

longs to him; he occupied the premises personally until September 1866, when he went to Glasgow, and wrought on a canal boat there, which he continued to do until September 1867, when he returned to the premises claimed on to reside there, as throughout his absence he had intended to do. During the whole period of his tenancy of the premises, and during his absence, his mother and brother resided in them, and without paying rent, but his brother supports himself. Robert Sinclair, messenger-at-arms, Louisburgh Street, Wick, a voter on the roll, objected to the said claim, on the ground that the claimant has not resided for the statutory period.

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

SHAND, for the appellant, maintained that the absence of the claimant being merely temporary, and it having been all along his intention to return to the premises of which he was all along the tenant, he was really an inhabitant occupier in the sense of the Act.

The Court, without hearing the opposite counsel, approved the judgment of the Sheriff, LORD BENHOLME remarking that the absence of a twelve-month must be held as fatal to the claim.

Agents for Appellant—Hughes & Mylne, W.S.

Agents for Respondent—Mackenzie & Black, W.S.

STEWART v. PHIMISTER.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Tenant and Occupant—Tenant—Owner. Circumstances in which held that a party had sufficiently established tenancy so as to entitle him to be retained on the roll, and was not disqualified on the ground that he was truly owner of the subjects.

"At a Registration Court for the burgh of Wick, held by me at Wick on the 5th 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 Stewart, coach-clerk, Bridge Street, Wick, a voter on the roll, objected to John Phimister, fish-curer, Willow Bank, being continued on the roll as a voter for the said burgh. The said John Phimister stood enrolled as a voter foresaid, as tenant and occupant of cooperage and stores.

"It was objected by the said John Stewart that the said John Phimister is not tenant. The said John Phimister is entered in the burgh valuation-roll for the year 1867-68 as tenant and occupier of cooperage and stores in High Street, under Mrs George Phimister, at a yearly rent of £9, and of a store, also in High Street, under John Cleghorn, at a rent of £9; and in the roll for the year 1868-69, he is entered as tenant and occupant of cooperage and stores in High Street, under Mrs Phimister, at a rent of £9, and of a store under John Cleghorn at a rent of £7.

"The following facts were proved:—That the cooperage in High Street belonged to the voter's father, who died intestate ten years ago; that the voter was his eldest son. He was then a minor, and on attaining majority did not, and has not, disturbed his mother's possession, and he agreed to pay, and does pay, a yearly rent to his mother for

that cooperage and store. He has never conveyed the property to her, or to any one.

"I repelled the objection, and continued the name of the said John Phimister on the roll. Whereupon the said John Stewart 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 state of facts makes the voter's holding of the cooperage and store other than tenancy?"

The Court affirmed.

Agents for Appellant—Hughes & Mylne, W.S.
Agents for Respondent—Mackenzie & Black, W.S.

STEWART v. RUTHERFORD.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Tenant and Occupant—Agent—Rates. Circumstances in which held that tenancy had been established by a party who occupied a house as agent for a society, and paid neither rates nor taxes.

The following special case was stated in this appeal:—"At a Registration Court for the burgh of Wick, held by me at Wick on the 5th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., cap. 48, intituled 'The Representation of the People (Scotland) Act 1868,' and the other Statutes therein recited, John Stewart, coach-clerk, Bridge Street, Wick, a voter on the roll, objected to Gilbert Brydone Rutherford, Captain, R.N., Murchison Street, Pulteneytown, being continued on the roll as a voter for the said burgh. The said Gilbert Brydone Rutherford stood enrolled as a voter foresaid, as tenant and occupant of house and pertinents, Murchison Street, Pulteneytown.

"It was objected by the said John Stewart that the said Gilbert Brydone Rutherford was not tenant. The said Gilbert Brydone Rutherford is entered in the burgh valuation-roll for each of the years 1867-1868 and 1868-1869 as tenant and occupier of house and grounds in Murchison Street, Pulteneytown, of the yearly rent or value of £40.

"The following facts were proved:—The voter, who is agent and factor at Pulteneytown for the British Fisheries Society, occupies the house referred to, and which is the property of his constituents, the Society. The furniture of it is the Society's almost entirely. He has no written agreement with the Society as to its occupation. Before his appointment as factor, he wrote asking what the emoluments were, and the secretary informed him by letter that the salary was so much a-year of money, with right to occupy a dwelling-house which had been built for the agent. He had no other agreement, and that letter was lost. Having been appointed upwards of three years ago, he has since possessed the premises, but the Society pays poor-rates and all taxes. The occupation of the house is not necessary for the discharge of his duties, although one of the rooms is an office in which books and papers of the Society lie; the duties might be done though he lived in any other house in the neighbourhood; he has a commission as factor, but no agreement to hold office for any particular period; he entered on his duties and to the house in June 1865. His predecessor had died in that month.

"I repelled the objection and continued the name of the said Gilbert Brydone Rutherford on

the roll. Whereupon the said John Stewart 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—Is Captain Rutherford to be regarded in law as tenant?"

