

has held that the disposition, by which the claimant's term of entry is declared to have been at Whitsunday 1880, coupled with these receipts and with the fact of possession, is sufficient to satisfy the statutory regulations. After listening to the arguments, I am constrained to come to a different conclusion, having regard to the cases, and to the provisions of the 7th section of the Act of 1832. Under these authorities a party claiming as owner must, I think, have more than mere possession for the six months prior to the 31st July, with a written title for part of that period. He must have a written title for the whole six months. Now, here the claimant founds on two receipts for feu-duties, and on the fact that the disposition, which is dated in March 1881, bears that the term of entry is to be as at Whitsunday 1880, as equivalent to or supplementary of this written title. As regards the declaration about the term of entry, I throw that out of view, as it seems to me to be settled that the Court cannot take that as evidence of title—*Rutherford*, January 24, 1863, 1 Macph. 317—and setting aside that, I understand that nothing is better settled in registration law than that receipts for feu-duties do not prove property, although they may raise some kind of presumption that the person who pays them is owner. In Mr Swinton's book on registration law, at page 100, the rule is so stated as acted on at that time in almost all Registration Appeal Courts, except at Inverness. But it appears from a note at page 218, in a later edition of the same book, that the Appeal Court had also in 1839 come to entertain the view I have stated, viz., that receipts for feu-duties are not sufficient as a title to instruct ownership under the 7th section of the Reform Act 1832. I am not aware of any subsequent decision which throws doubt on the law as so stated, while in this Court in 1868 the same rule seems to have been acted on—*Cairns v. Monteith*, December 19, 1865, 7 Macph. 295. I am therefore of opinion that the claimant has failed to make out his case, and that this appeal should be sustained.

The Court therefore sustained the appeal and altered the decision of the Sheriff.

Counsel for Appellant—Darling. Agent—John Gillespie, W.S.

Counsel for Respondent—Brand. Agent—William Archibald, S.S.C.

Monday, November 14.

[Sheriff of Peebles.]

BLACKWOOD V. RUICKBIE.

County Franchise—Title—Unstamped Missives of Sale followed by Probative Disposition—Proprietor.

A person standing on the assessor's list as at July 31, 1881, as "proprietor of house and garden," founded on two unstamped missives of sale dated December 31, 1880, and a formal and probative disposition to the said subjects dated April 15, 1881. Objections having been taken, the Court held that the subsequent granting of the pro-

bative disposition made it competent to go back to the unstamped missives of sale in order to instruct a title of "proprietor" within the statutory period.

Accretion—Author's Title.

Objections to the effect that the claimant's author had no formal title to the subjects disposed till 11th March 1881, and that therefore the claimant had no earlier written title on which to found his title as "proprietor," repelled, on the ground that his author's title being admittedly of that date, accrued to him as at the date of the missives of sale.

Andrew Ruickbie stood on the assessor's list of voters for the county of Peebles as "proprietor of dwelling-houses and garden." William Blackwood objected to the entry. The facts were that on the 31st December 1880 the said Andrew Ruickbie, by letter addressed to William Renwick, offered to purchase the subjects from him for the sum of £260, the feu-duty to be £1 sterling per annum; and of the same date William Renwick, by letter addressed to Ruickbie, accepted that offer; that both of those letters were unstamped, and that on the 15th April 1881 William Renwick granted a disposition of the said subjects to Ruickbie, in which the term of entry was declared to have been 1st January 1881, and in which the said William Renwick was said to have acquired right to an area of ground, of which area the subjects conveyed to Ruickbie formed a part, by disposition from the Rev. James Clapperton, dated 11th March 1881; that Ruickbie had been in possession of the subjects since 31st December 1880.

The question of law arising upon these facts was—"Whether the said Andrew Ruickbie had been for a period of not less than six calendar months next preceding the last day of July 1881 the proprietor of the said subjects?"

The Sheriff (ORPHOOR) held in point of law—(1) That a probative deed having been executed subsequent to the date of the missives, the requirements of the Stamp Acts were satisfied; and for that reason, as well as because the term of entry under the disposition was referred back to the day after that on which the missives had been exchanged, it was competent to look at these missives to ascertain what was the true date of the contract of sale. (2) That under the authority of the cases of *Stewart v. Flett*, December 19, 1868, 7 Macph. 294, and *Meldrum, Cay 156*, the missives, with the disposition founded on, constituted a title sufficient to qualify. (3) That it was incompetent to dispute the validity of the title of Ruickbie's author, and that in any view the narrative in the disposition in favour of Ruickbie only showed that his author had no formal title till 11th March 1881, and did not exclude, but rather implied, a preceding contract of feu, which, from the date of Ruickbie's entry and of the missives, must be presumed to have been completed prior to 31st December 1881." Therefore he repelled the objection.

