

of being out of the occupancy for the requisite period of the requisite value of subjects, the *onus* lay upon the objector, and it would not do for him merely to prove that for a week a room, amounting, they might suppose, to a mere fraction of the whole value, had not been occupied by the voter, and then to throw the *onus* on the latter of establishing his value. He thought the *onus* was upon the objector, and that he was bound to go on with his proof to the extent of showing that what remained in the voter's occupancy was not enough. It was only then that he truly made out his objection. It was quite clear that in this case the objector had not done this, or attempted to do it. But the voter himself had made it quite clear that he had enough value left—that he had been in the occupancy during the necessary period of something more than the necessary amount. Therefore it appeared to him that the Sheriff had gone wrong, and ought to have repelled the objection.

The judgment of the Sheriff was accordingly reversed, and the voter's name restored to the roll.

Agent for Appellant—William Archibald, S.S.C.  
Agent for Respondent—John Gillespie, W.S.

#### WEIR v. BLACKWOOD.

*Register of Voters—Objection—Failure to obey citation.* A party who stood on the Register of Voters was objected to on the ground that he was not proprietor of the subjects in which he stood enrolled. He was twice cited to appear as a witness and haver in support of this objection, but failed to appear, and warrant of citation and executions were produced. The Sheriff held that in these circumstances the party must be held to be confessed. Appeal against this judgment (*dub.* LORD ORMDALE) dismissed.

"The Sheriff stated the following special case:—The said John Weir stood on the Register of Voters as proprietor, houses and garden, Linton. It was objected by the said William Blackwood that the said John Weir was not proprietor of the subjects in which he stood enrolled. The said John Weir had been, on 14th September 1869, personally cited to appear as a witness and haver in support of the above objection, to 'exhibit and produce' the titles of the said subjects in the Registration Court held at Peebles on 15th September 1869, at one o'clock afternoon, and failed to appear in terms of the citation. He was again personally cited on 17th September 1869, to appear in the Registration Court on 18th September 1869 at ten o'clock forenoon, to bear evidence as a witness and haver at objector's instance, to 'exhibit and produce' the titles of said subjects, and again failed to appear, after being three times duly called at the public door of the Court by the proper officer; and the said John Weir's case was at the time the only case remaining to be disposed of by me before concluding my Registration Courts. In respect of which failure, it was moved by the said William Blackwood that the said John Weir's name be expunged from the Register of Voters for the county of Peebles. It was answered on behalf of the said John Weir that this failure to obey the citation is not sufficient reason for expunging his name from the Register of Voters, but no explanation was given or offered of his failure to obey the citation. The warrant for citation and executions were produced. In a previous case of another party (William Thomson),

who stood upon the assessor's list, but failed to appear upon due citation as a witness and haver, and whose case came before the Court on the 16th September current, and was defended by the same counsel and agent who appeared for the said John Weir, I held the said William Thomson to be confessed, in respect of his failure to appear, and intimated my intention to follow the precedent in any similar case. I held, in law, that the said John Weir must, in the circumstances above set forth, be held as confessed; and I therefore sustained the objection and expunged the name of the said John Weir from the Register of Voters."

Mr ORPHOOT, in supporting the appeal, said that before the Sheriff the appellant's claim to the franchise was objected to on the ground that he was not proprietor of the subjects on which he was enrolled. It was proved that he had been cited as a witness and haver to attend at the Court. He failed to appear, and being a second time cited, he still failed to appear. He was represented by counsel and agent, but did not appear as a witness and haver; and it was in respect of his failure to appear in that character that the Sheriff held him confessed, and struck him off the roll. He submitted that that judgment was ill-founded, urging that if under such circumstances a voter was liable to be struck off the roll, great hardship might be inflicted by citing absent parties for the purpose of causing them annoyance.

After some discussion, in which Mr MACDONALD supported the Sheriff's procedure.

LORD ARDMILLAN said the voter had been doubly cited as a witness and haver, but did not choose to come. He was represented by counsel, who offered no explanation of his absence. It had been suggested, in the course of argument, that the remedy was to have fined him £5; but he concurred with Mr Macdonald in thinking that if there was a prospect of a contested election, many a candidate or friend of a candidate would be glad to pay such a penalty for the voter. He could not consider a £5 penalty as any remedy to the objector at all—it was a mere punishment of the party for what was in the nature of contempt of Court. The only intelligible remedy to the objector was that, if there was due notice, with certification express or implied, then the voter not appearing should be subjected to the loss of his vote.

LORD ORMDALE said that what he should have desiderated in such a case was that some certioration should have been given to the party that, failing his appearance, the objection taken against his vote would be sustained. That not having been done, he was not prepared to hold that the course taken by the Sheriff was a strictly proper and correct one.

LORD BENHOLME thought it must be supposed that the voter was perfectly well-advised as to what would be the result of his non-appearance. He considered that the Sheriff had done perfectly right under the circumstances in striking the name off the roll.

The judgment of the Sheriff was accordingly affirmed.

Agent for Appellant—William Archibald, S.S.C.  
Agent for Respondent—John Gillespie, W.S.