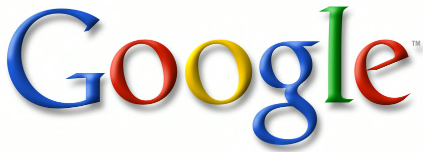

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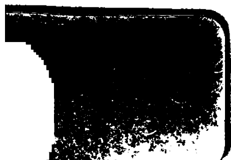

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A COLLECTION

OF

Decisions,

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G. WOODFALL, ANGEL COURT, SKINNER STREET, LONDON.

Gt. Brit. Courts

A

Collection of Decisions

IN THE

COURTS FOR REVISING THE

LISTS OF ELECTORS

FOR

THE COUNTIES

OF BERKS, THE EASTERN AND WESTERN DIVISIONS OF GLOUCESTERSHIRE, MIDDLESEX, THE EASTERN AND WESTERN DIVISIONS OF KENT, THE NORTHERN DIVISION OF STAFFORDSHIRE, THE EASTERN DIVISION OF SURREY, AND WARWICKSHIRE;

THE CITIES OF LONDON AND WESTMINSTER;

AND

THE BOROUGHS

OF ABINGDON, BEDFORD, BIRMINGHAM, CHICHESTER, FINSBURY, GREENWICH, HARWICH, LAMBETH, LEEDS, LEICESTER, LIVERPOOL, MARLOW, MARYLEBONE, PETERSFIELD, READING, SOUTHWARK, STAFFORD, STOKE-UPON-TRENT, AND THE TOWER HAMLETS:

TOGETHER WITH SOME OF THE

RESOLUTIONS OF THE COMMITTEES OF THE HOUSE OF COMMONS.

By W. F. A. DELANE, Esq.

OF GRAY'S INN, BARRISTER-AT-LAW.

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WITH CONSIDERABLE ADDITIONS.

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The approbation with which a former edition of this Work was received by the Public, has induced the Compiler to avail himself of many of the more recent decisions which appeared either to elucidate some points that had been left in doubt, or to confirm the opinions already delivered. To those gentlemen who have favoured him with their assistance, by transmitting their judgements or correcting the reports, he begs to return his most sincere thanks; and he trusts that in the alterations and additions that he has introduced, it will be found that he has added to the general utility of the Work.

W. F. A. D.

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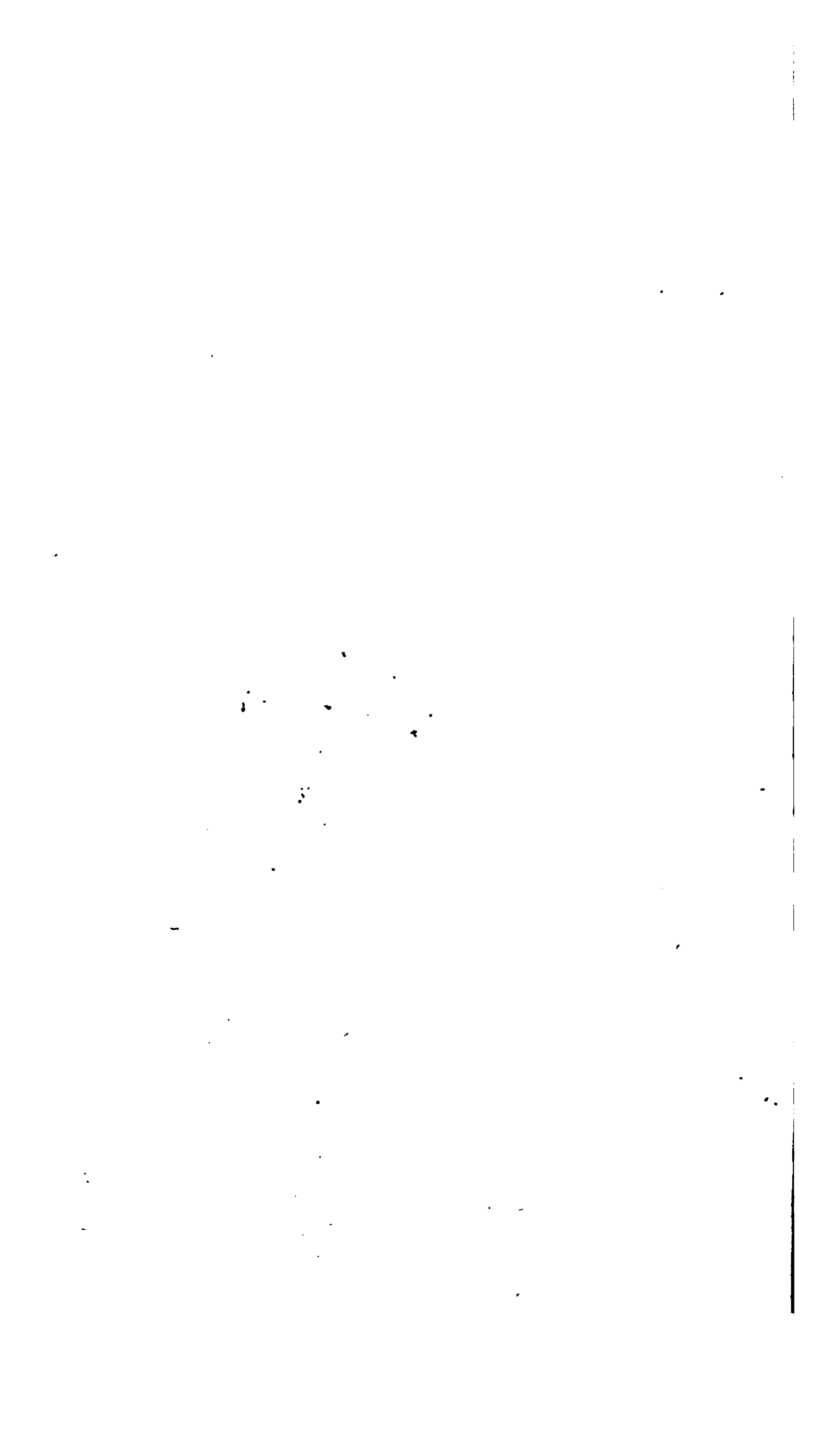

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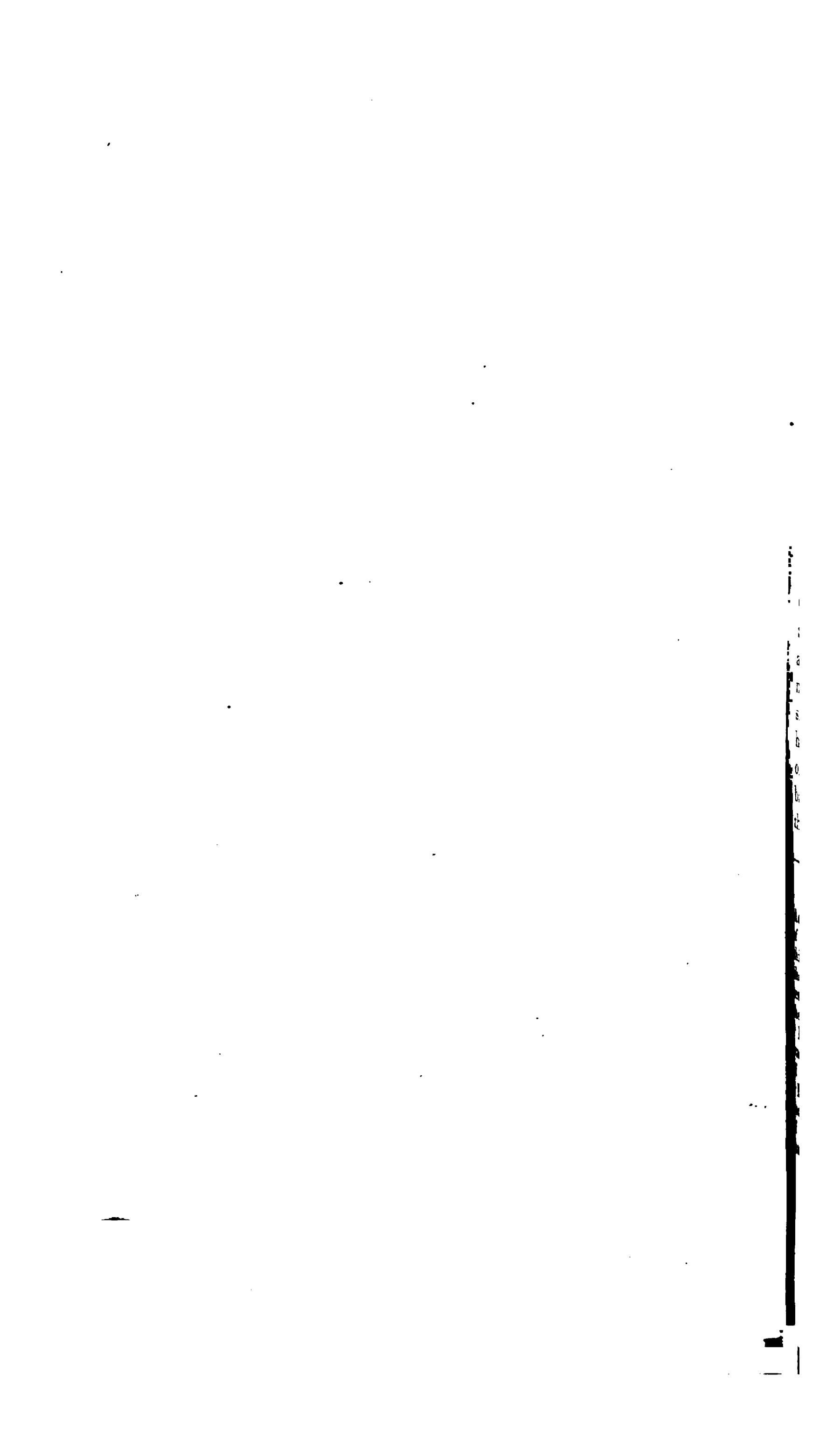

A COLLECTION

OF

DECISIONS

IN THE

COURTS FOR REVISING THE LISTS OF ELECTION.

BOROUGH REGISTRATION.

NOTICE OF OBJECTION.

Bedford, 1832. § 47, 2 W. 4, c. 45. The notice of objection must specify the objector's place of abode.

On the application of Mr. Rogers, on behalf of Samuel Crawford, Esq., the overseers were ordered to produce the original notices of objection served on them, by the agent of Captain Polhill. On the production of the notices, Mr. Rogers submitted, that as they were signed only by Captain Polhill's agent, without adding his place of abode, they were informal, and consequently of no effect. Messrs. Austin and Rose, (the revising barristers,) after taking time for deliberation, decided that the notices were bad*.

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* Before the committee, the cases decided under the Annuity Act (53 Geo. 3, c. 141) were relied on, in support of the decision of the revising barristers. By § 2, it is enacted, that within thirty days after the execution of the deed, a memorial of it should be enrolled, containing, *inter alia*, the names of the attesting witnesses, "in the form or to the effect following:" In the form referred to, under the head of names of witnesses, are "E. F. of ——;" and in Darwin v. Lincoln, 5 B. and A. 444, it was held that the annuity was void, because the place of abode of a witness was omitted. The decision in Smith v. Pritchard, B. and A. 717, was to the same effect, and the strict adherence to form, required by courts of law, was shown in the case of Cheek v. Jefferies, 2 B and C. 1. The Committee resolved, that the notice of objection was informal, and that the barristers'

Petersfield, 1832.
§ 47, 2 W. 4, c. 45.

The notice of objection to the name of James Cookson did not state the objector's place of abode. The overseer, who was well acquainted with the objector, received the notice, and entered the name of the claimant in the list of persons objected to. The objector subsequently discovered the omission, and was allowed by the overseer to add the place of his abode.

The revising barrister decided that the notice of objection was bad*.

---

decisions were right;—Bedford Town, Perry and Knapp's Reports, 116; Flight's case, but vide Ripon, ibid. 203; and Petersfield, ibid. 46.

Where notice of objection had not been served, the Court has no power to examine anything beyond the particular errors which appear on the face of the register. Manning's Notes of Revision, 9.

* The committee resolved, that the counsel for the petitioner should proceed as with his case, which, by their subsequent decision in Crockford's case, in effect decided that the objection was valid. Petersfield, Perry and Knapp's Rep. 46.

A notice of objection had been given to the name of George Snowden being retained on the list. The objector's place of abode was not stated in the notice, and the revising barrister retained the name. The committee resolved, that the counsel for the petitioner be at liberty to proceed with the case. Ripon, ibid. 203.

The name of Thomas Crockford had been entered in the list, and not objected to; it was therefore retained by the revising barrister. On the part of the sitting member, the vote was objected to. The committee decided, that they were not empowered to enter into any inquiry respecting votes that had not been under the cognizance of the revising barrister. Petersfield, ibid. 56.

And in Coggans's case, the committee resolved, "That it "being admitted that no objection was made to the voter be-"fore the barrister, and his name appearing on the register, they "deem themselves precluded from entering into the question of "his vote." Bedford Town, ibid. 122.

The committee resolved, "That they would not allow any "objection to the qualification of any voter at the time of regis-"tration, whose name was not objected to before the revising "barrister." Oxford City, Godfrey's case, ibid. 93.

William Grey was not objected to at the registration. The

City of London. Verbal notices of objection invalid.

The overseers of the parish of St. Antholin presented a list of persons, on the face of which no objection appeared, but they also presented a second list, containing the names of several who were entered in the church-door list, but who, they stated, had not paid their rates. It appeared, on examination, that only a verbal notice of disqualification had been given to the parties, and that the omission of any objection to them from the first was from motives of delicacy.

The Court said, that no doubt the motives of the overseers might have been good, but it was clear that they had not complied with the Act, and as no objection appeared on the list, he could not strike out the names.

One of the collectors of the king's taxes for the parish of St. John, Hackney, objected to his name remaining on the list of voters in that parish, as he was disqualified for exercising the franchise, by virtue of his office.

It appeared that the overseers having placed him on the list, he sent them a note, expressing his desire to be struck out, but stated no ground of objection.

Mr. Chapman (R. B.) said that the notice, besides being bad in time, was irregular in point of form, and he was therefore spared the necessity of entering into the question, whether a man, under the Reform Act, could object to himself. On the irregularity in point of form the name must be retained on the list.

---

committee decided to go into his case. Galway Town, ibid. 309. Vide also Collins's Case, Rochester, 2 P. and K. 121.

Leeds, 1835. Notice of objection.

The name of "Josiah" Bates, of Burley Terrace, had been inserted in the original list by the overseers, and was objected to by Mr. Wailes, but by a mistake of the overseer or printer, the name of "Joseph" Bates was printed in the list of persons objected to instead of Josiah. Mr. Clarkson held that this was a sufficient notice to the claimant to call upon him to prove his qualification.

City of London, 1835.

Mr. Davis, of Watling-street, was objected to by Mr. Williams, the member of parliament for Coventry, who is a voter in the same parish.

Mr. Rogers contended against the validity of the notice, as the objector had not added his place of abode after his signature. He relied chiefly on the decision of the committee on the Bedford election*. In that case it was proved, that Mr. Eagles the objector was well known to the parties, on whom the notice of objection had been served, but the committee had decided that the notice of objection was informal.

Mr. Craig (R.B.) said that the Bedford election committee had so decided; but the Petersfield committee had decided quite the other way. So that if the authority of a committee of the House of Commons was of weight on one side, it was of equal weight on the other. Without reference to either case, then, he would say that he thought the notice valid. He had said the other day, in giving his decision on a similar objection to a notice of claim, that an objector had more reason to put his address, as means should be had of knowing whether the party was entitled to object. The present case was certainly taken out of the application of that

* Perry and Knapp's Reports, Bedford, 122. Vide also p. 2.

objection, because the address of Mr. Williams was known to the overseers, they having entered his name in the very list to some of the names on which he had served his notice of objection. Under these circumstances he would admit the validity of the notice, but at the same time he must say, that the safest way in all those cases would be to follow the express words of the Act of Parliament, and certainly there was the less reason for Mr. Williams not having done so, as he himself was a member of the legislature. The case was a very nice one, and might be decided either way, and probably another barrister might give a different decision.

City of London, 1835.

Lieutenant John William Bailey was objected to.

Deptford Dockyard, 1835.

Notice of objection. Validity.

Mr. Sandom took an objection to the list in which the claimant was objected to as "John William Bailey, for a house in H. M. Dock Yd., Deptford." Mr. Sandom contended that the Act set out specific forms, in which all the words were stated at full length. He hoped it would be decided in the present instance that the Act had not been strictly complied with, and that the objection could not be supported *.

Mr. Brockman (R. B.). The Act particularly referred

* A notice of objection signed "R. G. Fitzpatrick, Pyle Street, "and Fairlee, Newport, in the Isle of Wight," was put in. It was contended by the respondent, that this notice was insufficient, being signed by the objector with only the initials of his Christian name, and the case of Mr. T. Leary was relied on, in which it was decided, that a notice of claim not containing the name and surname of the claimant at full length was insufficient. The Court said, the names of the objectors were no otherwise material than as they serve to enable the overseers to ascertain whether the objections proceed from persons qualified to object, and decided that if the name of the objector was so designated in the notice as to be commonly understood, it was sufficient. Manning's Notes of Revision, 165.

Deptford Dockyard, 1835.

to names, and names only. He had seen a hundred lists where it had not been attended to, and if he allowed the lists to be overturned on this point, half the county would be disfranchised.

Mr. Sandom said, whatever might be the result, he should insist on pressing the point.

Mr. Brockman held that the description in the list of objections was sufficient, and as Mr. Sandom was not prepared to prove the case, the name was struck out.

Mr. Rowcroft objected to the name of Mr. Charles Hicking, on general grounds of want of qualification.

Mr. Trott took a preliminary objection to the case being entertained, on the ground that the notice of objection had not been served on the overseers, but upon their assistant, who, though he had made out the list, had not signed that which was posted on the church doors.

Mr. Tamlyn decided, that under the 70th section, the assistant was an overseer within the intent and meaning of the Act, and therefore that service of notice upon him was good and sufficient service. In this opinion he was happy to say he had the full concurrence of his learned colleague, Mr. Craig.

St. Olave, Hart Street, 1835.

Several notices of objection had been served on Mr. Scaley the overseer: it was contended, that the service of notice upon him was invalid, as he had not been duly appointed by the justices to the office of overseer*.

* The objector, who was senior churchwarden, was required to prove the service of the notice of objection. He had delivered it to Mr. Wavell, who was not the regular overseer, but was employed, and paid by the churchwardens and overseers, to collect rates, &c., and he was known as the acting overseer. He

St. Olave, Hart Street, 1835.

Mr. William Baker proved that he had been the vestry-clerk of the parish of St. Olave, Hart Street, for the last 38 years, and that during that period he had discharged all the duties of the overseers, with the exception of disbursing their funds, and that pursuant to that practice he had prepared the lists of persons entitled to vote and of persons objected to in the parish. The witness produced the record of the parish proceedings, from which it appeared that Mr. Scaley was duly nominated overseer at a parish vestry duly convened, and held on the 23d of April last. The witness also proved, that he had by letter announced to Mr. Scaley his nomination to the office, and that afterwards Mr. Scaley had, in a conversation with the witness, acquiesced in the nomination, and was duly summoned to the vestry meetings. He, however, took no active part in the parish affairs, and had done nothing at all in the preparation of the lists, according to the provisions of the Reform Act. The elective appointment of Mr. Scaley was not confirmed by the justices until the 1st of September last. The witness received from Mr. Scaley, on the morning of the 26th of August last, the notices of objections which had been served upon him, and from them the witness made out the list, affixed to it the names of the overseers, and published it on the church doors, as required by the Act. He

had prepared the list of persons claiming to vote, but had not added his signature to those of the legal overseers. It was contended, that he was not an overseer, under the 43d Eliz., nor an assistant overseer, under the 59th Geo. 3. c. 12, and was not liable to a penalty for refusing to accept, or to produce the books. 17th Geo. 2, c. 2. The Court said, the Act contained no provision respecting the objection of overseers in boroughs. There was, however, nothing to deprive a voter of the privilege of objecting, where such voter was an overseer. The Act did not require a delivery to the overseer personally. The delivery to Mr. Wavell was sufficient. Manning's Notes of Revision, 26.

St. Olave, Hart Street, 1835.

always regarded Mr. Scaley as an overseer, and as such he had summoned him to vestry meetings five times previous to August last, and three times since.

In cross-examination by Mr. Trott, the witness admitted that vestry meetings were held in the parish on the first Wednesday in every month, but that he had not summoned Mr. Scaley to attend those meetings in the months of March, April, May, or June last, though in one of those months a poor rate had been made. Mr. Scaley had not attended any of the meetings, nor was it compulsory on him to do so. The justices confirmed the appointment of Mr. Scaley by the vestry, and the witness knew of no instance in which such a confirmation had ever been refused. Mr. Scaley had taken no part in the preparation of the lists of voters and of objections, though the notices were transmitted by him to the witness.

Mr. Edward Hughes proved that he served the notice of objection to the claim of Mr. David Bradley on the 25th of August last on a servant of Mr. Scaley, who informed the witness that his master was the overseer of the parish of St. Olave, Hart Street.

Mr. Trott, in support of the preliminary objection, cited the 44th section of the Reform Act, which provided that notices of objection shall be served upon the overseer "who shall have made out the list," in contradistinction from the notices of claims, which might be properly served upon any one of the overseers of the parish. But even supposing he failed on this first point, he contended, in the second place, that inasmuch as Mr. Scaley was not a duly appointed overseer, the service upon him was insufficient. He only became a legally constituted overseer from the date of the confirmed appointment by the justices— namely, the 1st of September last; for though the

terms of the appointment stated that he should act as overseer for twelve months from the 25th of March last, the case of "Rex v. Forest," 3 Term Reports, established the principle that justices had no power to constitute a man an overseer for six months preceding the date of his appointment by them.

St. Olave, Hart Street, 1835.

Mr. Rowcroft. Upon the due service of the notice no question could arise. The only question therefore was whether or not the elective appointment of Mr. Scaley by the vestry was such as to constitute him an overseer prior to the confirmation by the justices. He relied on the words of the appointment, and still more on the 79th section of the Reform Act itself, which provided that the words "overseers of the poor" should throughout the Act be construed to extend to all persons performing the duties, by whatever name they might be called or in whatever manner they might be appointed. Now, it was proved beyond dispute that Mr. Baker was the vestry-clerk, and that, acting on behalf of the overseers, he had prepared the lists. The notice duly served had been regularly traced into Mr. Baker's hands, and under these circumstances he was content to leave the case in the hands of the court.

Mr. Tamlyn (R. B.). The point for the consideration of the court arose very suddenly, when the list first came under revision, but at that period much information could not be collected on the subject. At that time it, however, had appeared to him that Mr. Scaley could not be either *de facto* or *de jure* considered as an overseer. On the next day further evidence was adduced, and upon it he had intimated that his then impression was, that that gentleman might be held to be an overseer. He had, however, the same evening, reconsidered the point, and the result of that

St. Olave, Hart Street, 1835.

reconsideration was, that he was disposed to think his last view of the case was very erroneous, and being never ashamed when he found he was wrong to avow his error, he acknowledged and at the same time announced his wish that the case should be re-argued before his learned colleague and himself jointly. Though much of the time of the court had been taken up in hearing the evidence, the real question for the court was, whether or not Mr. Scaley was an overseer at the time the notice of objection in this case was served; and on referring to the statute of the 43d Elizabeth, he found that, after nomination, every overseer must receive his appointment from two justices of the peace. Now, at the time of the service of this notice there had been no such appointment of Mr. Scaley made ; and he was of opinion that Mr. Scaley did not become a legally constituted overseer until after the appointment by the justices on the 1st of September last, and consequently that he was not so at the time of the service of the notice. It had been endeavoured to be shown that this gentleman had done some act as overseer which brought him within the provisions of the 79th section of the Reform Act; but the only solitary circumstance which had been relied on was, that the notice had been left at his house. This circumstance failed, for the notice was left with the servant, and not with Mr. Scaley himself. Again, the notice so served never reached the hands of the vestry-clerk until the day after that prescribed by the act—viz., the 25th of August. On all these grounds, coupled with the variation in the facts now before the court, as compared with those adduced on a former occasion, he had arrived at the conclusion, most satisfactorily to his mind, that there had not been in this case a sufficient service of the notice.

Mr. Craig (R. B.) expressed his entire concurrence in the opinion expressed by his learned colleague, and Mr. D. Bradley's name was retained on the list.

St. Olave, Hart Street, 1835.

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Ripon, 1835. Burgage claimants.

Mr. Rhodes appeared on behalf of William Auton, who claimed to retain his right of voting as the holder of a burgage freehold, under the 33d section of the Reform Act, which preserved the right of voting to all persons who lived within seven miles, and who were entitled to vote according to the usage and custom of any borough before the passing of that Act. He should prove, by unquestionable testimony, that previous to the passing of the Reform Act, any person who had an estate of freehold, whether beneficial or not, in an ancient burgage within the borough of Ripon, had a right to vote, and that such freeholders were the only voters for the borough. There had been no contest for nearly a century before the Reform Act passed, but these burgage freeholders, including those who held transfers of burgages under Mrs. Lawrence, had always been considered as the only electors, and had always signed the returns of members to serve in Parliament for the borough. He should prove this fact, and it would remain for him in addition only to show that this was an ancient burgage, and that it was vested in William Auton, the claimant.

Previous to the year 1745, the owners of houses, &c., had a right of common over certain common lands within

Ripon, 1835. the borough. In that year an Act of Parliament was passed to enclose those common lands, and to enable commissioners appointed by the Act to award compensation in respect of these rights of common. In 1745, the Commissioners, not having had time to execute their duties, another Act was passed to extend their powers, and in 1747 these Commissioners made their award, in which they directed a rent of 10*s*. 5*d*. to be paid as a compensation for the right of common he had mentioned, in respect of each ancient burgage. In this award, the burgesses and their owners are defined, and it would appear that the sixth burgage, on the south side of Kirkgate, was then vested in Mr. Aislabie, an ancestor of Mrs. Lawrence, and this was the burgage in respect of which Mr. Auton claimed to vote. Of this burgage Mrs. Lawrence had been in the receipt of the rents and profits for more than twenty years, and this in the absence of any evidence of an adverse claim on the other side would prove the title. From Mrs. Lawrence to Mr. Auton, a conveyance of this burgage would be proved in 1826, and also that Mr. Auton resided within seven miles of Ripon. If these facts were proved, and the custom of voting was established, no doubt, the Court would decide in favour of the claimant.

Mr. Henry Nicholson produced copies of the Acts of Parliament of 1743 and 1745, and proved that they were true copies of the original Acts, he having examined them therewith.

Mr. Richard Nicholson said, that he had been town-clerk of Ripon sixteen years, and had served his clerkship with the previous town-clerk. He had been in the town-clerk's office twenty-nine years, and had attended the different elections during that period. The persons who signed the returns, and were always considered as the electors, were those who had an estate

of freehold in the ancient burgages. No other parties ever signed the returns. Ripon, 1835.

Mr. Nicholson produced the award dated 11th January, 1747, by which it appeared that the sixth burgage on the south side of Kirkgate then belonged to William Aislabie, Esq. He was also the attesting witness to the conveyance from Mrs. Lawrence to Mr. Auton, the claimant.

This conveyance was by lease and release, dated 1st and 2d June, 1826, and conveyed to Mr. Auton the ancient burgage house, being the sixth burgage on the south side of Kirkgate, (and which these deeds mention to have been so described in the award of 1747,) during the joint lives of himself and Mrs. Lawrence, subject to a rent of 25*l.*, with a proviso that the conveyance should cease in 1836, unless Mr. Auton should pay to Mrs. Lawrence the sum of 40*l.*

Mr. Prest objected to the reception of this deed as evidence, on the ground that the stamp was insufficient. It was a demise for joint lives, subject to the payment of 25*l.* rent, and of 40*l.* in the year 1836. It operated, therefore, both as a lease and as a release, being a lease until the 40*l.* should be paid, and afterwards a release. It should therefore have had a deed stamp, an *ad valorem* stamp for the rent of 25*l.*, and also an *ad valorem* stamp for the 40*l.*

In reply, it was contended that this was either a lease, a mortgage for 40*l.*, or a conveyance. If it were a lease, a 30*s.* stamp would be sufficient. If it were a mortgage, the 35*s.* would more than cover it. And if it were a conveyance, the stamp was also sufficient.

The Court would not then decide the point, but would proceed with the case.

Mr. Nicholson, in cross-examination said, that Mrs. Lawrence, at the time she signed the conveyance to

Ripon, 1835. Auton, also signed many others. Auton never had possession of the deed, and never signed it, neither was it produced when he voted. It was not the custom to produce the deeds. The whole of these deeds had been in the muniment room at Studley, or in the possession of the witness, since they were executed.

It was here admitted by Mr. Bond, in order to save time, that these voters had never been in possession of their deeds, and that they were executed for the express purpose of creating votes.

Mr. William Morton stated that he had been steward to Mrs. Lawrence for twenty-one years. Until 1827 the owners of ancient burgages used to receive from the mayor a compensation for the right of common. Witness described the boundaries of the ancient burgage, being the sixth burgage on the south side of Kirkgate. It had been occupied until lately by Mr. Bowman. Witness had received the rent on behalf of Mrs. Lawrence, and also the compensation of 10*s.* 5*d.* per annum in lieu of the right of common in respect of this burgage. In 1816 witness was mayor, and paid the compensation also. The freeholders of burgages, including those who held transfers from Mrs. Lawrence, always signed the returns, and no others.

Cross-examined.—Witness received 10*s.* 5*d.* a-year up to 1827; since that time Mrs. Lawrence had received a compensation in money from the commissioners under the Enclosure Act, for all the burgages together, and therefore he could not say what was received in respect of this burgage alone. Auton did not receive this compensation; it was received on behalf of Mrs. Lawrence. None of the burgage voters produced their deeds at the elections. Auton resides within seven miles. Fourpence for each burgage, called

"borough groats," were payable to the lord of the manor. They were last paid in 1830. They are only collected once in six years, because the amount is so small. Ripon, 1833.

The Rev. William Glaister proved that he had known Mrs. Lawrence and her family for forty-eight years. He received her rents at Fleetham. About thirty years ago application was made to witness, by the late Mr. Justice Lawrence, to name persons to whom burgages might be transferred, and burgages were afterwards transferred to such persons accordingly. Witness had attended all elections for Ripon since 1791, except one, and had signed the returns in respect of a transfer from Mrs. Lawrence. Never had any *boná fide* property of his own in Ripon. Other persons came with witness and signed the returns. They were tenants of Mrs. Lawrence's, and never had any beneficial interest.

Cross-examined.—These persons never, to witness's knowledge, saw their deeds.

Mr. William Farrer had been twice mayor of Ripon, in 1813 and 1823. There was an election in each year. Witness was returning officer. The persons who had freeholds in burgages signed the returns, and none others. Those who had transfers from Mrs. Lawrence signed the returns. As returning officer, witness would not have received the votes of others.

The Enclosure Act was then put in, and this closed the case on behalf of the claimant.

Mr. Prest, on behalf of the objector, said that this was a mere attempt to prove a freehold. These trumpery voters were created by Mrs. Lawrence to serve a party, and were altogether a mockery. He had already called the attention of the court to the stamp, which he confidently submitted was insufficient, and if

Ripon, 1835. so, this was a fatal objection. But if the stamp were sufficient, he should contend that this burgage was not sufficiently identified. It was incumbent on the other side to prove identity, because if the burgage was severed the vote was gone, and they had neither proved dimensions nor frontage. It was true that former decisions had established these votes, but he relied with confidence upon the objections which he had urged.

The court, without calling upon Mr. Bond to reply, said that they were satisfied with the evidence of identity and of title, and it had been repeatedly decided that no beneficial occupation was necessary. The only question, therefore, which remained was as to the stamp, upon which point they would look into the Stamp Act. The court on the following day gave judgment on the question of the sufficiency of the stamp upon the conveyance to William Auton, merely saying that they had looked into the Stamp Act, and were of opinion that the 35*s*. stamp was sufficient.

The right of the other burgage claimants was therefore decided by this judgment.

Reading, 1832. Scot and Lot. James Barnett, the proprietor of the theatre, whose name was inserted on the scot and lot list, was objected to, on the ground of non-residence and non-occupancy.

Mr. Weedon, in support of the claim, said that the voter had a house in Reading, which was his home, and the centre of his business, to which he always returned from his excursions as a travelling comedian. It was, however, admitted that the entire period during which he resided in Reading, in the course of the year, did not amount to more than twelve weeks *.

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* A scot and lot voter, after he had been registered, but before the election, left his house and went into lodgings. The

Borough of Abingdon, 1832.

The court held that such was not a *bonâ fide* residence, and the voter's name was expunged.

Mr. Winter Harris appeared on behalf of certain claimants in the parish of St. Nicholas, and stated that the designation of the voters in the lists of the overseers, as inhabitant householders paying scot and lot, was not in accordance with the last decision of the House of Commons, in 1708, with regard to the right of voting in that borough, which declared the said right to be in the inhabitants paying scot and lot.

After some conversation, the court overruled the objection, on the ground that the former being the larger term, of course comprehended the smaller, and that, therefore, there was no description of the voters.

Richard Sheard claimed to have his name inserted in the list, in right of a house situate in the middle of the bridge leading from Abingdon into Oxfordshire.

Mr. Harris said that this voter claimed as a 10*l.* householder, and complained that the overseers had not made out, in pursuance of the 44th section of the Reform Act, a list of the 10*l.* voters in that borough.

The court having examined the overseers upon that point, declared that they were bound, under the Act of Parliament, to have made out lists of those entitled to vote under the new franchise, as well as of those who claimed to vote under the ancient usage of the borough, as scot and lot voters. Witnesses were then produced, amongst whom were the mayor, and some of the magis-

committee decided the vote was bad; Harper's Case, Bedford Town, Perry and Knapp's Rep. 143; although he continued to pay the rent to the landlord. Stock's Case, ibid.

Borough of Abingdon, 1832.

trates of Abingdon, to prove that the house in question was within the boundaries of the borough, as frequently perambulated by the corporate authorities. It was admitted, however, that the claimant was not rated to the parish of St. Nicholas; that his house, the Nag's Head public-house, was in the parish of Culham, in Oxfordshire, and that he was licensed by the Oxfordshire magistrates. But as the Boundary Bill declared the boundary in this borough to be that of the old borough of Abingdon, it was contended, on behalf of the claimant, that, as his house was situate within the borough, he was entitled to be put on the list of voters. The court decided against the claimant, on the ground that his claim ought to have been made to the overseers of the parish of Culham.

Joseph Hadley was objected to, on the ground that he did not reside within the borough as an inhabitant paying scot and lot. It was admitted that the claimant possessed a property in the borough, for which he was assessed, and for which the rates had been regularly paid up to the 31st of July; but that as his residence was beyond the boundary of the borough, his property did not come under the denomination of a scot and lot voter.

The claimant stated that he applied in writing to the overseer, to have his name entered as a 10*l.* householder, but that his name was entered as a scot and lot voter. There was a sleeping room in a tenement attached to his manufactory, connected with the borough, but he had not slept there since February last.

Mr. Harris contended, that under the 33d section of the Act, the limit of residence was extended within seven statute miles of the place where the polling was

Borough of Abingdon, 1838.

held. This voter had also a right to claim as a 10*l.* householder, and that this case raised the question as to the impropriety of the overseers not making out a list of such voters.

Mr. Talbot (R. B.). The overseers may have acted improperly in so doing, but the court could only deal with the qualification of voters as stated in the lists.

Mr. Harris suggested that the court might call upon the overseers to supply the deficiency, and to make out such a list now.

Mr. Corbett (R. B.) enquired if he could point out any part of the Act of Parliament which authorized or required the barrister so to do.

Mr. Harris said that this was a hard case, in which, if the voter should lose his right of voting, it would be through the culpable negligence of the overseers, in not making out a list of 10*l.* voters. The voter had required them to place his name in such a list, but instead of doing so, they placed him among the scot and lot voters, and it was not until some time before midnight on the 25th of September that an objection was entered to his vote.

Mr. Corbett said the court was ready to admit every thing Mr. Harris stated: they were ready to admit that it was the duty of the overseers in this instance to make out a list of the persons entitled to vote as 10*l.* householders; but they could only deal with the lists they had before them, and they could not remedy an evil affecting in this manner the franchise of a voter. For such evil the voter must seek his remedy against the overseers.

The vote, which was entered as a scot and lot voter, was accordingly rejected, on the ground of non-residence.

Reading, 1832.

William Pearce, who claimed as a scot and lot voter was objected to on the ground that he was not rated It appeared that the entry in the rate-book stood thus "William Pearce and Son;" and while no objection was made to the father, it was contended that there was no evidence that William Pearce, jun., was rated and the insertion of his name on the list of voters was accordingly objected to.

Evidence having been produced as to the identity of William Pearce with the individual who was returned on the rate-book merely as "son," of William Pearce, the vote was allowed.

Mr. Corbett said that this was a case of joint occupancy of premises, and that payment of the rates by one occupier was payment for both*.

Southwark, 1834.

Mr. Goddard claimed to have his name inserted on the list of electors as a scot and lot voter.

Mr. Doughney, the vestry clerk, said there were two grounds for not inserting the claimant's name; 1st, if he claimed under the Reform Act as the occupier of a 10*l.* house, he had not complied with the provisions of the Act, which required that the assessed taxes due on the 6th of April should be paid before the 20th of

* The claimant occupied jointly with his father and brother in partnership. The rates and taxes were paid by the firm, but the assessment of the premises continued in the name of the father. Name expunged. Manning's Notes of Revision, 57.

Two brothers, as partners, were joint occupiers of certain premises which had been rated in the name of the firm, but in 1831 the assessment was on Mr. "Hewitt." The overseer said, that by Mr. Hewitt he meant to assess the firm. The Court held that if the two brothers carried on trade under the firm of "*Mr.* "*Hewitt*," the assessment might have been good for both; but from the evidence, it was merely a virtual rating of both by a wrong name. Ibid. 158.

July; and 2dly, that as a scot and lot voter he had not paid up all the poor-rates made and demanded of him before the day of election. The Reform Act fixed the day of registration in place of the day of election, and in the Bridgewater case, where an elector had refused to pay his rates before the day of election and tendered the amount on the table, the returning officer refused his vote, and the refusal was held good.

Southwark, 1834.

Mr. Knox (R. B.). The case came within the 32d section of the Reform Act, which enacted, That very person who would have been entitled to vote in he election of a member or members to serve in any ature Parliament for any city or borough not included 1 schedule A, either as a burgess or freeman, or in the ity of London as a freeman or liveryman, if this Act ad not been passed, shall be entitled to vote in such ection, provided such person shall be duly registered ccording to the provisions hereinafter contained; but at no such person shall be so registered in any year iless he shall, on the last day of July in such year, be ialified in such manner as would entitle him then to ite, if such day were the day of election. It was bend all doubt that under the old system the claimant ould have been and was still bound to pay the poortes demanded of him before the election-day, and t having done so on the 30th of July, which the Rem Act had put, instead of the election-day, he lost right to have his name placed on the list.

Mr. Lennard (R. B.) concurred in that opinion, and dence having been given, that payment of the rates l been demanded, the claim was rejected *.

Thomas Bricknell was one of the old constituency of New ndsor, which, according to the last decision of the House of

Westminster, 1835. Scot and lot. Exeter Hall.

The joint occupiers of Exeter Hall claimed to b registered as scot and lot voters: the decision of th case had been postponed for consideration.

Mr. Craig (R. B.), on giving judgment, said, the mai question was, whether Mr. Baker (whose claim was t decide others of that class) could have voted as a sco and lot voter on the 8th of June, 1832. If he had th right then, he had it now, unless it could be shown tha his name had been off the books for two years, and th attempt to give such proof had failed. It must b taken, then, that the name had continued on the books and then the question went back to the first point— whether Mr. Baker could be said to be a scot and lo voter in 1832. The names on the rate-book were, Henr Pownal, Thomas Baker, and B. Hudson, and "occu piers" of Exeter-hall. He would not dwell much o the point as to what gave the right of scot and lot votin in Westminster, whether it was an "inhabitant" payin scot and lot, or an inhabitant "householder" payin scot and lot; that had not been decided. But h would go to what appeared to him to be neares to what scot and lot meant—namely, "rating," and h did not think Mr. Baker could be said to be rate under the term "occupiers;" his name must be there fore expunged.

The other names which depended on the same poin were also struck out.

Commons, consists of the inhabitants paying scot and lot (a) The last rate made for the voter's parish previously to the elec tion, was on the 16th of October, 1834. The voter was assesse to it, but on being applied to by the assistant overseer, he re fused to pay it, saying it was not convenient, as he was out o employ. The rate was not paid at the time he voted. The com mittee determined that the vote was bad. K. & O. 158.

(a) New Windsor. 2 Peck, 287.

Westminster, 1825. Scot and lot.

To the claim of Mr. William Shand, of 6 and 7, Buckingham-street, an objection was made by Mr. Rawlings, on the ground that Mr. Shand had not paid all his rates.

Mr. Le Breton, in support of the claim, contended that Mr. Shand claiming as a scot and lot voter, it was not necessary that he should have paid them, unless proof were given that they had been legally demanded. In the present case no such proof was given.

From the evidence of one witness it appeared that he (the witness) was present at a conversation between Mr. Shand and the collector, in which the former said that some abatement should be made in the rate, as one of the houses, having been nearly all taken down and rebuilt, was unoccupied for a considerable part of the time for which it was rated that year. There was no mention made of any demand by the collector. He had not called for the rate, but Mr. Shand seeing him passing, called him in to make a claim to be placed on the county list in right of some property of which he was trustee. Witness could not say whether any demand had been made for the rate at any other time.

Mr. Rawlings said, the claimant could have proved that no claim had been made, if the fact were so.

Mr. Le Breton said Mr. Shand was prevented from attending by illness, but even if he were not, he (Mr. Le Breton) contended that the *onus* lay upon the objector to shew that a demand had been made, which could easily have been done by calling the collector.

Mr. Craig (R.B.) said there was no evidence before him to shew that a demand had been made, and it appeared to be the general principle of all the decisions of committees of the House of Commons on the subject, that the scot and lot voter was not deprived of his right to vote by the non-payment of the rate, unless

Westminster, 1835.

the rates due had been legally demanded. The case of "Cullen v. Morris,"* which was tried before Lord Tenterden in 1820, was one which bore on the present. It was an action brought by a scot and lot voter against the high bailiff of Westminster, for having wilfully refused his vote. The defence set up was, that the plaintiff had not paid his rates. The jury on that occasion came to no decision, and were discharged without giving a verdict; but in the summing up by Lord Tenterden, he left it to the jury to say whether a legal demand of the rate due had been made. He gave it to them as his opinion, that if a man had been in the habit of paying rates as a scot and lot occupier, he did not lose his right to vote by non-payment of the rate, unless it had been legally demanded. With such authorities, he was of opinion that Mr. Shand's claim was good, and that his name should be retained on the lists.

Borough of Stafford, 1832. Freemen.

John Allen claimed to be registered as a freeman of the borough of Stafford. The facts given in evidence, in support of the claim, are detailed in the following judgment, pronounced by the court after consultation.

Mr. Lumley, (R. B.) said, the claimant, together with several others, claimed to have his name inserted in the list of freemen for that borough. By section 50, 2 W. 4, c. 45, the revising barristers were to insert in the list of voters the name of every person proved to their satisfaction to have been entitled on the 31st day of July next preceding the registration. By section 32, the rights of freemen were preserved provided they were duly registered; but no such person was entitled to be registered unless he had been so qualified on the 31st day of July, as to entitle him to

* 2 Stark, 577.

Borough of Stafford, 1832.

'ote if that day had been the day of election. In the ›resent case, the claimant said that his right was de- ived from birth; that he was of age before the 31st f July, and therefore on that day he had an in- hoate right to his freedom; and that having been dmitted to it since, *viz.* on the day of registration, his ight was perfected, and therefore, by relation, he had roved that on the last day of July he had a right to vote, nd was entitled to have his name inserted in the list. 'he case had been considered with an anxious desire to dmit the claimants, if it could be done consistently 'ith what appeared to be a correct interpretation of ıe Act. The Court was bound to examine the position f the claimants on the 31st of July, and not to regard ny subsequent events. The claimant, as the son of a :eeman, from the hour of his birth possessed an incho- te right, which could only be perfected by admission. ‹dmission was a formal promise, under a solemn oath ıken in court, to preserve the rights of the borough, f which Mr. Allen claimed to be a member. On the 1st of July that title was defective. In the case of a ɔpyholder, who claimed an estate on a surrender to im, the lord of the manor was bound to admit him; ıat admission was a mere ministerial act, yet the ɔpyholder's title was defective in any court of law efore admittance. If an action was brought against a 'eeman, not admitted upon a bye-law, for a breach of ıat law, he would be entitled to say he had never een admitted, and therefore was not liable; for by dmission only could he give in his adherence to the orporate body. A due distinction had not been taken etween the right to freedom, and the right to vote. 'he former might be perfect, and yet the party may 'ant some necessary qualification to entitle him to the lective franchise. It had been said that the inchoate

Borough of Stafford, 1832.

right had been perfected by the admission before the registration: no doubt the claimants were then perfect freemen, entitled to vote if that day had been the day of election; but they were not so on the 31st day of July. The Court could not help noticing, that almost all the claimants had had a full opportunity afforded them of perfecting their title before the last day of July. The mayor and aldermen, with a most praiseworthy attention to the interests of the freemen, had held a court on the 30th of July, for the express purpose of enabling the freemen who were possessed of the inchoate right to be duly admitted. Of that opportunity only one had availed himself, and the court was reluctantly obliged to determine that the names of those claimants who were not then admitted could not be inserted in the list.

City of London, 1835. Drapers' Company.

An objection had been made to the name of Lord Lowther, M.P., being retained in the list of the Drapers' Company, on the ground that his lordship did not reside within seven miles of the city of London. It was also urged by Mr. Trott, who appeared in support of the objection, that Mr. Sawyer, the clerk of the Drapers' Company, could not be heard on behalf of his lordship unless he produced a written authority signed by his lordship.

Mr. Sawyer in reply stated, that Lord Lowther was not now in England and therefore he could not produce his authority, but as clerk of the Company he was bound to protect the rights and privileges of every member of the Company.

Mr. Tamlyn decided, that as the claim was signed by his lordship he should dispense with the production of any written authority to appear on his behalf.

Lord Lowther's butler then proved that his lordship

had occupied a house in Cleveland-row, since February 1831.—Name retained.

City of London, 1835.

An objection was made to the retention of the name of Sir John Gurney in the list of the Fishmongers' Company.

Fishmongers' Company.

Mr. Trott in support of the objection said, that Sir John Gurney, as one of the Barons of the Exchequer, was connected with the collection of the revenue, and was thereby disqualified from voting. The Court of Exchequer was originally intrusted with the management of the revenue, and even now, informations for the recovery of the revenue were prosecuted in that court. The Court of Exchequer had also cognizance of all matters connected with the customs and excise, and by the 22d Geo. III. c. 41, it was provided, "that from and after the 1st of August 1782, no commissioner, collector, gauger, or other officer or person whatsoever concerned or employed in the charging, collecting, levying, or managing the duties of excise, or any branch or part thereof, nor any commissioner, collector, controller, searcher, or *other officer* or person whatsoever concerned or employed in the charging, collecting, levying, or managing the customs, or any branch thereof, shall be capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron, to serve in parliament for any county, stewartry, city, borough, or cinque port."

Mr. Towse, the clerk of the company, in support of the claim said, that the question now before the court was not as to the learned baron's right to vote, but merely whether he was entitled to have his name inserted on the list of electors.

Mr. Tamlyn was of opinion that if the provisions of the Act referred to had been intended to apply to the

City of London, 1835.

Judges of the Court of Exchequer, they would have been named specially, and were not comprehended in the words, "*other persons* whatsoever;" but even admitting that there might be a doubt on his construction of the Act, he was satisfied that the Barons of the Exchequer could not be considered as included within the operation of the words, "persons concerned or employed in collecting, charging, or levying, or managing the customs or excise."—Name retained.

Coopers' Company.

Mr. C. Pearson appeared to support the claim of Mr. D. Salomons, the sheriff of London and Middlesex, to be placed on the list of voters as a liveryman of the Coopers' Company.

Mr. Towse said it would be unjust to admit the claim of Mr. Salomons while other persons who, like him, had purchased their freedom and livery since March 1831, were excluded.

Mr. C. Pearson said the facts of the case are not disputed, and the whole question will turn upon the construction of the Reform Act. The disfranchising clauses of that statute were of a highly penal character, and they must be construed with all the strictness which regulated the judicial construction of penal statutes. It was true that the 79th section in some respects relaxed the particularity of construction in reference to the subjects therein specifically mentioned, but the particular distinction of terms employed in the Act in reference to the case before them not having been included in the 79th section, the court was bound to apply the same inflexible rule of construction as if the statute had contained no such explanatory clause. The 32d section of the Reform Act was that under which Mr. Salomons claimed the right to vote—it exempted the liverymen of London from the

operation of the restraining words which were to be found in the latter part of that section. It was an acknowledged rule of construction, that the enfranchising clauses of a statute were to be construed liberally and in favour of the franchise, while the disfranchising clauses, tending to limit the franchise, must be strictly construed; the enfranchising clauses carefully mentioned the liverymen of London in conjunction with the freemen and burgesses of other cities and boroughs, while in the proviso limiting the right of voting to those who enjoyed it anterior to the 1st of March, 1831, the liverymen of London were as carefully excluded from its operation; leaving to them the possession of the privilege, let the date of the creation of that privilege be what it might, provided only that such right was perfect at the date of registration, as if that had been the day of election, and provided they resided within seven miles of the place of voting. The words "freemen and liverymen of London," in the first two branches of the 32d clause, and similar words in the 33d clause, were introduced at the express instance of the corporation of London. If those words had been omitted, the livery of London would not have retained their franchise under the other words employed; and surely if the introduction of the express words was necessary to bring the livery within the operation of the enfranchising clause, *à fortiori*, it was necessary that they should be found in the disabling part of the section, in order to deprive them of the right to vote. If it had been the intention of the legislature to treat the words "freemen" and "liverymen" as synonymous, that rule of construction would have been set forth in the 79th section, the interpretation clause. But that section nowhere declared that "freemen" and "liverymen" shall be considered as con-

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City of London, 1835.

vertible terms, but leaves freemen to be affected by those clauses which named them, and the rights of liverymen likewise to be affected by those sections, and those only, in which they are particularly named.

Witnesses were called, who proved that Mr. David Salomons was admitted a freeman and liveryman of the Coopers' company, by purchase, on the 5th of July, 1831, and that on the same day he was admitted a freeman of the city of London, and that Mr. Salomons resided in Cumberland-street, Portman-square, within seven miles of the usual place of election for the city of London.

Mr. Towse, in opposing the claim, contended that the arguments on the other side were fallacious, but if they applied under any circumstances, they could only extend to liverymen and freemen, entitled by birth or servitude to the livery and freedom; to that class alone were the rights reserved by the 33d clause, which made no mention of their attaining the privilege by redemption.

Mr. Tamlyn postponed his decision till a future day, and then, addressing the clerks of companies in attendance said, that he was now ready to pronounce his decision, provided they did not wish it to stand over. Before he did so, however, he wished to put a few questions to the town-clerk, Mr. Woodthorpe, in order to see that he (Mr. Tamlyn) was correct in the facts upon which his judgment was founded. Would Mr. Woodthorpe have any objection to be sworn?

Mr. Woodthorpe said he was ready to afford the court every information in his power, but, as he neither appeared in support of claims, nor to sustain objections, he must decline to be sworn.

Mr. Tamlyn then inquired of Mr. Woodthorpe under what circumstances a liveryman was first made.

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Mr. Woodthorpe said, that the liverymen were a selected body elected by the court of assistants of the company of which they were respectively freemen, and were required to be properly and duly qualified.

Mr. Tamlyn inquired if it made any difference as to admission to the livery, whether a man was a freeman by birth, by servitude, or by redemption?

Mr. Woodthorpe answered, that every person admitted to the freedom of a company was liable to be called on to take on him the livery of the company under a penalty, but the penalty could only be enforced in cases where the parties were possessed of a certain amount of property, for an order of the 27th of July, 1697, of the mayor and aldermen of London, (who have the general supervision of the livery companies,) made very shortly after the reversion of the sentence of *quo warranto* against the corporation of London, and the consequent restoration of that body to their ancient rights and privileges, was to this effect—"That the Court of Aldermen was highly sensible that several persons had in many of the companies been called to the livery who had neither estate nor ability to take the clothing upon them, which proceeding tends to impoverish themselves and families, and at last makes them a burden upon the company; it is ordered, that for the future no person shall take the clothing of any of the twelve superior companies who has not an estate of 1000*l*., and that no person shall be called to take upon him the clothing of any of the inferior companies who has not an estate of 500*l*." It was also provided, that against persons of less estate, the penalties for not taking up the livery should not be enforced. The number of the livery

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was formerly limited, and did not exceed the present number composing the several courts of assistants.

Mr. Tamlyn asked, was there any difference as to the admission of freemen by birth, by servitude, or by redemption to the livery?

Mr. Woodthorpe said there was no difference, for that the moment a man was sworn a freeman of a company, he was liable to be called upon by the court of assistants to take up his livery, and was fined if he, thinking the office burdensome, should refuse.

Mr. Tamlyn wished to be informed whether the son or grandson of a freeman, who was not a liveryman, could, being a freeman by birth himself, be entitled to vote on becoming a liveryman?

Mr. Woodthorpe said, there could be no doubt of it.

Mr. Tamlyn inquired whether any gentleman present disputed these facts?

Mr. De Mole said, he only wished to remark, that the Merchant Tailors' Company having a charter of their own, the number of their livery was unlimited.

Mr. Woodthorpe said, such was the case in companies not having charters, but who, on the reversion of the sentence of *quo warranto* to which he had alluded, had thrown open the door to all, in order, by fees of admission, to raise new funds.

Mr. Tamlyn expressed himself obliged for the information, and inquired if any person desired a further postponement of his judgment.

Several gentlemen answered in the negative, and added, that it was desirable the decision upon this very important point should no longer be delayed.

Mr. Tamlyn said, the question before me is whether a person admitted to the freedom of the city of London by redemption since the 31st of March, 1834,

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and having become a liveryman of a company, and having been a freeman and liveryman for the space of twelve calendar months before the 31st of July last, is entitled to have his name placed upon the list of persons in his company entitled to vote in the election of members of Parliament for this city? This question has come before me by claim and objection. In some of the cases (in one in particular) it has been argued at considerable length, and with great ability and ingenuity. It appeared to me to be very important in the consideration of this question to ascertain what were the requisites to constitute a voter previously to the passing of the "Act for Amending the Representation of the People," and the result of my inquiries is, that the voter must have been a freeman of the city of London, but that that alone did not entitle him to vote, unless he were a liveryman of a company, and had been both freeman and liveryman for the space of twelve calendar months prior to the election. It appears by an Act passed in the 11th year of the reign of King George I., entitled "An Act for Regulating Elections within the City of London, and for preserving the Peace, good Order, and Government of the said City," that great controversies and dissensions had arisen with respect to the persons entitled to vote, and that Act enacted that the presiding officers at elections should poll no persons who had not taken the following oath:—"You do swear that you are a freeman of London and a liveryman of the company of ——, and have so been for the space of twelve calendar months, and that you have not polled before at this election, so help you God." And by the 14th section of this Act it is provided, "that no person or persons whatsoever shall, from and after the 1st of June, 1725, have any right or title to vote at any election of a citizen or citizens to serve in Par-

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liament for the said city, or any mayor or other officer or officers to be chosen by the liverymen thereof, who have not been upon the livery for the space of twelve calendar months before such election." Thus the law stood prior to the Reform Act. By that Act, in its 48th section, it is provided that for providing a list of such of the freemen of the city of London as are liverymen of the several companies entitled to vote in the election of members to serve in Parliament, the returning officers of the city shall issue precepts to the clerks of the livery companies, requiring them to make out a list of the freemen of London being liverymen of the respective companies and entitled to vote at such election. The question here is, whether the gentlemen whose cases I have had under consideration are entitled to have their names registered upon such lists, and that question depends upon the following enactment of the Reform Act:—"Provided always that no person who shall have been elected, made, or admitted a burgess or freeman since the 1st day of March 1831, otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election for any city or borough, or to be so registered as aforesaid." Now, it has been said that no one votes for London as a burgess or freeman, but that he votes as a freeman and liveryman; and it has been argued, that because no freeman of London can vote for the city of London unless he be a liveryman, this act is inoperative with respect to rights of election in the city of London, and that the omission of the word "liveryman," or any reference to it in this clause of the Act, shows the intention of the legislature to have been that this restrictive provision should not extend to the London constituency; but I am of opinion, that the voter does vote as a freeman, although he must also be qualified

as a liveryman, and that he is not entitled to be registered, because he has been admitted a freeman since the 1st day of March, 1831. An occupier of a house in a borough is under the Reform Act entitled to vote, but it is essential to his exercise of that right that he reside within seven miles. Now, I find that persons are not admitted to the livery of a company by birth or servitude, or by redemption, but the livery is granted to the freemen of the company uninfluenced by the circumstance of their having become free of the company, or freemen of London, by birth, by servitude, or by any other means; and therefore had the word "liveryman" been here introduced, no son or apprentice of a freeman of London, although such freeman might have been free for twenty years before the passing of the Reform Act, would have been ever able to vote although he had taken up his livery, because he had not become what it was impossible he could have become—a liveryman by birth or servitude. This is not only in my opinion a sufficient answer to the argument, but to the other arguments that have been advanced with reference to former parts of the same section on the circumstance of the words "burgess or freeman," and "freeman and liveryman," being there used, as it is said, in contradistinction; for the particular proviso on which this question depends is applicable to freemen only in their character of freemen, whether of London or any other city or borough, and however much it might have been proper to multiply words in the early part of the section, they would have been misplaced in the provision in question, and, if inserted, would have placed the old constituency of London in a worse situation than that of any other city or borough not disfranchised by the Act. On these grounds the objections to the claim of Mr. Salomons, and the other

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City of London, 1835.

gentlemen similarly circumstanced, must be allowed, and their names severally expunged from the lists in which they now stand.

Mr. Woodthorpe remarked that it would be desirable that this decision should be circulated generally amongst the companies.

Mr. Tamlyn said that, in order to prevent mistakes, he had reduced it to writing, and he would hand over a copy to the returning officers.

Shortly after the decision was pronounced, Mr. C. Pearson entered the court and complained that he understood evidence had been given which was capable of contradiction.

Mr. Tamlyn said that no new evidence had been given. He had this morning only made some inquiries to satisfy himself that he was correct on the facts. The reasons for his decision would be seen in his judgment.

Stoke-upon-Trent, 1832. Occupation.

R. Barton lived in the High Street, Hanley, and claimed in right of a house and shop. The shop was not under the same roof: there was a street between them. He paid 7*l.* per annum for the house, and 4*l.* for the shop. He was a wheelwright by trade, and there was a yard in front of the shop, without which the shop would be worth nothing to him. It was contended for the claimant that the yard should be added to the house, as land occupied therewith, in order to make up the qualification *.

* The claimant stated that he occupied two distinct houses adjoining each other, one of which he used as a dwelling-house, the other as a shop, but without internal communication. Being his own property, and together of the value of more than 10*l.* per annum. The houses were entered from the street by distinct entrances, but have behind a court common to both, and are under one entire roof. The court said that if the two houses were to be considered as two distinct dwellings, the claim must

Mr. Lumley (R. B.) decided that it must be one entire occupation. Name expunged.

Stoke-upon-Trent, 1832.

John Brown claimed in right of certain buildings and land near Magdallens.

Ripon, 1835. Cow-house.

Mr. Alderman Farrer proved that John Brown occupied three fields at 15*l.* per annum. There was a cow-house in one field, and a shed in another.

Mr. Prest said the borough of Ripon was inundated with cow-house votes, and submitted that a cow-house was not such a building as the words "other building would imply." It ought to be of the same nature as the buildings previously mentioned in the Act.

Mr. Clarkson said he was of opinion that a cow-house was a building within the meaning of the Act. He would have reserved the point, if he had felt any difficulty upon it; but he had frequently had to consider it before, and he did not think it now necessary. Name retained *.

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be rejected. The twenty-seventh section authorized land to be tacked to houses, but not the connecting of two buildings, each under 10*l.*, for the purpose of conferring the franchise. The two buildings must be considered as constituting one house for the purposes of this Act. Name inserted. Manning's Notes of Revision, 90.

* The building is a tool-house, used for keeping tools, vegetables, and fruit, worth, with the garden, more than 10*l.* per annum. The tool-house is about eight feet square, built in a corner of the garden, the two brick walls of which are raised one foot and a half for the purpose, from the north and west sides of the building, plates being let into the wall. The rest of the building was of wood, and had a door to it, and thatched roof, but no window; it was admitted that the building was merely subservient to the garden. It was contended, that if it had been broken open, and the tools or vegetables kept there, stolen, it must have been described as "a building" in the indictment, under the 7 and 8 Geo. IV., c. 29, s. 14, supposing it had been within the same curtilage with the dwelling house. In that statute the general word building was used in the 14th sec. "and counting-house

Ripon, 1835. Common pasture.

Robert Brown claimed for buildings and land in the Horse Fair and Red Bank.

Mr. Morton said that Robert Brown and four others occupied thirteen or fourteen acres of land in the Red Bank pasture, and a stable in the Horse Fair in Ripon, jointly, at a rent of 50*l.* a year. They had occupied since Lady Day last year.

Cross-examined by Mr. Prest.—The value of the stable was about thirty shillings a year. The land was on Red Bank. Red Bank was allotted to different individuals, about forty in number. The land was divided according to the quality, and therefore the witness could not carry the specific quantity in his mind. The claimant and his co-tenants held under a written agreement at 50*l.* a-year, but witness could not point out on the plan the particular allotment. All the allotments were marked by stakes, or long stobs, driven far into the ground. Each occupier of the Red Bank held a distinct portion or allotment, but they were not fenced off. The cattle of these five persons had the range of the whole of these fifty-four allotments. He did not call it having the exclusive use of the fourteen acres when other people's cattle had the use of it. They had the use and occupation for the whole year for which they pay their rent. They are prohibited by

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and shop," in the 15th; because the breaking into a mere building was not to be put upon the same footing with breaking into a shop or counting-house, unless as required in the 14th sec., the building was in the same curtilage as the dwelling-house. The court would understand, that in speaking of a house, warehouse, counting-house, shop, or other building, the words "other building," were used as designating property *ejusdem generis*, buildings, which like houses, &c., possessed a distinct substantive value in themselves, either to the amount of 10*l.*, or to some less amount, to be brought up to 10*l.* by joining with it land also occupied by the voter. Name retained. Manning's Notes of Revision, 157.

an agreement from grazing between Michaelmas and Candlemas, but they are bound to look after the fences during that time. The value of each of the allotments is pretty much the same. Witness believed these fourteen or fifteen acres to be worth about 3*l.* 10*s.* an acre.

Re-examined by Mr. Bond.—Witness let the land to these people by the year. There were allotments in different places, but so far as witness recollected the agreement they were not restricted from fencing them off. It was a question that had never arisen; but there was a copy of the agreement in court, and all the agreements were alike. Nobody else occupied the land whilst the tenants had not their cattle in; each party manured their own allotments. No part of it had ever been mown since it was taken by these parties.

Mr. Prest said they had it from Mr. Morton in the first instance, that the claimant along with four others, occupied fourteen acres of land, and then it came out, that they did not exclusively occupy these fourteen acres, but that other parties occupied part of the Red Bank pasture, that there was no division between this and other allotments of the Red Bank, and therefore they did not occupy exclusively. The eatage of this land was not consumed wholly and solely by Robert Brown and his co-tenants, as it was liable to be eaten by the cattle of other parties. These parties paid 50*l.* a-year, which was barely 10*l.* a piece, and that was not for the exclusive use of the fourteen acres, but for the range of the whole along with the others. He contended that this case must fail for want of value, as other occupiers paid rent for eating on these fourteen acres.

Mr. Bond said the only point in the case was,

Ripon, 1835. whether these parties occupied the fourteen acres o land and the building. That the value was sufficient if they occupied, was quite clear, for it was proved that they paid *50l.* a-year, which was not contradicted. Now the agreement told two tales which were of importance in the consideration of this question. It covenanted that the parties should have "a right of road and way, and full and free ingress and egress for horses, carts and carriages, with all things necessary to the exclusive occupation." With that proviso could Mrs. Lawrence, or her agents, tell these parties that they were not to fence it off? Certainly not. There was another clause reserving the right of hunting over the said land to Mrs. Lawrence, and her agents, friends, and servants, and the tenants were bound to bring actions of trespass against all others. The tenants had agreed among themselves how they would depasture the land, and that was in the way most convenient to themselves, but Mrs. Lawrence, under her hand, had given them the exclusive use of it during the term of their tenancy. It had been said on the other side, that each occupier had the whole range of the Red Bank pasture, but there was nothing within the four corners of the agreement upon which any man could lay his finger, and say, that it deprived these parties of the exclusive use of the allotment let to them.

The court having deferred their judgment to a future day,

Mr. Clarkson (R. B.) said that he and his learned colleague had looked into the agreement under which these persons held, and they were clearly of opinion that they had the occupation as tenants of these specific allotments. The only question which remained was, whether by the subsequent arrangement among themselves, the occupiers of the other allotments could or could not be

considered as joint occupiers with them. The cattle of these five persons ran over the other allotments, and the cattle of the other occupiers in their turn fed upon their allotments. If these persons had taken in cattle at so much per head, it would not have invalidated their votes, and here, if there was not a payment in money, there was a payment in the reciprocal advantage which the parties derived from the cattle of each running over the allotments of all. Each had the power to fence off his allotment, and could maintain trespass against the others, and the court was therefore of opinion that this occupation was sufficient. The rent was conclusive as to the value, and the objections must be overruled.

Ripon, 1835.

Gordon Squire Slater, who claimed as a 10*l.* voter, was opposed by Mr. Vines, on the ground of insufficient qualification.

Reading, 1832. Occupation in right of office.

The claimant was a clerk in a brewery, and held a small tenement from his employer, adjoining the brewery.

It appeared from the evidence of a witness who had formerly held the same situation, and occupied the same premises, that 5*s.* a-week was deducted out of his weekly salary of 1*l.* 5*s.* for those premises which he held in connection with his situation, and of which he was liable to be dispossessed whenever he left his place. The claimant, having been examined, gave evidence to the same effect, and admitted that he held the premises in question for no term, but would be obliged to give them up whenever he was discharged from his situation. He was rated, however, and had paid his rates for the house.

The court postponed the decision of the case until the following day, when

Reading, 1832.

Mr. Corbett (R. B.) said, that with regard to the case, the determination of which they had adjourned they were of opinion that there was in that instance no occupation as tenant sufficient to bring it under the 27th section of the Act, according to which the voter must occupy as tenant or owner, to entitle him to the franchise*.

Chichester, 1835. Occupation in right of office.

Thomas Preston claimed as the occupier of a house and building in the Botanic Garden, in which he resided as the curator. It was objected that the premises being the property of the proprietors, and the claiment being the servant, paying no rent, but removable at pleasure, it was not a distinct occupation as required by the statute. On the part of the claimant it was contended that the house was of the annual value of 10*l.*, and the voter having been distinctly rated to the poor for several years, and paid all ratès and dues, his was a sufficient occupation. The premises consist of a seed shop, a parlour, and a shed; which Mr. Watts, the overseer of All Saints, stated it as his belief were (from the locality of the situation) worth 10*l.* a-year. The claimant had been regularly rated for several years distinctly from the garden, and

* A claimant had been rated for and occupied a house for three years, under an agreement to pay 10*l.* per annum in services to be occasionally rendered in his landlord's counting-house. The landlord retained one room in the house, and repaid the claimant a proportionate part of the rates and taxes. The annual value of the whole house was 16*l.*, of the part occupied by the claimant 11*l.* One key of the house was retained by the claimant, another by the servants of the landlord, who had no access to the premises after ten o'clock at night. The claimant was not the servant of the landlord, but previous to, and since his occupation of the premises, had rendered occasional service to the landlord, which had been paid for, or credited on account. Name retained. Manning's Notes of Revision, 11.

paid the rates; he was rated at 2*l.* a-year. Mr. Mason, solicitor, who is agent to the proprietors, paid the rate for the garden, but refused to pay the rate for the house in which the voter lives. Mr. Morris, surgeon, who had been honorary secretary to the proprietors for several years, and Mr. R. Patmore, who has been a member of the committee ever since the establishment of the gardens, stated, that the voter was required to live there merely for the protection of the gardens, and the rates paid by him were invariably carried to account against the proprietors, as disbursements, and were always allowed; that he lived there free from any rent charge as servant of the proprietors, and no deduction was made from his salary, after the house was built for his accommodation, which was not worth 5*l.* a-year; and that he was removable at the pleasure of the committee. The court, under the circumstances, decided that it was not a sufficient occupation, as he did not occupy in a capacity either as landlord or tenant, therefore the name must be expunged.

Chichester, 1835.

Mr. Robinson appeared on behalf the Rev. Mr. Forshall, Mr. Hawkins, and others, who claimed to be registered in respect of houses occupied by them in the British Museum. The claimants above named were two of the sub-librarians, and occupied apartments in the establishment, *ex officio,* rent free, but had never been rated or assessed. Mr. Forshall, the first claimant, occupies apartments which have a communication with the interior of the Museum, but of which he has the sole control. There is also an outer door opening into the court-yard. Mr. Hawkins, the other claimant, occupies a house belonging to the establishment, and rated with it, but in other respects distinct from it.

Finsbury, 1833. Officers of the British Museum.

Finsbury, 1833.

One of the overseers stated, that the Museum was originally rated at a large amount, for the library and repositories, as well as for the apartments in which the officers of the institution resided; but the trustees took the opinion of the Attorney-General on the question of their liability to be rated for the whole building. That opinion was, that the officers' apartments only were liable to be rated. It was then arranged that those apartments should be rated in the gross, and not separately, and since that time up to the present, the parish had received the rates through Sir Henry Ellis, who was rated in the books in behalf of the trustees. He thought the overseers would not consent to rate those apartments separately, because, if they did, they would not be able to get so much money as they now received.

After some consultation, it was arranged by Mr. Russell, that the case should be adjourned, to admit of the production of further evidence.

At the next sitting of the court, Mr. Russell (R. B.) observed, that the claim of Mr. Hawkins stood in a very different position from those of any other of the parties, for that gentleman, having claimed to be rated to both rates for the year, had so far qualified himself. But the objection to the other claimants, arising from their not having claimed to be rated to more than one of the two yearly rates, still remained, and would preclude the necessity of his entertaining any question as to the facts upon which their claims were founded. With respect to the claim of Mr. Hawkins, the court now required some evidence that the apartments he occupied constituted a house, and, further, that he occupied them as tenant or owner.

To prove these facts, and in order to bring Mr. Hawkins's claim within the provisions of the Reform Act,

Finsbury, 1833.

Charles Monticelli, a messenger to the British Museum, deposed that he well knew the apartments of the officers resident on the premises of the institution, and those occupied by Mr. Forshall and Mr. Hawkins formed the lower part of one side of the square, on entering from Great Russell-street. Mr. Hawkins's house had a front and kitchen entrance, and no person had a right of ingress without Mr. Hawkins's permission, and the apartments could not be entered from any part of the Museum, of the antiquities of which Mr. Hawkins was the keeper. The acts and rules of the institution required a stated number of the officers of the Museum to be resident upon the premises, and of that number Mr. Hawkins was one; and it was the general understanding that separate apartments were given to these officers in right of their office, and should no such apartments be provided, that the salary would be increased. Mr. Hawkins could compel the opening of the great door leading into Russell-street at any hour either day or night.

Mr. Russell (after conferring with his learned colleague, Mr. Chapman) pronounced the decision of the court. He said, that after referring to the 27th and 30th sections of the Reform Act, the chief difficulty in the present case appeared to arise upon the question, whether the claimant occupied the premises as owner or tenant; and the first question to be decided was, whether the premises in question constituted a house; and the second, whether Mr. Hawkins occupied them as owner or tenant. With respect to the first question, he was of opinion it was answered in the affirmative by the evidence adduced; on the second point, no claim had been made by Mr. Hawkins, *quasi* owner of the house, and the question remained, whether he was a tenant. On this, the slight nature of the evi-

Finsbury. 1833.

dence left some degree of difficulty as to the nature of the tenure, but where there appeared a presumption in favour of the claimant, he was entitled to have the benefit of it. The claimant here appeared, from the evidence, to have a right of possession annexed to the office he held, and, under all these circumstances, the court would treat him as having made out his claim under the 27th section, and having also claimed under the terms of the 30th section of the Reform Act, to be rated to the relief of the poor, and therefore the claim of Mr. Hawkins must be admitted. The other claims must be disallowed, on the ground that the parties claiming had not given notice to be rated for the poor-rates within twelve months preceding the registration.

Warden of the Fleet Prison, 1833.

A claim was made on behalf of Mr. Brown, the warden of the Fleet prison, as having a right to be registered in respect of his office. To support the claim, a copy of the patent of Mr. Brown's appointment was produced, and evidence was given that, by virtue of that appointment, the claimant was in receipt of the rents, fees, and emoluments arising from the rooms and apartments in the prison.

Mr. Sandys (R. B.) held that the patent of appointment being during good behaviour, conferred a freehold office, and as the receipts and emoluments of that office had been proved, the claim must be allowed.

Occupancy. Officers of Woolwich Dockyard.

Mr. Colquhoun appeared on behalf of Mr. Richard Abethell, assistant master-shipwright, of Woolwich Dock-yard, who claimed to have his name inserted on the list of electors for the borough of Greenwich. The claimant had occupied a house in right of his office above the time required by the Act. It was

stated, that in the warrant appointing the claimant, he was declared to be entitled "to all rights, perquisites, and privileges heretofore enjoyed by the deputy master shipwright."

Officers of Woolwich Dockyard.

Mr. Gurney (R. B.) said it was necessary to have the warrant, as it appeared to be the only instrument under which the house was held.

Mr. Woollett, an inhabitant of Woolwich, who opposed Mr. Abethell's claim, contended that Mr. Abethell was not the *bonâ fide* owner, or tenant of the house, and that he was merely placed in it as the representative of the Admiralty, during the time he filled the situation. In support of his statement he said, that Mr. Abethell did not pay taxes for the house which he occupied, but the collector always went to the pay-clerk, from whom he received the taxes.

Mr. Serjeant, the collector of poor-rates, then proved that Mr. Abethell was rated, but, in cross-examination, he stated that he had never called on Mr. Abethell, or his predecessor, for the rates, as they were paid by the pay-clerk in the dock-yard. If the rates were in arrear, he should first demand them of the individual occupying the premises, and look to him, if he was obliged to distrain.

The warrant of appointment, and the letter of instructions, under which Mr. Abethell held his situation, were then sent for; and it appearing, from these documents, that if a house was allotted to Mr. Abethell, he was to occupy it during the time he filled the appointment.

Mr. Gurney decided against the claim, and ordered Mr. Abethell's name to be erased from the list.

Colonel Adye, who occupied a house in Woolwich

Officers of Woolwich Dockyard.

Arsenal, as colonel of artillery, claimed to be registered.

Mr. Woollett examined Mr. Serjeant, who proved that the house occupied by Colonel Adye belonged to the Board of Ordnance, and he received the rates from the storekeeper, on account of the Ordnance.

Mr. Colquhoun read the receipt for the rates, given to the storekeeper, which was drawn in favour of Colonel Adye.

It was then proved, that Colonel Adye's house was occupied by him as the officer of artillery stationed at Woolwich, and that if he had not such a house, he would be entitled to 1*l.* per week for lodging.

Mr. Woollett contended that the claimant was merely the representative of the government, in the occupation of the house, and not the *bonâ fide* holder of the premises. The commissioners at Woolwich could, at any time, erase the names of the whole of the gentlemen who filled situations at Woolwich from the rate-book, and place in their stead the Board of Ordnance, or the Admiralty. If that mode of creating votes was allowed, it would furnish the means for greater bribery and corruption than was ever before practised, and enable any man, very easily, to get into Parliament.

Mr. Gurney consulted with Mr. Hollest, and then observed, that they had come to the determination that Colonel Adye's occupation was merely permissive from the Government, and did not come within the meaning of the statute, they therefore could not allow his name to remain on the list of persons entitled to vote.

City of London, 1835. Occupation in right of office.

Mr. J. Knowles claimed for a house in Bridge-street, Blackfriars, in which the offices of the Economical

Life Assurance are held, and of which the claimant is the resident director.

City of London, 1835.

In support of the claim it was shewn, that Mr. Knowles occupied the house of the Economical Assurance Company, and was in the sole possession of it since September 1832. He occupied as resident director of the Society, and had servants and furniture in the house. He did not pay rent, but had the house from the Society, as a portion of his salary. He is rated as resident director, and pays the rate.

Mr. Craig (R. B.) said, that several questions arose out of the case. He, however, apprehended that there was one objection which would prove fatal to the claim. The Act required that every claimant should occupy the premises out of which he claimed, either as owner or tenant. Now it was shown that Mr. Knowles was a trustee as well as a resident director of the society, and though he might be entitled to be called an owner in his own capacity as a trustee and resident director, still there was a doubt whether he occupied the premises as a *bonâ fide* owner or tenant. After a careful consideration, as well of the cases which had been cited as of others bearing upon the question, he (Mr. C.) was of opinion that the claimant occupied, not as a tenant, but as the servant of the society. The claimant, in support of his qualification, had stated that there was an article in the deed of settlement empowering the resident director to occupy; but this article could only be viewed as an appendage to the service. Mr. Rowcroft had taken a distinction, that the claimant would have been allowed rent for other premises, if he did not occupy those from which he now claimed. The rent certainly might be paid in service as well as in money; and it was not incon-

City of London, 1835.

sistent with the situation of one held as a tenant to pay rent by service; but then it would be necessary that the tenancy should be distinct from the service. The distinction had been taken by the judges, that when rooms were an appendage to the service, the persons dwelling in them occupied not as tenants, but as servants. The occupation in the present instance was in right of the claimant's office, and to bring him within the distinction relied upon, it was absolutely necessary that the claimant's services should be shown to be distinct from his residence. Now, as in the present case, when a person received wages on account of occupation, he must be considered as a servant. Claim rejected.

Mr. Charlton was objected to on the ground that he was not an occupier within the meaning of the Act. He held part of the premises in which the Albion Insurance Company carry on their business in Bridge-street, Blackfriars. It appeared that Mr. Charlton has a private entrance to the part occupied by him, and that, though he has not been actually called on to serve parish offices, he has been told by the local authorities, that he is liable to be called on at any time as a housekeeper.

Mr. Craig took time to consider, and finally decided against the claim.