Blackwood took a Case, and argued—(1) It was not competent to refer to the missives of sale for evidence of the true date of the contract of sale. These missives were unstamped, and therefore improbativ. *Skeete v. Turnbull*, Nov. 7, 1871, 7 R. 14, was only one among a host of decisions to this effect. The Sheriff was wrong

in holding that the execution of the subsequent and probative disposition satisfied the requirements of the Stamp Acts. It could not cover the missives. The true test was, what value would these missives, in their unstamped state, have had in a court of law between 15th April 1880 and 1st Jan. 1881. (2) As it appeared from the disposition in favour of Ruickbie that William Renwick's title was not granted till 11th March 1881, the offer and acceptance passing between Ruickbie and Renwick on 31st December 1880 could confer no right of property on Ruickbie, and until then, the granting of the disposition in Ruickbie's favour on 15th April 1881, or, at all events, till the passing of the disposition in Ruickbie's favour on 11th March 1881, Ruickbie had no written title, and was not in law proprietor.

Ruickbie replied—That it was perfectly competent to found on the missives of sale to show the date of the contract of sale. It was *pars judicis* to see that the documents relied on as constituting the title, and which required to be stamped, bore the stamps prescribed by law; otherwise they could not be looked at. Where, however, the document was unstamped when executed, the objection on that ground might be removed either by getting it stamped or by referring to it in a probative and stamped deed executed at any time before the Sheriff considered the claim. (2) It was incompetent to dispute the validity of the title of Ruickbie's author. This being so, it was sound law to say that the disposition here covered the missives of sale—Nicholson on Elections, 69; Cay's Scottish Reform Act, 154, 155; 33 and 34 Vict. cap. 97, secs. 15 and 16; *Balfour v. Lyle*, July 23, 1822, 10 S. 855.

At advising—

LORD MURE—[Who delivered the opinion of the Court]—In this case we have had a very distinct argument on the different points raised, but the main question is as to the effect of the want of stamps on the missives of 31st December 1880, by which documents the transaction for the acquisition of the property was first reduced to writing. The disposition of the subject, in which the date of entry is declared to have been 1st January 1881, was not granted till the 15th April 1881, and it is argued that although that disposition may prove the party to have been proprietor at the time it was granted, it proves nothing more, and that as there is no writing which can be looked at as evidence to instruct proprietorship prior to that date, the name should be deleted from the roll. That argument depends upon the objection taken to the want of stamp upon the missives of the 31st of December, for it was not disputed, I think, that if these missives could be looked at as evidence, they were sufficient to prove a purchase at that date. Now, the answer made to this objection is, that the sale was regularly carried out as at 15th April by a disposition duly stamped; and that as the claims of the Inland Revenue for stamp-duty upon the sale of the property were satisfied by payment of the *ad valorem* stamp upon the transaction, the missives might be looked at to show the date at which the transaction was entered into, and that in that case the proof of ownership was complete. The Sheriff has held that by the granting of the duly stamped disposition the objection has

been obviated, and from that ground of judgment I am not prepared to differ. The question is a nice one, and has for long given rise to occasional discussion in Registration Courts with various results. But the preponderance of the decisions appear to me to go to this, that wherever the deed completing the transaction is duly stamped, that is sufficient to entitle the Court to look at prior documents relating to the same agreement, although they may not be stamped, upon the ground that the later stamps must be presumed to have satisfied the Revenue and to cover the want of stamps on the earlier missives. There is authority for that doctrine, moreover, in an opinion of Lord Mackenzie, concurred in by Lord Medwyn, in the case of *Balfour v. Lyle*, July 13, 1822, 10 S. 855. There a notarial instrument of intimation of the assignation of a lease, but extended on an inadequate stamp, was produced, and objection was taken to its being received. Another instrument recently extended upon an appropriate stamp was then produced and founded on as obviating the objection. Lord Mackenzie said—“The first instrument appears to be receivable as a written memorandum made by the notary at the time, and sufficient subsequently to warrant the extending of the second instrument. It is unstamped, and it is not received as a legal instrument in itself; but the stamp in the second instrument entitles the Court to receive the first to the effect now mentioned.” On the authority of this decision I am of opinion that the objection has not been made good, and no evidence has been adduced to show that the Inland Revenue would not be satisfied with the later stamp only. As regards the third objection, I think it is pretty well settled that parties are not entitled, except in very special cases, to raise questions as to the claimant's author's title, but assuming that they were, it appears to me that the objection taken here is not well founded. There was a missive of sale of the subjects between Renwick and the claimant on 31st December, and although Renwick's title may have been insufficient at that date, he had admittedly a valid title in March 1881, which I am disposed to think accrued to Ruickbie as at the date of the sale.

The Court therefore sustained the appeal.

Counsel for Appellant—Darling. Agent—John Gillespie, W.S.

Counsel for Respondent—Brand. Agent—W. Archibald, S.S.C.

COURT OF SESSION.

Wednesday, July 20.

FIRST DIVISION.

WYSE (ABBOTT'S TRUSTEE), PETITIONER.

Trust—Assumption of Trustees—Powers of a Quorum.

Held that the assumption of new trustees by two out of three acting trustees, without notice thereof given to the third, and without