process whenever the summons is executed; that the new Act did not apply, because the new Act dealt with appeals, and this was an advocation; and that, on the failure of the advocator to produce a report from the lawyers for the poor, the respondent was entitled, without putting up protestation, to ask the Lord Ordinary upon that ground to dismiss the action, The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Advocator—Mr W. A. Brown.
Counsel for Respondent—Mr Trayner.
Agent for Advocator—James Bell, S.S.C.
Agent for Respondent—Scott & Mann, S.S.C.

COURT OF LORDS ORDINARY.

Thursday, October 29.

MACKENZIE & CO. *v.* HUTCHISON & DIXON.

Moveable Property—Transference—Auctioneer—Diligence—Arrestment—Poinding.—M gave to F, a creditor, a letter addressed to an auctioneer, empowering him to take certain moveables belonging to the writer and sell them, and pay the proceeds to F. F gave the letter to the auctioneer. *Held* that when the auctioneer took possession of the moveables under the letter, M's control over them ceased, and the auctioneer held for F. *Opinions*—that the proper diligence for other creditors of M to use in the hands of the auctioneer was arrestment, and not poinding.

This was an advocation from the Sheriff-court of Lanarkshire. In January 1865 Metcalf addressed to Hutchison and Dixon, auctioneers in Glasgow, a letter in these terms:—

"Gentlemen,—You are hereby requested to take possession of and sell the whole of my household furniture and plenishing in the cottage occupied by me at Campsie Junction, called Glen Bank or Holly Lodge. You are to use your discretion whether to make the sale at the cottage or to remove the articles and sell them in Glasgow: and I request and authorise you to pay over the free proceeds of the sale to Mr John Finlay, ironmonger, Glasgow."

This letter was given by Metcalf to Finlay, and by him delivered to Hutchison & Dixon, who sold the furniture in terms of the letter. Mackenzie & Co., arresting creditors of Metcalf, now brought this action of multiplepoinding, in name of Hutchison & Dixon, the fund *in medio* being the sum realised by the sale of the furniture, and the claimants being Finlay and also certain creditors of Metcalf, besides Mackenzie & Co., who had used arrestments in the hands of the holders of the fund. The Sheriff (Bell) held that as the letter in favour of Finlay was admittedly granted for onerous considerations, and there was no proof that at the date of the letter Metcalf was notour bankrupt, or in such circumstances as to prevent him from granting the letter, so soon as Hutchison & Dixon took possession of the furniture Metcalf ceased to have any control over it, and the money obtained by the sale was held by Hutchison & Dixon for Finlay, and not for Metcalf; that the arrestments were therefore inept; and that, even supposing Finlay had no vested right in the furniture and value, the arrestments were worthless, the proper diligence in the circumstances being poinding; and preferring Finlay for the amount of his claim.

Mackenzie & Co. advocated.

Young and Shand for advocators.

Clark and R. V. Campbell for respondents.

The Court, while of opinion that the Sheriff had gone wrong in holding that in the circumstances poinding was the proper diligence instead of arrestment, came substantially to the same result as that expressed in the Sheriff's judgment.

Agents for Advocator—J. & R. D. Ross, W.S.
Agent for Respondents—J. Webster, S.S.C.

REGISTRATION COURT.

Monday, October 26.

(Before Lords Benholme, Ardmillan, and Manor.)

APPEALS FROM NORTHERN BURGHS.

JAMES ARCHIE.

Act. Clarke, Shand and Black.
Alt. Gifford and Mackintosh.

Tenant and Occupant—31 *and* 32 *Vict., c.* 48, § 3—*Burgh Franchise—Dwelling-House—Part of a House—Interpretation Clause—Separate Rating. Held* (affirming judgment of Sheriff)—(1) that the occupant of one-half of a house was occupant of a dwelling-house in the sense of the New Reform Act; (2) that not being separately rated to the relief of the poor he had not the qualification for the franchise under the 3d section of the Act.

The first case that came before the Court was that of James Archie, cooper, Cromarty, who appealed against a judgment of the Sheriff of Ross and Cromarty, respecting his claim to be admitted on the roll of voters. The following special case was stated by the Sheriff:—

"At a Registration Court for the burgh of Cromarty, held by me at Cromarty on the 5th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict. cap. 48, intituled 'The Representation of the People (Scotland) Act 1868,' and the other statutes therein recited, James Archie, cooper in Cromarty, claimed to be enrolled on the register of voters for the said burgh, as tenant and occupant of one-half of house in Church Street, Cromarty. The following facts were proved:—(1) That the claimant was, and had been for the requisite period, tenant and occupant of the premises in respect of which he claimed; (2) that there was an assessment for relief of the poor in the parish of Cromarty upon owners and occupants of lands and heritages; (3) that the claimant was not rated to the relief of the poor, either in respect of the premises occupied by him as aforesaid, or in any other character; (4) that the claimant had paid no poor-rates in respect of said premises; (5) that he had never been required to pay such poor-rates, either by demand-note or otherwise.

"Donald Mackenzie, nurserymen in Cromarty, a voter on the roll, objected to the said claim, on the grounds—(1) That a claim to be admitted to the roll as tenant and occupant of part of a house, was not a relevant form of claim; (2) that assuming the claim to be unobjectionable in point of form, the qualification on which the voter claimed was in the circumstances insufficient to entitle him to be enrolled.