Greenwich Hospital, 1835. Occupation in right of office.

The claim of Sir Wm. Beatty, the Physician of Greenwich Hospital, to be registered for the borough of Greenwich was objected to.

Mr. Bicknell, Solicitor to the Admiralty, attended to support the claim, and Mr. Suter to oppose it.

Thomas Hodges proved that the name of Sir Wil-

liam Beatty was entered in the rate-book for a house, that it belonged to the hospital establishment, and that Sir William Beatty was assessed at 53*l.* poor-rate, which sum was charged against his name in the book.

Greenwich Hospital, 1835.

Mr. Bicknell submitted that this was quite sufficient; the collector proved the payment of the rates in the name of Sir William Beatty.

Mr. Fish (R. B.).—It must be shown that he occupies as a tenant under the Act.

Mr. Bicknell said that in no case had such a course been pursued. The persons had been called on to make out a *primâ facie* case, and if they showed they were rated, they were not called upon to prove the nature of their occupancy.

Mr. Fish said that no case similar to the Hospital had come before him.

Mr. Bicknell was aware that the revising barristers had decided a number of cases of this nature, but he should not look upon such decisions as at all affecting this case; he had taken those decisions and had examined them with some attention, and had found half a dozen instances where the barristers had, in cases very similar to this, decided in favour of the vote; on examining further, he had found six cases decided the contrary way. He had looked into the cases at London, and found that what was tenancy in London became occupancy in Kent, and that what was occupancy in Kent, was ownership in Hertfordshire. The Reform Act was so indefinite, so deficient, that the revising barristers had not been able to apply any principle to the cases brought before them, and they could not come to the same decision under the same circumstances. Sir William Beatty's case was distinct from

Greenwich Hospital, 1835.

every one that had come before the revising barristers. Sir William Beatty had been appointed physician, and not being removable but for misconduct, had a house attached to his situation, and he must be removed from office before he could be removed from his house: by this appointment Sir William Beatty became entitled not for any house, but for the house for which he pays his rates. It was not for an apartment, but for a separate house and garden that Sir William Beatty claimed; and no one could enter it but by the door, which Sir William Beatty could keep shut against the commissioners of the Admiralty and the commissioners of the Hospital. Sir William Beatty did not hold at will, but if he did it would not make any difference. In a book edited by Mr. Grainger, the barrister, and published in 1835, it is said, "That a tenant at law is one who holds or possesses lands or tenements by any kind of title, or in fee for life, for years, or at will." This was the popular meaning, which he would rather take than the judicial meaning; it was not intended the Act should be crippled by the law—the tenant was not required to pay the rent, and under the Act of Parliament the legislature so held it.

Mr. Suter said it had been urged, that although Sir William Beatty did not actually pay rent in money for his house, yet he paid it out of his salary, which was the same thing. In "Bertie *v.* Beaumont," 16 East 33*, which was an action on the case respecting a right

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* A servant put into the occupation of a cottage, with less wages on that account, does not occupy it as a tenant; but the master may declare it as his own occupation in an action on the case for a disturbance of a right of way over the defendant's close to such cottage. Bertie v. Beaumont, 16 East, 33.

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of way, Lord Ellenborough decided that a man holding a portion of a house under his master, and having the rent stopped out of his salary, could not be considered in law a tenant; at the same time his lordship said, that had Howell occupied the house before he had worked for such master, and had a new arrangement been made, then he should have decided differently. Mr. Suter also quoted the case of the Whitehaven bankers, 2 Taunton, 229, and "the King against the inhabitants of Cheshunt," 1 Barnewall and Alderson, 473, in support of the objection. He likewise cited a question of a settlement respecting a pauper named John Blackerway, which was decided by Lord Ellenborough and Mr. Justice Bayley, in which the pauper was stated to be a labourer in the employ of the Board of Ordnance, and rented a house of them at 2*s*. per week, which was deducted out of his salary. This was not considered by the Justices at the Court of Quarter Sessions sufficient to constitute him a tenant, and thereby gain a settlement in the parish; and the same view was taken of the question by Lord Ellenborough and Mr. Justice Bayley.

Mr. Bicknell replied at considerable length, and declined to produce the regulations of the Board of Admiralty appointing the officers of the hospital.

Mr. Fish, on a subsequent day, gave the following decision:—It seems that the appointment of Sir William Beatty is an appointment for life, and that he occupies a house in the precincts of Greenwich Hospital, and that in respect of such house rates are paid by the Treasurer of Greenwich Hospital, and Sir William Beatty afterwards reimburses the commissioners of the hospital out of his salary. Now it appears that, by the 27th section of the Reform Act, no occupier can

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vote unless rated to the poor-rate, and unless the place he occupies shall be occupied by him as owner or tenant, nor unless such person shall have paid all the poor-rates. By this it is quite clear that it must be proved that Sir William Beatty is either owner or tenant of the house he occupies, in order to establish his right of voting: but it has not been proved that he occupies the house either in the one capacity or the other. On the whole, I am of opinion, that Sir William Beatty has not sufficiently proved his case to entitle his name to be inserted in the registry, and it is, therefore, my duty to reject his claim.

Deptford Dockyard, 1835. Occupation in right of office.

Lieutenant De Montmorency was objected to, and in support of his claim, stated that he resided in a house in the dockyard, and had done so since the 4th of February, 1834. The house was of the value of 60*l.* per annum. He did not hold any office, but the house had been provided for him by the Admiralty on his being recalled from his office as warden of Sheerness.

In answer to Mr. Brockman (R. B.) he stated that he did not pay any rent. It was appropriated to him as a reward for his services until he could be otherwise provided for. The rent was paid by Sir John Hill. He did not hold the house on any express condition; if the Government ordered him to remove at a day's notice he should consider it his duty to do so.

Mr. Sandom considered Lieutenant Montmorency was a tenant by sufferance, or at least a tenant at will, and would, like the latter, remain in possession so long as the parties agreed.

Mr. Brockman (R. B.). As there was no contract between the parties he could not be deemed a tenant.

The case was similar to a bailiff or a steward put in possession of property for his employer.

Deptford Dockyard, 1835.

Mr. Sandom said there was an implied contract, it was held for services to the Government.

Mr. Brockman. If it had been for future services, it might have been construed into a tenure by service, but as it was, the claim could not be maintained.

City of London, 1835. Serjeant's Inn.

Sir Edward Alderson, and the other judges of the Courts of Westminster (not being peers) claimed to vote in right of chambers occupied by them severally in Serjeant's-inn. It was proved that a sum of 80*l.* a year was paid to the parish of St. Dunstan in the West by the society of Serjeant's-inn, as poor rates, under authority of a recent local Act, and this sum was assessed, in quarterly payments, on the learned judges occupying the chambers according to the estimated value of each set. The judges occupied those chambers in the discharge of their official duties. In the case of Judge Vaughan, evidence was given to show residence, and it was proved that he had for a considerable time slept in those chambers, but not for the last few years. They were now occupied by his son, who slept in them, but the learned Judge paid the rate.

It was objected by Mr. Sharpe, that they were occupied merely as public chambers for the transaction of official business, and that on ceasing to act as a judge, the right to those chambers would cease at the same moment; 2dly, that they could not come under the 27th section of the Act, as they were not houses, that the word "chambers" was not mentioned in it, and that, therefore, the Act did not contemplate that the occupiers of chambers should vote.

City of London, 1835.

Mr. Rowcroft, in support of the claim, said that the chambers were occupied in right of the learned judges being serjeants. It was proved that the learned judges occupied those chambers, that they were of the value of 10*l.*, and that they had been rated. As to the objection that these chambers did not come under the 27th section of the Act, he would contend that that was an assumption not proved. They came under the words "or other buildings." He contended that, for all purposes, they must be taken to be separate houses. After citing, in support of this argument, Wordsworth's Digest, p. 45, and Peckwell, vol. 2, p. 109, he said there was a strong case in Sewell on Registration, in which were these words:—"It is obvious that if a door be the outer door of a house, and a house may consist of only one room, and consequently the door of that room would be the outer door of the house, it is immaterial whether it opens into the open air at once or into a covered way. A contrary principle would disfranchise all the occupants of chambers in the inns of court, and also the inhabitants of the Burlington and Lowther Arcades, and others similarly circumstanced."

Mr. Craig (R.B.) having postponed his decision, on a future day said he had considered the subject with great attention. The first point was, whether these chambers could be considered as a house; next, whether there was an occupation within the meaning of the Act; and lastly, whether there was a sufficient rating. With respect to the first point, he was of opinion, and in this he was fortified by all the authorities he had consulted, that the chambers must be considered to be houses. The occupation he thought was sufficiently proved by the daily use made of them. As respected the sufficiency of rating, the local Act by which the composition was

made with the parish set that at rest, inasmuch as every occupant was liable to his share of the sum compounded for. Under these circumstances he was of opinion that the claim was good, and as this claim decided those of the other judges, the names of all (who are not Peers) were ordered to be inserted on the lists.

City of London, 1835.

Charles Francis Adey, Esq., and eight other gentlemen, claimed to have their names entered on the list of voters for the parish of St. Andrew, Holborn, in right of their joint occupancy of certain parts of Barnard's Inn, of which they are "the principal and ancients."

Barnard's Inn.

Mr. Rowcroft, in support of the claim, produced evidence to shew that Barnard's Inn is an inn of Chancery —that the society of that inn is a voluntary association, consisting of the "principal, ancients, and companions" —that the ancients, in right of their office as such, have the joint occupancy of the hall, the library, kitchen, pantry, porter's lodge, and other premises in the inn, but have nothing to do with the chambers, which are let—that the ancients and companions dine together in the hall seven days in each term—that the ancients dine in it without the companions on certain days called pensions, on which they meet to pass their accounts— that the sole and entire control over the premises abovementioned rests with the ancients, who hold a lease of them in their joint names. It was also proved that these premises are worth 130*l.* a-year, and that, being extra-parochial, the inn is not assessed to the poor rates.

Mr. Sharpe contended, first, that the facts alleged were not a sufficient proof of occupancy; and next, that even if they were, the occupancy was in the society, which consisted of the "principal, ancients, and companions," eighteen in all, and that the number was too

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great to claim a beneficial interest to the amount of 10*l.* each. In support of this objection he produced *Herbert's History of the Inns of Court*, from which it appeared that Barnard's Inn Society consisted of the principal, ancients, companions, and the "gentlemen" of the inn, by which last were meant those who had entered themselves as students of the inn.

Mr. Craig (R. B.), on hearing the case, having postponed his decision till a future day, in giving judgment said: It is a case of considerable singularity, and I have founded my opinion after much consideration and caution. I have made a laborious but fruitless search in law books for the definition of the word "occupier." This hall comes under the name "building" in the 27th section. The sense in which a person can be said to occupy is, to possess, to keep, to take up, according to Johnson. In this case, by occupancy is implied the habit of resorting twenty-eight days in the year to keep commons and meetings of the ancients, and on eight other days on "pensions" to transact the affairs of the inn, after which they dine. These gentlemen undoubtedly use the inn, but they cannot be said to occupy it. My idea of an occupation implies a daily use; here there is a use that at best can only be called occasional, which cannot be called an occupation. If they met every day on business, that might alter the case; but I do not say that even then I should decide that that was an occupation. The question has arisen upon the statute of Queen Elizabeth—what is an occupancy under the Act? and the decisions are that it must be a beneficial occupation. In support of my opinion I refer to 11 George III. (the Paving Act), cited in Holford and Copeland, 3 Bosanquet and Puller, in which the decision is upon the upper part of this very parish. A question arose

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whether a rate was properly made on the Master (Holford) in respect of the public buildings, and Lord Alvanley decided that the rating was improper. I think the legislature did not recognise inns of court as being occupied. The only case I can find at all analogous is the Exeter-hall case, decided by my predecessor, Mr. Thompson. If these gentlemen were to be considered occupiers, every bencher in every inn of court, and every ancient of every inn of Chancery, would be entitled to be so considered; all the members of the livery companies would be entitled to vote in respect of their halls, and every proprietor of an insurance company, in respect of the insurance-office. A decision in favour of these gentlemen would lead to consequences of a very peculiar nature,—consequences with which I have nothing to do, but which would not deter me from making my decision unless I felt very strongly in favour of the contrary opinion; but the most patient investigation and consideration with my colleague, have led both him and myself to concur in the opinion that this is not a proper occupation.

Mr. Rowcroft, for the sake of form, protested against the decision, as it might be necessary hereafter to bring the case before a committee of the House of Commons.

Mr. Craig said that it was not necessary to make a protest against the decision in order to have the case brought before the House of Commons.

Evidence of value may be received to rebut the amount for which the premises are rated.

Joseph Felton, a claimant, was rated at 9*l.* per annum. The court decided that the yearly value of the house was the proper qualification, and if there was evidence to prove that the value of the claimant's house was 10*l.*, his vote was good. The assessed tax-

City of London, 1835. gatherer swore the house was worth 12*l.* a-year, and the claim was allowed*.

Finsbury, 1832. In the case of David Laycock it appeared that the claimant was rated at 7*l.* only, but was otherwise duly qualified. The claimant resided in his own house, and swore that its annual value was more than 10*l.*

The overseers were of the same opinion, and the court, on this evidence, allowed the claim.

Reading, 1832. In the case of William Gregg, on reference to the books, it appeared that the claimant was rated at 7*l.* only. The court told him the law required that he should be rated at 10*l.* The claimant stated that he paid a rent of 10*l.* per annum, and the court allowed his vote.

Granary and right of free wharfage. Thomas Terry claimed to be put on the list of 10*l.* voters in right of a granary held by him. It appeared that the claimant paid 5*l.* per annum rent for the granary, and an additional 5*l.* for a right of free wharfage connected with it. The claim was rejected.

Claim in respect of share of New North Road expunged. Mr. M'Laurin claimed to be inserted in the registry, as having a right to vote in respect of a share for 250*l.* in the Metropolitan New North Road.

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* In the Bedfordshire case, 2 Luders, 449, the resolution of the committee was, that the value of a freehold, in right of which an elector votes, is the rent which a tenant will give for it, and not what the owner, occupying it himself, may possibly acquire by it.

The claimant paid only 8*l.* per annum rent; but it appeared in evidence, that the value of the house was 10*l.* per annum. The court decided, that where evidence is given that the rent paid is not equal to the value of the occupation, the real value must be the guide;—Manning's Notes of Revision, 19.

Finsbury, 1832.

Mr. Coventry (R. B.), after inspecting the Act of Parliament which had been obtained for the formation of the road, said that it was manifest, from the terms of the Act, any share or interest the claimant might possess was personal property, and therefore the claim must be disallowed.

City of London. Joint Occupation.

Messrs. Keene and Thompson (R. B.) sat together in Guildhall, for the purpose of hearing and disposing of the claim of Mr. Goodge, of the firm of Goodge and Lamére, to be placed upon the list of voters for the parish of St. Mary, Aldermanbury. The claim was objected to by Mr. Highmore, the vestry-clerk of the parish, on behalf of the overseers, who were anxious to have the opinion of the court, upon the question of the claimant's right to be inserted on the list.

Mr. Goodge claimed for himself and partner, under these circumstances:—The firm had occupied a warehouse, situate in the parish of St. Mary, Aldermanbury, and within the house of a gentleman of the name of Thomas, since Lady-day last, previous to which they had been in the occupation of premises within the parish of St. Alban, Wood Street. In respect to the last-mentioned premises, they had last year served a notice upon the overseers of the parish of St. Alban, claiming to be rated, but subsequently removed to the premises out of which they now claimed a right to vote. Mr. Goodge this day produced the notice, a copy of which had been served upon the vestry-clerk of St. Alban's parish, as well as the receipts for the assessed taxes, which had been paid within the time required by the Act. The claimant relied upon the 30th section, and contended that the omission by the

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overseers to put him upon the rate-book, could not affect his franchise.

The Court having been satisfied as to the regularity of the service of the notices, pronounced them to be valid.

The claim was, however, now opposed by the overseers, on the ground that the applicants had not such a distinct and separate occupancy as gave a qualification.

Mr. Goodge described the nature of the premises in his occupation, to be the ground-floor of the house of Mr. Thomas, and contended that although the whole house was entered by one common street-door, yet the house and warehouse were distinct and separate; for the landlord, Mr. Thomas, had not the power to close it, so long as the applicant and his partner were engaged in the transaction of their business; neither could any person having access to the warehouse get into the house part of the premises. Mr. Goodge contended that this was such a distinct occupancy as came within the provisions of the Act*.

* No person can be deemed a householder, who does not possess an exclusive right to the use of the outward door, although, by taking inmates, he may have relinquished for a time the exercise of that exclusive right; neither can a person whose habitation is composed of more than one apartment, be deemed a householder, unless he also "possesses an exclusive right to the use of the stair-case, door-way, or other passage, that forms the means of communication between his several apartments, although, by taking inmates, he may likewise have relinquished for a time the exercise of that right." Cirencester, 2 Fraser 449.—*Vide* also Chippenham Case, 1 Peck 274.

"The term outward door to the building, does not include within its meaning, the gates or outward door of a court or passage open to the sky. A house may contain but a single apartment, yet it does not follow as a necessary conclusion, that a single apartment, though furnished with a separate outward door,

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Mr. Keene (R. B.) asked, whether or not the outer door of the warehouse was glazed.

Mr. Goodge replied in the affirmative, but added, that it could be, and was, when closed, secured by shutters.

Mr. Thompson (R. B.) had great doubts, whether a sheriff's officer, charged with the execution of a writ, having obtained admission at the street-door, would or would not be justified in breaking open the door of the warehouse, in order to effect his purpose.

Mr. Goodge contended that any person so entering the warehouse, would be amenable to the law for the trespass; and urged, in proof of his distinct occupation, that he had the right to keep open the street-door during the day, against the will of the landlord.

Mr. Thompson said, that if the present claim was allowed, the occupiers of shops, or even counting-houses, if they should but claim to be rated, must be admitted on the registry, and he certainly thought that had never been in the contemplation of the legislature. It was true, the Act contained a provision for cases of joint occupancy, where both parties had a control over the entire building, but he could not suppose it was ever intended that these provisions should apply to joint occupancy by landlord and tenant. He should, therefore, reject the claim, and if the applicant should not be satisfied with that decision, by tendering

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will constitute a house: for a shop or a stall, unless it be used as a dwelling, is certainly not a house. The committee afterwards added, that the legal meaning of householders and inmates must be determined on the general principles of the law of the land, not on any ideas of local usage.

"That it is the opinion of the committee, that if a passage is considered as a street passage (though covered), all the houses that have separate outward doors opening into the passage, are good votes."

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his vote at the next election, the question might be raised before a committee of the House of Commons, which was the only appeal from his judgment.

Joint occupation.

Mr. Parker, a solicitor, claimed to be put upon the registry, as the occupier of a house situate in St. Paul's Church Yard, within the parish of St. Gregory by St. Paul, at a rental of 135*l.*, the poor-rates of which were paid by the landlord, who held the freehold, and occupied the ground-floor as a warehouse. In July last the applicant claimed to be rated to the poor-rates in his own name, and within the time specified in the Reform Act had served a notice of claim upon the overseers to be put upon the registry.

The overseers, who were in attendance, stated the objection had been taken merely to have the decision of the court as to whether this was a sufficient occupation.

The claimant said that there were distinct and separate street doors to each part of the premises, and upon inquiry from the collector, that the premises were rated for the assessed taxes by the separate and distinct numbers of 28 and 29, St. Paul's-church-yard.

Mr. Thompson (R. B.) decided in favour of the claimant. It appeared that he had complete control of the street door leading to the portion of the premises in his own occupation*.

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* The elector's qualification consisted of a house, through the centre of which, there was a passage from the garden to the front door, opening into the street. An upper and a lower room communicating with each other by a staircase, and the lower room opening into one side of the passage, were held under the elector by a tenant at 3*l.* per annum, payable half-yearly. Apartments precisely similar, on the other side of the passage, were occupied by the elector himself; and two other rooms at the back of the house, the lower one opening into the garden, were let to another

Reading, 1832. Joint occupation.

John and Charles Symmonds, who are partners with their brother Henry Symmonds, in a banking concern in this town, and who claimed as 10*l.* voters in right of the premises in which the banking business was conducted, were objected to, on the ground of insufficient qualification. It appeared from the rate book, that the three brothers were rated at 15*l.* for the two rooms in which the banking business was transacted.

The two overseers of the parish, and several builders and auctioneers, estimated the two rooms in question at an annual value of not more than 20*l.*, while, on the other hand, the town-clerk, and Mr. Compeigné, stated the value to be at least 30*l.* per annum.

Mr. Corbett said, that with such conflicting evidence on the part of gentlemen, who, he was sure, estimated the value of these premises to the best of their opinions, he and his learned colleague were glad that in deciding the case it was in their power to appeal to an official document, the rate-book, as a guidance for their judgment. It would appear, from the amount for which the parties were rated, that those two rooms were not worth more than 20*l.* a year, and though he did not mean to say that the amount either of rates, or of rent paid, should be conclusive evidence as to value, yet

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person. The elector was rated for the whole of the premises, as three distinct tenements. It was objected, that the elector had not a sufficient occupation of the premises. The committee decided that the elector was in the legal occupation of the whole of the premises. Ripon, Perry, and Knapp's Rep., Carey's Case, 209.—*Vide* also Mangle's Case, ibid. 210.

In the case of Fludyer *v.* Lombe, Cas. temp. Hardw. 307—Lord Hardwicke said, "A lodger was never considered as the "occupier of a house; no part of it can be said to be in his tenure "or occupation; and though he pays rates, yet will he not have "the power to vote, not being deemed to be a householder or oc-"cupier. A lodger cannot be said to be an inhabitant, but only "an inmate under the tenant."

Reading, 1832.

such evidence was material when it went, as in the present instance, to corroborate evidence of another description.

The votes of Charles and John Symmonds were accordingly rejected, while that of Henry Symmonds, who was also rated for the whole house at 20*l*., and who claimed in right of it, was allowed.

St. George's, Bloomsbury, 1833. Joint occupation. § 29, 2 W. 4, c. 45.

Mr. J. Keppel, bookseller, of Holborn, claimed to be registered an elector of the parish of St. George, Bloomsbury, as occupier of a shop, warehouse, and three rooms, which formed part of a house. He had lived in the rooms, and carried on business in the shop and warehouse for fifteen years, and had been in the habit of paying the rates and taxes, deducting them from the rent he paid to the landlord, who was rated and assessed for the premises, and not the claimant.

Mr. Robinson, the vestry-clerk, admitted that Mr. Keppel had put in a claim to be rated within the time required by the Act; but he thought, if this claim was admitted, lodgers would be entitled to vote.

Mr. Russell (R. B.) pointed out the distinction between a lodger and an occupier of a shop and warehouse, claiming to be rated. After consulting with his learned colleague, Mr. Chapman, he observed that this was a point which had not been under consideration before; but the court was inclined to give the claimant the benefit of the doubt. The shop being part of the house, it was quite clear that a separate rating could not be made; the Reform Act distinctly laid down the qualification of a shop occupancy, and it certainly could not be interpreted against the claimant, as he had complied with its provision in claiming to be rated in due time. Claim allowed.

Mr. Faircloth claimed to have his name entered on the lists of voters for the parish of St. Leonard, Shoreditch, as joint tenant with his landlord for premises which he had occupied for the last twelve months, and for which he paid more than 10*l.* per annum. He contended that by the 30 §., 2 W. IV. c. 45, the legislature intended that such claim should be admitted. He was liable to all rates and taxes due on account of the premises, and the collector might have distrained upon his property if it happened that the landlord had not sufficient goods upon the premises to satisfy the demand. He cited the decision in the case of Messrs. Combe and Delafield, which he argued was in his favour.

Tower Hamlets, 1834. Joint occupation.

Mr. Ware said, the word "occupation" had given rise to great misconception, and that according to the 30th section, lodgers were not entitled to vote, and in that opinion he was borne out by the case of Fludyer and Lombe, Cas. temp. Hardw. 307, in which it was held that no lodger could be considered the occupier of a house. In order to entitle the tenant to be registered, he must be actually rated for twelve months preceding, or he must prove he had claimed to be rated.

Mr. Sandys (R. B.) said, in the case of Messrs. Combe and Delafield, it was proved they were rated in the name of the firm to which they belonged, and their claim had been admitted on evidence being given that the partnership was at that time in existence. In this case the name of the claimant did not appear in the ratebook, nor had he claimed to be rated. His name therefore could not be inserted in the list.

The Rev. J. Antrobus, rector of St. Andrew-under-Shaft. Occupied part of the rectory house, to which

City of London, 1835.

City of London, 1835. Joint occupation.

there was a separate entrance, of which he kept th key. The remaining part of the house was let t other parties, who had access through another entrance

Mr. Craig considered this was a separate residenc within the meaning of the Act, and placed the name o Mr. Antrobus on the list.

The occupiers of several counting-houses at No. 40 Lime Street, claimed to be placed on the lists of voters The premises in right of which they claimed are parts of a large building at the south end of Lime Street, to which there is an entrance through a passage with folding gates, which are closed at night. The owner of the building occupies part of it, and has let the remainder to the claimants.

Mr. Sharpe urged that by the 27th section of the Act, the words "counting-houses" must be taken to mean a separate building, and he contended that by the words "or other building" coming after the words "any house, warehouse, counting-house, shop," it must be understood that the places there mentioned were to be considered separate buildings. If the words had been "house, warehouse, counting-house, or shop," the objection would not lie; but he thought that by the words "or other building," they were to be considered separate, and being only rooms in the same house, they did not come within the Act.

Mr. Rowcroft was heard in support of the claims.

Mr. Craig (R. B.) said, that the addition of the word "other" did not imply that all the premises previously mentioned were to be taken as separate buildings. Had the word "other" been omitted before "building," it would imply that the words "house, counting-house, shop," were not buildings, but each of these might be buildings, or might not. It was clear that the

Reform Act could not have meant these premises to be considered as separate buildings, for long before that Act was passed it was decided that chambers of inns of court should, for many purposes, be considered separate buildings. Under all the circumstances, he considered that these counting-houses came within the meaning of the Act, and that the claims should be admitted.

City of London, 1836. Joint occupation.

In the case of Mr. Thomas Broncker, of Aldersgate, a claim was made in right of a house, but the evidence adduced proved only that the claimant was in occupation of a warehouse and shop.

Mr. Rodgers contended that this was insufficient to support a claim as for a house. This shop and warehouse could not be construed to mean a "house," as mentioned in the 27th section of the Act. It was not a dwelling-house, but as the claim had been made for a house, no other description of property could be included.

Mr. Sharpe said, this was to be considered in effect a house, or part of a dwelling-house; but even if there was a mistake as to the description, it was one of those errors which the barrister was authorized to correct.

Mr. Craig (R. B.) held the objection to be fatal to the claim. He had looked into several works for an exact definition of the word "house." He found that Sir E. Coke always mentioned "dwelling-house" as meaning a house singly, or place of man's abode or residence. In the present case that definition would not apply to the shop and warehouse in question. It was not, as Mr. Sharpe had contended, a part of a dwelling. There might be cases in which the occupation of a part of a house would be taken to be the occupation of the whole, but in these cases it must be taken to be an

City of London, 1835. Joint occupation.

occupation by one and the same party only, and the part occupied must be held to be part of the dwelling-house, which had not been done here. It could not, as Mr. Sharpe had suggested, be held that the misdescription was a misnomer which the barrister had power to correct. Such misnomers did not apply to definitions of qualification, they only applied to mistakes as to persons or places. Under these circumstances he must admit the objection, and strike out the name. He did not wish, however, to be understood to say that sleeping on the premises was necessary to constitute a dwelling-house.

Leeds, 1835.

The Allan Brig Mill Company, consisting of forty-three partners, claimed to be registered for the borough of Leeds.

Mr. Richardson on behalf of the claimants said, that the case had already decided one election for the borough of Leeds, and that as it was within the bounds of possibility that it might be decisive of another election, a deep responsibility attached to him in undertaking so important a question; he should be enabled to satisfy the court by unquestionable testimony as to the value of the property, and by reference to very high authority as to the law which regulated the question. That the claimants were rated would be established by the production of the rate, with the solitary exception of one name, and in respect of which he should prove that there had been a claim. It was the duty of his friend and himself to contend that all the buildings that were within the walls, the steam engine, the stocks, the shafts, the drums and the billeys, should be included in the valuation. With respect to the billeys, there might be some diversity of opinion, but the valuation would not run so near as to make it of very great im-

portance whether they were included in it or not; there was a general law regarding fixtures which was not broken down by any exception that was applicable to this case. The rule was laid down with great simplicity and ability by Professor Amos and Mr. Ferard in their treatise on the law of fixtures, page 9. "It is a maxim of law of great antiquity that whatever is fixed to the realty is thereby made a part of the realty to which it adheres, and partakes of all its incidents and properties: by the mere act of annexation a personal chattel immediately becomes parcel of the freehold itself." Such was the ancient law, subject to some exceptions; but those decisions were most clearly and utterly inapplicable to this case; they arose on particular circumstances, which had not occurred here, and therefore, the judgment of the court in this matter must be founded upon law, which had never been overturned, and had not been in the slightest degree affected by any modern construction.

Mr. Webster, the book-keeper of the Allan Brig Mill Company, then proved that the forty-three claimants were partners in the company, and that they all resided within seven miles of the borough. That all the premises in respect of which the claim was made, were inclosed in a yard, and consisted of a scribbling mill, fulling mill, engine house, cloth shed, a stone washing cistern, a reservoir, a tenter house, boiler house with one boiler, and a wool dry house over, and two houses occupied by the overlooker and book-keeper, with a counting house. There were besides, several additional edifices, which could not be taken into account as they were not erected previous to the 31st of July, 1834, for instance, a willey house, dye house, stable, outhouses, and shed, besides a new boiler to the engine. The new boiler had been placed

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in what was formerly the dye-house, and the four vats which stood there, had been removed into the new dye-house, part of which was previously occupied by one dyeing vat and a scouring vat. The willey in the new willeying house had during the year been removed out of the scribbling mill, and given place to a new scribbler. The cost of the new dye-house, with the hot and cold water-pipes which were connected with the boiler, was 183*l.* 13*s.*; the willey house 102*l.* 14*s.*; and the new boiler 292*l.* 16*s.*, making a total of 579*l.* 3*s.*

Evidence was then given that the rates had been duly paid, and that the mill, including the fulling stocks, the washing machine, the four pans in the dye-house formerly in use, was worth 5682*l.* 7*s.* 4*d.*

Mr. Obadiah Willans of Leeds, manufacturer, thought the premises, with the use of the machinery and pond, worth 700*l.* a year, to let or to sell. In that valuation he had included every thing except the buildings now in course of erection.

Mr. John Bottomley, a mill wright and mill holder, said that 10*l.* per cent. upon the cost was a fair allowance for investments in mill property, and he valued the premises as they stood in July last year at a rental of 580*l.* exclusive of the machinery. The improvements since made had cost 600*l.* In the valuation at 580*l.* a year, the stocks, engine, shafts, drums, and going gear were included; but not the carders, scribblers, billeys, willeying machine, or teazer. The value of these excepted articles he estimated at 1436*l.*, which added to his valuation of the other property would make upwards of 7000*l.*

Mr. Bond on behalf of the objector said, he should prove beyond dispute that the whole of the property was not sufficient to confer votes upon each of the

forty-three claimants; he should prove that the percentage of 10 per cent., which had been relied on by the other side, was entirely erroneous with respect to buildings; and that as the conveyances were made only to the committee or trustees, the other claimants must be rejected under the decision which the court had most properly come to, that persons could not occupy both as owners and tenants.

Leeds, 1836. Joint occupation.

Mr. William Hirst, of Gomersal, had carried on the business of a scribbling miller for about forty years, and had also practised as an engineer for twenty-five years. He had inspected Allan Brig Mill, and made an estimate of the building of similar mills. He did not take into account the shed and stable now in course of erection, nor any part of the machinery, as he considered it personal property. The stocks, which were personalty, he had put a value on; but he had not valued the scribblers, carders, billeys, willey, nor teazer. The total value of all the buildings, including the steam engine and stocks, he estimated at 3471*l.* 10*s.*; in that valuation, however, he had only included such part of the dryhouse as was locally situate within the boundary of the borough. The particulars of his valuation were classed under the following heads—Land, mill, and engine house, 925*l.* 18*s.*; boiler house and iron floor, 199*l.* 4*s.* 6*d.*; willeying house, 48*l.* 16*s.* 4*d.*; dyehouse, 83*l.* 11*s.* 4*d.*; open shed, 26*l.* 14*s.* 6*d.*; the whole of the tenter house, not including tenters, 300*l.*; the engine, including ashlar work and two boilers, 1000*l.*; the reservoir, or so much as was in Bramley, 65*l.*; the drains for refuse, 90*l.*; drawing plans, surveying and incidental expenses, 200*l.*; stocks and washing machine, 335*l.*; going gear and shafts for turning scribblers, &c., 100*l.*; two cottages and counting-house, 200*l.*; making a total of 3574*l.* 5*s.* 5*d.*

Leeds, 1835. Joint occupation.

He considered that seven and a half per cent. would be a fair rental for a person to give for these premises, the tenant having to keep them in repair; seven and a half per cent was a fair profit. He knew of instances in which more had been given, but they were under particular circumstances, and in such cases the land was not mentioned.

Several other witnesses also proved that the premises were not of the required value.

Mr. Bond said, that under the words of the 27th section of the Reform Act, no two of these buildings could be added together for the purpose of conferring a qualification to vote. Of the terms of the 27th section, the court was well aware. The sentence was a disjunctive one; and the court had very properly refused to add two buildings together as one, under the words of that section. It was true that the word "premises" was found in the 29th section, and that word was said to have a more extensive signification; yet, followed as it was by the words "as aforesaid," he would submit that the word "premises" was a mere relative word, and referred to that which went before it. It never was the intention of the framers of the Reform Act that two buildings should be joined together for the purpose of conferring a qualification. The words were disjunctive, and if the court would take the trouble to refer to the Scotch Reform Act, passed in *pari materia* with the English Reform Act, they would find in the eleventh section, that the words concerning the qualification were very dissimilar to those used in the English Act. In the former, the words were "in the occupancy, either as proprietor, tenant, or life-renter of any house, warehouse, counting-house, shop, or other building, within the limits of such city, burgh, or town," and whilst the English Act said "being either

separately or jointly with any land within such city, borough, or place, occupied therewith by him as owner or as tenant under the same landlord," the Scotch Act said "which either jointly or separately with any other house, warehouse, counting-house, shop, or other building, within the same limits, or with any land owned and occupied by him, or occupied under the same landlord," &c. From that section of the Scotch Reform Act alone, it was perfectly clear that the intention was to add together two buildings in the Scotch boroughs; and it was equally clear that it was not the intention to add two buildings in the English boroughs. There had been also two bills brought into the House of Commons to amend the English Reform Act, in both of which it is recited, that whereas doubts have arisen as to the meaning of the words "or other building," be it therefore enacted that no person shall be entitled to vote in respect of the occupation of any premises unless he shall occupy as owner or tenant, some house, warehouse, counting-house, factory, and shop, office, mill, malt-house, granary, distillery, brewery, or farm buildings. The "farm buildings" were in the plural number, and the "house" was in the singular number, and clearly meant one house. So enlarged a construction as that these were all one building would probably not be contended for on the other side. There were, however, some cases similar, perhaps, in principle, to these, which had, at all events been acted on in questions of election law, and in which it had been decided that what was within the curtilage of a dwelling-house was part of the dwelling-house. With these decisions he did not differ, and should rely on them as decisions upon which his argument must either stand or fall. But these decisions went to the full extent; beyond them the court could not go so as to add two buildings

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to make them one. It would, perhaps, be more properly the duty of his friends on the other side to show that these buildings were within the curtilage. As however, Mr. Richardson had not referred to it in his address, he would endeavour to show, however difficult a negative might be to show, that there was no curtilage to a mill at all; that the curtilage referred only to a principal dwelling, and not to a mill, and if he were right in that argument, it followed that no two of these buildings could be joined in one so as to confer on these parties a qualification to vote. The legal definition of curtilage was "a court yard; backside, or piece of ground lying near to and belonging to a messuage;" it was defined by Spelman to be "a back yard," &c. In Shepherd's Touchstone, also, a work of which it was not necessary for him to speak, as it had been so highly spoken of on the other side, curtilage was defined to be "a little garden, yard, field, or piece of void ground lying near and belonging to the messuage and houses adjoining to the dwelling-house, and the close upon which the dwelling-house is built at the most." In Ryland's edition of Blackstone, speaking of burglary cases, and the alteration in the law relating to that offence, it was said, "The main question in such cases will be, what shall be considered as being within the curtilage, which in the Termes de la Ley is defined to be a garden, yard, field, or piece of void ground lying near and belonging to the messuage. Such garden, &c., must be connected with the messuage by one uninterrupted fence or inclosure of some kind, and perhaps such fence may more properly be termed the curtilage than the ground lying within it." In Mr. Chitty's Practice of the Law, curtilage was thus laid down—"In its most comprehensive and proper legal signification, it includes all that space of ground and

buildings thereon which is usually inclosed within the general fence immediately surrounding a principal messuage, and outbuilding, and yards closely adjoining to a dwelling-house." Now upon these authorities, he submitted without fear of contradiction, that there could only be a curtilage to a principal dwelling-house. But it might be said on the other side, that although these buildings were not within the curtilage, because the mill had no curtilage, yet that they were within the curtilage of the overlooker's cottage; but here the mill was the principal building, and not the overlooker's house. It was laid down in Shepherd's Touchstone, that a feoffment of a house without the word "appurtenance" would pass the curtilage; but it could not be contended that the conveyance of this cottage would pass the mill; though it might perhaps be contended that a conveyance of the mill and appurtenances would pass the cottage. It might even be doubted that the curtilage was continued at the lower end of the dam, even supposing it was held that the buildings were within a curtilage. No burglary would lie for breaking into the mill; and a communication by shafts and steam pipes could not be held to be an internal communication within the eye of the law sufficient to connect any two of these buildings together; as well might it be said, that all the houses in Leeds were connected together because the gas pipes ran along the streets, or that those in the city of London were connected because the water company's pipes ran through the streets and communicated with each.

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Mr. Richardson replied, and the court adjourned.

Mr. Clarkson (R.B.) in giving his decision said, the first question is whether the *primâ facie* case of ownership made out on the part of the proprietors of Allan Brig Mill has been rebutted by the memorials produced

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from the Register Office, and whether it does not appear from them that some of those persons *only* are owners and others not, and if so, whether some being owners and others not, all are entitled to vote under the 29th Section of the Reform Act. The second question is, whether in estimating the value of the premises described in the list of claimants, the mere value of the buildings independent of any portion of the machinery is to be taken into consideration, or whether the value of the buildings and machinery conjointly is to be included in any such estimation. The third question is, whether all the buildings and all the machinery, together with that part of the land mentioned in the list which is within the borough, or whether only some of the buildings and some portion of the machinery, together with such land, can, in contemplation of law, be taken to constitute the qualification of these persons. The fourth question is one of fact, namely, whether the land, together with such portions of the machinery and buildings as can be taken to constitute such qualification, is of the annual value of 430*l.*, there being forty-three occupiers. Now, I am of opinion in reference to the first question, that the presumption that all the partners in the Allan Brig Mill are owners, and which has been raised by proof of their occupation, has not been destroyed; for although it may appear from the memorials that the land in which the mill is enclosed was originally conveyed to some of them only, yet it does not at all appear in what capacity it has been conveyed to them, whether as trustees or otherwise; and for anything that appears there may have been subsequent conveyances and other grants and agreements, either legal or equitable. I think the second question is one of some difficulty, although it appears to me to lie in a

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very narrow compass. In the first place, this is a case of annexation to the freehold of machinery by the owner of the soil, and it is also the case of an annexation to the freehold of machinery, not for the purpose of the enjoyment of the natural productions of the soil, as in the case of the Salt Pans, Lawton *v.* Salmon *, but for the purpose of carrying on a trade of a personal nature unconnected with the land, as in the case of the Cyder Mill, 3 Atk. 13., reported to have been decided by Chief Baron Comyn; and it appears to me that this case resembles in principle the Cyder Mill case, and is different in principle from the case of the Salt Pans; and, according to the decision in the case of the Cyder Mill, there can be no doubt, if that decision is now law, that the machinery in question would go to the executor and not to the heir. It might be contended that it is personal property and no part of the freehold, and therefore that it cannot be taken into consideration under the Reform Act as constituting any part of the value of the mill. The case of the Cyder Mill seems to have been recognized by Lord Hardwick

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* Things fixed to the freehold by and at the expense of the tenant in fee, which are removable, but necessary to the enjoyment of the inheritance, go to the heir and not to the executor, therefore trover will not lie by the executor against the heir for salt pans erected by the testator. Lawton v. Salmon, 1 H. Black. 259.

Where the superincumbent building is erected as a mere accessory to a personal chattel, it may be removed; but not where it is necessary to the freehold. In the case of Lawton v. Lawton, 3 Atkins 13, and Lord Dudley v. Lord Ward, Amble 113, the fire-engine was an accessory to matter of a personal nature, to the carrying on a trade of getting and vending coals. So a cyder mill is an accessory to the trade of cyder making. 3 Atk. 13. Salt-pans in Cheshire and other salt counties are an exception, because the salt-pits in those counties are a valuable inheritance, and the salt-pans and wyche-houses are a means of enjoying the inheritance, and are not to be considered as accessory to carrying on a trade merely as such. Lawton v. Lawton, 3 Atk. 13.

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and other judges, but there is no modern decision supporting it, and it may be doubted whether property of the above description would go to the executor or to the heir. But in the view I am disposed to take of this case it is not necessary to inquire whether that decision would now be supported or not, nor consequently to inquire whether this machinery would go to the heir or to the executor, as it appears to have been clearly laid down by Chief Justice Gibbs, in the case of Lee *v.* Risdon, 7 Taunt. 188; 2 Marsh 495; reported by Taunton, that things fixed to the freehold are in all cases to be deemed essential parts of the freehold while they subsist in a state of annexation, notwithstanding they may be subject to a right of being afterwards removed from the freehold and converted into personal chattels. I am of opinion, therefore, upon that authority, that a certain portion of the machinery, exclusive of the scribblers, carders, and billeys, and perhaps some other parts of the machinery, the value of which would not affect the general result, can be taken into consideration in estimating the value of this mill. It would appear, moreover, according to the case of Place *v.* Fagg, 4 Manning and Ryland 277, that machinery of this description would have passed under a conveyance of the mill, without being specifically included in the conveyance, and that could only be upon the ground of its being affixed to the freehold at the time of the conveyance; and Mr. Justice Bayley there says, speaking of the gear of the mill, "no delivery of the fixtures under the mortgage was necessary for the reason already stated; they passed with the land." And in the case of *ex parte* Wilson, in the Bankruptcy Court, it seems to have been considered that machinery of this description, affixed to the freehold, would pass, although not specifically mentioned

in the conveyance. These decisions seem to fortify and confirm the proposition of Chief Justice Gibbs, if any such confirmation were wanting. Now, if under a conveyance of this mill on the 31st July last, this machinery would have passed, it must have passed as being at the time part and parcel of the freehold, and the question is what would that, together with the machinery, be worth at that time. According to Chief Justice Gibbs, in Lee *v.* Risden, we are to consider it at the time that it is annexed to be real property of all the proprietors. Now in point of fact it is attached to the mill; and it seems the more consistent principle and most logical, to hold that during the time it is attached to the freehold it is real property, subject to be detached, and by the severance reduced to personalty. But, whatever opinion I might have entertained on the subject, I should not have felt myself at liberty, after the decision of Chief Justice Gibbs, to have held the contrary. The only remaining point will be as to the value. The third question is, whether all the buildings and all the machinery together with that portion of the land which is within the borough, or only some portion of the buildings and of the machinery, can be taken into consideration, or whether we can tack one building to another. I will fairly and at once state that I have weighed the evidence on both sides of the question. I have considered the situation of the mill; and it is very important to consider the situation of the place, because we know that a house of certain dimensions, which in one place will only fetch 40*l.* a-year, will in another place realize 80*l.* a-year. Some persons say one thing and others another, according to the constitution of their minds; and there will always be a contrariety of opinion as to value, because it is mere matter of opinion. It may be said in this case that one party

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is as much biassed as the other. I am not going exactly to state the mode in which I arrive at my calculation, as I consider that I am in the light of a jury in that respect, and therefore not bound to state the grounds of the decision to which I have come, but upon all questions of law I will state the reasons on which my opinion is founded. But there are in this case many facts which appear to speak for themselves quite independent of any testimony which appears on one side or the other; and I admit that that entire mass of buildings, known by the names of the scribbling mill, the fulling mill, the engine-house and boiler-house, together with the machinery that is clearly attached to the freehold, is of sufficient value; but if it had been necessary, I should have had no hesitation, according to my present impression, in taking into consideration the value of the tenter-house as being part of that building, because it appears to be ancillary to the occupation of the mill, or at all events, it is ancillary to the occupation of that building. For the same reason, I apprehend, that a brewhouse which is not connected with a house, but stands within what is termed the curtilage, may be attached to the house, and the reason why it may be attached to the house is because it is part and parcel of the house itself, as being within the curtilage, and it appears to me that the same reasoning may undoubtedly apply to a mill. Now, under the Reform Act that mill would come under the denomination of a warehouse or a building, that is a building *ejusdem generis*, a mill that is used in the same way that a warehouse is, to put wares in, and therefore it appears to me that I should have had no hesitation in considering that a mill would come under the denomination, warehouse. If, therefore, a brewhouse can be taken to be part and parcel of the

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house within whose curtilage it is situate, you may consider this building, the tenter-house, to be part of the mill; and if you have within the same curtilage another house which is used in connection with another warehouse, I consider that it may be just as much part and parcel of the warehouse, as a brewhouse may be considered part and parcel of a dwelling-house. On the view I take of the value it is not necessary to do that. It appears to me, therefore, that under all the circumstances these persons are entitled to remain on the list, and I shall consequently disallow the objections. My learned colleague, Mr. Heigham, entirely concurs in the opinion which I have expressed on the following point, that there is not sufficient evidence to rebut the presumption, that all the persons who are in occupation of these premises are occupying in the character of owners; and also that all the machinery annexed to the freehold may be taken into consideration in estimating the value; but as he is of opinion that so much only can be taken into consideration as constitutes one separate building, and as he considers that without including the other part of the property, there would not be sufficient value, he prefers not giving judgment on the case.

Mr. John Charlesworth claimed to be registered for buildings and land in York-street, as a proprietor of the Leeds Gas Light Company, who occupied premises in York-street. There were seventy proprietors, and he had been one above two years.

The company were rated owners, "the Leeds Gas Light Company"; occupiers, "the Leeds Gas Light Company, for land, houses, warehouses, and buildings, and also the mains, pipes, and other apparatus for the conveyance of gas belonging to the said com-

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pany, situated and being fixed in the ground in the said township of Leeds."

Mr. W. C. Raper, clerk of the company, proved that there were twenty miles of pipes. He thought that without the pipes the buildings would not be worth 700*l.* a year.

Mr. Richardson said, the value of the pipes and mains which run through other persons' grounds cannot be added to these buildings to make them worth 700*l.* The value which they derived from manufacturing could not be considered to make up their value; as well might a man who paid 5*l.* a year rent, say, that because he manufactured coats, waistcoats, and breeches, to the amount of 20*l.* a year, his house and shop were worth 20*l.* a year.

Mr. Clarkson asked if the value of the building and works within the walls were of such amount as to give 10*l.* a year rental to each shareholder, and having been answered in the affirmative,

Mr. Clarkson said, that in that case the vote must be allowed, without reference to the question as to whether the pipes and mains could be taken into consideration to increase the value, which need not now be considered.—The claim was allowed.

David Mitchell claimed for a house and shop in Hunslet-lane, and was objected to. He stated that he took the house and shop in question at a rent of 35*l.* together, previous to the 31st July, 1834. He occupied the house, and his son alone occupied the shop, for which he paid witness 15*l.* rent.

By the court.—The house is distinct from the shop. He had a bakehouse in the same yard, all in the lump.

By Mr. Dibb.—There is an internal communication from the house to the shop, but witness has nothing to

do with the shop. Witness's son lodges with him, and pays him so much a-week for his board. He locks up the shop and keeps the key. Witness keeps the key of the front door of the house.

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Mr. Dibb said that this house and shop were all one building, and that the claimant could not be entitled to vote in respect of it, as he was not in occupation of the whole, his son having the exclusive use of the shop, and keeping the key of the shop door.

Mr. Richardson said that he thought this point had been decided on a former day, by Mr. Heigham, in the case of Messrs. Baines and Son, who let off their front shop to Messrs. Baines and Newsome, reserving a right of entrance through the shop, when open, to their premises, which were situated to the rear and over the shop.

Mr. Clarkson thought there was some distinction between the two cases, but that in the present case there was sufficient occupation to sustain the vote, and therefore he should disallow the objection.

John Brown claimed as a joint occupier of a house, No. 213, Tottenham-court-road. He occupied the shop, parlour, kitchen, and two sleeping-rooms. Mr. Savage, his landlord, occupied the other part of the house. There were separate entrances from the street, but they were jointly rated.

Finsbury, 1835.

Mr. Merivale, without deciding upon the point of distinct occupancy, said the claim was not founded upon the real fact. Brown had claimed as a joint occupier, but it appeared that his claim ought to have rested upon his occupancy of a particular part of the premises. He had no power to alter the character of the claim, and therefore it must be struck out.

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William Squire claimed to be registered for a shop in Hunslet-lane. The claimant stated that he rented a house and shop in Hunslet-lane, at 20*l.* a-year, and that he let off part of the house to James Cork, hair-dresser, who paid him about 8*l.* a-year. There were three outer doors; two of them to the front. One of the rooms to the front was used by the claimant as a shop, and the other by James Cork. He kept the key of one shop, and Cork the key of the other. Cork had the key of the back door. The claimant had the use of a sitting-room, but he did not think he had a right to go into the upper premises occupied by Cork. There are no keys to the lodging-rooms. Cork and his family sleep on the premises, but witness does not. The claimant is master of the house, as he takes it of the landlord. Cork is an undertenant, and has nothing to do with the landlord.

Mr. Richardson.—The claim cannot be sustained, as the claimant is not in the exclusive occupation of the whole premises; Cork had the key of one door and the joint key of another, and the claimant had only the exclusive use of the shop and one room.

Mr. Dibb said that this case was precisely analogous to that of David Metcalfe, which had been decided in the early part of the day; and though he did not think that a good vote, yet as it had been so ruled, he must contend that upon the principle applied to that case this was an equally good vote.

Mr. Clarkson (R.B.) said that there was a distinction between the two cases, though it might turn out to be a distinction without a difference. In Metcalfe's case, the occupier of the shop lodged on the premises with the father; in this case, the claimant did not sleep on the premises.

In a subsequent part of the day, Mr. Clarkson said that in the King v. Ditcheat, 9 B. and C. 135, it was held "not necessary in order to make a man an occupier that he should actually sleep or take his meals in the house, or that his family should actually dwell in the whole house; but the law considered him an occupier if he *held* the whole and by himself, or family, occupied a part."—Name retained. Leeds, 1835.

James Asquith claimed for a shop and yard in Waste Lane. In support of his claim he stated, that the shop was built about thirty years ago, and that he bought it of the trustees of the former occupier. He rented the yard and land on which the shop stood of Mr. Upton. The shop was built chiefly of wood. The back part was composed of brick and mortar for fifteen feet above the ground. The front was supported by posts, the ends of which were morticed into stones fixed a few inches in the ground. The roof was slate upon regular rafters. He considered it a substantial building *.

On cross-examination the claimant added, that the

* A tenant in agriculture who erected at his own expense, and for the more necessary and convenient occupation of his farm, a beast-house, carpenter's shop, fowl-house, cart-house, pump-house, and fold yard wall, which buildings were of brick, mortar, and tiled, and let into the ground, cannot remove the same during his term, though he thereby left the premises in the same state as when he entered. It was part of the case, that those erections were necessary and convenient for the occupation of the farm, which could not be well managed without them. There appears to be a distinction between annexations to the freehold of that nature for the purposes of trade, and those made for the better enjoying the immediate profits of the land, in favour of the tenant's right to remove the former. That is, when the superincumbent building is erected as an accessory to a personal chattel, as an engine, but when it is accessory to the realty it can in no case be removed. Elwes v. Maw, 3 East. 38.

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shop was chiefly built of wood, and that he could take it away when he left.

Mr. Dibb.—This is not a building within the meaning of the Reform Act, but merely a fixture, and therefore could not confer a vote by being coupled with the land.

Mr. Richardson.—It is by no means clear that the claimant can remove the shop. It is a question of law rather than fact, and in the case of Lee v. Risdon, 7 Taunt. 188; 2 Marsh; Sir Vicary Gibbs decided that whatever was attached to the freehold became a part of the freehold, and until the moment of severance, was in no respect distinguishable from it.

Mr. Clarkson (R. B.) thought it was difficult to say what might be the legal effect of the annexation of the building, but he should hold that in hiring the land the claimant hired the building upon it. Name retained.

City of London, 1832. Residence. § 27, 2 W. 4, c. 45.

Mr. Keene (R. B.) said, the question of residence was raised by the claim of Mr. Hoggart; it was a case of some importance. The claimant was occupier of a house, at the yearly rental of 200*l*. or 300*l*., in the parish of St. Gabriel, Fenchurch-street, and had paid all rates for twelve months preceding the 31st of July, but had not slept in his house for six months previous to that date. Two servants slept in the house. Several cases had been referred to, with a view to determine the nature of the residence required for a qualification. After referring to those cases, in one of which it was laid down that "the word 'residence' denoted the place where a man, or his family and servants, ate, drank, and slept," the barrister observed that the court was bound, in the present instance, to decide upon the terms of the Reform Act. By the 27th clause of the

Act it was provided, that every person who should occupy any house, warehouse, counting-house, shop, or other building, of the yearly value of 10*l.*, should, if duly registered, be entitled to vote for the city or borough in which the house was situated. It was enacted, that a party should not be registered unless he had occupied for twelve months previous to the 31st of July in each year, and had been rated to the poor and assessed taxes, and had paid, by the 20th of July, all such rates and taxes which should have become payable previously to the 6th of April. The Act also provided (and this was the material part, in reference to the present claim) that an individual should not be registered unless he had "resided for six calendar months next previous to the last day of July, within the city or borough, or within the place sharing in the election for the city or borough, in respect of which city, borough, or place, respectively, he should be entitled to vote, or within seven statute miles thereof, or any part thereof." It appeared, therefore, that in addition to being an occupier for twelve months, and having paid all rates as described, a party must have resided for six calendar months in the way required, in order to entitle him to vote. The Act required actual residence, as well as occupation, and, such being the case, the court was bound to decide against Mr. Hoggart.

City of London, 1832.

Mr. Thompson concurred with his learned colleague that the Act required *bonâ fide* residence, and that the claimant, who was only an occupier, could not vote*.

* It is not necessary, in order to make a man an occupier, that he should actually sleep, or take his meals, in a house, or that his family should actually dwell in the whole house; but the law considers him, for this purpose, an occupier, if he *hold* the whole,

St. Pancras, 1833. Occupancy and residence.

A gentleman appeared to support the claim of his brother, Captain Bell, an officer in the service of the East India Company, who claimed to be put upon the list of voters, in the parish of St. Pancras, under these circumstances:—Captain Bell occupied a house of the required value, within the parish, up to the month of June last, when he proceeded on a voyage to India, leaving his family in the occupation of the premises in question, and in which they still remained. The rates and taxes had all been regularly paid, and the claimant was expected to return about the month of April in the next year.

The overseers objected to the admissibility of the claim, on the ground of non-residence.

Mr. Sandys said, that the question now raised by the overseers had been disposed of by the House of Commons itself upon two occasions—first, with reference to the presumed non-residence of seamen engaged in the whale fisheries * in the northern parts of this country; and secondly, on the 7th of February, last year, when an Honourable Member (Captain Boldero) moved, that all persons actually serving abroad, either in the military, naval, or commercial marine of the

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and, by himself or family, occupy a part. The word occupation of a house implies personal residence: but if a lessee of a house dwell in any part of it, though he let the other part, he, in point of law, is to be considered as occupier of the whole. Littledale J. Rex v. Ditcheat, 9 B. and C. 135.

* In the towns of Hull and Yarmouth a question arose, whether mariners having houses in the town in which their families continued to reside, could be considered as residing there during their absence at sea. In both instances the residence was held to be insufficient, but it seems now admitted the decisions were wrong. For a man must undoubtedly be said to reside at the place where his dwelling is on ordinary occasions, where his wife and children abide, to which he returns when released from the duties of his calling, and which he considers as his home. "Cockburn's Questions on Election Law," 62.

United Kingdom, being entitled to vote for members to serve in Parliament, should be exempt from the application of the term non-resident. In Perry and Knapp's Reports, part 1, page 16, the following dictum was attributed to the present Lord Chief Justice of the Court of King's Bench (then Sir Thomas Denman)—"I think that the Honourable and gallant Member opposite is mistaken in the law of the case, with regard to the residence of persons whose families occupy a house in a city or borough. In my view of the case, such a person is to be taken as resident; so that if any one were to sail to the East Indies, and yet leave his family in the occupation of a house in Westminster, he would not by such an absence be deprived of his vote." On those authorities, he (Mr. Sandys) should allow the claim.

St. Pancras, 1833.

Mr. Thomas Leech, on the list of 10*l.* occupiers, was objected to for not having resided within the borough during six calendar months next previous to the last day of July. The evidence was, that Mr. Leech left Leicester for America last April; his object in going was, as he told the witnesses, to collect property left him there by a relation, and that he intended and was expected to return about November. He had left one or two servants in the care of his house in the mean time, and every demand for taxes, &c., had been duly discharged. The witnesses had no reason to suppose he had any intention to settle in America.

Borough of Leicester, 1833. Occupancy and residence.

Mr. Finnelly (R. B.) was of opinion, that upon this evidence the objection failed. Although business called Mr. Leech from home for a time, his residence was still continued in Leicester. The keeping up of

Borough of Leicester, 1833.

his house and establishment of servants, as well as the conversation with the witnesses, proved the *animus revertendi*. The words of the 27th section did not require that the party should abide from day to day in the place of his residence. The renting of a house, and keeping it furnished and occupied by one's servants for his own use, though the party may be absent sometimes on business, must be considered sufficient to constitute residence, especially when he has not acquired, or intended to acquire, any other residence.

Several freemen were objected to, as not residing within seven statute miles of the place where the poll was heretofore taken. The question, as to how the distance was to be measured, was discussed before both the barristers, Messrs. Curzon and Finnelly, who were requested to sit together on this occasion, in order to decide the point before the lists of freemen came to be revised.

The objectors contended, that the legislature must have meant the distance measured according to the English form, by a chain drawn along the public way, and not a geographical measurement by the straight line, as the crow flies, a sort of measurement that was sometimes heard spoken of, but never reduced to practice. They cited the case of Wood v. Dennet, 2 Starkie, 89; and Leigh v. Hand, 9 B. and C., and said there were numerous cases to be found in Leonard's and Cooke's Reports, but did not name any.

For the freemen, it was urged, that there was more certainty as the crow flies. The distance in that way could be accurately ascertained and sworn to, and would remain a lasting measure, while the distance by

the road might vary as often as a new road, or alteration of an old one was made.

Borough of Leicester. 1833.

The Court, after hearing the arguments, intimated to the parties on the following day, that when the list of freemen came to be revised, the distance would be measured by the nearest public way of access*.

Permissive occupancy insufficient.

A gentleman made a claim to vote for a house in Camden-place, in which he allowed the party from whom he took it to reside for some time, but he (the claimant) had paid rent, taxes, and rates for the period of eighteen months, up to this time. It appeared, however, that if the time during which the landlord was allowed to remain in possession were deducted, it would not give the claimant an occupation of twelve months up to the last day of July last.

Mr. Palk did not think that a sufficient occupation within the meaning of the Act.

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* See Hawkins's Pleas of the Crown, c. 26. s. 13, p. 390 of the last edition.

The Committee decided, that it is not sufficient objection to the validity of the vote of a registered freeman, that he has ceased at the period of the election to reside within seven miles of the place where the poll for a city was taken previously to the passing of the Reform Act. Worcester, K. & O. 257.

In the consideration of an engagement (a bond) not to open a shop within a mile of a certain spot, the shortest way of access by the footpath is to be taken. Woods v. Dennett, 2 Stark—Ellenborough.

In a covenant not to keep a public house within half a mile of a particular place, the distance must be estimated by the nearest mode of access at the time of the covenant; Tenterden and Littledale; or as the crow flies; Parke. Leigh v. Hind, 4 M. & R. 579; 9 B. & C. 774.

And the same construction has been put on the statute relating to Popish recusants, (35 Eliz. c. 2; 3 Jac. 1, c. 5, s. 6, 7,) which require that every Popish recusant shall repair to the place of dwelling, and not remove above five miles from thence. Cockburn's Question on Election Law, 62.

Borough of Leicester, 1835.

On the part of the claimant it was contended, that having paid rent and rates for the house for more than a year, he ought to be considered as the occupant; and that it made no difference, whether the house was left in the care of his friend, or of his servants, for he could in the one case, as well as in the other, have entered into possession at any moment he pleased.

Mr. Palk (R. B.).—The occupation by the servants of the claimant would have made a difference in his favour. The house in the possession of another could not be considered as an occupation by the claimant.—Claim rejected.

City of London, 1835. Occupation.

Mr. Thomas Postan claimed in right of a house in Talbot-court, St. Andrew, Holborn. The claimant rented the house, which he let out in apartments to different tenants, but occupied no part of it himself. He was rated in the poor-rate book for the house, and had paid all the rates, and the question was, how far this could be called a constructive occupancy.

Mr. Craig (R.B.) decided that this was not an occupancy within the meaning of the Act. If the claimant had kept one room for himself, or even had a servant in the house to represent him, it would be different. The claim must be rejected.

Southwark, 1835. Occupation.

Mr. Curling claimed to have his name inserted in the registry in respect of certain houses which he possessed in the parish of St. Mary Magdalen, Bermondsey. He had possessed these premises for upwards of twelve months; all the rates due on their account had been paid, and that their yearly value exceeded 10*l.* They were, however, let out to tenants.

Mr. Curling maintained, that although he did not

Southwark, 1835.

actually reside in the premises, or occupy any portion of them in the way of business, he was entitled to vote at the borough elections, because he was liable for the payment of the rates, whether the premises were actually occupied by tenants or not. He also referred to a local Act, which he said distinctly recognized him in the character of occupier with respect to these houses. His residence within seven miles of the borough was not disputed.

Mr. Lennard and Mr. Knox (R.B.) concurred in opinion, that Mr. Curling had not satisfactorily established his claim to vote. It was clear that Mr. Curling's tenants would, by claiming to be rated, become entitled to receive the franchise, though the rates were actually paid by the landlord; and as it was not the intention of the Reform Act to give two votes for one and the same qualification, Mr. Curling's claim was not a valid one. Whether Mr. Curling would have a right to be registered, supposing these premises not to have been tenanted for the last twelve months, was a question on which the barristers said they would give no opinion, as it was not the one with respect to which they were now called on to decide.

Mr. Curling submitted, that his claim must be admitted, without reference to its merits, because no objection had been taken to it, either by the overseer, or by any third party.

This point was, however, overruled, the barrister deciding, that every person whose name does not appear in the overseers' lists, and who claims to have it inserted therein, is bound to prove his qualification. —The claim was accordingly disallowed.

Gloucester, 1835. Non-residence.

John Bloxholme was objected to for non-residence. The claimant was the driver of the Rapid coach from

Gloucester, 1835.

Monmouth to Cheltenham and back daily; during the time he slept entirely at Monmouth, but had a house near Gloucester, in which his father and mother resided, and for which he paid rent.—Name retained.

Residence.

The Rev. George William Hall, canon residentiary of Gloucester Cathedral, was objected to. The claimant is master of Pembroke College, Oxford, the duties of which office require the greater portion of his time; but it was proved that he has a house furnished and attended to by a servant in the College-green, in this city, and that he keeps his own "residence" of two months during the year, and frequently the residence of some other canon *. In the present year he commenced his residence in June last.—Name retained.

City of London, 1835.

Mr. Tamlyn gave judgment in the cases of Mr. Palmer and Mr. Delafosse. Mr. Palmer was the active partner of a firm carrying on business in King's Arms-yard, Coleman-street, and though he had a country house, which his family occupied, he himself lived and slept in King's Arms-yard for at least four days a-week throughout the year. Mr. Delafosse's case stood precisely under the same circumstances, and in both cases he (Mr. Tamlyn) was of opinion that they resided in such a manner as to be within the intention and meaning of the Act. He should therefore overrule

* In a case which occurred at Exeter, two clergymen holding benefices in a cathedral had one house in which they alternately resided; but the house was appropriated exclusively to each during the period of his respective occupation, and the one out of residence went to reside on some other benefice. It was held that the absent party could not be said to reside, because, though there might be an *animus revertendi*, the house had ceased to be even potentially the habitation of the party. Cockburn's Question on Election Law, 61.

both objections, and retain the names of both gentlemen upon the list of voters for the parish of Nicholas Acons.

City of London, 1835. Residence.

Mr. E. B. Kemble, the claimant, had a dwelling-house in town from the year 1834 up to last March, at which time it underwent a thorough repair. During the time in which it was being repaired, the claimant continued to occupy it by furniture and by the residence of two female servants. In February and March last, Mr. Kemble, whose general residence was at Croydon, came occasionally to town and dwelt in the house. The question then was, whether under the circumstances Mr. Kemble could be considered a resident within the city. In the case of King's Serjeant, 5 Term Reports, 466, the question arose whether a person who had taken a house in the borough of Seaford, but who had only slept in it a night or two previous to the election, was entitled, under the Paving Act, to vote, which was ruled in the affirmative, and the vote allowed.

Mr. Craig (R. B.) having cited several other cases, decided that the residence had been proved to be sufficient, and the claim was consequently allowed.

A question arose on the lists of St. Andrew's Undershaft, as to whether a sufficient residence of six months (the other qualifications being admitted) was proved under the following circumstances:—The claimant resided in lodgings in Devonshire-square up to June 30, and from thence to July 21 went about on visits to friends, sometimes sleeping within seven miles of London, and sometimes beyond that distance. After this he went to France for a short time; during his absence he paid no rent for his lodgings in Devonshire-square, but there was an understanding that on his return he

City of London, 1835. Residence.

would resume his occupation of them, and he left some articles of property there. The lodgings were kept for him till his return.

Mr. Craig (R. B.) held that this was a sufficient rating within the meaning of the Act. There was no evidence of any attempt to let the place in his absence. It was only reasonable, then, to assume a continued occupation for six months. The case, he admitted, was one of difficulty, and as the decision might be justified either way, he ought to give the claimant the advantage of the doubt.—Claim admitted.

In the case of Mr. Dignum, who was rated for a house in Newgate-street, it came out in evidence that before the 31st of July Mr. Dignum had removed to premises in Watling-street.

It was objected that the party could not sustain the right to have his name on the list, as he no longer possessed the same qualification for which he was rated.

Mr. Craig (R. B.) held the objection to be fatal to the claim. One of the questions which the returning officer would put to Mr. Dignum when he went up to poll would be, whether he still possessed the same qualification for which he had been rated, and as he could not answer that in the affirmative, his vote would not be received. It would be of no use, therefore, to allow his name to remain *.—Name expunged.

Successive occupancy, 1833. § 28, 2 W. 4, c. 45.

Mr. Lyall claimed to have his name inserted in the list of voters resident in the parish of Allhallows Steyning; the overseers solicited the opinion of the court as to the admissibility of the claim.

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* Rochester, P. and K. 109.

City of London, 1833.

The claimant had for some time occupied a house and premises in Fenchurch-street, within the parish, and for which he was rated to the poor, and for the assessed taxes, all of which having been paid within the period specified in the Act, the claimant had acquired the right to vote in respect of those premises. The objection, or rather subject matter upon which the overseers desired a decision arose from the removal of the claimant from the premises in which he had acquired the franchise, to new premises in King William-street, New London-bridge, situate in another parish, in the list of which, it was suggested, the claimant ought to be placed. On the other hand, it was urged that the occupancy of the claimant in the latter parish had not been of sufficient duration to entitle him to be registered there.

Mr. Thompson (R. B.) after satisfying himself with proof that all the rates on the premises in Fenchurch-street had been regularly paid, admitted the claim *.

Borough of Lambeth. Successive occupation.

An objection was made to the claim of Mr. Walsh in right of his residence in certain premises in St. Anne's road, which he had occupied for the last six months, having resided the previous six months at Paddington.

Mr. Knox (R. B.) decided that the objection was fatal. The Act required an occupation of twelve months, and a residence of six months. Such residence need not be continuous in the same premises, but it must be in premises in the same borough. A temporary absence would not destroy the requisite occupation provided

* If during part of the year the voter occupy two houses concurrently, it is not necessary that he should be rated in respect of both houses during the period of the concurrent occupation. Manning's Notes of Revision, 25.

Lambeth, 1834.

the premises were continued in the possession of the claimant.—Claim rejected *.

Marylebone, 1834. Successive occupation.

William Walsh claimed to have his name inserted in the register as the occupier of a house in the parish of Paddington. The claimant had in the course of last year removed from a former residence at Lambeth to the house in right of which he now claimed, and which he had occupied about nine months. He had duly paid all rates and taxes charged against the premises for the twelve months, but had returned to his former residence at Lambeth.

Mr. Coventry (R. B.) said, under the 27th Section of the Reform Act, to entitle a party to vote in respect of successive occupation, the premises so occupied must be in the same borough.—Claim rejected.

Marylebone, 1835. Lodgers.

Mr. Rodgers appeared on behalf of Mr. Gill, who claimed in right of apartments occupied by him as a lodger. He contended that every person occupying to the amount of 10*l.* per annum, whether a lodger or not, was entitled to be registered. The householder, when he let a room in the house to another person, parted with the occupation of that room, which became the castle of the party to whom he let it.

Mr. Coventry (R. B.) said he had no doubt on the point. A lodger must have notice to quit like another

* A change by a 10*l.* householder from the occupation of the 10*l.* house to that of another of similar value, after the 31st of July, disqualifies him from voting until a new registration is in force. Cruttenden's case, Rochester, P. and K. 109. Although the description of his qualification in the register would equally meet both cases. Gate's case, Rochester, 112. But if not objected to before the revising barrister, it cannot be objected to before a committee. Lawson's case, New Windsor, P. and K. 152. Cook's case, Worcester, K. and O. 240.

tenant, and if he was a yearly tenant he must have six months' notice. The words "owner or tenant" could not be understood to mean a person having a part of a house. In Fludyer *v.* Lombe, *temp.* Hardw. 307, Lord Hardwicke said that a lodger could not be considered as the occupier of a house, and he could not vote. Would the words "other buildings" be considered as embracing any more than a description of buildings similar to a house, warehouse, or shop? Other building must mean a distinct building, not a part of a house. It had been decided, that no person should be deemed a householder who had not the command of the outer door. In his opinion Mr. Gill was not an occupier within the meaning of the Act, and therefore his name must be expunged.

Marylebone, 1835.

Mr. Martin (R. B.) said he never had any doubt upon it. An occupier must be in such possession, that in an indictment for burglary, the premises might be laid as his property.

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The persons excluded from the elective franchise by the limitation of that right, "to every male person of

Disqualification by statute.

Disqualification by statute.

full age, and not liable to any legal *incapacity* *," consist of aliens †, idiots ‡, lunatics §, infants ||, officers of excise, customs, post office packets, stamps, window duties ¶, London police magistrates and officers **, agents at elections receiving reward ††, voters in boroughs receiving alms or other relief ‡‡, Catholics, unless they have taken the oath prescribed by 10 Geo. IV. c. 7., and persons convicted of felony §§, bribery, per-

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* § 19, 2 W. 4, c. 45.

† No man is entitled to be registered, who, on the 31st of July preceding the registration, was an alien, i. e. a person born out of the allegiance of the prince who was king of England at the time of the birth of such person, (see Calvin's case, 7 Co. Rep. 1,) and who had not been made a denizen by letters patent. Manning's Notes of Revision, 11.

‡ Idiots being under a perpetual incapacity, ought not to be registered. Id.

§ Lunatics who have lucid intervals ought to be put in the register by town clerks and overseers in cities and boroughs. Id. But except during lucid intervals, ought not to be allowed to be registered. Heywood's Counties, 260. Mere childishness is not a sufficient disability, if the person knows what he is doing at the time. 1 Peck, 108. 1 Fraser, 164.

|| According to the law of England, which does not admit the fraction of a day to be computed, except to ascertain the priority of distinct events occurring during the same day, a person is of full age who has lived during some part of every day necessary to constitute a period of twenty-one years. Thus a person born at eleven o'clock on the night of the 1st of January will be of age immediately after midnight between the 30th and 31st of December, although he will then want forty-seven hours of completing twenty one years.

In Davis's case it was decided, that an objection on the ground of infancy could not be taken before the committee, as it had not been made before the revising barrister. New Windsor, Knapp and Ombler, 160.

¶ 22 G. 3, c. 41.

** 10 G. 4, c. 45.

†† 7 and 8 Geo. 4, c. 37.

‡‡ § 36, 2 W. 4, c. 45. 2 Luders, 564.

§§ 1 Peck, 508; 1 Simeon, and 2 G. 2, c. 24, § 6. Whether a felon convict, who has acquired a statutary pardon by serving out the time of his transportation, is not rehabitated, See Bullock v. Dodd, 2 B. and A. 258.

jury, or subornation of perjury *, peers, lord lieutenants and ministers, or servants of the crown, are not even to influence electors. And by resolution, 14th December, 1699, Com. Dig. Parl. (D.) 10; 10 Journ. 447; it was declared, that "no Peer of Parliament has a right to vote for members of the House of Commons." † This resolution, which was repeated at the commencement of every session, on the Union with Ireland underwent alteration, and now stands thus—resolved, "That no Peer of this realm (U.K.), except such Peer of that part of the United Kingdom, called Ireland, as shall, for the time being, be actually elected, and shall not have declined to serve for any county, city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in Parliament."

Disqualification by statute.

In the Banbury case, the vote of an Irish peer, not being elected for any place in England, was admitted to be bad. Heywood, 318.

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* 57 Journ. 376; 37 Journ. 507.

† The vote of the Marquis of Tavistock was objected to, on the ground that he was a Peer of the realm at the time that he voted as a freeman of the town of Bedford, on the 12th of December, 1832. The Marquis, on his return to Woburn Abbey, after voting, found a copy of the Gazette of the 11th of December, announcing that he had been summoned to the House of Peers, by the style and title of Baron Howland of Streatham, in the county of Surrey. The King's warrant for the writ was dated the 7th December, 1832. The Marquis of Tavistock wrote immediately to the returning officer of the town of Bedford, stating that he had received a copy of the Gazette, and that it appeared that the King's writ, calling him to the Upper House, had been actually issued at the time of voting, (of which he was wholly ignorant,) and requesting his name should be withdrawn from the poll-book, if it could be done consistently with the law and practice of elections. The returning officer, by the advice of counsel, did not alter the poll. The Committee determined that the vote of Lord Tavistock was good. Bedford Town, Perry and Knapp's Reports, 146.

Lambeth, 1834.

The name of the Archbishop of Canterbury appearing on the list with the qualification of "house and land," Mr. Knox (R. B.) said, that undoubtedly the Act required that a list should be made out by the overseers of the name of every person in the parish occupying a house to the value of 10*l.* a-year; but in the present instance any person whose name was on the list might make an objection to the name of the Archbishop being continued on it, as he, in virtue of his high office, was entitled to sit in the House of Peers. The overseers might if they pleased have omitted the name, leaving it to the Archbishop to make his claim and prove his right, if he so thought fit. The question in the latter case would have to be decided by the revising barristers. The name, however, now appeared, and without any objection, and under such circumstances the question was, had the barristers any power to strike it out? *Primâ facie* the qualification stated was a good one, but the cases in which revising barristers expunged names were where objections had been made, or where the names of parties had not been fully stated, or where there was not a sufficient description of the qualification. Nothing of the kind occurred here. The barristers were not called upon to decide whether the Archbishop of Canterbury had lost his right to vote at elections by his seat in the House of Peers. The House of Commons annually passed resolutions against any interference in elections of any of their body by peers, but the Archbishop was not a peer. As a bishop he was a lord of Parliament, but not a peer. The resolution of the House of Commons to which he had alluded said, "that no peer of this realm," meaning of course the united kingdom, "excepting such peers of Ireland as shall for the time being be actually elected, and shall not have declined to serve for any county,

city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in Parliament." It appeared to him that the Archbishop of Canterbury did not come within the terms of this resolution, as he was not a peer of the United Kingdom; and under these circumstances, if the case had come before him, he did not think he should be warranted in expunging it from the list, or bound to decide whether the Archbishop possessed the right to vote or not. If the case should ever come before the House of Commons, it would be for that body to decide whether a vote of the Archbishop was a breach of their privileges. In the case of the Marquis of Tavistock, who had voted at the Bedford election, not knowing at the time that he had been created a peer, a committee of the House of Commons decided that the vote was a good one, and would not strike it off.

Lambeth. 1834.

Sir John Dickinson Fowler was objected to, on the ground that he was retained as an agent for the next election, by one of the candidates of the division in which he claimed to be registered.

Agents. Northern Division of Staffordshire, 1832.

Mr. Lumley thought the statute did not authorize him to reject the claim on that ground *.—Name retained.

* In Hodges's case, the declaration of an elector, that he was to be paid for his services, and proof of subsequent canvassing, were held sufficient to invalidate his vote under the 7 and 8 Geo. 4, c. 37. New Windsor, Knapp and Ombler 173. And the paid agent of one candidate cannot vote for another. K. and O. 174. The acceptance of a retainer by a solicitor, and acting under it, invalidates his vote, though no payment is proved. S. C., K. and O. 175.

The vote of the town clerk, whose services had been paid for during the election, was rejected by the committee. New Wind-

City of London, 1832. § 19. 2 W. 4. c. 45. Aliens.

Charles Friend*, an alien, claimed to vote;—his claim was, of course, disallowed. It appears, however, that a large class of persons in the same situation la-

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sor, Knapp and Ombler 185. But the vote of a city officer, who attends an election and sends in a bill for his services, and is paid by the candidate, is good. Barne's case, Worcester, Knapp and Ombler 247.

The committee decided, that the vote of a regular constable of a borough, employed at an election to keep the peace, who refuses to take a sum of money paid to the town clerk as a remuneration, is good, though he had said he expected to be paid before the petition was presented. New Windsor, K. and O. 160.

The register is to be the register of the electors entitled to vote, on the 31st of July. By implication, the 31st of July must be considered the day of election, and persons not entitled to vote on that day, would therefore not be eligible to have their names placed on the register.