The Court affirmed the judgment of the Sheriff, holding that the tenancy was not of a sufficiently precarious nature as to disqualify.

Agents for Appellant—Hughes & Mylne, W.S.
Agents for Respondent—Mackenzie & Black, W.S.

SUTHERLAND v. SINCLAIR.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Burgh Franchise—Exemption from Poor-Rates—Inability to Pay—Subsequent Payment. Held that a party who had within 12 months before the statutory period been exempted from poor-rates on the ground of inability to pay, did not by subsequent payment purge the defect disqualifying him from the franchise.

The following special case was stated in this appeal:—"At a Registration Court for the burgh of Wick, held by me at Wick on the 7th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., cap. 48, intituled 'The Representation of the People (Scotland) Act, 1868,' and the other Statutes therein recited, James Sutherland, cooper, Salton Street, Pulteneytown, claimed to be enrolled on the register of voters for the said burgh as tenant and occupant of house in Salton Street, Pulteneytown.

"The following facts were proved:—That the claimant, on 27th September 1867, was exempted, on his own application to the Parochial Board of Wick, from payment of poor-rates, on the ground of inability to pay—the rates from which he was so exempted being those for the year from the first Tuesday of August 1866 to the first Tuesday of August 1867; that prior to 31st July 1868 he paid up the rates from payment of which he had been exempted, together with the rates of the following year. Robert Sinclair, messenger-at-arms, Louisburgh Street, Wick, a voter on the roll, objected to the said claim, on the ground that he was exempted from payment of poor-rates on the ground of inability to pay, and that within the period of twelve months immediately preceding the 31st July 1868.

"I rejected the claim of the said James Sutherland. Whereupon the said James Sutherland 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—Does the exemption set forth disfranchise the claimant?"

BLACK, for the appellant, submitted that the claimant having subsequently paid his rates, he was entitled to be enrolled.

LORD BENHOLME, without hearing opposite counsel, said he thought that in this case the Court must affirm the judgment of the Sheriff. The claimant had been exempted, on his own petition, from payment of his rates, on account of his inability to pay. His own conduct was conclusive, and his paying up afterwards appeared to him to make no difference. He was properly exempted from his rates on the ground of his inability to pay,

and he could not take any remedy from subsequent payment.

LORDS ARDMILLAN and MANOR concurred.

The Court unanimously affirmed the judgment of the Sheriff, with expenses.

Agents for Appellant—Hughes & Mylne, W.S.
Agents for Respondent—Mackenzie & Black, W.S.

STEWART v. SUTHERLAND.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Tenant and Occupant—Undischarged Bankrupt—Non-Residence. Circumstances in which held that an undischarged bankrupt was not disqualified from the franchise, and that the continuity of his residence was not so interrupted as to affect his right to be continued on the roll as tenant and occupant.

The following special case was stated in this appeal:—"At a Registration Court for the burgh of Wick, held by me at Wick on the 6th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., cap. 48, intituled 'The Representation of the People (Scotland) Act 1868,' and the other Statutes therein recited, John Stewart, coach clerk, Bridge Street, Wick, a voter on the roll, objected to James Sutherland, fish curer, Huddart Street, Pulteneytown, being continued on the roll as a voter for the said burgh. The said James Sutherland stood enrolled as a voter fore-said as tenant and occupant of house in Huddart Street, Pulteneytown.

"It was objected by the said John Stewart that the said James Sutherland (1) has not resided within burgh for statutory period; and (2) is an undischarged bankrupt. The said James Sutherland is entered in the burgh valuation rolls for the year 1867-1868 and 1868-1869 as tenant and occupier of house in Huddart Street of the yearly rent or value of £10.

"The following facts were proved:—That Sutherland was sequestrated on 27th September 1866, and that Robert Sinclair became trustee, and was discharged as trustee in April 1868; that trustee took possession of the bankrupt's furniture; that thereafter the bankrupt took the house on which he is now entered in list, and has possessed it since Whitsunday 1867, and that the trustee had not interfered with this new house or holding; that after his bankruptcy at Martinmas 1866 Sutherland was employed as foreman to Mr Gunn, fish-curer at Swiney, for the year till Martinmas 1867, Swiney being fifteen miles distant from the burgh of Wick; that he lived at Swiney in lodgings, but his wife and family occupied the house in Pulteneytown, where Sutherland came to them every Saturday night, coming also occasionally at other times.

"I repelled the objection, and continued the name of the said James Sutherland on the roll. Whereupon the said John Stewart required from me a special case for the Court of Appeal; and in compliance therewith I have granted this case.

"The questions of law for the decision of the Court of Appeal are—(1) Whether Mr Sutherland, being an undischarged bankrupt, is entitled to be retained on the list and vote as tenant? (2) Is he disqualified by non-residence?"

The Court affirmed.

Agents for Appellant—Hughes & Mylne, W.S.
Agents for Respondent—Mackenzie & Black, W.S.