

Thursday, January 22.

FIRST DIVISION.

HERRON (TOWN-CLERK OF RENFREW),
PETITIONER.

Burgh—Election of Magistrates—Where Appointment made in Absence of a Quorum—Application to Court for Managers under 3 and 4 Will. IV. cap. 76 (Burgh Reform Act), sec. 27.

The full number of councillors in a royal burgh were chosen at the annual election in November. They afterwards failed, through want of a quorum, to elect magistrates. Terms (1) of an application to the Court by the town-clerk of the burgh, praying under the 7th section of the Burgh Reform Act 1863 for the appointment of managers, and (2) of the *deliverance* thereon by the Court, under which the election was afterwards held.

The town of Renfrew, a royal burgh, which contributed to return a member of Parliament, was included in the Burgh Reform Act 1833 (3 and 4 Will. IV. cap. 76), and in accordance with the provisions of that Act, and the Acts amending the same, the annual election of councillors to fill the vacancies caused by the retirement of members by rotation or otherwise took place on the first Tuesday of November annually. By the provisions of the Act 15 and 16 Vict. cap. 32 (sections 2, 3, and 4), the whole number of councillors for the burgh was fixed at twelve, including a provost and two bailies; a majority of the whole council was constituted a quorum, and after each annual election the council were thereby directed to fill up, according to existing use, vacancies in the magistracy.

At the annual election, which took place on 4th November 1879, seven vacancies were filled up. The new members were duly declared elected councillors of the burgh, and on Thursday, 6th November, being the second lawful day after the election, they appeared before Bailie M'Kenzie, the acting chief-magistrate and returning officer at the election, and severally declared their acceptance of the office and made a declaration *de fidei*.

Bailie M'Kenzie was the only magistrate remaining in office after said election, and it was provided by section 6 of the Act 15 and 16 Vict. cap. 32, that "at the first meeting of the council of any such burgh after the annual election, but before the election of the provost and magistrates, the provost or senior magistrate who may continue to be a member of council, and be present at the said meeting, shall preside thereat, and shall at such meeting have a deliberative, and in case of equality of votes, a casting vote."

By section 17 of the Burgh Reform Act (3 and 4 Will. IV. cap. 76) it was enacted—"That the councillors of all such burghs not contained in Schedule (F) to this Act annexed, respectively so elected and accepting, shall, upon the third lawful day after the election of the whole number of such councillors in the present year, assemble . . . and shall there, by a plurality of voices (the councillor who had the greatest number of votes at the election of councillors having a casting or

double vote in case of equality), elect from among their own number a provost or chief-magistrate, the number of bailies fixed by the set or usage of such burgh, a treasurer, and other usual and ordinary office-bearers now existing in the council by the set or usage of each such burgh."

According to custom, the town-council was summoned to meet on Friday the 7th November, being the third lawful day after the annual election of councillors. Only six members appeared at this meeting, but they elected notwithstanding a provost, a bailie, and a dean of guild from their own number. The other six members of council, however, who were not present at the meeting, and who were headed by Bailie M'Kenzie, subsequently refused to recognise the pretended election at the said meeting as of any validity or effect, on the ground that both by statute and usage it required seven members to make a quorum.

The town-council being thus divided into two parties of six each, and neither party being willing to yield to the other, the municipal affairs of the burgh were brought to a deadlock; and the town-clerk, after making various ineffectual efforts to obtain a legal meeting of council, presented this petition to the Court for appointment of managers, in accordance with the practice recognised by 3 and 4 Will. IV. c. 76, section 27—"That where any royal burgh shall, in consequence of the decision of a court of law or otherwise, be without any legal council or magistracy at the time when this Act comes into operation, or at any future time, all the functions directed by this Act to be performed by the existing magistrates or councils, shall be performed by one or more of the managers who may by any lawful appointment be then in the actual administration of the affairs of any such burgh." The twelve members of the council were called in the petition, and it was served upon them.

The prayer of the petition craved the Court to "appoint such persons as their Lordships might be pleased to name" . . . "to be managers of the affairs of the said burgh, with all such and the like jurisdictions, and the same rights and powers of administration of the property and affairs of the burgh, and of mortified or trust funds, as heretofore lawfully belonged to and were exercised by the provost and magistrates, and town-council, of the said burgh prior to the 4th day of November 1879;" or otherwise to appoint such persons as their Lordships might be pleased to name "to be managers of the affairs of the said burgh in room and place of the provost and of one bailie thereof respectively, and to act as such managers respectively along with the foresaid members of town-council, with all such and the like jurisdictions, and the same rights and powers of administration of the property and affairs of the burgh, and of mortified or trust funds, as heretofore lawfully belonged to and were exercised by the provost and the bailie of the said burgh whose term of office expired at said 4th November 1879; and in any event to appoint a manager to hold and exercise the office and jurisdiction of dean of guild in and for the said burgh, with the same rights and powers as heretofore lawfully belonged to and were exercised by the dean of guild of the said burgh prior to the said 4th day of November 1879; and to interdict, prohibit, and discharge the said

respondents, or any of them, from acting as councillors, magistrates, or office-bearers of the burgh in any way or to any extent which shall be inconsistent with such arrangements for the administration of the burgh as your Lordships may be pleased to make under this petition, &c.”