* Aliens are incapacitated by the Common Law, 2 Peck. 118; but if made denizens by letters-patent, or naturalized by Act of Parliament, the incapacity is removed. By 13 G. 2, c. 3, foreign seamen, in time of war, serving two years, by 13 G. 2, c. 7; 20 G. 2, c. 44; 22 G. 2, c. 45; 2 G. 3, c. 25; and 13 G. 3, c. 25, all foreign Jews and Protestants, upon residing seven years in any of the American colonies, under certain restrictions, were declared to be naturalized. By stat. 26 G. 3, c. 50, and 28 G. 3, c. 20, foreigners established in England, and carrying on the whale fishery, and importing the produce thereof for five years, are entitled to all privileges of a natural-born subject.

Anthony Barbre's vote was objected to, being an alien; the return made by the Alien Office was produced, by which it appeared he was born in Paris; Middlesex, 2 Peck. 118.

It was admitted, a denizen might vote, ibid. Peck. 116.

Persons born in the United States of America, since the treaty of 1783, by which the independence of those States was acknowledged by this country, are aliens, and cannot take lands by descent, or inherit them in this country. Doe d. Thomas *v.* Acklam, 4 D. & R. 394; S. C., B. & C. 779.

The children of an American loyalist, who continued his allegiance to the Crown of Great Britain, after the colonies were separated from the mother country, and settled in America, are entitled to take lands by descent in England within the operation of 4 G. 2, c. 21, as natural-born subjects of the Crown of Great Britain; Doe d. Auchmuty *v.* Mulcaster, 8 D. & R. 593; S. C. 2 B. & C. 771; and see Doe d. Birtwhistle *v.* Vardill, 8 D. & R. 185.

An alien may hire a house for his habitation, 7 Rep. 17; but a lease of lands will be forfeited to the King; Co. Litt. 2.

boured under the mistake, that there was some Act of Parliament which conferred on them the right of exercising the elective franchise.

City of London, 1832.

An *alien*, residing in St. Michael's Bassishaw, claimed to be registered, on the ground of occupying a 10*l.* house, and paying rates and taxes. He contended that there was no provision in the Reform Act by which his claim could be rejected.

The court said, by the common law regulating scot and lot voting he would possess no right, and the new law did not extend the franchise to aliens.

Claim rejected.

Marylebone, 1834.
Aliens.

The name of Count Mendelssohn, the chargé d'affaires for the Court of Wurtemburg was inserted in the list of voters.

Mr. Kean (R. B.) said, the king of Wurtemburg could have no claim to be represented in the British House of Commons, but as there was no express authority conveyed by the provisions of the Reform Act to the revising barrister to strike out the names of persons not objected to, and as the privileges of foreign ambassadors were somewhat undefined, he wished it to be understood that he expunged the name of Count Mendelssohn and others similarly circumstanced, upon the narrow but still safer ground of the omission of a particular required by the statute—namely, their Christian names had been omitted.

Westminster, 1835.
Aliens.

Rodolph Weberstadt claimed to be inserted in the list of voters, for St. Ann, Soho. The claim was resisted on the ground that the claimant was an alien; he admitted that he was born in Germany, and that his parents were natives of that country. He had himself

Westminster, 1835. Aliens.

served in Egypt and the Peninsula, in the 3d Dragoons, for upwards of four years, and in London in the Coldstream Guards for upwards of two years more. He was in the enjoyment of a pension, and considered himself to all intents and purposes a British subject.

Mr. Davies referred the court in support of the claim to the provisions of the statute 2 George III., chap. 25*.

Mr. Tamlyn (R. B.); the statute cited was confined in its provisions to foreign Protestants who had served in a military capacity in America. To such persons under certain circumstances the rights of British-born subjects were extended. The present claimant had not brought himself within the provisions of that statute, and consequently, and in the absence of letters of naturalization, the claim must be disallowed.

City of London, 1835. Aliens.

The claim of Mr. Sebastian Gonzalez Martinez was objected to on the ground that he was an alien. In this case the question was raised as to whether the *onus*

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* An Act for naturalizing such foreign Protestants as have served, or shall serve for the time therein mentioned as officers or soldiers in his Majesty's Royal American Regiment, or as engineers in America. Foreign Protestants serving for two years, and qualifying as directed by 1 Geo. 1, and producing certificates of their having received the sacrament in some Protestant church, to be deemed natural born subjects.

Peter Chistensen, a native of Denmark, was objected to. It was urged by Mr. Hearn that the court would not take notice that Denmark was a foreign country. In the case of a conviction for being within a certain distance of the coast in vessels of a prohibited size, the court of King's Bench held that they could not take judicial notice of the divisions of counties. An alien is a person without the king's allegiance. A person who has taken the oath of allegiance is not an alien. The claimant's attestation into the royal artillery was produced, but he admitted that he had not been naturalized by Act of parliament. Name expunged. Manning's Notes of Revision, 103.

of proof of disqualification lay with the objector, or whether the claimant should prove that he was not disqualified.

City of London, 1835. Aliens.

Mr. Rogers contended, that by a proviso in the 16th section of the Act 7 George IV., c. 54, (the Alien Registration Act,) it was enacted thus:—"Provided always, that if any question shall arise whether any person alleged to be an alien, and to be subject to the provisions of this Act, is an alien or not, or is, or is not, subject to the said provisions or any of them, the proof that such person is, or by the law is to be deemed to be, a natural born subject of His Majesty, or a denizen of this kingdom, or a naturalized subject, or that such person if an alien is not subject to the provisions of this Act or any of them, by reason of any exception contained in this Act, or otherwise, shall lie on the person so alleged to be an alien, and to be subject to the provisions of this Act." Under this proviso Mr. Rogers contended the *onus* was on the claimant.

Mr. Sharpe, and Mr. Gassiot (the partner of the claimant) considered that the court had already decided that the *onus* of proof of disqualification lay with the objector.

Mr. Gale (a solicitor acting for the claimant) contended, that the proviso quoted could apply only where the provisions of that Act were sought to be enforced.

Mr. Craig (R. B.) said, that the *onus* of proof of disqualification lay with the objector, and he thought the principle ought to extend to objections of alienage as well as any other. The Act referred to was one for the registration of aliens. It was highly penal in some of its enactments, and he did not consider that it was to be made available for other purposes than those for which it was especially enacted. The words of the proviso were intended to apply only where the question

City of London, 1835. Aliens.

arose, as to whether a party was or was not subject to the provisions of the Act, and that was a question which did not arise here, and which, even if it did, he had no authority to decide. Under these circumstances he decided that the *onus* of proof of disqualification in this case, as in others, must lie with the objector.

Mr. Gassiot was then put into the box, and underwent a cross-examination by Mr. Rowcroft, as to whether he had heard the claimant state his having resided in Spain, and whether he did not speak English with a foreign accent. He answered as to both these facts in the affirmative.

Mr. Gale produced letters patent under the Great Seal, dated April, 1827, by which his late Majesty had granted to the claimant all the privileges of a British subject.

Mr. Rowcroft, having seen the letters patent, withdrew his objection, and the claim was admitted.

Mr. Rowcroft objected to the name of Mr. Pompey Anchini being retained on this list, on the ground generally of want of qualification.

Mr. Trott, who appeared to support the vote, inquired whether the ground intended to be relied on was incapacity, as, if so, it was for the objector to prove his case.

Mr. Rowcroft, after some discussion, contended that it was for the other side to prove the qualification.

Mr. Tamlyn (R. B.) ruled in favour of Mr. Rowcroft, but begged to be understood he by no means wished it to be drawn into a precedent. He was only induced to adopt this course now from having learned that his learned colleague had so ruled it in the other court.

Mr. Anchini was then put into the box by Mr. Trott, who proceeded to examine him as to his qualifi-

cation so far as occupation, residence, and payment of rates were concerned.

City of London, 1835. Aliens.

Mr. Rowcroft admitted all these points, observing that all he wished was to have an opportunity of cross-examining the party as to his incapacity as an alien.

Mr. Trott objected to any questions being put to Mr. Anchini which had a tendency to prove him an alien, inasmuch as, under the Alien Act, he was liable, if not registered in the proper office, to certain penalties.

Mr. Tamlyn, after referring to the Act, overruled the objection.

Mr. Anchini's claim was subsequently admitted on his producing an act of naturalization.

Alms.

Mr. Trott objected to the claim of a liveryman and freeman of the Merchant Tailors' Company on the ground that as a liveryman he had received relief and alms from the funds of the company. In support of his objection he cited the statute 11 Geo. 1. c. 18. § 14, which provided "that no liveryman or freeman of the city of London should be capable of voting in the election of members to serve in Parliament, or mayor or aldermen, who should have been remitted his fee fines as liveryman, or any part or portion thereof, or should receive any allowance in respect thereof."

It was proved that the party objected to by Mr. Trott had received a donation of 10*l.* from the charitable fund of the company in 1825, but that those funds formed no portion of the fee fines.

Mr. Tamlyn (R. B.) overruled the objection, and retained the name on the register.

The claim of J. Cole, of the parish of St. Ethelburga, was objected to on the ground that he had received parochial relief and other alms within the last twelve

City of London, 1835. Alms.

months. It appeared, however, that the relief received by the claimant was not parish relief, but a portion of meat and coals which were annually distributed in the parish to poor persons not receiving parochial relief*. Claim allowed.

Drapers' Company.

On the list of this company being produced for revision, a question was raised as to whether the name of a person ought to be struck off whose livery fee had been returned to him. The clerk of the company submitted that it should, the person in question receiving eleemosynary assistance.

Mr. Tamlyn (R. B.) would not on that ground interfere with a list already complete. He also declined to strike out the names of persons on the ground of their being merely stated to be dead, unless he should have evidence from persons who knew the fact of their own knowledge.

St. Alban's. Parochial relief by labour does not disqualify.

A freeman's vote was objected to, on the ground of his having received parochial relief. The facts were,

* The claimant having a wife who lives separate from him, assigned his pension of 5*s*. per week for service in the navy to the churchwardens and overseers of Newport, to secure to the parish the repayment of the weekly sum of 5*s*., which they were in advance to his wife and daughter under the 59 Geo. 3, c. 12, § 30. One shilling was deducted from the allowance of the wife and daughter about three quarters of a year ago, the claimant having represented that he could not pay so much. It was also proved that the parish surgeon had attended the wife and daughter of the claimant at the parish expense. The court said that the 5*s*. per week paid by the overseers is at least a loan from them to the husband. The whole proceeding presupposes an application to the parish, either for relief or for an advance of money for the support of the wife and daughter of the claimant. Ordinary medical assistance, not called for by any temporary or accidental cause, and supplied by the parish, falls within the meaning of the expression, "parochial relief."—Name expunged. Manning's Notes of Revision, 148.

that he had applied to his parish for work, which was furnished him at something under the rate of labourers' wages, and he received no money which he had not earned *.

St. Alban's.

Mr. Knox (R. B.) held that this was not that description of assistance which would cause disqualification; for though it might be legally claimed, it must be entirely in the nature of eleemosynary aid to have that effect.—Claim allowed.

Abingdon, 1832. Excise officers disqualified.

John George, the proprietor of the New Inn, was objected to by Mr. Harris, on the ground of his holding an appointment under the Commissioners of Excise. It appeared that the voter was appointed by a warrant, regularly signed by four of the commissioners, for keeping a journal, and for affording them the use of a room, for which he received 5*l.* 10*s.* per annum. The court held, that he was thereby disqualified under the 22 Geo. 3. c. 41, and his name was accordingly struck out of the list.

Francis Gayford was objected to, on the ground that he held a situation in the Excise; and, evidence having been produced as to his being seen employed in dis-

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* Thomas Barker was proved to have received parochial relief after the completion of the register, but before the day of polling; the committee resolved, that the vote was a bad vote. Bedford Town, Perry and Knapp's Rep. 127. And also that voters were disqualified by receiving relief from labour at a lower price than that paid by individuals. Kemp's Case, ibid. 128. By employment by the parish of the voter's children at a lower rate of wages. Reuben Hedges's case, ibid. 130. By relief, by sending the voter to a lunatic asylum for a short time after the 31st July. Ibid. 129. And by parochial relief, afforded in cases of cholera. Wilshire's case, 130.

Abingdon, 1832.

charging the duty of an excise-officer, his vote was disallowed.

Southwark, 1833. Collectors of king's taxes.

An objection taken to the retention of the names of William Barnes, Robert Osment, William Stead, and Samuel Stead, on the list of voters for the parish of St. George-the-Martyr.

Mr. Fitch, the vestry-clerk, explained that the ground of the objection was, that these parties were collectors of assessed taxes, and consequently disqualified from voting, by the provisions of the 22d Geo. 3, c. 44.

Mr. Thomas, on behalf of the parties objected to, contended, as they were not appointed to the situations they held by the Crown or the Treasury, the Act of 22d Geo. 3 could not be construed to apply to them. The acceptance of those situations, he said, was made compulsory on the gentlemen for whom he appeared; and the Legislature never intended to disfranchise individuals for holding offices which they were compelled to accept.

Mr. Knox (R. B.) on reference to the Act of Parliament said, that though the first clause in general terms excluded all persons appointed collectors of king's taxes, yet the second clause reserved the right to those who were appointed by the commissioners of land-tax. Names retained.

Finsbury, 1834. Collectors of taxes.

A collector of assessed taxes complained on behalf of himself and brother officers that the overseers had, under an erroneous impression, omitted their names from the list of voters. He was appointed under a local Act of Parliament, and the office was compulsory under a penalty of 100*l*. Notice had been

given to the overseers, and he now claimed to be registered.

Finsbury, 18[illegible].

Mr. Chapman (R. B.) said, that two years ago the point had been decided in Southwark. It never could be the intention of the Legislature to disfranchise parties for holding a compulsory office, and he should admit the claim.

City of London, 1835. St. Bride's.

The claim of George Welsh was objected to on the ground that, being a collector of King's taxes, he was prohibited from voting.

Mr. Craig (R. B.) said, that would depend on whether he was appointed by the Crown or by local commissioners.

The claimant said, that he was not a King's collector, his appointment having been made by the commissioners of land-tax.

Mr. Craig (R. B.) said, it had been decided over and over again by committees of the House of Commons that tax-collectors appointed by commissioners had a right to vote.—Name retained.

City registration, 1832. St. Botolph, Bishopsgate.

West, a city policeman, was objected to, on the ground that all police-officers in the metropolis were deprived of the elective franchise by the New Police Act. It was contended that the New Police Act only applied to the metropolitan police force, and could not affect the right of the applicant, who was not a member of that force, but belonged to one embodied by the city authorities.

Mr. Thompson (R. B.) said, that the disqualifying clause in the Metropolitan Police Act did not apply to persons appointed by the corporation to the police of the city of London.—Name retained.

Hull, 1835. Dealers in stamps.

Mr. William Stephenson was objected to on the ground that he was a dealer in stamps.

Mr. Thompson in support of the claim submitted, that there were three persons concerned in the distribution of stamps—the distributor, the sub-distributor, and the vender. He would maintain that the 22d Geo. 3, c. 41, did not apply to a sub-distributor, or vender. It was quite clear that Mr. Stephenson's license to sell stamps did not constitute him a distributor. Betwixt the distributors and venders there was a material difference. The distributor was accountable to government for the stamps which he sold; the vender purchased stamps and paid for them, and did whatever he chose with them. The license to sell stamps he was entitled to on applying for, and the only object of it was to give a certain bond that he would not buy stamps of persons who had stolen them. The statute enabled any person whatsoever to buy stamps and sell them again who could give the necessary security; and the whole object of that security was that none but legal stamps should be sold. The venders of stamps were totally independent of government.

Mr. Stephenson said, my contract is under Mr. Reynolds, the distributor himself. If I were to neglect a payment Mr. Reynolds would be answerable for the loss.

The court decided that the case did not come within the meaning of the Act, and the name must be retained.

City of London, 1835. Post-master.

Thomas Denny was objected to on the ground that he was disqualified by reason of his employment as a twopenny post-office keeper.

In support of the objection, Mr. Rowcroft produced a witness, Thomas Howell, who proved that he had waited upon Mr. Smith, the head of the twopenny-post department, who had informed him that the claimant had held the office of twopenny post-office keeper for upwards of twelve months, and that he had been appointed thereto by the Postmaster-General. Mr. Smith expressed his surprise that this claim should have been made, inasmuch as all persons similarly situated with Mr. Denny had been served by the post-office with a cautionary circular, informing them that they would be liable to a penalty of 100*l.* if they exercised the elective franchise *.—Name expunged.

City of London, 1835.

Mr. Thompson (R. B.) recommended that, when it could be done, the lists should be signed by all the overseers of the parishes from which they were sent.

Lists of Electors, 1832.

On production of the list by the overseers of Birmingham, Mr. Thomas Eyre Lee objected that it was not a proper list, inasmuch as it was only signed by twelve overseers. In Birmingham there was a local Act for the government of the poor, called the Guardian's Act, by which 108 persons were appointed guardians of the poor, and were a corporation, and as such, were required to fix their common seal to any document of a legal nature. This had not been done in the present instance. By the act there were twelve persons appointed annually, who were to act as overseers in the levying of rates, &c.; but he contended

Birmingham, 1835.

* The committee will not entertain an objection to a registered voter on the ground that he is in the employ of the post-office, the objection not having been taken before the revising barrister. New Windsor, K. and O. 178.

Birmingham 1835. Lists of Electors.

that not they alone, but a majority of the whole body of guardians ought to have signed the list, or rather to have affixed their seal.

Messrs. Bassevi and Kenyon (R. B.) on reference to the local Act said, that by the 79th section of the Reform Act, the words "overseers of the poor," extended to all persons who by virtue of any office or appointment shall execute the duties of overseers of the poor, by whatever names such persons may be called, or however appointed*. The twelve persons who had signed

* Upon examining the Northwood list, it appeared that the words "in respect of property occupied in the parish of Northwood" were omitted, that the name of the parish did not appear any where on the face of the list, and that it was signed only by Mr. Ayrton, who was stated to be merely the clerk to the overseers. The court was of opinion that it was competent, under the 50th section, to supply the words omitted in the heading of the list; that the fact of the list being delivered in by the overseers of Northwood as the list of persons entitled to vote for the borough of Newport, was sufficient to authorize the court to receive the paper, as containing a list of voters in respect of property in that parish; and that the signature of the overseers, though it was a form with which the overseers were bound to comply, was not essential to the validity of the registration. Manning's Notes of Revision, 143.

It was objected, that the list of the parish of St. Nicholas, in the borough of Newport, was not such a list as would satisfy the 44th section, which directs "the overseers to sign each of such lists." Two overseers were elected for the parish; one (Mr. Blatchford) for the part within, Mr. Lock for the part without the borough. The acting overseer within the borough was Mr. Atkey, a person not elected by the parish, but appointed and paid by Mr. Blatchford. The list was signed by Mr. Atkey in his own name and also in the name of Mr. Lock, under a general verbal authority to use his name as overseer. Mr. Manning said the overseers are elected for the whole parish, and have authority throughout, though particular districts are allotted to them. That part of the statute is merely directory, and I do not consider it is such an informality as will vitiate the proceedings. I think I am bound to receive any list produced by the overseers, as the list of persons claiming in respect of property in their parish. Manning's Notes of Revision, 15[illegible].

the list did so execute the duties of overseers of the poor, and not the 108 guardians. They were of opinion the lists were properly signed.

Birmingham, 1836. Lists of Electors.

Mr. Charles Pearson applied to the court, to know whether misnomers in the list invalidated the claims of the parties.

Errors in the lists to be corrected by a reference to the rate-books, 1832.

Mr. Russell (R.B.) replied, that errors in the original list were to be corrected by a reference to the rate-books, on the parochial officers undertaking to swear that they had made the mistake, if the evidence of the overseers and the rate-books coincided; but errors in the rate-books were fatal to the claimants at all times, as the revising barrister had no power to have such errors rectified.

A list was produced, containing the names of several inhabitants of the parish of Bisham, in the county of Berks, as entitled to vote for the borough of Great Marlow. The parish of Bisham is, by the Boundary Act, included in that borough. The list merely stated the names of the claimants, without their qualifications or residence. The parties did not attend to support their claims, and in the absence of the overseer, and all information on the subject, the revising barrister expunged their names.

Borough of Great Marlow, 1833.

Mr. Harris requested the court to examine the overseers, as to their neglect in not making out the proper lists of voters as prescribed by the 44th section of the Act, and submitted that, under the 50th section of the Act, the barristers had the power of examining the overseers as to the performance of their duty.

Borough of Abingdon, 1832.

Mr. Corbett said the only question they could ask the overseers was, whether they had made out any list

Borough of Abingdon, 1832. Lists of Electors.

of persons entitled to vote as 10*l.* householders? Having accordingly put that question to the overseers, he received a reply in the negative.

Mr. Harris suggested that the overseers should be asked whether they had not received instructions from the Secretary of State, and a copy of the Reform Act; and that they also should be required to state their reasons for not making out the lists in question.

Mr. Corbett observed, that he and his colleague did not sit there in judgment on the overseers. If they had neglected to perform their duty, they were responsible to another tribunal for such negligence. If a voter could show that he had made a claim in writing to the overseer, of course the overseer had no right to disfranchise him.

Mr. Harris said he would proceed with the case of Mr. William Ames, who had claimed to be placed on the list of 10*l.* occupiers, and if he failed to establish that, he would resort to his claim as a scot and lot voter.

Evidence was then given that the claimant was an occupier of a house within the borough, for which he paid 19*l.* per annum; that all rates and taxes due up to the 6th of April had been paid before the 20th of July, and that he had served the overseers with a claim in writing to be placed on the list of 10*l.* occupiers.

Mr. Graham contended that no 10*l.* list had been made out, on which the occupier's name could be placed.

Mr. Corbett, after consulting some time with his learned colleague, said this claim raised a very important question, and that, as they wished to give it every consideration, they would defer the decision upon it until the next day.

Borough of Abingdon, 1832. Lists of Electors.

Mr. Harris observed that there were more than fifty claims involved in the decision of this question.

In answer to a question on another case, subsequently before the court, the overseer stated that the last rate made previously to the 31st of July, was published on the 22d of that month, and that they did not begin the collection of it until the 27th.

Mr. Harris, in reference to those cases, the adjudication of which had been postponed by the court till the next day, proceeded to contend that the rate published on the 22d of July was not legally due on the 31st of that month, and therefore that that rate should not be taken into account in deciding these cases. He grounded his argument on the 54th George III., c. 170, by which no person could be distrained on for the payment of rates until seven days after they had been legally demanded, and he maintained that as this rate was not demanded until the 27th of July, the seven days at the end of which it would have been legally due, had not elapsed until after the 31st of July. He referred to several cases in support of his argument; and in conclusion observed, that the overseers had in this borough postponed commencing the collection of the rate until it was almost impossible for many persons to know that a rate had been made, and that as many were out when the collector had called, the overseers had intentionally caused the names of very many persons, lawfully entitled to vote, to be kept out of the list.

Mr. Corbett said, that the seven days allowed by the Act before distress could be made, did not preclude the rates from being legally due during any part of that period.

On the following day, in pronouncing his decision, Mr. Corbett said, that with regard to the case of Mr.

Borough of Abingdon, 1832. Lists of Electors.

William Ames, claiming to be put on a list as a 10*l.* voter, which they had yesterday postponed, for the purpose of looking into the Act of Parliament on the subject, they were, after having given the point the fullest consideration, of opinion, that though the overseers had made out no list of 10*l.* householders, yet that as the claimant had complied with the provisions of the Act of Parliament, and as he had proved his qualification as a 10*l.* householder, he was entitled to be put upon a list of voters.

Mr. Graham asked upon what list the barristers would insert the name of the claimant?

Mr. Corbett.—We shall return him as a 10*l.* householder to the returning officer.

Middlesex, 1834. Omission of overseers.

The overseers of Allhallows, Lombard-street, neglected to make any list for the current year, although the register contained the names and descriptions of three electors, viz., James Carter Pollen, Bedfordshire; George Knight, Harwell Vicarage, Abingdon, Berks; and Richard Fountayne Wilson, Melton, near Doncaster; the overseers conceiving that because the electors had not sent in any claim for the current year, they were not required to insert or continue their names on the list.

Mr. Coventry (R. B.), after conferring with Mr. Keen, said, that as the court was one of equity as well as law, he was strongly inclined to insert the names of the three gentlemen in question, as otherwise they would be disfranchised for the year. The limited provisions of the 50th section however interposed, as the power was explicitly confined to mistakes contained in, or omissions from the list. In this case there was no list returned, and it required some proof, either by the overseers or the tenants in possession of the property

in right of which the claim was made, to satisfy the court that the gentlemen whose names were omitted still retained the same qualification. In the absence of any list and of such proof the names could not be inserted, and the overseers were exposed by their neglect to the penal liability imposed by the 76th section of the Act.

Middlesex, 1834. Lists of Electors.

Mr. Keen (R.B.).—The 43d section enacted, "that if it shall happen that any person shall give to the overseers of the parish due notice of his claim to have his name inserted in the list of voters at the election of knights of the shire for any county, &c., and shall have been omitted from any such list by the overseers, it shall be lawful for the barrister upon revision of such list to insert the name of the person or persons so omitted, in case it shall be proved to the satisfaction of such barrister that such person shall have given due notice of claim to the overseers, and that he was entitled on the last day of July then next preceding to be inserted on the list of voters," &c. This clause no doubt applied strictly to the case of new claimants; but there was nothing to prevent its application, upon an equitable construction, to the case of voters already upon the register, whose names had been accidentally omitted by the overseers, if it should be found to the satisfaction of the barrister that due notice of claim had been given, and that the person whose name was omitted was entitled to be inserted in the list of voters on the preceding last day of July. Now he conceived the original notice of claim in the present cases was sufficient proof as to the first point, for the 37th section expressly provided "that no person whose name shall be upon the register for the time being shall be required thereafter to make any claim, so long as he shall retain the same qualification, and continue

Middlesex, 1834. Lists of Electors.

in the same place of abode." As to the second point, he was of opinion that a county voter on the register of last year was entitled to be inserted in the list of voters made out on the 31st day of July, subject to the right of the overseers to object in the required form—namely, by writing the words "objected to" against his name, and he (Mr. Keen) had frequently, in the course of the circuit, inserted the names of voters registered last year upon the oath of the overseers, that their names had been accidentally omitted, that they continued in the same place of abode, and that, to the best of their knowledge, the party retained the same qualification. He conceived further, that upon satisfactory proof that the overseer (the only person who could, previously to the 31st of July in each year, object to a registered voter) had no ground of objection, such voter was entitled to be inserted in the list of voters on that day, and therefore the revising barrister had the power of inserting the name of such party under the 43d section, supposing that section to be applicable to the case of registered voters as well as new claimants. He felt bound, however, to say that there was some difference of opinion upon that point between his learned colleague and himself, his learned colleague agreeing as to the sufficiency of the original notice of claim, but holding that further proof was necessary besides the testimony of the overseers that the voter whose name might have been omitted retained his qualification. Upon either construction of the clause, third parties would be precluded from their right of objection after the publication of the lists; but that was a necessary consequence of the powers given by the 43d section, and no practical inconvenience resulted from it; for it was remarkable that in their progress through the entire county not a single in-

stance had occurred of an objection being taken by a third party, all the objections having been made by persons constituted by the Act the official objectors—he meant the overseers. In the case of this parish, however, there was no list with which the court could deal, and consequently his learned colleague and himself were deprived of the opportunity of resorting to a remedial application of the 43d section of the statute.

Middlesex, 1834. Lists of Electors.

Mr. Copland objected to the reception of the list for the parish of Rettendon, on the ground that it had only been signed by Mr. James Moore, the assistant overseer, instead of a majority of the parish officers.

South Essex, 1835. Overseers' Lists.

Mr. Moore, in examination, said that his name only was affixed to the list which was placed on the church door. The list he delivered to the high constable was a true copy, except that it contained the signatures of two other parish officers.

Mr. Copland said this was not such a list of voters as the court could revise. It ought to have been signed by the majority of the officers, without which it could not be legal.

Mr. Reynolds (R. B.) said he did not think that the revising barrister ought to go into all those acts which were to be done by the overseer, the high constable, the clerk of the peace, and other persons ministerially under the Act, because a greater duty would thus be imposed upon them than the law intended. It would compel the overseers to be more accurate than they had been of late in the performance of their duty, but it would impose on the revising barristers other duties than, for the purposes of this Act, it would appear they were intrusted with, and would, he thought, be acting in a manner more strict than the Act required. As to putting the names of the overseers on the lists,

South Essex, 1835. Lists of Electors.

that ought to have been done before they were placed upon the church door; but whether signed or not, the list was sent to the high constable, and by him to the clerk of the peace, who attended to present it, and then the duty of the revising barrister commenced. It was clear that the 43d section did not direct the barrister to look whether the lists were made out in a proper way or not, but he was to receive the lists as delivered to him. The Act provided that the barrister should not strike out the name of any person unless he was objected to, and the want of qualification made out to his satisfaction; now on this list there were many names not objected to, and if he rejected the list he should be striking out the whole, which he could not take on himself to do, because it would be an act of great injustice, besides going farther than the Act intended. Every person in a parish was not compelled to see the overseers had properly signed the list—he might not know their names—he might not reside in the parish, and even if he did, he would have no means of remedying the defect—he would be deprived of his vote, and his only remedy would be against the overseer, as given him by the Act of parliament. It would be a gross injustice to reject the list, and unless the Act compelled him, he considered it his duty to proceed and revise the list.

Borough of Abingdon, 1835.

A voter, of the name of Shellar, desired in the first instance to be put on the list as a scot and lot voter; but as it appeared he had not paid his rates up to the 31st of July, that claim was given up.

Mr. Harris then proposed to prove the right of the claimant to claim as a 10*l.* householder.

Mr. Graham asked, if, when a person forfeited the right reserved to him as a scot and lot payer, he could

fall back on the other and new right created by the Act of Parliament?

Borough of Abingdon, 1835.

Mr. Corbett said, that a voter could certainly claim in respect of the two rights, and if he should prove his qualification under the Act as a 10*l.* householder, he was entitled to the franchise.

It was proved by the vestry-clerk, that the house of the claimant was one of the 450 houses in the borough of Abingdon which had been returned to government as 10*l.* houses. The claim was accordingly allowed.

A list of the 10*l.* occupiers, who had complied with the requisites of the Act of Parliament, was then made out by the barrister.

Ripon, 1835. Lists of Electors.

Mr. Prest submitted, that, under the Reform Act, the overseers were bound to post the notices on the doors of dissenting chapels as well as those of churches; if otherwise, how would persons who did not attend the church service have the means of seeing that they were objected to?

Mr. G. B. Jones, assistant overseer, deposed that he had duly posted copies of the several lists handed in, on the doors of Ripon Minster, of Trinity Church, and of Magdalen Chapel, on the days required by the statute, but not upon the dissenting chapels, as Mr. Mathews had told him that that was unnecessary.

Mr. Clarkson (R. B.) said, he was clearly of opinion that that was sufficient: the chapels spoken of were *ejusdem generis*, and meant chapels of ease to the Establishment.

Mr. Heigham (R. B.) concurred in that opinion.

West Kent, 1835. Misdescription.

Mr. Thomas Page, of Olive-court, Bowling-street, Westminster, claimed to vote in respect of four free-

West Kent, 1835. Lists of Electors.

hold houses, one of which was tenanted by Mr. John Acton, and used as the post-office.

The qualification was said to be "house and premises." In answer to questions by the revising barrister, the claimant stated that the property in question was freehold, and had been left to him by his uncle. He (claimant) had been possessed of it for the last six years, and the house which he now claimed to vote for was let upon a twenty-one years' lease to Mr. John Acton, and was above the value required by the Act to entitle a person to vote for members of parliament.

The overseer of Bromley here handed in the original claim, which set forth that the property was "a house and premises."

Mr. Fish (R. B.), decided that the claimant's name must be struck out of the list, in consequence of his not having placed the word "freehold" or "leasehold" before "house and premises."

Leeds, 1835.

Thomas Davison was registered for a house and shop, in Walker's Yard, East-street, and was objected to.

The claimant stated, that he occupied a house, shop, and yard, for which he paid 18*l.* a-year. The shop was in the yard, which had no gate, and had no internal communication with the house. The yard was used as a wood yard, and there was no way into the shop from the house, without going into the yard.

Mr. Bond contended, that as the "yard" was not contained in the description of the qualification, the shop was separated from the house, and therefore the qualification was not such as to confer a vote, neither house nor shop alone being of sufficient value.

Mr. Richardson applied to the court to have the yard added.

Leeds, 1835. Lists of Electors.

Mr. Clarkson (R. B.) said, that the overseer was bound to state, in the lists of voters, the qualifications of the parties; and in this case the qualification, as it appeared on the rate-book, was "house, shop, and yard." The court had power to correct any mistake in any of the lists, as to any of the particulars required to be inserted in the said lists, and therefore he should hold that this was one of the particulars contemplated by the legislature, and make the correction by adding the word "yard." *

The correction was then made, and the claimant's name retained.

A claimant was entered on the list as "Joseph" Elvin, instead of "Joshua" Elvin. On reference to the rate-books, it was difficult to ascertain whether the assessment was in the name of "Joshua" or "Joseph." †

Shoreditch, 1832.

The court allowed the correction to be made.

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* The name of Henry George was inserted in the register for a qualification he did not possess, on the 31st of July, although he had a good qualification, which was omitted by the misconduct of the assistant overseer. The committee directed his vote to be put upon the poll, though it had been rejected by the returning officer. New Windsor, Knapp and Ombler's Rep. 163.

† An elector was registered in the name of William James Crouch, his real name, as it appeared on the poll, being James Thomas Crouch. The committee allowed evidence to be given, to prove that James Thomas Crouch was the person intended to be registered. Southampton, Perry and Knapp's Rep. 230.

William Morris and James Turner were entered on the register under wrong Christian names. At the poll they stated they were the persons intended to have been described on the register, but their votes were rejected by the returning officer. The committee directed their votes to be placed on the poll. New Sarum, Ibid. 261.

City Registration, 1832. Lists of Electors.

In one case, where the Christian name and place of abode were both incorrectly entered in the list, the court decided that two such mistakes could not be altered.

Overseers are not authorized to make any alteration in lists after publication.

The overseer of the parish of St. Alban, Wood-street, presented the list of voters which had been placed on the door of the parish church. The names of two persons had been struck out of the list by the overseers, in consequence of their not having given the necessary notice to be placed on the parish books as rate-payers, within the time prescribed by the Act.

Mr. Thompson (R. B.) said, that making any alteration in the list placed upon the church door was highly improper; he had acted wrong, in not swearing the overseers to present him with correct lists of voters, as they had been placed on the church door. If he should have any doubt of the correctness of any of the lists in future, he should certainly adopt this course. He could not enter now into the cases of the two persons whose names had been erased, but desired the churchwardens to return him a correct list; as the names had been placed in the original list by the overseers, and no notice of objection given to the parties, they must be retained.

A correct list was subsequently presented, including

The claimant, Richard Terry, was rated and registered in the name of William Terry, by mistake of the overseer. The misnomer was fatal. Name expunged. Manning's Notes of Revision, 110.

It was proved by the town clerk, that "Robert Batt" possessed the qualification attributed in the register to "Richard Batt," and that there was no other person in the town of either of the names who could have been entitled to be registered except Robert Batt. The Committee directed the vote to be added to the poll. New Windsor, Knapp and Ombler, 168.

the two names which had been erased, and which the court decided should remain on the list.

City Registration, 1832. Lists of Electors.

Amongst the names which appeared on some of the lists, were those of claimants who had been added to the lists after they had been taken from the church doors.

Mr. Sandys (R. B.) directed all such names to be struck out, and the erasures marked with the initials of the overseers.

Mr. Joseph Neeld applied to be entitled to a vote for the borough, his name having been omitted from the list of voters. He stated, that he sent in his claim to be inserted in the list of voters for the borough, accompanied by a shilling. His name appeared in the list of voters in the eastern division of the county of Surrey, with the words "objected to" written in the margin against it, and the revising barrister had expunged it. One of the overseers explained that the name was inserted in the wrong list, by mistake.—Claim rejected.

Marylebone, 1833. 50 §, 2 W. 4, c. 55.

Mr. Sawyer, of East-street, claimed to be inserted upon the list of voters in the parish of Marylebone. It appeared, upon inquiry, that the claimant had paid his rates and taxes within the period specified by the Act, and had actually been returned by the overseers as a person entitled to be put upon the list, but, owing to an omission upon the part of the printer, to whom was entrusted the printing and publishing * of

* The committee permitted printed copies of the lists produced before the barrister to be given in evidence. Carnarvon, Perry and Knapp's Rep. 459.

Marylebone, 1833. Lists of Electors.

the lists to be affixed to the church doors, the name had not appeared in the list so posted.

Mr. Coventry inquired if the claimant had given any notice of claim when he found that his name did not appear on the lists.

The applicant answered, that he had certainly given in no claim, because he thought that, having paid all his rates and taxes, he had sufficiently and completely fulfilled all that was required of him by the Act.

Mr. Coventry said, that by the 50th section, the revising barrister, with reference to borough voters, was empowered, upon due proof of claim and qualification, to insert the names of claimants improperly omitted; but the section concluded with an express proviso, that no person's name should be inserted by such revising barrister, or should be expunged therefrom (except in cases of death, of omissions of the christian name or qualification), unless notice should be given according to the provisions of the Act. Under such circumstances (the claimant having omitted, by the service of a notice, to cure the mistake) the claim must be disallowed.

Mr. Petcher, of East-street, subsequently claimed under similar circumstances, except that on discovering the omission, he had sent a note to the overseers, calling their attention to it.

Mr. Coventry (R. B.) held that this was a sufficient notice of claim, though it might not have been in the terms specified in the Act, and therefore he should allow the claim.

Omission.

Sir Samuel Whalley, M.P., appeared on behalf of Mr. Sawyer, whose claim had been disallowed, on the ground that, after his name had been omitted by the

overseers in the lists posted on the church doors, he had neglected to give notice to those officers, calling upon them to insert his name; and said that on reference to the 50th section of the Act, upon which the judgment of the court seemed to have been based, he thought, taking it with the other provisions, it was capable of an entirely different construction from that which the court had adopted. He (Sir Samuel Whalley) thought the proper construction to be put upon the clause was, that a notice of claim was only necessary in cases where the overseers objected to put a party upon the list, and by that notice the claim would be adjudicated upon by the revising barrister; but it never could have been in the contemplation of the Legislature, that when the name of an elector was omitted by the laches of the parochial authorities, in default of giving a notice to them, he should be disfranchised. Such a construction as the latter would lead to dangerous effects, particularly where an overseer might happen to be a party man; in this case, however, the error was quite accidental.

Marylebone. 1833. Lists of Electors.

Mr. Coventry (R. B.) said, that since deciding the point, he had discussed it with his learned colleague, Mr. Sandys, and the result of that consideration was, that they had determined to construe the Act liberally, as otherwise a great injustice would be done to many individuals who were similarly circumstanced with Mr. Sawyer; and therefore, as he had not yet signed the list, the name of that gentleman would be restored.

It appeared that the names of a number of the electors were omitted from the lists. On discovering the omission, the parties applied to the overseers on the subject.

Omissions in lists.

The overseers, or rather the persons actually em-

Marylebone, 1833. Lists of Electors.

ployed in making up the lists, instead of directing the applicants to put in a written form of claim, in many instances had observed that the omissions had arisen from mistake, and that they (the overseers) would take the necessary steps for having the claimant's names duly registered. In pursuance of this undertaking, the overseers had actually prepared and delivered into the court a list of claimants, which on the face of it appeared to be strictly regular, but a difficulty presented itself to the mind of the court, arising from the absence of any written claim on the part of the voters, pursuant to the provisions of the 47th section of the Act *.

Mr. Coventry, (R. B.) after conferring for some time with his learned colleague, said that the number of claimants who appeared to be in this situation was very considerable, and their exclusion would materially affect the constituency of the borough. He was of opinion, that as the parties had, in fact, taken initiatory measures towards securing their franchise, and had only been prevented, in all probability, completing those measures in the manner prescribed by the Act, by the representations of the overseers, who were the proper authorities for receiving claims, and preparing lists therefrom, the court would be justified in considering that the spirit of the Act had been sufficiently

* The list published on the church doors, contained the name of Samuel Dawson, and no objection had been made to it. This name was omitted from the list produced before the revising barrister, and signed by him; it did not therefore appear on the register. At the election, Dawson tendered his vote, and the returning officer refused to receive it, as his name was not on the register. The committee resolved, that Samuel Dawson had a right to vote at the election, and ought to have been on the register, and placed his name on the poll. Southampton, Perry and Knapp's Rep. 229.

Marylebone. 1833. Lists of Electors.

complied with, and that claimants in this situation might be admitted on the lists, upon proof, to the satisfaction of the court, that in other respects they were duly qualified. He, at the same time, wished it to be distinctly understood, that the court, in coming to this decision, by no means adopted the principle, that a claim could, under any circumstances, be entirely dispensed with, or that the present decision should be drawn into a precedent on future occasions.

Sir William Henry Richardson claimed to be inserted upon the list of voters for this parish. He had been on the register of last year, but his name had been omitted (he presumed inadvertently) from the lists now under revision.

Mr. Coventry inquired if Sir W. H. Richardson had made any claim, written or otherwise, to the overseers on discovering the omission.

Sir W. H. Richardson said he had made no sort of claim, nor could he do so, for at the time the lists were posted he was in Switzerland.

Mr. Coventry (R. B.) said, that no claim whatever having been made, he could not accede to the application now.

Sir W. H. Richardson thought it was extremely hard to be thus disfranchised by the omission of the parochial authorities. He should hope that, following the decision of the court in the case of Mr. Sawyer, which he contended was analogous to his own, his claim would not be rejected.

Mr. Coventry said, the case of Mr. Sawyer was very different, for he, on discovering the omission, applied personally to the overseer, who had undertaken to cure the error, and who had actually returned Mr. Sawyer's name in the list of claimants. In the case before the court now, no claim whatever had been made, nor did

Marylebone, 1833. Lists of Electors.

Sir W. H. Richardson's name appear in the list of claimants returned by the proper authorities; under such circumstances he felt bound to disallow the claim.

Sir W. H. Richardson said he should of course bow to the decision of the court, but he was determined, by petition, to bring the provisions of the clause by which his franchise had been thus affected, under the consideration of the House of Commons.

City of Westminster, 1835.

The overseers of St. George's, Hanover-square, stated that they had made out a correct list of all the persons who were considered entitled to vote as scot and lot voters. These were made out on the Friday, and the printed lists were to be upon the church doors on the Sunday; in the hurry of the printer, however, he had omitted all the names under the letter H, being twenty-six in number. The overseers advised the parties of the mistake as soon as it was discovered, and expressed themselves willing to correct it, by placing the names on the lists of claims, which they did, and they were put on the church door. In consequence of this the parties made no claim in writing to have their names inserted. No objection was made to the names so put up.

Mr. Craig (R. B.) said that the Act was specific as to the course which a party whose name was omitted by the overseers should take, and it was, that he should give notice in writing of his claim "according to the manner and form hereinbefore described." The only question then was, how far the written communications which passed between the overseers and the omitted parties could be said to be virtually a claim.

Evidence of these facts was given, and also that portion of the manuscript list which the printer had omitted. It was added, that notice was not sent in to them by the overseers till the 9th of October.

Mr. Craig (R.B.) said that the legislature might have said that publication on the list of names should be taken as conclusive evidence of a claim having been made, but it had said no such thing. The 50th section said distinctly that no name should be placed on the register by the revising barrister of any party who had been omitted by the overseer, unless such party had given a notice in writing of his claim to be so placed. In the face of a direct enactment of that kind, he could not take upon himself to insert the names of parties who had not given any such notice. However much he might regret that these gentlemen should lose their votes, he found that he had no right to interfere in it, and must decline to insert the names.

City of Westminster, 1835. Lists of Electors.

The revising barrister was furnished with the original manuscript list of the electors of the united parishes of St. Andrew, Holborn, and St. George the Martyr, duly signed by the overseers; but it appeared on enquiry that the lists which had been posted on the church doors were printed, and had been altered considerably by the insertion and omission of several names.

Finsbury, 1834.

Mr. Sandys (R. B.) said he should insert in the list returned by the overseers the names of all whose claim could be substantiated. He was justified in that decision by the determination of the committee of the House of Commons in the Southampton case, Perry and Knapp, 226, 51.

In the lists of this parish the names of Messrs. Gliddon, Jones, and Toller, although entered in the register of last year, were omitted by the overseer by mistake. The overseers applied to insert them.

St. Andrew's, Holborn, 1834. Omissions in lists.

Mr. Coventry could not admit them without proof of

St. Andrew's, Holborn, 1834. Lists of Electors.

two things—first, that they had given due notice of claim; and, secondly, that they were duly qualified to vote on the 31st day of July last. As to the claim, he considered the notice given on the first year's registration sufficient, but as to the qualification, he admitted some doubt might be entertained. The words of the 43d section were "entitled on the last day of July," and not "qualified," but he construed the word "entitled" in that section as "qualified," for if "entitled" were taken in its strictest sense, the parties being on the register last year were entitled to be placed on the present list, without inquiry as to qualification, which might turn out, as in all these cases, insufficient on the face of them. They were leaseholders, whose tenants had votes for the borough, and as such were not qualified, and therefore not entitled to be on the list at any time; it was therefore necessary to go into the qualification, in order to show that the party was entitled. The mere circumstance of their being on the register last year did not alone appear to him, under such circumstances, to be sufficient to justify him in inserting the names without proof that the parties still retained the same qualification.

The overseers were not prepared to supply the proof, and their application to remedy their omission failed.

Southwark, 1835.

In making out the list for the parish of St. Mary Magdalen, Bermondsey, the overseers omitted the names of two persons who occupied a house as joint tenants. The overseers stated that they considered that for the purposes of the Reform Act they were bound to judge of the value of a house by the amount at which it was rated in the parish books. They admitted that the house in question was of the yearly value of 30*l.*, but finding it rated at only 19*l.* in the pa-

rish books, they omitted the names of the two occupiers from the list of voters, because that sum would not give an amount of 10*l.* to each occupier, as required by the Act.

Southwark, 1835. Lists of Electors.

The court said that the franchise depended, not on the amount at which a house is rated, but on its *bonâ fide* value.

The name of one of the occupiers, who had taken the precaution to send in a claim, was accordingly inserted in the registry.

In the case of James Huggins, Mr. Ware stated that the claimant was a cashier in the Bank of England; he (Mr. Ware) having occasion to visit the Bank, made out a claim there for Mr. Huggins, but on his way home he lost it.

Where the elector's claim was lost by the overseer, the name was allowed to be inserted.

The court, on the evidence of Mr. Ware, allowed the vote.

Mr. Wainwright, one of the overseers of the liberty of Saffron-hill, &c., stated that the names both of himself and his colleague were omitted in the original lists, and that they were omitted under the following circumstances:—He and his colleague thought they were qualified to vote for the county, and inserted their names in the list for the latter; but, discovering that they were in error, they erased their names, and put them into a copy of the original list of voters for the borough. This occurred between the first and second Sundays in September, and they pasted the second list, which contained their names, over the first, which had been previously fixed and exhibited on the church door. They hoped that after this explanation the court would be induced to allow all their votes.

Finsbury, 1832. Omission to claim.

Finsbury, 1832. Claims.

Mr. Russell (R. B.), understanding that they gave no notice of claim, and that their names were not published in the list of claimants, which itself was not exhibited until the 4th inst., said he feared he could not assist them.

Mr. Hammond referred to the case of the inhabitants of Ely-place, and contended that the overseers were precisely in the same situation, and he could not see, since the one had been allowed, why the other should be refused.

Mr. Russell (R. B.) said there was a broad distinction between the cases; the overseers were not to prejudice other persons by their neglect, though they might affect themselves thereby.. They could certainly not complain, since they suffered by their own error, whereas others, who had lost their franchise by their neglect might complain, and not unreasonably. They ought to have obtained proper assistance in the performance of their duty, which was a very onerous one, and then such errors would not have occurred. Claim rejected.

Claims to be placed on the lists of electors must be in writing. 1832.

Out of thirty claimants for the united parishes of St. Andrew-above-Bars and St. George the Martyr, two-thirds were rejected, because they had not given in a written notice of claim to the overseers. It appeared that a list was exhibited on the church doors, and the claimants, on discovering that their names were omitted, called upon Mr. Stillworth, the vestry-clerk, who inserted their names, &c., in a printed copy of the first list, which was removed, and this amended list exhibited in its stead.

Mr. Russell (R. B.) revised the original list, and the amended list was produced, containing the names

omitted in the former; the claimants contending that the barrister ought to accept it as a document every way sufficient to support their claims. Mr. Russell said there was nothing upon the face of that document to lead him to conclude that it was a list of persons claiming; on the contrary, it was entitled "A list of persons entitled to vote," and it was a document of which he could take no cognizance.

Finsbury. 1832. Claims.

The Rev. Dr. Birch, who was one of the claimants, said, he and others of the claimants, when they called upon the vestry-clerk, asked him if it was necessary for them to give a written notice, but he answered in the negative, and contented himself with putting down the names of the parties so calling upon him. He (Dr. Birch) would contend that the insertion of his name in the amended list by Mr. Stillworth, who acted as his agent, was a good claim, for it was quite evident that there was a difference between the names written and those printed, and the distinction was, that the latter formed the original list, and the former were the claimants.

Mr. Russell (R. B.) was sorry he could not assist the claimants; it appeared that they did not know that a written claim was required by the Act. In the Tower Hamlets he remembered, that in one of the parishes the overseers kept a list of persons who called upon them, and claimed within the time specified by the Act; but this was delivered to him as so many claims, and was entitled "A list of persons claiming," &c., and therefore he admitted it; but it was a very different document from the one now before him. He advised the claimants to tender their votes at the poll, and if there was an election petition, his decision would be re-considered, and the question properly tried.

Tower Hamlets, 1834. Claims.

Mr. Hanks, one of the overseers of St. John's, Hackney, applied to have his name inserted in the supplementary list, as it had been omitted in that which appeared on the church-doors. Mr. Hanks being himself an overseer, had conceived that a written notice of claim was unnecessary.

Mr. Sandys (R. B.) said there were five other overseers, on whom the notice of claim might have been served, and the law made no distinction in his favour. The claim must therefore be rejected.

City of London, 1832.

Mr. Tripp claimed to be put upon the registry in respect of a house in his occupation, situate in Duke's-place.

Mr. Thompson (R. B.) inquired if he had given any notice to the overseers of the parish in which the house was situate.

The claimant replied that he had made a claim to the tax-collector to whom he paid his rates, who had told him that, having paid his rates, all would be right.

The overseers expressed a doubt as to whether the rates had been paid by the claimant, upon which the latter produced his receipt.

Mr. Thompson (R. B.) said, that it was necessary, pursuant to the provisions of the Reform Act, for each person claiming a right to vote to make application in writing, in the form prescribed, to the overseers, and, in the absence of any such written application, he must now disallow the claim.

Tower Hamlets, 1833.

The vestry-clerk of St. John's, Wapping, applied to the court, to know whether the officers and servants of the London Dock Company were entitled to be registered. By virtue of their offices, they occupied

houses on the premises of the company, rent free, and were rated to and paid the poor-rates, but the king's taxes were paid by the Dock Company.

City of London, 1833. Claims.

Mr. Chapman (R. B.) said, that the question had been decided in the case of the officers of the British Museum, on the preceding day, on the principle that though no rent was actually paid, yet the services of the individual was an equivalent consideration. The present case was even stronger than that of the British Museum, for here the parties were actually rated to the poor-rates. He must hold that these were good votes.

The vestry clerk applied to have them inserted in the list; but it appeared that no written claims had been made by the parties.

Mr. Chapman (R. B.) said, as they had not claimed to be registered, he had no power to place their names upon the list.

Mr. Griffith, a claimant in St. George the Martyr stated, that his name appeared in the original list, as drawn out by the overseers, but subsequently a pen had been drawn through it.

Mr. Stillworth, the vestry clerk, explained, that in reviewing the list, it was discovered that the name of Charles Griffiths was entered twice, and believing that it was a repetition of the name of one person, the overseers erased it, not knowing there were two persons of the same name.

The claimant urged, that his name should be inserted as the parochial authorities admitted that they had expunged his name under an erroneous impression.

Mr. Russell (R. B.) having found that the claimant had not given in a written claim, decided against him.

Claim by signature of initials void.

A name, entered R. M. Dowthwaite, was struck out, as a total omission, under the 42d clause. Another name was entered John F., with the surname; this was allowed, one Christian name being decided to be sufficient *.

City of London, 1835. Claim by deputy.

The claim of Mr. Thomas was objected to, as having been signed by his brother for him during his absence from town.

Mr. Craig (R. B.) said as the brothers were in partnership, there was sufficient to justify him in considering that the brother was authorized to sign for the claimant. Name retained.

Verbal claim void.

In a claim made by Mr. Wild, of Southampton-street, who had paid all his rates and taxes by the prescribed period, and given a verbal notice to the vestry-clerk, without paying a shilling, it was decided the applicant could not be registered.

St. John's, Hackney, 1834.

A supplementary list of thirty-three rate payers, whose names had been by mistake omitted in the printed list, was presented to the court. On enquiry, it appeared that only seven of the parties had made their claims in writing; twenty-six who had claimed only verbally were therefore rejected.

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* Notice of claim was delivered, signed T. Leary, by Charles Allen, his agent. The Court said that, independent of the omission of the local description of the property, the claim would have been defective in not stating the Christian name of the claimant at full length, and thereby enabling the overseers to insert such Christian name in the first column of Schedule 1, No. 6, which requires the Christian and surname to be set out. Manning's Notes of Revision, 101.

The following notice was served on the overseers of St. George's-in-the-Fields:—"John Grint, of 66, New Compton-street, claims to have his name inserted in the lists of borough voters for this year, the poor and king's taxes having been paid previous to the 1st of July, 1834."

Finsbury, 1834. Claims.

The vestry-clerk objected that the notice did not contain a sufficient description of the property in right of which the claim was made.

Mr. Sandys (R.B.), on the authority of the decision of the committee in the New Sarum case, *Perry and Knapp's Rep.* 247, decided that the notice was sufficient.

Mr. John Richardson claimed in right of certain property in Star-alley. It was objected that his notice of claim was insufficient, as it did not state his place of abode.

City of London, St. Olave, 1835. Claims.

Mr. Craig (R.B.), in pronouncing his decision, said it had been contended by the objector, that the case mentioned in Perry and Knapp's election cases, page 116, was decisive as to this point. In that case it was held by the Bedford Election Committee in 1833, that notice of objection in which the place of abode of the objector had not been added to the signature was invalid; but it was also true that a contrary decision was given by the committee in the Petersfield election. So that if he (Mr. Craig) were bound by the decision of the House of Commons, he must look on the authority of one decision being as great as that of the other. However, it should be considered that the decisions in these cases were those of objectors. The case of a claimant was, in his opinion, entitled to more favour. It was necessary to know the objector's place of abode, in order to find out whether he was qualified to make the objection or not, but the description of the property

City of London. St. Olave, 1835. Claims.

of the claimant shewed all that was necessary to be known as the ground of an objection. There was a case which appeared to him to be analogous to the present. It was this:—an Act was passed for the registration of annuities. In the schedule to the Act was a form in which a blank was left for the name of the attesting witness, and afterwards the word "of." The question came for decision before the King's Bench, whether by the insertion of the word "of" the legislature intended that the address of the witness should be added, and it was decided that it had. On this an Act soon after passed (the 3d George IV.), declaring that it was not intended by the previous Act that the address of the attesting witness was necessary. Now, this led him (Mr. Craig) to assume that, by the addition of the word "of," the legislature did not always consider the addition of the address necessary. On these grounds he considered the notice of John Richardson a good one.

City of London, 1835.

James Lillie occupied his present residence, No. 63, St. Mary-Axe, since September last, and had previously occupied a shop of above the value of 10*l.* in the same street. The rating was continuous, but the claimant had in his notice claimed only in right of No. 63, without mentioning the shop previously in his occupation.

Mr. Craig (R.B.) said the Act did not require the notice to include both his present and former residence. One of the questions put to the voter at the poll was, whether he possessed the same qualification for which he claimed. If he had claimed in right of both his shop and house his vote would be rejected, as he no longer occupied the shop.—Name retained *.

* The claim of James Smith, to be placed on the register, was rejected by the revising barrister, for informality, in omitting

City of London, 1835. Claims.

Mr. Elias Lindo sent to the overseers a claim "in respect to a house in your parish." The overseers knew the premises he occupied, and inserted his name in the list as of No. 14, St. Mary-Axe *.

Mr. Rogers contended that the claim was insufficient.

Mr. Craig (R.B.) said the objection was fatal. The 50th clause of the Act contained the following proviso:—"Provided always that no person's name shall be inserted by such barrister in any such list for any such city or borough, or shall be expunged therefrom, except in the case of death, or of such omission or omissions as hereinbefore mentioned, unless such notice shall have been given as hereinbefore required in each of the said cases." The Act required that the notice of claim should be in a particular form. The

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the description of the local situation of his qualification. The committee determined that his name had been improperly omitted from the register, and directed it to be corrected, by the addition of his name; and, also, that it should be placed on the poll for the petitioner. New Sarum, Perry and Knapp's Rep. 252.

* The 79th section provides that no misnomer or inaccurate description of any person or place named or described in any schedule to this Act annexed, or in any list of voters, or in any notice required by this Act, shall in any way prevent or abridge the operation of this Act with respect to such person or place, provided that such person or place shall be so designated in such schedule, list, register, or notice, as to be commonly understood. It has been contended that the omission of the street, in a notice to claim, is merely an inaccurate description, which should not violate the notice. It is contended that a notice stating the qualification to be in respect of "a house in the parish," *must be commonly understood to designate a house in Crocker-street*, when it appears on the face of the notice the party resides in Crocker-street; but as the intimation of the residence of the claimant contained in the notice could not according to the duty imposed on the overseers find its way into the list of claims, which is to give the public the only information they are entitled to receive, the claim must be rejected. Manning's Notes of Revision, 100.

City of London, 1835. Claims.

words "a house in your parish," could not be deemed a compliance with that form, and to mean that the claim was made in right of a house No. 14 St. Mary-Axe. The circumstance of the overseer knowing the property in right of which the claim was made was immaterial. The claim did not contain a sufficient description and must therefore be rejected.

Finsbury, 1833.

Mr. Arthur Smith claimed to be inserted in the list of electors for the county, in right of freehold property, in the parish of Mounthaugh, in the city of London.

The claimant admitted that he had changed his residence since the registration of last year, and previous to the lists of the present year being made out, and stated that he had not given any new notice of claim.

Mr. Sandys (R. B.) said that the provisions of the 43d section had not been complied with, and the claim must be rejected.

East Riding of York. Claim admitted after 31st July.

At the registration for the Hull district, Mr. Henry, the barrister, decided that the claim of a person arriving from sea, made since the day appointed by the Act, if made immediately on his landing, would be allowed; but if time were suffered to elapse after coming on shore, before the claim was preferred, the name could not be inserted in the list.

Payment of the shilling. § 56, 2 W. 4, c. 45.

The claim of an overseer upon one of the electors amounted to 2*l.* 14*s.* for poor-rates, and 1*s.* required by section 55, to be paid annually for registration by voters for any city or borough. The elector refused to pay the 1*s.*, but tendered 2*l.* 14*s.*, the amount of the poor-rate, which the overseer accepted; and

said that, sooner than there should be any misunderstanding, he would pay the shilling for the registration out of his own pocket, which he accordingly did. It was objected that the payment not having been made by the elector, his name could not be retained on the list.

Payment of the shilling.

Mr. Russell (R. B.) said the Act directed that by means of these payments, a fund should be provided for certain purposes therein named, and made the claimants liable to the payment of the shilling; but if another party was willing to discharge that liability by paying the shilling, the object of the statute was effected, and he was clearly of opinion that the name must be retained.

Forty-eight of the claimants in right of property in this parish were objected to by the overseers, on the ground that they had not paid the shilling required by the 56th clause to be paid to the overseer by every claimant on giving in his claim.

Finsbury, 1834. Payment of the shilling.

The case of Thomas Allen was selected, on the understanding that the decision on that case should govern the other cases.

Mr. Oldershaw, the vestry-clerk, and Mr. Ufford, the overseer, urged that the shilling formed a component part of the poor rates, and must be paid by the claimants to entitle them to be registered on the lists of electors.

Mr. Sandys (R.B.).—Suppose a rate were tendered to you *minus* the shilling, how would you act?

Mr. Oldershaw.—We would accept the rate, of course, as we are often obliged to accept a portion where the whole is due; but still, wanting the shilling, we should consider the rate deficient. For instance,

Finsbury, 1834. Payment of the shilling.

suppose a man were rated to the poor rates in the sum of 2*l.* 14*s.*, and that he paid us that amount, our claim, including the shilling, would be 2*l.* 15*s.*, and consequently we should consider that the rate was so far deficient.

Mr. Chapman (R. B.) said, I shall now briefly state my opinion upon the point at issue. By the 27th clause of the Act it appears that "every male person who shall occupy as owner or tenant any house, warehouse, &c., of the clear yearly value of not less than 10*l.*, shall, if duly registered, be entitled to vote, having occupied his holding for the space of twelve calendar months previous to the last day of July in such year, provided that such person shall have been rated to all rates for the relief of the poor," &c.; so that this clause gives the elective franchise to all occupiers of premises provided that they shall have duly paid the rates and taxes due upon and in respect of such premises previous to the day specified in the Act. Then comes the 56th section, which says that "every person giving notice of his claim to vote shall pay or cause to be paid to the overseer the sum of one shilling, and such notice of claim shall not be valid unless that sum be paid:" and then the clause goes on to say, that "such monies so paid shall be applicable to the same purpose as monies raised for the relief of the poor, and that for the purpose of defraying the expense of the returning officer, each elector whose name shall appear upon the registration of voters shall be liable to the payment of one shilling annually, which sum shall be levied on each elector, in addition to and as part of the monies payable by him as his contribution to the poor rate, and such sum shall be applicable to the same purposes as the monies raised for the relief of the poor;" and then it is stated that "all expenses of the returning

officers shall be defrayed by the overseers of the poor." Now, in the present case it appears that forty-eight persons, all of whom had paid up their rates and taxes within the given time, were nevertheless objected to by the overseer, and their names erased from the list, because they had refused or neglected to pay the shilling in question. It was contended on the part of the parish, that if the shilling was not included in the poor rates it would not be paid at all, and there would be no other means of enforcing payment of it unless it was so included. That argument, I own, struck me at the time with some force, but upon consideration I think that the clause is remedial, and that it gives to the overseer the same power of recovering the shilling as he has to recover the poor rates. That is to say, it is my opinion that the shilling forms no part of the rate applicable to the relief of the poor, and that, being distinct from the poor rate, its payment may be enforced by a separate warrant of distress.

Finsbury, 1834.
Payment of the shilling.

Mr. Sandys (R.B.).—I agree with my learned colleague in the view which he has taken of this question. The simple point at issue is, whether the shilling demanded from each claimant is, or is not, an integral and component part of the poor rates, which must be paid in order to entitle the party claiming to vote to have his name entered on the list of voters. If the 27th section stood alone it would admit of no question, for it is clear and distinct enough, and indeed it appears to be the manifest intention of the legislature, that every owner and occupier of premises of the yearly value of 10*l*. shall be entitled to vote, provided that his rates and taxes were paid by a certain day. It appears to me, therefore, that no person who had paid his rates and taxes, and was eligible in other respects, ought to have

Finsbury, 1834. Payment of the shilling.

his name erased from the list of voters solely on account of his refusal to pay this shilling, which I consider to be separate and distinct from the poor rate; for although the 56th section says that "such monies so paid," meaning the shillings, "shall be applicable to the relief of the poor," it goes on to say that such monies shall be applied "for the purpose of defraying the expense of the returning officer of every city, borough, and town in which each registration shall take place," and also for "paying the expense of making out and revising the lists." I cannot for my own part see that the poor have anything to do with the shillings so raised, for the very words of the Act declare that the money shall be applied in defraying the expenses of making out the registration, and I think that the object of requiring the payment of a shilling from each voter was, that the expense attending the registration should not be paid by the parish officers out of the poor rates, but that a separate fund should be reserved for the purpose. The words of the 56th section are somewhat remarkable, and, as I think, they fully bear out my construction of the entire clause. The words are, "Each elector whose name shall appear upon the registration of voters shall be liable to the payment of one shilling, which shall be levied on him in addition to, and as part of, the monies payable by him as his contribution to the poor rate, and such sum shall be applicable to the same purposes as the monies raised for the relief of the poor." I consider, therefore, that the shilling is levied for the purpose of indemnifying the poor rates, and not with a view to its augmentation, and that the monies so raised are solely for the purpose of defraying the expense of registration. Then comes the difficulty as to how the shilling, being separate and

distinct from the poor rate, is to be recovered. The clause says, "which sum shall be levied on each elector in addition to, and as part of, the monies payable by him as his contribution to the poor rate." But, although the money is directed to be levied on each elector, it points out no mode by which payment might be enforced, and in this respect I think the clause is defective. In conclusion, I have only to express my great surprise that so many intelligent persons should have fallen into the error that by paying the shilling they would be paying for that to which they would be entitled as their right, when, in fact, they were only paying for the means by which their right would be secured to them.

Finsbury, 1834. Misnomer.

Mr. Edward Clout claimed in right of premises which he had taken from Mr. Clouter, whose name had been continued in the rate books and tax assessments, by mistake, in consequence of its resemblance to the name of the present occupier. The claimant had been in possession three years, and paid all the rates and taxes, although his name had never been entered on the parish books.

Lambeth, 1832.

The court decided that the omission was fatal.

The claim made by Mr. Smith, of Kennington-street, differed from the former, in the fact that he had frequently told the collectors to insert his own name in their books instead of his mother's, who was dead. The collectors not having their books with them at the time, forgot to make the required alteration. The court admitted the claim of the applicant.

Mr. George Hermes, of the Asylum-road, whose

Lambeth, 1832. Misnomer.

name had been expunged from the overseers' list, in consequence of its having been entered "Hearne" in the poor-rate collector's books until July last, although the receipts for the church-rate and king's taxes were given in the proper name of the applicant, applied to have his name inserted in the list of electors.

Mr. Reynolds (R. B.) declined to adjudicate it singly, and sent for his learned colleague, to consult with him on the point. It appeared that the claimant and his landlord live in two adjoining houses, the latter of whom, to save the trouble of two distinct payments, pays the rates and taxes for the claimant, who consequently pays a proportionately increased amount of rent. The claimant's house was rated to him, and the receipts were given in his name. He did not think of examining them until the Reform Bill was under debate, when he directed his landlord to get his name corrected. The landlord did so. Mr. Reynolds was of opinion that the claimant, being fully cognizant of his name being mis-spelt in the rate-book, was bound to see it corrected, and his having neglected to do so disqualified his vote.

Mr. Espinasse (R. B.), on the contrary, was of opinion that the vote was admissible, provided that the claimant was identified as having been the sole occupier of his house. This fact having been satisfactorily proved, the barristers, after a long consultation, admitted the claim.

Leeds, 1835.

On a claim by Mr. James Stodart, for a house in Parliament-street, the assessment being in the name of "Stoddard."

The court held that it was *idem sonans*, and allowed the vote.

The name of Thomas Buller was entered in one of the rates instead of "John Butler." In the other rates the assessment was correctly charged on the claimant, John Butler.

Shoreditch, 1832. Misnomer.

The court decided that the error was fatal.

Mr. John Bridie had not been rated to the early rates of the current year, though he had served a notice on the overseers claiming to be so. In the last rate the premises in right of which he claimed were rated to John Brodie, instead of "John Bridie." The vestry-clerk proved that Mr. Bridie was the person to whom the entry in the rate-book applied, and it was also proved that Mr. Bridie had called on the overseer to correct the error, and he had promised to do so in the next rate.

City of London. St. Sepulchre, 1835.

Mr. Tamlyn (R. B.) thought the rating was sufficient and disallowed the objection.

A claimant named Morris, stated that he and his son occupied the same house; sometimes one paid the rates, and sometimes the other; both names were, in consequence, occasionally entered. The court decided that neither of them was entitled to be registered.

A claimant had been in occupation of a house since April 1831, and had been assessed to the king's taxes since that time, but by some mistake the claim for poor-rates was not made till after August in that year, and then only for the rate made in that month.

Mr. Palk (R.B.) did not consider that sufficient. The

City of London, 1833.

claimant should have been rated for all the rates made for the period for which he claimed.

Officers of Bridewell Hospital. Not being rated.

On the revision of the list of voters resident in the Bridewell Precinct being submitted to the court,

Mr. W. C. Bousfield, the overseer and chapel-warden of the precinct, appeared to object to the retention on the list of the names of the chaplain and other officers of the Bridewell Hospital, who had claimed in respect of premises in their several occupancies within the hospital. The grounds of the objection were, that the claimants were neither rated to the poor-rates nor to the assessed taxes. The same objection had been made last year, but, in consequence of it not being followed up, the names were not on that occasion expunged by the court. Mr. Bousfield added, that one of the claimants, Mr. Poynder, felt the objection to be so strong, that he had communicated to him (Mr. Bousfield) by letter, his intention not to press his claim.

Mr. Thompson (R. B.) said that the secession of Mr. Poynder from prosecuting the claim could not affect the rights of the other claimants.

Mr. Bousfield stated that the other claimants were willing to be bound by the decision of the court in Mr. Poynder's case. The letter of that gentleman was most important in the case, as it afforded the court full authority to expunge his name. It stated that the officers of the hospital had never been rated, or paid any rates for the premises they occupied. Mr. Thompson held that the objection was valid, and the names of the parties objected to were expunged.

City of London, 1836. Not being rated.

An objection was taken by Mr. Rodgers to the insertion of the name of Mr. John Mills, of No. 9, St. Mildred's Court, on the ground that he was not rated to the poor of this parish.

Mr. Tamlyn (R. B.), in giving his decision, said, on the rate-books being referred to, it was found the premises in question were thus entered, "occupier of the house No. 9, St. Mildred's-court," without any name being stated. The question then for the decision of the court was, whether or not this entry without a name would constitute a sufficient rating for the purpose of entitling the claimant to be registered as an elector under the Reform Act. By the 43d of Elizabeth, chap. 2, it was provided that "the churchwardens and overseers of the poor of every parish, or the greater part of them, should, by and with the consent of two or more justices dwelling in or near the said parish, raise weekly, or otherwise, by taxation of every inhabitant, vicar, occupier of land, houses, or tithe impropriator, &c., a competent sum of money to purchase stocks of flax, hemp, wool, thread, &c., upon which to set the poor to work; and also a competent sum of money for and towards the relief of the lame, impotent, old, and blind, being poor and unable to work, and for putting out poor children to be apprentices." Such were the provisions of that statute, and it was well known that among the various modes of acquiring a settlement in a parish one was being chargeable with, and paying the rates levied and raised under the statute to which he had referred. Questions had frequently arisen in law as to what constituted a proper charging and rating to enable a party to gain a settlement. Some of those questions had found their way from the

City of London, 1835. Not being rated.

quarter sessions to the Court of King's Bench, and to those cases he had referred with a view to assist him in his decision upon the objection raised in the case now before him. He found it laid down by the Court of King's Bench, in the case of *Rex v. Brightman,* 8 Modern 38, and *Rex v. Painswick,* 2 Burrows 1062, that "it was not necessary that the occupier of a house should be rated by name in order to gain a settlement," and hence he concluded that a person rated as the "occupier of a house" was sufficiently rated to gain a settlement, and therefore was sufficiently rated for all other purposes. In the case of *Rex v. Walsall,* 2 Nolan, 127, and Cald. 35, Lord Mansfield pronounced the decision of the court to be, that "the name of the occupier need not be inserted on the rate; if the parish had a sufficient notice of him as an occupier, that was sufficient to gain him a settlement." Under those circumstances, and on those authorities, it appeared to him, that as Mr. Mills could under this species of rating gain a settlement in the parish, he was sufficiently rated to come under the provisions of the Reform Act. The objection must therefore be disallowed, and Mr. Mills's name be retained on the list.

Leeds, 1835. Rate.

The claim of Hugh Macdonald in right of a house and garden was objected to. The voter removed from Lower St. James's-street, to No. 3, Burley-terrace, and on the 7th of May he removed from No. 3, to No. 1, in the same terrace. In the last June rate he was rated for No. 3, though then living at No. 1.

The court thought that the rating of the number of the house was immaterial and might be rejected; as

he was rated for Burley-terrace, where he was occupying, that was sufficient. Name retained.

Not being rated.

Mr. Thomas Toller (on the list of 10*l.* occupiers) was objected to, for not having been rated to all rates made in the parish during the twelve calendar months next previous to the last day of July. The evidence was, that the rates were made quarterly. Mr. Toller was rated for the three last quarters of the year of his occupation, which commenced from the last day of July, 1832. The former occupier of the premises was rated for them for the first quarter. That rate was allowed by the justices, on the 29th of July, and was published the Sunday following, which was the 3d of August. Mr. Toller paid that rate, as well as the other three.

Borough of Leicester, 1833.

It was argued, on this evidence, that Mr. Toller was rated to all rates made during the twelve months of his occupation; that the rate allowed on the 29th of July was made before his entering into possession, and it could not be afterwards altered; that the rate is made and consummated from the day on which it is allowed.

It was contended by the objector, that, by 17th Geo. 2., c. 3, s. 1, no rate was valid until published, and the rate being published in August, was then, and not until then, made; and that, therefore, it was not one of the rates made during the twelve months of occupation next previous to the last day of July.

The court held that, as by the statute referred to, publication was made necessary to the validity of the rate, this rate could not be said to have been made until the 3d of August, the day on which it was published. By the 30th section of the Reform Act, the

Borough of Leicester, 1833. Not being rated.

occupier had a right to claim to be rated—a remedy Mr. Toller ought to have availed himself of, when he found his name was not on the rate.

The overseer being, on this suggestion, called by Mr. Toller, and examined as to this point, said he called for payment of this rate soon after it was made, and Mr. Toller, while paying it, seeing his predecessor's name, and not his own, in the rate, said his own name should be substituted, taking the rate-book at the same time from witness, and writing his name with a pencil upon it, which the witness said he would notice.

Mr. Finnelly (R. B.) was of opinion that the fact thus established, whether by accident or intention, was a sufficient compliance with the direction of the 30th section; it was a claim to be rated, and an actual payment of that rate; and the occupier must be deemed to have been rated.

City of London, 1835. Rates.

Mr. W. Clarke claimed to be placed on the list. On examination he stated that he rented a counting-house and warehouse at No. 34, Great Tower-street. In July last he made a claim to be rated for those premises. He had made no tender of any rate, because there was none due at the time.

The overseer produced the rate-book, and stated that only one rate was made in the parish from July, 1834, to July, 1835, and that was in January, 1835. It also appeared, from the rate-book, that the poor-rate of January was paid in March for the premises No. 34, but the name of the claimant, Mr. Clarke, did not at all appear on the books.

Mr. Sharp contended that the claim of Mr. Clarke was good. He was not bound to make a tender at the

time of making the claim, as there was then no poor-rate due.

City of London, 1835. Not being rated.

Mr. Rowcroft opposed the claim, and contended that, by the 27th section of the 2d William 4, c. 45, the claimant should be rated for twelve calendar months to all rates for the relief of the poor in respect of the premises in his occupation, and should have paid all such rates. In this case the claimant was not rated, nor had he paid any thing. The 30th section of the act also required that when a claim was made to be rated, a tender should be made at the same time of any rates due within the period for which the party claimed to be rated. The claimant here had made no such tender, though it was in evidence that one rate at least had been made for which the claimant would be liable.

Mr. Craig (R. B.) held the claim to be good: the party had made no tender, for there was no rate due between April and July, and he need not have done so. The 30th section, while it required a tender of all rates due at the time of making the claim, also provided, that where the overseer neglected to insert the claim, the name should (all the necessary forms prescribed by the Act having been complied with) be considered for all the purposes of the Act as placed on the list. Under these circumstances the claimant's name must be retained.

In the case of Mr. Dick, of St. Botolph, Aldgate, the question arose whether a valid claim to be rated was made under the circumstances:—A witness proved that at a meeting of the vestry held in October last, he, as a member of that body, moved that a certain class of inhabitants be rated. That class would have

City of London, 1835. Not being rated.

included Mr. Dick. The witness could not say whether he mentioned the name of Mr. Dick on that occasion or not. He afterwards saw Mr. Dick, and spoke to him of what had occurred, and Mr. Dick expressed his approbation of it. This, it was contended, was sufficient to constitute a claim to be rated on his part.

Mr. Rowcroft contended that it was not sufficient to establish a claim to be rated.

Mr. Craig (R. B.), in giving his decision against the claim, said that it would be stretching the point much too far to infer from what took place at the vestry in October last, and the subsequent adoption of it by Mr. Dick, that he had claimed to be rated in the manner required by the Act.

St. Margaret Moses.

Mr. Trott objected to the retention on the list of the name of Mr. James Josiah Millard, on the ground that the premises were not occupied by the claimant.

Mr. Rowcroft supported the claim, and called Mr. John Millard, who proved that his brother was the clerk of the Cordwainers' Company, and that as such he occupied apartments of the annual value of 100*l.* at the company's hall in Great Distaff-lane; that he was there every day on business, and occasionally slept there, and that whenever he was out of town his servants remained in the occupation of the premises. Mr. Rowcroft submitted that this evidence brought the case of the present claimant within the decision of the revising barristers for the borough of Finsbury, in the case of the officers of the British Museum, reported in 1st Edit. of *Delane's Cases*, p. 108*.

Mr. Tamlyn (R. B.) remarked, that in that case it

* 2d Edit. p. 43.

was shown that the premises occupied by the officers of the British Museum were distinct houses, having separate entrances.

City of London, 1835. Not being rated.

Mr. Rowcroft contended that the British Museum was one entire building, having only one common entrance.

Mr. Trott, in support of the objection, submitted that this was not an occupation of a house or building within the intent and meaning of the Reform Act. The nature of the building was not described in the notice of claim, as he contended ought to be the case.

Mr. Tamlyn was inclined to think the claim came within the decision cited, and was a good and valid claim.

Mr. Trott said he had another objection to Mr. Millard, on the ground of not being rated to the poor-rates.

The overseer proved that the company was rated in the parish books, and that the rates were paid by that body.

Mr. Tamlyn (R. B.) said this objection was fatal to the claim, and would spare him the consideration of the first ground of objection.—Name expunged.

John Wilson, Esq., claimed on behalf of certain warehouses, offices, and basin, in Dock-street, the property of the Aire and Calder Navigation Company.

Leeds, 1835. Canal premises.

Mr. W. M. Maude, the auditor to the company, stated that the buildings were rated at 939*l.*, independent of the new warehouse in Call-lane, which was rated at 800*l.*, without the wharf, and the canal within the borough was rated at 1172*l.* The whole of the rates and taxes for the current year had been paid.

In answer to questions put by Mr. Richardson, Mr.