"I rejected the claim on the ground stated in the second objection. Whereupon the said James Archie required from me a special case for the Court

of Appeal; and in compliance therewith I have granted this case.

"The questions of law for the decision of the Court of Appeal are—(1) Whether a claim to be enrolled in respect of tenantcy and occupancy, or ownership and occupancy of part of a house, is sufficient in point of form? (2) whether, in the circumstances above set forth, the qualification claimed on was sufficient to warrant enrolment, keeping in view the provision of the 3d section of the Representation of the People (Scotland) Act, as explained by the 59th section of the said Act?"

No special description of the house being given—

SHAND asked for a remit to the Sheriff, in order to ascertain the nature of the house.

LORD BENHOLME said he saw no ground for a remit. The man claimed as tenant and occupant of one-half of a house, and as such, under the interpretation clause of the Act, his title was good, provided he was separately rated to the poor. It was admitted that he was not so rated; therefore, under the terms of the Act, the claim as tenant of part of a house could not be sustained. He did not think this was a case for remit. The case in other respects, however, did not seem so clear as he thought his friends considered it, and he would suggest to their Lordships that, while they refused to remit, they should take time to consider the case, because it ran into other cases in which the rating clause was involved, and in which the question as to what formed part of a house would be discussed.

LORDS ARDMILLAN and MANOR concurred, and time was taken to consider the case.

The case was advised at a subsequent diet of the Court—

LORD ARDMILLAN said that the claimant in this case claimed to be enrolled as tenant and occupant of one-half of a house in Cromarty. The objection to his claim was that he only claimed as tenant and occupant of a part of the house, and that he was not separately rated. The Court had already expressed its opinion in more than one case that the occupant of part of a house had no right whatever to the franchise unless he could bring himself within the 59th section of the Act. By that section it was necessary that the occupant of a part of a house should be separately rated; and in this case the occupant was not so separately rated, and therefore the claimant could not get the benefit of that section.

LORD MANOR was clearly of the same opinion. In this case the claimant only occupied part of the house, and, not being separately rated, he could not come under the 59th section of the Act, and was not therefore entitled to the franchise.

LORD BENHOLME concurred with their Lordships. The interpretation clause supposed that a dwelling-house might be a part of a house. One would be a little at a loss as to what was the true definition of a house in the sense of the Act, and he could conceive cases in which, on the abstract question, without considering the way in which houses were inhabited, it would be difficult to say what part of a building constituted a whole house. But it was quite clear that this Act of Parliament contemplated that the word dwelling-house for the purposes of this Act might be taken in a very large sense, and might extend to every part of a building, however small, that was occupied by one individual, provided the occupier was separately rated for the poor either in respect of the premises which he occupied, or as an inhabitant of the parish. The only question here was whether there was really not a whole house, and therefore they did not require the aid of the interpretation clause to make it a dwelling-house. On that point they had had a very able argument; but he had not been able to see this in a different light from their Lordships. He thought these premises were plainly a part of a house; and he could not help agreeing with their Lordships that they must affirm the judgment of the Sheriff.

The judgment of the Sheriff was accordingly affirmed.

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

JAMES GORDON SMITH.

Act. Clark, Shand, and Black.
Alt. Gifford and Mackintosh.

Husband—Owner in right of Wife—Correction of description. Held that the Sheriff was entitled to correct an enrolment by adding the words "in right of his wife" to the qualification of a husband claiming as owner in respect of his wife's property. Qualification, so amended, held to confer the franchise.

In this appeal the Sheriff stated the following special case:—"At a Registration Court for the burgh of Cromarty, held by me at Cromarty on the 5th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict. cap. 48, intituled 'The Representation of the People (Scotland) Act 1868,' and the other statutes therein recited, George Gordon Smith, surgeon in Cromarty, a voter on the roll, objected to Alexander Mackay, innkeeper in Cromarty, being continued on the roll as a voter for the said burgh. The said Alexander Mackay stood enrolled as a voter in Cromarty, as owner of inn, garden, and dwelling-house, Church Street, Cromarty.

"It was objected by the said George Gordon Smith that the said Alexander Mackay was not owner of the premises on which he stood enrolled.

"The said Alexander Mackay produced in support of his right to be continued as a voter on the roll, the writs, of which copies so far as material are appended hereto, and which are to be held as embodied in this case, and to constitute part thereof, viz.:—Disposition of the premises in question by Innes Colin Munro of Poyntzfield, in favour of the claimant's wife, Christina Maclean or Mackay, dated 4th February 1867.

"The following facts were also proved:—That the premises on which the voter was enrolled were of the yearly value of £13.

"I repelled the objection, and continued the name of the said Alexander Mackay upon the roll, adding to the word owner, in the description of his qualification, the words 'in right of his wife.' Whereupon the said George Gordon Smith required from me a special case for the Court of Appeal; and in compliance therewith I have granted this case.

"The questions of law for the decision of the Court of Appeal are—(1) Whether it was competent to the Sheriff to correct the description of the voter's qualification as appearing on the register by the addition thereto of the words 'in right of his wife?' (2) whether, assuming that it was not competent to the Sheriff so to correct the description, the disposition in favour of the claimant's wife was a title sufficient to warrant the enrolment of the voter as *owner* of the subjects conveyed by