shares of daughters on their marriage or majority; and the interest on the minors' shares to be applied by the trustees for behoof of such minors respectively until the capital of their shares is paid to them; and the shares to the child or children of the second marriage are to be in payment and satisfaction of all claim competent to them under my contract of marriage with their mother; and I authorise my trustees to make such arrangements with my son who is to succeed alternatively to the leases of Kirklawhill and Posso as may enable him to stock and carry on the farm which he is to succeed to, and to leave stock in his hands sufficient for that purpose, for the value of which he shall be debtor to the trustees for behoof of my other children, to be divided among them as above provided."

John Gairns, the eldest son, took Kirklawhill and the stocking thereon. The claimant George Jackson Gairns was major and had been assumed into his father's trust, and was one of the five acting trustees thereunder. After 1879 the claimant lived at and managed the farm of Posso, annually submitting his books to the trustees, and supplying them out of the profits with the means of paying the rent. He had not been in any way recognised by the landlord as tenant. The trustees were on the valuation roll as tenants of the farm. The beneficiaries under the trust were the claimant, two of his brothers, and two of his sisters.

The Sheriff-Substitute (Orphoot) rejected the claim.

The claimant took a Case, in which the foregoing facts were stated.

Argued for claimant—The claimant was both a trustee and a beneficiary under the trust, and was in the actual management of the farm. He was thus joint tenant of the farm as trustee, and, besides, he was a beneficiary. His position was just like that of the claimant in the case of *Anderson*

v. *Niven*, Nov. 8, 1880, *ante*, vol. xviii., p. 65, 8 R. 4.

Counsel for respondent was not called on.

Lord Mure—I do not think that there is any doubt upon this case. The claim is to be enrolled as a "joint-tenant and occupant," not as a beneficiary, as in the case of *Anderson* v. *Niven*. There the claim was to be enrolled as a "joint proprietor" in respect of the beneficial interest. But here it is a claim as a tenant. Now in the first place, in the valuation roll (though I do not say that is conclusive) the trustees are entered as tenants, and very properly so, for we find in the trust-deed that the "trustees shall manage the said farm of Posso and the stocking thereon for the use and benefit of the younger children other than my heir-at-law." The trustees are thus presumptively tenants. The claimant is one of the sons of the truster, and one of the beneficiaries on the estate, and he resides on the farm and manages it for the trustees, but there is no question at all that the Sheriff was right in holding that he is not entitled to be enrolled as joint tenant of the farm.

Lords Craighill and Fraser concurred.

The Court affirmed the judgment of the Sheriff.

Counsel for Appellant — Brand. Agent — William Archibald, S.S.C.
Counsel for Respondent—Darling. Agents—Gillespie & Paterson, W.S.

COURT OF SESSION.

Tuesday, November 14.

SECOND DIVISION.

[Lord Adam, Ordinary.

M'INTOSH *v.* M'INTOSH AND BLAIR.

Husband and Wife—Divorce—Adultery—Lenocinium.

A husband who having reasonable grounds for suspecting his wife of infidelity, follows her and keeps a watch upon her movements in order to detect her in the act of adultery, is not barred by *lenocinium* from founding, for the purpose of obtaining divorce, on an act of adultery in which he may in this way succeed in detecting her.

Observations per Lord Young on the case of *Marshall* v. *Marshall*, May 20, 1881, 8 R. 702.

This was an action of divorce at the instance of a husband. The pursuer, William Hatt M'Intosh, a valet, was married to the defender on 29th December 1876. At the time he was a waiter, and she was a domestic servant. They cohabited as man and wife at various places thereafter, the pursuer being, however, a good deal away from his wife at intervals in the course of his duty in his various engagements. One child was born of the marriage. It appeared from the evidence that in October 1881 pursuer obtained a situation as valet to a gentleman in Stirling, and left his wife and child in a house which he had taken in Roslin Street, Edinburgh. The house consisted of a bedroom and kitchen. Before leaving the pursuer arranged that his wife should take as lodger a clerk who was an old friend of his. This lodger occupied the bedroom. There was also living in the house a servant girl out of place, called Mary Renton, who had been invited by the pursuer. The pursuer alleged in his evidence that in May or June 1879, while he was a waiter in a hotel in North Berwick, and defender was staying in Edinburgh, he became aware that she was corresponding with the co-defender John Blair, who was a stevedore in Granton. Blair was acquainted with both the pursuer and defender, and had been introduced to the latter by the former. On 18th November 1881, the pursuer, who was then in his situation in Stirling, paid a visit to Edinburgh. What he saw of his wife on that occasion aroused his suspicions as to her fidelity. In consequence of this he asked the girl Mary Renton to come to see him in Stirling, as he wished to speak with her, which she accordingly did. He paid her expenses. According to the pursuer, she then told him that his wife had been unfaithful. He arranged to correspond with her on her return, she to let him know "if his wife was still carrying on the way she had been doing." After her return he wrote once to her, and received a reply saying that Blair had been twice staying in the house over night. He also received a letter from White, the lodger, saying he had heard a man in the house late at night. The letters were not produced. In her evidence, Mary Renton admitted the visit to Stirling, but said it was on her own affairs, and had nothing to do with pursuer or his wife, the former of whom she met there merely by chance, and that she paid her own expenses. She admitted writing to pursuer after her return. The pursuer was again in Edinburgh in the beginning of February "to see if he could find anything out of place." He did not see his wife on that occasion, and found nothing further to rouse his suspicions. His own account of subsequent events was as follows:—He came to Edinburgh again on the 18th February with an acquaintance. They saw the defender go into his house with the co-defender Blair. They went into a neighbour's house from which they could see into the lighted windows of pursuer's house, and they saw the co-defender there. After waiting in the neighbourhood for several hours, they broke into the house and found the defender and co-defender both up, but undressed, in the bedroom of the lodger, who was from home at the time. This account was corroborated by the neighbour referred to, as well as by a policeman, whose aid they had asked, and by Mary Renton.

The defence was a denial of the adultery, and (2) *separatim*, *lenocinium*. The account of the events of that evening given by the defender and co-defender was that the co-defender had met the defender on her way home on the evening in question after he had missed a train to Granton, and when he was much intoxicated; that he having fallen in the mud, she asked him to come into her house close by, where she washed the mud off his clothes; that thereafter she had left him sitting sleeping on a chair in one room while she went to bed in the other; that he had gone to bed in the room where he was, and had awakened and called for a drink, which defender, who had been aroused by the call, was just about to bring him when her husband burst into the house.