Leeds, 1835. Not being rated.

Maude stated that there were ten houses or warehouses in the yard on the south side of the river that were occupied by servants, or other persons, who paid rent to the company for the premises situated within the inclosure.

Mr. Richardson contended that the curtilage was destroyed by the occupation of other persons within the yard, therefore the proprietors could not make up sufficient value, as they could not unite different buildings together; all that they could do was to claim for the largest warehouse that they did occupy.

Mr. Dibb said that they would take the large warehouse in Call-lane, together with the canal, which would be of sufficient value to answer the purpose.

Mr. Maude was further examined by Mr. Dibb, and stated that the fly-boat warehouse was rated at 200*l.*, the offices at 30*l.*, the old warehouse at 85*l.*, the counting-house at 10*l.*, the basin at 135*l.* 10*s.*, the new warehouse at 800*l.*, and the canal at 1172*l.*; the latter was rated at 17*s.* 7*d.* per lineal yard of land covered by water.

Mr. Richardson then objected that the rating was defective, inasmuch as the parties were rated in the names of the Aire and Calder Navigation Company, instead of their parliamentary names of "Trustees or Undertakers of the Aire and Calder Navigation," and which he contended must prove fatal.

Mr. Maude was further examined by Mr. Dibb, and stated that the proprietors had the name of "Aire and Calder Company" painted upon all their boats, and were better known by that name than any other. If they were to use their parliamentary names, they would be laughed at, and if their names were not correctly stated in the rate-book it was not their fault, as they

had been shewn in writing to the overseer, and he had been requested to copy them into the rate-book.

Leeds, 1835. Not being rated.

The court said, it had been proved that the property was of ample value. As to the objection that the company of proprietors were not rated in their legal name, they were rated in the name by which they were generally known, which was quite sufficient. There was sufficient property without the curtilage, and the court would not discuss that point, but would disallow the objection.

City of London, 1835. St. Olave.

Mr. Trott objected to the name of Mr. William Smith Boyd being retained on the list of voters for this parish, on the ground that he had not been rated a sufficient period for the premises in right of which he claimed to vote.

Mr. Goodeve, in support of the vote, called the overseer, who proved that on the 9th of July last Mr. Boyd served him with a notice claiming to be "entered" on the parish books, and if any rate had since been made, he should have included Mr. Boyd in the rate.

Mr. Tamlyn (R. B.) thought it was manifestly the intention of the claimant to be rated, and it was also clear that the overseer would have acted upon the notice served if a rate had been made; his name must, therefore, be retained.

City of London, 1835. St. Olave.

Mr. Philetas Richardson, of Mark-lane, was objected to by Mr. Rowcroft on the ground that he was not rated.

It was proved that Mr. Richardson is a partner with Mr. Corcoran, trading under the firm of "Bryan Corcoran and Co." The rates were all paid, but the name of Mr. Corcoran only appeared on the rate-book. The

City of London, 1835. Not being rated.

receipt for the poor-rate was given as to "Messrs. Corcoran and Co." The name of Mr. Richardson did not appear on the book, but he resides on the premises.

Mr. Sharpe, in support of the claim, contended, that it having been shown that Mr. Richardson was the occupier, and that the payment of the rate was in the name of the firm of which he was partner, it was a sufficient rating within the meaning of the Act. He also contended that this, according to all decisions which had been made as to rating, independently of the Reform Act, was a sufficient rating, and if it were a good rating before that Act, it was a good one now.

Mr. Rowcroft: the question was, whether this was a rating within the provisions of the Reform Act. The argument on the other side was this—that Mr. Richardson was virtually rated, because a firm of the names of Bryan, Corcoran, and Co. paid poor-rates for premises in Mark-lane, in which it is said Mr. Richardson resides. The person rated on the books was Mr. Bryan Corcoran, the receipts given were to Messrs. Corcoran and Co., but in no way was the name of Richardson mentioned. Could he be summoned to take on him a parish office under such circumstances? He would contend not. Under the 30th section he had no claim. He also contended, that even according to the rate-book, which must be taken as conclusive evidence, Mr. Richardson could not be said to be rated under the word "Company" as a partner, for the word "Company" did not occur in the book. The book stated that the rate was paid by Mr. Bryan Corcoran; so that even if Mr. Richardson claimed to be included under the word "Company," though he (Mr. Rowcroft) would not admit that such claim would be good,

City of London, 1835. Not being rated.

he had not that ground to go on, for the word did not appear in the book. There were several decisions on this very point by the revising barristers, all of which went in support of the view he took of it, in the 1st edit. of *Delane's Collection of Decisions by Revising Barristers*, page 12*. It was held by Mr. Thompson (R. B.) that to enable any person to have their names placed on the registry, they must pay the rates themselves. Their names must appear in the parish books as the payers of the poor-rates, or they would have no vote.

Mr. Rowcroft then cited the case of Philip Davis † and the Exeter-hall case ‡.

In those cases the revising barristers held, that no person was entitled to vote whose name was not placed on the rate-book of the parish.

The next extract was in a note to page 67 of *Delane*, and was itself an extract from *Manning's Notes of Revision* §.

Mr. Craig (R. B.). You allude to Dashwood's case?

Mr. Rowcroft said he did, but he did not quote it as being one in all respects analogous to this— he quoted it only for the concluding passage, which would apply to the present case. It was this:—

"If the assessment, though in his name, is to be considered the assessment on the landlord who pays the rates, then the tenant is not rated. If the claimant is to be considered the person rated, then he has not paid." He did not quote these decisions as authority binding on the court, but he did quote them as matters

* Page 184, 2d edit. † Page 172, 2d edit.
‡ Page 22, 2d edit. § Page 211.

City of London, 1835. Not being rated.

which no doubt the court would consider in forming its judgment. He submitted, under all the circumstances, there was no pretence for considering that Mr. Richardson was rated.

Mr. Sharpe briefly replied.

Mr. Craig (R. B.) considered the case of great importance, and postponed his decision to a future day, when he decided that the rating was insufficient, and the objection must be allowed.

An objection was made to the name of Mr. John Kolle, being retained on the list. The claimant had for many years been in partnership with his father, occupying premises in Addle-street, Aldermanbury. On his father retiring, the claimant continued to carry on the business under the original firm of "Henry Kolle and Son." The claimant recently removed into Cheapside, and took into partnership a younger brother, but still continued the trade under the firm of "Henry Kolle and Son," in which words the premises were assessed in the rate book.

Mr. Goodeve said it was not a sufficient rating; the entry was Henry Kolle and Son, and it appeared that Henry Kolle was not a partner.

Mr. Trott, in support of the claim contended, that it was only for one vote that the claim was made. Mr. John Kolle was entitled to be registered under the description of "Son" as entered in the rate-book.

Mr. Tamlyn (R. B.) considered it was not a sufficient rating; but as it appeared that the rates of the claimant had not been paid on or before the 20th of July, the claim was rejected on that ground.

Leeds, 1835

John Cawthorn was rated with Stephen Eason, his

partner, for a "shop and wood yard" in York-street. It appeared, however, that the property in their occupation was not sufficient to give them votes, without including a house in York-street, occupied separately by one of the partners, without any specific rating. The Court held that the rating of "shop and wood-yard" would not include this house, as it had no communication with the wood-yard, and therefore disallowed the claims, without giving any opinion as to whether the house, if rated, could have been considered as in the joint occupation of the partners, by whom the rent was paid*.

Leeds, 1835.

Two gentlemen, partners in the firm of Howell and James, Regent-street, claimed to have their names entered in the list. The firm consists of five partners, who occupy the houses Nos. 5, 7, and 9, in Regent-street. All the partners are clearly entitled to vote, but only three were rated in the parish books. The other two partners gave notice, in due time, of their right to be rated, but on finding their names omitted in the list prepared by the overseer, they went to the clerk, in Poland-street, requesting that the omission might be supplied. The clerk promised to do this, but

Westminster, 1832. § 27, 2 W. 4, c. 45. Partners not qualified, unless their names are in the rate-book.

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* Two brothers, as partners, were joint occupiers of certain premises which had been rated in the name of the firm "J. and J. Hewitt." In February, 1831, the assessment was on "Messrs. Hewitt." In April and July, 1831, in "Mr. Hewitt." The overseer said that by "Mr. Hewitt" he meant to assess the firm. The court decided, that if two brothers carried on trade under the firm of "Mr. Hewitt," the assessment might have been good for both; but from the evidence, it was merely a virtual rating of both by a wrong name. Manning's Notes of Revision, 158.

Westminster, 1832. Not being rated.

omitted it, and through this neglect their names did not appear in proper time*.

Mr. Keene (R. B.) said, the fault certainly rested with the clerk, and the claimants could not be admitted to the franchise, owing to that cause; but he advised that they should tender their votes at the next election, and if a petition went to a committee of the House of Commons, they would obtain a decision of their case.

A gentleman named Mills, who occupied, jointly with his partner, Knags, a house of value sufficient to give each a qualification, claimed to have his name

* Mr. Edward Upward carried on business alone till October 1829; in that month the claimant, George Upward, and his brother, were admitted into partnership with their father; in Oct. 1831, the words "*and sons*" were added to the father's name over the door; from that time to May 1832, the business was carried on under the firm of Edward Upward and Sons; the father then retired from the business, and the firm consisted of "George and Edward Upward." The rates had been paid out of the partnership funds, but the name of Edward Upward, who had been originally rated for the premises, continued on the rate-books during the successive alterations above mentioned. The overseer stated, that he considered he was rating the property occupied by the partners. It was argued, on the part of the objector, that no occupier, whose name did not appear on the rate, could be said to be assessed to the relief of the poor. The Court said, there was a decision upon the point of misnomer, in the Leominster case. (2 Peck. 595.) "Wm. Probert was offered to be put on the poll for the petitioner. He was rejected by the returning officer, as being on the November rate only. In the January rate the same premises were rated in the name of Thomas Probert. It was proposed to call the overseer to prove that William Probert was the person rated, that the name of Thomas had been inserted by mistake, and that, in fact, both rates had been collected from William Probert. The Committee determined that the overseer should not be called." It was impossible to distinguish that case from the present, and the name must be expunged.—Manning's Notes of Revision, 68.

inserted in the list. It apeared, however, on reference to the rate-books, that the name of Knags alone appeared as rated.

Westminster, 1832. Not being rated.

Mr. Palk (R. B.) considered the objection fatal to the claim of Mr. Mills. If the rate-book showed that the rates were paid by "Knags and Co." he would consider it sufficient to admit Mr. Mills and other partners, on proof of partnership, and that the house was of sufficient value, but he was precluded by the fact, that on the book it appeared that only one person was rated.

Mr. Davis, of the firm of Cole, Davis, and Co., was struck out, in consequence of his name having been omitted in some of the rate-books, the entry being merely Cole and Co. Mr. Davis said, it was well known by the overseers that he was the occupant of the house, and that he paid the rates.

Mr. Russell (R. B.) said he could not help Mr. Davis; he was compelled to follow the letter of the law.—Claim rejected.

Wm. Pearce, who claimed as a scot and lot voter, was objected to, on the ground that he was not rated. It appeared that the entry in the rate-book stood thus —"Wm. Pearce and Son;" and while no objection was made to the father, it was contended that there was no evidence that William Pearce, jun. was rated, and the insertion of his name on the list of voters was accordingly objected to.

Reading, 1832.

Evidence having been produced as to the identity of William Pearce with the individual who was returned on the rate-book merely as "son" of William Pearce, the vote was allowed.

Mr. Corbbett said that this was a case of joint occu-

Reading, 1832. Not being rated.

pancy of premises, and that payment of the rates by one occupier was payment for both *.

Philip Davis was objected to, on the ground that no such person's name was on the rate-book.

On referring to the rate-book, it appeared that the entry for two Davises, the father and son, was "Davis, Philip, and Philip;" and though it was proved that the father and son lived in the premises so rated, yet as through the incorrect entry made by the overseers in the rate-book, the name of only one Philip Davis appeared there, the son's vote was rejected †.

City of London, 1835.

Joseph and Thomas Taylor claimed to be registered as the co-partners of their father, John Taylor, who traded under the firm of "John Taylor and Co."

Mr. Rodgers contended that the claimants were not sufficiently rated. They could not, as secret partners,

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* The claimant occupied jointly with his father and brother, in partnership. The rates and taxes were paid by the firm, but the assessment of the premises continued in the name of the father. Name expunged.—Manning's Notes of Revision, 57.

The claimants, father and son, were assessed in the rate-book in the following manner:

William Kingswell............ 2*l.*
Ditto Ditto................ 1*l.*

The son was objected to, and it was contended that William Kingswell meant the father, and "ditto ditto," must be read as applying to the same person. The Court decided that the rating was sufficient; that "ditto" did not always import identity, and that evidence was admissible to explain the latent ambiguity. Name retained. — Manning's Notes of Revision, 62.

† The claimant was a member of the firm of "Sewell, Hearne, and Sewell." The assessment in the rate-book was on "Sewell and Hearne," the firm in which the business had been carried on before the claimant became a partner. The Court decided that it was not a sufficient rating. Name expunged.—Manning's Notes of Revision, 25.

be called upon to serve any parish offices for that parish, and where they could not be considered as rated for that purpose, they could not be considered as rated at all. Besides this was not a rating coming within the 27th section of the Act.

City of London, 1836. Not being rated.

Mr. Craig (R. B.) gave his judgment this morning, and held this was not a sufficient rating under the Act, and directed the names to be expunged.

St. Giles's, Cripplegate. Rating.

The court sat for the purpose of hearing and deciding the claims of the several partners in the firm of Messrs. Whitbread and Company, to be inserted in the list of this parish, as entitled to vote in respect of certain store-houses situate in Whitecross-street, in the occupation of the firm. The notice of objection served by Mr. Rodgers, as well as the value and occupation of the premises, was admitted, as was also the fact, that the premises were rated in the name of the firm "Whitbread and Co." and the question for the judgment of the court (as in the case of Mr. Crow, of the firm of Morrison and Co.) was, whether this was a sufficient rating to bring all the partners within the terms and provisions of the Reform Act.

It was proved by the vestry-clerk, and by Mr. Samuel Charles Whitbread, that the firm consisted of Messrs. W. H. Whitbread, Richard Martineau, Joseph Martineau, S. C. Whitbread, Sir J. C. Hobhouse, bart., and Messrs. Joseph Godman, sen. and jun., and that the property in question was purchased with the funds of the firm. The residences of all the partners within the distance prescribed by the Reform Act were also proved, except in the case of Mr. Godman, sen., whose claim was disallowed on that ground, and his name expunged from the list.

City of London, 1835. Not being rated.

Mr. Sharpe said that the Reform Bill had made no distinct alteration of the laws relating to rating in existence prior to the passing of that measure. It was important therefore to look at those cases where the question of settlement by reason of rating had been discussed in the higher courts. The statute 3 William and Mary, c. 3, sec. 6, enacted, that no person who should not be charged with his share of the public burdens, raised in the shape of poor-rates, could gain a settlement in the parish in which he might become an inhabitant. Under that Act various cases had been brought under the consideration of the supreme courts of law, and the decisions upon them all show, that even though a party may not be charged by name with the parochial burden, yet if he pays the rates on the premises he occupies, or if these rates are demanded, or even where the party appears only charged as the "occupier" of certain premises, without the mention of him by name, it is a sufficient charging and rating to give him a settlement. In Rex v. Brightman, 8 Modern, 48; Rex v. Painswick, 2 Burrow, 1062; and Rex v. Walsall, 2 Nolan, 127; the decisions prove that it was sufficient to occupy and to be charged as an occupier to gain a settlement. The 30th sect. of the Reform Act was in terms almost precisely analogous to the provisions of the statute cited, and was perfectly silent as to the necessity of a party being rated by name for the purposes of the Reform Act. Not so, however, the statutes referring to the land-tax assessments, which required a rating by name to qualify for certain purposes, and therefore, if the legislature had contemplated so strict a requisite for the franchise under the Reform Act, those stringent words, "by name" would have been inserted. There was no precise decision since the Reform Act, upon the question,

whether the words, "and Co." was a sufficient rating to include all the partners comprised in that designation, but in *Delane's first edition of Decisions*, p. 19, and in *Manning's Notes of Revision*, p. 158, it would be found that several revising barristers in the country had expressed themselves willing to have admitted on the registry all who could prove themselves to be parties coming under that designation as partners in trade, provided there was a sufficiency in the value of the premises; and the statutes, 18 George 2, c. 18, 20 George 3, c. 17, and 30 George 3, c. 21, were cited to show that to entitle a party to vote in elections for members of parliament, it was sufficient that the premises out of which the claim arose were charged to the poor-rates. The words "and Co." would comprise all partners in their liability to a security so endorsed in a court of law, and on these grounds he submitted it was a sufficient description, coupled with the knowledge of the parish authorities as to the parties comprised in this instance in that description, to bring the present claimants within the intent and meaning of the Reform Act.

City of London, 1835. Not being rated.

The Revising Barristers having postponed their decision, on a subsequent day,—

Mr. John Williams, of the firm of "James Morrison and Co.," of Fore-street, appeared to support his claim to be inserted in this list. His occupation of the premises in respect to which he claimed, and his partnership, were proved, and the only objection arose on the point raised by Mr. Rowcroft, viz. that the entry "Morrison and Co.," in the rate-books, was an insufficient rating to entitle the claimant to be inserted in the list of voters for this parish. The same question

City of London, 1835. Not being rated.

was raised in the case of the partners in the firm of Whitbread and Co.

After hearing the evidence in the case of Mr. Williams, the court conferred for a short time, when

Mr. Tamlyn (R.B.) said, the present case was precisely similar to that of Mr. Joseph Godman, one of the partners in the firm of Whitbread and Co., which had been discussed at great length; in that case the question was whether or not Mr. Godman was rated to the poor-rate made in the parish in which the premises were situated, within the intent and meaning of the Reform Act. Great discussion had taken place as to the meaning of the word "rating," as used in that statute, and considerable industry, ingenuity, and research had been displayed by Mr. Sharpe, in the argument he had addressed to the court, but it occurred to him (Mr. Tamlyn) that the framers of the Reform Act had used that expression according to the legal construction which had been put on it by committees of the House of Commons, whose decisions afforded the fairest criterion as to what was the intention of the legislature. He should have been most happy to have been able to have given this Act a more liberal construction, but he considered himself bound by the decisions as to rating laid down in the Middlesex election case, reported in *2d Packwell's Reports.* On these authorities he did not think the words in the rate-books, "and Co.," did convey to the world in a manner sufficiently notorious that Mr. Godman, of the house of Whitbread and Co., was a partner liable to the rates, and to serve parish offices, and as the same objection applied to the claims of Sir J. C. Hobhouse, of the same firm, and of Messrs. Williams and Crow, of the firm of Morrison and Co., he was of opinion

City of London, 1835. Not being rated.

the objections taken by Mr. Rowcroft must be allowed, and the names of those gentlemen expunged from the list.

Mr. Craig (R. B.) said he most reluctantly felt himself compelled to concur in the judgment pronounced by his learned colleague. It might be considered a great hardship by this decision to exclude from the register persons of the wealth and influence of the parties now before the court, but that hardship was to be attributed to the legislature, as under the law as it stood the court had no alternative but to decide the point in the way which had been announced. It was for the legislature, and not the court, to consider whether that law did not tend rather to narrow than to extend the elective franchise.

Mr. Tamlyn (R. B.) said that the court had drawn a distinction between the cases just decided and that of Mr. Samuel Charles Whitbread, who had been objected to on the same ground, and they were of opinion that the entry, "Messrs. Whitbread and Co.," in the rate-book, was sufficient to entitle that gentleman to be placed on the registry. As the words "Messrs. Whitbread" were sufficient to convey a plural meaning, he conceived it to be a good rating of both the brothers, who had been proved to be partners in the firm. In this case, therefore, the objection must be disallowed.

Mr. Craig (R. B.) concurred, and the name of Mr. Samuel Charles Whitbread was ordered to be retained upon the list.

In the list of the parish of St. Mary-at-hill, the name of Mr. James Peek was objected to on the ground that he was not rated to the poor-rates.

On inquiry, it turned out that Mr. James Peek was

City of London, 1835.
Not being rated.

one of three parties (partners in trade) claiming in respect of the business premises, which were rated in the parish books in the name of the firm, "Peek, Brothers, and Co.," and the sufficiency of the value of the premises, and the fact that the present claimant was one of the "brothers" of the firm, having been proved, Mr. Tamlyn (R. B.) overruled the objection, stating that he was of opinion this was such a rating as came within the provisions of the Reform Act. He should, therefore, retain the name of Mr. James Peek in the list.

Mr. George M'Daniel was objected to, and on reference to the rate-book, it appeared that the premises in right of which he claimed were assessed under the following entry, "Charles Haynes for George M'Daniel," and it was proved by the rate collector that Mr. Haynes was the landlord of these and other premises upon which he paid all the rates for his tenants.

Mr. Heppell relied upon the 30th section of the Reform Act, the latter part of which gives the tenants a right to vote after having made a claim to be rated, although the rates were paid by the landlord.

Mr. Rowcroft.—The party rated here is the landlord; the rates were paid by him; and the claim must therefore be rejected.

Mr. Tamlyn (R. B.) said, it appeared that the claimant had entered into an agreement with his landlord to pay an increased rent, the landlord undertaking to pay all rates and taxes. In pursuance of that agreement an entry was made in the rate-book "to be paid by the landlord or tenant;" there could be no mistake as to the meaning of that entry, and he therefore considered it such a rating as to bring the claimant within the provisions of the Act, with regard to the payment of rates by either party; in the absence of any authori-

ties on the point he should adopt the old rule of law, "*qui fecit per alium fecit per se.*"—Name retained.

City of London, 1835. Not being rated.

The claim of Mr. Telford was objected to by Mr. Rowcroft, on the ground that the entry made in the rate-book as to his being rated was incorrect, and that it was to be considered as no rating at all. The entry in the parish rate-book was "Mr. Telford, No. 4, Star-court, 70*l.*"

Mr. Craig (R.B.) held that the claim was good, and that Mr. Telford's name ought to be inserted on the register. It was admitted that the rates were paid, and Mr. Telford swore that they were for these identical premises. On the other hand, it was contended that this was parol evidence to supply a defect in documentary proof, which could not be admitted. He (Mr. Craig) did not deny the rule as laid down by Phillips, but he did not think the case was analogous to that mentioned by that writer. If the entry in the rate-book was "70*l.*" instead of "John Telford, No. 4, Star-court, 70*l.*" the case would have been different. There parol evidence would not be allowed to fill up the deficiency in the documentary proof. It appeared that the mode of entry adopted in Mr. Telford's case was the usual one in the parish, and had not been objected to. Under all the circumstances the claim must be allowed.

John Bishop claimed as an occupier of what is termed a compounded house; that is, a house for which the landlord pays the taxes, and not the tenant.

Tower Hamlets, 1832. § 30, 2 W. 4, c. 45.

Mr. Russell (R. B.) said, the Legislature were aware, when this Bill was passed, that landlords had been allowed to compound for rates, as being, in many instances, both advantageous to the parish and the landlord.

Tower Hamlets, 1832. Not being rated.

The 30th clause of the Bill therefore provided, that the tenants of such houses should be allowed an opportunity of possessing themselves of the elective franchise, by claiming to be rated.

In reply to a question by the court, the claimant said that he had not claimed to be rated.

The court observed, that the Act did not decide when such tenants should claim to be rated.

The applicant then turned to the overseers, and said, "I now claim to be rated."

Mr. Russell said, the question would now arise whether the applicant was too late or not; and he was ready to hear that question argued.

Mr. Offor, one of the candidates, was requested by the claimant to conduct the argument on his behalf, which he consented to do, with the understanding that he did so purely for the sake of settling the question, and not with any interested motives.

Mr. Russell said, this was a most important question, affecting almost every parish in this borough, and therefore he should call in the assistance of his brother barrister, Mr. Chapman; he also suggested, that some one should appear on the part of the parish.

Mr. Ware, the vestry clerk of Shoreditch, consented to do so, premising, that in meeting the arguments of Mr. Offor, he was not influenced by any inclination to limit the elective franchise, or to deprive this description of claimants of their votes, but merely for the purpose of bringing both sides of this important question before the court.

Mr. Offor on behalf of the claimant said, the question was, whether the claimant, being an occupier of a compound house, and not having claimed to be rated before

the 31st of July, but on the 17th of October, was too late to claim to be rated between that date and the final revision of the list?

Tower Hamlets, 1832. Not being rated.

It ought to be understood that the tenants of those houses for which the landlords compounded, paid an additional sum, by way of rent, to cover the rates and taxes, and that the landlords themselves were, under some circumstances, compelled to compound by local Acts. The question was, whether the tenants of such houses, claiming to be rated before the court *viva voce*, can be refused by the overseers; he was of opinion, that their refusal would not invalidate the vote, as the claim to be rated might be considered as good as being actually rated. The claimant had, as well as other persons, sent a notice to the overseers, to put his name on the register; but not being versed in legal technicalities, he did not word that notice as he ought to have done; he did not claim to be inserted on the rate-book. He was happy to find the question had taken this turn, because it would be of the greatest importance to many who had not claimed to be rated, under the idea that a limited period was laid down in the Act. As no time was specified, the claim should be made, as a matter of course, before the register was finally revised and completed; and, therefore, he submitted that the applicant ought to be considered as among the number of those actually rated, whether the overseers refused to admit the claim, or not; and consequently his vote must be good, if the rest of the qualification was good. It was not too late for him to claim to be rated, and therefore, it was not too late for him to be admitted as a voter.

Mr. Ware said, the delivery of the claim could not affect the question; the claim was to be put upon the list, and not upon the rate-book. The claim was a

Tower Hamlets, 1832.
Not being rated.

printed form, supplied to the claimants generally, by the overseers. Great reliance had been placed upon the circumstance, that there was no definite period expressed in the Act, for claiming to be rated; but a period was fixed in which the lists should be made out, and a period for making the claims. The Act contemplated giving all publicity to the lists, in order that persons authorized might have an opportunity of making objections; if voters could be admitted at this stage of the business, that provision of the Act would be defeated, for there would be no opportunity of objecting. The Act did not sustain the hypothesis raised by Mr. Offor, that a claim might be made at any time, for there was no clause in it empowering the revising barrister to insert the name of any person omitted in the list, who was not prepared to show he had made his claim in the proper time, and whose name had not been publicly exhibited. The intention of the Act was clearly, that the claim should be made in time to be inserted in the supplementary list, in order to give this court an opportunity of deciding on the merits of such claim.

Mr. Offor reminded the court, that in this case the name of the claimant was on the list.

The court remarked, that the revising barristers were empowered, under the 50th section of the Act, to insert the names of claimants whose titles were good, on the last day of July.

John Bishop, the claimant, was then examined by the court. Was not aware, before to-day, that he ought to claim to be rated. Did not think the notice he had sent in, conveyed his wish to that effect to the overseers.

The learned barristers retired for a short time, to consider the question: on their return,

Tower Hamlets, 1832. Not being rated.

Mr. Russell (R. B.) said, there were doubts and difficulties connected with this important question, in the mind of the court, which had not been touched upon, and therefore they had determined to adjourn it, in order to give an opportunity of entering more fully into it. It was then arranged, that this particular question should be adjourned to a future day.

On the hearing of this case being resumed,

Mr. Offor said, that the claim was made in sufficient time to render it valid. There was no time specified in the 30th clause of the Act, when the claim to be rated should be made; therefore it might be made at any time which would bring the claimant within the rule of qualification described in the 42d clause—that he should have been qualified on the last day of July. Although some stress might be laid upon the publicity given to the lists, the great object of such publicity was, to receive the claims of those voters whose names had been unintentionally omitted in the original list; and if the claim was made to be put upon the rate for the time being, such rate having been made prior to the 31st day of July, it would, so far as the poor-rate was concerned, entitle the claimant to vote on the ensuing election. In the parish of St. Mary, Whitechapel, for instance, the rate is made once a year, and the rate for the time being is the only rate made between July 31, 1831, and July 31, 1832; so that the claim may be made at the last moment prior to the register being settled.

The court, after a very short deliberation, decided that the claimant was too late, and that to render a claim to be rated valid, it ought to have been made on or before the 20th day of July. Name expunged.

Bethnal Green, 1832. Not being rated.

John Fenn, who claimed as an occupier of a compound house, said that he went to the overseers, and claimed to be rated; but as there were no rates due, there was no necessity to tender money. When the list was published, he found his name was omitted, and immediately wrote to the overseer, claiming to be entered on the list. Still he was omitted.

Mr. Russell (R. B.) explained to the claimant, that the Act required the elector to be rated to all rates within the year; and that, as quarterly rates were made in Bethnal-green, the tenants of compounded houses could not have qualified between the passing of the Act and the 31st day of July last*.

City of London, 1832.

Several applications to be registered were made by householders residing within the limits of the city, who had been in the habit of permitting their landlords to pay the rates and taxes payable with respect to the premises they occupied, and in consideration thereof giving their landlords a higher rent. They conceived that they had a right to have their names placed on the registry, since they did substantially, though not directly, pay the rates and taxes due upon the houses which they occupied. Some of the applicants had, it

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* By section 30, a person having claimed to be rated, and tendered payment of the rates due, is to be deemed to have been rated "from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid;" therefore, unless it is in places where only one rate is made for the whole year, or where the occupier has been assessed to all rates made during the year preceding the 31st of July, except the last, or in case of partnership, or of successive occupancy, the proviso contained in section 27, requiring occupiers to be rated to all rates for the relief of the poor, is not complied with, and the claimant is still disqualified.—Vide Buckler's case, Manning's Notes of Revision, p. 56.

appeared, claimed to be rated, subsequent, however, to the 20th of July.

City of London, 1832. Not being rated.

Mr. Thompson (R. B.) said, that to enable any person to have their names placed on the register, their names must appear in the parish books as the payers of the poor-rates, or they would have no vote. Such of the applicants as had omitted to make their claim to be rated previous to the 20th of July, were not entitled to have their names put on the registry.

A parishioner of St. Mildred's, Bread-street, claimed to vote for a house for which he paid 100*l.* a-year rent, and intended also to cover rates, which were nominally paid by the landlord, though virtually by the tenant, as he paid from 25*l.* to 30*l.* more than a fair rental in order to cover the rates.

The court held, that the tenant had a right to claim to be rated, but it appeared that in mistake he had made a claim, not to be rated, but to be put on the list. The omission to make the claim to be rated within the prescribed time was held to be fatal, and the claim was disallowed.

S. Bates claimed to be registered as an occupier of house and land for which he paid 18*l.* per annum; he was rated for it, but his landlord paid the rates and charged them to him at Martinmas.—Name retained.

Rating in the name of the claimant sufficient. 1832.

An objection was taken by the overseers of St. Andrew's, Holborn, to a claim with which they had been regularly served, on the ground, that though the party was rated in the parish books in respect to the premises on which he claimed, yet the rates were in fact paid by the landlord.

Mr. Thompson (R. B.) held the rating of the party

City of London, 1832. Nonpayment of rates.

in the parish books to be sufficient to support the claim, notwithstanding that the rates were paid by another individual*.

Lambeth, 1834.

Mr. Saunders claimed to have his name inserted on the lists of voters as the occupier of one of four houses, for the poor-rates of which he had under the provisions of a local Act compounded with the parish. The house in which he resided was worth more than 10*l.* per annum; and all poor-rates due previous to the 6th of April had been duly paid. It was urged that the composition with the parish did not in any way affect his right.

Mr. Gillman in behalf of the parish, said that the claimant having compounded with the parish for a fixed sum for all the houses, which sum was less than he would have been assessed to in the ordinary course, had not made such a payment as was contemplated by the Reform Act, when it made an assessment to the poor-rate an essential qualification to the voter; and that though the claimant had paid at a rate of assessment of 20*l.* for the four houses, he had not paid on any one as much as he would be assessed as occupier of a house worth 10*l.* per annum; and consequently was not assessed for his residence as much as he ought to be to qualify him to be registered.

The local Act under which the composition was made, did not in any way affect the question.

Mr. Lennard (R. B.) after consulting with Mr. Knox

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* Thomas Spanner was rated, and the receipts made out in his name; but the money was paid by his landlord. The question was, whether the rates so paid by the landlord, were repaid by the tenant; evidence was produced that they were paid by the landlord on his own account, and were not repaid by the claimant. Name expunged.—Manning's Notes of Revision, p. 66.

said, the question was simply how far the composition made under this Local Act was an assessment within the meaning of the Reform Act. In his opinion it was an assessment quite sufficient to qualify the claimant. The overseers could make no higher demand. The most satisfactory evidence was adduced by the production of the parish books, to prove that the portion of the rate for the relief of the poor to which the claimant was liable, had been paid, and his name must therefore be placed on the list.

Lambeth, 1834. Nonpayment of rates.

John Jacobs was objected to. The claimant occupies a house in Sarah-place, St. Botolph, Aldgate, of which the rates are paid by the owner, Mr. Joseph. There are nine houses in the place, and, by an agreement with the parish, he is rated on a rental of *5l.* a-year for each house. The claimant pays *6s.* a-week rent.

City of London, 1835.

The vestry-clerk was called to prove that he had, along with the overseers, gone over the names of those persons who had paid their rates, and that great care had been taken not to put any name on the list of voters who had not paid up all the rates. The name of Mr. Joseph, the owner of the houses in Sarah-place, was on the rate-book as being rated for those houses, and it appeared that all his rates had been paid up before the 20th of July.

Mr. Rowcroft objected, that in the present case there had not been sufficient proof of occupation, and also that this sort of rating of the landlord to a lower sum than other houses in the parish, was not a rating in full to "all" rates, as required by the 27th section of the Act. This was his chief objection, but there was another not at all involved in it, and which must be fatal to the claim in this instance,—namely, that the

City of London, 1835. Nonpayment of rates.

party had not proved by satisfactory evidence that he was entitled on the 31st of July last to have his name placed on the lists.

Mr. Trott, in reply, said that by the 30th section of the Act, it was enacted that the claim of the tenant to be rated should not defeat the claim of the parish on the landlord for the rates. This showed that the legislature contemplated the probability of two parties being liable for the rates. He contended that virtually this must be considered a rating of the tenant. The tenant paid in rent, but it was a convenience to the parish to collect from the landlord rather than from several tenants, and therefore the parish made some small abatement on that account, but it was still to all intents and purposes a rating within the meaning of the Act. It was the interest of the overseers that all houses should be rated to their fair value.

Mr. Craig (R. B.) in giving his decision said he was required by the Act not to insert the name of any party objected to on the list, or to allow it to remain on, unless he was satisfied by the party, or by some one acting for him, that he was entitled to be on the list on the 31st of July last. In that matter he had no discretion, but, when once an objection was made, he was bound to omit the name, unless the party proved to his satisfaction that he was fully qualified. In the present case it had not been proved to his satisfaction that the party claiming had on the 31st of July a right to have his name inserted on the lists, and therefore his name must be expunged. From what had fallen from Mr. Rowcroft he felt it necessary to say a few words as to the other point, as to whether a house not being rated to the full, the tenant acquired a right to vote. He had already given it as his opinion that to the tenant under such circumstances the right of voting

City of London, 1835. Nonpayment of rates.

was given, (the other conditions of the Act being complied with,) and he saw no reason to change that opinion. The custom as to rating was different in many parishes, and often differed in the same parish on property of different descriptions. Now, if he were to take the rating at the full, he knew of no standard by which he could decide what "full" rating was, unless he took it upon the rack rent; and if he were to decide that those houses only should be deemed to be fully rated which were rated at the rack rent, he should reduce the number of voters from houses to little more than 200 in the whole of the city. As to what had been said about overseers rating at a low rate to extend the franchise, he would observe, that it might also be said that overseers might increase the rate to limit the franchise; but these were matters which he could not allow to enter into his decision. He had only to deal with the assessment as he found it. In the cases of those parties where the rate was paid by the landlord on a somewhat lower assessment than other houses, he must again say that he thought it a sufficient rating within the meaning of the Act.

Aldgate.

Moses Lyon occupied one of twenty-three houses belonging to the same landlord, and paid his rent at *5s.* a week, to include all rates and taxes. The landlord compounded with the parish by paying *3l.* *4s.* per quarter for the whole twenty-three houses. Had they been rated in the ordinary way, the rates would exceed *5l.* per quarter.

Mr. Rowcroft contended that this was not a rating such as was contemplated by the 27th section of the Act. He added, that it was doubtful whether the *5s.* per week was sufficient, after paying all rates and taxes, to leave the value of *10l.* a year.

City of London, 1835.

Mr. Craig (R.B.) postponed his decision, and on a subsequent day said, the question was, how far a rate paid by the landlord, and laid on the tenant in the shape of rent, could be considered a rating of the tenant sufficient to qualify him to vote. It was objected by Mr. Rowcroft that this was insufficient on two grounds—first, that the payment was not a payment in full of "all" rates made to the relief of the poor, as the claimant was not rated to the full, as other houses were; and the second, that if it was a sufficient rating, it was not paid by the tenant, but by the landlord. With respect to the first point, he (Mr. Craig) did not think that it was required by the Act that the tenant should be assessed to the full rate. It was a custom in many parishes to rate small houses of this description to a smaller amount than the large houses, and this was in his opinion a sufficient rating. As to the second point, he was of opinion that the rate being paid by the landlord was sufficient, as the tenant paid it back to him as rent. It was provided for by statute 3 William and Mary, cap. 2, sect. 6, that payment of rates made by the landlord for the tenant, and paid by the tenant as rent, gave the tenant a settlement, and the tenant in that case would be considered as "charged" with the poor rates, or in other words as "rated." He (Mr. Craig) thought the same principle must apply here. The tenant is virtually assessed by the rent paid to the landlord, and if the tenant were to be called on to be rated separately to a poor rate, he would be paying twice over. Under these circumstances, and looking at the Act of William and Mary to which he had referred, he would decide that the payment of rates by the landlord was to be considered as a payment by a tenant claiming under the Reform Act. The name of the claimant must be retained on the list.

Extra parochial places. Finsbury, 1832. Ely Place. § 38, 2 W. 4, c. 45.

The overseers of the liberty of Saffron-hill, Hatton-garden, and Ely-rents, having a dispute with the inhabitants of Ely-place as to whether they were extra-parochial or not, on which a suit is still pending, omitted to return them in their list, on the ground that they had not paid their rates, they having refused them, because they considered themselves to be extra-parochial. It appears that they are governed by a committee of their own, annually elected by and from among themselves; they are rated for all the public exigencies of their place, and pay all claims made upon them, without any reference to the parish whatever. They had been distrained upon by the parochial authorities for the rates, but still resisted payment, and out of this resistance the question at law has arisen. When the inhabitants of Ely-place discovered that their names had been omitted in the overseers' list, they claimed to be inserted, and a list of them was then made out, which the court accepted as a list of "claimants;" and on the delivery of the lists to the revising barrister, Mr. James, the treasurer, explained the matter to Mr. Russell, who deferred its further discussion until the list came on in its order to be revised. In going through the original list, the name of Mr. Greathead, an inhabitant of Ely-place, was met with, and it appeared that in the draught list made by the overseers in the first instance, the whole of the inhabitants of Ely-place were inserted, but afterwards erased, with the exception of Mr. Greathead's and one or two others, which were overlooked. Against this name the word "freeholder" had been inserted, instead of the proper qualification.

Mr. James offered, on behalf of Mr. Greathead, to supply the omission, but Mr. Hammond, the vestry-

Finsbury, 1832. Ely Place.

clerk, objected, and contended that the court could not decide in the absence of the party.

Mr. Russell (R.B.), however, overruled the objection, and decided that he was empowered to receive evidence in the absence of the party to supply such an omission as the present; and as no written objection had been made against Mr. Greathead, he should insert his qualification as now supplied in evidence, and allow his name to stand.

Having gone through the original list, Mr. Russell next took the list of the inhabitants of Ely-place, and called the first, Mr. Samuel Angel.

Mr. James said he would appear on behalf of Mr. Angel.

Mr. Hammond objected to it. By the 27th clause of the Reform Act, the claimant should be the owner or tenant of a house; he should have occupied and resided in it for a given period, and he should have been rated to all rates in the parish for the year ending the 31st of July last, and have paid them within a certain time, and also the assessed taxes. The Act also provided that such persons as thought themselves entitled to vote, and had been omitted, should make a claim, and a list of such claimants should be made out by the overseers, and exhibited on the church doors. With reference to the persons whose names were now before the court, the latter had not been done, and unless the party was present he could not examine him on the other points; and it was essential that he should do so on the part of the parish, for by such an examination he should be able to show that none of them were qualified to vote. He contended also that the court could not take cognizance of such a document as the list now before it.

Finsbury, 1832. Ely Place. Not being rated. Where the overseers neglect to publish the list, the claimants are not to be disfranchised for their neglect.

Mr. Russell (R. B.) overruled these objections, and observed, that if the overseers neglected to publish the list, the persons were not to be disfranchised for their neglect.

Mr. Hammond contended further, that the revising barristers, by the 79th clause, were compelled to proceed in the same manner as the returning officers had been accustomed to do, and therefore the party must be present.

Mr. James, in reply, said, that by the 52d section the court was empowered to receive secondary evidence, and it had hitherto been the universal practice, under the Reform Act, to do so.

Mr. Hammond said he would still insist that Mr. James could not be heard in support of the claim. He had often heard the judges at *nisi prius* urge strong objections to the evidence of attorneys; they could not be unbiassed witnesses, nor could they be in a situation to prove all the necessary points.

Mr. Russell (R. B.) said these objections were premature; if he saw a necessity for the appearance of the party, he should certainly require it.

Mr. James said, he did not appear as an attorney, but as the treasurer of Ely-place, to support the claims of all the inhabitants of that place. He produced a copy of a written notice sent to the overseers before the 25th of September by Mr. Angel, and he (Mr. James) served that notice himself.

The notice was directed to the "overseers of the parish of St. Andrew, Holborn."

Mr. Hammond said, there were no such persons in existence.

Mr. James said, he served the notice upon Mr. Wainwright, one of the overseers of the liberty of Saffron-hill.

Finsbury, 1832. Ely Place. Not being rated.

Mr. Wainwright admitted that fact.

Mr. Hammond said the parish was divided into three townships, or liberties, each having its own overseers, and being independent of each other in the management of the poor. He called

Mr. Woodward, the assessed tax-collector for the liberty of Saffron-hill, who stated that the parish is divided into three liberties, and they choose their own overseers. The upper division is called the united parishes of St. Andrew, Holborn, and St. George the Martyr; the lower division, the united liberties of Saffron-hill, Hatton-garden, and Ely-rents; and the third division lies within the city of London, and is called the City Liberty. They have separate work-houses, and maintain their own poor, and pass paupers from one to the other.

On examination by Mr. James, he stated, that Mr. Wainwright was one of the overseers of the liberty of Saffron-hill, Hatton-garden, and Ely-rents, in the parish of St. Andrew, Holborn; and that Ely-place is next to that part of the parish which is called the liberty of Hatton-garden, Saffron-hill, and Ely-rents, in the parish of St. Andrew, Holborn.

Mr. James put in the overseers' list as evidence to show that they had so described the parish.

Mr. Taylor, vestry-clerk of St. Andrew-above-Bars, on being examined by Mr. Hammond, said, I am clerk to the governors of the poor, under a Local Act, the 6th Geo. IV., but I think at general meetings I am vestry-clerk. I believe there are three such clerks in the parish; one of these is also a clerk of the whole parish for ecclesiastical purposes. The latter is Mr. Pontifex, clerk in the city liberty. There are no overseers for the entire parish; each liberty has its separate overseers. An order of removal signed by "the

overseers of the parish of St. Andrew, Holborn," I should consider bad. The usual form is "the overseers of (naming the liberty), in the parish of St. Andrew, Holborn."

Finsbury, 1832. Ely Place. Not being rated.

Mr. Russell (R. B.), in reply to Mr. Taylor, said, There is but one general parish church; two others have been recently built. There is but one rector of the parish. The churchwardens are appointed for the whole parish.

Mr. James said he could prove, by *Doomsday-Book*, and all the ancient works in our language, that the liberties were always treated of as one parish.

Mr. Hammond referred to a case in *Burn's Justice*, "the King *v*. Loxdale," in which Lord Mansfield had recognised the liberties as three distinct parishes.

Mr. Russell (R.B.) decided, that the heading of the notice was quite sufficient. It had been proved that in the case of the rector the parish was considered as one, and also in the case of the churchwardens, and of Mr. Pontifex, the vestry-clerk. And the 79th section of the Act provided that no misnomer or inaccurate description should be fatal, if it could be commonly understood to mean the person to whom it was addressed.

The notice having been read, and allowed,

Mr. Hammond said, he must insist upon the attendance and examination of Mr. Angel.

Mr. Russell (R. B.) said, he believed that where a question involving such important results to a parish came before the court, he ought to have the claimant before him.

It was then agreed that the cases of the claimants not present should be postponed, and Mr. James

Finsbury, 1832. Ely Place. Not being rated.

appeared in support of his own claim. Having produced his notice, and proved the service on the overseer,

Mr. Russell (R. B.) remarked, that now the onus of proving Ely-place to be extra-parochial would fall upon Mr. James, and proceeded to examine him, to make out a *primâ facie* case. He stated that he had occupied the house, No. 23, Ely-place, for the year ending the 31st of July, 1831, and had resided there for the last six months of that period; he was rated to all rates properly made in respect to the premises, and paid them within the time required by the Act. There was no poor-rate, but a rate made for general purposes. He was assessed to the king's taxes, and paid them in time.

On examination by Mr. Hammond, Mr. James said he had lived in Ely-place thirteen or fourteen years, and knew that Ely-place was surrounded by the parish, but did not know that it was in the centre of the liberty. When the officers of the liberty perambulate, they do not enter Ely-place; they have sometimes attempted to do so, but have been refused. There are no overseers of the poor for Ely-place, but there is a committee of six, elected by the inhabitants annually, who make two rates in the year, for lighting, paving, &c. The custom is as old as the place itself. He had been chairman about two years, and had written minutes of the resolutions and proceedings of the annual and other meetings, at which the rates were made.

Mr. Hammond said, all those documents should be produced.

Mr. Russell said, he had no power to order them to be brought before the court.

It was ultimately arranged that the case should be

postponed, to give time for the production of such evidence, on both sides, as the parties may think proper to bring forward.

Finsbury, 1832. Ely Place. Not being rated.

Messrs. Russell and Chapman (R. B.) subsequently sat together, and the discussion upon the question as to the parochiality or extra-parochiality of Ely-place, was resumed.

Mr. Russell (R. B.) suggested to Mr. Hammond, the vestry-clerk for the liberty of Saffron-hill, Hatton-garden, and Ely-rents, whether, under all the circumstances of the imperfect constitution of the court (which had no power to compel the attendance of witnesses, or the production of papers) to decide so important a question as the extra-parochiality of Ely-place, while proceedings at law were pending, the parish officers had not better consent to withdraw their opposition to the claims tendered on behalf of the inhabitants of Ely-place, on a certificate being given by the revising barrister to the effect, that the proceedings now going on in the court of King's Bench to settle that question should not thereby be prejudiced?

Mr. Hammond replied, that being favourable to the greatest possible extension of the elective franchise provided that object could be attained without prejudice to his clients, he would willingly accede to the suggestion of Mr. Russell, provided also that his certificate should be so worded, as clearly and distinctly to reserve the question of extra-parochiality, as if it had been wholly untouched by the present discussion; at the same time, he was prepared to go into the question, and to establish the parochiality of Ely-place.

Mr. James (treasurer of Ely-place) contended, that as neither Mr. Hammond nor the overseers, nor any

Finsbury, 1832. Ely Place. Not being rated.

one else, had objected to the inhabitants of Ely-place, within the time specified by the Act, he could not now be heard in opposition to their claims.

After some further discussion, the arrangement suggested by the court was adopted, and the following certificate was given to Mr. Hammond by Mr. Russell:

"Mr. George Lake Russell, the revising barrister for the borough of Finsbury, understanding that the question, whether Ely-place is or is not parochial, is in the course of investigation in a trial in the Court of King's Bench, and feeling that for various causes the revising barristers' court is not so constituted as to enable him to come to a decision which would be satisfactory on so important a point, requests the parish to withhold any evidence on their part before him, and such evidence is withheld accordingly, under the express understanding, that neither the parish nor the inhabitants of Ely-place should be prejudiced thereby.

"GEORGE LAKE RUSSELL.

"White Conduit-house, Nov. 14, 1832." *

This certificate was deemed satisfactory by all parties, and Mr. Hammond, having accepted it on behalf of the parish, did not interfere during the subsequent proceedings in the case of Ely-place.

Mr. Russell (R. B.) then observed, that as, at his request, the parish had withdrawn their opposition, what transpired in this court would not prejudice the suit now pending between the inhabitants of Ely-place and the parochial authorities. He then proceeded to examine

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* 1833. A similar arrangement was made this year by Mr. Russell giving another certificate to the same effect.

1834. A similar arrangement was made this year by Mr. Sandys, the question being still undecided.

Mr. James, to make out a *primâ facie* case, who stated, that the inhabitants of Ely-place had never contributed to the parish funds, nor borne any part of the parish burthens, nor had any person obtained a settlement in the parish by servitude or tenancy in Ely-place. The inhabitants of Ely-place supported their own poor; and had borne every burthen which came upon them by their residence there. When their porter was incapacitated, and in fact superseded, they wholly supported him during his life, and the watchman also. Ely-place, as far as he knew, had been, from time immemorial, exempt from the ecclesiastical division.—It had been recognised by Acts of Parliament as an extra-parochial place; in the Police Act it was expressly mentioned among other extra-parochial places; and they had made their own population returns.

Finsbury, 1832. Ely Place. Not being rated.

Mr. Russell (R. B.).—Upon this evidence then, I insert your name.

The rest of the names on the list of inhabitants claiming for Ely-place were then gone through, *pro forma*, Mr. James giving evidence on their behalf as to qualification.

Objections were made to two claimants, residents in chambers in Furnival's-inn, as not being rated to the poor's rates. The court held, that being extra-parochial, the omission did not disqualify, and retained their names.

Furnival's Inn.

By this decision the occupants of Thavies' and Barnard's Inns, which are also extra-parochial, are entitled to be registered *.

Thavies' and Barnard's Inn.

* Vide also page 57.

Chichester, 1835. Nonpayment of rates.

Thomas Mayhew, of All Saints, claimed in right of certain premises successively in his occupation. He was objected to on the ground that he had not paid all his poor-rates. It appeared that he left the premises in St. Botolph on the 27th of April last, having paid the overseer, Mr. Pretty, one-third of the quarter's rate; on Mr. Watts, the overseer of All Saints, applying to him for the rate of that parish, he offered him two-thirds, but Mr. Watts being satisfied with a half-rate, he paid him.

Mr. Cooper contended that this was a fatal omission, as a period intervened for which no rate was paid.

Mr. Maclean (R. B.) said the law required the party to be rated, and that his rates should be paid by a certain period; but from the claimant offering to pay two-thirds to the overseer, (Mr. Watts,) considering that he was justly entitled so to do, having paid one-third in St. Botolph, although it was refused by Mr. Watts, he (Mr. M.) was of opinion that it protected his claim, therefore he should retain his name upon the list.

Reading, 1832.

Thomas Parr, jun., who claimed as a scot and lot voter, was objected to on the ground that he had not paid his rates up to the 31st of July.

The overseer stated that the voter had tendered a portion of the amount for which he was rated three several times before the 31st of July, refusing to pay the whole, on the ground that he was wrongly rated. It appeared that he paid his rate subsequently, on the 13th of August. It was admitted, however, that he had not appealed against the rate.

The court held, that a scot and lot voter must have paid all his rates up to the 31st of July, to entitle him to be registered; that where a voter was

wrongly rated, he had his remedy, but that where a voter did not appeal, and where the rate was not quashed, it must be taken as the rate due.—Name expunged.

Reading, 1832. Nonpayment of rates.

Several parishioners of St. Olave's claimed to be inserted in the list in respect of the rights reserved by the Reform Act to the old scot and lot voters. Their names had been omitted by the overseers in consequence of their having neglected to pay the poor-rates previous to the 31st of July, the same having been demanded by the collector.

Southwark, 1833. § 33, 2 W. 4, c. 45.

The attorney who appeared for the claimants stated, that the rate which his clients had neglected to pay was made on the 2d of July, and only demanded on the 18th; and he therefore contended that sufficient time had not been allowed them to answer the demand. He questioned also whether any legal demand had been made for these rates, as the collector had only left at the house of his clients a printed paper, stating the amount of poor-rates due by them.

The collector, in answer to a question from Mr. Lennard, said that he considered the notice which he left at the houses of the parties in question a demand, and that it was regarded in that light by the parish in general.

Mr. Lennard (R. B.) said, that no person claiming to vote in virtue of the reserved rights could have his name placed on the registry, unless he should have been qualified on the 31st of July, in such manner as would have entitled him then to vote, if such day were the day of election, and the Reform Act had not passed. The present claimants, therefore, would possess no right to be placed on the registry, if they had neglected

Southwark, 1833. Nonpayment of rates.

to pay previous to the 20th of July the rates due by them, the payment of such rates having been demanded. The question then arose, whether any legal demand had been made for the payment of the rates; and in his opinion the notice left by the collector at the houses of the parishioners was a sufficient demand*. This view of the case was borne out by the opinions of chief Justice Abbott, who, in the case of *Cullen v. Morris*, 2 Stark. 577, decided that the plaintiff, whose vote had been rejected at the Westminster election, had a right to vote, inasmuch as he had paid his rates for some years before, and no personal demand had been made on him, or any paper left at his house, to say that his rates were in arrear. In the present case, a notice had been left at the houses of claimants, stating that their rates were in arrear, therefore their names could not be registered.

Mr. Knox (R. B.) concurred in this opinion, and the claims were accordingly disallowed.

City of Westminster, 1835.

The claim of Mr. Joseph Parkes to have his name inserted on the register was objected to.

Mr. Tamlyn (R.B.), in pronouncing judgment, detailed the following facts.—In this case Mr. Joseph Parkes claims to be put upon the list of voters for the parish of

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* Bridgewater, 2 Peck. 108. The committee decided, "That persons rated, and not having paid their rates before the day of election, the rates having been *legally demanded, and no fraud appearing on the part of the overseers*, are disqualified from voting." But where there appeared any laches on the part of the overseer, —for instance, as promising to call again and not coming—the vote was admitted, though the money was only paid at the poll. Seaford, Simeon, 134.

City of Westminster, 1835. Nonpayment of rates.

St. Margaret, as a person entitled to vote in the election of members of Parliament for the city of Westminster, and the question simply is, whether his case is within the 30th section of the Reform Act. The house in respect of which Mr. Parkes claims to vote is in Great George-street, and was before occupied by Sir Edward Stracey, who leased it to Mr. Parkes for a term of nineteen years, at a rent of 233*l.* 15*s.* The parish officer called, when Mr. Parkes informed him that he had become tenant from Michaelmas, and that he should in future pay the rates, and that he claimed to be rated. There appears to have been at this time some arrears due from Sir Edward Stracey, but none from Mr. Parkes. The fact of those arrears was mentioned by the officer to Mr. Parkes, who answered that he would inquire respecting them by letter to Sir Edward Stracey, which he accordingly did, and Sir Edward Stracey, in his answer, having admitted these arrears, Mr. Parkes, by check on his bankers, paid the amount, and then required the officer to receive the rates in future from Mrs. Parkes, as he was very much engaged. It appears, however, that the officer did, in fact, always receive the rates from Mr. Parkes himself by checks on his bankers; that the receipt was always given in the name of Joseph Parkes, Esq.; and that the call-paper was exclusively directed to Mr. Parkes. Some part of the house had been occupied by the Corporation Commissioners, and their names had been placed on the door, and the collector had taken their names down, and he stated that if he had not done so, he should have put down that of Mr. Parkes. It has been contended that the claim to be rated was not a good one, because the rates due from Sir Edward Stracey were not paid at the time. Now,

City of Westminster, 1836. Nonpayment of rates.

it is far from being clear to me that the Act meant to include the payment of rates that became due before the claimant entered into the occupation of the property. If indeed that were the construction, a person succeeding an occupier who had left his rates unpaid, or a landlord succeeding a tenant who had not only left his rates unpaid, but had, perhaps, afterwards defrauded him of his rent, could not make an effectual claim to be rated, so as to be put upon the rate, without discharging an incumbrance, which it would seem impossible the legislature could have intended to fix upon him. But it is unnecessary to consider that question here, inasmuch as the payment of the rates was postponed on an arrangement between Mr. Parkes and the parish-officer, that Mr. Parkes might have a communication with Sir Edward Stracey, in order to be satisfied that Sir Edward Stracey admitted the arrear; and his answer being received, Mr. Parkes paid the money; and on his doing so again referred to the payment of the rates by him in future; and that as he was very much engaged, they would be paid for him by Mrs. Parkes. It appears to me, then, that this claim to be rated, and the payment of the arrears, is, in effect, one transaction, and quite sufficient. On these grounds, therefore, I shall overrule the objection, and retain Mr. Parkes's name in the list of this parish.

Leeds, 1836.

Mr. George Houson was objected to by Mr. Rawson. In support of his claim he stated that for seven years he had occupied a house, a garden, and some land, for which he paid 13*l.* rent, per year, all under the same landlord; and that all the rates were paid.

Leeds, 1835. Nonpayment of rates.

Mr. Rawson contended, that as the voter was only rated for land in the rate book, the house not being mentioned at all, he was not rated for a building within the meaning of the Reform Act. A second objection which he urged, and maintained must prove fatal, as the Reform Act required that the whole of the rates must be paid to entitle any person to the elective franchise, was that the voter was not so entitled, as about twelve months previously he had paid a rate of *5s.* 1½*d.* with *5s.* 1*d.*, the remaining halfpenny never having been paid. The law made no distinction between a large and a small sum being deficient, and as this individual had not paid the whole of the rates due and payable by him, as required by the Reform Act, he was not entitled to have his name retained upon the list of voters.

Mr. Benjamin Wood, overseer of the township of Beeston, was called by Mr. Bond, and requested to explain the rate book, and account for the deficiency of payment, which he did by stating that it was usual to rate property under the head land, if the land was considered to be of greater value than the buildings; that which was represented under the head buildings, frequently consisted of both buildings and land; he had received a rate of the voter when they were both short of change, and consequently one halfpenny was left unpaid. The voter told witness to ask him for it, but he had neglected to do so, and had entirely forgotten the halfpenny, although he had received a rate subsequently of the voter, and no man paid better.

Mr. Heigham (R.B.) observed that if the overseer neglected his work, or kept his books in such a state that no person could understand them, it was a very hard case for the voter to be disfranchised; he had himself ex-

Leeds, 1835. Nonpayment of rates.

amined the rate, and it was in evidence that the voter paid rates for the house, although it was rated under the head land. He did not know how to understand the rate book, for he frequently, under the column "owner," found the word "empty," which in fact was an impossibility, as there must be an owner to the property; all houses and land were indiscriminately called the one or the other. After reserving the case for further consideration, on a subsequent day, the objections were overruled.

Marylebone, 1832.

Mr. Roberts claimed to be registered as entitled to vote. The rates had not been paid until the 2d of August because payment had not been demanded.

The collector proved that he had called for payment previous to the 20th of July. Mr. Roberts was out, and he left one of the usual printed notices.

Mr. Keene (R. B.) considered the notice equivalent to a demand, and rejected the claim.

Bethnal Green, 1832.

The collectors of the parish of Bethnal Green being unable to inform the court as to the precise date on which they received the rates and taxes, the complainants were compelled to produce their receipts, to prove that they had paid on or before the 20th of July last, as required by the Act. In one case a receipt was dated on the 31st of that month, but the claimant declared he paid on the 13th. The collector admitted that he might have made such a mistake, but would not swear to that.

The court decided, that the evidence of the receipt must be its guide, in the absence of better evidence to the contrary, and disallowed the claim.

A claimant of St. Andrew-above-Bars was opposed, on the ground that he had not paid up the whole of his rates as required by the Act. He stated that he entered the premises he now occupied at the half-quarter, and a demand was made upon him for the whole, which he refused to pay. The dispute remained pending until he was in arrears for the next quarter; he had, however, tendered the rates to the amount that he deemed himself liable.

Nonpayment of rates. Where the rates have been disputed, although the sum originally demanded has not been paid, the claimant was admitted.

Mr. Taylor, the vestry-clerk, admitted that the claimant had done so, and that a final arrangement of the dispute between the claimant and the overseers had taken place, but he had not paid all that was originally demanded of him.

Mr. Russell (R. B.) having further investigated the affair, and found that the rates which the claimant had paid, brought him within the meaning of the 27th section of the Act, admitted his vote.

Mr. Samuel Stone (on the list of 10*l.* occupiers) was objected to, as not having paid his rates, there being 9*s.* of the rate made in March, left still unpaid.

Borough of Leicester, 1832.

The evidence was, that Mr. Stone's rate was increased from 1*l.* 1*s.* to 1*l.* 10*s.* for that quarter, to which he objected. He paid 1*l.* 1*s.*, the usual rate for the quarter; and the collector, after some conversation about the value of the house, said the sum paid was quite enough. He made a mark to that effect in the rate book, and said he would tell the overseers of it. The succeeding collector had no instructions from the overseers to call for the 9*s.*; he never did call, nor intended to call for them, nor could he take on himself to say that any part of a rate was due from Mr. Stone.

Mr. Finnelly (R.B.) said, the words of the 27th section

Borough of Leicester, 1832. Nonpayment of rates.

required the payment, on or before the 20th of July, of all the poor-rates which shall have become payable previously to the 6th of April; and that, whether they are demanded or not. But as the collector said he does not consider any thing due, the conclusion from that was, that nothing was payable, and that Mr. Stone had paid all payable rates.

Other persons on the 10*l.* occupiers' list were objected to, for not having paid the rates of the quarter previous to the 6th of April, 1833.

It appeared that the rate of that quarter was prepared by the overseers on the 27th of March, allowed by the justices on the 3d of April, and published the Sunday following, which happened to be the 6th of April.

Mr. Finnelly (R.B.) decided, that this rate was not payable previously to the 6th day of April. It was not published until that day, and a rate could not be considered made until published, as, by the 17th of George 2, c. 3, it had no validity as to collecting or raising it before that final act.

Marylebone, 1832.

The name of a claimant had been omitted from the lists, because he had not paid his poor-rates within the given time.

Tender of payment of rates sufficient, although the payment of costs of summons refused.

The claimant admitted the fact, but contended that he was entitled to have his name placed on the lists, as he had tendered the rate on the 14th of July.

The overseer said that the tender was refused, because the claimant objected to pay a shilling, as the cost of the summons which had been issued, to compel the claimant to pay the rate.

The claimant said, that he had refused because he considered the conduct of the collector as harsh and

arbitrary, he having issued the summons on the first demand of payment after the rate was made. The magistrate, before whom the case was brought, had, it was said, the same opinion of it, for he kept back the summons. It was further contended, on behalf of the claimant, that all the Act required was a tender of the rate in due time. It said nothing of the cost of summons.

Marylebone, 1832. Nonpayment of rates.

Mr. Palk (R. B.) said, it was clear that the tender was made within the time specified by the Act, and therefore the claim must be admitted.

Mr. William Rogers claimed to be inserted in the list of voters resident within the parish of St. Leonard, Shoreditch, but was objected to, on the ground that he had not paid his police-rate due at Lady-day, before the 20th of July last.

Demand of rates not necessary. § 27, 2 W. 4, c. 45.

The claimant said, that he was not aware any such rates were due from him, as no demand had been made upon him for payment.

Mr. Russell (R. B.) observed, that it was not necessary any such demand should be made, and the objection was fatal to the claim.

An elector claimed to have his name inserted in the list of voters for St. James's parish; his claim was opposed by Mr. Buzzard, the vestry-clerk of the parish.

Westminster, 1833. Where a local Act directs the police and county-rate to be levied as the poor-rate, tender of the poor-rate only, insufficient.

It appears that the poor-rates in the parish of St. James are charged at 3*s.* in the pound, but of this sum only 2*s.* are appropriated to the relief of the poor, and the remaining shilling is applied to defray the expenses of the police, and other purposes connected with the administration of the affairs of the parish. The claimant, being aware of this subdivision of the sum levied

Westminster, 1833. Nonpayment of rates.

under the name of "poor-rate," went to the collector and tendered 2*s*. in the pound on the amount of his rental, and upon this ground contended that he was entitled to be registered as a voter.

Mr. Keene (R. B.), after consulting with Mr. Thompson, and referring to the Act, disallowed the claim, because the local Act, under which the vote was levied, declared that the police and county rates should be levied as poor-rates, and it was only subdivided for the satisfaction of the inhabitants.

Nonpayment of rates, not a valid objection.

The overseers of the parish of St. Nicholas Cole Abbey, appeared with the list of voters resident within their parish, to the names of four of whom the words "objected to," were annexed. On inquiry, it was found, that the ground of objection was, that the parties in question had not paid their rates.

Mr. Thompson (R. B.) said, that such a ground might have been a proper reason for the non-insertion of the names on the list, but he was afraid that, as the names did appear on the list, the objection must fail *.

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* The objector, who was senior churchwarden, was required to prove the service of the notice of objection. He had delivered it to Mr. Wavell, who was not the regular overseer, but was employed, and paid by the churchwardens and overseers, to collect rates, &c., and he was known as the acting overseer. He had prepared the list of persons claiming to vote, but had not added his signature to those of the legal overseers. It was contended that he was not an overseer under the 43d of Eliz., nor an assistant overseer, under the 59th Geo. 3. c. 12, and was not liable to a penalty for refusing to accept, or to produce the books, 17th Geo. 2, c. 2. The court said, the Act contained no provision respecting the objection of overseers in boroughs. There was, however, nothing to deprive a voter of the privilege of objecting, where such voter was an overseer. The Act did not require a delivery to the overseer personally. The delivery to Mr. Wavell was sufficient.—Manning's Notes of Revision, 26.

Nonpayment of rates.

Mr. C. Pitt, of the Adelphi, claimed to be inserted in the list of electors of the parish of St. Martin-in-the Fields.

It appeared that Mr. Pitt occupied a counting-house, which he stated to be of the yearly value of 50*l.*, in a house which he let out to different parties, three of whom were rated to the poor, and had been admitted to the franchise. He had paid no poor-rates for eight or ten years, and was not at present rated in the parish books; but, about ten years ago, he had been rated, and had paid rates; therefore, he contended, that the 27th section of the new Act, contemplated extending the franchise to him, from the words, "shall have been rated, &c., during the time of his occupation," &c. The words, "have been," he considered to refer to any antecedent rating, and as he had been twenty years an occupier, and still paid the poor-rate indirectly, he thought he had made out a claim.

Mr. Keene (R. B.) said, he had no doubt at all on the subject. Mr. Pitt had no claim to the franchise, on the ground he had alleged; for the Act of Parliament evidently intended by the words, "have been," to refer to occupancy and payment of poor-rate between the year 1831 and 1832 *.

* Henry Dashwood was rated in respect of a house held by him from Mr. Webb, for 13*l.* per annum, under an agreement, whereby Webb engaged to pay the rates. It was contended that the nonpayment of the rates did not disqualify the tenant, because, by the agreement with his landlord, he was not liable to any. The court said, the claimant is required to have paid all rates payable "from him." The words, from him, must be understood to mean all to which he is assessed, and for which, as between himself and the parish, he alone is liable. If the assessment, though in his name, is to be considered the assessment on the landlord who pays the rates, then the tenant is not rated. If the claimant is to be considered the person rated, then he has not paid. Name expunged.—Manning's Notes of Revision, 18.

City of London, 1835. onpayment of rates.

The premises of Mr. Balne in Gracechurch Street were burnt down in December last. A rate had been made in January, but the collector did not call for the rate till September, when the premises were rebuilt. In the interim Mr. Balne occupied premises in Long Lane, Smithfield, for which he paid a fixed sum, the landlord paying all the rates.

Mr. Craig (R.B.) held the claim to be good. Mr. Balne had never been applied to for the rate till September. He thought Mr. Balne had complied with the words of the Act; he had paid all rates that were "payable" within the time, and he therefore directed the name to be continued on the list *.

City of London, 1835.

In the case of Mr. Charles Hodson, of St. Andrew's, Holborn, a question arose as to how far a payment of rates made by the overseer or collector, for a householder, without his authority or his knowledge, was a payment within the meaning of the Act. The collector, in his direct examination in support of Mr. Hodson's right to vote, produced the rate-book, from which it appeared that all rates were paid by Hodson before the 20th of July. On his cross-examination by Mr. Rowcroft, it came out, however, that the rates were paid, not by the claimant, but by him (the witness). He had entered the sum in his book as paid to the parish, and on balancing his account, he handed over the difference due to the parish to the churchwarden. He had not done this for any election purpose—he had no

* Pulling down and entirely rebuilding the house in right of which the voter was registered, does not invalidate his vote. —Meyrick's case, New Windsor, K. and O. 153.

A person who builds a house on his land is the occupier of the land and house during the building.—Manning's Notes of Revision, 113.

thought of the kind. He did it merely out of respect to Mr. Hodson, and to get rid of the account. He had only two arrears, that of Mr. Hodson, and a female householder. Mr. Hodson repaid him some time in August.

City of London, 1835. Nonpayment of rates.

Mr. Craig (R. B.) held that this was too much of the character of an eleemosynary payment, to qualify the claimant, and the name must therefore be struck out.

Mr. Trott objected to the name of Mr. George Godfrey, on the ground of his being in arrear for a portion of the poor-rates charged on his premises.

St. Olav, 1835.

The rate-collector proved that there was now due by Mr. Godfrey to the poor-rates 17*s*. 6*d*., and to the church-rates 13*s*.

Mr. Goodeve called the claimant, Mr. Godfrey, who proved that he supplied wine to the churchwardens and overseers for parish purposes, and that he had now a set-off of 2*l*. 8*s*. for that commodity supplied by him. He had long been in the habit of discharging his rates in this way, but if he had been called upon by the collector, he should have most readily paid them.

Mr. Tamlyn (R. B.) said, that as it appeared the wine supplied was for sacramental purposes, Mr. Godfrey could only recover it as a charge upon the church, and not the poor-rates. Under such circumstances, he was still in arrear to the poor-rates, and therefore the objection must be allowed.

John Finny had been rated to all the rates since he came into the parish. The amount was 30*s*., but it appeared from the books that he had only paid 15*s*., although the overseer had given him a discharge for the whole amount. The overseer stated that Mr.

City of London, 1835. Rates.

City of London, 1835. Nonpayment of rates.

Finny had only been in the parish half the time for which the rates were made, and he therefore considered he was only entitled to pay half the rate.

Mr. Rodgers contended, that the claimant should have paid "all the rates payable."*

Mr. Craig (R.B.) said, that if there had been any reason to believe that the remission was of an eleemosynary character, he must expunge the name: but the overseers had given the claimant a receipt in discharge of all the rates which they considered he ought to pay, and therefore the claim must be admitted.

Leeds, 1835.

Edwin Simpson was objected to for nonpayment of the poor-rate. He claimed in right of a warehouse, which, up to May 1834, was assessed at 110*l.* per annum; without any notice having been given, the assessment was raised to 120*l.* per annum, the rate upon which amounted to 8*l.* When the overseer called for payment, Mr. Simpson complained that no notice had been given, according to the custom of the township, of the intention to raise his assessment. The overseer agreed to take, for that time, the rate on the former assessment.

Mr. Rawson.—This is not a payment of all rates payable in respect of this warehouse, and therefore the claim must be rejected. The overseer had not any legal authority to abate any portion of the rates.

The court considered that the objection was fatal, and expunged the claimant's name.

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* It has been contended that the voter, by claiming to have his name put upon the rate for the time being, and paying the rates due, was entitled to be considered as having been on all former rates; but it is reasonable to presume, that the intention of the Act was to relieve the party from the necessity of having recourse to legal proceedings, which was required as due dili-

City of London. 1834. St. Stephen's, Coleman-street. Nonpayment of rates.

The overseers of the parish of St. Stephen, Coleman-street, omitted the name of a householder, a Mr. Powell, who rented and was rated for two houses; the rates upon one of them were duly paid, those on the other left unpaid.

Mr. Thompson (R. B.). Then you resist this man's claim with a view of making him pay you for the other house?

The overseer admitted that it was so.

Mr. Powell said, that he purposely left those rates unpaid, in order to try the question.

Mr. Thompson (R. B.) held, that he must be entitled, for it was admitted that he was the holder of one house, and paid the rates of it within the specified time.—Name retained.

Greenwich, 1832. Nonpayment of taxes. Evidence may be received to show that the receipt is antedated.

Mr. William Cooper, residing in Conduit Vale, Blackheath, claimed to be registered; he occupied a house of the value prescribed by the Reform Act for several years, and paid all taxes up to the 31st of July, and was regularly rated in the parish books.

Mr. James, the vestry-clerk, was instructed to state, that Mr. Cooper had not paid the quarter's assessed taxes which were due on the 6th of April till the 6th

gence, before he could be considered to be rated under the former scot and lot right. And according to the provision of the Act, the occupier claiming can only be put on the rate "for the time being", and he is then to be considered as having been rated from the period at which the rate was made. To claim therefore to be put upon a rate made six months before the 1st of July, will not entitle the party to be considered as being assessed to a rate that was in force at an antecedent period.

It seems clear, from the language of the section, that the voter must pay, or tender, all rates which have become due, not only during his occupation, but also at any former period. Whether such was the intention of the legislature is another question.—Cockburn's Questions on Election Law, 70.

Greenwich, 1832. Nonpayment of taxes.

of August following, as would appear by the collector's book.

Mr. Carttar, who appeared to support the claim, said he was prepared to show that the receipt was dated the 6th of April, and not the 6th of August.

Mr. James said, the fact was, that when the collector left home, on the 6th of April, to gather the quarter's tax due on that day, he dated all the receipts; hence arose the mistake in the date on which the money was paid.

Mr. Carttar submitted, that parole evidence could not be received against a written document, and contended that the date of the receipt was conclusive evidence, to prove the time of payment. The receipt is the instrument, and, therefore, ought to carry conviction with it.

Mr. Deedes (R. B.). You are arguing the point without the production of the document: is it stamped?

The collector said, all the receipts were stamped. The receipt in question was antedated, and did not refer to the time the money was received.

Mr. Deedes (R. B.). My opinion is, that parole evidence is admissible to prove the receipt is ante-dated, but as the document is not before us, I will not decide upon the point till it is produced. The name of the claimant was subsequently expunged.

Finsbury, 1834.

Mr. William Mason claimed to have his name inserted on the list of voters resident in the parish of St. James, Clerkenwell. It was objected that his assessed taxes had not been paid within the time required by the Act.

The claimant produced his receipt, dated the 20th of July last, which was a Sunday. The collector stated, that the claimant tendered him the amount of his taxes

on Sunday, the 20th of July, but he did not feel justified in receiving it on that day. He left the receipt with his wife, dated by mistake the 20th, and the next day the claimant called and paid the money.

Finsbury, 1834. Nonpayment of taxes.

Mr. Chapman (R. B.) said, in several circuits a tender had been deemed sufficient to entitle a party to be registered. It was not strictly a legal tender, but he should construe the Act liberally and admit the claim.

City of London, 1832. St. Peter-le-Poer's.

Two householders in this parish claimed to be registered, but were opposed on the ground of not having paid their assessed taxes until after the 20th of July. The claimants produced their receipts, which bore the date of April. The overseer stated, that it was the practice of the tax-collector to antedate the receipts; and the entry made by him in his books proved that the claimants had not paid the taxes until the 21st of July.

The court said, that it was necessary to be made acquainted with the existence of such a practice, or the receipts would be regarded as evidence of the taxes being paid in due time. But as this practice had been brought under its notice, the claim must be rejected.

Mr. Widdrington, the landlord of the Waterloo Arms, and his sons, applied to have their names retained in the list, the overseers having objected to their votes, upon the ground that they had not paid the assessed taxes by the prescribed time. The claimants said, that the taxes had not been demanded from them by the collector.

Demand of payment not necessary.

The court held that the demand of payment was unnecessary, and the names were expunged.

City of London, 1832.
Nonpayment of taxes.
Tender of payment of taxes sufficient.

Mr. Cooper, of St. Peter-le-Pôer's, was objected to, because he had not paid his taxes within the time prescribed by the Act. Mr. Cooper stated, that he went to the tax-collector's house on the 20th of July, with the intention of paying his taxes, but the collector was not at home. He saw the collector's mother, and acquainted her with the object for which he came; and upon being called upon by the collector next morning, he paid the taxes.

The court considered, that Mr. Cooper had made a tender of his taxes, within the meaning of the Act, and inserted his name in the list.

Anthony Hudson, claimed to have his name inserted in the list of voters of the parish of St. Mary, Stratford-le-Bow; but was objected to, solely on the ground that he had not paid the king's taxes before the 20th of July last.

The claimant, in order to meet the objection, proved that he sent a messenger with the amount due, to the residence of the king's-tax collector, on the afternoon of the 20th of July, but the collector not being at home, the messenger brought back the money, which, however, was paid to the collector on the following Monday, the 22d of July.

Mr. Chapman (R. B.) held, that the accidental absence of the collector ought not to deprive the claimant (who had used due diligence) of his franchise, and the vote must therefore be registered.

Mr. Clarke applied to be entitled to vote, his name having been expunged from the overseers' lists. He had had a dispute with the collector of the king's taxes, respecting a window overcharged to him, and

had offered to pay what he considered was the amount of taxes he owed. The collector declined taking the money, but agreed upon letting him know the decision of the commissioners. This he did on the 21st of July, when the claimant paid the money.

City of London, 1832. Nonpayment of taxes.

Mr. Espinasse (R. B.) admitted the claim.

Mr. George Shipway claimed to be put on the list of the parish of St. Leonard, Shoreditch.

The objection to the claim rested upon the non-payment of the king's taxes before the time prescribed by the Reform Act.

Mr. Shipway said, he had repeatedly called upon the collector for the purpose of paying the king's taxes, but had never been able to meet him at home.

Mr. Russell (R. B.) inquired of the claimant, if he could swear that he had called at the collector's house to pay the taxes before the 20th of July, as that would be a good tender in law, and would save his vote.

The claimant said, that though he had repeatedly called, he could not swear that he had done so before the day named.

The court held the objection to be fatal, and the claim was disallowed.

John Bigmore claimed as the occupier of a house, No. 16, Baldwin's-gardens, in the parish of St. Andrew, Holborn, for which he had been rated, and had paid all his rates. He also possessed four adjoining houses, but in the month of July last he was relieved from the payment of a portion of the assessed taxes by the commissioners.

Finsbury, 1835. Nonpayment of taxes.

It was contended that the claimant had not complied

Finsbury, 1835.
Nonpayment of taxes.

with the requirements of the 27th section of the Reform Act, which required that all the rates and taxes due before the 20th of July should be paid. Besides this, he was disqualified under the 36th section, in consequence of the relief he had received.

