

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. MAC-KENZIE.

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

found upon his guarantee to the bank for Weir Brothers & Company, as one of the business transactions for relief of which he held the security. He avers that when the bond was granted there were bills discounted by Weir Brothers & Company in the hands of the bank to an amount exceeding £5000, and that since that time the bank has always held bills so discounted greatly exceeding that amount, the sum due by the firm for such discounts at the date of its sequestration being £8774. But he does not aver, and at the debate it was admitted not to be the case, that any part of this sum is due for or in any way represents bills which had been discounted by the bank at the date of recording the bond in the Register of Sasines.

"The defender asks that, for the purposes of this question as to its validity as a security, the bond shall be read along with, and as qualified by, the back letter. The back letter has not been recorded, and the Lord Ordinary is disposed to hold that it cannot be taken account of for the purpose of exempting the completed heritable security from any invalidity which may attach to it under the Act 1696, c. 5. The purpose of the provision of that Act as to heritable securities for future debts, was to prevent frauds which could hardly be accomplished if such securities might be validated by the production of latent deeds. But whether the bond and disposition in security be read along with the back letter or not, the Lord Ordinary is of opinion that, when founded upon as a security for the relief of the defender from his obligation to the bank for the amount of Weir Brothers & Company's discounts at the date of their sequestration, it falls within the enactment of the Act 1696, c. 5, and that it is not exempted from the application of that Statute by 19 and 20 Vict., c. 91, sec. 7, as to securities of cash accounts, the provisions of which have not been complied with if they were applicable to the case.

"The back letter makes no reference to the defender's guarantee to the bank. It merely acknowledges that the bond is held as a security and relief of all business transactions. As regards future ordinary business transactions, this was clearly a security struck at by the Act 1696, and in no way supported by 19 and 20 Vict., c. 91. But, assuming that the declaration in the back letter includes relief of the obligations under the guarantee, the Lord Ordinary thinks that under the provisions of the latter Statute the attempted security is invalid even as to it. The exception from the Act 1696 established by that Statute, and by the Bankrupt Acts 33 Geo. III. c. 74, and 54 Geo. III., c. 137, sec. 14, in favour of securities for cash accounts or credits, and for relief of cautioners for the payment of these, is guarded by a provision that the principal and interest, 'which may become due upon such cash accounts or credits, shall be limited to a certain definite sum, to be specified in the security.' The Statute thus requires that the nature of the transaction and the limit of the security shall enter the record. The Lord Ordinary cannot hold that this provision has been complied with by the bond being taken for payment and in security of a sum of £5000 as having been advanced, which in point of fact never was advanced. The insertion of that sum in the bond had no special reference to the transaction with the bank, more than to any ordinary business transactions that might take place between the defender and Weir Brothers & Company. The bond was not for any sum to become due on an account

with the bank, but for payment of £5000 at Martinmas 1861, with interest till paid; while the Act requires that the interest shall be limited to three years' interest.

"The defender pleaded that the date of his cautionary obligation to the bank must be taken as the date of the debt to him, and that on that ground the Act 1696 does not apply. But that view was distinctly set aside in *Geddes v. Smith's Trustee*, 1st December 1810, F.C."

The defender reclaimed.

MACKENZIE for reclaimer.

WATSON for respondent.

The Court adhered, holding that the bond could not be brought under the Act 19 and 20 Vict., c. 91, not being in compliance with the provisions thereof; and farther, that this was not one of the class of cases to which the Statute referred, not being a security either for a cash credit account, or for a bond of caution for a cash credit account.

Agent for Pursuer—A. K. Morison, S.S.C.

Agents for Defender—A. G. R. & W. Ellis, W.S.

Saturday, November 14.

RANKIN v. JAMIESON (JARDINE'S TRUSTEE).

Bankrupt—Bankruptcy Act 1856—Agent and Client—Proof—Haver. Circumstances in which a person who had for some time acted as agent for the bankrupt, being examined under secs. 90 and 91 of the Bankruptcy Act, was ordained to produce certain documents in his possession relating to the bankrupt's affairs.

Mr Jardine's estates were sequestrated on 9th April last. It appeared that he had for many years carried on business in a small way as a cattle dealer. In August 1865 he succeeded, through the death of his father, to the estate of Blackrigg, worth £5000. He thereupon entered into possession of the property, at same time continuing the cattle dealing. In June 1867 he granted a trust-deed for behoof of his creditors, in favour of George Gentle, accountant, Airdrie. The bankrupt was thus only about 96 weeks in possession of his property, and, so far as could be seen, must have spent during the whole of that time at the rate of £50 per week. When examined before the Sheriff of Linrithgow under the sequestration, the bankrupt failed to give any satisfactory or intelligible account of what had become of his means. He kept no books, and had no documents to show, but stated that the appellant had been his agent for many years, having the charge of his affairs. The appellant was thereafter examined under sections 90 and 91 of the Bankrupt Act, and, *inter alia*, was called upon to produce a statement of accounts betwixt him and the bankrupt, made up in August 1865; his accounts current with the bankrupt betwixt that date and February 1867; and also his (the appellant's) books, that excerpts might be taken therefrom of all entries therein tending to show what had become of the bankrupt's means. The appellant declined to produce or exhibit the documents called for upon various grounds; and, in particular, that on 27th February 1867 the bankrupt had granted him a letter of authority, whereby he (the bankrupt) acknowledged to have received just count and reckoning of all sums intromitted with on his account, and authorised Messrs Rankin & Motherwell to pay the appellant the sums in vari-