Mr. Merivale (R. B.) was of opinion that the claimant had not complied with the 27th section, and therefore, without reference to the other point, the claim must be struck out.

In the case of Mr. James Bowring the point of objection was, that the claimant did not prove payment of assessed taxes, and the objector (Mr. Rowcroft) contended that it was a necessary part of the qualification to prove that all assessed taxes were paid.

In support of the claim it was argued that that would be correct if it were proved that the house had been assessed to the taxes, but the *onus* of proof of that fact lay with the objector.

Mr. Craig (R. B.) said if it were proved by cross-examination or otherwise that the house was assessed, then the claimant would be bound to prove the payment; but if that were not proved, the *onus* of proof must lie with the objector, and as the objector had not given any proof of assessment, the objection failed. The vote was therefore admitted.

The overseer proved payment of poor-rates by Mr. Pinches, the claimant, and stated that he had heard from the collector of taxes that he had also paid his assessed taxes.

Mr. Rowcroft contended that hearsay evidence of that fact could not be received.

Mr. Craig (R. B.) said that this case came within the point of the last. The fact of assessme of the house

had not been proved, and unless the objector was in a condition to prove assessment, the objection *pro tanto* must fail.—Claim admitted.

Finsbury, 1835. Nonpayment of taxes.

An objection was made to a claimant on the ground that he was assessed to the king's taxes, and had not paid them before the 20th of July. The attendance of Mr. Reid, the tax-collector, was required by the barrister.

Westminster, 1835. Attendance of tax-collectors.

Mr. Reid attended, but before being examined begged to know whether the barrister had power to command his attendance. He was aware that opinions were divided on the subject, and unless the barrister had authority to compel him, he must decline, as he was unwilling to mix himself up with these matters, as he might be considered a partisan by one side.

Mr. Craig (R. B.) said he was empowered to order the attendance of collectors by these words of the 51st section:—"And every barrister appointed under this Act shall have power to require any assessor, collector of taxes, or other officer, having the custody of any duplicate of tax assessment, or any overseer or overseers having the custody of any poor-rate assessment, to produce the same respectively before him at any court to be held by him, for the purpose of assisting him in revising the lists, to be by him revised under this Act". As to his being considered a partisan, he (Mr. Craig) did not see how he could be so considered, when he only attended in discharge of a public duty.

Mr. Reid then gave his evidence, and the party claiming was struck out for nonpayment of the assessed taxes.

Mr. Charles Bridge claimed to be registered for certain premises in the hamlet of Ratcliffe.

Tower Hamlets, 1835. Payment of taxes.

Tower Hamlets, 1835. Nonpayment of taxes.

The collector of taxes objected to the claim in consequence of the nonpayment of the king's taxes. Mr. Bridge had been taxed for a dog, but had refused to pay it, and had tendered all the other taxes that were due, but the collector refused to take them without the payment for the dog.

Mr. Merivale (R.B.), after consulting with his colleague, said the nonpayment of the tax for the dog would not disqualify Mr. Bridge, and then the question was, whether the tender of the money for the other taxes did not bring the claim within the Act of Parliament. In his opinion it did.—Name inserted.

Mr. John Hysop was objected to by the tax-collector for nonpayment of the tax for a chaise belonging to him. Name inserted.

Lambeth, 1834. Nonpayment of taxes.

An objection had been made to the name of an elector being retained on the register on the ground that he had not paid his assessed taxes. The elector proved that the collector did not call for payment, that he sent to request him to call, and finding the period approaching within which the payment must be made, he went to the collector's house and took the money with him to tender payment, but there was no person at home.

Mr. Lennard (R. B.) said, under the old law that would have been sufficient, as a man did not lose his vote if he had used all reasonable diligence in making a tender in payment of his taxes. He had done all in his power to pay, and his name must be retained.

The claim of Mr. Stone was objected to, his assessed taxes not having been paid within the specified time.

Mr. Stone proved by production of his receipts that

the taxes had been paid by his landlord and repaid by him in his rent.—Name retained.

Lambeth, 1834. Nonpayment of taxes.

St. Bride's, 1833.

An objection had been made to the name of Mr. Botterill on the ground that the claimant had been returned by the collector as defaulter, the assessed taxes on the premises out of which he claimed not being paid. Mr. Botterill in support of his claim stated, that on the 8th of July he applied to the collector of the district or parish, Mr. Welsh, to be furnished with an account of all imposts due by him, and it appeared that on the following day, namely, the 9th of July, the claimant was furnished by Mr. Welsh with no less than eleven receipts for parochial and other charges to which he was liable in respect of the premises out of which he claimed, with the solitary exception of the assessed taxes. All the taxes for which the demand was made were paid by the applicant on the following day, namely, the 9th of July. The omission was not discovered until too late according to the terms of the Act. The claimant contended, that having made his demand, it was the duty of the collector not only to furnish it, but to call for payment.

Mr. Thompson (R. B.) said, that if the claimant could shew that he had made a tender of payment within the period prescribed by the Act, he should be induced to admit the claim. The Act contained no provisions that made it imperative, or even necessary, that the collector should call and make a demand for payment. The clause expressly stated, that in order to entitle a party to vote, all taxes must be paid up to a certain day named. If the collector had pursued the course wilfully, the claimant had, under the provisions of the Act, his remedy at law. The Act provided that if any person should wilfully contravene its provisions,

St. Bride's, 1833. Nonpayment of taxes.

he should be liable to an action at the suit of the party aggrieved. The clause in question was express in its terms, and the objection, on the ground that all taxes had not been paid, was valid in this instance, and the claim must be disallowed.

The same decision was, upon precisely similar grounds, pronounced by the court in the case of Mr. Lyons, another claimant.

COUNTY REGISTRATION.

NOTICE OF OBJECTION.

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Berkshire, 1832. Blank notices. § 39, 2 W. 4, c. 45.

On an objection to the name of Thomas Curtis being inserted in the register, Mr. Gregory on behalf of the claimant, requested that the service of the notice of objection might be proved.

George Willats stated that he served a notice, a copy of which he now produced, upon the claimant on the 25th of September. When he received the notice, which was signed "Thomas Ayris," the name of the objected party, "Thomas Curtis," was not contained in it. The notice was afterwards filled up, and the name of the claimant inserted in it. Witness put the name of Thomas Curtis in the notice, which had been beforehand signed by the objector.

Mr. Gregory asked for the authority given by the objector to fill up this notice.

Berkshire, 1832. Blank notices.

Mr. Graham said that prior to the 25th of September, Mr. Ayris signed certain blank notices, and authorized him (Mr. Graham) to fill them up. He received no instructions from him as to the particular name of Curtis, or as to any of the other names, but he believed that his clerk had; and he had no written recognition of his authority for filling them up until the 2d of November.

Mr. Corbett (R. B.), after conferring with Mr. Talbot, postponed his decision to the following day, and then stated that he had fully considered the case, both with reference to the section of the Act of Parliament, and with reference to cases of notices of a similar description, and he was of opinion that sufficient recognition had been produced in this instance to substantiate the notices. He could not distinguish this case in principle from that of Goodtitle v. Woodward, 3 Barnewall and Alderson, 689, where Lord Tenterden held, in the instance of a notice to quit, that a subsequent recognition of the authority of the agent was sufficient to make it a good one. Looking also at the general principle of the law on this subject, he did not see any thing to take this case out of it, and he had only to add, that his friend Mr. Talbot concurred with him in opinion on this subject.

Middlesex, 1835. Notice of objection.

A notice was signed in blank, and the question was whether this could be considered to be a good notice, or whether a subsequent recognition could make it valid. Mr. Pouncey stated, that there were certain persons in his neighbourhood who, in his opinion, had no right to vote, and he went to a gentleman of the name of Davies, who signed ten or twelve notices in blank, but the name of the particular individual was not mentioned; the names were not afterwards filled

Middlesex, 1835. Notice of objection.

up in Mr. Davies's presence. Mr. Pouncey filled them up according to his own idea, and served them on parties without Mr. Davies's knowledge. Mr. Pouncey afterwards told Mr. Davies he had served the notices, but did not tell him the names. Mr. Davies had himself no objection to the claimant.

Mr. Martin was inclined to think this was not a good notice.

After the barristers had consulted together for some time, it was agreed that the point should be re-argued before them both—that Mr. Gregory should be heard on behalf of the claimant, and Mr. Coppock in support of the notice.

Mr. Coppock said the point he had to support was, whether a notice signed in blank was such a good and valid notice as would cause a party to come and prove his qualification. The 39th section stated, that every person objecting should, on or before the 25th of August, give a notice according to the form numbered 4 in the schedule. Now it had been proved that Mr. Davies had signed these notices in blank, and had given them to Mr. Pouncey; by so doing he had complied with the strict letter of the Act of Parliament, and constituted Mr. Pouncey his agent, delegating his authority to him, and the notices so given were to all intents and purposes binding on Mr. Davies, and would have been so at common law. If he had accepted a blank bill of exchange, he would have been liable to pay it; and it would have been good as a notice to quit. The object of the clause was, that the party should have proper notice; and he here had proper notice, according to the form prescribed by the Act. He had no cause to complain, and no injury was sustained, when the purposes of the Act had been strictly fulfilled. It might be said that this mode of signing

Middlesex, 1835. Notice of objection.

notices in blank was an inconvenience; but he was not bound by that. There were precedents on both sides, and he would cite a case mentioned in Mr. Delane's book, where Mr. Corbett and Mr. Talbot, after two days' consideration, delivered their judgment. It was there proved, that prior to the 25th of September Aris signed notices in blank, and authorized Mr. Graham to fill them up, and there was afterwards an actual recognition by Aris. Mr. Corbett postponed his decision, and having consulted with Mr. Talbot, decided that a sufficient recognition had been established to substantiate the notices of objection *. That case was entitled to great weight, as the talent shown on the Berkshire registration was greater than had been displayed on any other circuit that had hitherto been held. He had another point upon the general principle of recognition: he should contend that he was able to call upon Mr. Davies in court, to recognize the notice, but he had done so before he came into court, and agreed in the propriety of the notice; he, therefore, submitted that the Act of Parliament had been complied with, and that the notice must be assumed to be binding †.

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* Vide page 225.

† In West Somersetshire, a person having claimed to vote was applied to by an agent of one of the candidates to sign a number of notices of objection which he was about to serve. The claimant assented, and signed at the agent's office several hundred notices which had been previously filled up with the names of the parties, but he did not read them, nor was he informed against whom they were directed. He remained in the office several hours occupied in signing the notices, and during that time messengers came backwards and forwards to the office to whom parcels of notices were given to be served upon the parties. The claimant was aware of the purpose for which the notices were delivered to them, but did not enter into any communication with them, or give any directions respecting the service. Some time afterwards he gave a written authority to

Middlesex, 1835. Notice of objection.

Mr. Gregory said, there was no evidence of recognition, whatever the evidence was the other way. He would take the case upon the two points; but look first as to the facts. Pouncey considered that certain persons were fit and proper to be objected to:

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a professional gentleman to appear before the revising barristers to support his objections. It was contended that there was no objector before the court, that there was no proof that the notices had been served by virtue of any authority from the supposed objector; on the contrary, that the evidence proved he had nothing to do with the service. In reply it was urged that there was sufficient evidence that the objector had authorized the service, that he had been aware all along that the notices were to be served, and that he could only have signed them with the intent that they should be served. That if any confirmation was wanting, it was clear he looked upon himself as the objector by having given his authority to support the notices, and that at all events he had adopted the service, which would be sufficient to establish the agency. The barristers held the service to have been sufficient, being mainly influenced by the proof of the authority given to support the objections.—Cockburn's Questions on Election Law, 103.

In another case a claimant signed a batch of notices at the request of an agent, who took them away without saying any thing relative to serving the notices. The objector stated that he had given no authority, either direct or indirect, to serve the notices, but that he had considered that all he had to do was limited to signing the notices, and that the serving them was a matter which belonged altogether to the agent.

An authority similar to that given in the preceding case for supporting the objections had been given, but it had been obtained by the agent of the candidate after the revision had commenced. The court considered that this authority not being altogether *bonâ fide*, held that no notice of objection had been given by the objector to the parties objected to.—Cockburn's Questions on Election Law, 106.

In Essex the notices were signed in the name of a Major S. A. Richardson, but not by the objector himself. It appeared that at a public meeting the objector had given a general verbal authority to all persons present to sign objections in his name. The person who signed and served the notice of objection in question was not one of those present at that meeting; but the objector had, however, authorized a professional agent to appear in support of that objection, and the court held the notice good.—*Idem*, 107.

Middlesex, 1835. Notice of objection.

he saw Mr. Davies, and stated that fact to him, and Mr. Davies signed the notices, although the names of the parties were not even mentioned. Davies then delivered the notices in blank to Pouncey. The notices were served, not according to Mr. Davies's discretion, but the discretion of Mr. Pouncey, and they were then no longer the notices of Mr. Davies. It had been said, that this notice was similar to a notice to quit: he denied that proposition. He would ask the court to refer to the principle which was laid down at the opening of the circuit, that the court was to lean towards the extension of the franchise. Every notice of objection served against the claimant was to deprive him of the franchise. It was in its nature something which was approaching to a penal character. Here they were asked to set aside the vote of a person against whom the objector said he had no objection. The 39th section enacted, that the party objecting should give to the party objected to, a notice as set out in the schedule annexed. Now, upon looking at the schedule they would see what the notice prescribed was. The notice there was "To Mr. William Ball," the same being filled up. In the present instance there was no name filled in. According to the doctrine contended for on the other side, a service of a notice without any name would be good service; this doctrine was so monstrous as to be wholly untenable.

Mr. Martin (R. B.) said, this was a point which he need not remind them was one of great difficulty and importance, and he confessed he had had a strong impression, before he began his duties on this circuit, that general notices signed in blank were insufficient, and his reason for that opinion was, that he thought the notice of objection ought not to be given, except

Middlesex, 1835.
Notice of objection.

upon weighty and due ground, and he therefore wished to discountenance the vexatious system of giving notices by wholesale; but he must remind them it was not their business to consider the policy of the law—that rested with the legislature. On this point he believed there was some slight difference of opinion between his learned colleague and himself; but they should come to this conclusion, that the notice of objection signed in blank was not insufficient, provided the party who signed the notice subsequently approved of his conduct. His reasons were these:—he thought, in the first place, where a party signed a notice in blank, and delivered that to another person to serve, he gave him authority; and if he subsequently approved of the use made of that authority, they must hold it to be good: it was an indirect way of doing a thing which might be done directly. It was not a criminal case, this was not a criminal court; it was a general maxim of law, that a person giving a subsequent recognition, was in the same situation as if he had commanded it in the first instance; where there was no subsequent approval, they should hold the notice not to be good. In the next case, this did not come within the objection of *delegatus non potest delegare;* the voter had power to delegate his authority. There would be no substantial injustice done; but he could not but disapprove of the system of objecting by wholesale. Under all the circumstances, they had agreed, that if the party approved of the conduct of his agent, before the party came into court, the notice was good; it was, however, highly desirable that no such notices should be served in future.

Mr. Coventry (R. B.) concurred with his learned friend; he had no difficulty except on the subject of subsequent recognition. He had doubted whether a general

approval was that sort of individual approval which the statute required, but the doubt was now removed, and it appeared that this service had been subsequently recognized, and the evidence was sufficient for that purpose, and he thought they must admit it to be good service. With respect to the time of recognition, he had a great doubt, in saying that it was competent for the party to come into the court, and then give such recognition; he was of opinion, as in the Berkshire case, that there should be evidence of recognition, and that such recognition should be made before the sitting of the court in which it was to be proved in evidence.

Middlesex, 1835. Notice of objection.

The name of Thomas William Chandler was objected to by Kenrick Hickman. It was proved that the notice of objection had been served upon the respondent by a person of the name of Hayward, and not by the objector himself.

Berkshire, 1832. Service of notice of objection.

Mr. Weedon, on behalf of the claimant, said, that the notice, not having been served by the party himself, was invalid. There were no less than nine sections of the Reform Act relative to different notices, and in those sections the phraseology of the Act was, that the said notices should be delivered by the parties from whom they emanated, or be caused to be delivered by them. But the 39th section of the Act, which directed the mode in which a person objecting to another's claim was to give that notice, required that he should himself serve that notice, and he was not allowed the alternative, as in the other cases, of causing it to be served by another. This was not an accidental omission on the part of the legislature; it had been purposely made, in order to prevent a person residing in a distant part of the county from

Berkshire, 1832.
Service of notice of objection.

signing objections by wholesale against the claims of those of whom he could have no knowledge whatever.

Mr. Warren, for the objector said, that it was not material by whom the notice was served, provided only that it was served; and he was of opinion that the common law maxim, *qui facit per alium facit per se*, would apply to this case. If the party objected to received a notice to that effect, the intention of the Act, in his opinion, was satisfied.

Mr. Talbot (R. B.) said, that this question, though one of form, was one also of great importance, and he thought it right to take his learned colleague's opinion on the subject.

The court, after consultation, directed the case to be re-stated by the parties, and postponed the decision till the following day.

Mr. Talbot (R. B.) then said, that in this case an objection had been taken to the service of the notice of objection, on the ground that it had been served on the party objected to, not by the objector, but by another hand. It had been contended that the terms of the Act of Parliament expressly declared the necessity of personal service by the party objecting, and that without it a notice of objection would not be valid. The learned gentleman who had argued in support of the vote had, in the course of his argument, admitted that, taking the words of the Act, "giving notice," generally, without reference to the words also employed in other parts of the Act, "cause to be given," the service of notice would have been fully satisfied in the eye of the law, when delivered by another party, as well as when given personally by the party objecting; but it was also contended that there was a peculiarity in this case, and that the necessity of personal

service arose from the juxta-position of two parts of the clause, in one of which the alternative, or "cause to be given," occurred, and in the second of which these words were not to be found. It was important, in deciding this case, to consider what was intended by the Act, by the words "or cause to be given," and it had been contended, in reference to this alternative, that the other portion of the clause had done away with it, as *expressio unius* was *exclusio alterius*. Now, on full consideration of those words, and bearing in mind the legal meaning of the words "give notice," and the terms in which those words were interpreted by the explanatory section 79 of the Act, they (his learned colleague and himself) were of opinion that, as far as the argument rested upon that point, the words "cause to be given" were words of surplusage, and that the intention of the Act was fully to be gathered by the other words employed. But if in the one instance it was proper to discuss the meaning of words employed in the clause by a reference to the juxta-position of others, it was equally right that they should also, in the other instance, be guided by a similar juxta-position. Now, proceeding further in this section, they found the following words:—"Shall give to the person objected to, or leave at his place of abode, as described in such list, or personally deliver to his tenant, in occupation of the premises described in such list, a notice in writing," &c. It had been suggested that the personal delivery here contemplated by the Act applied to the tenant, and not to the party giving notice of objection. Now, in considering those words, and interpreting them by a reference to another part of the clause, he (Mr. Talbot) and his learned colleague could not construe the words "personally deliver," employed in this instance, other than by saying, that in

Berkshire, 1839.

It is not necessary that the objector should serve the notice of objection himself, except where the service is on the tenant in occupation.

Berkshire, 1832. Notice of objection.

serving the notice of objection in that case, viz., upon the tenant, it was intended by the Act that the notice should be served by the person objecting, and not by any other individual. In conclusion, therefore, he begged to say, that they did not think it necessary, under the Act, that the party objecting should make personal service of the objection upon the party objected to, unless in the case of such objection being delivered to his tenant in occupation, in which case they considered that personal service was expressly required by the Act. That being the case in the present instance, the service of objection was not irregular.

South Essex, 1835.

The claim of Mr. B. Pattison was objected to. The notice of objection had been served on Thomas Johnson, the occupying tenant, by some person on behalf of the objector.

Mr. Florence submitted that objections to this class of voters must be served by the objector himself. In Berkshire a decision to this effect had been given. The distinction would be seen on reference to the clauses of the Act: the 9th section in respect of other objections said, the objector should deliver, "or cause to be delivered," but in the 39th section, which related to serving notice on the occupying tenant, the latter words were omitted. The matter was of great importance, and Mr. Talbot had said that personal service was expressly required by the Act.

Mr. Chambers (R. B.) considered there could be no difference of opinion amongst the revising barristers on this subject; he had an opportunity of speaking with several of them on the matter, and they considered that the word "personally" was placed there unintentionally, and that it was not meant to apply to the person objecting, but to the tenant. Personally, according

South Essex, 1835.
Notice of objection.

to the grammatical construction, certainly applied to the objector, but according to the common sense construction it must apply to the tenant. Personal service amongst lawyers, meant as regarded the person to be served. He knew that some of the revising barristers had decided that the notice must be served by the objector, but he had no hesitation in saying they were wrong in that—and he thought if the case came again before them, they would admit it themselves. His decision therefore was, that there was no more necessity for the objector serving the notice in this case than in any other.

Mr. Curling appeared to support a claim to be registered, and urged that the notice of objection was insufficient, because it had not been served personally by the objector. He relied on the words of the Act, which required the objector to give a notice of his objection to the person objected to, or to leave it at his place of abode, or "personally deliver it to his tenant."

Mr. Knox (R. B.) held that what the Act required was, not that the objector should himself deliver the notice of objection to the tenant, but that the tenant should be personally served with such notice. The reason for this provision appeared to be this—that it was supposed such a connexion existed between the landlord and tenant, that the latter would not fail to give his landlord notice of his vote being attacked, if he received personal notice of the objection.

Berks, 1832.

In the case of James Jelfs it appeared that a copy of a notice of objection, instead of the original in the objector's handwriting, had been served upon the claimant. It was admitted that authority had been

Berks, 1832. Notice of objection.

given for making the objection, and the original objection, in the objector's handwriting, was put in and admitted.

Mr. Corbett (R. B.) decided that the service was good.

Berkshire, 1833.

Where an occupier of lands and tenements had left the farm in right of which he claimed, it was decided that it was sufficient to leave the notice of objection at the residence named in the list.

And in another case, on service on the tenant in occupation, the court ruled that the notice of objection must be delivered to the tenant of the qualification described in the list, in right of which the claim was made.

East Surrey, 1835.

Mr. Meymott objected to a claim for a freehold house in Rotherhithe-street, and it was described as being made, not by any individual or individuals, but by the Thames Tunnel.

It was proved that a notice of objection had been served on Mrs. Jenkins, tenant of the Thames Tunnel Company, who lives in a small court immediately adjoining Rotherhithe-street.

After a short discussion it was decided that this service was not valid, as it had not been made on the tenant of the premises described in the list of voters.

Mr. Meymott suggested the difficulty, if not the impossibility, of finding the particular premises described in the list, as the only specification was "a freehold house in Rotherhithe-street." The notice of objection had been served on a tenant of the company living close to Rotherhithe-street, and near the entrance to the Tunnel.

Mr. Knox (R.B.) said, the plea of difficulty in find-

ing the tenant would not avail the objector, because the notice might have been served on the clerk of the company, or at his office, and that service would have been a good one under the Tunnel Act.

East Surrey, 1835. Notice of objection.

Mr. Meymott then submitted whether the claim ought not to be struck out altogether, inasmuch as neither the Christian name nor surname of the claimant was stated.

Mr. Knox held this to be a good objection, and accordingly expunged the Thames Tunnel claim from the list.

Eastern division of Kent, 1832.

Messrs. Round and Bullock (R.B.), in the case of Sir J. Cosway, who had signed a notice of objection which was delivered by a third person, decided that the objector was not bound to serve in person the notice of objection on the objector.

Berkshire, 1832.

Where the claimant has claimed in different parishes, a notice of objection to the claimant for each parish is unnecessary.

Mr. Compeigné, on behalf of the proprietors of the Kennet and Avon Navigation, who had claimed in fourteen different parishes for the same description of qualification, contended that the claimants should have been served with separate notices of objection for each of the parishes in which they had claimed.

Mr. Talbot (R.B.) did not perceive the necessity for doing so. The separate notices to the overseers in each parish would obviate the inconvenience which might arise in such a case to the voter, of proving thirteen or fourteen different qualifications by one notice.

Mr. Harris.—The form of the notice prescribed by the Act is, "I object to your name being retained on the list of voters for the county of Berks," not in the list of voters for any particular parish.

Mr. Talbot (R. B.) had no doubt himself on the point; but as it was a vital one, he would consult with his colleague on the subject. On returning, he said that the

Berkshire, 1832. Notice of objection.

question here was as to parties who had claimed in several different parishes, and it was contended that separate notices should have been served upon them for the several different parishes out of which they claimed. He (Mr. Talbot) was of opinion, and in that opinion his learned colleague concurred, that in such a case the general notice of objection was sufficient. If different places of abode had been stated, service at them would have been necessary; but as only one place was mentioned, service there was sufficient.

Subsequently, on attempting to prove the service of the notices of objection against the claims of the proprietors of the Kennet and Avon Navigation, on the overseers of the parish of Sulhampstead Bannister, it appeared that the parish was divided into two districts, the one called "Sulhampstead Bannister, Upper End", the other "Sulhampstead Bannister, Lower End." The Kennet and Avon Navigation passed only through "Sulhamstead Bannister, Upper End", and the notices of objection were served only on the overseer of "Sulhampstead Bannister, Lower End".

Thomas Love, the overseer, stated, that he was overseer of the Lower End of the parish of Sulhampstead Bannister; that he was not overseer of the whole parish of Sulhampstead Bannister; that there was an overseer for Sulhampstead Bannister, Upper End; that they each maintained their own poor separately and distinctly. The county and church-rates were the same for both Ends, but the poor-rates were distinct. He made out the list of voters for the "Lower End", but had nothing to do with making out the list of voters for the "Upper End". There is but one church for both divisions, and that is situated at the Upper End. The list of voters that he had made out, he

Berkshire, 1832. Notice of objection.

posted on a sign-post, but it was usual before, to place notices referring to the Lower End on the church door.

In support of the notices of objection it was contended, that the divisions of "Upper End", and "Lower End" were not authorized or recognised by law, but were merely a matter of agreement by the parishioners for their own convenience. It was proved that there was only one church for both the alleged divisions, and that it was situate at the "Upper End"; that there was only one register of baptisms, marriages, and burials, and that it was kept in that church; that the inhabitants of both divisions attended divine service there; and that all notices required by law, to be published at the parish church, relating to either of the divisions, were posted at the doors of that church. The appointments of the overseers, and of the collectors of the assessed taxes, and the land-tax, were made for the parish of Sulhampstead Bannister, without any mention of the distinctions of "Upper" or "Lower". The lists of electors, and of objections, were entitled, "the lists, &c. &c. for the parish of Sulhampstead Bannister". And in the notice given by the barristers for holding their courts of revision, containing the names of the different parishes in each district, it was described only as the "Parish of Sulhampstead Bannister."*

* In 1811 an Act was passed for enclosing lands in the united parishes of Sulhampstead Abbotts and Sulhampstead Bannister, otherwise Males, in the county of Berks; it contains no distinctions of Upper or Lower.

(Temp. Hen. III. and Edw. I.) Testa de Nevill. Com. Berks: p. 122.

Feoda que feurunt Roberti Achard.

Wittus Banastre tenet Finghamstead pro uno feodo milit de feodo dicti Roberti Achard.

Berkshire, 1832. Notice of objection.

Mr. Talbot (R. B.) after consulting with Mr. Corbett, said that in both the courts they most reluctantly yielded to objections on matters of form, and especially where, as in this case, the votes were worth nothing; but he had no doubt, in this instance, that, looking at the Act of Parliament, and construing it as they were bound to do, the service of notice in this instance had not been fulfilled.

Mr. Corbett fully concurred in the opinion of his learned friend, and thought that where a list of claims was regularly published by the overseer, the objector had no excuse for his ignorance in not serving the proper overseer*.

Northern Division of Staffordshire, 1832.

Thomas Bakewell was objected to by Mr. Alfred Hales.

Evidence was given, that Mr. Alfred Hales had claimed to be registered for the Northern Division of Staffordshire; and the service of the notice of objection on the claimant and the overseer having been proved, the notice was read. It was one of the ordi-

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Johnes Banastre tenet Sylhamsted pro uno feodo de feodo dicti Roberti Achard.

The following is copied from the Calendar of the Charter of Rolls kept in the Tower of London, anno 20, Ed. 1. It is a charter granted by the king to the above-named Robert Achard, of a fair at Aldermaston, and free warren in various other townships in Berkshire.

Robertus Achard.

Aldermaston	Mercat 'feria	
Sparsholt	Chalaw	Libera warenna confirm: pat. anno 4, H. 4, p. 2, mem. 28.
Estmanton	Weston	
Silhampsted		
Banastre		

* It would appear that the list of claims had not been regularly published by the overseer. The exhibition of the list on a sign post was irregular; the publication should have been on the church door.

nary printed notices, but was signed "Alfred Hales, Stone, Attorney to Jesse Watts Russell, Esq."

Northern Division of Staffordshire, 1832. Notice of objection.

Mr. John Cattlow stated he was an attorney at Cheadle, and had resided at Stone. There are several villages and hamlets in Stone, with different names. Walton, where Mr. Hales resided, is distinguished from Stone, and is one of those villages. A person residing at Walton, is not usually described in legal instruments, as of Stone. Walton is not a post town, but Stone is. On this evidence it was objected, 1st, That the notice of objection was not signed by the objector; and 2dly, That if Mr. Hales was to be taken to be the objector, his place of abode was not stated.

Mr. Hales said he made the objection for himself, as a claimant. He had no instructions from Mr. Russell, to make that objection. He had not told any one that these notices were given by Mr. Russell, nor any thing to that effect. He had not received a retainer from Mr. Russell. He was employed by Mr. Meeke.

Mr. Lumley (R. B.) decided that the notice was valid.

Service of notice on Sunday, 1833.

William Bailey was objected to. The notice of objection was served on the claimant, on Sunday, the 25th of August.

Mr. Cruso said, that the service of the notice on Sunday, was void; and cited Roberts v. Monkhouse, 8 East, 547; wherein it was decided, that service of a notice of plea filed on a Sunday is void, by 29 Chas. 2, c. 7, sect. 6; which avoids all process served on that day.

Mr. Gaunt contended, that ministerial acts might lawfully be executed on Sunday, and this was not a judicial act. In support of the notice, he cited Drury

Notice of objection.

v. Defontain, 1 Taunt. 131; and Bloxsome v. Williams, 5 D. and R. 82.

The court decided, that the service of the notice on Sunday was good.

John Millward was objected to. In attempting to prove the service of the notice of objection, it appeared that the notice was put under the claimant's door, a short time before twelve o'clock at night, on the 25th of September, but the witness did not hear the clock strike. The court decided, that there was not sufficient proof of the service of the notice.

North Staffordshire.

R. W. Player claimed for two freehold houses, (Joseph Day and Ann Bromley, tenants,) and was objected to. The claimant did not appear, and it was proved that a notice had been delivered to Ann Bromley, but none to Joseph Day.

Mr. Lumley (R. B.).—I think I can only strike out of the qualification that house of which Ann Bromley is the tenant, and must retain the vote for the other house.

East Gloucestershire, 1834.

The claim of William Collier was entered on the list "for freehold houses, held under lease for 500 years, on the Green." Collier resided at Preston, near Cirencester, and it was proved that the premises in right of which he claimed were occupied by four different tenants. It was urged that notices of objection should have been served upon all the tenants.

Mr. Lumley (R. B.) said, that as no names were mentioned in the list, and the claim must be taken for leasehold, which must be all one property, the notice to one tenant was sufficient.

A notice of objection was given to the name of John James being retained in the list of voters "*for the sub-division of Pirchill North, in the county of Stafford,*" instead of for the sub-division of Pirchill, in the Northern Division of the county of Stafford.

Northern Division of Staffordshire, 1832. Notice of objection.

It was objected, that the notice did not comply with the form in the Act.

The court, on reference to section 54, decided that it was sufficient.

Mr. Collingwood was objected to, and a question arose respecting the notice having been sent by post. Mr. Miller contended, that sending the notice by the post could not be held to be a good service. The Reform Act imperatively stated, that the notice must be either left at the place of qualification as described in the list, or personally served upon the tenant in possession. It was clear that neither of these provisions had been complied with, as the list described the qualification to be "leasehold houses in East-street and Roan-street." In addition, he submitted that the service by post must be bad as regarded a claimant, because the 79th section of the Reform Act, in respect to the service of notices upon overseers, clearly set forth that sending them by the post shall be considered good service, but in the clause relating to the service of notices upon claimants, sending by post is altogether omitted.

West Kent, 1835. Notice of objection.

Mr. Fish (R. B.), after perusing the 79th clause, decided that the service was good.

Mr. John Thomas Jones was objected to.

Mr. Cadell stated that the claimant resided at Worthing, in Sussex, and the notice had been directed to him at that place, it being the residence named in the

West Kent, 1835. Notice of objection.

list. The letter had been put in the post on the 22d of August, and had not been returned. He therefore submitted, from the known accuracy of the Post-office, that this amounted to a personal service.

Mr. Brockman (R. B.) ruled that it did, and the objection was entered into, and the name expunged *.

Middlesex, 1834.

In revising the list of the parish of Mile-end New Town, it appeared that the words "objected to," instead of being written on the margin of the list exhibited on the church door opposite the name of the claimant intended to be objected to, were inserted in the fourth column, under the designation of the property out of which the right to vote was claimed.

Mr. Keen (R. B.), after conferring with Mr. Coventry, said, that the object of the statute in requiring the posting of the lists with the words "objected to" appended as therein directed, was to afford parties whose rights were thereby disputed, a notice to defend their claim. The words "objected to" should have been placed in the margin to render them conspicuous, so that the claimant might see them; and he should therefore disallow all such objections.

Middlesex. Hackney, 1835.

Mr. Coppock objected to the reception of the overseer's list. The directions of the Act were, that the words "objected to" should be placed opposite the name of the party objected to; whereas, in the lists sent in by the overseers of this parish those words

* The court decided, that a claimant transmitting his notice of claim by post, would have until the last moment of the 20th of August for putting his letter in the office, although the post may have left at an earlier hour of the day.—Manning's Notes of Revision, 112.

were written on the right hand side of the list, and consequently opposite the qualification, and not opposite the name, in compliance with the terms of the Act of Parliament.

Middlesex. Hackney, 1835. Notice of objection.

Mr. Coventry (R. B.) overruled the objection.

Mr. Baker took an objection to the manner in which the objections were set forth on the overseers' lists. The 38th section of the Act declared, "that the overseers, if they have reasonable cause to believe that any person so claiming, or whose name shall appear on the register, is not entitled to vote, have power to add the words 'objected to' opposite the name of every such person, on the margin of such list." Now, in the lists before the court, the words "objected to" were in the margin opposite the name of the first of these claimants, but opposite to those of all the others was the word "ditto." This, he submitted, was not that sort of objection required by the Act. It was, in fact, no objection, and in that case the barrister had no power to strike the names out.

Middlesex, 1832.

Mr. Palk (R. B.) said, that let in another question, which the barristers had yet to decide,—namely, how far they had the power to strike out names in certain cases where no objection was entered by overseers or others. The present cases must stand over to abide the general decision on the other, though he admitted that there was in some respects a difference between this and most of the other cases on which the question arose *.

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* It was subsequently decided that the court had no power to expunge names not objected to.

Middlesex, 1835.

C. F. Adey was objected to, for having described himself of "Stone Buildings, Lincolns Inn," and in another parish as of Hampstead, where it was alleged he actually resided. Mr. Adey had objected to a number of claimants, and the object was to have his name expunged, and thereby defeat the objections he had made.

Mr. Field said, it had been held that a description of the residence being given at the counting-house was not sufficient.

Mr. Martin (R. B.) considered it sufficient if the residence was such as was used for practical purposes. Name retained.

Notice of objection valid, although signed only with the initial of the Christian name.

A person was objected to by Mr. Charles Green, who stated that he wrote a letter and gave it to a little boy, who swore that he delivered it to the claimant. No copy of the notice was produced, but Mr. Green stated that the letter contained a notice in the words of the Act. The overseer then produced the notice which Mr. Green had given him, and it appeared to be signed, "C. Green, Church-street."

Mr. Adey took an objection to the notice, on the ground that the Christian name should have been written at length, and that Church-street was an insufficient description of the place of abode, as there were an immense number of Church-streets in the county of Middlesex: supposing a notice so signed to be served upon a party living at a distance, how was the party objected to to know whether the objector was upon the list or not, particularly when he had only given the initial of his Christian name?

Mr. Green said, he was well known to the claimant, who lived very near him.

Mr. Martin (R. B.) said, the notice was given to

the claimant to enable him to attend and prove his qualification. No person had a right to sign a notice who was not himself upon the list; and it was therefore requisite to be so given as to inform the person objected to who the objector was, so that he might see if his name was upon the list. Therefore, where the notice was so framed as not to give every person in the county that information, it would be bad. You should therefore know the parish, but in the present case it was clear Mr. Green was known to the claimant, and therefore he thought the notice a good one.

Notice of objection.

Mr. Coventry (R. B.) was of opinion, the notice was good in this case, though it might be different where the claimant lived at Brighton, and the objector in London.

East Kent, 1835.

Mr. Frederick Flint, of St. Dunstan's-street, Canterbury, was objected to, but it was contended there was an informality in the service of the notice. It appeared that Mr. Flint resided with his father, and so described himself in the list. The person who served the notice went to the house, but on hearing Mr. Flint was from home, he went round to the counting-house of Mr. Flint, sen., (who is in partnership with a Mr. Kingsford,) where the claimant assisted in the business. The notice was left with a clerk in the counting-house, which adjoined the private house, but between which there was no internal communication. It was contended that this was no part of the premises given as the abode of Mr. Flint.

The court held that the service of the notice of objection was insufficient.

Middlesex. St. Luke's, 1835.

In the case of Thomas Lee, it was submitted that the notice of objection was not valid, inasmuch as it

Middlesex. St. Luke's, 1835. Freehold interests.

was printed, whereas the Act of Parliament required that it should be in writing.

Mr. Coventry (R. B.) decided that the notice was valid.

Northern Division of Staffordshire, 1832.

Edward Bott claimed to be registered for the northern division of Staffordshire. The facts of the case are fully detailed in the following judgment.

Mr. Lumley (R. B.) said, the claimant claims to have his name inserted in the list of voters for the township of Hopton and Coton, in respect of certain land in Coton Field, and Mr. Alfred Hales, of Stone, objects to his claim.

On the examination of the claimant it appeared, that he has been in possession of an acre of land in Coton Field for thirty years, and that he lets it out to one Booth, who pays him a rent of 55*s*. a-year. For this, however, the claimant is liable to a rent of 4*s*. a-year to the corporation of Stafford, and that sum he has frequently paid. He holds this land for his own life, at least as it appears to me, subject to the conditions of his remaining a burgess of Stafford, of his residing within the borough of Stafford, and of his not committing any felony: none of these conditions has been broken. The claimant is still a burgess, he resides within the borough, and he has not committed any act of felony. So far then his life estate is valid and available for the purpose of qualifying him as an elector, since a freehold interest in land is not affected by the existence of a condition imposed thereon, so long as that condition is not broken. Neither is an interest less a freehold interest, though it may depend upon a contingency, until that contingency has happened. Thus, an estate given to a woman, on condition that she remains a widow, is a freehold until she

Northern Division of Staffordshire, 1832. Freehold interests.

marries. So a clergyman holds his living on various conditions; among others, that he belong to the established church, or that he do not take another living beyond a certain distance. Yet no one doubts that he has a good freehold interest.

The condition imposed upon the claimant's tenure, therefore, not affecting his freehold interest as regards its duration, I must now consider what is the nature of his interest in the soil, because it is said that he has no permanent interest therein. It appears that the corporation of Stafford are in possession of this Coton Field, which consists of about 180 acres of land, by what right I will not now say; but being so possessed, a custom prevails, and from the length of time, I infer that it has arisen from some bye-law, to assign to certain burgesses different portions of this land, generally about an acre; the burgess is put into exclusive possession of this acre; he marks it out from his neighbour's; he pays a certain rent for it; he is liable to a distress for it; and when some expenses were incurred in the inclosures, the present claimant was called upon to contribute towards it, evidently as a person interested in the soil. Two cases were referred to as analogous to this, the King v. Warksworth, 1 M. and S. 473, and the King v. Belford, 10 B. and C. 54, but on looking at those cases, they are clearly distinguishable. In the first, the pauper had, as a freeman, a right of common on certain land, but he had never exercised it, and had had no cattle which he could have commoned, and therefore it was held that he had no interest in the soil. Again, in the latter case the Corporation of Berwick received the rents of certain lands, and distributed those rents so as to pay a portion to particular freemen every year, and it was decided that these freemen had not any estate in the

Northern Division of Staffordshire, 1832. Freehold interests.

soil. But here land is actually assigned to each burgess, and staked out to him, and a rent paid by him for the particular land. The cases are, I think, wholly dissimilar, and on the evidence, the claimant has made out a right to an exclusive enjoyment of the soil.

But another question has been introduced into this case of a very collateral nature. Mr. Hales, the objector against this claimant objects, that though the mayor and corporation of Stafford may have granted life estates for a long period of time, and still continue to do so, yet they have no right in this soil which warrants their grants, Earl Talbot being, as he says, the real owner of the freehold and fee. Now I own that it is very hard upon a claimant to be called upon to prove, not only his own title, but also that of the person through whom he derives his title. He has no reason to expect that such an enquiry will take place, and he has not always the opportunity or the means of meeting it, and I have thought it sufficient if he gives reasonable evidence of the existence of the previous title. On the other hand, the objector, it is said, has not always the full means of compelling the production of that testimony to contest a claimant's title, which would be conclusive of the case; but, I expect that he shall produce fair and reasonable evidence before I can go the length of expunging a claimant's name, on the ground of a defect of title in the person through whom he claims.

In the present case, it appears, the corporation of Stafford have granted *freehold* interests in this land, that is the exercise of a power quite inconsistent with a mere tenancy for a term of years. They pay an annual rent to the Earl Talbot of 12*l.* a-year, for land which is worth at the least 300*l.* a year, and this, it is said, after the expiration of a long lease. Of that

Northern Division of Staffordshire, 1832. Freehold interests.

lease I have no evidence. Mr. Ginders, his lordship's steward, has never seen the original nor the counterpart, nor is any witness produced before me who has seen the one or the other. I cannot, therefore, tell what is the nature of the tenancy of the corporation under Lord Talbot. It is said that some difference exists between the corporation and his lordship, and some notices have been served by him on the corporation, but what those notices were is not proved to me, nor does it appear that they have ever been followed up.

There is nothing therefore satisfactory to my mind which contradicts the strong fact of the corporation granting these *freehold* interests without interruption or interference, and therefore I think the objector has not disproved the title of the party through whom the claimant claims.

It is right to observe, that neither his Lordship nor the corporation are parties to this present proceeding. No act of mine can affect their mutual interests, and therefore my present decision cannot have the slightest bearing in the dispute (if there really be any) between his Lordship and the corporation. I only decide that the claimant has satisfied me that I ought not to expunge his name from the list of voters for property in this township. The name must therefore be retained.

West Gloucestershire, 1835.

William Ettle claimed to be registered in right of a house and garden at Bay-lane. The facts of the case, which was known in the county by the name of the Berkeley Heath Leases, are fully detailed in the following judgment.

Mr. Lumley (R. B.) said, the present case is one of great importance, not only because it affects the votes

West Gloucestershire, 1835. Freehold interests.

of many claimants, but because it also involves the question of the validity of their title to the estates which they possess. I have therefore given it as much consideration as the situation in which we are placed will allow. I have thought it right to commit to paper my deliberate judgment. The claimant, William Ettle, claimed to vote in respect of a freehold lease of a house and garden; in proof of that right he produced a lease duly executed on the 28th of January last for his own life, granted by Lord Segrave, who is the lord of the manor. He also stated that livery of seisin was made on the same day. A small rent of 3*s.* a year was payable, and the lease contains covenants and conditions not to assign without the consent of the grantor; not to commit waste; for payment of rent; and to keep the premises in repair; which are ordinary covenants in leases. There is also a condition of an unusual character, namely, that the lessee shall occupy the premises himself. That condition, though unusual, does not of itself affect the validity of the lease. The house and land are of more than 40*s.* annual value, and the claimant has occupied them from January to July under that lease. So far then the claim is established. It is sought to impeach it by evidence of the circumstances under which the lease was executed. It appears there were a number of persons who rented small cottages and gardens either on Hamfallow Common or on the skirts of it, for which they paid annually the rent of 5*s.* They had lived there for different periods, some for a very long time, and others had succeeded in the occupation to persons who were their relatives. So that they had a sort of enjoyment of life interests without any legal title. In January, the agent of Lord Segrave, the lord of the manor, applied to these different tenants, to know whether they were

willing to take leases for their lives of their different tenements, and received from them their consent; and I cannot conceive any reason why they should refuse, because, though they were to pay a consideration of *5l.*, they were to get an indefeasible title to that which they only occupied permissively. They having assented to this proposal, leases were prepared, the consideration money was advanced to them by Mr. Ellis, unquestionably with the privity of the grantor, though it did not come from him. The leases were executed by the lessor to the lessee, and I am not sure that the claimant was fully aware of all the conditions in the lease. I rather think not. He does not, however, say that he was deceived, or refuse to acknowledge the lease—he does not seek to avoid it, but on the contrary he produces it in support of his claim. It seems therefore to me, to be perfectly obligatory on the parties who executed it, and to convey to one an estate for life, subject to conditions, and to reserve to another the rent agreed upon and the stipulated covenants. The lease was given to the claimant, and by him handed over to Mr. Ellis as a security for the money advanced by him; he now holds them in the character of a mortgagee, and must produce them when called upon by the lessee, and must deliver them up if the money advanced by him be tendered. Upon all the facts of the case, I cannot but see that the leases were executed for the purpose of conferring upon the lessees the franchise of voting in the election of knights of the shire. That franchise was not sought for by the claimant, but was given to him, and he now avails himself of it.

West Gloucestershire, 1835. Freehold interests.

It was contended on the part of Mr. Emerson, who has objected to this among other claimants, that the claimant had no right to vote under the circumstances above detailed. His argument is that the transaction

West Gloucestershire, 1835. Freehold interests.

is illegal, and therefore the *lease is void.* He must come to that conclusion—which is one that naturally strikes one as a serious consequence, and not to be admitted too hastily. I do not think that it was urged before me that the parties themselves had been defrauded; if it had I should have thought that I could not decide that question against the claimant, when *he* did not raise it, and I should have thought that the lease was too beneficial a thing, even with all its conditions, for him to reject. But the main argument certainly pressed upon the court was a supposed illegality in the purpose and object of the grant. It is no doubt illegal at common law to confer upon a person a *colourable title*, to give him a nominal qualification, and by deeds or other means to clothe him with *the appearance* of the qualification, but not actually to give it in substance. This occurs where a person gives in name an estate to a relation, but continues to receive the profits to his own use. It cannot be said that the title is *colourable* in the present case. The claimant has the land and enjoys the profit.

It is said, however, that this comes within the prohibition of the statute 10 Ann, c. 23, which restrains the executing of conveyances for the purpose of qualifying persons to vote (where they are subject to conditions or agreements to defeat or determine the same, or to reconvey the same). The object here was, as I have said, to confer the right of voting upon the claimants, but there is no condition in the lease for determining or defeating or reconveying the estate, other than the usual conditions in leases, which it never can have been contended would have such an operation. Reliance is made upon the condition for the voter's occupying the house and property, which is undoubtedly a requisite to enable the voter to vote in respect

West Gloucestershire, 1835. Freehold interests.

of such leases as the present by the 18th section of the Reform Act. But that condition is not a condition to defeat the estate, it is one which continues with its existence. I cannot therefore bring the lease within the prohibition of this statute, which was evidently intended to apply to cases where conveyances were made for an occasion, and were immediately to be cancelled, and the property to be restored. In the present instance the estate continues as long as the party lives and fulfils his covenants.

But I think the argument was put on a more general ground, and it was contended that these were void, for what is known in parliamentary language by the term *occasionality*. That is defined by Mr. Rogers to be where *the qualification is conferred for the purpose of voting for a particular candidate or in a particular interest.* Now in the present case no election whatever was in expectation on the 28th of January, the present parliament had just been chosen, and it is in contemplation of law to last for the next seven years. Therefore I cannot say that these leases were made for any specific occasion, besides which, they could not have been available before the expiration of nine months. Then there is no obligation on the lessee to vote for any *particular* candidate or in any *particular* interest. The lessee may vote for any person he thinks fit—he may vote for any interest he chooses—nay, he is under no obligation to vote at all. His lease will be still valid, though he should refuse, or become incapable from age, sickness, or any legal disability, from exercising the franchise. It cannot be said that the choice *is annexed to the tenure,* in the language of Lord Somers.

It appears to me that the objections urged against the claimant are not sustainable, and that I cannot de-

West Gloucestershire, 1835. Freehold interests.

feat his estate in the land, and consequently his right to be registered. At the same time it is proper to observe, that if these leases, under all the circumstances, are affected by the stat. of Anne, the voter who gives his vote under it will be subject to a penalty of 40*l.*, as well as all the persons who executed the leases, and were privy thereto. The question may therefore be tried by a court of law, if it be considered that my decision is wrong.

Middlesex, 1835. Freehold.

Mr. Venn and Mr. Hutchinson claimed to vote for the county, in right of freehold land, within the borough of Finsbury, in their occupation; they also occupied houses which conferred the right of voting for the borough of Finsbury.

Mr. Field, in support of the claimants, referred to the 24th section of the Act, which he said must be construed in conjunction with the 27th section. He said, that according to his reading of the Act, if certain words were left out, the meaning would be clear.

Mr. Gregory had always conceived the principle laid down in construing Acts of Parliament by Sir Edward Coke was the only safe principle which could be relied upon; that principle was this—not to reject any part of an Act of Parliament, but to adapt the one part to the other, and then to reconcile the whole when taken together according to the rules of common sense. Construing the 24th section of the Act by the 27th section, which gave the franchise to voters for boroughs, he submitted it to be clear that the legislature never intended to confer upon one individual the double right of voting in the borough and in the county, in respect of property situate within the limits of a borough in

which the claimant resided. Mr. Gregory, in support of his argument, cited a case from *Delane's Decisions*, which was precisely similar.

Middlesex, 1835. Freehold interests.

Mr. Field, in reply, cited two cases from Mr. Manning's book, which he contended were equally applicable.

Mr. Martin (R. B.) said, that as it was admitted that the houses of the respective claimants were sufficient in point of value to confer the right of voting for the borough, and that it was therefore not necessary, in order to make up that value, to take in the value of the freehold land in order to make up the value necessary to qualify for the borough, he was inclined to allow the vote for the county; but he admitted that the point was one of great difficulty, as the Act was so extremely obscure.—Names retained.

Mr. Allen claimed to be registered in respect of property belonging to the Thames Tunnel Company. The claim was objected to, and the objection was sustained by Mr. Meymott, jun.

East Surrey, 1835. Thames Tunnel.

The clerk of the company stated, that the property in respect of which the claim was made was freehold, and was rated in the parish books for 400*l.* A portion of it was let out, and yielded 300*l.* a-year in rents.

In answer to questions from Mr. Knox (R. B.), the clerk said, that the company was incorporated by Act of Parliament, that the property in question had been purchased for the purposes of the tunnel, and that it was conveyed in the form prescribed by the Act to the company and their successors.

Mr. Knox (R. B.) said, he must confess that he never could comprehend the reason of the law which withheld the franchise from the members of corpora-

East Surrey, 1835. Thames Tunnel. Freehold interests.

tions aggregate. It appeared to him that those persons possessed the same interest in the property which they held as sole corporators did in theirs, and no objection could consistently be taken to their exercising the elective franchise on the score of severalty of interests, when it was recollected that the law gave votes to joint tenants. But there was no doubt respecting the law on the subject; and it had uniformly been held that the members of corporations aggregate were excluded from the enjoyment of the elective franchise. It should be borne in mind, that the present state of the law with respect to this matter did not arise out of any of the new enactments of the Reform Act; and he could not help thinking, that if it had been brought under the consideration of the framers of that Act, they would have altered a law, which was founded on a distinction without any real difference. He was bound, however, to administer the law as he found it, and he must therefore disallow the claim.

The name of Mr. Allen was accordingly expunged.

Middlesex, 1835.

Joseph Isaac was objected to, on the ground that being in partnership with his mother as coach proprietors, the house and stabling in right of which he claimed, was not of sufficient value. Evidence was given which proved that the name of the claimant and his mother, appeared on the coach doors, which, it was contended, was sufficient proof of the partnership.

Mr. Field said, that the names on the coach doors was no proof of partnership, and called witnesses who stated that the claimant and his mother were not in partnership.

Mr. Adey then submitted, that Mr. Martin had decided a similar case at Hampstead against the admission of the claim, and that it had there been proved, that the premises were let only to one party,

and the receipts, which shewed that fact, were then produced.

Middlesex, 1835. Freehold interests.

Mr. Coventry (R. B.) having conferred with Mr. Martin (who stated that he had in the Hampstead case decided, that as the horses belonging to the partnership were put in the stables of the partner paying the rent, he considered that there must be such an arrangement between them as would create a partnership in the premises, and reduce the value below the required sum,) did not consider that there was sufficient evidence of a partnership in the premises, and admitted the claim.

Berks, 1832. Enclosure by permission, and 29 years' possession, and payment of quit-rent, no freehold.

George Strong was objected to, on the ground that he held no freehold.

The claimant on his examination stated, that he held a house and a portion of land for upwards of twenty-nine years in the parish. He had enclosed it by permission of the lord of the manor, to whom he had paid a rent of 1*s.* 1*d.* during that period. The value of it was upwards of 10*l.* per annum.

Mr. Warren submitted, that this was a mere case of tenancy at will, and quoted several authorities to show that it could not be considered a freehold.

Mr. Harris said, the decision in this case involved many others. He submitted that twenty-nine years' possession, with the annual payment of this small rent, was adverse possession, against the lord of the manor; that this was a *bonâ fide* freehold, and he stated that a decision to that effect had been given by Mr. Corbett in the other court.

Mr. Talbot (R. B.) stated, that he was of opinion that this was not a freehold, but that it was a case of permissive occupation. Name expunged.

Berks, 1832. Freehold interests.

James Green was objected to.

The claimant, on being examined, stated, that he had a little piece of ground in the liberty of the parish of Wornersh. He had enclosed it from the common, and had built a house upon it. He had possession of this property for thirty years; it was worth about 5*l.* a-year. He paid a quit-rent of 3*s.* a-year. The quit-rent had never varied.

A survey of the parish, made at the time of the enclosure, was produced, from which it appeared that the property occupied by the claimant belonged to the lord of the manor.

Mr. Weedon submitted, that this case came precisely within the rule laid down by Mr. Talbot and Mr. Corbett, in the instance of the Burghfield voters.

Mr. Talbot (R. B.) said, that the rule which they had then laid down was, that a possession of more than twenty years confers a possessory title, supposing that the presumption of adverse possession thus raised was not rebutted, but that might be rebutted by showing that the party came into possession by the permission of the lord. There was no evidence in the case of the Burghfield voters to show that they had come in by the permission of the lord, and there was no variation in the quit-rent to rebut the presumption of adverse possession; but here there was evidence produced to shew that the party had come in by permission of the lord. The name must, therefore, be expunged.

Middlesex, 1832. Potter's Ferry.

Mr. Baker appeared to support the claims of the members of Potter's Ferry Society, and produced a number of deeds, showing the grant of the landing-place, and the right of ferry, first from King Edward VI. to Sir William, afterwards Lord Wentworth;

and that from him they came to Lord Cleveland, and from him to a Mr. Warner, from whence it passed to the Society, and was now held by trustees for the use of the body at large. Mr. Baker contended, that as the society derived a beneficial interest in the property to the value of 40*s*. a-year for each member, it was sufficient to give them a right to vote, as the right was a freehold, and had been so admitted by a committee on the Middlesex election, in the case of Burdett and Mainwaring, on which occasion several members of the society had been admitted to vote in right of this property.

Middlesex, 1832. Potter's Ferry. Freehold interests.

Mr. Palk (R. B.), on looking over some of the deeds, said, there could be no doubt that the property was vested in the society, but the very deeds they produced showed that the profits, whatever they were, were derived from the right of ferry. As the vote was objected to, he was bound to call on the claimants to prove that they were entitled to have their names retained on the list in respect of the qualification for which they claimed. Now the qualification on which they had claimed was "freehold land." In what way could they show that the right of ferry was of that description? or how could the profits derived by the society from the ferry be said to arise out of "land?"

Mr. Baker contended, that the right of the ferry was contingent upon the ownership and possession of the landing place, and that in that respect it might be considered freehold land.

Mr. Palk (R. B.) was clearly of opinion that the evidence produced did, on the face of it, negative what was set forth as the qualification. The 38th section required, that the nature of the qualification should be set forth at length. In the present case it was

Middlesex, 1832. Potter's Ferry. Freehold interests.

set forth as "freehold land;" but as there was no evidence to prove that there was any such profit from land as would give the claimants 40*s*. a-year, he must admit the objections, and strike out the names.

Mr. Baker then contended, that eleven of the trustees who claimed had such a beneficial interest as would give them the right. They had claimed in right of freehold land in the Isle of Dogs.

Mr. Palk (R. B.), on looking at the trust deed, asked, whether these parties had claimed as trustees; but it appearing that no mention was made of that fact, he decided that the proof not being sufficient to support the "nature of the qualification" as set forth in the notice, was fatal to the claim.

Northern Division of Staffordshire, 1832. § 24, 2 W. 4, c. 45.

J. K. Knight claimed for freehold land in the borough of Stoke-upon-Trent. The claimant, jointly with two other persons, occupied a china factory, and was also the sole occupier of a house, all within the borough. The land, which was used as a brick-bank, was the joint property of the claimant and another person, and was 180 yards from his house.

It was objected that the house or factory must be joined to the land, and then it would be a good borough qualification, and the claimant would be excluded from the county franchise by the 24th section.

Mr. Lumley (R. B.) considered that the words "by himself," in the clause, referred to cases where the claimant was in the exclusive occupation of the property, and not where it was held jointly with other persons.—Name retained.

Adam Moore (the claimant) and his three brothers, were jointly entitled to certain freehold land, worth 12*l*. per annum, and in their joint occupation. The

claimant also kept a beer shop a mile distant from the land, but both the land and the beer shop were within the borough of Stoke-upon-Trent. The same objection was urged, but overruled, and the name retained.

Northern Division of Staffordshire, 1832. Freehold interests.

Simon Povey claimed for a house worth 14*l.* or 15*l.* per annum, occupied by himself and son.

Mr. Tomlinson objected that the house was of sufficient value to confer the borough franchise, and the claimant was therefore excluded from the right of voting for the county.

Mr. Lumley (R. B.) said, he thought, as in former cases, that the occupation must be exclusive, and as this was a joint occupation, the name must be retained.

Thomas Snape said he was possessed of a freehold house in Stoke-upon-Trent. He also rented a brick-work at 70*l.* per annum. There was a building on it. It was half a mile from his house.

Mr. Tomlinson contended, that the Act contemplated every thing occupied by the claimant at the same time, and this would confer the borough franchise.

Mr. Lumley (R. B.) said, the construction he put upon the words "together with," in section 24, was, that they applied to a connected occupation.—Name retained.

James Dickinson claimed for a freehold house and shop in Gude-street, Stafford, worth 20*l.* a-year. The claimant and his three aunts lived in the house; two of them were partners.

Mr. Lumley (R. B.) said, he thought that this case fell within the interpretation he had given to the words

Northern Division of Staffordshire, 1832. Freehold interests.

"by himself," in section 24, although there was a distinction between this and other cases, as there was a sufficient value to qualify two of the parties for the borough. Although he entertained considerable doubt on it, he would give the claimant the benefit of the doubt.—Name retained.

East Gloucestershire, 1834.

Nicholas Jenkins claimed for a freehold house. He held it under a lease *par autre vie*, which he had acquired at Whitsuntide, 1833, by descent from his father, who died intestate. It was worth 3*l*. 10*s*. per annum, and the claimant did not occupy it, but allowed his mother and brother to do so.

Mr. Lumley (R. B.).—As the claimant does not occupy this property, and it is under 10*l*. per annum, he is prevented from voting by the 2 W. 4, c. 45, § 18; and title by *descent* is omitted in the provisoes contained in the clause.—Name expunged.

Northern Division of Staffordshire, 1832.

Joseph Barker claimed in right of a freehold factory, situated within the borough of Stoke-upon-Trent. It was worth more than 10*l*. per annum, but was untenanted. It was objected that the owner was in this case the occupier, and thereby excluded from voting for the county.

Mr. Lumley (R. B.) said that the occupation contemplated by the Reform Act was explained by reference to the decisions on assessments to the poor rate. It meant the actual use and enjoyment of the property. —Name retained.

William Waller claimed for buildings and land in the borough of Stoke-upon-Trent. The buildings were untenanted.

The court held that an untenanted house could not

be considered in the occupation of the owner, and he was not therefore excluded from the county franchise by the twenty-fourth section.—Name retained *.

Northern Division of Staffordshire, 1832.

Thomas Parsons claimed in right of two freehold houses at Whitehall. He stated that he occupied one himself; the other was undergoing alteration and repair. The premises consisted of three distinct tenements; there was a cottage on each side, and a weaving-shop in the middle. There was no internal communication between them.

East Gloucester, 1834.

Mr. Cox referred to Waller's case, *Delane*, 256, and *Manning's Notes of Revision*, 113.

Mr. Fryer urged that the claimant had not been in the occupation, but in the possession.

Mr. Lumley (R. B.) said, in this case there was no beneficial occupation of the premises by the claimant, and his name must be retained.

Mr. Cristall claimed in respect of a freehold blacksmith's shop, adjoining other freehold premises, which were in the occupation of the claimant. This shop was occupied by the blacksmith, who was rated for it in the parish books, and who regularly paid the claimant a rent of 15*l.* per annum.

East Surrey, 1835.

Mr. Corner objected to the claim, because he contended that the premises were virtually in the occupation of the claimant, and being within a borough, the

* A claim was made for a piece of ground in which the claimant had commenced the erection of a house, which was roofed in, but not completed. It was proved it would be worth 10*l.* to occupy in its unfinished state. It was contended it was not occupied by the claimant. The court decided, that as the land was in the occupation of the claimant before he began to build, he still occupied it by his workmen.—Manning's Notes of Revision, 113.

East Surrey, 1835.

occupying freeholder had no county vote. He cited the case of The King v. Cheshunt, 1 B. & A. 473, in which the learned barrister, Mr. Knox, acted as counsel, where it was held that the occupation by a coachman of a freehold cottage belonging to his master was not an occupation sufficient to give the pauper a settlement in the parish, the occupation being virtually by the master; and in this case the blacksmith was the clerk and working smith of the claimant, living on the premises of the claimant.

Mr. E. Meymott denied the application of the doctrine laid down in The King v. Cheshunt to the present case. There the occupation was by the coachman as coachman, and as soon as his service ended, then his occupation ceased; and there also the situation of the premises was unlike the present, for the coachman only occupied rooms over the coach-house and stables at the back of his master's house. But here was a wide difference. The blacksmith, it was true, happened to be clerk to the claimant and did his smith's work, but he could not, when his service terminated, be turned out of possession of this shop without the usual process necessary between a landlord and a refractory tenant. The man kept a general smithy, and the claimant was only one of his customers, a principal one surely, but not his master. Persons were in court for whom he had done much business on his own account at this shop; and as to the situation of the shop, it was not connected with the claimant's premises; there was no door or communication between the two; they were adjoining, but not communicating, as appeared by a plan which was produced. The smith, too, was rated in the parish books for the shop, and not Mr. Cristall. It could not be said that Mr. Cristall was in any sense the occupier.

Mr. Knox (R. B.) said the case certainly differed from the case of The King v. Cheshunt, which he recollected very well, although at first there appeared to him a great similarity between them. The points in Mr. Meymott's argument appeared to be supported by evidence, and he should admit the claim; and in doing so he necessarily decided another question, which he understood was in doubt before,—namely, that this blacksmith having made himself out the occupier, he was therefore entitled to his borough vote.

East Surrey, 1835.

Thomas Peere Williams, Esq., claimed in right of freehold lands and tenements in the parish of Bisham.

Berks, 1833.

Mr. William Field stated, that the claimant was the owner of Temple Mills, in the parish of Bisham. They were worth 40*l*. per annum. The witness resided at the Temple Mills, as agent to the Copper Mills Company. They stand at present in the name of the executors of the late Mr. Williams.

In reply to a question from Mr. Gregory, Mr. Corbett said, he considered that the claimant had established a *primâ facie* case.

On cross-examination, Mr. Field said, the mills are freehold property. I carry on the business of the copper mills as agent to the late Mr. Williams, and am paid a salary by the company. I pay the sum of 1000*l*. a-year as rent, out of the profits of this mill, to the copper company. The business goes on at present in the name of the executors. Mr. T. P. Williams is landlord of the mills. The company consisted of two persons, the late Mr. Williams and his brother. The freehold house and land included in this claim are considered part of Temple Mills. I believe that it is the present

Berks, 1833. Mr. T. P. Williams who makes this claim. He resides sometimes in London, sometimes in Wales, and sometimes at Temple Mills. Since his father's death he has resided occasionally at his house at Temple Mills. The Temple Mills do not form a part of Temple House. Mr. T. P. Williams is one of the partners in the copper company. The rent is paid to the partnership account specifically as rent. I pay over to the partnership the profits of the concern at the end of the year, and receive from it a fixed salary. I am the occupier of the mills, but I am not personally responsible for the rent, which is payable in the first instance out of the profits.

Mr. Gregory submitted that this was the ordinary case of mercantile accounts in the city of London, where one partner was possessed in his own right of the property and plant by means of which the profits of the business are earned; in such cases it is reasonable that the partner who contributes so material a part of the capital should be paid for the use of it, and then it is usual to set a rent upon it, and the profits of the business are primarily liable to that rent. So, also, when capital is advanced into a partnership fund, in unequal portions, by several parties, it is usual and reasonable that the profits of the business should be liable to pay interest at a certain rate upon the capital employed. In this case he contended that Mr. Field was the mere agent; he was not himself liable to rent, but the profits of the concern were; the possession of Mr. Field was, therefore, the possession of the partnership,—the possession of Mr. Williams himself, as one of the partners; therefore, this property being held by Mr. Williams jointly with other property which conferred upon him the right to vote for the

borough of Marlow, he was excluded by the twenty-fourth section of the Act from a vote for the county. Berks, 1833.

Mr. Corbett (R. B.).—Can you show, Mr. Ward, that there is any tenancy on the part of Mr. Field?

Mr. Ward would undertake to show that Mr. Field was the sole occupier of the mills on behalf of the company, and that the company paid Mr. Williams, who was the sole proprietor, a rent of 1000*l.* a-year before they shared any profits.

Mr. Corbett (R. B.).—Suppose that he is the sole proprietor of the mills, and that he lets them to the company, and that there is a rent reserved for him. He receives the rent it is true, but how does that prevent Mr. Williams, who is a partner, from being in his turn an occupier? As a partner, Mr. T. P. Williams pays rent to T. P. Williams as a proprietor—he is, therefore, both occupier and proprietor. If you can prove that Mr. Field is the tenant, that will give a good vote to Mr. Williams, who in that case will not be the occupier; but how can you show that there is a tenancy on the part of Mr. Field to Mr. Williams, when all his transactions are, as he tells you, with the company?

Mr. Ward said, that in consequence of his living in the house, Mr. Field received a less salary than he otherwise would do. He was therefore a tenant to Mr. Williams.

Mr. Corbett (R. B.).—This is a case that has often been settled before; if Mr. Williams was anxious to be on the register for Marlow, and that he claimed as the occupier of these mills, and as residing in them within seven miles of that borough, would not that be a sufficient qualification for him, he being a partner in this company? I think that the revising barrister for

Berks, 1833. Marlow would decide that it would be a sufficient qualification, and, being such, I must expunge his claim to vote for this county.—Name expunged.

South Lancashire, 1835. Burial Ground. Charles Duncan claimed to vote in respect of a certain freehold called the Providence burial ground, Oldham, in which he had a beneficial interest exceeding 40*s.* per annum. The secretary of the shareholders being sworn, stated that the cemetery was held in shares of 5*l.* each, and that there were twenty shareholders, holding among them 120 shares. The land itself cost 299*l.* odd. The profits of the shareholders arose out of the sale of graves, and the dues on the opening and re-opening of the same. There was no special Act of Parliament or trust deed in reference to the property, which was similar in its character and tenure to the Rusholme-road cemetery, Manchester. The ground had been used as a cemetery about two years and a half, and about one-fourteenth of the graves had been sold. One dividend had been paid (and another was about to be declared) amounting to 8*s.* per share for the twelve months. The present claimant held six shares, and therefore his dividend amounted to 2*l.* 8*s.*

Mr. Greenwood (R. B.) said that he could see no pretence whatever for allowing the claimant's name to remain on the list; his decision was founded on the broad principle, that the party did not receive to the value of 40*s.* a year out of the land in the way contemplated by the 8 H. 6, c. 7.

Berks, 1832. Tithes. In the parish of Sulham, the Rev. Mr. Hammond was opposed by Mr. Gregory, on the ground of want of title in that parish.

The rev. gentleman, who appeared on his own behalf,

stated, that he claimed out of freehold tithes in Berkshire, but as rector of Whitchurch, in Oxfordshire. Those tithes were leased out at 96*l.* per year, and he was assessed to the land-tax, in the parish of Sulham, at 5*l.* 12*s.*, a copy of which assessment he produced.

Berks, 1832 Tithes.

On his examination by Mr. Gregory, he stated, that he could not say that any portion of those lands, out of which those tithes arose, was in the parish of Sulham. The tithes were appended to the Rectory of Whitchurch, in Oxfordshire, and he could only say that the land in question was in Berkshire. In reply to questions from the court, the claimant stated that all the poor's-rates and church-rates for these lands were paid to the parish of Whitchurch, and that the paupers in them were relieved by that parish.

Mr. Wilder, the proprietor of those lands, could not state in what parish they were; they were situated in Berkshire, and had always been assessed to the land-tax in the parish of Sulham.

Mr. Hammond said, that if these lands were in the parish of Sulham, he was right in sending in his claim to the overseers of that parish. If they were to be considered as in the parish of Whitchurch, there should have been overseers appointed for it, as the overseers appointed for "Whitchurch, Oxfordshire", could not in that case act for "Whitchurch, Berkshire", there being then, in that view of the case, no legal overseers for this parish. The case, in his opinion, came under the 38th section of the Act, which enacted —"That every precinct or place, whether extra-parochial or otherwise, which shall have no overseer of the poor, shall for the purpose of making out such list as aforesaid, be deemed to be within the parish or

Berks, 1832. Tithes.

township adjoining thereto, such parish or township being situate within the same county, or the same riding, parts, or division of a county as such precinct or place; and if such precinct or place shall adjoin two or more parishes or townships so situate as aforesaid, it shall be deemed to be within the least populous of such parishes or townships, according to the last census for the time being."

Mr. Gregory submitted, that to bring this case under that section, the parish or precinct in question must be in the same county with the parish to which it was to be attached for the purpose of registration. It might be that these lands were in Oxfordshire.

Mr. Talbot (R. B.) said there could be no doubt that those lands were in Berkshire. Sulham was the least populous parish adjoining, and he could not construe the 38th section of the Act other than by saying, that the claimant was entitled to have his name put upon the list of voters in Sulham.

East Gloucestershire, 1834.

Mr. Mordaunt Ricketts claimed to have his name inserted on the register in respect of his freehold interest to the amount of 40*s*. per annum in certain tithes, derived from eight acres of land within the borough of Cheltenham.

Mr. Cox appeared on behalf of the claimant, and proved that the land was part of the field occupied with his house; that the tithes were holden with the house, and conveyed to him by the same deed. The whole was in his occupation, and the average value of the tithes was 49*s*. per annum.

Mr. Lumley (R. B.) gave the following judgment, which fully details the arguments urged on behalf of

East Gloucestershire, 1834. Tithes.

the claimant and the objector. Mr. Ricketts claimed to vote in right of his interest to the amount of 40*s*. per annum in certain tithes. It appears that he is the owner and occupier of the land out of which they issue, and that land is all situate within the borough of Cheltenham, so as to confer on him a right of voting for that borough. He contends, however, that holding the tithes by a distinct title from the land, inasmuch as the land is copyhold of inheritance, and he is the purchaser in fee of the tithes, the latter is still a distinct tenement which he holds, and for which he is entitled to vote. The right to the tithes constitutes an incorporeal hereditament which does not merge in the right to the land. The point is not altogether clear, but in our opinion, although the right is not merged it is suspended, and we cannot find that there is such an enjoyment of the right as to keep it in force as a separate tenement. It seems to resemble the case of the land-tax which has been redeemed. So long as the redemption is vested in the owner of the land, I apprehend there could not be a claim as for a distinct right to the former when the latter is barred. So if a rent in fee were charged on lands which were afterwards entailed on the grantee, so long as the entail lasted the rent would be suspended, but it would revive on the failure of the entail. Here, however, I may add, that the tithes are necessarily included in the borough vote, because the real effect of the present title in Mr. Ricketts is to increase the value of his land by making it, as regards himself, tithe free, consequently the land is so much more valuable. That value he would be entitled to incorporate with the other value of the land, if he required it, to complete his borough qualification.—Claim rejected.

North Staffordshire, 1832. Building Club.

William Austin claimed to vote for two freehold houses at Lane End. He stated that he had had them for one year and a half, and they were acquired under these circumstances: a building club existed at that place consisting of several members who paid monthly subscriptions. In 1820 a piece of land was conveyed to trustees for the benefit of the shareholders, and portions of that land were from time to time allotted to the different shareholders, and the allotments were built upon by the society. When the houses were finished the allotments were conveyed by the trustees to the shareholders, to whom they had been allotted, provided all their subscriptions were paid up. In this case the claimant had paid 140*l.*, but the trustees had not conveyed the houses which had been built on his allotment to him, because there was still some subscription money due, but he had been allowed to take the rents.

Mr. Lumley (R. B.), retained the name.

Kennett and Avon Canal Company, 1832.

Thirty-seven shareholders of the Kennett and Avon Canal Company claimed to be placed on the list of voters for the county of Berks, in right of their "Freehold proportion of rates and duties arising from the carriage of goods, wares, merchandise, and commodities, on the river Kennett, in the county of Berks; and of houses, warehouses, lands, and hereditaments, forming the river Kennett navigation, or connected, or used therewith."

The case being of considerable importance, it was arranged that Mr. Talbot should sit with Mr. Corbett to hear it.

Mr. Gregory appeared in support of the objections taken to the claimants, and asked whether the

decision in one case was to determine all, as the thirty-seven claimants had claimed in fourteen different parishes; in fact, in every parish through which the canal passed.

Kennett and Avon Canal Company, 1832.

Mr. Corbett (R. B.) said they were anxious, after the fullest examination of one of the cases, to pronounce a deliberate decision upon it, which decision would guide their judgment with regard to the other cases, and having once pronounced that decision, he certainly should not depart from it.

Mr. Gregory submitted that the overseer should be examined, as to the time when the notices of claim were delivered in to him on behalf of those voters, and whether they had been delivered within the period prescribed by the Act of parliament.

Mr. Warren contended that the list, as made out by the overseer, was *primâ facie* evidence of his having complied with the provisions of the Act of Parliament, and that, unless strong proof was adduced by the objector on the other side to shew that the contrary had been the case, the barrister was not obliged to examine the overseer as to the fact.

Mr. Corbett said they could not enter into the question as to the conduct or misconduct of the overseers, but it was thrown upon the objector to show that he had not done his duty.

Evidence was then produced, as to the service of the notice of objection upon John Blackwell, one of the thirty-seven claimants, and with whose case it was agreed by both sides to commence.

The overseer of the parish of Aldermaston, in which the claimant resided, being examined, stated, that the notice of claim on behalf of this and the other individuals claiming in right of the property of the Kennett

Kennett and Avon Canal Company, 1832.

navigation, had been delivered to him by the same person, at eight o'clock on the 20th of August.

Mr. Warren, in support of the claim, said, that the Kennett and Avon Canal Company had been incorporated by 34 Geo. 3, c. 90, for the purpose of making a canal from Newbury to Bath, and that under that Act the shares in the Company were personal estate, and admissible as such. This Company having become anxious to purchase a property called the Kennett navigation, an Act was passed (53 Geo. 3, c. 119) to enable them to do so. That Act recited all the Acts on both sides, regulating their respective properties—*viz.* the Kennett and Avon Canal from Bath to Newbury, and the river Kennett navigation from Newbury to Reading. It enabled the company to purchase the latter property for themselves, their successors, and assigns, and it invested them with, and they became seised of, all the rights, privileges, and franchises that had hitherto appertained to that freehold property. Having read a clause from the Act in question, to the effect he mentioned, he proceeded to state, that they should put in a freehold conveyance, in accordance with the terms of the Act of the river Kennett navigation property, to proprietors of the Kennett and Avon Canal Company, and which conveyance, he contended, entitled the person holding such property to the right of voting. His clients claimed to vote in respect of the rights and liberties of the river Kennett navigation property, which had now been brought home and vested in them; and though the shares of the Kennett and Avon Canal Company were expressly declared, by Act of Parliament, to be personal property, it was equally plain, that the property of the Kennett navigation, which had been absolutely conveyed to them,

must be deemed freehold property, carrying with it the rights and advantages which such property possessed*.

Kennett and Avon Canal Company, 1832.

* The following opinion was given on this case previous to the discussion before the revising barrister;—"From the Acts of Parliament (34 Geo. 3, c. 90—36 Geo. 3, c. 44—38 Geo. 3, c. 18—41 Geo. 3, c. 23—45 Geo. 3, c. 70—49 Geo. 3, c. 138—and 53 Geo. 3, c. 119) submitted to me on this subject, I entertain no doubt that the shares of the proprietors of this company are only personal estate, and, consequently, incapable of conferring the right of voting at county elections. The case of Buckeridge v. Ingram, 2 Ves. jun., 652, established, that where the shareholders in navigable rivers had such rights arising in and out of the soil as amounted to an incorporeal hereditament, the law would, in the absence of any express enactment concerning them, imply that they were of the nature of real estate. But in that case, the master specially reported that the shares would come by descent, and that there was to be no right of survivorship among the parties, but that the share should descend and go to the heir of the party dying. It further appeared that there were no words in the Act then in question (10 Anne, c. 8) declaring of what nature the shares were to be. That is not the case with the Acts on which the right of the Kennett and Avon Canal Company depend; in them, it is repeatedly declared, that the shares shall be personal estate. The Acts 1 and 7 Geo. 1, and 3 Geo. 2, by virtue of which several persons were authorized to make the river Kennett navigable, might have been construed, under the authority already cited, to give the persons therein named a freehold interest in their shares. The Kennett navigation was purchased by the Kennett and Avon Canal Company, under the authority of the 53d Geo. 3, c. 119, but the same Act which gave the company the power to make this purchase, directed that the funds required for that purpose should be raised by the creation of new shares, and that all such new shares should be transferable as personal estate; and that the provisions of the former Acts relating to the Company, should be applicable to these new shares, in like manner as if the said shares had been originally subscribed for under the said recited Acts. The company itself is made, by these Acts, a corporation. The claimants cannot vote in respect of the property of the company, for that belongs to the company at large, and not to the individual members of it, and the company, being a corporation, cannot act but by its proper officers, and under its common seal; and, as a corporation aggregate, can have no vote at an election. They cannot claim as individual proprietors of distinct shares, for those shares are declared to be personal property, and, as such, can give no right of voting."

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Mr. Merriman, the clerk of the company, having been sworn, stated that Mr. Blackwell was proprietor of twenty shares in the Kennett and Avon Canal Company, and that, as such, his proportion of the tolls and other property collected upon the river Kennett navigation amounted to more than 40*s.* a-year. He further stated that the company had purchased this freehold property from Mr. Frederick Page, in the year 1815, and that the river Kennett navigation ran through the county of Berks, and a great part through the parish of Aldermaston.

Mr. Gregory submitted, that not even a *primâ facie* case had been made out on the other side.

Mr. Corbett (R.B.) considered that there had, and that the objector was now called upon to produce evidence to show that the claimant did not possess the qualification to entitle him to have his name upon the list.

Upon a cross-examination by Mr. Gregory, the witness stated that he did not know what was the entire amount of tolls produced between Newbury and Reading, and that he did not know whether any portion of those tolls were collected in the parish of Aldermaston. He admitted that the amount of tolls produced by the Kennett navigation were blended with the general mass of receipts of the Kennett and Avon Canal Company.

Mr. Gregory begged to know from the witness, whether the charges paid by a man navigating the Kennett navigation from Reading to Newbury would be carried to the general account of the company, or to the separate account. The witness, in reply, stated that such an individual would stand debited in the books of the company so much for the Kennett navigation, and so much for the Kennett and Avon canal, if his barge had passed through it; but that when the

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amount was paid to the clerk, it would be handed over to the general treasury, and that, in point of fact, the receipts of that navigation were carried to the general fund out of which the annual dividend was made to the Kennett and Avon proprietors. He further stated, that there were no separate proprietors of the Kennett navigation, as distinct from the proprietors of the Kennett and Avon canal. He supposed that there were not fewer than 1000 proprietors, great and small, possessing from one share upwards in this company, the number of the shares being 25,328. He produced the annual printed account of the nett receipts of the company upon the whole line of navigation from Reading to Bath, for the year ending May 1832, from which it appeared that, after deducting the drawbacks, the nett receipts amounted to 42,601*l.* That was the nett amount of receipts, subject to deductions to the amount of 5,843*l.* 8*s.*, of which 2,156*l.* 12*s.* 1*d.* were deductions against the Kennett navigation, and that he considered the receipts upon that navigation worth 5,000*l.* per annum. He stated the dividend upon the nett amount of the profit of the company to be 25*s.* per share, and 5*s.* of that he assigned as the product of the Kennett navigation. He did not know an instance of any canal proprietor having voted at the election for a member of Parliament for the county, under the old law, except Colonel Page, who still possessed a rent charge of 500*l.* per annum upon the Kennett navigation property. In the case of a deceased intestate proprietor, it was necessary to take out letters of administration in order to pass the property.

Mr. Corbett called on Mr. Warren to put in the deed of conveyance to which he had referred, for the satisfaction of the court.

After some discussion it was accordingly put in.

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Mr. Gregory then said he should state a few points to the court, any one of which, he contended, would be quite conclusive against the vote. In the year 1714, certain persons were empowered by an Act of Parliament (1 Geo. 1, c. 24) to make the river Kennett navigable. Two other Acts of Parliament were passed subsequently, extending the time for the completion of the work; but the material Act, to which he should call the attention of the court, was 34 Geo. 3, c. 90, by which the company was incorporated, and it declared that all the shares of such company should be deemed personal estate, and transferable as such, and not as real estate. The committee of management were empowered, under section 90 of that Act, to act as they should think fit on behalf of all the other proprietors; and the 99th section showed that the shares of that property were, in the most clear and distinct sense possible, personal estate. In case of death, the proprietors' executors were obliged to pay up the calls on the shares. The next Act relating to this company was the 45th Geo. 3, c. 70, which also clearly proved the property to be personal estate. The next Act of Parliament, the one which bore more immediately upon the present question, and to which he should have to refer hereafter, was the 53d Geo. 3, c. 119. He now merely cited it to show the authority under which this purchase was made. The 3d section of that Act, which was passed for the purpose of enabling the company to purchase the Kennett navigation, declared that all the new shares which it empowered them to raise, and which were by it incorporated with the old, should be transferable as personal estate. The first point he had to make against the vote was, that under the Kennett navigation Act (1 Geo. 1, c. 24) no fee simple estate was conferred upon the undertakers of the Ken-

nett river navigation; that nothing more, in fact, was conferred upon them than a mere easement, a power of making the river navigable for boats of passage; and such a privilege, it was obvious, did not carry with it a fee simple right. The case of Buckeridge and Ingram, 2 Vesey, jun.*, which he expected would be quoted upon the other side, was plainly distinguishable from the present one, but which, even if it were not, had been subsequently overruled by two other deci-

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* Buckeridge v. Ingram, 2 Ves. jun. 662. The 10th of Anne, c. 8, for making the river Avon navigable, was considered to create a real property in the shareholders. § 10. No person shall hold more than one share, unless the same came by descent of will. § 11. No survivorship amongst the parties, but the share shall go to the heir of the party dying. M. R. It is not the soil which I hold would hardly pass to the grantee, but it is a right arising out of the soil.

The words, that these shares shall be personal estate, were not in that Act, a matter which was commented upon in the argument.

In R. v. Thomas, 9 B. & C. 128, this Act was again discussed, and the proprietors held not rateable "for land covered with water, being part of the river Avon, in this parish; the proprietors of the navigation not being occupiers of the land covered with water."

Hollis v. Goldfinch, 1 B. & C. 205, held that an Act enabling proprietors of a navigation to use lands on making the owners compensation, did not imply that they were to purchase the land, and they must therefore shew such a purchase before they could maintain trespass with respect to those lands. Abbott, C. J. If all the purposes of the Act might be accomplished without the purchase of the soil, there is no reason to suppose the soil would be purchased. It is quite obvious that all the purposes of the Act might be accomplished without the actual purchase of the soil.

§ 10 and 11 W. 3, directed that certain persons should be called Conservators of the Tone, and should have an estate in fee-simple, in lands purchased by them in the manner specified in the Act, held, that though not created a corporation by express words, they were so by implication. Conservators of Tone v. Ash, 10 B. & C. 349. Bridgewater and Taunton Canal Navigation v. Bluck, 10 B. & C. 293.

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sions of the Court of King's Bench, and might, if it were an authority, be cited in support of his (Mr. Gregory's) argument. In that case, Mr. Buckeridge, by his will, gave four shares in the river Avon to his son, and the question arising as to whether they were real or personal estate, it was referred to the master for his opinion. It appeared, from his report, that by the 10th of Anne, the Act which referred to the navigation of that river, certain freehold tenements were connected with it, which made the property savour so much of real estate, as induced the Court of Chancery to pronounce a judgment that the property embraced by the testator's will was considered by the testator as a freehold estate, and that, therefore, the court would give effect to the provisions of the will. He referred to the case of Hollis and Goldfinch, 1 Barnewall and Creswell, 205, which overruled Buckeridge v. Ingram, so far as related to the division of the freehold. In that case the court decided that the proprietors of a canal were not necessarily occupiers of the soil, nor had a right in the bank, so as to enable them to maintain an action of trespass. He referred also to another case, in the 9th Barnewall and Creswell, King v. Thomas, in which the court held that land covered by water was not occupied by the proprietors of the said water. He proceeded to contend that, in this instance, it was clear no freehold vested in the proprietors of the Kennett navigation, and that therefore the proprietors of the Kennett and Avon canal could not claim a right to vote in respect of freehold. But, even admitting that a freehold had been conferred by the original Act on the undertakers of the Kennett navigation, and that it was transmitted to, and held by, Colonel Page, yet to admit the claim on the other side would be to allow that a fee simple had been vested in a body

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corporate and in individuals at the same moment, as tenants in common. This would be a perfect anomaly in the law; it would be supposing the existence of a fee-simple, of which a body corporate, having perpetual existence, held as tenants in common with a body of proprietors, which were necessarily ephemeral, and perpetually changing. It was scarcely necessary to assert that such a principle was utterly inconsistent with the law of England. It was plain, from the 53d clause of the Act of Parliament, that the legislature never intended to confer on this company a right perfectly at variance with the general law of the land, and this objection alone was fatal to the claim. His third point of objection was, that the shares of this company were, strictly speaking, of the character of personal estate; that in case of intestacy they could only be passed by administration, and that they savoured in no degree of real estate. His next point was, that the deed of conveyance, which had been put in evidence, was absolutely void. It was a conveyance made in consequence of the 53d Geo. 3, c. 119, which gave the company power to purchase the property, but it was necessary that the conveyance should have been in the terms prescribed by the 34th Geo. 3, section 30, in which the form of conveyance to be employed when this company was empowered was set forth. As this deed, therefore, was not conformable with the terms of conveying there prescribed, he maintained that it was void. His next point was, as to the form of the transfer of the shares. That form was also prescribed by clause 100, 34th Geo. 3, and he maintained that no fee-simple property could, by any possibility, pass by the words there employed. In conclusion, he said it would be a most monstrous thing if 28,000 shareholders, or upwards, in a

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property like this, supposing each share worth 40*s.* a-year, could come in and swamp the constituency of a county. Such a thing had never been contemplated by the legislature, and, upon all the grounds which he had stated, he called upon the court to reject these votes.

Mr. Vines followed on the same side.

Mr. Warren replied. He maintained that the case of Buckeridge and Ingram, and the judgment therein given by the Master of the Rolls, clearly showed that a company could possess a real estate in a property like this. He referred to *Rogers*, page 27, for instance, in which it was held that shares in bridges, rivers, &c., were real property. The property now in question was two hundred years old. It was always regarded as real property, and made transferable as such by lease and release, fine and recovery. Colonel Page, he maintained, conveyed it as a fee-simple estate to the Kennett and Avon Canal Company; and he contended that the 53d Geo. 3, c. 119, which empowered them to purchase this river Kennett navigation, transferred to them all the rights connected with it, and that, therefore, they possessed those rights which appertained to a freehold property. It was for the objector to show that the elective franchise had never been exercised by the person who had conveyed this property to the Kennett and Avon proprietors. The conveyance was perfectly correct; and he relied with confidence that the decision of the court would be in favour of his client.

Mr. Corbett (R.B.) said, that as the case depended much upon the construction of Acts of Parliament, and upon authorities that had been cited, he and his learned colleague would take that evening to look into the cases referred to, and the Acts of Parliament, and he would pronounce the decision of the court in the morning.

Kennett and Avon Canal Company, 1832.

Mr. Corbett (R.B.), at the sitting of the court, gave the following judgment.

This case depends upon the construction of several Acts of Parliament, to which my attention was very properly called yesterday. I have since carefully looked through those Acts, and am of opinion that the name of John Blackwell must be expunged from the list of voters for the parish of Aldermaston.

On looking through those Acts of Parliament, it appears that the company are possessed of two interests; that is to say, of a freehold interest in the Kennett navigation, by virtue of a conveyance from colonel Page; and of a further individual right to share in the perception of the profits of the navigation, in proportion to the amount of their shares.

With respect to the first, I am of opinion that it vested in the Kennett and Avon Company, and their successors, as a corporation aggregate, and consequently does not confer a right to vote on individual members of such corporation.

With respect to the latter, whatever might have been the case if the Acts of Parliament had been silent on the subject, yet, construing the Acts of 34 and 53 Geo. 3 together, I am of opinion that both the old and new shares must be considered as personal property, and consequently will not entitle the individual holder to vote. The vote of John Blackwell must, therefore, be expunged.

Mr. Talbot said, that he had also carefully considered this case, and that he perfectly concurred in the judgment given upon it by his learned friend.

Mr. Gregory then proceeded to prove the service of notices of objection upon such shareholders of the company as had claimed to vote in the parish of Alder-

Kennett and Avon Canal Company, 1832.

maston, which being done, their names were struck out of the list of voters*.

Middlesex, 1834.

The following claim to be placed on the list of the voters of the parish of Hiltingdon was made—"Freehold water, the fisheries of which are let to a tenant at a rental of 5*l.*"

The vestry clerk stated he knew that the claimant had let the fisheries to a tenant at the rental stated, but the stream in question was a flowing river, and the party claiming was not the owner of the land on either side.

Mr. Coventry (R.B.) said, that as no objection had been taken, he had no power to enquire into the qualification; but he would so far amend the description as to designate it a freehold fishery.

County of Middlesex, 1834. Shareholders of the Old Corn Exchange.

In the list of the parish of St. Olave, Hart-street, there appeared the names of three gentlemen, whose qualifications were respectively stated to be freehold shares in the Old Corn-Exchange, producing 24*l.* per annum. These claims were objected to by the parish authorities, and the question now came before both the barristers for adjudication.

Mr. Baker, the vestry-clerk, said, that the objection had been taken in pursuance of a direction given him

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* In consequence of the decision of the court in the Sulhampstead Bannister case, page 240, the shareholders of the Kennett and Avon Canal were retained on the list of electors in that parish, and several of them voted at the general election in 1832. In the following year, their claims were renewed in all the parishes, but the notices of objection having been effectually served on all the claimants, and all the overseers, the names were expunged from all the lists.

by the revising barristers last year, in order that they might be satisfied, after inquiry, upon the validity of these claims. Since the objections had been taken, he had made inquiries, the result of which satisfied him that the shares were freehold property, and therefore that the objection was untenable. The shares had ever been so considered and dealt with; they had in many cases been devised as such, and in one case had been so recognized by the crown. He alluded to the case of a Mr. Dyson, who bequeathed certain of these shares to a natural son, whose will, subsequently made, proving to be defective, the crown took possession of these and other freehold property, and upon inquisition escheated it. He had been furnished with an abstract of the deeds upon which the company was formed so long ago as the year 1749, and he felt satisfied that the court would feel itself justified, upon a perusal of this abstract, in overruling the objection.

County of Middlesex, 1834. Shareholders of the Old Corn Exchange.

The abstract of the deed of incorporation was then handed in by Mr. Baker, by which it appeared the property upon which the Old Corn-Exchange was founded had been purchased on the 5th of May, 1749, by a number of individuals, who took a conveyance of it to a nominal trustee, as to their respective shares, to the use of themselves, their heirs and assigns, as tenants in common. By an indenture bearing date the 12th of May in the same year, the purchasers demised the property thus acquired to five trustees (members of their own body) their executors, administrators, and assigns, for a term of 500 years, at a pepper-corn rent, with powers to grant leases, to receive rents, &c., and to attend to the general management and improvement of the property; and also to divide the gross profits amongst the proprietors in

County of Middlesex, 1834. Shareholders of the Old Corn Exchange.

proportion to their respective shares. It was also proved that the rents of the vaults and stalls on the premises were paid at an office for that purpose by the tenants, who received a receipt from a clerk in the name of the "Proprietors of the Old Corn-Exchange."

Mr. Coventry (R. B.) said, in this case the proprietors of shares in the market were, in fact, tenants in common of the freehold, and that as each 80th share yielded more than 40*s.* a-year, the owner thereof was, in his opinion, entitled to a vote for the county. He remembered that last year he recommended that objections should be taken to these qualifications by the overseers; but he had then more particularly alluded to the shareholders in the New Corn-Exchange, whose names also appeared in the list now under revision. By the Act of incorporation which had been obtained by the proprietors of the New Corn-Exchange, the shares in that undertaking were declared to be personal property; these shares could not therefore, in any way, be compared to shares in a railway undertaking, or in a gas company, where the freehold was vested in trustees, and where the profits arising from the investment were made from the land itself and not from the machinery upon it. A franchise might indeed exist of a freehold tenure. Thus an ancient market or fair, entitling the owner to certain tolls, was a freehold tenement within the intent and meaning of all Acts of Parliament bearing upon the law of election. Such a franchise was derived from the crown, and might be entailed, and made the subject of family settlements; but this market was the undertaking of private individuals, at a somewhat recent period, and therefore did not come within the class to which he had alluded. It, however, appeared to him, after an

County of Middlesex, 1834. Shareholders of the Old Corn Exchange.

inspection of the abstracts which had been presented to the court, that the shares in the Old Corn Exchange were undoubtedly freehold, and liable to escheat as such, and that though this was not an ancient market, conferring by itself upon the owners the county franchise, yet as the proprietors were joint tenants of the freehold, and as each share was of the required annual value, he was of opinion that the owners were entitled to be registered as electors for the county in respect of such shares.

Mr. Keen (R. B.) expressed his concurrence in the view which had been taken of the present case by his learned colleague. In reference to the claimants in respect of shares in the New Corn Exchange, it was manifest upon the face of their own Act of incorporation, that they possessed no right to the elective franchise. He should therefore expunge those names, and retain only the names of the three claimants in right of the Old Corn Exchange.

East Surrey, 1835. Leather Market.

Mr. Brown claimed as a shareholder in the New Leather Market, Bermondsey. The claim was objected to.

Mr. Corner appeared on behalf of the claimant, and stated, that the present case was a very important one, as it involved the right of about seventy shareholders to be registered. The question which had to be decided was, whether the freehold of the property in the leather market belonged to the trustees or to the shareholders. That market was situated on freehold ground, and the property was of sufficient value to give to each of the shareholders a qualification, if he should succeed in showing that they possessed the freehold interest. The property was vested in trustees for the

East Surrey, 1835. Leather Market.

benefit of the shareholders. The trust deed contained the following clause:—"That, as between the proprietors for the time being, and their real and personal representatives, the grounds and hereditaments to be purchased by or on behalf of the company, notwithstanding the same may be of freehold or copyhold tenure; and the share of each proprietor in the capital of the company should be considered as personal estate, and should be transmissible accordingly." There might be a good reason why this property should be held among the shareholders themselves as personal rather than freehold; but beyond them such an arrangement could have no effect, because, whatever an Act of Parliament might do, no deed of this kind could alter the nature of property. He, therefore, contended that the deed could not convert the property in question from freehold to personal estate, and that it ought not to be held as having any effect beyond the parties themselves—that, in fact, it was not binding between the shareholders and the public.

Mr. Lennard (R. B.) enquired, if a person bought one of those shares, whether he would not be bound by the deed?

Mr. Corner urged, that the deed ought to be held as binding only among the proprietors themselves, and should not be allowed any weight in the great public question as to the right of the parties to the franchise. That portion of the deed by which it was attempted to convert freehold property into personal estate could not, he believed, be sustained in a court of law, and he thought it might be contended that it had reference not to the freehold property, but to the capital of the company.

Mr. Lennard (R. B.) said, he should take this case into consideration, and subsequently pronounced his decision in favour of the claimants.

East Surrey, 1835. Leather Market.

Mr. Edward Segar claimed to be registered as part owner of the Liverpool Corn Exchange. Mr. Peacock objected to the claim, on the ground that the shares in the building were personal estate. He stated, that the legal estate in the building was vested in sixteen trustees for the proprietors, who were seventy-seven in number; and a subsequent deed, to which all the proprietors were parties, embodied all the rules of the company; by the 3d rule it was expressly declared, that the shares should be considered as personalty, and transferred as such. The 7th rule prescribed the mode of choosing the committee, who it declared should have power to let the stalls, receive the rents, and, after defraying the current expenses, invest the surplus in one of the banks; it was therefore quite clear from this clause, that the trustees were excluded from voting, as they were not in receipt of the rents of the building, and it was equally clear that the committee, as such, were not entitled to be registered, as they had neither the legal nor equitable interest in the property. It would, he understood, be contended, that when any of the trustees happened to be chosen committee-men, they would be entitled to be registered, as being trustees in receipt of the rent within the meaning of the 23d sec. of the Reform Act, but surely the accidental circumstance of a trustee being one of the committee could confer no such right, for it was in his character as committee-man, and not as trustee, that he received the rents, for in the latter character he was, by the rules of the company, excluded from any power in the management of the concern.

Liverpool, 1835. Corn Exchange.

Liverpool, 1835. Corn Exchange.

Mr. Greenwood (R. B.) said, there was no pretence for the proprietors claiming to be registered, as their shares were expressly declared to be personal estate, and as the committee, by the laws of the company, have the entire management and control of the property, the trustees were clearly excluded from voting, not being in receipt of the rents.—Claim disallowed.

East Kent, 1835. Shareholders in the Medway Navigation Company.

Several of the shareholders in the Upper Medway Company claimed to vote in respect of "freehold shares in the River Medway Navigation Company, with lands, wharfs, houses, and other buildings, near the great bridge, Tunbridge."

Mr. Miller appeared to support the claims, and Mr. Case on behalf of the objectors. The case came first under the notice of the revising barristers at Tunbridge, when Mr. Case submitted that the whole of the Medway shareholders should be struck out of the list, the Act having constituted them as a corporate body, and as such, they could not vote as individuals on the property of the company.

Mr. Brockman and Mr. Fish (R. B.) both considered that the objection was fatal to the claims, but postponed giving their decision until Saturday last, at Maidstone, when the case was re-argued.

Upon the conclusion of the argument, Mr. Brockman, after having stated that, since he had heard the case at Tunbridge, feeling anxious not to deprive so large a body of respectable gentlemen of the power of voting, he had consulted several experienced legal friends, who had coincided with him in the opinion he was about to give, thus continued—"After listening with great attention to the arguments on both sides, and after considering attentively the Acts of Parliament with which I have been furnished, it appears to

East Kent, 1835. Shareholders in the Medway Navigation Company.

me that the questions which I have to propose to myself are these:—What is the nature of the interest which these claimants have, and in what right do they hold it, because to entitle them to vote, it is clear, first, that they must have some profit arising out of it; and secondly, that they must have the enjoyment of it as individuals, and not as members of a corporate body. Now, assuming that the claimants have the soil of the river Medway, and the water flowing over it, which would be, in the eye of the law, an interest in land, inasmuch as if any of the professional gentlemen whom I see below me were instructed by their clients to prepare a conveyance of a piece of water, the mode of doing it would be by conveying, not the water itself, which is not capable of being conveyed, but by conveying *totidem terræ aquâ coopertâ.* Let us inquire in what right do they now hold them, whether as individuals or as members of a corporate body. In order to ascertain this, let us refer to the 2d section of 13th George 2, c. 26, which says that 'they shall be, and are hereby authorized and empowered, from and after the said 30th day of April, 1740, by themselves, their deputies, agents, officers, workmen, servants, and assigns, to cleanse, scour, dig, and make new channels, trenches, and watercourses, and to remove all trees, roots, and other impediments, and to set up and erect locks, wears, turnpikes, dams, pens of water, bays, sluices, and by those, or by any other ways and means, to make the same navigable, passable, and portable, for boats, barges, lighters, and all other vessels, and also to make wharfs, and set up and erect storehouses, cranes, and all necessary erections, both on the said river and streams and lands adjoining, in such manner as the proprietors in and by the said former Act were empowered to do; and the said

East Kent, 1835. Shareholders in the Medway Navigation Company.

river and streams so to be made navigable, and all lands, tenements, and hereditaments to be by them made use of for the benefit of the navigation, by virtue of the former and this present Act, shall be and are hereby vested in the said company of proprietors, their successors, heirs, and assigns for ever.' On reference to that section, it will be found that the bed of the river and streams on it (by such Act directed to be made navigable) are vested in the company of proprietors, which company, in an early part of the same section, are declared to be a body politic and corporate by the name of 'The Company of the Proprietors of the Navigation of the River Medway.' Having discovered, by a reference to this section, that these claimants enjoy whatever interest they may have as members of a body corporate, and not as individuals, the consequence follows that they cannot exercise the elective franchise. Without referring to particular decisions it is sufficient to say, that in all text writers on election law it is laid down, that where a man becomes a member of a corporation aggregate, or enjoys land by virtue of his being such member, the land being part of the corporate estates, and vested in the corporation, will not confer the elective franchise, it being clear that all the persons claiming in respect of their shares in the Medway Navigation (if they have any rights at all) possess them as members of a corporation, and not as individuals. I am of opinion that they are not entitled to exercise the elective franchise, and therefore that their names must be expunged from the list."

Middlesex, 1835. New River Shares.

Several proprietors of the New River Company claimed to be registered in right of their respective shares. The arguments urged in support of the claims

and on behalf of the objectors are fully detailed in the following judgment.

Middlesex, 1835. New River Shares.

Mr. Coventry (R. B.) said, in the Clerkenwell list there are twenty-seven disputed claims for shares in the New River Company. The north parts of London, as is well known, have been supplied with water for the last two centuries from springs or wells in the neighbourhood of Ware and Amwell, in Hertfordshire, brought to a large cistern in Islington by a trench or channel constructed through the indefatigable perseverance of Sir Hugh Myddleton. By an Act passed in the 3d James 1., cap. 18, the mayor, commonalty, and citizens of London, and their successors, are empowered to make a trench ten feet wide, for the conveyance of water from Chadwell and Amwell, in the county of Herts, to the north parts of the city of London, and for that purpose to have and take the use of as much ground during the whole length of the said channel as they shall find most apt, leaving the inheritance in the owners thereof—that is, in the owners of the ground. By this, I understand the mayor and commonalty have only an easement, the soil and freehold of the land over which the river flows being still in the persons from whom they purchased the liberty of digging the trench. If the case had rested here, with the right of property in a body corporate, there could be no doubt the individual members would not have a right to vote; but shortly after the passing of this Act, the adventure changed hands, and the right of property became vested by purchase in private individuals. The statute passed in the next year of the same reign (which is not printed with the public statutes, but which I have referred to) is merely explanatory of the former statute, and enables the construction of a covered trench instead of an open one.

Middlesex, 1835. New River Shares.

It would appear, however, that the mayor and commonalty, weighing the great expense of the undertaking, and doubting of its success, declined to proceed with the work, when Sir Hugh Myddleton declared himself ready to adventure the whole charge; and accordingly, by indenture, dated the 28th day of March, 1612, the mayor and commonalty assigned to him, his heirs, and assigns, the whole profit and advantage of the said new cut or stream, and the water conveyed thereby, with power to execute and perform all that they were authorized to do by virtue of the said Acts. But after proceeding some miles, Sir Hugh found the opposition so strong, and other difficulties so great, that he was obliged to call in the assistance of his friends, with whom he agreed, in consideration of their contributing towards the charge of the work, that they should "have and receive to them and their heirs rateable shares out of the profits of the said undertaking." This was the origin of shares; but the shareholders could not possibly have any greater interest in the adventure than Sir Hugh had himself. If, then, Sir Hugh had but a mere easement, and no interest in the land over which the water was conducted, neither could his sub-purchasers, who derived all their interest from him. But, even with the assistance of his friends, the work seems to have made little progress till the king lent a helping hand, paying one-half the charge, upon an agreement that he should have one-half the profits. In five years after this the work was completed, and the water brought to London; then by letters patent, dated the 21st day of June, 1619, it is declared, that for establishing the said work, and settling one moiety of the profits on the king, his heirs and successors, and the other moiety on the said Sir Hugh Myddleton, and the said ad-

Middlesex, 1835. New River Shares.

venturers, their heirs and assigns, in proportion to their several shares therein, the said Sir Hugh Myddleton, and twenty-eight other persons, should be and become one body corporate, by the name of "The Governor and Company of the New River, brought from Chadwell and Amwell, to London," and by that name have perpetual succession, and that they and their successors should by that name be capable of purchasing lands, tenements, and hereditaments, in fee or otherwise, and by that name should plead and be impleaded, and have a common seal. The charter then provides for the election of a governor and deputy-governor, and also of a treasurer, who is to have the receipt of all the rents and profits arising from the said work, and, after payment of all expenses, to divide the clear gain as follows:—one moiety to the king, his heirs and successors, and the other moiety among the several parties interested therein. The company is then empowered to demise the water for twenty-one years, or three lives; and after provisions for the appointment of officers, the king grants to the company and their successors, "the said New River cut and stream, so as aforesaid brought from Chadwell to London, with the appurtenances and all manner of profits and advantages thereof, to be holden of the king, his heirs and successors, as of his manor of East Greenwich, in free and common socage." Now, this imports a grant of the soil and bed of the river, which, however, could scarcely be, as it was not in the king's power to grant; still it imports to pass some hereditament which might be holden, and in that sense it is a tenement; but the question then is, whether it is such a tenement as is the subject of the statute of Henry VI. previously referred to? That it was not intended to affect the soil and freehold of the land is further evidenced by power be-

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ing given to the company to cleanse and scour the said river, and to take and carry the earth digged up to any other part of the trench. The charter then empowers the company to purchase and use the rights and privileges of the city, and also a common-hall. It then declares, that in order to give perpetual continuance to the said company, and that every person to whom any share should come by purchase, descent, or otherwise, should have a several voice in the said work, and as often as any shareholder shall part with all or so much of his share as that he shall not retain a full thirty-sixth part of one moiety of the said work, then it shall be lawful for the governor and company to remove him "from being of the said company," and to elect some other person having a thirty-sixth share in his place; and that upon the death or avoidance of the place of any member of the said company, then his heirs, or other persons to whom the inheritance of his share shall come, or some other person having a thirty-sixth share in the said work, shall be elected and taken into the said company, and be a member thereof, in the room of the person so deceased, or whose place shall be void. The person having less than a thirty-sixth share is not deprived of his beneficial interest in the company, but he is no longer eligible to be a member thereof, and there may be persons possessing more than a thirty-sixth share, who have not been elected members of the said company; and it is to the latter class of proprietors our attention is chiefly now to be confined. The charter contains some other unimportant clauses, and concludes by declaring that no other river shall be brought to London without the consent of the company. There are, I believe, some other Acts of parliament relating to the local interests of the river, but the constitution of the company is to

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be found in the charter itself, and I have been at some pains to select the most material parts bearing on the subject in hand. It should, I believe, be stated, that the company has exercised its power of purchasing lands to some extent, but these lands have been conveyed to the governor and company in their corporate capacity, and are used for purposes connected with the work. The rents and profits of the whole property are in the first instance received by the governor and company, or their deputy, and after paying all charges, divided among the shareholders; and the question is, whether the gentlemen thus receiving dividends on their shares, can be said to possess "free land or tenement to the value of forty shillings a year within the county" for which they claim to vote. Legally they have no interest in the property; but the 23d section of the Reform Act clearly points to an equitable interest as being sufficient. Have they then an equitable interest in any land or tenement? and if they have, are they in possession within the meaning of that section? These are difficult questions to deal with, and before they can be satisfactorily answered, it is necessary to refer to two or three cases wherein these shares have been recognized by the superior courts as real property, and it is undoubted that they are always treated as such; they are conveyed by lease and release, are subject to dower and courtesy, may be entailed, and that entail docked by fine and the remainders barred by recovery, all of which savours of reality. Moreover, they are not the subject of the legacy or probate duties, nor are they assets for the payment of debts, though a case of the New River Company v. Brownjohn, 1 Dick. 187, Amb. 162, seems to point to the application of these shares in an administration of assets. The case in Vernon is very little to

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the purpose, the question there being whether the company had power to lay down pipes *in alieno suo*, and it was held they had; and though the north parts of the town only were mentioned in the Act, yet that they had power to serve the South even to Westminster and Chelsea (New River Company v. Graves, 2 Vernon, 431). The more appropriate authority is that of Drybutter v. Bartholomew, 2 P. Wm. 127, where it was held that a married woman could not pass her interest in a New River share without a fine, which she could have done if it had been a mere personal thing. Sir J. Jekyll, Master of the Rolls, said, "a fine may be (and usually is) levied on New River Shares by the description of so much land *aquâ coopertâ*, and in this case there ought to have been a fine, it being the inheritance of the wife." The reporter adds, "and as the river runs through three counties—Hertford, Middlesex, and London—there must be a fine or recovery for each county." The error of this judgment, if I may presume to say so, is that the shareholders could not properly describe their interest as land covered with water; for the bed of the river is expressly reserved to the owners of the land from whom the right of excavating the trench is purchased, and though the shareholders may be said in some sense to have an incorporeal hereditament, which a married woman could not legally pass without an assurance of record, yet I apprehend it cannot justly be said that they have any interest in the land over which the water flows. Their shares are hereditary by the wording and construction of the charter; but the difficulty is to see wherein they savour of the reality, like a common in gross, for instance, which lies *in prendre*, and consists of the annual produce of the earth. Here, however, the water itself is entirely evanescent, and the only connection it has

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with land is, that it is conveyed by a trench dug in the earth, and distributed through the metropolis by pipes sunk in the soil till it reaches the Thames, and thence the sea. But the case of Buckeridge v. Ingram, 2 Vesey, jun., remains to be noticed. It was there distinctly held that shares in the navigation of the river Avon, under the statute of 10 Anne, are real estate and subject to dower. The circumstances of that case are somewhat different from the present: the mayor and corporation of the city of Bath were by that Act empowered by themselves or nominees to make the river Avon navigable, and for that purpose to enlarge or straiten the banks of the river, and to make any new cuts through any lands near or adjoining, first giving satisfaction to the owners of the lands so used; and in consideration of making and maintaining the said river navigable, the mayor and corporation were empowered to demand and take for their own use certain rates for goods conveyed up or down the said river. There was no grant of the bed of the river, nor any power to purchase lands further than what was necessary for any new cut or passage. The corporation of Bath, like the corporation of London, found it impossible to carry the objects of the Act of Parliament into effect, and, therefore, by indenture, dated the 10th of March, 1724, they nominated and appointed the Duke of Bedford, and thirty-one other persons to make the river navigable, according to the powers of the said Act, and to receive all the profits therefrom as the nominees of the said corporation; to hold the same powers and profits to the said Duke and thirty-one other persons, their heirs, executors, and administrators, for all such estate and interest as the said corporation were by virtue of the said Act empowered to grant. By another indenture, bearing date the next day, viz., the 11th of March,

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1724, and made between the said Duke of the one part, and the said thirty-one other persons of the other part, the said several parties agreed to become undertakers and co-partners in making the said river navigable, and in purchasing such tracts of land adjoining thereto as should be needful for locking, towing paths, and other necessary ways; and it was agreed that when any of the parties died, the share of him so dying should go to his heirs and assigns. Now this was a case in which the several shareholders were joint-tenants, and as they had purchased divers freehold and copyhold lands and grounds, their property consisted of real estate, as well as of the rates and duties payable in respect of the navigation of the river. They were therefore legally seised of these estates in equal shares for an estate of inheritance, and their shares consisted of an aliquot part of the land, and not merely of the profits arising from the navigation of the river. Sir R. P. Arden, Master of the Rolls, on delivering his judgment on this case, observed "that according to Lord Coke, every hereditament which arises out of land affects the same, or is exerciseable therein as all the properties that belong to real estate; there are certainly hereditaments which may be made to descend from ancestor to heir, that do not in any degree affect the realty, as personal annuities and offices not having any concern with the land; but when we try the question by the test of that definition, it would be strange to say this right of making all these cuts and erections, and receiving certain tolls payable by all persons and goods navigating the river, does not savour of the realty; it not only does, but it partakes of it; it is not the soil, which I hold would hardly pass to the grantee, but it is a right arising out of the soil; the land itself includes every profit that can be made out of the land. This Act cannot, indeed, be construed

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to have taken out of the proprietors and given to this corporation the soil, but it has given to them a right in and over the soil, and certain real rights arising in and out of the soil. The Act establishing the New River was referred to as the foundation of the rights of that company, but that Act is vastly inferior to the powers they exercise. I cannot find anything in it but a right of making a cut of a certain width to convey water to London. This is all that is given by that Act. There must be some subsequent Act; for they lay pipes in *alieno solo*, and go much further; and it is acted upon as real estate, and recoveries are suffered and fines levied upon it. There is no difference between that property and this. I am told of a later case in the Court of King's Bench, in which such a right as this was held to be real estate. If this is so, and Lord Coke's definition is right, it only remains to try this question by that test. I have no difficulty in saying, that wherever a perpetual inheritance is granted which arises out of lands or is in any degree connected with, or, as it is emphatically expressed by Lord Coke, exercisable within it, it is that sort of property which the law denominates 'real,' and cannot pass by a will without three witnesses. Therefore, upon these authorities, and the universal acceptation, the Master of the Rolls was of opinion that these shares were not only a real hereditament but a real tenement." Buckeridge v. Ingram, 2 Vesey, jun., 663. This case, it will be observed, is materially different from the one under consideration, but it cannot be denied that the Master of the Rolls founded his judgment on the circumstance that shares in these tolls were real estate. Lord Coke, in the passage referred to, is enumerating the different subjects of property which may be entailed under the word "tenements" in the statute *De donis*, which word,

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he says, includes not only all corporeal inheritances, but all inheritances issuing out of these, as rents, commons, or profits granted out of land; and without doubt an advowson or common in gross may be entailed, but neither the one nor the other would give a vote for the county. The truth is, that the word "tenements" alone occurs in the statute *De donis*, but in the statute of "what sort of men shall be choosers," the words are "free land and tenement," which shows that the word "tenement" here is to be used in a more restricted sense, and to mean corporeal inheritances. It may also be doubted whether Lord Coke meant to include in his description of tenements, the subject of our present consideration, for in a former part of his "Institutes" he says, "If a man grant *aquam suam*, the soil shall not pass, but the fishery within the water passes therewith, and land covered with water shall be demanded by the name of so many acres covered with water, whereby it appears that they are distinct things."—Coke Litt. 6 a. But Lord Coke does not say what Sir Joseph Jekyll has said, that when a man has only the water he can demand the land covered therewith: Lord Coke merely meant to say, that when a man has land covered with water, he cannot describe it as so much water, but as land covered with water; which is a very different proposition from Sir J. Jekyll's. Modern cases have followed up Lord Coke's distinction, and it is now settled that the proprietors of a navigable river have merely an easement and no interest in the land. By an Act for making another part of the river Avon navigable, containing very similar powers to the statute of Anne, it was held that the proprietors were not liable to be rated to the poor as occupiers of land covered with water, because they were not occupiers of that land, but had a mere easement

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in it. Lord Tenterden, however, said that the cut or navigable canal which was actually made by this company upon land purchased by them, and the lock which was erected on that land, were fit subjects to be rated to the poor. Rex v. Thomas, 9 B. & C. 129. In a subsequent case Mr. Justice Bayley says, " I think the undertakers of the Aire and Calder navigation are not liable to be rated for the bed of the river. In order to make them rateable they must be within the words of the 43d of Eliz., 'occupiers of lands or houses.' [The words before us are 'lands and tenements.'] Rex v. Jowell, and Rex v. Thomas."—Mr. Justice Bayley continues, " establish it as a rule, that an Act of Parliament passed for the purpose of making navigable a natural river does not vest in the undertakers the bed of the river, but gives them a mere easement in it."—Mr. Justice Parke makes similar observations. " It is now established," he says, " that when parties have a mere easement in the bed of the river, they are not occupiers of the land covered with water. Rex v. the Aire Navigation Company, B. and C. 830.—We may add, that if they are not even occupiers of the bed of the river, they certainly cannot be owners without some conveyance. With respect to the river therefore, the New River Company has merely an easement; that easement is perpetual and hereditary; and in that sense it is an incorporeal hereditament; and this agrees with the observations of Mr. Justice Bayley, in another case, when he says, speaking of a similar right, " They may have had a mere easement in the soil of others to make channels and towing-paths, but we cannot assume they had more. Such an interest, however, according to the case of Buckeridge v. Ingram would be a real hereditament. They had a right to compel the owners of the adjoining banks to keep them in repair, and

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that right may, like the right of way over the lands of another, be so many incorporeal hereditaments." Portmore v. Bunn, 9 B. and C. 699. From these authorities, I think it must be admitted that the interest of the company in the New River is an incorporeal hereditament, savouring, indeed, of the realty, but much more of the personalty; and I take it to be clear, that if these shares had been created in the present day, they would have been declared personal estate; for so convertible are the terms, that most modern Acts of Parliament and incorporation deeds declare interests of this kind personal property; and thus shareholders in gas companies and railway undertakings are deprived of their votes. It has indeed been said, that this clause is introduced *ex abundante cautelâ;* but be that as it may, we must now consider these New River shares as real estate, transmissible by grant, and not by lease and re-lease; for there is no transmutation of possession or livery of seisin necessary; and, therefore, the lease for a year seems to be quite useless; for incorporeal hereditaments neither admit of a use nor the reservation of a rent. But it is now time to turn to the statutes of Henry 6. c. 7., which declare that knights of the shire shall be chosen in every county of the realm of England, by people dwelling and resident in the same counties, whereof every one of them shall have free land or tenement to the value of 40*s*. by the year, at least, above all charges. The residence in the county was repealed by the 14th of George 3, cap. 53, and the words "within the same county," were shortly added to the lands and tenements, by a statute passed two years after the first, the 10th of Henry 6, cap. 2; so that now the free land or tenement must be within the county where the party claims to vote. The question then is, whether the New River can be said to be a

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tenement within the meaning of that word in this Act of Parliament? Land, it certainly is not, as we have already seen; but in the charter, the King grants the New River cut or stream to the said Company and their successors, to be holden of his manor of East Greenwich in free and common socage. However incompatible, therefore, a tenure or holding may be to an incorporeal hereditament, it is here declared to be a tenement; and the only question is, whether it is such a tenement as the statute contemplates? Dalton, in his construction of these words, lays down the following rules:—"He that hath no freehold (or inheritance) but advowsons of churches, though they be of the value of 40*s*. (or 40*l*.), by the year, yet thereby he hath no such sufficiency, nor such freehold land or tenement, as that thereby he may be a chooser of the knights of the Parliament, &c. He which hath no other freehold than common of pasture, though that be to the value of 40*s*. per annum, yet he may be no chooser; but he who hath a freehold house or lands of the yearly value of 30*s*., and besides hath thereto belonging a common of pasture appendant to the yearly value of 20*s*., he may be a chooser, &c.; otherwise it is, if his house be a newly erected tenement or erected within the time of memory; for that common appendant must be by prescription, and therefore except such house, &c., be of the yearly value of 40*s*. besides the common, it enableth him not. If a man hath a free warren of coneys, the which *communibus annis* is worth 40*s*. per annum, this is sufficient freehold, &c. If a man maketh 40*s*. by the year *communibus annis* of his wood sales, coal-mines, tithes impropriate, or the like, being his freehold, these are sufficient, &c. If a man hath 40*s*. rent per annum, or an annuity of 40*s*. per annum issuing out of lands during his life, this is

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sufficient. Note that, by the common law, all freemen of England had a voice in the election of these knights within the counties where they dwelt; but now by the statutes of 8th Hen. 6, and 10th Hen. 6, they are restrained to such as have 40*s*. freehold per annum within the county, &c. Again it seemeth they must be such freeholders as do contribute to the wages of the knights of the shire: or else such as are suitors to the county court."—*Dalton,* 333. Taking, therefore, the construction of the cases, and the declaration in the charter as to the tenure, I am bound to say, that the interest in the New River is an easement savouring of the realty, and not only an incorporeal hereditament, but, in the language of Sir R. P. Arden, a real tenement, and being freehold, it falls literally within the words "free land or tenement" in these statutes, whatever may be the true spirit and meaning of those words. There is, therefore, no difference between this part of the company's property, and what they have subsequently purchased, which consists of lands and tenements in the proper sense of those words, but these being conveyed directly to the company in their corporate capacity, are somewhat differently situated to the shares in the river, which were in existence before the charter; and it is not to be forgotten, in considering the interests of the individual shareholders, that the members of the company are selected from the body of proprietors, and that the shareholders do not derive their title from the corporate body, but by purchase. Having then settled that the property itself is "land or tenement," within the meaning of the statute of Hen. 6, we now come to the question whether the shareholders can be said to be entitled to an equitable interest in the property, and if so, whether they are in the receipt of the rents and profits?

for the 23d and 26th sections of the Reform Act declare, that no person shall be allowed to vote, or be entitled to be registered, unless he be in the actual possession or receipt of the rents and profits. Now, on this point we are not left without an authority to tell us who are in the actual receipt of the rents and profits. It will be remembered, that the king obtained one moiety of this undertaking, but king Charles I., with the consent of the company, about the 17th year of his reign, granted all the trust, use, and benefit of his moiety to Sir H. Myddleton, his heirs and assigns, reserving a rent to his majesty, his heirs and successors, of 500*l.*, and that rent is still payable. In a question which arose on this grant in 1805, between Adair v. New River Company, Lord Eldon, Chancellor, observed, "The company are entitled at law, under the instruments recited, to receive in the first instance the whole profits, afterwards, in consequence of the expense the king had been at in the work, they grant to him one moiety of the rents, profits, and gains made, so it must be a chose in action, still they remain the legal owners of the whole concern, entitled to receive all the rents and profits, but having granted a moiety, bound to account for that to the king". In a subsequent part of his judgment, his lordship adds, "but I am disposed to think, in a case under such circumstances as this, the whole legal interest in the company, to distribute the fruit of that interest according to the equitable rights, a bill might be filed by the plaintiff", &c. 11 Ves. 445. No authority was wanting on this point, for it is undoubted that the whole profit of the undertaking is, in the first instance, received by the company, and that the shareholders are in the ordinary case of *cestui que* trusts out of possession, having nothing to do with the rents and profits as

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such, but only with the dividends on their respective shares. True it is, those dividends are the residuary rents and profits; but no shareholder could sue an individual consumer of the water or other debtor of the company. The case, therefore, appears to me to fall within the 23d section of the Reform Act, which declares that no trustee shall be entitled to vote unless he be in the actual possession or receipt of the rents and profits; but this necessarily denies a right of voting to the *cestui que* trust when the trustee is in actual possession, which is manifested by what follows, namely—that the *cestui que* trust shall vote only when in possession. As shareholders, therefore, I must expunge these twenty-seven names, and in doing so I have only to observe that this section is a re-enactment, after having been repealed several years, and it is therefore no argument that these shares have heretofore conferred the franchise. The last question is, whether these trustees in possession are entitled to vote, and that question is easily disposed of, for they are entitled to this property, not in their individual capacities, but as a body corporate; and it has been held by several committees, and I hold rightly, that the individual members of an aggregate corporation are not entitled to vote. There is one other claim for redeemed land-tax on a particular share or shares. I have not had time to look through the numerous and complicated Land-tax Acts on this subject, but it appears by the case in the 11th Ves., that for this purpose the whole property is liable to the land-tax, and on redemption the party would have a rent-charge in respect of his redemption, but he could not, I apprehend, distrain for that rent charge as he could for a fee-farm rent on land; and therefore, I think, as the shareholders themselves are not entitled to vote, neither can a person who has merely a rent

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issuing out of their interest. It has recently been held that a rent-charge for life, issuing out of a leasehold estate, is a mere chattel (Saffers v. Elgood, 1 Adolphus and Ellis, 191); and therefore, after the best consideration I can give this case, I must disallow all these votes, and I do so with less hesitation, as I am apprised that similar claims have been made in the county of Hertford, and the gentlemen for that county will, I am sure, give the case every attention, independently of my opinion.

Mr. Thompson, the solicitor to the company, subsequently attended and stated to the court, that the company were not satisfied with his judgment. It appeared to them that he had formed his opinion on fallacious grounds, for he had assumed that the freehold land had been vested in the corporation, when the fact was, that there never had been any conveyance of it to them. It was true that the charter of 1619 purported a settlement, but he would submit that no charter would divert the property from shareholders to be invested in the corporation.

Mr. Field said, after so long a lapse of years, during which the corporation, and not the shareholders, had received the rents, it must be presumed that there was a conveyance of the legal estate for the shareholders of the corporation, agreeably to the tenure of the charter, and that consequently they had become trustees of the whole property held for the shareholders; that they were in possession of the rents as trustees, and not in the capacity of agents, which Mr. Thompson would contend; independent of every other consideration, the two hundred years' possession must assuredly prevent the shareholders from now calling in question that the present possessors had the right to the legal estate. The case must therefore rest upon the ground upon

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which Mr. Coventry had placed it—namely, that the corporation were in receipt of the rents as trustees, and that within the meaning of the 23d section of the Act the shareholders have only an interest as a *cestui que* trust, and were not in possession.

Mr. Coventry (R. B.) said, his opinion was not at all shaken, but if Mr. Thompson would embody his observations and put them on paper with any new facts, he would give it his consideration; and if he ultimately entertained any doubt, he would give Mr. Thompson the benefit of it. The names were finally expunged.

Hertfordshire, 1835.

Similar claims having been made in Hertfordshire, Mr. Thompson, the solicitor for the company, produced evidence of the title of the claimants, of the value of the shares, and the annual income arising from them.

On behalf of the objectors, the elaborate judgment of Mr. Coventry, in deciding on similar claims in Middlesex, was urged as conclusive against the claimants, and the different cases mentioned by him were cited; and it was contended that the proportion of rents and profits arising from lands and hereditaments within the county of Hertford would not be sufficient in annual amount to entitle the shareholders to a vote, and that they were not in receipt of the rents and profits as required by the Reform Act.

Mr. Thompson stated that the decision alluded to was not to be considered conclusive; that on the hearing at White Conduit-house Mr. Coventry had expressed an opinion in favour of the claimants, but from an observation made by the opponents he had requested to have a copy of the charter and a conveyance of a share sent to him, upon the understanding that if he saw any ground for changing his opinion, notice should be given to the claimants' solicitor, that the subject

might be argued; that the judgment which had been referred to was subsequently published without any notice or discussion, and upon explanation it appeared that the gentleman who had been desired by Mr. Coventry to give notice had quite misapprehended the matter. He contended that the shareholders were, for all the purposes contemplated by the 26th clause of the Reform Act, in receipt of the rents and profits; and cited the Gloucester case, 1 Haywood, 107, and the Middlesex case, 2 Peckwell, 106, in which it was decided that it was not requisite that the claimant should be in direct personal receipt of the rents and profits.

Hertfordshire, 1836.

Messrs. Perry and Knapp (R. B.) after consultation, declared that they coincided entirely in the statements made in Mr. Coventry's judgment, and the deductions drawn by him as to the nature of the property and its efficiency to qualify to the elective franchise, and that such property was vested in the shareholders distinctly from the corporate body. As regarded the point whether the claimants were in possession or receipt of the rents and profits, under the 26th section of the Act, they had given the subject the gravest consideration, not merely on account of the importance of the property which the question involved, but the weight which they felt must justly attach to an opinion given by a gentleman of the learning and attainments of Mr. Coventry; but, notwithstanding their respect for his judgment, they were bound also to give weight to the decisions of two committees of the House of Commons, which had been quoted in support of the claims, and with which the bias of their own opinion coincided, as agreeable to the legitimate meaning of the 26th section of the Act; and after recapitulating the points of objection, decided that the claim-

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ants, as shareholders, were to be considered as *cestui que* trusts of freehold property, answering the description of "free lands and tenements," and in the equitable receipt of the rents and profits of a sufficient annual value, and therefore entitled to be retained on the list.

Northern Division of Staffordshire, 1832.

Samuel Brough claimed to be registered in right of the receipt of rents and profits arising from two shares in Lane-end market.

Mr. Tomlinson contended that the property from which the claim was derived, was not a tenement within the meaning of 2 W. 4, c. 45. That the amount, arising from certain movable stalls in the market, was not of sufficient value to entitle the claimant to a vote; but if added to the rents of the fixed stalls, it would confer the right of voting for the borough. The cases of R. *v.* Mosely, 2 B. and C. 226, and R. *v.* Bill, 5 M. and S. 221, were cited.

The facts given in evidence, in support of the claim, are detailed in the following judgment:—

Mr. Lumley (R. B.) said, that it appeared a market was formerly held upon certain land at Lane-end. It was not stated whether the land was public or private property; but the market-house fell into decay, or was not sufficiently extensive for the purposes of the market, and it was thought expedient to have a new one. A piece of land was accordingly purchased from Messrs. Harvey, on which a market-house and shambles were erected. The sum of 500*l.* was paid for the land, and 2000*l.* was laid out on the building. Of the sum of 2500*l.* thus expended, 1000*l.* was raised by subscription, in shares of 5*l.* each. The market, thus established, seemed perfectly analogous to the cases of the dock, canal, or mining companies, where several

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persons advance money for a joint speculation, and in which they have a joint interest. The legal title was vested in three persons; but they were only trustees for the benefit of the subscribers. It was proved that the market-house, and so much land as was purchased from Messrs. Harvey, was the private property of the subscribers, and that an annual income of at least 200*l.* per annum was derived from the market-house and the fixed stalls. Tolls were also collected from persons standing in the market-place, and for carts and waggons standing in the street, and, after deducting the expenses, the dividend upon the two hundred shares amounted at least to 1*l.* per share. The claimant, who was possessed of two shares, had therefore 40*s.* a-year derivable from this property. This was not the case of market tolls derived from the use of the soil of a market which was open and public; but it was an actual rent paid by the persons attending the market, occupying the stalls, and availing themselves of the conveniences afforded by the buildings erected by the proprietors of the market, out of funds which they had provided by subscription. If it had been a case of market tolls, still that would be an interest in land, which would confer the right of voting on a party possessed of a sufficient interest. It was not necessary to consider that part of the case which related to the tolls taken from the persons standing in the market, or from carts and waggons in the street, as the value was sufficient without incorporating that item. The principal objection against the claim, was that derived from the 24th section of 2 W. 4, c. 45, which prohibits any freeholder from voting in right of any property which he occupies in a borough, the value of which would confer the right of voting for such borough. The market was within the borough of Stoke-upon-Trent;

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but if it was in the occupation of the proprietors, it was clear there was no exclusive occupation by the claimant. He was only one of several joint occupiers; and section 29 required that the value of the property should be of sufficient amount to afford 10*l.* a-year at least to each occupier. It appeared there were, originally, sixty-two proprietors, amongst whom the two hundred shares were divided; and if the number of shareholders was not diminished, the annual value should have amounted to 620*l.* to confer the borough qualification upon the proprietors. If they are not all entitled, one of them could not enjoy the franchise exclusively. The claimant had proved that, in the situation of *cestui que* trust, he was entitled to a joint interest to the amount of 40*s.* per annum, arising from the market-house and profits thereof, and was therefore entitled to have his name retained on the register.

James Howard was opposed by Mr. Gregory, on the ground that the property in right of which he claimed, namely, a rent-charge, had not been registered pursuant to the provisions of the Act of Parliament. The vote of the claimant had been rejected on the same ground at the last election.

Mr. Roberts, of Wokingham, who had been requested to support the claim, acknowledged that he believed such was the case.—Name expunged.

Sampson Fletcher claimed for a freehold rent-charge, and was objected to, because it was not registered pursuant to the 3d Geo. 3, c. 24.

The court thought registration was not now necessary, and retained the name*.

* The Reform Act has made two alterations in the rights of those who claim to vote at county elections, in respect of the

Mr. Bransby Cooper claimed in respect of a freehold rent-charge payable out of the tolls collected at Richmond bridge.

East Surrey, 1835. Rent-charge.

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possession of annuities, or rent-charges. The original grantee by deed may now claim to be put on the register to vote, in respect of a six months' possession before the last day of July, whereas he was previously required to have a possession of twelve months, to qualify him for the exercise of the elective franchise (see § 26), "which said period of six months shall be sufficient, any statute to the contrary notwithstanding." He therefore is in a better situation than under the old law. But the person to whose favour the annuity or rent-charge is created by devise, or to whom it comes by devise, marriage, or descent, will be in a worse situation; for, if under the old law, he came into possession of an annuity or rent-charge by any of those means, he was entitled to vote upon entering a certificate on oath with the clerk of the peace, before the first day of such election. If, therefore, he came into possession of the annuity by one of the modes above mentioned, a day before the first day of election, he might instantly enter his certificate, and vote at the election. The framers of the Reform Act have taken away this right, and, in the exception (§ 26) in favour of freeholds coming within such period of six months to any person, by descent, devise, marriage, &c., declare "that such person shall be entitled to have his name inserted as a voter, in the election of knights of the shire, in the lists next to be made by virtue of this Act." The Act has only contemplated the coming into possession within six months before the last day of July; it has not provided for the case of coming into possession between the last day of July and the day of election. It has not, therefore, given the annuitant the right of tendering his claim to the barrister (§ 43), without first having put in that claim with the overseer; nor of tendering his vote at the poll (§ 59), without first claiming, in the special manner required by the Act, to have his name inserted in the list. If, therefore, any one should come into possession of an annuity by descent, devise, &c., the day after the claims are made out, he must wait till the next year's lists are prepared before he can be entitled to exercise the right of voting, for registration is indispensable to the exercise of that right.

Whether the grantee of an annuity or rent-charge is now required to enter a memorial of the grant with the clerk of the peace, in the manner directed by the 3 Geo. 3, c. 24, is a difficult question. The terms of the Reform Act, in requiring the registration of freeholds, do not expressly repeal that statute, except with relation to the length of possession required. I should therefore recommend the precaution of entering such a memorial; but in cases where that has not been done, the necessity of it

East Surrey, 1835. Rent-charge.

Mr. Smith said that the interests of the claimant arose by devise. The bridge commissioners were, by Act of Parliament, empowered to raise money for the purpose of building the bridge, but having failed in their attempts to do so, they at last resolved to raise the necessary funds by way of tontine. The money so raised was not to be repaid. It was raised in 100*l.* shares, one of which was held by Mr. Cooper; and on that it was that the present claim was founded.

Mr. Chapman contended, that the money subscribed was to be repaid somehow; if not by the repayment of the capital, in the shape of interest. The Act under the authority of which the tolls of Richmond bridge were levied distinctly declared that they should be considered as personal estate; but, supposing there was any freehold in them, it was vested in the commissioners, and in nobody else. The part of the Act to which he referred directed that "all securities and all assignments shall be entered by the clerk to the said company, without fee or reward, in a book to be kept for that purpose, and shall be deemed personal estate."

Mr. Knox (R. B.) said that he was of opinion that Mr. Cooper's claim could not be supported. The tolls of the bridge were distinctly declared by Act of Parliament to be personal estate; and as they formed the source from which Mr. Cooper derived his annuity, it

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seems to me fairly arguable. It is clear, that where the memorial has been once entered with the clerk of the peace, and the annuity or rent-charge comes to another person by descent, devise, marriage, &c., no second entry of it need be made; and when it is originally created by devise, the entry need not, and indeed cannot, be made; for the memorial required by the 3 Geo. 3, c. 24, is directed to be under the hand and seal of the granter, a direction which necessarily limits the operation of the clause to annuities created *inter vivos.* C.C.

was quite impossible to regard that in the light of a freehold.

East Surrey, 1835. Rent-charge.

Mr. Lennard (R.B.) said, he perfectly concurred in the opinion just expressed, and decided that the claim was bad.

Middlesex, 1835. Rent-charge.

Richard Clarke claimed "on account of an annual rental of 15*l.*, as awarded by the commissioners under an act of Parliament, granting to the Dean and Chapter of Westminster, out of a freehold house belonging to lay choristers and singing men, and others belonging to Westminster Abbey, in the year 1777."

Mr. Gregory, in support of the franchise, said it was matter of no sort of consequence out of what kind of property the money came, if this man held a freehold office, in respect of which he received a stipend out of land lying within the parish. According to the evidence of the gentleman himself, it was clear the case was made out. By the Act of Parliament certain houses were ordered to be pulled down, and powers were vested in the commissioners that until these houses were rebuilt, a stipend of 15*l.* should be annually awarded to the person who possessed the office. The commissioners had appointed a receiver, into whose hands certain sums of money were paid, out of which these parties were compensated. The property out of which the claim arose was freehold; it mattered not whether this gentleman received that income from the dean and chapter, or from the tenants themselves. It was clearly a freehold office, founded on a freehold in land more than sufficient to give a qualification. It appeared that over this land certain trustees were appointed, and therefore the individual who now claimed was in possession as a *cestui que* trust, and claimed

Middlesex, 1835. Rent-charge.

the right of voting in respect of property in rents to which he had a right. The case was clearly analogous to that of a parish clerk, with a freehold right attached to the office, and it was also similar to the case of a man having a life interest in the property of his wife, who received the rents through the hands of trustees.

Mr. Coppock submitted that this claimant might have had a freehold before the act in question passed, but, on that becoming the law of the land, his freehold was clearly destroyed.

Mr. Gregory having replied,

Mr. Martin (R.B.) said the claim was made on account of a piece of freehold land, upon which two houses had been built, and which were occupied by the lay clerks, or singing men of the cathedral, and so long as they held possession of the houses they were entitled to vote. In the course of time it became necessary to pull down the houses, and the act under which that step was taken provided, that until the houses were rebuilt, the singing men should receive 15*l.* a year out of the Abbey funds. The houses, however, were not rebuilt for the accommodation of the singing men, but the land was let, and the singing men were awarded a stipend of 15*l.* out of the chest of the dean and chapter in lieu of their rent. He was of opinion therefore that the singing men had no claim on the site of the house, and had no right to have their names on the registry.—Name expunged.

West Gloucestershire, 1835.

James Crump claimed for a rent charged on premises, at Pound's Ground, Wotton-under-Edge. The notice of objection was given to Mr. Henry Adams, a mill-wright, at Pound's Green. He was called, and stated, that he was the tenant of John Crump, but

West Gloucestershire, 1835. Rent charge.

not of James; he knew him, he was the brother of John, but the witness never paid him anything.

Mr. Lumley (R. B.).—If this objection is persisted in, I am bound to say, that the service of the notice is not proved. The statute requires that the person objecting shall give the notice to the person objected to, or leave it at his place of abode, or personally deliver it to *his* tenant in occupation of the premises described in the list. I cannot say that the notice has been left with the claimant's tenant; indeed, in the case of a rent-charge, it seems difficult to adopt that mode of service. Name retained.

Oswald Bloxam claimed for a rent of 10*l.*, charged on lands in Dursley, which is in West Gloucestershire, and also on lands in Longney, which is in the Eastern division. It was granted to the claimant for his life, on the 29th of January, 1835, payable half-yearly, on the 6th of January and the 6th of July. A memorial duly registered was produced from the office of the clerk of the peace, which stated, among other matters, that seisin of the rent had been given by the payment of the sum of 5*s*. The half year's payment which fell due on the 6th of July had not been paid.

It was objected by Mr. Helps, first, that the rent ought, according to the 3d Geo. 3, c. 24, to have been registered with the clerk of the peace twelve months before the last day of July; secondly, that there had not been any actual enjoyment or receipt of the rent; thirdly, that as it extended into two divisions, there was not a rent of 10*l.* annual value within that division of the county.

Mr. Carter.—It is enough in answer to the latter objection to say, that the claim is made for the western di-

West Gloucestershire, 1835. Rent charge.

vision, and the rent is charged on every part of the land. Then, as to the want of enjoyment, the claimant has the right to the rent by the grant; it is immaterial whether it be in arrear or not. The arrears may be recovered at any time.

Mr. Lumley (R. B.).—The 2d W. 4, c. 45, has, in my opinion, repealed that Act which requires the registration with the clerk of the peace. Then the receipt of the 5*s.* is a receipt of a part of the first half year's payment, and therefore there was an enjoyment of the rent for six months before the last day of July, though it seems doubtful whether a rent-charge is within the 2 W. 4, c. 45, § 26. As to the charge extending to lands in another division, that does not seem to me to be material, there being lands of sufficient value in this division to meet the charge. Therefore the name must be retained*.

Northern Division of Staffordshire, 1832. Pews.

Thomas Blurton claimed to vote in right of a pew in Lane End Chapel. The claimant stated that he purchased the pew for 24*l.* two years ago, and that it would descend to his heirs, at his death. He had no house to which it belonged, but was an inhabitant of Stoke-upon-Trent. It was a chapel of the established church, purchased under a local Act, the 32 Geo. 3, c. 88.

Mr. Tomlinson said, the freehold of the church was in the parish, and this was only a chapel subject to the mother church of Stoke-upon-Trent. The pew owner possessed none of the ordinary or exclusive rights of

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* A claim for an annuity charged upon the church rates of the parish of Staines, was considered a sufficient qualification by Mr. Coventry.—*Vide* Page 332.

property. It had been decided, in Mainwaring v. Giles, 5 B. and A. 356, that an action at common law could not be maintained for disturbing another in the possession of a pew, unless it was annexed to a messuage or house in the parish. It was a freehold easement, not annexed to or arising out of land.

Northern Division of Staffordshire, 1832. Pews.

Mr. Lumley said, it was only a freehold interest in an easement, which conferred no right of voting. Name expunged.

The same question was again discussed in the case of Wm. Cotton, and was argued by Mr. Knight for the claimant, and Mr. Tomlinson against the vote.

Mr. Lumley (R. B.) postponed the decision until the subsequent day, and then delivered the following judgment. This claimant claimed to vote for a freehold interest in a pew, in Lane-end Chapel. It appears that that chapel was originally built by a person of the name of John Browne on his own land, and dedicated by him to divine service, according to the principles of the established church. To enable him to build it, he raised money not by a mortgage upon the chapel or the chapel land, but by selling the pews or seats in the chapel, for certain sums of money. The instruments of such sales were *Grants*, containing among other words the word *Grant*. This chapel falling into decay, a new chapel was built under the powers of a private Act of Parliament. The new chapel was vested by that Act in the trustees, who have, I think, the inheritance of the chapel, having the power of nominating the officiating curate, and I incline to think Mr. Tomlinson is right in his position, that the incumbent for the time being, has the freehold of the church. No question has arisen which depends upon the actual right of those parties,

Northern Division of Staffordshire, 1832. Pews.

but the claimant puts forward his right as a freehold interest in the pews as part of the chapel.

Now the right to a pew in a church at common law, is only an easement. It is no estate or interest in the soil, more than a right of way, or a right to the enjoyment of lights, or to dry nets on the soil of another person. This indeed is admitted by the claimant. All the inhabitants of a parish have a right to sit in the parish church to hear divine service, and a parochial chapel is of the same nature. But the placing them is the duty of the churchwarden. If any individual have endowed the church or chapel, he may have a right to a particular pew, or on an undertaking to keep the pew in repair, he may obtain a faculty from the ordinary for the enjoyment of some particular pew.

But in all those cases, the freehold of the church and its fabric remains in the rector untouched. It is only an incorporeal right which is conveyed to the party, namely, the easement of enjoying the pew. Hence it was held as early as in the reign of James 1st, (I think in Dee v. Dawtrie, which I believe is in Cro. Jac., or in Roll. Rep.,) that trespass will not lie for a disturbance of a pew, but an action on the case, which is the proper remedy where the enjoyment of any easement is interfered with.

Such is the general principle. Is there any thing in the particular case which removes it out of the application of the general principle? Lane End Chapel could not be rebuilt without raising money. The Act therefore authorizes the obtaining of money by the sale of the seats or pews in the new chapel, and there is a power to sell them in fee simple. This power has been exercised. Whether the present claimant is a purchaser under that Act, or has simply been an owner of

Northern Division of Staffordshire, 1832. Pews.

a pew, in compensation of his right in the former chapel, does not exactly appear. Be that as it may, he now has an interest in this pew freehold in duration. But has he any right or interest in the soil or fabric of the church? I think not. There is nothing inconsistent in an easement enduring for ever, or in a party's having an estate of inheritance in such easement even though it be in gross, and not appurtenant or incident to any land. That, as I expressed my opinion in a former case, appears to me to be the interest of the claimant in this chapel. I think he has a freehold easement therein. If he has an interest in the soil and fabric of the church, in what character does he hold it? Is he a joint tenant with the trustees or the incumbent? If the chapel be injured, must he and all the other pew owners be joined with them in an action of trespass, or if sacrilege were committed therein, could the chapel be alleged to be the property of the pew owners? I apprehend not.

It was said that the pew owners have great powers and authorities under the Act; and so they ought to have, for undoubtedly their easements constitute valuable property, as do other easements. The owner of a watercourse has great concern in the maintenance and support thereof, but he does not therefore become entitled to any interest therein.

Again, the pew owners may be taxed for the maintenance of the pews, but that is agreeable to the usual provision of the law. If you will lay a pipe in my ground, says a very old authority, you must repair it. And in Pomfret v. Ricroft, which is in Saunder's Reports, it was decided, that where a person had a right to use a pump in another man's premises, he was bound to keep it in repair.

Then it was urged, that the pew owners are liable

Northern Division of Staffordshire, 1832. Pews.

to distress. But that is inconsistent with the freehold interest which is claimed. Because if the pew owners have the freehold in the pew, how can any one else distrain? It is known that a rent cannot be reserved on a conveyance of land in fee, and therefore this is not a distress for any rent. I was however struck at first with this power, because it was not very consistent with the existence of a mere easement, there being no power of distraining on such property. But the power is not confined to the pew. It is general and authorizes a distress upon any property of the party liable. So that it is nothing more than the ordinary power of enforcing a church rate, with this distinction, the latter is leviable upon all the inhabitants, but is only on the pew owners.

As to the usual forms by which these rights are conveyed, the deeds put in contain the word "Grant," and that is the proper term for passing incorporeal rights, such as easements are, and it is not material that various other words are added.

Upon the whole, I retain my opinion that this is nothing more than an easement, freehold perhaps in its duration, like the box at the Opera-house, with which (if it be proper to compare such subjects) it seems to me to be perfectly analogous, but no interest in the soil itself, which is requisite to confer a right of voting. The name therefore must be expunged.

East Surrey, 1835. Camberwell. Pews.

Mr. Knox (R. B.), in giving his decision on Mr. Gray's case, said, this claim was made in respect of two freehold pews in an episcopal chapel. The right to a pew in a parish church is only an easement in law, in respect of a messuage, whatever may be the form used in the conveyance of it. An easement is defined to be a service or convenience or accommodation that

East Surrey, 1835. Camberwell. Pews.

one man may have a right to *alieno solo* in the land or freehold of another. Many cases, and some recent ones, might be cited to establish that the right to a pew is a right only to an easement. It is not necessary to go through them on this occasion. The principle on which this position rests, as opposed to the present claim, is, that the freehold remains in the rector or vicar, and that the grant only, however expressed, gives in law only the use of a pew for the purpose of attending divine service, and that when made as appendant to a house; for if a pew could be granted in gross—that is, to a person generally, and not as an inhabitant of a particular house—the pews might be all locked up, and the church rendered inaccessible to the parishioners. This, however, is not the case of the freehold being in the rector or vicar—for this chapel is what is termed a proprietary one. But these private chapels and parish churches, though not throughout analogous, stand upon the same footing as to the point involved in this question. The trustees represent the rector or vicar, the freehold of this chapel is vested in them, on terms to preserve it for ever as a place of worship. A grant of a pew therefore conveys an easement only, the freehold remaining in the trustees. If it did not, the chapel might be desecrated by the conversion of the pew to secular purposes. Committees of the House of Commons have decided on the case of the six clerks in Chancery, who have preferred claims to vote in respect of their desks, and have always been disallowed, and their case is very similar to the present. But it is said that Mr. Gray has a grant of two freehold shares in the chapel, together with his pews. It does not distinctly appear whether these shares are not intended as another mode of describing the pews—but admitting that they are

East Surrey, 1835. Camberwell. Pews.

not, I am of opinion in this case, that the easement would not be extinguished by unity of possession, if it were meant by the conveyance to pass the freehold of the ground upon which the pews stand. I can take no notice of this grant of the freehold, as it appears in the deed that is shown to support the title to the pews in Mr. Gray, that the freehold is in the trustees for the specified purposes wholly unalienable. On these grounds the claim cannot be allowed.

South Lancashire, 1835.

Mr. Thomas Harris claimed in right of three freehold pews in St. Ann's Church, Nos. *52*, *53*, *58*. He was objected to by Mr. Atherton, on the ground that the Act for the regulation of the church, viz., 12 Geo. 3, c. 36, vested the freehold right in the trustees of the church. It appeared, however, that according to the second section of that Act the trustees were empowered to convey the property of the pews to individuals, and that Mr. Harrison had paid for two of them 145*l.*, and had received a legal conveyance. One of them let for 7*l.* per annum, out of which two guineas per annum went to the churchwardens; the other two let for 14*l.*, and four guineas went to the churchwardens. Any sums which were paid towards church repairs were voluntary, to make the property more beneficial.—Name retained.

Middlesex, 1835.

Claims had been made to be registered in right of certain pews in Staines Church, and of an annuity granted out of the church rates. The facts it is unnecessary to detail, as they are so fully stated in the following decision.

Mr. Coventry (R.B.) said, I had an opportunity of considering yesterday the validity of four claims on the Staines list, three of them being for pews in the church,

Middlesex, 1835. Staines. Pews.

and one for an annuity granted out of the church rates. By an Act for re-building and taking down the parish church of Staines (1827), it is enacted, that it shall be lawful for the trustees from time to time to sell and dispose of the fee-simple and inheritance of such and so many of the pews or seats in the body of the church as shall not be appropriated to gratuitous accommodation, not exceeding one-third of the whole, as the trustees shall think fit, unto any person or persons being inhabitants of or residents within the parish, willing to become the purchasers thereof; but such purchasers are not to sell or devise the same to any person not being an inhabitant or resident within the said parish, and if upon the death of the purchaser the said pew shall descend or go to some person not being an inhabitant of the said parish, then the pew shall be forfeited to the trustees, and they may resell the same. The form of conveyance prescribed by the Act is this:—"We, seven of the trustees, do hereby grant, release, and convey unto the purchaser, his heirs, and assigns, all that pew, (describing its situation,) and all the right, title, and interest of the said trustees to and in the same." Now this assumes the attributes and endurance of real estate, and the conveyance being to the purchaser, his heirs, and assigns, he may be said to have an estate of inheritance, which is not affected by the Reform Act. We are therefore obliged to fall back on the 8 Henry 6, c. 7, which declares that knights of the shire shall be chosen in every county by people dwelling and resident therein, whereof every one of them shall have land or tenement to the value of 40*s*. by the year at least above all charges. The question, then, is, whether these pews can fall under the description of lands or tenements; and to decide this question we must refer more particularly to the local Act, which

Middlesex, 1835. Staines. Pews.

declares that all the materials of the old church, and the stones, bricks, timber, and other materials for rebuilding the new church, shall belong to and be the property of the trustees, and they may defend the same by action or indictment as the case may require; but it is further enacted that the present vicar and his successors shall continue to be the vicar of the said church so to be rebuilt in like manner as in the old church. Now in the old church the freehold of the site and edifice, as well as of the church-yard, is by common law vested in the parson or rector, or, where there is a lay impropriator, in the vicar, and the local Act continues that state of things. I was prepared to find the freehold of the church and church-yard vested in the trustees, but that is not the case; they have only the property in the materials in order to defend the possession of them; the church, when built, becomes the freehold of the vicar. This is important in considering the property in the pews, the materials of which may, perhaps, belong to the trustees, but they have no power to grant, nor do they assume to grant, by the form of conveyance before referred to, the land upon which the pew stands, but only the use, or at most the material substance, of the pew itself. It does not, therefore, fall within the term "land," in the statute of Henry 6. The only other question is, whether it can be called a "tenement" within that statute. Now, by the terms "dwelling and resident therein," I infer that the word "tenement" in that statute is to be received in its ordinary acceptation of "houses," and that tenements totally unconnected with the dwelling and habitation of man are not the description of tenements there referred to; and this seems to be the interpretation of the Middlesex committee, (2 Peckwell, 93,) which held that H. C. Selby, not having a freehold interest in

house or land, was not entitled to vote. At common law, the freehold of pews in the body of the church is in the parson, for the use and accommodation of the parishioners, but the freehold of pews in the chancel may be in an individual; and the use of pews in the body of the church, when enjoyed exclusively, are attached to a particular house, and not to the person of the inhabitant. The ordinary has the power of allotting and disposing of the pews among the inhabitants, but no spiritual court can grant a faculty for a pew in gross, certainly not to a man and his heirs, and it is not yet settled that it can be granted to a parishioner for life. On this subject the late Lord Tenterden has said that in no case has a person a right to the possession of a pew analogous to the right which he has in his own house or land; for trespass would lie for an injury in the latter, but for an intrusion into the former the remedy undoubtedly is by an action on the case. That furnishes strong reason for thinking that the action is maintainable only on the ground of the pew being annexed to the house as an easement, because an action on the case is the proper form of remedy for the disturbance of the enjoyment of any easement annexed to land. (Mainwaring v. Giles, 5 Barn. and Ald., 356.) Now, though the conveyance of these pews prescribed by the Act purports to pass an estate of inheritance, yet it is not, I apprehend, an estate of inheritance in land or tenement within the meaning of any Act of Parliament relating to real estate. It is not entailable within the statute *de donis;* for who ever heard of a recovery being suffered of a pew in gross? It is not transferable by lease and release, for of what use would be the lease for a year? It cannot be the subject of a feoffment; for how is the feoffor to deliver seisin? It passes simply by grant, and if granted to a man and

Middlesex, 1835. Staines. Pews.

Middlesex, 1835. Staines. Pews.

the heirs of his body, it would create a fee conditional at common law, so that on issue had he may alien in fee. It is something analogous to a grant of navigation, which is a mere easement giving no right to the bed of the river. The pews or seats of the six clerks are also somewhat similar, and these have uniformly been disallowed. The pew of the parish clerk is often insisted on, but with as little success, and there is not much difference between that and the present case, both being personal to the parties and held on certain conditions. The conveyance here is of the materials of the pew, but not of the land on which the pew stands. It is not therefore a profit arising out of land or tenement, but a mere personal easement ceasing when the party leaves the parish. Upon this view of the case, I must disallow the three first votes; but as to the annuity, that is charged on the church-rates, and they are levied by the local Act on all the lands and tenements within the parish. It is not therefore a mere personal annuity, and though granted to executors, it is held for life, and as such is a freehold interest, entitling the party to vote, if of sufficient value, which is admitted in this case. I must therefore allow Dr. Simmonds's name to be retained.

East Surrey, 1835.

Mr. Knox (R. B.), in giving his decision on the claim of the Rev. Mr. Richards, said, this is a claim by a baptist minister at Wandsworth, in respect of his office. It is stronger than some others previously decided, for Mr. Richards does not take the pew rents as salary after they have been paid to the trustees, but receives them himself, in consequence of his agreement with those of his congregation who engage them; he is therefore in possession of the pew rents as pew rents. I know many similar claims to this have been admitted,

but, nevertheless, I regret that the view I take of this claim compels me to reject the claim of Mr. Richards. If the pews themselves, which I have already shown *, will not give a vote, I cannot conceive how the rent received for them can. Besides, these pew rents are not necessarily attached to Mr. Richards's office. I admit he has a freehold office—it is for life—but there is no deed nor will giving him the pew rents or any part of them. The trustees only permit him to let them for his benefit in lieu of a stipend. There is nothing to prevent the trustees in his case from saying, we will henceforth let the pews and take the rents ourselves, and remunerate you in another manner. He would have no remedy against them. There is no difference in principle, in these cases, between the chapels of Dissenters and places of worship of the Establishment. The ministers of neither can have a right to vote, unless they have the "free land or tenement" required by the old law, for they have no claim under the new franchise. Here is nothing out of the realty that Mr. Richards can claim, as arising from his office. It is similar to the case of the parish clerks, whose votes, where there are no endowments, are now disallowed.

East Surrey, 1833.

Robert Long claimed for an estate for life, in a share of a freehold messuage, called Lucas's Hospital, and the garden thereto belonging,

Lucas's Hospital, 1832. Alms-men.

Mr. Warren examined the claimant, to establish a *primâ facie* case; he stated that he occupied a room in Lucas's Hospital, and a piece of garden ground; he had been in possession three years, and paid no rent

* Vide page 326.

Lucas's Hospital, 1832. Alms-men.

for it; he considered it was his property as long as he lived. Every person had a separate room; his was sixteen feet square, and ten feet four inches high.

In answer to the court he stated he could not get such another room for 4*s*. per week.

On cross-examination by Mr. Weedon, the witness said he was one of the brethren of the hospital; that it consisted of a master and sixteen brethren; that the rules were read over by the master, Mr. Morris; that they were not rated to the poor; and that he did not know whether their rules said anything about expulsion for misconduct, for blasphemy, for being guilty of theft of the value of 12*d*., for being guilty of idleness, for lodging out of the hospital for one night, or for going or riding forth out of the town of Wokingham.

Mr. Talbot (R.B.) said, it was quite evident that this corporation society of a master and 16 brethren were elected and governed by some charter, and he would not decide without seeing it. It was in evidence that certain rules were read, and he would not decide in favour of the vote without their production.

Mr. Warren.—If the court decides we have not made out a *primâ facie* case, then we are bound to produce the deeds; but I submit we have made out a case of freehold which has not been rebutted, and therefore we are not called upon to produce the rules. The opposite party have not made out any case.

Mr. Talbot, (R.B.).—They certainly have made me acquainted with the fact that this society is governed by rules, and I will not decide in favour of the voter till I have seen the rules.

The rules were then put in.

Mr. Weedon submitted, that by the introductory part it was shewn they were incorporated by the name

of master and brethren, and rule the 7th gave a power of dismissal in case the party is guilty of blasphemy. By rule the 8th, if they hold any erroneous opinions in religion, if they are guilty of adultery, and theft, they may be expelled. If they are guilty of idleness, they shall forfeit a week's salary for the first offence; for the second, a quarter's salary; and for the third offence they shall be expelled. By the 12th rule they are liable to be expelled for drunkenness. By the 13th a similar penalty awaits them, if they shall go and ride forth from the loyal town of Wokingham without permission. If guilty of gaming, they are also liable to be expelled. If they have a woman in the college they are liable to be expelled. If they do not keep their chambers sweet, and for many other offences, they are liable to expulsion.

Lucas's Hospital, 1832. Alms-men.

Mr. Talbot.—That is a power of removal.

Mr. Warren said, that looking at what had been the practice of the court, he had supposed that having made out a *primâ facie* case of freehold, possessing all the requisites specified by the Act of Parliament, he should not have been called upon by the court in the first instance to proceed further, and most undoubtedly he did not expect that the court would have insisted upon a production of the rules of the society. He had relied entirely upon the *primâ facie* case, which he would still maintain had been made out in this instance, but he now found himself called upon to fight against weapons taken out of his own armoury. No case had been made out to deprive this claimant of his vote. They found him in possession of all the requisites of a freehold specified by the Act of Parliament; a place held by him for life. The definition given in *Cruise's Digest* of the expression *quamdiu se bene gesserit*, as applied to freehold offices of this description, was, that a party held

Lucas's Hospital, 1832. Alms-men.

so long as he conducted himself as the founders of the charity said he should, in order to be entitled to its benefits. Now, in order to remove this case out of the scope of that definition, they must suppose that which the law would not suppose, namely, that the inhabitants of this hospital would not conduct themselves in accordance with the rules of the institution. The law, as Lord Tenterden said, takes every one to be skilful until the contrary was proved. In like manner the law assumed that every man was innocent until he was proved guilty; and upon the same principle it must be assumed, according to the common law, that every one has complied with given rules or regulations to which he might be subject, until his acts proved that the contrary was the case. Now no such proof was offered here, and no case was made out in order to deprive this voter of his franchise. This individual voter must be supposed not to be capable of committing any one of the crimes or offences specified in the rules that had been read, until proof was adduced of his actually having done so. He was in the situation of one who held an office for life, for he could hold this office as long as he conducted himself in the manner enjoined by the founder of the charity. According to the definition of the terms *quamdiu se bene gesserit*, given by *Cruise's Digest*, this was a case which came within the rule sanctioned by the law, and recognized by the present revising barristers themselves with regard to freehold offices. The criterion of a freehold was, that which might last for a life; thus, if A. were enfeoffed of a property until B. returned from Rome, that would be held to be a freehold, because the possession of it might last for A's life. That, he believed, was a solution of the difficulty which had been thrown upon them. In order to prove that a person filling a situation like this was without the pale

of the common law definition, as to a freehold office, it must be shown that he was removable at the mere pleasure or caprice of those who appointed him. That was not the case here. His removal entirely depended upon the acts of the party himself, and therefore he had the power of retaining the situation for life. The only thing that could prevent him from so continuing in a situation like this for life, would be a power vested in somebody else, of arbitrarily depriving him of it, and no such power existed. The presumption in this instance was, that a man would not commit such a *felo de se* as to deprive himself of such a situation, for, upon a like principle, it was laid down by the law that the presumption was, that no one would commit an act of folly against himself. A case had been made out to show that this person was in the possession of a freehold office, and therefore entitled to the elective franchise.

Lucas's Hospital, 1833.] Alms-men.

Mr. Talbot.—I need not trouble the gentleman on the other side to reply. It is a case of considerable importance, and the learned gentleman has grappled it ably, but unsuccessfully. As to a *primâ facie* case, I was of opinion that there had been a *primâ facie* case made out, till the cross-examination of the voter, which showed that those rules were read once a year, and I then considered it my duty to insist upon seeing those rules, and I am of opinion that the office is not such a freehold office as will entitle him to vote for a member for the county. I have more than once stated, during my progress on this circuit, that it was my opinion that, by an office held *quamdiu se bene gesserit*, the law meant the possession of such an office as could only be forfeited by the commission of an offence against the common and statute law of the land, however affected by the rules of the corporation. Still,

Lucas's Hospital, 1833. Alms-men.

that discretion being vested in trustees by charter, the office is divested of its freehold character, because, if a power of removal exists, the office is not a freehold, and the party enjoying it cannot have a pretence for voting for a county member. Therefore the name of Robert Long must be expunged from the list.

Fifteen other claimants for the same qualification were also expunged; but, in the following year, their claims were renewed, and again objected to.

Mr. Warren having established a *primâ facie* case by the evidence of Robert Long,

Mr. Gregory, on the part of the objectors, then said, that he held in his hand a copy of the charter of this hospital, which had been regularly examined with the original. The paper he then held in his hand contained the "Ordinances, Statutes, and Rules, made by Robert Raworth and Thomas Buck, Esquires, executors of the last will and testament of Henry Lucas, Esq., deceased, the 12th day of March, 1666, and in the 19th year of Charles II., for the order and government of the hospital of Wokingham, *alias* Okeingham, of the foundation of Henry Lucas, Esq., deceased, incorporated by the said King's most excellent Majesty, by His Majesty's letters patent, under the great seal of England, bearing date the 18th day of January, in the 18th year of his said Majesty's reign, and thereby appointed to be called by the name of the master and brethren of the hospital of Wokingham, *alias* Okeingham, of the foundation of Henry Lucas, Esq., deceased, and to consist of a master and sixteen brethren." This hospital was a corporation aggregate. There were various rules to which the members of this corporation were obliged to conform; and,

being thus elected, and thus governed, the document referred to showed that they possessed no freehold right whatever.

Lucas's Hospital, 1833. Alms-men.

Mr. Warren contended, that the document in question did convey to the claimant a freehold right. All the extracts that had been read, proved that the brethren held their tenements *quamdiu se bene gesserit*. If an office were granted to a man so long as he behaved himself well in it, the law inferred that he held it for life, and had a life estate in it. Every one of these claimants had a separate freehold for life in this hospital, such as entitled them to the elective franchise. It was admitted that these persons held lands.

Mr. Talbot.—But what do you say, Mr. Warren, to the point of this hospital being a corporation?

Mr. Corbett.—This is a case of a corporation aggregate; and, if so, nothing can be more clear than this —that the property held by such a corporation cannot give its members individually a right to vote.

Mr. Warren argued, that this hospital could not be deemed a corporation aggregate. The ordinary case of a corporation aggregate was that of a mayor and burgesses, or of a master of a college and the fellows.

Mr. Corbett.—The current of election authorities is decidedly against you on this point.

Mr. Talbot said, that though this point was not taken at the last investigation, he had not overlooked it in coming to his decision. The Lucas Hospital cases must all go. The claim of Robert Long must be expunged, as well as those of his fifteen brethren.

Thomas Barefield claimed in respect of a freehold occupation of an alms-house.

Wokingham, 1832. Alms-men.

Wokingham, 1832. Alms-men.

This claimant was objected to by Mr. Weedon.

Mr. Warren examined the claimant, who stated that he lived in what they called the alms-houses. He had a house and a bit of land. He had lived there seven years, and expected to remain there as long as he lived. He thought the value of the house and garden was *5l.* a year.

Cross-examined.—He stated that on being appointed by Mr. Morris, the minister of the parish, nobody else had any thing to do with it. He gave it him for his life. He had no paper to show for it. He gave it to him because he was in distress for a house. These houses, he believed, belonged exclusively to the parish of Wokingham. Only parishioners of Wokingham are appointed. The houses are by the church. He asked Mr. Morris if he would give it him, as he had no house. Never had parish relief before. Paid no poor-rates. Mr. Morris is the clergyman who officiates at Lucas's Hospital. Witness performed no duty for this office. He did not carry the mace before the corporation. He was too young. Had *4s.* a-week now and then, when in distress. He supposed that all who occupied the alms-houses had relief; they had it from the overseers. Recollected Elizabeth Smith. She was turned out by Mr. Morris and Mr. Creaker.

Mr. Talbot.—I have understood that there is a deed, and I cannot come to a satisfactory conclusion without seeing that deed.

Mr. Warren produced the deed, from which it appeared that no person could be expelled unless he or she was a thief, a robber, a scold, a drunkard, or had been guilty of some abominable and detestable vice.

Mr. Weedon then called Elizabeth Smith, who stated that she had lived in one of those alms-houses for some

years; that she had been turned out by Mr. Morris and Mr. Creaker, the latter being one of the corporation. She had known Martha Wheeler, who had lived in one of those alms-houses for several years. She was turned out because her daughter happened to have the misfortune to have a child. Martha Wheeler was afterwards re-admitted. Witness's weekly pay while in the alms-house was *2s. 6d.*

On her cross-examination by Mr. Warren, the witness said she had been turned out because her granddaughter kept up such a game with the young boys and girls.

Mr. Morris, on being examined by Mr. Warren, stated, that he knew the old woman and her granddaughter, who had been resident in one of the alms-houses. He had been the instrument of their being turned out, in consequence of their keeping loose company in the house. He had remonstrated with her twice, but she still continued the same practice. He should not have considered it within the scope of his power to have turned her out for any thing less than such an offence. He had never known any other person turned out. He had never read the deed of trust in his life.

Mr. Weedon contended that the inhabitants of these alms-houses were paupers, and therefore could not have any freehold to give them a qualification.

Mr. Talbot said he should like to confer with Mr. Corbett, and on his return he stated, that in this case Thomas Barefield, the claimant, claimed to vote in respect of the profits arising out of land by the occupation of an alms-house. As he understood them, the objections were two-fold,—first, that this was not a holding for life, the party being removable; and, second, that it was, in point of fact, nothing more nor less than

Wokingham, 1832. Alms-men.

charitable assistance to indigent persons, and, therefore, that it did not confer a right to vote. To dispose of the first objection, he must look at the evidence furnished to him, and he took it for granted, that the deed produced, followed the terms of the early deed, from which it appeared, that nine poor and elderly people should inhabit and dwell in those houses, and that no man or woman having once entered should be expelled, except he or she was a thief, a drunkard, a robber, a scold, or had been guilty of some other detestable offence. Now the rule that he had laid down, that an office held *quamdiu se bene gesserit* did not mean an office of freehold, where it was proved that the party was removable from it for other than offences against the statute or common law, did not apply here, because, in this case, the party was only removable in case of committing an offence which was cognizable by the law of the land. On conferring with his learned friend, Mr. Corbett, it did appear to them that the trustees had no power to remove, except for an offence against the law of the land. They were therefore of opinion, that in the first point the party held this privilege, arising out of land, *quamdiu se bene gesserit*, according to the terms of the law as laid down by Lord Coke, and therefore he was entitled to vote in respect of a freehold. Then came the other objection, that this was a charitable assistance to the poor. It was well known, that the receipt of alms did not disqualify a party having a freehold in his own right, therefore, he was of opinion, that the party in this case had a permanent interest to the amount of 40*s*., from which he could be expelled only by the committal of some offence, cognizable by the law of the land. The claim was therefore admitted.

Wokingham, 1832. Alms-men.

Charles King, who claimed under precisely the same circumstances, was objected to by Mr. Weedon, who stated that he should now argue this case. He had omitted to do so in the former one, feeling confident that the judgment of the court would have been in his favour. This was the most extraordinary attempt ever made in the history of county elections, to impose upon the constituency of the county the votes of paupers. He knew of no one case, and he had searched with great attention through all the books on the subject, in which it had not been invariably held that the receipt of alms was a disqualification in the voter. In this deed it was stated, that the party should be one in the lowest state of poverty, arising from the act of God, and he was removable on the commission of offences, which he contended the common law did not recognize; for instance, a woman, if she was a scold, which was not an offence at common law. In the present case, there was no office attached to the situation, nor was there any duty to be performed by the party occupying. In Mr. Finelly's book, page 52, it was expressly said that alms-men were not entitled to exercise the elective franchise; and Mr. Shepherd said, that they were not entitled to vote. In 1 Douglas, page 277, the case of "the Bristol voters", the point was, whether freemen in possession of alms-houses, were or not disqualified by the mere perception of the profits, and the words were, that the vote of the party would not be admitted. There was not, in fact, a single instance, in which it was not laid down that alms-men had not a right to vote.

Mr. Talbot (R. B.) stated, that he wished those cases had been mentioned to him before; at the same time let it be understood, that they could not have altered the opinion at which he had arrived. It appeared to him

Wokingham, 1833. Alms-men.

that those persons were entitled for life to more than 40*s.* per annum, arising out of these houses, and therefore it was hardly necessary for him to say, that he adhered to his former opinion.

The claimant's name was therefore directed to remain upon the list of voters.

Robert Hibbert claimed in respect of a freehold occupation of an alms-house. This claim was opposed by Mr. Gregory, and supported by Mr. Warren.

Robert Hibbert.—I occupy one of the alms-houses in this town, and part of the land belonging to them. I was in possession of them six months previously to the 30th of last July, and am so still. The possession is worth forty shillings a year to me. I am in for my life—so are all my brethren.

Mr. Warren.—This is a *primâ facie* case of freehold.

Mr. Gregory.—The claimant has not shewn that the property may not be copyhold or leasehold.

Mr. Warren.—He has shewn that he has a life estate in it, and possession is a *primâ facie* case of a seisin in fee.

The court held that the claimant had made out a sufficient *primâ facie* case of freehold to call on Mr. Gregory to prove otherwise.

Mr. Gregory then proceeded to cross-examine Hibbert, who deposed as follows:—I was appointed to this alms-house last Christmas, by Mr. Morris and Mr. Heelas. I don't know what right they had to appoint me. Mr. Heelas was the alderman of the place at that time.

Mr. Gregory said, that it appeared these alms-houses had been given by a Mr. Westend, by a deed, bearing date September 1, 1451, to certain trustees

Wokingham, 1832. Alms-men.

for ever, in trust, that they should repair the said alms-houses, and that, with the advice of the alderman and minister of Wokingham, they should appoint certain persons to inhabit them. Now the fee of this appointment was vested by this deed in certain trustees, who could appoint during their lives, or could, under one clause of the deed, appoint others; but assuming, as it was probable, that there had been a failure in the due appointment of trustees according to the deed, the fee simple of the property, and consequently the right to appoint, was at this moment vested in the heir-at-law of the last surviving trustee, but with the advice of the alderman and minister. It ought therefore to be shown, that Hibbert was appointed by the trustees, or by the heir-at-law of the last surviving trustee, by and with the advice of the alderman and minister, or by him who has the appointment in fee.

Hibbert, on being recalled, said that he was appointed by Mr. Morris and Mr. Heelas.

Mr. Warren contended that this was the usual case of trustee and *cestui que* trust. He then read part of the original endowment of the charity, and some entries, for the purpose of showing that trustees had, for some time after the original endowment, been regularly appointed; that they had nominated persons to inhabit these alms-houses, as he had proved this person to inhabit them; and that no person could be expelled, unless he or she were a thief, a robber, a scold, a drunkard, or had been guilty of some abominable and detestable vice. He also argued, that the power of appointment, in case of the death of one of these alms-men, must be in the minister and alderman.

Mr. Talbot (R. B.) asked, what had been the ordi-

Wokingham, 1832. Alms-men.

nary course of appointment? Had it been in the alderman?

Mr. Gregory.—We don't know; we show that the fee-simple of the appointment is in the trustees for a common use. In case they died without an appointment, it would be in the heir-at-law of the last trustee. That person had alone the power of appointment, controlled, he admitted, by the advice of the alderman and minister. He maintained that in a case where paupers were claiming the franchise, which it never could have been the intention of the legislature to confer upon them, Mr. Warren should show more of a case than he had shown at present.

Mr. Corbett (R. B.).—Have we a right to try the validity of this appointment in this manner?

Mr. Talbot (R. B.).—The claimant holds under the customary appointment.

Mr. Gregory.—But I contend under an illegal appointment, unless you are prepared to allow this, that Mr. Morris and Mr. Heelas are the heirs-at-law of the first grantor, and have, therefore, the right of appointment.

Mr. Corbett (R. B.).—The right of the claimant to vote for the county, involves the validity of his appointment. In undertaking to decide that question, we should be deciding one which rather belongs to a court of equity.

Mr. Talbot (R. B.).—If the claimant has a right to be in that house, he has a right to vote; but we cannot try the validity of a title on an election matter.—Name retained.

Northern Division of Staffordshire, 1832.

John Pearson stated that he lived in Stone, in his own freehold house, which he had purchased forty years ago. It was worth 6*l.* or 7*l.* a year. He had

received relief from the parish within the last week.—Name retained.

Northern Division of Staffordshire, 1832.

Charles Horne was objected to.

East Kent, 1835. Jesus Hospital. Alms.

The claimant was kin to Sir John Boys, the founder of the charity, which endows for life eight brothers and four sisters with two rooms each and a piece of ground. The appointment of the brothers and sisters is vested in the dean, on the recommendation of the mayor; and, in the event of those elected not wishing to live in the hospital, which is freehold, they may receive a fair proportion of the rental if they have previously obtained the sanction of the warden.—Claim allowed.

East Kent, 1835. Woollen Drapers' Company.

Mr. Nutt, the town-clerk of Canterbury, appeared on behalf of Mr. Davey, warden of the Company of Woollendrapers and Tailors in that city, to support his claim to be entered on the register as a voter for the county. The claim was grounded on the possession, by the company, of a house in the parish of St. Alphage, which yielded an annual income of 40*s.* and upwards to each member of the company. On a former occasion the house was in such a dilapidated state that it did not yield sufficient to qualify the members, who had several other houses, but which they had not inserted in their notice of claim. Upwards of 200*l.* had since been expended in repairing the house, which was let on a lease at a low rent, but sufficient to qualify the members of the Company.

Mr. Pillow, one of the assistants of the company, was examined, and stated that he had been a member of it ever since the year 1784, and was admitted being free of the company by apprenticeship. The company had for a long time past consisted of only six persons, some of whom had been elected. The house in question had

East Kent, 1835.

been leased out by these persons at a yearly rent of 15*l.*, which, together with other property, was equally divided amongst them.

Mr. Furley cross-examined the witness as to how they obtained their power. The witness replied there were charters and deeds which were in the possession of their clerk. The company consisted of a warden, four assistants, and members; they had an uncontrolled power over their funds, part of which was given away in charity, and the rest spent, as usual, in good eating and drinking. The company signed all deeds individually, and had no common seal.

An account-book, kept by the company in the reign of Henry VIII., anno 1509, was produced, in which the company was called the Warden and Fellows of the Company of Woollendrapers and Tailors.—The claim was then allowed.

Northern Division of Staffordshire, 1832.

The Rev. Peter French was opposed by Mr. Flint. Mr. Richardson produced a licence, under the seal of the Bishop of Lichfield and Coventry, to the claimant to hold the perpetual curacy of a newly-erected and consecrated chapel of the Holy Trinity, and to receive the pew rents and fees; and stated that the appointment was by the Marquess of Anglesea. It was not a parochial chapel, but had been erected by private subscription.

John Shelley proved that the claimant was the officiating minister, and had appointed him clerk to the chapel. Evidence was also given that the pew rents were paid to the claimant, and that they amounted to more than 40*s.* per annum.—Name retained.

P. M. Holland stated that he was the Catholic priest, residing at Ashley, and claimed to be registered in right

of a freehold chapel and house. He was appointed to the mission on the 3d of May, 1830, and was inducted to the chapel in the same month. The vicar apostolic of the district, the Rev. Thomas Walsh, appointed him. The mission extends a circuit round the parish. The endowment might amount to 100*l*. The claimant's emoluments arose from the seat-money in the chapel, and his house. The appointment was for life, subject to deprivation for misconduct. The house was purchased in 1805, by Mr. Delatre, a French refugee. There was a chapel there before. He devised the house to Mrs. Cartledge, and it was purchased, in 1823, by Mr. Gerard, of Coleridge, for the use of the Catholic congregation. A deed was made out then to four trustees, to be held for the use of the Catholic priest. The chapel has been recently erected, on the land bought from Mrs. Cartledge. The congregation hold their seats at yearly rents, which are paid to the claimant.—Name retained.

Northern Division of Staffordshire, 1832.

The Rev. Peter Kaye claimed for a freehold office as Catholic priest in the chapel Stott-hill. In this case the only question was as to whether the appointment was for life. Mr. Kaye deposed that he was appointed to the situation by the bishop of this district, and that it was merely a verbal appointment. He had been at Manchester some time previous to coming here. The bishop, in one of his visitations at Manchester, had desired him to come to Bradford, and he did so. The chapel was freehold. He received the pew rents, surplice fees, and all other emoluments belonging to it. He considered it an appointment for life. He did not know exactly the extent of the bishop's power, but conceived that he could not be removed without his consent, except for some canonical fault. If the bishop

Bradford, 1835.

Bradford, 1835.

was to insist peremptorily on removing him in contrariety to his own wish, he could appeal to the court of Rome; and he believed that unless some canonical fault were proved against him, he would not be removed. Upon this evidence the court allowed the vote. The vote was supported by Mr. Palfreyman, and opposed by Mr. Alcock.

Middlesex, 1835. St. Mary Aldermary.

The Rector of St. Mary, Aldermary, claimed as rector of the parish.

Alderman T. Wood opposed the claim; Mr. Gregory supported it.

The objection was, that the claimant had been a bankrupt, and that his living was under a sequestration; and further, that he was not in occupation.

Mr. Martin (R. B.) said, it had been decided that bankruptcy was no disqualification.

The claimant stated, that his living was not now under sequestration, and that he had received a certain sum during the time of the sequestration.

Mr. Wood suggested that that payment was only allowed for the performance of the duty, and he cited the case of *Ex parte* Maynard, 1 Atkins, 297.

Mr. Martin (R. B.) thought that was another point, and the sequestration had been withdrawn. On examining the claimant, he had stated that he now received the income arising from the rectory, and he did so before the 31st of July; the sequestration was withdrawn on the 6th of July. Then came the question, whether that was a six months' enjoyment—it was a remitter to the benefice.

Mr. Gregory said there was a previous question—a sequestration did not remove the rector from his living, it was only in the nature of an execution.

Mr. Martin (R. B.) thought, as he found the party

in possession, and that he had been remitted to his living, the vote was good, and the rector had received an income during the sequestration.

Middlesex, 1835. St. Mary Aldermary.

Mr. Wood said, it was not the case of a remission to a right—it was a taking by the rector of something without legal authority. By the operation of the bankrupt laws, his right had passed to his assignees. In the latter end of the year 1832, the claimant became bankrupt, under which bankruptcy he had last year obtained his certificate. At the time of the bankruptcy there was a sequestration against him, then there was an allowance made to a gentleman who did the duty, and a short time afterwards the rector resumed his duties, having obtained his certificate. The sequestration being withdrawn, the claimant found himself in possession of the living, but the previous existing right was in the assignees under the commission, and the bankrupt was bound from time to time to give information to the assignees of the state of his affairs, and after the remission he ought to have gone to the assignees and said, "Now you are at liberty to go in."

Mr. Martin (R. B.) wished to know which preceded —the certificate or the resumption?

Mr. Wood.—The certificate; but that only protected the person, the parish was in possession of the claimant. Supposing the freehold estate of a bankrupt was charged with an annuity which absorbed the whole of the rents and profits, assuming the annuitant to die, did the property go to the bankrupt or to his assignees? Here was a living, of which the claimant was the possessor of the whole of the income, but he thought fit to make a limited charge upon it, beyond that there was a reversionary property somewhere; this he was prevented, by the operation of the bankruptcy, from having, because it was transferred to his as-

Middlesex, 1835. St. Mary Aldermary.

signees, and he could not then be allowed to say that he had acquired a new property, for he was as much bound to discharge his duty to his assignees as he was to discharge his duty to his church, and one was as much binding upon him as the other.

Mr. Gregory did not rest the claim on the acquisition of a new right, the claimant stood on his original right by presentation and induction; and he would take it, that from August, 1834, to July, 1835, he was in possession of his living, and received a sufficiency to give him a qualification. With respect to the other question, he confessed he could not look upon it in the same point of view as Alderman Wood had done. Lord Hardwicke, in the case cited, had said a parson held a living in right of the church, and not for his own benefit, and therefore he might be considered to hold it in *autre droit.* It would not be easy to adduce a case in which the assignees of a bankrupt had taken possession of the living of a parson. How could they get possession—how could they take the property of the church, which was committed to the parson for the performance of certain duties which laymen could not perform? But if this doctrine was contended for, how did it happen that there was not a single case in the books where a bankrupt's assignees had taken possession of a living? The case of the annuitant was not in point, because it was impossible for the assignees to stand in the shoes of the clergyman, he must be an ecclesiastical person, and must be presented and inducted, but, as laymen, it was impossible they could take the fee-simple, which was vested in the clergyman on condition of performing certain duties.

Mr. Martin (R. B.) here interposed, and said that if the claimant stated that he had a new property, there would be a difference; but supposing this gentleman had

an interest amounting to 40*s.* per annum, he wanted to know whether, by the withdrawal of the sequestration, he was not remitted to his ancient right in the property, and he then thought he was not under the operation of that part of the Act which required six months' possession. Unless Mr. Wood was prepared to contend that A, having a freehold property upon which there was a mortgage which absorbed the whole of the rents and profits, but paying off that mortgage within six months from the time appointed by the Act for having possession of a freehold, had not a right to vote. This gentleman's claim must be admitted. They could not try a right. They found him in possession, whether tortuously or not they could not determine. He claimed as rector, and was in receipt of the emoluments of the church, and inasmuch as the party was remitted to his ancient right, the clause requiring six months' possession did not apply to this case. Name retained.

Middlesex, 1835. St. Mary Aldermary.

In the case of the Rev. John Walker it appeared, by a deed dated the 24th of June, 1825, that a certain rent-charge of 40*l.* per annum was created to be received by certain trustees, upon trust to pay the rent-charge over to the minister, churchwardens, and overseers of the parish of Cottered, Herts, to be by them applied in the education of the children of poor cottagers residing within the parish.

St. Mary-le-Bow, 1835.

After hearing Mr. Gregory in support of the claim,

Mr. Martin (R.B.) said it was evident the legal estate was vested in trustees, who were to pay the rents to the minister, and therefore the claim could not be allowed.

The Rev. W. Huntingdon claimed as incumbent of St. John's Church. The church was built by the

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late Mr. Byrom, under the authority of an Act of Parliament passed in the 9th year of the reign of Geo. 3. By the Act it appeared, that the fee-simple of the church was vested in the rector, and the churchwardens were directed to pay him 120*l.* a-year from the rents of certain pews. One pew, No. 85, was declared to be the property of the rector, and Mr. Huntingdon stated that his pew was worth 5*l.* per annum.—Claim allowed.

East Surrey, 1835.

The Rev. Mr. Anderson claimed as minister of the Episcopal Chapel at Camberwell, and was objected to. It appeared that he had a life interest in his office as minister of the chapel. The interest in land necessary to give him a vote, in respect of that freehold office, was stated to arise out of pew rents. Upon the investigation he said, that his claim upon the trustees was for a stipend of 100*l.* per annum, and that if the pew-rents did not produce that sum he should still have the same claim upon them. These rents, in point of fact, exceeded that sum. The deed was put in, by which it appeared that the trustees were authorized to let the pews, and out of the produce to discharge the various expenses attendant upon the chapel, and among them the salary of the minister.

Mr. Knox (R. B.), in giving his decision said, that without entering into the question, whether there could be such a freehold interest in a pew as would confer a right to vote, when there was no freehold interest in the ground upon which it stood, it seemed clear in this case that the minister had not necessarily attached to his office any portion of the pew-rents. He had, indeed, a demand upon the trustees for 100*l.* a-year, but he claimed and took it as salary, agreed to be paid by them to him, and not as rent due to him. If the other

charges exhausted those rents, as under many circumstances it might be conceived would be possible, the trustees' liability to him would continue; but could he then be said to receive any portion of the pew rents? The claim to vote was founded, not on the new franchise, but on the ancient right given by the statute of Henry 6. to such as have "free land or tenement to the value of 40*s.* a-year within the county." This gentleman holds, indeed, a freehold office, but wanting the "free land or tenement." I am therefore of opinion, that the claim cannot be sustained. Upon intimating this view of the case before, Mr. Anderson's claim was put upon another ground. It was alleged, that he had a right, as minister of this chapel, to a residence in a house of sufficient value. A deed was produced, to show, that a school had been erected for teaching children on Sundays, and the trustees were directed to permit the minister of the chapel to reside in a house, conveyed to them for that purpose, as long as he superintended the school and gave his personal services in it. If the house had been attached to the office of minister, the claim in respect of it would certainly have been a good one; but that is not so; Mr. Anderson might continue minister, and yet forfeit his right to reside in the house, for on various accounts he might find it inconvenient to attend to the school, and thus cease to have any right to reside in the house. The claim is not made as schoolmaster, but the case could not be supported, for no appointment to that office is alleged. I am, therefore, of opinion, that the objection must be allowed, and the name expunged.

East Surrey, 1835.

The Rev. James Martineau, of No. 3, Mount-street, claimed on freehold pews as minister of the Unitarian Chapel in Paradise-street. Mr. Martineau stated, that

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he considered himself entitled to vote, in consequence of a life appointment in his office, as neither the congregation nor the trustees could remove him. He admitted that he was not in a direct receipt of the rents.

Mr. Peacock submitted to the court that the legal estate was vested in the trustees, and not in Mr. Martineau, as he had himself admitted that he was not in the receipt of the pew rents; and it did not appear that he was in the receipt of 40*s*. per annum arising from lands or tenements.

Mr. Greenwood (R. B.), after referring to a case in *Delane's Decisions*, p. 164, decided in favour of the claimant.

Middlesex, 1835. Dissenting minister.

Isaac West claimed to be registered in right of a copyhold Dissenting Chapel.

Mr. Sumpter stated that he attended the chapel, which belonged to the Independents, and he was given to understand the minister was not removable, in consequence of a late decision in the Court of Chancery, relating to the Tabernacle in Tottenham-court-road. The chapel in question was copyhold, and the minister was paid out of the pew rents, but he did not know the amount. Persons were not refused admission if they did not attend; he believed the minister received more than 10*l*. a-year.

Mr. Field submitted, that the minister was not removable, and that he was in possession.

Mr. Gregory.—The appointment and election of Mr. West had not been proved; if that had, there might have been a *locus standi;* but there was no evidence that there was a body to elect, and the witnesses had proved that the payments were only voluntary.

Mr. Coventry (R. B.), was of opinion, that from the evidence, the qualification was not as minister, but for

the copyhold property occupied by him. The 19th section stated, that any person seised of a copyhold tenement of the annual value of 10*l.* should be entitled to a vote in respect thereof. It appeared to him, that Mr. West was entitled so long as he conducted himself properly to the possession of the property, and also that the property was worth more than 10*l.* per annum; therefore he was of opinion a *primâ facie* case had been made out.

Middlesex, 1835. Dissenting minister.

Mr. Martin (R. B.) said, although the case was very slight, yet he thought it had been made out sufficiently to call upon the objector to rebut it.—Claim admitted.

The Rev. William Ashley was objected to. On examination by Mr. Weedon, he stated, that for eight years past he had been, and then was, minister of the Methodist chapel, to which he was appointed for life. The chapel and land were freehold. He was in the receipt of income from that situation of 60*l.* a-year, derived from pew rents and burial fees.

Northern Division of Staffordshire, 1832.

On being cross-examined by Mr. Warren, he said he received the pew-rents himself; was appointed by the congregation; had no written appointment; was not removable at pleasure, nor for misconduct. There were six trustees, but he was the only one in possession; the surplus of the rents was applied to the interest of the debt incurred in building the chapel, money being lent on the bond of three of the trustees. There was no deposit of deeds. The debt amounted to 800*l.*, and they paid interest at 4½ per cent. There was not enough collected from the rents of the pews to pay his salary. The property was worth 1200*l.*, the debt was contracted by the purchasers.

On further examination by the court, he stated that the pews were let quarterly by himself. The congre-

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gation could not discharge him. They might withhold their contributions, but could not prevent him receiving the pew-rents. There was no charge upon the chapel. The conveyance of the chapel was to the trustees. The pew-rents were not applied in discharge of the interest of the debt. The trustees had established a business to pay off the debt and interest.

Mr. Talbot (R. B.) (having consulted Mr. Corbett (R. B.) said, the doubt which occurred to him was, that the claimant was a dissenting minister, and one of six trustees, to whom the fee was conveyed. At the time the purchase was made, a sum of money was borrowed. There was no mortgage upon the chapel; but some of the trustees had become liable for the payment secured by their bond.

Mr. Weedon said, a bond was a charge upon the heir where real property descended, but it could by no possibility be a charge upon real estate, which passed by purchase.—Name retained.

Berks. Dissenting minister.

The Rev. Mr. Glanville, the minister of the baptist congregation at Wantage, was opposed by Mr. Chitty. The claimant stated that he was appointed to the situation by the church, and that he had held it for the last five or six years. There were certain lands at Inkpen appropriated for the baptist church at Wantage, which had been its property for a hundred and fifty years, and he, the claimant, now regularly received the rents arising out of them*. Claim admitted.

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* An application was made for a mandamus to the trustees of a dissenting congregation at Bradford, called "Particular Baptists," to restore John Lloyd to the office of minister. The

Mr. James Rodway, a dissenting minister, was objected to by Mr. D. Wakefield. It was alleged that the freehold in right of which he claimed to be registered, was vested in certain trustees, and not in him.

Berks, 1832. § 52, 2 W. 4, c. 45. Dissenting minister.

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affidavits of Lloyd, and a person named Jotham, stated that, in July 1787, Lloyd, on the invitation of twenty-seven members of the congregation, (on behalf of the whole,) agreed to accept the office of minister, and procured his dismission from another congregation in Devonshire, and was publicly admitted at Bradford, and continued to officiate as such till November, 1790, when he received a paper, signed by some of the congregation, dismissing him, and that the door of the meeting-house had been shut against him, and he had been prevented from performing the duties of his office. That there was an endowment for the minister for the time being, and that the defendants were the trustees of the rents and profits. Lloyd also deposed, that when he accepted the office, he considered that the appointment was for life, and that the congregation could not remove him without his consent, unless he misbehaved himself. On behalf of the trustees, it appeared that Lloyd had been guilty of impropriety and profaneness, and had made the pulpit the vehicle of personal slander, in consequence of which a special meeting was held, when fifty-five of the congregation (which amounted to less than a hundred) agreed upon his dismissal, which was signified to him accordingly; and they stated, that forty-three years ago a minister had been dismissed for immoral conduct. The affidavits also stated, that he had not obtained a licence, as required by Act of Parliament; and that amongst that sect it was held absolutely necessary, after a minister had been chosen, that he should be ordained by the ministers of the baptist church, who meet once a year for that purpose; it was also stated that he had not complied with the regulations of the Toleration Act, 1 W. & M. c. 18, § 8. Kenyon, C. J. said, no doubt a mandamus lies where there is an endowment; but it is necessary that the party applying should make out a *primâ facie* title to the office, and show that he has complied with all the forms necessary to complete that title. Rex v. Jotham, 3 T. R. 575.

The Gloucestershire and Bedfordshire Committees refused to allow dissenting ministers to vote, in respect of houses and land which they held as such, not being appointed for life.

At the Yorkshire election, Mr. Justice Bayley and Mr. Sergeant Heywood attended as assessors, and admitted some of the protestant dissenting ministers, who stated they believed themselves to be elected for life, and could not be removed: others, who understood they might be removed at pleasure, were rejected.

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Mr. Harris objected to the appearance of Mr. D. Wakefield in support of the objection, as he was a counsel.

Mr. Wakefield said he had made his objection in the capacity of an elector for the county, and had therefore a right to appear in support of it.

Mr. Corbett (R. B.) decided, that, as an objector, Mr. D. Wakefield was not excluded by the Act.

The claimant, on his examination, stated that he had been in possession of two tenements and a large garden, at Beech-hill, for twenty-three years, which he received when he became pastor of the congregation, and that he always believed it to be a freehold of the value of 6*l.* per annum. The property in question was never conveyed to him by any regular instrument, but merely by a letter from the trustees, with the approbation of the congregation. His salary was paid partly by the trustees. He took possession on his appointment, from Mr. Michael Cane, the prior manager of the concerns of the chapel, the office of pastor having been supplied for an interval by a person of the name of Arnold. It was not in the power of any of the congregation to remove him, and he believed he could not be ejected from the situation except he was guilty of some moral delinquency, or any crime which would subject him to the penalties of the law of the land.

Mr. D. Wakefield, as the objector, contended that the belief of the voter as to the law of the case—namely, that this was a freehold—could not be admitted, though it was admissible as to a matter of fact: and the claim of the voter was grounded only on the belief that this was a freehold, vested in trustees for the benefit of the congregation. This claimant was merely elected to fill this office by a parole

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authority, and there was nothing to prevent the trustees from ejecting him, if they thought fit, by bringing an action of ejectment. These premises were occupied by two labourers during the interval between the death of the former pastor and the appointment of the present one, and there was nothing to prevent the trustees from ejecting him, as they had ejected those two labourers from them.

Mr. Harris said, that it was of little consequence in whom the legal right was vested. They had it in evidence that the claimant was appointed for life; that he was in undisturbed possession for twenty-three years, and that he could not be ejected by any authority, except on account of moral delinquency. The question of his appointment having been a *viva voce* one, was perfectly immaterial, in the face of such positive evidence as had been given as to the possession.

Mr. Corbett (R. B.) said he was bound to decide this question on the evidence before him, and the evidence of possession was abundantly sufficient to establish the claim of the voter. Name retained.

Mr. John Coles, a dissenting minister, appeared to support his claim to have his name retained in the lists of the parish of Wokingham.

On examination by Mr. Dobie, the claimant stated that he claimed in right of his freehold office, as minister of a congregation of baptist dissenters to which he had been appointed thirteen years ago, and from which he could not be removed.

In reply to questions from Mr. Corbett, he stated that there was no estate settled on him as minister in this parish, and that there was no landed property out of which he derived an income of upwards of 40*s*. a

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year. This income was derived principally from the rents of the pews, all of which the congregation were bound to pay over to him without deduction. The chapel and burial-ground were freehold. He could only be removed from his office on account of immoral conduct, or for preaching doctrines different from those specified in the trust deed, and his removal must then be effected by an application to the Lord Chancellor.

On cross-examination by Mr. Chitty, who appeared to support the objection, the claimant said the chapel had been mortgaged for the purpose of raising money to enlarge it. The conveyance was made by the trustees. The mortgage had been paid off. The propriety of mortgaging the chapel was one of those questions that was decided by a majority of the members of the chapel.

Mr. Chitty submitted that the claimant could not possibly be considered as possessing a freehold interest in this property.

Mr. Corbett (R. B.) said, it would be more satisfactory if the trust deed could be produced.

Mr. Coles said it was in the hands of the trustees, and it was not in his power to produce it.

On re-examination by Mr. Corbett (R. B.), Mr. Coles said —I receive all that the pews produce. The chapel is freehold. 500*l.* were lately laid out upon the chapel. There is an endowment from a trust, called "Atkins's Trust". There was a mortgage on the chapel for the purpose of raising a fund to enlarge it. The interest was paid by a fund raised for that purpose. I was a party to the agreement for raising the money, as a member of the church. I am not sure whether I signed the mortgage or not. I signed the other document, which was drawn up at a church meeting. The

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chapel and burying-ground were mortgaged. The sum was 200*l*. The church (the congregation) could have done it without my consent. It would have been put to the vote. The congregation could not expel me from the pulpit except upon some moral charge against me; not for any doctrinal points; there are certain tenets recognised in the church deed. If I was to renounce those tenets, that would authorize an application to the Chancellor, without which I cannot be removed. If the congregation wished me to preach other doctrine, they could not compel me to give up my pulpit.

Mr. Graham said, if Mr. Coles would consent, Mr. Roberts, the attorney, would produce a draft of the mortgage.

Mr. Dobie objected to the production of the mortgage.

Mr. Corbett (R. B.) said, Mr. Roberts could not produce it without the authority of his client. In order to entitle the claimant to vote, two circumstances must unite in his person—namely, the possession of an office which he held for life, and the derivation of a certain interest from land. It certainly would have been more satisfactory to me if the deed of settlement had been produced, if Mr. Coles had had it in his possession; as he has not, and as the notice to produce it was served on Mr. Coles, and not on the trustees, I shall admit the claim. Where there is a balance of testimony, I always give it in favour of the elector.

South Derbyshire, 1832. Dissenting ministers.

Several cases of claims on behalf of dissenting ministers having been reserved for consideration, the following judgment was delivered at the termination of the sittings.

Mr. Miller (R. B.) said, in the cases of the several ministers of dissenting congregations, who claim to have

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their names registered in the lists of voters for this division of the county of Derby, in respect of an alleged freehold interest possessed by them in right of their appointments as such ministers, my learned colleague and myself, having taken time to confer together and minutely examine the authorities on the subject, have, after the most anxious consideration of the question, brought our minds to a decision. It is a question, undoubtedly of great importance, as affecting the rights and privileges of a numerous, a respectable, and an intelligent body of men; a class of individuals, so far as our observation has gone, in every way meriting the privilege,—the high constitutional right—of exercising a voice in the choice of the people's representatives in parliament. For this reason, therefore; and also in consequence of high authorities relied upon on behalf of the parties on either side, we have brought to the consideration of the question the most intense anxiety to arrive at a just and right conclusion.

The leading circumstances in almost every case of this description which has come before the court, are these:—a congregation or voluntary association of protestant dissenters has purchased certain premises, consisting of a building, or land, or both, which are conveyed to certain of its members as trustees to hold them in trust to permit the congregation to use them for the purposes of Divine Worship. The building (if there be one already built, and if not a building is erected for the purpose) is fitted up as a chapel; and in some cases a parsonage house is also erected. A minister is then chosen in this manner. He first preaches and otherwise discharges the duties of pastor for some short time, after which, if the congregation approve of him they invite him to become their pastor. This invitation is contained in a letter setting forth the spiritual

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benefits they anticipate from his ministry, and requesting, therefore, that he will come amongst them and accept the office of pastor of their congregation. In each of the several letters of invitation which have come before the court, a specific annual sum was proposed as remuneration for his services; in one, which was not produced, it was stated that the remuneration proposed was not fixed, but was to consist of the amount collected in voluntary contributions. In none of the letters is there any express allusion as to the period for which the appointment was to continue. The minister replies to this invitation, also by letter, acceding in general terms, to the request. He then takes possession of the parsonage house, if there be one, and enters upon the discharge of the duties of his office. His salary is made up generally from the voluntary contributions of the congregation frequenting the chapel; in some instances there are contributions called pew or seat rent, but which are admitted to be voluntarily paid for the accommodation of seats, without any power in any quarter to compel payment of them. There are also, in some cases, small bequests or endowments, to the use of the chapel from private individuals, the profits of which partly go in aid of the voluntary contributions towards defraying the expenses of the chapel, and remunerating the minister.

In all the cases that have come before the court, the general effect of the evidence given by the ministers themselves is this:—they consider themselves, when appointed in the manner before mentioned, appointed for life; that is, that in point of law it is not in the power of the congregation to remove them; but that should the congregation become dissatisfied with them and wish to remove them, they (the ministers) would feel themselves bound in moral feeling, although not in

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law, to retire from the office. They also state, that neither in point of fact, nor in point of law, have they any means of enforcing payment of their salary, so far as it arises out of voluntary contributions, or seat money, it being perfectly optional with the congregation to withhold those contributions or not; but they believe that the congregation have no power to expel them from the parsonage-house (where there is one) or from the pulpit; or to withhold from them payment of those small sums arising from such private endowments as have been before mentioned, which they are entitled to receive by virtue of their office. In two of the cases which have come before the court, one member of the congregation in each stated that his idea was, that they had not the power to remove their minister. It was also stated by the claimants, that it was generally understood amongst this class of ministers throughout the country, that they could not legally be removed from their office against their will; although, in addition to the moral obligation of retiring, as already stated, upon their flock becoming dissatisfied with them, the latter might compel them in most instances to resign, by withholding those contributions on which they mainly depended for remuneration. Some of the claimants have held their present appointments for a period considerably above twenty years; others for less time. In some cases their predecessors had removed voluntarily; in others they had removed in consequence of a disagreement with their congregation.

Upon these facts it was contended by the gentlemen in support of the claims, that the claimants had an interest arising out of freehold land by virtue of their office; that that office was an office for life, and consequently that interest was a life interest, which there-

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fore invested them with a right to be registered in respect of a freehold qualification. In support of this argument, the decision of the present Mr. Baron Bayley, when at the bar, and of Mr. Serjeant Heywood, who admitted votes under similar circumstances, when attending as assessors in the great Yorkshire election in 1807, was relied upon; as also the decision of another learned gentleman to the like effect at the last Berkshire election.

On the other hand, the gentlemen in support of the objection, rely on the decision of the committees of the House of Commons in the Gloucestershire and Bedfordshire cases, as reported in *Luder's Reports*, where votes of this description were decided, after elaborate argument, to be bad. They also contend, that as the appointment is not by deed, it is rendered by the statute of frauds insufficient to pass a freehold estate.

Now upon this latter ground of objection the court has no difficulty in deciding, that although to pass the *legal* estate in a freehold, it is necessary that the instrument should be under seal; yet here, the parties claiming only an equitable estate in virtue of their office, the instrument containing the appointment is sufficient to vest an equitable freehold in the claimant, provided that appointment be an appointment for life.

The question therefore is, is this an appointment for life? for in our judgment, the whole case turns upon that question. To decide that question, it will be necessary to consider,

First:—Is a general appointment to this office, *per se*, an appointment for life?

Secondly:—Is there any thing expressed or implied in the appointments in question, to show that it was

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intended, by the parties themselves, to be an appointment for life?

Thirdly;—Does the belief or understanding of the parties, as to its legal operation, alter the effect which it would otherwise have, in the absence of such belief?

Upon the first point it may be observed that there are certain offices, which, by law, are offices for life, as that of parish clerk, and a number of others with which the public are familiar. These being in themselves offices for life, a general appointment to one of them is *per se*, an appointment for life. But it is nowhere laid down, that the office of dissenting minister is an office for life. Nor can it be, from its very nature; because it is one constituted by, and dependent upon, the will of a voluntary association of persons who may dissolve their association at any moment, and, of course, the office must expire with it. But to prove the negative of this first proposition, it is only necessary to refer to the decision of Mr. Baron Bayley and Mr. Sergeant Heywood, on the occasion referred to by the gentlemen in support of the claims. There those learned persons rejected the votes of such of the dissenting ministers as declared that they might be removed at pleasure. Now, if a general appointment were *per se* an appointment for life, they would not be asked the question as to what their understanding on the subject was; but being generally appointed, and therefore appointed for life, they were entitled to vote without any further question on that point. And in the case of the King v. Jotham, *3d Term Reports*, 575, which was an application by the minister of an endowed meeting-house, who had been expelled by a majority of his congregation, for a *mandamus* to restore him, he having been ap-

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pointed generally, and believing that the appointment was for life, Mr. Justice Ashhurst said, "It was not enough for the complainant to state his *supposition* that he was elected for life; he ought to have shown the *grounds* of it." Now, if a general appointment was an appointment for life, there would be no necessity for his stating either the *grounds* of his supposition, or his *supposition* itself. It is clear, therefore, that a general appointment is not *per se* an appointment for life.

Then, secondly, is there anything expressed or implied in the appointments in question, to show that they were to be intended as appointments for life?

Certainly, nothing *expressed*. There is no allusion to the period of duration, although the terms as to the amount of remuneration are very distinctly specified; and it must be observed, that it is not a little extraordinary, where so much doubt has arisen from time to time as to the duration of these appointments, and where they have been again and again decided by a committee of the House of Commons not to be appointments for life, that, if it was the intention of the parties to constitute them appointments for life, they should not in one single instance, down to the present moment, have set the matter at rest by the insertion of those two short words, "for life". Does not the guarded omission of them, on the contrary, considering the natural and just anxiety these gentlemen evince to establish a legal claim to their offices for life, prove to demonstration that it was not the intention of their respective flocks to confer the office otherwise than during pleasure.

But let us see what may be *implied* from what appears on the face of the contract. The invitation is to this effect—"Come and serve us as our pastor, and we will pay you for such services 100*l*,

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a-year", or whatever the sum may be. The minister replies, "I will serve you on those terms." The minister tells us that that 100*l.* is to be made up mainly, if not altogether, of voluntary contributions, which may be withheld from him the moment they wish to get rid of him. Well, then, what does the contract amount to? Why, to this—"Come and serve us for 100*l.* a-year, which we will only continue to pay you during our pleasure"; and if that be so, can it be supposed that they meant to invite him to *serve* them *for life*, whilst they only meant to *pay him* during their *pleasure*. But it may be said, "There is the parsonage-house in some cases, and the profits from the endowments in others,—these do not depend upon voluntary contributions." Very true; but the minister can only claim a right to these by virtue of his office; the moment his appointment is at an end, so is his right to all the perquisites of his office. It will, therefore, come round to the old question, "For what period was he appointed?" and to ascertain that, you must take the whole contract together. Taking the whole contract together, it is one to pay him 100*l.* a-year for his services, so long as the congregation choose, and consequently it must be their intention that he should only serve them during pleasure.

Then it is admitted by the claimants that they would feel themselves under a moral obligation to withdraw, if their flocks should become dissatisfied with them. Now, where the intention of the parties is not expressed on the face of the contract, let us see whether such intention may not be supplied? Supposing the terms of the contract were to be specified at the time of making it; can it be believed for a moment that gentlemen filling the sacred calling of these claimants, would stipulate for the insertion of a condition, to en-

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force the performance of which would be a violation of a moral obligation? It being clear, then, that a mere general appointment to this office is not of itself an appointment for life, in the absence of all intention to that effect by the parties, and that there is nothing either expressed or implied in the appointments in question to show that it was so intended in point of fact, we come now to the third question, viz.,

3d. Does the belief or understanding of the parties as to the legal operation of such a contract, alter the effect which it would otherwise have in the absence of such an understanding?

It was only upon this point that the court had felt any difficulty in deciding the case; because when we find two learned persons, of whose great wisdom and learning it would be the highest presumption on our part to utter one word, admitting or rejecting the votes according as the parties express their belief or disbelief in their irremovability in point of law from their respective offices, it well behoves this humble tribunal to distrust the dim rays of its own feeble judgment when it finds itself unable to follow in such a track of light. The observation of Mr. Justice Ashhurst, however, in the case already quoted, that the mere supposition of a party as to his irremovability, is not sufficient, without stating the grounds on which he founds that supposition, may enable us to solve the difficulty. The decision of Mr. Baron Bayley was pronounced amidst the hurry of a contested election; it does not appear from the report that any other question was asked the voter than whether or not he understood his appointment to have been for life. The grounds of his supposition do not appear to have been stated; consequently the learned assessor may have inferred that the voter was speaking of an understanding in point of fact—an intention when

South Derbyshire, 1832. Dissenting ministers.

making the contract—in short, an understood mutual agreement, on the part of the contracting parties, that the appointment was given and accepted for life; and not merely the voter's speculative notion of its operation in point of law. Had he known that the voter's understanding on the subject only rested on his notion of its legal operation, it may fairly be inferred that the learned assessor, with all the facts and circumstances attending the appointment before him, which are now before us, would have decided directly the other way.

Looking then to that explanation of the Yorkshire decision; looking to the obvious actual intention of the parties themselves, whatever may be their construction of the law; but especially looking to the decisions of the committees of the House of Commons, the tribunal before which alone these claims can ultimately come for final judgment,—decisions pronounced in cases, one of which was as strong, if not stronger than the strongest of those before the court, and pronounced moreover after a most elaborate review, (by able counsel,) of all the cases on the subject,—we feel ourselves compelled to declare, that with the strongest desire to see these gentlemen in the full enjoyment of the franchise to which they are so well entitled in every other respect, we cannot bring our minds to doubt that, as between them and their congregation, (and the question necessarily involves that point,) they only hold appointments during pleasure; and consequently, as between them and the public, they are not entitled to have their names retained on the lists of voters, in respect of the interest they possess in virtue of their respective offices. One word before we dismiss this subject; it is known that the Courts of Revision in different parts of the country have decided this question in different ways. But let not that be

visited on the nature of such a tribunal, when it is found that one of the most learned judges on the bench, and one of the soundest election lawyers the country ever produced, are at issue with the House of Commons on the question, a quarter of a century before such a tribunal as the present was ever thought of. I shall conclude by again repeating our anxious hope that this question will be speedily carried before a committee, and in one way or another set at rest for ever;—for which purpose, the claimants should tender their votes at the poll, and then, if our judgment be erroneous, they will, upon petition, be allowed the benefit of them.

South Derbyshire, 1832. Dissenting ministers.

The Rev. Richard Ward claimed as the incumbent of the Free Donative chapel of Calton, elected and inducted on the 2d July, 1832, by the parishioners. It was objected that he had not read the 39 Articles.

Northern division of Staffordshire, 1832.

Mr. Lumley (R. B.) thought that as by the 13th Chas. 2. c. 4, the claimant had two months to read them, he could not consider him as disqualified on the 31st of July.—Name retained.

George Godfrey, parish-clerk and sexton of Hurley, stated that he received *5l.* a-year as parish-clerk, that he was allowed *1l. 1s.* per annum as sexton, and that he also derived certain fees on burials. He further stated, that he occupied one of three houses which were connected with the parish church, and which house had been held by his predecessor in the office he at present filled. He paid no rent for it. His salary as parish-clerk was defrayed out of the poor-rates.

Berks, 1832. Parish clerks.

Mr. Warren submitted that the office of parish-clerk was always considered as held for life, and he cited a

Berks, 1832. Parish clerks.

case which had been decided before the revising barrister in Middlesex, where the claim of a parish-clerk, who proved he derived 40s. and upwards a-year out of the church-yard as burial fees, was admitted.

The present claimant stated that his fees as sexton amounted to 3*l.* a-year. If no one died in the parish, of course his fees would amount to nothing. The vicar told him that he would not be turned out of his office as parish-clerk, though he would out of that of sexton.

Mr. Talbot (R. B.) was clearly of opinion that the sextonship in this instance was not a freehold office. The claimant had, however, shewn that his situation of parish-clerk was a freehold office. The house in which he lived did not belong to him *virtute officii*, as he did not enter on it immediately on the decease of his predecessor; but he derived 5*l.* a-year salary as parish-clerk, out of the poor-rates; and upon that ground, as the case was a doubtful one, he would retain the name.

Thomas Willatts, who claimed to vote as a parish-clerk, in right of his salary, derived from certain freehold lands attached to the church, was opposed by Mr. Vines.

The claimant stated that he was paid 5*l.* a-year by the churchwardens out of a fund derived from those lands, which had been set apart by a certain commission, executed in the reign of Queen Elizabeth, for defraying the expense of repairing the church, and paying the parish-clerk's salary.

A copy of the deed was put in in support of the claim, but Mr. Vines contended that a copy was no evidence, when the original could be produced.

Berks, 1832. Parish clerks.

On production of the original, it appeared that no such provision as that contained in the copy was to be found.—The name was accordingly expunged.

The claim of a parish-clerk was objected to, in order to ascertain what property he derived from land, which he received in right of his office. He said that he was paid from funds derived from the parish (of St. Stephen, Coleman-street) estates; but he added, that the vestry, though they had no power to dismiss him as long as he conducted himself well, had the power to increase or diminish his salary; but he did not think they had power to take it away altogether. He derived more than 40*s.* a-year from burial fees.

Mr. Palk (R. B.) was inclined to think the claim a good one.—Name retained.

Middlesex, 1832.

Mr. Roberts, the parish-clerk of St. Mary, Islington, claimed to be put upon the list of voters resident in that parish, in right of his office, which entitled him to burial fees, from the ground appropriated for the interment of deceased persons. Theclaimant stated that he had been appointed for life, and was licensed to his office.

Mr. Coventry (R.B.) inquired from the claimant, whether he occupied any house, or held any land, by virtue of his office as parish-clerk.

Mr. Roberts replied in the negative, but added, that he considered, by reason of the burial fees to which he was entitled, he had a freehold interest in the burial-ground.

Mr. Coventry (R. B.) said, that the freehold of the burial-ground was in the rector of the parish, and therefore he could not allow the claim. He was fortified in this decision by a case of a similar kind, decided by a

committee of the House of Commons, reported 2 Peckwell, 92 *.

Berks, 1833. Parish clerks.

James Maltby, parish-clerk of St. Thomas's, Oxford, appeared to support his claim to be retained on the list of electors for the parish of South Hinksey, Berks. He stated that he was in the actual receipt of 50*s.* per annum, arising from lands in the parish of South Hinksey; 20*s.* he received in right of his office as parish-clerk, and 30*s.* as schoolmaster of a certain school, in the parish of St. Thomas, Oxford. He had been appointed parish-clerk seventeen years, and schoolmaster fourteen years. By an inscription on a stone in front of the school-house, the payments were directed to be made to the clerk and schoolmaster, in the proportions stated by the claimant, and the parish-clerk was to be appointed schoolmaster, if sufficiently qualified.—Name retained.

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* Middlesex, 2 Peck. 92. Job Kentish, licensed clerk of Hendon, appointed by the parish generally; licence from the bishop confirming the appointment, "during our pleasure, and no longer." It was argued from hence, that the office was held at the pleasure of the bishop, and that there was no evidence of an appointment for life by the parish. It was answered that the licence was not necessary to render the appointment valid; and that a general appointment is, *primâ facie*, an appointment for life. R. v. Warren, Cowp. 371. R. v. Gaskin, 8 T. R. 299. 1 P. Wms. 29. A mandamus has been granted to restore a parish-clerk. At common law, a parish-clerk is in without deed. The vote was holden to be good. 2 Salk. 256. Middlesex, 2 Peck. 88.

William Ashfield, licensed parish-clerk. In this case it was agreed by the counsel on both sides, and entered on the minutes of the committee, that the office of parish-clerk is, *primâ facie*, an office for life, and confers a right of voting, unless some deficiency of value, or other circumstance, be proved, to invalidate it, and that it does not require assessment.—Ibid.

Middlesex, 1834. Parish clerks.

Mr. Spon, the parish-clerk of St. John's, Wapping, renewed his claim (which last year led to so much discussion) to be registered in respect to the qualification, as stated in his notice, of "licensed parish-clerk."

Mr. Coventry (R. B.) said he well remembered the point discussed last year, and inquired if the claimant had any new argument to urge.

Mr. Spon stated he must in the first place remind the court of the case upon which he had before relied, of Job Kentish, the parish-clerk of Hendon, whose vote was held good by a committee of the House of Commons, on the celebrated Middlesex election petition. The decision was reported in 2d Peckwell, 92. The claimant added, that last year the revising barrister had remarked that in the case cited, for anything that appeared in the report, there might have been land or tenements attached or appurtenant to the office. In this respect he was prepared with information derived from the present parish-clerk of Hendon, that no such appurtenances belonged to that office, nor was such the case during the period it was filled by Job Kentish. Mr. Spon then handed in a letter stating that fact, and in addition stated that a similar decision was also reported in 2d Peckwell, in the case of a parish-clerk of the name of William Ashfield. In both these cases, on proof being given that the parties had been duly appointed to the office, and had subsequently been licensed thereto by the diocesan, the committee of the House of Commons decided in favour of the validity of the votes. He (Mr. Spon) was prepared to give the court similar proof, and upon these authorities claimed a decision in his favour.

Mr. Coventry (R. B.) inquired whether the present

Middlesex, 1834. Parish clerks.

claimant was in the enjoyment of any lands or tenements by virtue of his office of parish-clerk?

Mr. Spon admitted that he had none. His claim had, however, been admitted on the first registration by Mr. Palk, the then revising barrister, and he had actually voted in respect of the same qualification. He must also remark, that by virtue of his office he was entitled to, and was in the receipt of, fees considerably exceeding 40*s*. a-year.

Mr. Coventry (R. B.), who upon this point called for the assistance of his learned colleague, then said, that although he regretted he could not bring his mind to the view which it appeared had been entertained by his learned predecessor, Mr. Palk, yet it appeared to him that the terms of the 18th section of the Reform Act made it imperative upon him to disallow the claim. That section provided that no person should be entitled to vote in the election of knights of the shire, except in respect of "lands or tenements," whereof such person should be seised, and in *boná fide* possession. Now it appeared to him that the office of the present claimant was not a tenement within the meaning of the Act of Parliament. The same words, "lands or tenements," were also made use of in the old statute, the 8th of Henry 6.—*viz.*, "that the members to be chosen for every county should be chosen by the people dwelling and resident in such county, whereof every one of them shall have free land or tenement to the value of 40*s*. by the year at the least, over and above all charges." Now, the connexion between the words "land or tenement" showed that the last word "tenement" had reference to a subject matter of the same quality as "land," and this was still further manifested by the provisions subsequently made in the same clause, that it must be free land or tene-

ments of a certain value, over and above all charges. Now, the office of parish-clerk alone could not be the subject of any charge whatever, and this circumstance fortified him in the opinion, that it was not a qualification within the intent and meaning of either of these statutes. He should, on these grounds, allow the objection, and leave it to the claimant, if he was dissatisfied with the decision, to raise the question before a committee of the House of Commons, by the tender of his vote at the poll on the next election.

Middlesex, 1834. Parish clerks.

Mr. Keen (R. B.) said it was true that there had been conflicting decisions upon the point; but he was notwithstanding, inclined to think, that to bring the claimant within the purview of the Reform Act, there must be land or tenements annexed and appurtenant to his office. The office of the claimant was clearly freehold, but still not a tenement within the meaning of the statute upon which he (Mr. Keen) was called upon to act.

St. Mary Lothbury, 1835.

The parish-clerk claimed for a freehold office; he proved that he received two sums of 2*l.* 10*s.* each, one of which was paid by the Drapers' Company, for houses in Fleet-street, and the other was granted by Queen Elizabeth, payable out of real estate.—Claim retained.

South Lancashire, 1833.

Thomas Clarke, of Back King-street, claimed in respect of his office as parish clerk of St. Mary's Church. He was appointed by the churchwardens, under the authority of the Act of Parliament for building the church, and paid by the pew rents, of which he was the collector.

Mr. Greenwood (R. B.) said that no person could vote in respect of a freehold office unless the appointment was for life, and he received 40*s.* a-year from lands.

Berks, 1832. Sextons.

In this case the appointment was only during pleasure, and therefore the claim was disallowed.

Thomas Chambers claimed in right of his office of sexton, and on account of an annual stipend of 40*s.*, which had been bequeathed by an ancestor of Mr. Fyshe Palmer, for the purpose of having the church bell of Wokingham tolled every morning at 4 o'clock, and every night at 8 o'clock, and which was payable to the claimant out of the lands of that gentleman. The claim was opposed by Mr. Vines.

It appeared, from the statement of the claimant and of Mr. Roberts, who supported the vote, that though this sum of 40*s*. was payable, for the purpose stated, out of the lands of Mr. Palmer, it was not possible to say from what portion of those lands, whether in Berkshire, or in some other county, it was levied; and the overseer of Wokingham stated that the sexton was appointed to his situation by the vestry, and that he believed they had the power to remove him for neglect of duty.

Mr. Talbot (R. B.) said that it was plain that the office of sexton was not a freehold one, and that as the 40*s*. payable to the claimant for ringing the bell might, in his failing to comply with that condition, be taken from him and given to some one else, it could not be considered a freehold interest vested in him, and his name must therefore be expunged *.

Berks, 1832. Schoolmasters.

James Jelfs claimed as Master of the Free Grammar School at Hungerford; he stated, that his appointment

* Middlesex, 91. John Meyrick, sexton, acted as such, elected generally, but no proof of an appointment for life; general appointment not sufficient.—Vote bad.

was for life, that in right of it he held a freehold house and garden to the value of 40*s*. and upwards, and that he was not removable unless by due course of law, and not at the arbitrary will of the trustee.—Name retained*.

Berks, 1832. Schoolmasters.

An objection had been made to the name of Charles H. Chapman being retained in the list of electors for the parish of Remenham.

The claimant stated that he was master of the Bluecoat School in Henley, and had been appointed to that office by the trustees of the Henley United Charity Schools, in 1831. His salary was payable out of funds vested in the trustees, part of which consisted of a fee-farm rent of 100*l*. per annum, arising from the lands of Park Place, in the parish of Remenham. He considered that he was appointed for life, or so long as he conducted himself properly. The master of the upper school voted at the election for Oxfordshire in 1826.

The Report of the Charity Commissioners, in refer-

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* Bedfordshire, 2 Luders 428. The schoolmaster and children, from time to time, to be put in and placed there by the approbation and good liking of I. N. and his heirs.—Vote bad.

Ibid. 430. Gardiner and Mason, schoolmasters appointed by the Lord of the Manor of Stratton, who thought he had no power to remove.—Vote good.

Ibid. 431. Philip Turner, appointed schoolmaster under a deed, whereby an estate was settled on the rector for the time being, on condition that he should "apply, out of the rents, 5*l*. per annum to one or more schoolmasters or mistresses." The rector did not believe that he had the power of removal, and never knew an instance of it.—Vote good.

Ibid. William Gale, appointed schoolmaster by the vicar, received 40*s*. per annum, issuing out of lands charged with the payment of it, "for the benefit of the school." By the words of the foundation deed, the vicar might have applied the rent-charge to repairs, or for any other purposes beneficial to the school.—Vote good. Vide also R. v Owersley Le Moor, 15 East, 356.

Berks, 1832. Schoolmasters.

ence to this charity, and the 18th Geo. 3, c. 41, intituled "An Act for uniting the Free Grammar School of James, King of England, within the town of Henley-upon-Thames, in the county of Oxford, with the Charity School founded in the same town by Elizabeth Periam: and for the better regulation and management of the said endowments," was then put in.

Mr. Warren, in support of the objection, referring to the report of the charity commissioners, in which it was stated that the trustees of this charity had the power to appoint and remove the masters, contended that this was not a freehold office. In two cases of a similar description, at Reading, the barrister had decided against the votes.

Mr. Harris said, that in those cases an agreement was put in and proved, showing that the trustees had the power to remove at pleasure; but such was not the case in the present instance. Here the trustees could remove; but they could only remove upon inquiry: and if they found that the master had committed any crime, or perhaps had done something in contravention of their bye-laws, they might remove him from his situation. Mr. Serjeant Russell, before whom, as assessor, in 1826, at the Oxfordshire election, the claim of the other master was argued, had decided in his favour.

Mr. Talbot (R. B.) said there could be no doubt that, as the definition of the law was laid down in *Comyn's Digest*, a freehold office was one where a party either held it for life, or *quamdiu se bene gesserit*. Now the rule which he (Mr. Talbot) had laid down in construing the expression *quamdiu se bene gesserit* was, that it meant that so long as a party was guiltless of an offence against the common or statute law, he could retain his situation. He could not construe the expression to mean so long

Berks, 1832. Schoolmasters.

as it pleased the trustees to retain an officer, or to dismiss him as they thought fit, without any application to the Court of Chancery. Such a power being vested in the discretion of trustees, deprived an office, in his opinion, of the freehold character. He might be wrong, but such was his interpretation of the expression *quamdiu se bene gesserit*.—The name must therefore be expunged.

John Roper claimed in right of his office of master of the Free Blue-coat School, Reading. He stated that he was appointed by the mayor and corporation of Reading, and that his salary proceeded partly from land in the parish of Streatly, Berks. He had no written appointment.

The chamberlain of the corporation of Reading, who appeared to support the claimant, stated that the former schoolmaster resigned his situation, though there were circumstances at the time which might have led to his dismissal.

Mr. Talbot (R. B.) said, it did not appear that the corporation had the power to dismiss the claimant, and that the office he filled entitled him to the franchise *.—Name retained.

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* On reference to the first Report of the Commissioners on the Education of the Poor, page 48, it will be seen that Richard Aldworth, Esq., by his will, dated the 21st December, 1646, gave to the mayor, aldermen, and burgesses of Reading 4000*l.*, to purchase lands of the clear yearly value of 215*l.* 6*s.* 4*d.*, or an annuity issuing out of land to that amount, and also a house, in the parish of St. Mary, Reading, in trust, to pay for the education and bringing up of twenty poor male children, and also to pay to the schoolmaster (to be appointed by the mayor, aldermen, and burgesses) 30*l.* a-year, for teaching the said children. In 1657 and 1660, part of the above named donation was laid out in the purchase of two farms, called Lancelevy and Marshalls, at Sherfield on Loddon, in Hampshire; several other bequests were made at different times in support of the original foundation, or providing

Northern Division of Staffordshire, 1832.

Thomas Martin claimed as master of the Free Grammar School, at Eccleshall. He stated that he was appointed by the parishioners in vestry, in 1825, by a resolution entered in the parish books, and had acted as master of the school ever since. There was a freehold school-house and eight perches of land; the land was used as a play-ground—the value was more than 40*s*. per annum. He took boarders into his house for instruction. Sometimes he received 100*l*. from the school, by tuition. He made no charge for the use of the school-room. The use and occupation of that room was worth 5*l*. a-year to him.

Mr. Lumley (R. B.) said, that there was no beneficial interest, that was not naturally incident to the duties of a schoolmaster, and there was no endowment.—Name expunged.

Berks, 1832. Redeemed land-tax.

W. D. Molony, who claimed a right to vote on account of a certain amount of redeemed land-tax purchased by him, was opposed by Mr. Weedon.

It appeared, from the statement of the claimant, that in 1815 he purchased the redeemed land-tax upon an estate then bought by Lord Braybrooke, that he received upwards of 2*l*. a-year from it, and that he voted in right of it at the last election, when his vote, after a long argument, was allowed.

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for an increased number of scholars; and in 1819, the clear yearly income of the school, arising from the rents of the different estates, and from dividends on funded property, amounted to 1073*l*. 2*s*. 11*d*. The commissioners stated that the directions of the testators, in respect of apprenticing the children, and supplying a certain dress for some of the boys, had not been complied with. And it did not appear, in the above case, whether the salary paid to the schoolmaster was derived immediately from the rents of the lands charged with its payment, or whether it was paid from the general annual income of the school, blended with the dividends on the funded property.

Berks, 1832. Redeemed land-tax.

On cross examination by Mr. Weedon, he stated that he had not now with him the assignment of this property which he produced at the last election; he had given it to the solicitor, Mr. Roberts, who was now supporting his claim.

Mr. Weedon said, that if this document was produced, the voter's name would be at once struck off the list.

Mr. Warren contended, that as the 42d Geo. 3, had declared purchased land-tax real property, and as this had been purchased since 1802, it was a freehold interest, conferring upon its possessor the right to the franchise.

Mr. Weedon said it would appear from the book of the commissioners of land-tax, produced by Mr. Roberts, who was their clerk at the last election, that this property, the assignment of which had been purchased by the claimant, was originally purchased in 1797.

Mr. Talbot (R. B.), after looking over the deed of assignment said, that it was the assignment of a personalty, and he therefore called on Mr. Warren, who supported the vote, to produce the original conveyance from the land-tax commissioners. If it could be shown that this property had been purchased subsequent to the 24th of June, 1802, then the question would arise, whether the Act of Parliament did not mend this conveyance.

Mr. Roberts, on being called, and examined by Mr. Talbot, stated that he, as the clerk of the commissioners of land-tax, had in his possession a book of their contracts, and that he thought this property was purchased in 1799.—The name was finally expunged.

Westminster, 1832. Redeemed land-tax.

Mr. Samuel Clark, and Mr. Robert Hendrie, claimed to be inserted on the list of voters for the parish of St.

Westminster, 1833. Redeemed land-tax.

James, Westminster, and grounded their qualifications upon the redemption of the land-tax upon houses their own respective property. The claims were objected to by the overseers for want of a sufficient qualification.

Mr. Coventry (R. B.) held the objection to be fatal to the claims. The learned gentleman said, that upon taking the 123d and 154th sections of the Land-tax Redemption Act into consideration, he was of opinion that the claimants could have no freehold interest in the land-tax redeemed upon their own property. When a party entitled to the inheritance redeemed the land-tax, the presumption was that he did so for the benefit of the estate, and it merged into the same accordingly. When copyholders, leaseholders, or tenants for life, redeemed the land-tax, the party had a charge upon the land for the 3 per cent., the price or consideration money, which was, in the nature of a mortgage, descendible to executors as personal estate; and it was only where a person purchased the land-tax upon the property of another party that it became a fee-farm rent, which would be an interest descendible to his heirs, and for which he might vote under the 51st Geo. 3, c. 99.

Both claims were disallowed.

Middlesex, 1835.

Messrs. Nicholson claimed in right of certain redeemed land-tax on copyhold property in their possession.

Mr. Martin in giving his decision said, the case depended on the construction of sections 123, & 154, of 42 George 3, c. 116, and on the peculiar nature of copyhold property.

I take it to be clear that the land-tax is charged upon the fee simple of the land, and not upon the customary estate of the copyholder. A contrary doctrine would lead to results in the highest degree incon-

Middlesex, 1835. Redeemed land-tax.

venient and absurd. Were the land-tax charged on the estate of the copyholder, then in case the manor became vested in a tenant who had redeemed his land-tax, the estate in the copyhold, on which alone the land-tax was redeemed, would be absolutely merged in the fee, and the same land would again become subject to it in the hands of the same person. Even if this were not the case, the estate of a copyholder is extremely precarious. He is liable to forfeiture for waste. His estate is subject, in many manors, to a peculiar line of descent. It sometimes escheats to the lord, on the death of the issue female of a tenant in fee, who himself died without issue male, though his daughter may have had children. It would be extremely hard, in cases like these, if the lord were to take advantage of his tenant's redemption of the land-tax, and to hold the land discharged. I am of opinion, therefore, that the estates in the land-tax, and in the copyhold, are not commensurate, and that the one does not merge in the other, but is at most suspended during the union of the two in the same person. The question now is, what is the nature of the interest of the copyholder in the redeemed land-tax? If we recur to section 123, we find it there provided, that every person having an estate other than an estate of inheritance in manors, land, &c., redeeming the land-tax, shall have a charge on the inheritance, which shall be personal estate. This clause, it is manifest, relates to estates in land of socage tenure, where the owner of an estate for life or for years redeems the land-tax with his own money. Here, as he cannot acquire the fee in the land, the Act provides means by which his personal representative may obtain repayment of what he advanced, and this cannot be deferred for an indefinite period, because an estate of inherit-

Middlesex, 1835. Redeemed land-tax.

ance in remainder must fall into possession within the reasonable period required by law. Thus no inconvenience can ensue from giving the redeemed land-tax in this case a personal character. Where the fee-simple or fee-tail is in the purchaser, then the estates being, in fact, commensurate, or capable of being made so, the rent-charge merges. But in the case of a copyholder, (who is certainly not contemplated by this section,) if my former reasons be correct, the redeemed land-tax does not merge. The question therefore is now only whether it is real or personal estate, a fee-farm rent on a charge bearing interest. Now the estate of the copyholder may endure for ever; and as he has no means of acquiring the fee, unless the lord consent to enfranchise the copyhold, it would be highly inconvenient, if, after two or three generations, the copyhold should escheat, and the writ of possession be terminated, the copyhold should become charged in the hands of the lord with a sum of money for the personal representative of the person who redeemed the land-tax. In order to avoid this inconvenience, I think the copyholder must be held to be a purchaser of the land-tax within section 154, in which case he will have a fee-farm, which will be suspended during the unity of possession, but, in case of escheat, will revive for the benefit of his heirs generally. And this conclusion is, in fact, sanctioned by the words of the statute, which provides, in section 10, that no person having a mere estate at will, which is all that a copyholder is considered at common law as having, shall redeem the land-tax. I conclude, therefore, that the land-tax redeemed on a copyhold is real estate, and in this very doubtful case shall not deprive these gentlemen of their franchise; their names, therefore, must be retained.

Berks, 1832. Trustees.

Edward Phillips claimed in right of a property for which he was trustee, and of the rents and profits of which property he had the management and disposal, as such trustee.

Mr. Vines contended, that, under the 23d section, the claimant was entitled to the franchise; for that if it was not so, that section meant nothing, and was perfectly unintelligible.

Mr. Corbett said, he had already decided, and he believed he was not singular in such an interpretation of the Act, construing it as it stood, that no trustee would be entitled under it to the franchise, unless he was in receipt of the rents and profits "for his own use." The 23d section enacted "that no person shall be allowed to have any vote in the election of a knight or knights of the shire, for or by reason of any trust, estate, or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate." So far a trustee might be considered as entitled to vote, even though he was not beneficially interested in the trust in question. But then came section 26, which provided that no person should be registered "in any year in respect of his estate or interest in any lands or tenements as a freeholder, copyholder, customary tenant, or tenant in ancient demesne, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof, for his own use."

The vote was accordingly rejected*.

* On the question, whether trustees have a right to vote under the 2d W. 4, c. 45, § 23, Mr. Charles Clark gave the following opinion, previous to the registration of 1832. "This clause of the Reform Act only re-enacts a part of sections 7 and 8 W. 3, c. 25. The test of the right of voting is made by this clause to consist of the actual possession of the rents and profits of the

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The question, whether trustees were entitled to have their names retained on the register, having

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estate. The result of the various cases upon the subject of trusts seems to be, that the trustees have a legal estate for the benefit of the *cestui que* trust (1 and 2 P. Williams); that they have such legal estate wherever they have a duty to perform that requires such an estate to be vested in them for its performance; and that that estate continues until that duty is fully discharged. Lands were devised to trustees and their heirs to pay several legacies and annuities, and then to pay the surplus rents into the proper hands of a married woman, and after her decease, that the trustees should stand seised to the use of the heirs of her body. Held (1 Equity ca. Abr. 383) that this was a use executed in the trustees during the life of a married woman. This decree was affirmed by the House of Lords, after consulting the judges (3 Bro. Parl. Cas. 113). A distinction has been taken between a devise to a person in trust to pay over the rents and profits to another, and a devise to a person in trust to allow another to receive the rents and profits. In the former case it was held, that the legal estate was in the first devisee, in order that he might be able to perform the trust; for when he is directed to pay over the rents and profits, he must necessarily receive them; but in the latter case, it has been adjudged that the legal estate is vested by the statute in the person who is to receive the rents (Cruise, 1st vol. 414). The exception to this distinction, is in the case of a married woman. Where an estate was devised to trustees and their heirs, upon trust to permit the testator's niece, who was married, to receive the rents for her own separate use, Lord Kenyon said (7 T. R. 652), that to effectuate the object of the testator, which was to secure to a *feme covert* a separate allowance, it was essentially necessary that the trustees should take the estate with the use executed, for, otherwise, the husband would be entitled to receive the profits, and so defeat the object of the devisor. The Court certified, that the legal estate, by way of use, executed in fee simple, vested in the trustees. The same rule has been applied to cases where estates were devised to trustees, to sell or mortgage them, in order to raise money for the payment of debts, and subject thereto, in trust for a third person. Wherever, therefore, an estate is devised to trustees with a requisition to do any act to which the seisin and possession of the legal estate is necessary, although they be permitted to direct the rents and profits to be received by another person, still that person will only be entitled to a trust estate (Fearne's Opin. 422). The presumption, therefore, seems to be, that where trustees have an *active duty* to perform, the legal estate and possession of the rents and profits must be in them, and so it must where the

been raised during the second registration in Middlesex,

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will of the testator could not otherwise be effected. In all such cases they would be entitled to vote, if duly registered according to the 26th section of the Reform Act.

As to the question of constructive trusteeship, where a vendee of an estate is let into possession before a conveyance is executed, it has been held, that if the contract was of such a nature, that a court of equity would compel a *specific* performance, the vendor must be considered as trustee for the vendee, who then became *cestui que* trust, and consequently was entitled to vote (Shepherd 13, Finnelly 59); where, however, the vendor was in possession, and the delay in executing the conveyance arose from the negligence of the vendee, the vendor was allowed to vote (2 Peck. 107). A mere authority to receive the rent, unconnected with interest in land, would give no right; as, where a purchaser at the time of sale executed a bond to permit the vendor to receive the rents and profits for life, the vendor's vote was rejected (Gloucester, 183, 4). A purchaser merely let into possession of the estate, but without having a right to take the rents and profits, would not be entitled to vote. From all these instances, the rule to be deduced appears to be, that the right to receive the rents and profits must be accompanied by a co-existent interest in the land, in order to give the right to vote; but as the circumstances which are to show the existence of that right and interest are in the discretion of the committee that may happen to sit on any election, it may be impossible to define all the instances in which such right may be held, to be completely made out. The language of the 23d section is more favourable to mortgagors and *cestui que* trusts, than to mortgagees or trustees; for the latter are called on to make out their title by proof of actual receipt of the rents and profits, while the title of the former is presumed to be good until such opposing proof is given.

I am aware that, at elections which took place before the passing of the Reform Act, assessors were frequently in the habit of rejecting the votes of trustees, on the ground that such persons had not a receipt, beneficial to themselves, of the rents and profits of the trust estate. Without discussing the question, whether, under the law as it then stood, these decisions could be justified, I must state most distinctly, that I think they could not be supported if given on claims made under the Reform Act. The great object of the legislature, in that Act, was to secure to all property the benefits of representation. Among the classes of men declared to be entitled to vote, if duly registered, are trustees who are in the actual receipt of the rents and profits. I do not think that the 26th section was meant to limit the 23d, nor that

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Mr. Coventry (R. B.) said, that the question he was now about to discuss, was one of considerable importance, not only to a large class of voters in this district, but also to the country at large, for full one half of the property of the kingdom was vested in trustees; and it was therefore matter of general interest to inquire, whether they were entirely disfranchised, or were entitled to vote under any circumstances. The 23d sec-

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it has such an effect. All the persons mentioned in the 26th section are persons seised in their own right, and there are no words in that section which describe a trustee. Yet it is supposed by some gentlemen, after the example of the assessors above mentioned, that the phrase "own use" is to be introduced from the 23d into the 26th section. It seems to me that they have no right to introduce this new term into the qualification; to do so is to render the Act, with regard to trustees, a dead letter. A trustee receiving the rents of a trust estate beneficially for his own use, is a contradiction in terms. The case of a trustee, who, being a creditor on the estate of the *cestui que* trust, becomes the assignee of that estate on the bankruptcy of the *cestui que* trust, has been cited, to show that it is possible for a trustee to receive the rents beneficially for his own use, since he would take the rents for the benefit of himself and the other creditors. This is, however, altogether to mistake the situation of the parties, and to pervert the meaning of the words employed. He is invested with two perfectly distinct characters; his rights in one are exactly opposed to his duties in the other, fully as much as those of individual creditor and of assignee; nor does the circumstance, that these two characters are united in the same individual, alter the nature of the case. To put the above construction on the Act amounts to saying that the legislature affected to give trustees a right, but imposed on them a condition which made the enjoyment of that right impossible. This cannot be presumed, and if the words of the one section could be incorporated into the other, I should still be of opinion that by "own use" was meant, in legal construction, that "own use" which a person possessed of the legal estate is, by the law, presumed to have in the profits of that estate. As, against all the world but the *cestui que* trust, he does receive the rents and profits to his own use; and by allowing him, under the restrictions noticed in the cases above cited, to vote, the property he possesses is represented; while, by permitting him alone to vote, the manufacture of votes, which the Act desired to prohibit, is effectually prevented.

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tion of the Reform Act declared, that no person should be allowed to vote for members for a county by reason of any trust, estate, or mortgage, unless such trustee or mortgagee should be in actual possession or receipt of the rents and profits of the said estates, but that the mortgagor, or *cestui que* trust in possession, should and might vote for such estate, notwithstanding such mortgage or trust. This section, when taken alone, was sufficiently clear; but when placed in connection with another section in the same page of the Act it was that any difficulty arose. The section to which he now alluded was the 26th section, which declared, that "notwithstanding any thing therein before contained, no person should be entitled to vote in the election of any knight or knights of the shire to serve in any future Parliament, unless he shall have been registered in the manner provided by the Act; and that no person should be so registered in any year in respect of his estate or interest in any lands or tenements as a freeholder, copyholder, customary tenant, or tenant in ancient demesne, unless he shall have been in the actual possession thereof, or in receipt of the rents and profits thereof, *for his own use*, for six calendar months, at least, next previous to the last day of July in such year; and that no person shall be so registered, as leaseholder or occupier, unless he shall have been in actual possession thereof, or in receipt of the rents and profits, *for his own use*, for twelve calendar months next previous to the last day of July in such year." Now it was that the difficulty arose on the question, how a trustee could be said to be in possession *to his own use*. If the words were intended to import that he should be in possession for his own absolute use and benefit, *as owner*, then no trustee, or even mortgagee, could be registered; but, according

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to his (Mr. Coventry's) construction, these words were to be taken negatively, and to mean, "not to the use of any other person unconnected with him in legal privity;" in short, not to any sinister or concealed use which did not appear on the register. A trustee in possession was, at law, the owner of the property—was assessed to the land-tax, and liable for all rates, repairs, rents, and other outgoings—he represented his *cestui que* trust, and must account to him, not only for what he had received, but also for what he might receive except for his own wilful neglect and default. It could not be said that a trustee in possession received the rents to the use of any other person than the law acknowledges; and the receipt therefore, was to a lawful use, and to his *own* in regard to his situation and trust. The words *to his own use* had been first introduced to prevent the fraudulent multiplication of votes by the conveyance of property, and it was to a fraudulent possession of that sort (not really and *boná fide* to the use of the visible occupant) that these words had all along been directed*. The 23d

* In the case of Mr. William John Wilkinson, who claimed as a trustee to the estate of James Wilkinson, Esq., the court, after referring to § 23, and stating that it was copied from the 7 and 8 W. 3, c. 25, said it was difficult to reconcile that clause with the 26th, which declared, "that no person should be registered in respect of any estate, &c., unless he had been in the actual possession thereof, or in receipt of the rents and profits thereof *to his own use* for six calendar months." The claimant had not been in the actual possession, nor had he received the rents and profits to *his own use*; but it appeared that the object of the provision in the 26th clause, was merely to fix the time during which the claimant should have possessed the estate, and not to introduce any fresh limitation with respect to the beneficial nature of the possession. From the conclusion of the 23d clause, it was obviously the intention of the legislature to give the vote in every case to the trustee, except where the party beneficially interested fulfilled the condition of being "*cestui que*

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section of the present Act was copied *verbatim* from the 7th section of the 7th and 8th William 3, chap. 35, which went to invalidate conveyances made to multiply votes for electioneering purposes; and in the last cited statute the words *for his own use* do not occur, but are first found in the 18th Geo. 3, chap. 18, which omits the clause relating to trustees to be found in the statute 7th and 8th William 3. The present Reform Act is the only statute in which the clause relating to trustees, and the words "for his own use," are found united, except in the Irish Act, where they are in immediate connection, which manifested the contemplation of the legislature to be, that trustees in possession must, for election purposes, be considered as being seised to their own use; and in the sense in which the words were found to be used throughout the statutes, trustees certainly are, in the seising to their own use, considering the *cestui que* trust (with whom they stand lawfully connected) as part of the unity composing the entire ownership. The dominion of the property resides in the trustee and his *cestui que* trust together, and the freeholder composed of these two parties may fairly say that he is seised to his own use, the Act giving the right of voting to the legal or equitable tenant accordingly as they were in possession. Indeed, if these words were to be taken as importing absolute and entire ownership, the *cestui que* trust could no more say he was seised to his own use than could the trustee. The consequence of such a construction would be, that the 23d clause of the Reform Act would be entirely stultified. On the same construc-

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trust in possession," either by actual possession, or occupation of the land, or by direct perception of the rents and profits.—Manning's Notes of Revision, 163.

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tion also, would a mortgagee in possession be deprived of his vote; for a mortgagee in possession is not more seised to his own use than a trustee in possession; both are accounting parties, and courts of equity have all along held the mortgagor as owner, and entitled to redeem at any time. The same might also be said of a vendor; for immediately upon the execution of the contract, the vendor becomes the trustee of the vendee, and is bound to account; and yet, being trustee in possession, he falls within the 23d section of the Reform Act, unless the 26th section disfranchises him, as not being in possession as complete owner. There are two classes of trustees, active and passive: of the latter class were trustees of attendant terms, trustees to preserve contingent remainders and all dormant trustees; while active trustees were trustees for infants, for married women, assignees of bankrupt estates, and others of a class which were usually in possession, or entitled to the receipt of the rents and profits. To such active trustees the 23d section gave the right of voting at county elections; and it provided also, that if the trustee or mortgagee should not be in possession, then the *cestui que* trust should and might vote, notwithstanding the mortgage or trust. If this construction should not be allowed, the property would be altogether unrepresented; for, on the other construction, the *cestui que* trust may not vote, as not being in possession, nor the trustee, as not being complete owner. He (Mr. Coventry) could not accede to such a sweeping disfranchisement as the latter construction would create, particularly in carrying into effect an Act which purported to effect the very reverse. It was obvious, also, that the object of the clause which originated the present difficulty, *viz.* the 26th, was to limit the time during which the party

registered should be in possession, and why, then, should it be perverted to a purpose altogether foreign to the object of the Act? As to the number of persons who would be let in by the construction he put upon the two clauses in question, he could only say it involved a point of policy with which it was not his province to deal. For all these reasons, he was of opinion that trustees in possession, or in receipt of the rents and profits, were entitled to be registered; but at the same time he was not prepared to say that trustees of chapels could be held to be in possession, when the ministers received all the pew rents and emoluments. That, however, was a question not immediately before the court, and his reasons for the general principle he had already detailed.

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Mr. Sandys (R. B.) thought the point was one of very great difficulty, and that difficulty entirely arose from the 26th section of the Act, for nothing could be more clear and distinct than the 23d section. He also entertained some doubts as to how it was possible for a trustee to be in the receipt of rents and profits to his own use. Though the point was one of great difficulty, he thought it would be too much, under this Act, to exclude trustees in possession from its provisions.

Marylebone, 1832. Trustees.

A claim had been served upon the overseers of this parish on behalf of the trustees of the National Scotch Church in Regent-square, who grounded their qualification upon their interest as trustees in that building. An objection was taken by the parish authorities to the claim, in order that the opinion of the court might be taken upon the question.

The solicitor to the trustees attended to support the claim, and produced the deed under which they were

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appointed. The deed of appointment was dated the 11th of November, 1825, and conveyed to the trustees and their heirs the ground upon which the church had since been erected, upon trust, to permit a church, outbuildings, vestry-room, burial-vaults, &c., to be thereon erected, in such manner as a committee of the proposed congregation (many of whom were parties to the deed) should direct and appoint. The deed then contained a number of directions; amongst others, that the church should be appropriated to religious worship according to the forms of the church of Scotland, and that the Rev. E. Irving should be permitted to act as minister, subject, however, to removal upon cause assigned. There were also express provisions that the vestry-room should be used by the deacons appointed by the congregation, and that the members of the session should be entitled to the use of the burial-ground.

Mr. Sandys (R.B.) inquired how the funds were raised for the erection of the building.

The solicitor replied, by public subscription, which proving insufficient, the church had been completed by a mortgage of the building by the trustees, under a power reserved to them for that purpose in the trust deed.

In answer to questions put by the court, it also appeared that the deacons were appointed by the congregation, and that those officers collected the pew-rents under the trustees, and the receipts were paid into the hands of the banker—that though the trustees had power to shut up the church, yet they could not exclude a member of the congregation.

Mr. Sandys (R. B.) said that it appeared to him that though the legal estate was in the trustees, yet they were not in actual possession. The actual possession was in the *cestui que* trust—namely, the congregation, who, un-

der the provisions of the deed, were entitled to certain benefits and privileges, of which they could not be deprived by the trustees.

Marylebone, 1832. Trustees.

The solicitor for the claimants urged strongly the fact of the removal of Mr. Irving by the trustees, without the intervention of the congregation, as a proof of their actual possession.

Mr. Sandys (R. B.) said, that on the other hand, the trustees had no power to place in the church a minister of a persuasion different to that of the congregation. It was clear that the latter had rights of which the trustees could not dispossess them, and that they were the parties virtually in possession. On these grounds the claims must be disallowed.

Finsbury, 1833. Trustees.

Mr. Patteson applied on behalf of certain trustees of a chapel and burial-ground, situate in the parish of St. Giles-in-the-Fields, to have their names inserted in the list of voters for that parish. In support of the claim, the trust deed was produced, under which the claimants received the pew-rents and fees payable from the congregation to be applied to the maintenance of the chapel, and the payment of a minister.

Mr. Sandys (R. B.) held that the claimants were not in such a situation as to be entitled to be put upon the list of voters. The 23d section of the Reform Act provided that no trustee or mortgagee should be entitled to vote by reason of the trust or mortgage, unless he should be in the possession of the rents and profits to his or their own use and benefit. Several antecedent statutes bore the same construction, and the claims, on these grounds, must be disallowed.

Northern Division of Staffordshire.

Mr. Morgan resided in Stafford, and claimed as trustee of the late H. Nickisson, of Stone, for a bene-

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ficial interest to the amount of 40*s*. per annum, arising out of freehold houses and land in High Street, Stone. The property was devised to trustees, with power to sell at discretion the rents and profits, to be applied for the payment of debts, and the residue to Mrs. Nickisson.

Mr. Lumley (R. B.) considered that the claimant had no beneficial interest, and expunged his name.

Middlesex, 1834.

The overseers of Allhallows, Thames Street, objected to the retention upon the list of the names of three gentlemen, whose qualifications were severally stated to be " as trustees of certain freehold property, in receipt of the rents and profits."

Mr. Coventry (R. B.) said that it had already been decided that, under the 23d section, trustees in possession were entitled to the franchise in respect of such property, otherwise as the *cestui que* trust could have no vote, the property vested in active, and not merely passive trustees, would be unrepresented. He presumed that the property in question was of value sufficient to entitle all the parties claiming in respect of it to the franchise.

In reply it was stated, that it was extensive, and its value was very nearly 1,000*l*. per annum. The objection had been taken because the parties were not in receipt of the rents and profits to their own use.

Mr. Coventry (R. B.) said that could scarcely ever be the case. The objection must be disallowed.

North Warwickshire, 1835.

William Clive, of Legge Street, claimed, as one of the trustees of Belmont chapel. It was proved that the chapel was freehold, and that there were eighteen surviving trustees who were in receipt of the rents and profits, and that after paying all expenses, there

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was a residue of more than 40*s*. per annum for each trustee.

Mr. G. Whately argued that under the 26th section of the Reform Act, a trustee should not only receive the rents and profits, but he must receive them for his own use.

Mr. James and Mr. Barlow appeared in support of the claim.

Messrs. Basevi and Kenyon (R. B.) reserved their judgment till the following day, when—

Mr. Kenyon (R. B.) said, originally the election of knights of the shires vested in the freeholders of the counties, however small their freeholds were. Lord Holt, in Ashby v. White, says, " It is an original right, vested in and inseparable from the freehold." The first Act restricting that franchise is the 8th Hen. 6, c. 7, which limited the right to those who had freeholds to the value of 40*s*. by the year above all charges; and the 10th Hen. 6, c. 2. enacts that the freehold shall be in the county where the vote is to be given. Thus the right of election remained subject to no other general restrictions for about two centuries and a half. In the meantime the doctrine of trusts had arisen. In the reign of William 3, a practice had grown up, originating in fraud and collusion, of creating and multiplying votes by conveying property subject to trusts, or clauses of re-entry and provisoes for redemption, by which the grantees obtained votes without having any beneficial interest in the property, or being even the apparent owners. To remedy this mischief, the 7 and 8 Wm. 3, c. 25 was passed, which enacted that no person should vote " by reason of any trust estate, or mortgage, unless such trustee or mortgagee be in the actual possession or receipt of the rents and profits of the same estate, but that the

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mortgagor or *cestui que* trust in possession shall and may vote for the same estate." The subsequent statute of the 10th Ann, c. 23, shows the mischief intended to be remedied by the enactment of the 7th and 8th of William 3, viz. the danger of the *bonâ fide* honest exercise of the franchise being destroyed by fraudulent and collusive trusts secretly made. It shows that the same mischief still continued, and provides a new remedy. Subsequent to these statutes, there is no Act respecting the right of trustees which bears on the present question until the Reform Act, which re-enacts, with only a slight alteration, immaterial to the present question, the clause of the 7th and 8th Wm. 3, c. 25.

There are two cases in which, according to this clause, if standing alone, a trustee would be qualified to vote—first, when in the actual possession; secondly, when in the receipt of the rents and profits. With respect to the first, it is observable that a marked distinction is made in the Acts between the kind of possession which is necessary to qualify the trustee and that which will qualify the *cestui que* trust. The trustee must be in the "*actual possession:*" the word "*actual*" is not used in describing the possession of the *cestui que* trust. Considering the mischief intended to be remedied by the 7th and 8th Wm. 3, c. 25, and the words of it, we think that "*the actual possession*" of the trustee mentioned in that Act means *the personal occupation* by him as the legal owner excluding the exercise of any rights of ownership by the *cestui que* trust; and that the same construction must be put on the same words when copied into the Reform Act; and that, if a trustee is not in such personal and exclusive occupation, he is not qualified to vote in respect of his possession. There ap-

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pears by the evidence to be in the present case no such actual possession; on the contrary, it appears from the deed the trustees are to permit the person appointed by the Conference to hold and enjoy the premises. Next, as to the qualification to vote in respect of the receipt of the rents and profits of the estate. If this depended on the 23d section alone there would be little difficulty in deciding upon it. But much difficulty has been caused by the 26th section, which enacts that no person shall be entitled to vote until registered, and that no person shall be registered as a freeholder or copyholder "unless he shall have been in the actual possession, or in the receipt of the rents and profits *for his own use*, for six calendar months." The wording of this section is the same as that of the 5th section of the 18 Geo. 2, c. 18, and was probably copied from it. The object of that statute was to provide against the creation of votes secretly, with a view to an election; and the means adopted for attaining that object were the making length and notoriety of possession necessary, unless the property shall have come to the voter in such a way as precludes the supposition of its being granted for the purpose of so creating a vote. It does not in terms relate to trustees. It has been said that the practice was, previous to the Reform Act, for trustees to vote; and it is thence inferred that trustees were not intended to be included in the 18 Geo. 2, c. 18. I am not aware of any decision in which that Act has been applied to exclude their votes. But whether by the true construction of that Act and the practice under it, the words "*for his own use*" were or were not applicable to the qualification of trustees in respect of their receipt of rents and profits, there can be no doubt that, used as they are in the 26th section of the Reform Act, they must apply to such a qualification. The

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Reform Act is the first Act in which a clause respecting the right of trustees to vote, and the clause requiring the voter to have been, previous to the exercise of his franchise, in receipt of the rents *for his own use,* have been both introduced. The question which arises on these clauses, is what operation these words are to have. As applied to those whose property is not subject to trusts, they must mean *the beneficial use,* i. e. that the party must be in receipt of the rents and profits to dispose of them for his own private purposes absolutely. If this construction is to prevail in the application of the words to trustees, it must exclude them entirely from voting in respect of the receipt of the rents and profits. A trustee receiving money to dispose of for his own private purposes, in his character of trustee, is a contradiction in terms. A case, indeed, may be put, in which the individual who is trustee may be beneficially interested in the trust property, i. e. in which he may be trustee, and in part *cestui que* trust. But this accidental junction of two opposite characters in one person could not be the case intended by an Act which makes such distinct provisions for those different characters. From the time of Lord Hardwicke downwards, there have been cases in which the courts have given different interpretations to the same sentence in applying it to different subjects; and upon the principle which has guided the courts in acting, so we must now proceed, in order to give what we consider the effect intended by the legislature to these words, "*for his own use.*" We have, therefore, carefully and fully considered the several enactments bearing upon the question, and the mischief which they were intended to remedy. Trustees are of two descriptions; first, those who have an active duty to perform under the guidance of their own discretion, such as

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trustees for the distribution of funds where the objects to be benefited by those funds are to be selected by the trustees; and secondly, bare and dormant trustees: trustees of the first kind, have the control over the estate, and have the power of *using* or *disposing of* the money. In our opinion, such trustees have the right of voting in respect of their receipt of the rents and profits. A different decision would exclude from representation a vast quantity of property and many very valuable interests, and such cannot, by a mere inference, be held to be the intention of an Act which in its preamble professes as an object the extension of the franchise. Bare trustees, who act merely as the conduit pipes through which the profits are conveyed to specified parties beneficially interested, and who have no discretion to exercise in the use of the money, are, we think, excluded. By such construction we give effect to every part of the statute bearing upon the subject; while by any other we should be obliged to reject some expressions in it, or adopt a forced interpretation. In the particular case under consideration, we are of opinion that Mr. William Clive is a trustee who has to exercise a discretion in the use of the rents and profits received by him from the property in question. All other points of his qualification have been made out to our satisfaction, and therefore we are of opinion that his name must be retained on the list.

Mr. Basevi (R.B.).—Having been in this case also requested to lay down the general principle of decision we propose to adopt in it and others of the same class, we have carefully considered the subject for this purpose, and you have heard our judgment from Mr. Kenyon. He has left me little to add. Looking to the Reform Act, it appears to me very clear that it intended disfranchisement only in the cases actually and expressly

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provided. Now there is no question that trustees, when in actual possession or receipt of the rents and profits, where there was no *cestui que* trust in possession, i. e. no person immediately entitled in Equity to receive the rents and profits from the trustees, did always exercise the franchise after the passing of the 7th and 8th of William and Mary up to the passing of the Reform Act, notwithstanding the 18th Geo. II., which first contained the much debated words "for his own use"—that Act having been passed merely to defeat fictitious and colourable qualifications of a temporary nature, not permanent ones of a *bonâ fide* character. I think those words were adopted from that Act into the 26th section of the Reform Act, and must be taken with the same limitation, namely, not to act now, as they did not before, in abridgment of the rights of trustees being in actual possession or receipt of the rents and profits, which rights so clearly appear to have been intended to have been left as they were, by the adoption *verbatim*, into the 23d section of the Reform Act, of the very clause which ratified and confirmed them in the 7th and 8th of William and Mary.

Liverpool, 1835.

David Davies, of Price Street, claimed as trustee of the Welsh Baptist Chapel, Great Crosshall Street; the claimant was one of 19 trustees appointed to conduct the affairs of the chapel. He, as trustee, received the rents, made good all necessary repairs, and paid the clergyman. Mr. Carson contended that there was no proof adduced, delegating to the claimant the power which he had exercised.

Mr. Heywood (R. B.) said it was evident the trustees were in possession, and as no one disputed their right, the court had not the power. Moreover, it appeared that they received and appropriated the

funds of the chapel, the minister having no voice in the direction of its affairs, and being paid his stipend by the trustees, he considered that the claim had been fully made out.—Name retained.

Liverpool, 1835. Trustees.

Mr. Bailey and three other gentlemen claimed to be placed in the list of electors, as trustees for the Episcopal Chapel at Camberwell.

East Surrey, 1835.

Mr. Knox (R. B.) said, I am aware that some revising barristers, whose judgment is entitled to great respect, have held, that the 23d section of the Reform Act is to receive effect according to its literal enactments, altogether unqualified by the 26th section, and have decided that, in every case where trustees are actually in the receipt of the rent and profits, they are entitled to vote: but they appear to me to overlook what I conceive to be an insurmountable obstacle to this easy solution of the difficulty, which is, that they thus may give two votes in respect of the same property, for the *cestue que* trust is empowered to vote notwithstanding the trust, and this unquestionably could not have been the intention of the legislature. But by restraining the right to those cases where the objects of specific appropriation leave a residue of sufficient amount, either for accumulation or for the purposes of the trust, at their discretion, I think the words in the 26th section, without any violently strained interpretation, may be satisfied, and that in such instances trustees are in receipt of rents and profits "for their own use," *sub modo* as trustees. I have acted hitherto on this principle during the course of this revision, and I do not clearly see that the trustees have, in this instance, 40*s*. per annum after they have discharged the various claims upon them under the deed, either for the purposes of accumulation, or in

East Surrey, 1835. Trustees.

furtherance of the trust purposes, at their discretion. But admitting that they had, they derive all the profit they can make from pew rents exclusively; and for reasons given in another case, I am of opinion that pew-rents cannot be considered as conferring that species of interest which is necessary for a county vote *. In the Croydon cases the trustees had in one instance the power of letting their chapel, if they pleased, for any purpose as a building at 150*l.* a-year; and in the other, they derived from other sources, (for pew rents were against their principles, they being Quakers,) a considerable income, which they were to appropriate at their discretion. This case, therefore, does not come within the reasoning upon which those decisions were founded. It is said, however, that these trustees must be taken to be in possession, meaning occupation; but if so, as the chapel lies within the limits of the borough of Lambeth, they are incapacitated from thus acquiring a vote for the county. But it is said that they could not have a vote for the borough because they are not liable to be rated, and none but persons who may be rated can vote for boroughs. A recent statute has exempted chapels of all denominations from their liability to the poor rate. The Reform Act requires rating only where there is a rate, and does not make the being rated in all cases a *sine qua non* of the borough franchise; if it did, the occupiers of chambers in the Temple, where there is no rate, would be excluded. I think, as there is a statutable exemption here from liability to the rate, the fact of not being rated under such circumstances could not be an objection to the claim to the vote for the

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* Vide page 333.

borough. I think, therefore, that if the trustees could be considered occupiers in this instance, and if sufficient value were proved, upon which I give no opinion, (as it is unnecessary,) they would not be incapacitated from acquiring a vote for the county; consequently my decision upon the whole of the case is, that their claim must be disallowed.

East Surrey, 1835. Trustees.

Mr. Bousfield claimed to have his name placed in the registry, as being one of the trustees for the management of the Reform Almshouses at Brixton.

East Surrey, 1835.

The claim was objected to by Mr. Meymott.

Mr. Ledger, the Secretary to the Reform Almshouses' Institution, said that the buildings for which the present claim was made were erected at the cost of a number of individuals, who thought it preferable to celebrate the passing of the Reform Bill by the establishment of some public charity, instead of expending their money on an illumination. The sum of 1,600*l.* or 1,700*l.* had been laid out in the purchase of land, and the almshouses were occupied by persons chosen by the general body of subscribers. Besides the land on which the houses stood, there was a separate portion under the care of the trustees, let out to tenants, and yielding a rent of 36*l.* a-year. Fifteen gentlemen founded a claim to vote on the trust deed, twelve of whom possessed other and indisputable qualifications. They were, however, anxious to hear the opinion of the revising barrister as to their right on the present claim. A similar case had been lately decided at Croydon in favour of the parties claiming to vote.

Mr. Knox (R. B.). Not exactly. In that case there were no tenants in possession of the property under the management of the trustees. He wished to know

East Surrey, 1835. Trustees.

what regulation had been adopted by the subscribers with respect to the tenants of these almshouses?

Mr. Ledger replied that they were to continue in possession of them so long as their income did not exceed a certain amount.

Mr. Knox (R.B.) said, it appeared to him that the tenants, and not the trustees, were entitled to vote; for, with respect to the county franchise, the receiving of alms was no disqualification.

Mr. Ledger then abandoned the claim for the almshouses, and contended that the trustees had a right to vote for the portion of land not occupied by those buildings, the value of which was 36*l.* a-year. The trustees had the discretionary distribution of this money for the benefit of the trust.

Mr. Knox (R.B.) was of opinion that this was a good claim. He thought it was quite clear that the legislature intended such property as that in question to be represented. The trustees were not mere conduit-pipes to receive the rents and profits, and hand them over to other parties. They had the discretionary management of the property, and on that ground he held their claim to be good.

Middlesex, 1835.

Ten trustees of a leasehold chapel at Mile End Old Town were objected to.

Mr. Coventry (R. B.) in giving judgment said, it is admitted that the building, if occupied, would give a vote for the Tower Hamlets, but it is objected that in its present state it is incapable of conferring the borough franchise on any one, and that, therefore, it does not fall within the 25th section. That section concludes with these remarkable words:—"Such building being of such value as would, according to the provisions hereinafter contained, confer on any person the right of

Middlesex, 1835. Trustees.

voting for any borough, whether any person shall or shall not have actually acquired a right to vote for such borough in respect thereof." This being a disfranchising clause must be construed strictly. The object clearly was to take away the right of voting for the county whenever the property would give a vote for the borough, and this is made to depend on the capacity of the property claimed for, and not on the capacity of the party occupying it to exercise the right. Hence the occupation of the house by a female or an alien will not prevent the operation of this section on the county vote, and these parties may live half a century, and thus the property would neither have a vote for the borough nor the county during the whole of that time; still, if occupied by another tenant, it might give a vote for the borough. Now here the use of the building does not appear to alter its capacity to give a vote for the borough; for if used as a warehouse, or converted into dwelling-houses, it would undoubtedly confer that privilege. It lies with the trustees to use it for what purpose they please, and if they use it for a purpose which will not confer on any party a right to vote, that does not alter its capacity to confer that privilege whenever they think proper to use it for a purpose that will. It is not like a consecrated building which is wholly devoted to religious purposes, and therefore may be converted to any purpose the owners please. And as to the Act exempting it from rates, *that* merely shews that in its present state it is not necessary to be rated. On the whole, I think these gentlemen are not entitled to a county vote, and as such their names, which I have already struck out, cannot be restored.

Mr. Evans, the barrister, who claimed as a trustee,

Middlesex, 1835. Trustees.

was heard in support of his claim, and was followed by Mr. Field on the general question.

Mr. Ady and Mr. Gregory having argued against the right of trustees,

Mr. Coventry (R.B.) said, that he had several times considered the question, and was obliged to do now what he had done on former occasions—namely, to give such a construction as would reconcile the two conflicting clauses, rather than expunge a whole section for three words of doubtful meaning, and positively inconsistent with the nature of trust estates, for strictly speaking no trustee as such can be beneficially interested, and the argument that allows a trustee to vote when he has a small interest secured to him to go the whole length of allowing validity to the 23d section. He was of opinion that in the case of a conveyance unto, and to the use of A. B., his heirs and assigns, in trust for C. D., his heirs and assigns, if A. B. were in actual possession or receipt of the rents and profits, he fell within the obvious meaning of the 23d section, and he must draw his pen through that section if he did not admit him. This he could not consent to do, and there might be cases where the property would be totally unrepresented if that were not allowed, for the trust might be for an infant, for a married woman, for an incapacitated person, or for a person abroad, or the like, and if neither trustee nor *cestui que* trust could vote, when it was clear one or the other was entitled to vote, he could not admit a construction which would end in that sweeping disfranchisement so obviously at variance with the spirit and meaning of the Act. At the same time he must say that he had great difficulty in allowing trustees to vote who were only in possession constructively.

Take, for instance, the 60 trustees of Exeter-hall; if only one were in actual possession he could not register the remaining fifty-nine. He admitted that, legally speaking, the possession of one joint tenant was the possession of all; but this Act dealt with actual and not constructive possession, and therefore the evil of multiplying votes did not seem to him to apply. He had so fully gone into the question on a former occasion, that it was unnecessary for him to go into the subject again. He was sorry if there should be any difference of opinion in the court, but as the point had been reserved to the close of the circuit there would be no undue advantage taken of that circumstance.

Middlesex, 1835. Trustees.

Mr. Martin (R. B.) said, this question is of far greater importance than I at first imagined; I am therefore more than ever unwilling to differ in opinion with my learned colleague, but at the same time it is the more incumbent upon me to decide according to what I conceive to be the meaning of the Act. In the interpretation of a statute, it is doubtless our duty, if possible, to give to each word and sentence a due and proper effect; but should this be impossible, and should it be absolutely necessary to reject any one part of the statute, I apprehend that a positive and distinct enactment must control any supposed right arising only from implication. If therefore it should be impossible to reconcile the 23d and 26th sections, the latter must prevail, and the votes of all persons not having a beneficial interest must be disallowed.

It may be contended that the 26th section was made *diverso intuito* for the purpose of preventing occasional votes, which, but for the length of possession required before the right of voting can be exercised, would be made whenever a general election was expected, and

Middlesex, 1836. Trustees.

therefore, that all that is required is, that the claimant should have been seised six months before July 31st. But this interpretation would in fact be equivalent to expunging the words, the very material words, "to his own use." It would be nothing less than cutting the knot instead of untying it. If we examine section 23, we shall hardly find that it is less flexible than the other, and at any rate considering what it evidently contemplates, we shall narrow the number of cases in which votes can be sustained on it. The section enacts, that no trustee or mortgagee shall vote unless in the actual receipt of the rents and profits; but that notwithstanding such mortgage or trust, the *cestui que* trust or mortgagor in possession shall vote. Now these concluding words render it obvious, that the only cases contemplated by the Act are those where there is, has been, or might be, a trustee or mortgagee in possession; this at once excludes all trustees for public purposes, such as the trustees of the rivers, roads, navigations, and for parishes and corporations; and thus a considerable number of the claimants on this occasion are disposed of. It is also obvious, that where the *cestui que* trust can vote, or, but for some personal incapacity might vote, this section is not intended to confer votes on the trustees; and this gets rid of the trustees of those chapels where the minister is admitted to the franchise. Then at all events if my argument be correct, the practical extent of contradiction resulting from these clauses is very greatly reduced: but I still think these sections may be reconciled on the supposition that the words trustee and *cestui que* trust were introduced, in order to comprehend a numerous class of cases where conveyances are made for temporary securities and other purposes, which technically speaking, cannot be denominated mortgages,—as where an estate

is conveyed to A. in trust, to permit the owner to receive the rents until he shall make default in payment of an annuity, and then to receive them and pay the surplus to the owner. In cases where trustees under deeds for the benefit of creditors are themselves creditors, the characters of trustee and *cestui que* trust are united in the same person, he has a beneficial interest, and is at the same time accountable. So where a trustee is entitled to a per centage on his receipts, a case which came before me yesterday, the trustee has also a beneficial interest. Under all the circumstances, I entertain so clear an opinion, that the votes of trustees must be disallowed, that I cannot on this occasion bend to the judgment of my learned colleague; and I feel myself under the necessity of disallowing them. I am the less averse to this conclusion when I consider the great inconvenience that would arise from a contrary conclusion. Public bodies, such as trustees of roads, chapels, navigations, and schools, on the one side, and men of great wealth and ambition on the other, would be continually scheming as to their estates, that while they retained the same dominion as before, they would acquire a great and undue share of political influence; and thus the real intention of the Act would be entirely defeated. I am at all times unwilling to lean against the franchise, but a *bonâ fide* and really well qualified voter is injured, when a mere parchment voter is placed on the same footing with him.

Middlesex, 1835. Trustees.

Mr. Robert Clay claimed to vote as a trustee of certain freehold warehouses and offices in Moore Street. He was objected to by Mr. Atherton, who contended that Mr. Clay, being a mere trustee, was not entitled to vote.

South Lancashire, 1835.

Mr. Peacock contended that trustees in receipt of

South Lancashire, 1835. Trustees.

the rents were admissible. Before the passing of the statute of 7 and 8 of Wm., persons having the dry legal estate were the only persons whom the law recognized as admissible voters, and the statute referred to was purposely passed with a view to remedy the hardship under which certain parties beneficially entitled to vote laboured. The 7th section of that statute was precisely the same, but it only had the effect of taking away the right of trustees to vote in certain cases. The next statute referred to was the 10th of Anne, chap. 23, sec. 2, which enacted that no person shall vote for knights of the shire, and in respect or in right of any lands or tenements for which such persons shall not have received the rents and profits, to the full amount of forty shillings or more annually, for his own use. The words "for his own use" were introduced into the section for the express purpose of preventing the fraudulent multiplication of votes by conveyance of property for election purposes, as it often happened at the time it was framed, as in the present day, that a party appeared to the world to be the visible owner, but had to account to the real owners for the profits; and it was to restrain this practice only that the words were introduced. This statute, however, was found not to have the desired effect; and another statute, the 18th Geo. 2, chap. 18, was passed for the purpose of restraining the practice just alluded to; and by this statute the voter was compelled to swear at elections that he was in the receipt of rent to the amount of 40*s*. per year for his *own use;* and by the 5th section of the same Act it was enacted that no person should vote at elections without having a freehold estate in the county for which he should vote of the clear value of 40*s*., or without having been in the actual possession or receipt of the rents and profits for his own use above twelve

South Lancashire, 1836. Trustees.

months. He (Mr. Peacock) merely referred to those statutes to show that the words for *his own use* were merely introduced for the purpose, as expressed in the title of the statute of Anne, viz., to prevent the fraudulent conveyance of votes. It was never, he contended, the intention of those words to affect the *right* of trustees to vote. It had been the uniform practice, from the year 1696 to the passing of the Reform Act, for trustees to vote, and this he had no doubt would be conceded to him by the learned gentleman who objected to the claim. The question that now arose was, whether there was anything in the Reform Bill which took away the right that existed in this case before that bill passed. Now the 23d section of the Reform Bill was an exact re-enactment of the statute of 7 and 8 of William, before adverted to. It was a confirmation of the rights of trustees; and, had it stood alone, no difficulty would have arisen, but when placed in juxta-position with the 26th section of the Reform Bill, great difficulties arose. By that section it is declared that no person shall be allowed to vote unless he should have been in the actual possession, or in receipt of the rents and profits for his *own use*. How, he would ask, could a trustee be said to be in possession for his *own use?* If the words were intended to import that he was to be in possession as owner, then no trustee or mortgagee could be registered. Now it would appear, that the sole object of the 26th section was to limit the time during which the party registered should be in possession; and if it were to be held that the words "for his own use" were to refer to trustees, then the 23d section would be a dead letter, and the rights of trustees, as confirmed by the section, destroyed. He begged to impress upon the court the object of the legislature in first making use of these words, for, as he had already

South Lancashire, 1835. Trustees.

shown, they were merely made use of to prevent fictitious votes being given at elections, and were never intended to apply to cases of trust, which were fairly open to inquiry. He conceded the point that a naked trustee, not in possession, would have no right to vote; but in all cases where a trustee was in possession, and had the entire control of the estate, he had a clear right to vote. He contended that trustees in possession for the time being were owners of the property, and subject to all taxes, such as that upon land, repairs, and other legal payments made for their own use, inasmuch as it was a discharge of their own responsibility. There could be no doubt of the meaning of the legislature as to the point, for when the 23d section of the Act was before the House of Commons, Sir Edward Sugden enquired from the law officers of the crown what construction they intended to put upon it, and whether there was any intention to alter the law as it existed respecting trustees and mortgagees, when Sir William Horne in reply stated that it was not intended to make any alteration. In this statement he was confirmed at the time by Lord John Russell. It had been already shown that before the passing of the Reform Bill trustees were clearly entitled to a vote, and it would be absurd to suppose that the words "for his own use" were introduced in a mere matter of detail to deprive the trustee of his unquestionable right.

Mr. Atherton in support of the objection replied. He contended that the 26th section took away the right of trustees to vote in all cases, unless the trust was accompanied by some benefical interest.

Mr. Greenwood (R. B.) said that trustees in possession were entitled to vote, and that was the opinion of his colleagues unanimously. It was quite clear to him and them that the legislature did not intend to take

away the rights of trustees which had existed before the Reform Bill passed.

South Lancashire, 1835. Trustees.

The claim of Mr. Clay was then declared to be allowed.

Robert Murray claimed to vote as a trustee of freehold houses. He was the treasurer of the Senior Society, a benefit society at Stafford, duly enrolled. The society consists of 160 members, who receive relief when sick. They subscribe monthly, and the society is possessed of two freehold houses in the borough of Stafford, which bring in eleven guineas a-year. They are held by trustees, of whom the claimant is one. The trustees receive the rents, and pay them over to the general funds of the society, deriving no personal benefit from the property.

Northern Division of Staffordshire, 1832.

Mr. Lumley (R. B.) held that the claimant had no right to be registered.

Amos Greenslade claimed for freehold premises near Bristol. They had belonged to Wm. Powell, who conveyed them, in 1828, to the claimant and another person in trust to sell, and pay his different creditors, of whom the claimant was one, and to pay over the surplus, if any, to himself. The premises had not been sold, because an eligible offer had not been made.

Mr. Lumley (R. B.) held, that even if the claimant could be said to have any beneficial interest in the property itself, he had not a freehold interest in duration. It was the duty of the trustees to sell within a reasonable time; that could not be understood as enduring during the life of any person.—Name expunged.

Northern Division of Staffordshire, 1832. Trustees.

John Howlett claimed under similar circumstances. He was a trustee to sell and pay off first a mortgage due to a mortgagee, then to pay a debt due to himself, and to distribute the surplus among the creditors. It was contended that the claimant was in the light of a mortgagee in possession, but Mr. Lumley (R. B.) considered this was the same as the case of Amos Greenslade; the claimant had no freehold interest in the land, although he might have a right to a share of the produce.—Name expunged.

Copyhold tenure.

The owner of a copyhold property of four houses, each of which (the landlord paying rates and taxes) was under 10*l.* a-year rent, claimed to vote for the county for the whole. No objection was made and the claim was admitted.

Northern Division of Staffordshire.

G. W. Filcher claimed as a copyholder of a house of the value of 3*l.* 10*s.*, land 12*l.*, and a factory 7*l.* 10*s.*, all in the borough of Stoke, but in the occupation of different persons.—Name retained.

Middlesex, 1834.

Mr. Richard Davison claimed in right of certain copyhold houses, respectively let to tenants at a rental exceeding 10*l.* per annum each.

The vestry clerk for the parish of Mile End Old Town said, that the tenants had by the occupation of their respective houses acquired the right of voting for the borough of the Tower Hamlets.

Mr. Keen (R. B.) said the objection was fatal; the borough franchise acquired by the tenants deprived the leaseholders or copyholders of the right to vote for the county.

East Surrey. 1835.

Mr. Barrett claimed in respect of copyhold houses at Vauxhall. The claim was objected to, on the ground that the houses in question, though separately worth less than 10*l.* a-year, were together of more than that value, and would therefore confer a right of voting for the borough of Lambeth. This objection was founded on the 25th clause of the Reform Act, which enacts that no person shall vote at county elections in respect of copyhold property, which gives, either to the copyholder himself, or his tenant, the right of voting in boroughs.

Mr. Knox, (R.B.), said it was a point which had been much discussed, whether or not the union of houses, each of which was below the value of 10*l.* a-year, would give a right of voting in boroughs. After the best consideration he was able to bestow on the matter, not only on the present, but also on previous occasions, he had come to the conclusion that the union of houses for such a purpose was not permitted. It appeared to him an inconsistency or omission in the Reform Act not to allow a man occupying a house in a borough to add another to it for the purpose of making up the value of 10*l.*, while power was given him to join a shop, warehouse, counting-house, or a bit of land with his house to eke out that amount. Nevertheless, he was bound by the Act of Parliament, and whenever a doubt arose in his mind as to the wording of the Act, he always inclined in favour of giving the claimant. He should, therefore, allow Mr. Barrett's name to remain in the list.

Mr. Lumley (R.B.) allowed some claimants to add several copyhold houses of less than 10*l.* annual value together to make up the county qualification.

Middlesex, 1835. Leasehold tenure.

An objection was taken by Mr. Gregory to the vote of James Hopkins, who claimed to vote in respect of the aggregate value of several leasehold tenements. He contended that the Act of Parliament meant to confer a right of voting upon persons possessing the unexpired residue of one entire term of the annual value of 10*l*., and not in respect of several distinct terms, the total value of which might amount to the sum specified in the Act. In the present case there were three distinct terms, and upon that ground the property did not confer a right of voting. The court held the objection to be good, and expunged the name from the lists.

Mr. Grover, the owner of leasehold property, had been objected to on the ground that the property in right of which he claimed, conferred the right of voting for the borough.

Mr. Stephens, his agent, proved that but one of the leasehold houses in respect of which his client claimed, was let at a rental of 10*l*. The tenements were let to weekly occupants, at sums varying from 3*s*. to 3*s*. 6*d*. per week; he therefore contended that as the franchise was not by occupation or amount of rent conferred upon the tenants, the leaseholder, who in this case possessed an unexpired term of thirty-four years, was entitled to have his name entered on the lists.—Name retained.

Northern Division of Warwickshire, 1833.

Josiah Allen claimed to have his name inserted in the list of voters in right of two houses in Colmore Row, of the annual value of five guineas each, erected upon land held under a lease originally granted for a period of sixty years, and let to weekly tenants;

Northern Division of Warwickshire, 1833. Leasehold tenure.

on an adjoining portion of the land held under the same lease, two houses had been built of the respective yearly value of 75*l.* and 40*l.* The ground rent for the whole of the land amounted to 45*s.* per annum, and there was no other charge upon the property.

Mr. G. Whateley, in support of the objection, submitted, that as one of the houses conferred a borough vote on the tenant, Mr. Allen could not claim to be registered for the county, in respect of the others, and referred to a case decided in the Berkshire registration for 1832*, when it was ruled, that premises could not be added together to make up a borough qualification; but it was admitted, that if any one house was worth 10*l.* per annum, it would confer a right of voting for the borough and exclude the owner from the county franchise. The 25th section of the Reform Act was conclusive against the claimant. That section enacted, that notwithstanding anything thereinbefore contained, no person should be entitled to vote in respect of his *estate or interest* as lessee, or assignee, in any house, warehouse, &c., such house, warehouse, &c., being either separately, or jointly, with any land occupied therewith, of such value as would confer a borough vote. Lessees for years were "possessed, not properly of the land, but of the term for years," (1 Cruise, 4th ed. p. 224, sec. 10,) which is defined by Lord Coke to be "the *estate and interest* that passeth for that time", (Co. Litt. lib. 1, cap. 7, sec. 58, p. 45, b.). The term for years, then, was the estate or interest in respect of which the vote was given; it was an entirety extending over the whole property, and inasmuch as it

* Page 427.

Northern Division of Warwickshire, 1833. Leasehold tenure.

comprehended the two houses which were of sufficient value to confer borough votes, the case came within the 25th section of the Reform Act. The principle upon which that Act was to be construed was perfectly clear, viz :—that property (in a borough) of sufficient value to confer a borough right, cannot give a county right. The right in this case was given by one lease as one property. The borough right was clearly given, and the county right as clearly excluded.

Mr. Barlow and Mr. Redfern for Mr. Allen said, that the smaller houses for which he claimed to vote for the county happening to stand on part of the same land occupied by the larger houses, and demised by the same lease, did not deprive him of his claim.

Messrs. Basevi and Kenyon (R. B.) having sat together to hear this case, Mr. Basevi on a subsequent day delivered the following decision. We have carefully considered the case of Mr. Allen, and are of opinion—1st, that Mr. Allen has failed in establishing his claim to a vote for the county, for this reason, that after deducting from the present rents of the two cottages, let together at 10*l.* 10*s.* per annum, the sum that ought to be set apart for repairing or rebuilding, which cannot be less than 5*s.* per annum for each cottage, and the proportion which belongs to them of the ground-rent of 2*l.* 5*s.* per annum, he does not remain with a clear yearly value of not less than 10*l.* But 2dly, as it is desired we should lay down the general principle on which we propose to decide other cases which may come before us, wherein the above difficulty on the score of value shall not arise, we are of opinion that the 20th section of the Reform Act having enacted that every person entitled, either as lessee or assignee, to any lands or tenements for the unexpired residue of any

Northern Division of Warwickshire, 1833. Leasehold tenure.

term, originally created for not less than sixty years, shall be entitled to a vote for the county; and the 25th section having excluded from conferring this right only houses, &c., of such value as would, according to the provisions thereinafter contained, confer a vote for the borough—that in all cases to which this principle of exclusion is not expressly and strictly applicable, the decision should be in favour of the franchise. We think there is no weight in the argument drawn from the unity of the title remaining undisturbed, conceiving that there is no sound distinction between the case of a leasehold and that of a freehold or copyhold in this respect. It is not the title to the lease, but to the lands or tenements, as lessee or assignee, (which may be either of the whole, or of a part only, of those comprised in the lease,) which confers a right to the county vote. It was admitted, and rightly, that if Mr. Allen had assigned to a purchaser the two larger houses, he would have been entitled to a vote for the county for the two smaller ones, separately insufficient to confer a borough vote. It appears to us that an under-lease is a sale and a severance, *pro tanto*, attended with the same result. A fairer case for laying down the principle could not be conceived; for it appears that Mr. Allen has acted in this matter on personal views of advantage only, without reference to the creation of votes under an Act subsequently passed; and though we think the legislature did not contemplate such a result, yet the express words of the Act being clearer than the intention, if any, to the contrary, it is for the legislature, not for the revising barrister, to declare that intention, and to remove the doubt*.

* Value having been made one of the conditions of the franchise in respect of leaseholds, it becomes important to ascertain how

Northern Division of Staffordshire, 1832. Leasehold tenure.

Thomas Leek claimed, as a leaseholder, under a term for 1000 years, created about sixty years ago. The lessee had demised the property to four persons equally. One of them was the claimant's wife. The rent reserved was 3*l.* 14*s.* per annum, and if deducted wholly from the claimant's share, would have reduced it below 10*l.* a-year, whereas the fourth part of the rent (18*s.* 7*d.*) which he had been always accustomed to pay, left him more than 10*l.* per annum.

Mr. Lumley (R. B.) said, as the claimant could claim contribution from his co-assignees, in the event of his being compelled to pay the whole rent, he was entitled to have his name retained.

Tower Hamlets, 1832.

A claimant in right of certain property in the parish of St. Luke, stated that his brother had taken certain land on a building lease, and had built several small houses on it, which he (the claimant) had purchased, a pepper-corn rent being reserved.

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that value is to be estimated. The question was very fully discussed before the committee in the Longford Case, with respect to leasehold property in Ireland; and though the decision there turned on the Irish Reform Act, still as the Acts are made *pari materia*, and the legislature in each may be presumed to have intended to establish the franchise on the same footing, and especially as the words in the Irish Act are even stronger than those in the English Act, as the former requires that a lessee shall have a "beneficial interest" of the value of 10*l.* or 20*l.* as the case may be, it may be fairly considered that the decision of the Longford committee is an authority perfectly applicable to this question as arising under the English statute. The committee in the case referred to came to the following resolution:—That the right to vote for a freehold or leasehold in Ireland is in such freeholder or leaseholder, where the property for which he claims shall be of the yearly value of 10*l.*, and shall actually yield or be capable of yielding that value to the claimant after deducting all rents and charges payable out of the same, except only public or parliamentary taxes, and other charges mentioned in the 10th section of 2 and 3 W. 4, c. 88.—*Cookburn's Questions on Election Law*, 11.

Mr. Sandys (R. B.).—But the occupants of those houses have a right to vote for the borough of the Tower Hamlets.

Tower Hamlets, 1832.

The claimant said he claimed under the 20th section of the Act, which extends the right of voting to leaseholders. He did not reside in the borough, but received a ground-rent from his property, and had nothing to do with the rights which the occupants of the houses had acquired.

Mr. Sandys (R. B.) said the claimant was correct as to the right conferred by the 20th clause; but he had overlooked the 25th.—Claim rejected.

Berks, 1832. Leasehold tenure.

The claim of Charles Butler was objected to. The claimant was the assignee of a term of 1000 years, of four cottages and gardens, let to separate tenants at *3s.9d.* per week each, in the parish of St. Mary, in the borough of Reading. The question arose upon the construction of the 25th section of the Act, which provides that no person shall be entitled to vote for a county out of property in a borough of "such value as would, according to the provisions hereinafter contained, confer on him, or on any other person, the right of voting for any city or borough, whether he or any other person shall or shall not have actually acquired the right to vote for such city or borough in respect thereof." It was admitted, that if any one house were worth 10*l.* per annum, it would confer a right of voting on the tenant for the borough, and exclude the owner from voting for the county, according to the construction of the 24th section; and the only difficulty was, whether, in estimating the value of the property out of which this claim was made, the rents of all the cottages were to be added together; for if that should be done, the value would be more

Berks, 1832. Leasehold tenure.

than 10*l.* and the claimant would not be entitled to a vote in the county.

Mr. Talbot (R. B.), after conferring with Mr. Corbett, decided that the value of the cottages was not to be added together, and therefore that the claimant was entitled to be retained on the list.

In the parish of St. Matthew, Bethnal-green, a claim was objected to, on the ground that it could give a right for the borough; but it appeared, on examination, that the claimant had left two notices of claim with the clerk to the vestry-clerk (who received them for the overseers); one was for four copyhold houses, let at 9*l.* 10*s.* a-year each, out of which claimant paid the taxes. The clerk, on receiving the two, said that the leasehold qualification would be sufficient, and that alone was entered.

Mr. Sandys (R. B.) was disposed to think that this was a sufficient notice of claim, and if he were satisfied that the houses were not of such value as could give a right for the borough, he would retain the name on the lists.

Lambeth, 1833.

Mr. Bray was objected to by the overseers of Lambeth, on the ground that he claimed a qualification for the county in right of property which conferred the right of voting for the borough. It appeared that Mr. Bray, as the lessor of thirty-seven small cottages, by agreement paid all the rates, amounting to 2*l.* 14*s.* each cottage, and received from each of his tenants a rent of 11*l.* 14*s.* The cottages were not of the value of 10*l.* per annum.

Mr. Knox (R. B.) said it could make no difference whether the tenants paid their rent and rates separately or together. It could not be contended that the rates could be added to make up the value required by the

statute. The tenant paid only 9*l.* for rent, and 2*l.* 14*s.* for rates.—Name retained.

Lambeth, 1833. Leasehold tenure.

South Essex, 1835.

Francis Harrison was objected to on the ground that his leasehold was not worth 50*l.* a-year. Mr. Harrison said he claimed for a farm called Lyons Hall, and that his rent was upwards of 50*l.* a-year. Being asked whether his lease had expired, he said that it had. Mr. Herringham then submitted that his qualification having changed, the claim was not valid. Mr. Harrison said when his lease expired he occupied for a twelvemonth, and he had now agreed for a seven years' lease.

Mr. Reynolds (R. B.) said, he should not be justified in allowing the qualification as it now stood on the list, the claimant being an occupier and not a leaseholder.—Name expunged.

Middlesex, 1835.

Wm. Curtis claimed to be registered in right of certain leasehold property, the rental of which exceeded 100*l.* per annum. On examination, it appeared that the lease was only for fourteen years, and the claimant applied to have the description of his claim amended, by inserting the words occupier at a rent of upwards of 50*l.* per annum.

Mr. Gregory submitted, that it was not within the authority of the court to amend the qualification, because it was asked that the court should substitute one qualification for another. Mr. Curtis had claimed as a leaseholder; in the 20th section of the Act the different qualifications were defined; the barrister had power under the 42d section, merely to rectify mistakes and supply omissions, but the 37th section directed that notice of claim should be given to the overseers—which

Middlesex, 1835.

was the foundation for the overseers' lists. In the 42d clause the authority of the revising barrister was defined by that clause; it was directed that the barristers shall require it to be proved that the claimant was entitled in respect of the qualification described in the list; if he claimed in respect of a certain qualification, he was bound by the qualification he had given, and it was not open to him then to say that he had mistaken his qualification and substitute another. That was not the mistake or omission which the barrister had power to supply.

Mr. Martin (R. B.) considered it was not such a material mis-description as to disentitle the claimant to have his qualification amended.

In the parish of St. George a claim was made by the holder of a lease of four houses, the tenants in each of which paid him 4*s*. a-week rent; but out of this he paid 20*s*. a-year taxes for each house.

Mr. Palk (R.B.) admitted the claim, as the rent was such as could in no case confer a vote for the borough.

Middlesex. Occupation.

The claimant had a freehold house and premises in St. Peter's, Cornhill, the joint property of himself and one of his partners; the house was not used as a residence, but it was occupied by the claimant and all his partners as a "warehouse" or "counting-house."

Mr. Palk (R. B.) held, that though as freehold it would give a good claim to each of the joint owners, yet that an occupation as a "warehouse, counting-house," &c., was within the 24th section of the Act, and as an objection had been raised in the manner prescribed, he had no difficulty in saying that the claim must be rejected.

John Joseph Cato claimed, as occupier of the grand stand at Whittington Heath, under a lease for eight years, at a rent exceeding 50*l.* per annum.

Northern Division of Staffordshire, 1832.

The court rejected the claim, on the ground that the lease was not for any of the terms required by the Act.

J. D. Cooper, tenant from year to year of a factory in Derbyshire, and cottages in Staffordshire, claimed as occupier, at a rent of 50*l.* per annum. The cottages were under-let to his workmen, and it was objected that the claimant did not occupy as tenant, the premises for which he was liable to the rent. R. v. Ditcheat, 9 B. and C. 185, and 1 W. 4, c. 18, were cited.

Mr. Lumley (R. B.) said that Mr. Cooper had not proved his qualification. Occupation meant actual possession by the claimant, and not a possession by undertenants. Name expunged.

Thomas Letton was objected to by Mr. Chitty. The claimant, who, it appeared, was the occupier of a large farm, had been let into possession of the fallows of a certain portion of it, according to the custom of the country, upon May-day, and he was bound to give it up on May-day, at the expiration of the term; but it was admitted that his rent was payable at Michaelmas and Lady-day. It was contended that there was not here a *bonâ fide* liability for rent for twelve months preceding the 31st of July.

Berks, 1832.

Mr. Corbett (R. B.) said that the only question was, whether a liability existed from May-day to May-day; and as it appeared that the claimant was bound to give up a portion of this land in May, he must be considered as liable for the rent from May-day to May-day.—Name retained.

Berks, 1833.

A case precisely similar, came on for argument in 1833. Mr. Talbot, in pronouncing his decision in favour of the claim, observed, that he had not said anything as to the liability for rent; but, on the construction of the Act, he thought the name should be retained.

East Gloucestershire, 1834. Occupiers.

Underhill Coldicott claimed as an occupier of land in Cowhoneybourne parish: his place of abode was in this parish when he sent in his claim last year, and it so stood on the register; but it was admitted that at Christmas last he changed his place of abode to Churchhoneybourne, in Worcestershire. He had not sent in a fresh claim. This was the ground of objection.

Mr. Lumley, R.B., after consulting with Mr. Peake, R.B., said that this appeared to him to be a fatal objection. By the 27th section, persons who change their places of abode are to make fresh claims, and that also appears in form of the Notice, No. 1, Schedule H. But there is no mode of enforcing that provision, but by holding it to be a good ground of objection under the 42d section, because it cannot be the subject of inquiry at the poll. It was urged that the barrister might correct the list by the information now given him, by the power contained at the end of that clause; but that is only a power to correct mistakes, and there is no mistake here. It is not by any means free from doubt, but it seems to be a fatal objection, and the name must be expunged.

Northern Division of Staffordshire, 1832.

Joseph Lawton stated that he paid *50l.* a-year for a toll-gate and house. He paid more than *50l.* a-year for the turnpike tolls. He took them by the year in March last; he had held them for the preceding year, which terminated on the 17th of March. The

rent was paid by monthly instalments; he must give up the gate and house if the rent was not paid.—Name retained.

Northern Division of Staffordshire, 1832.

J. Podmore claimed as an occupier of lands and tenements, and stated that he lived at the Hopton-lane Gate. He rented it from the trustees of the Hopton Road, and took it at last Lady-day. He had rented it for four years, and paid 86*l.* per annum for the toll-house and tolls.—Name retained.

Berks, 1832.

Berkley Hicks claimed as an occupier of the toll-houses and tolls of Maidenhead-bridge. He paid upwards of 1800*l.* a-year rent.—Name retained.

Northern Division of Staffordshire, 1832.

Robert Rushton claimed as occupier at a rent of 50*l.* a-year. The claimant was tenant of a farm at a rent of 27*l.* 10*s.* under one landlord; 14*l.* under another; 12*l.* under another; and 25*l.* under another: thus more than 50*l.* altogether. But not being under the same holding, his name was expunged.

Berks, 1832.

Several occupiers of lands and tenements in the parish of Bisham, in the county of Berks, claimed to have their names inserted in the list of voters for that county. The service of the notices of objection on the claimants having been admitted,

Mr. Gregory referred to section 35, 2 & 3 W. 4, c. 64, Schedule O, by which it appeared that the parish of Bisham was included in the boundary of the borough of Great Marlow, and he submitted that the claimants were excluded from the county franchise by section 25, 2 W. 4, c. 45, which provides that no person shall be entitled to vote for a county in respect of any pro-

Berks, 1832. perty in a borough which would confer the right of voting for such city or borough. — Names expunged.

Middlesex, 1835. Mr. Adey requested the decision of the court respecting the nature of the tenancy necessary to confer the right of voting in right of a 50*l.* occupation. Mr. Martin had held that it was necessary there should be a holding to the amount of 50*l.* of one and the same landlord, whereas Mr. Coventry had decided that holdings under several landlords, where the several rents amounted to 50*l.*, entitled the party to claim. He must confess that he thought the latter decision the correct one: he therefore would submit that it would be better that the decisions upon the same principle should be the same in both courts.

Mr. Field begged to concur with Mr. Adey in the observations he had made.

Mr. Coventry (R. B.), having consulted with Mr. Martin (R. B.), said, there was some considerable difficulty in the point. The majority of the barristers had decided that a joint holding was not sufficient: however, he considered there ought to be a liberal construction of the Act, and that persons having joint holdings should be entitled to admission.

Mr. Martin (R. B.) stated, that when he first read the Act of Parliament, without reference to any former decision, he had understood the meaning of the Act to be that the rent must be such as could be distrained for; his opinion remained unchanged; but as it was important there should be an uniformity of decisions, and as both parties concurred in this, he was willing to yield his opinion to that of Mr. Coventry, and should therefore, in future, admit persons holding

under different landlords, where the whole rents amounted to 50*l.* a-year.

Middlesex, 1835.

Jabez Allen claimed in right of a rental exceeding 50*l.* per annum, arising from a shop and other premises at Ashted. The shop was let, together with a mill-power, at 5*l.* per week.

Northern Division of Warwickshire, 1833.

Mr. Pierce contended, for Mr. Allen, that the mill-power not being rateable to the poor, and the shop being only of the value of 5*l.* per annum, which would not of itself give a borough vote, he was entitled to a county vote in right of the rental of 50*l.*

Mr. G. Whateley and Mr. Herbert contended, that the tenant, who was the occupier of the premises, was the person entitled, if any vote could be claimed.

The Court said, to entitle a person to vote for a county, he must be either a freeholder, copyholder, leaseholder, or tenant in occupation. Mr. Allen is neither of the first three. If he is tenant, from the locality of the property he has a qualification for a borough vote; if he is not a tenant, the vote passes on to the occupier, and the county vote is lost.

William Taylor claimed as an occupier paying a rent of 55*l.* per annum. The landlord had, since the lease, built a chapel upon the land, but there was no agreement that there should be a deduction in the rent, but the claimant had signed a deed by which he joined in the conveyance of that piece of land to the trustees of the chapel. The landlord had, however, allowed the tenant 10*l.* a-year since he had built the chapel.

Middlesex, 1835.

Mr. Gregory contended that the circumstances proved amounted to a contract in equity, by which the landlord must be bound. The evidence amounted to this:—the landlord, with the permission of the tenant,

Middlesex, 1836.

took the land, and he then agreed verbally that the rent for the whole of the holding which the tenant continued to occupy should be reduced from 55*l.* to 45*l.* per annum. Subsequently the tenant joined in the deed to the trustees of the church, and upon the next payment of rent the landlord gave a receipt for 22*l.* 10*s.*, as for half a year's rent. Here, therefore, it appeared that there was either a new taking in the tenant which would destroy his liability to a rent of upwards of 50*l.* per annum, or there was such an actual reduction as brought it below that sum. In the former case there was an end of the claim. Assume, however, the case that the landlord distrained upon the claimant for the original rent of 55*l.*, it was by no means clear, upon the facts disclosed, that the tenant would not have a good defence if he replevied; but admitting that he had no case at law, it was clear that upon tender of the rent actually due upon the contract, there was sufficient evidence of the new contract between the landlord and tenant to take the case out of the Statute of Frauds, and therefore sufficient ground to sustain the equity. A court of equity, upon evidence of the parol agreement, could not but rule that there was a sufficient consideration for the new agreement between the landlord and tenant to support it, and the subsequent receipt signed by the landlord or his agent of the reduced rent proved the new contract between them. That being a contract binding upon both parties in equity, if not at law, he submitted that the claim must be rejected.

Mr. Field argued that there was no evidence to prove that the contract had been such as was stated, and that the contract, if any, was merely an agreement to abate 5*l.* from the then half-year's rent.

The landlord's receiver said that he understood the

landlord's statement of the agreement to refer to the rent so long as the property continued to be occupied by the claimant.

Middlesex, 1835.

Mr. Coventry (R. B.), having consulted with Mr. Martin (R.B.), was of opinion that it was not such a contract as could be enforced in equity, and therefore rejected the claim.*

Northern Division of Staffordshire, 1832.

George Burnley was objected to. He stated that he kept the Fountain Inn, at Stone, for which he paid 52*l.* rent. He let the front room for a slaughter-house, at 16*l.* per annum. The slaughter-house did not adjoin his house.

Mr. Lumley (R. B.) said that the claimant did not occupy as tenant the premises for which he was liable, to the rent of 50*l.* per annum.—Name expunged.

Francis Jaule claimed as an occupier of lands and tenements, at a rent exceeding 50*l.* a-year.

John Jaule stated he was the owner of a freehold brewery in Stone, and carried on the business of a brewer, with his son Francis, the claimant. The premises were taken at a rent of upwards of 100*l.* per annum, and the rent was paid by the firm. His

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* A question has frequently arisen, whether an occupier of a tenement, who by under-letting a part of it reduces the part in his own immediate occupation, that the rent for that part will no longer amount to 50*l.* is entitled to vote. But in the great majority of instances the vote was held to be bad; and as it should seem, rightly so; for not the liability to pay rent alone, but occupation is made the condition of the franchise, and the occupation contemplated by the statute, cannot be taken to be other than an actual and personal occupation, as contradistinguished from a holding by means of the occupation by another, such being, indeed, in a legal sense, the only proper acceptation of the term. Rex v. North Collingham, 1 B. and C. 578. Rex v. Tonbridge, 6 B. and C. 88.—*Cockburn's Questions on Election Law*, 18.

Northern Division of Staffordshire, 1832.

son's share of the rent amounted to more than 50*l.* a-year.

Mr. Tomlinson said, here was a joint occupation under a joint rent, and that the proviso contained in section 29, as to joint occupiers, did not extend to county voters.

Mr. Dutton contended that the father and son were each liable to the rent, and, as such, were entitled to be registered.—Name retained.

George Bennett claimed as the occupier of a house paying 70*l.* per annum rent.

Mr. Gregory stated that his objection was, that the claimant let lodgings, and thereby reduced his rent below the sum of 50*l.* per annum; that inasmuch as there was not a continuous occupation by the claimant for a whole year previous to the 31st of July, which the Act of Parliament contemplated by the 20th section of the Act, the claimant must be considered as disqualified. The 20th section of the Act extended the franchise to persons who should occupy as tenant any lands or tenements for which he should be *bonâ fide* liable to a yearly rent of not less than 50*l.* The subsequent clause (26th) declared that no person should be registered in respect of any lands or tenements held by him, unless he should have been in the actual possession thereof for twelve calendar months next previous to the last day of July: it had been decided that when a man took a farm at a rent of 50*l.* and let off part, that would destroy his claim. There must be a continuous occupation. Now, how was that case distinguishable from the case of a person letting lodgings? It was true he was liable to the 50*l.* rent, but he was no longer the actual occupier. There were two ingredients necessary in this class of

Northern Division of Staffordshire, 1832.

qualification, and the claimant had only the one, namely —that of liability to pay rent, but had not the other necessary ingredient, *viz.* occupation for the whole period, which would destroy the qualification.

The Court then called upon Mr. Field to support the claim.

Mr. Field considered there was very little difficulty in the question; indeed, the only difficulty he felt in arguing it was, that it was fighting against a shadow. There were two decisions in the House of Commons on the point; the first was that of Casey, in 1 Perry and Knap, 209; and the other was that of George Mangles, in the same book, page 212; but the case had been completely settled by an opinion expressed by Lord Denman.

Mr. Coventry (R. B.) said, that the claimant was not disqualified by the circumstance of his letting part of his house in lodgings; he was still liable to the yearly rent, whether he had lodgers or not.

Isaac Humphries, occupied a farm in Blackmore and Writtle, at the yearly rent of 50*l.*; there were two cottages on the land, which he let off at 8*l.* a-year. The objection was that as he underlet he did not "actually occupy" to the value of 50*l.* a-year.

Mr. Reynolds (R. B.) thought "occupier" must be taken in its popular sense. It was true that rent issued out of every part of the land, but if the actual occupation could be dispensed with, if a person hired property at 50*l.* a-year, he might underlet everything but sufficient for a pig's stye to stand on, and then put in a claim to vote. He considered the occupation must be personal, and therefore expunged the name.

Northern Division of Staffordshire, 1832.

Mr. Pashley, publican, of White Notley, claimed as the occupier of premises worth 50*l.* a-year. His rent was 55*l.* a-year, and Mr. Lane endeavoured to prove that he let two cottages attached to the holding for more than 5*l.* a-year. The claimant said he had never made any bargain with the tenants, but took just what he could get. He considered that the rent of each cottage was 50*s.* a-year, and said that he had never taken 3*l.* from one of the tenants for one year's rent.— As there was no proof that the cottages not in his own "actual occupation" were let for more than 5*l.* a-year, so as to reduce the value of the other property below 50*l.*, the claim was allowed.

Middlesex, 1836.

Mr. Marshall claimed as occupier of premises of the value of 50*l.* per annum.

The claimant said that he held the premises jointly with his brother at a rental of 100*l.* a-year.

In cross-examination by Mr. Gregory, he stated that his brother and himself rented some houses and land of Richard Marshall, their father; that they held the premises under two agreements. Under the first agreement they were to pay 70*l.* per annum for a house and land, and under the second they were to pay 32*l.* 4*s.* for houses which they let out.

Mr. Gregory submitted that this was not a rental where each party was bound to pay at least 50*l.* per annum.

Mr. Martin (R. B.) decided that the claim must be expunged.

Mr. James claimed to be registered as an occupier of premises at a rent exceeding 50*l.* per annum.

Mr. Martin (R.B.), who had postponed his judgment

said the claimant was tenant of a house at Hampstead, for which he was liable to a rent of *50l.* a-year; he was in the habit of letting it out furnished; he was in the actual possession at the commencement of 1834, and in July, 1835, but in the mean time he had let it out to tenants, and no servant of his remained on the premises. Under these circumstances it was contended, that he was debarred from voting under the 26th section of the Act, which enacted that he should not be entitled to vote, as an occupier, unless he had been in the actual possession thereof for twelve calendar months. The meaning, therefore, would turn on what was actual possession, and so far as he had been able to look at the case, the circumstances did not establish such an actual possession as had been contended for. Sir Carey's case, in *Russell on Crimes;* a burglary had been committed in a house which belonged to one Nash, who did not live in any part of it himself, but let it to tenants. The indictment laid the house as belonging to the tenant, and the point as to whether this was properly laid was reserved for the opinion of the twelve judges, ten of whom were of opinion that the indictment was good, as the owner did not reside on the premises. In Rogers there was a case where the owner of a house let out the premises, not occupying any part of them himself, but keeping some wood in a cellar, and the judges in that case decided that it could not be laid as the residence of the owner. There was also a case in a civil court, of Ward and Cowley, 4 Term Reports, 489, wherein a similar doctrine was laid down. These cases bore so strongly upon the point, that he thought he should hardly be justified in allowing the vote to be retained, and particularly as Mr. Coventry concurred with him in opinion. At the same time, he thought it

Middlesex, 1835.

a question of considerable doubt, and one of great difficulty.—Mr. James's name was therefore expunged.

Samuel Taylor claimed, the occupier of land and buildings at Snape Hill, of the annual rental of *50l.* It appeared that the claimant and his father rented two properties separately, the rent of the latter amounting to *35l.* per annum; but although the takings were separate, the two joined in the profits or losses, and also in the stock on the two farms. This was held to be a joint occupancy, but as the combined rental did not leave *50l.* payable by each, Mr. Blanchard rejected the claim.

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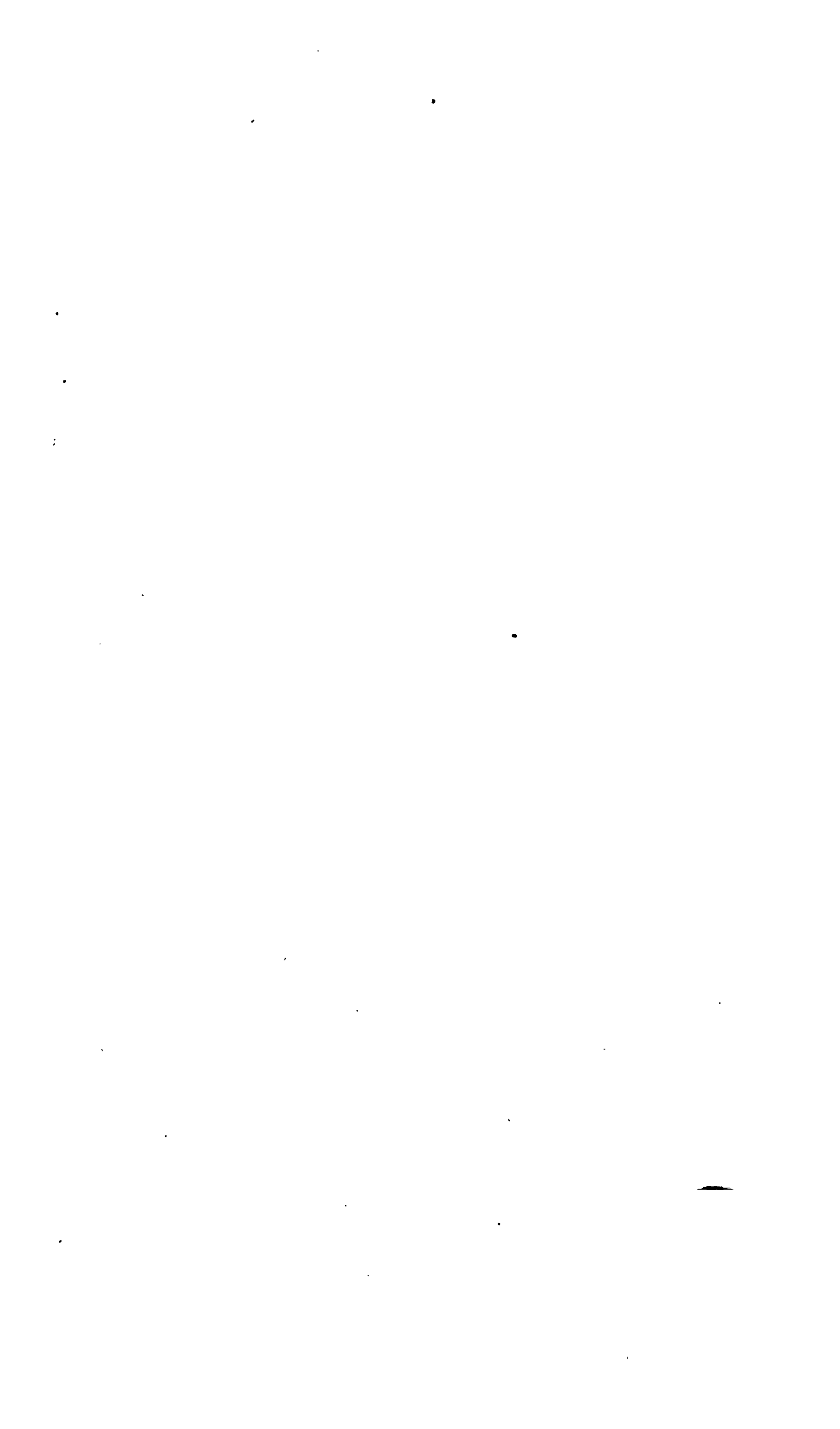

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