The two parties in the town-council were separately represented by counsel at the hearing of the petition, but no opposition was made to the application.

Authorities cited—*City Clerk of Edinburgh*, M. 7436; *Town-Clerk of Edinburgh*, M. 7437; *Walker*, M. 7447; *Kay v. Bell*, Mar. 11, 1830, 8 S. 719; *Forbes*, Dec. 22, 1838, 1 D. 351; *Fowler*, Jan. 30, 1867, 5 Macph. 337; *Miller*, June 20, 1840, 2 D. 1181; *Kidd*, Dec. 17, 1852, 15 D. 257; *Martin*, Jan. 25, 1853, ib. 312; *Greig*, Jan. 21, 1842, 4 D. 422.

The Court without delivering opinions pronounced the following order:—

“The Lords having considered the petition of William Herron, town-clerk of the royal burgh of Renfrew, and heard counsel for the petitioner, and also for the twelve persons, respondents, who since the annual election in November last constitute the full number of councillors in terms of the sett of the burgh and Acts of Parliament thereanent,—Find that it was the duty of the said twelve councillors, and they were bound under the provisions of the Act 3d and 4th William IV. cap. 76, to assemble in the town hall, or other their usual place of meeting, and there to elect from among their own number a provost, two bailies, a treasurer, and other usual and ordinary office-bearers, if any, or to fill up by such election so many of the said offices as were vacant, according to the sett of the said burgh and Acts of Parliament thereanent: Find that the said respondents have hitherto failed to perform the said statutory duty, and are still bound and obliged so to do: Therefore appoint and ordain the said twelve councillors, respondents, to assemble on Monday the 2d day of February next, in the town hall, or other usual place of meeting of the council of the said burgh of Renfrew, and then and there, by their votes or plurality of votes, to elect from among their own number a provost, one bailie, and a dean of guild, the persons so elected to hold office respectively for the same period as if they had been timeously elected according to the provisions of the said statute: Appoint the petitioner, as town-clerk, to call the said meeting, and to give not less than four days' notice thereof, and of this deliverance, to each of the said twelve councillors: Ordain each and every one of the said twelve councillors, respondents, to attend the said meeting, and then and there to act and vote in the said election along with the other councillors present, or else to allege a reasonable and sufficient cause for his absence and failure to act as aforesaid, as he shall be answerable, with certification as effeirs: Appoint the petitioner to report to the Court the whole proceedings which take place under this deliverance: Supersede further consideration of the petition till such report shall be received: Reserve the question of expenses.”

Counsel for Petitioner—Balfour—Campbell.
Agent—A. Kirk Mackie, S.S.C.

Counsel for Bailie M'Kenzie and Others—Ure.
Agents—Dove & Lockhart, S.S.C.

Counsel for the other Six Councillors—Pearson.
Agents—Pringle & Dallas, W.S.

Thursday, January 22.

FIRST DIVISION.

[Exchequer Cause.]

COWAN & STRACHAN v. INLAND REVENUE,
AND
SCOTTISH WIDOWS FUND v. INLAND
REVENUE.

Revenue—Inhabited - House Duty—Caretaker—Tenement—Act 48 Geo. III. cap. 53, Sched. B. Rules 3, 5, 6, 14—Act 41 Vict. cap. 15, sec. 13, subsecs. 1 and 2.

Certain premises consisted of a shop on the street floor and of three flats above, extending over the shop and also over an adjoining shop. The first and third flats were occupied as show and work rooms, and had internal communication with the shop below. The second flat was occupied by the salesman of the shop, who was paid by salary. He had in addition to look after the premises and to keep the keys, for which he received no additional salary, but had the occupancy of the house, and he had also to provide dinner in the house for certain employees, for which he was paid so much per head. There was no direct internal communication between the shop and the second flat, but access to the second flat was obtained by means of a stair in the exclusive occupation of the proprietor of the shop, and access to the first and third flats, which communicated with the shop, might also be obtained by this stair. *Held* (following the *Union Bank*, Feb. 2, 1878, 5 R. 598) that the entire premises, including the second flat, were liable in inhabited-house duty.

Certain other premises consisted of three flats and an area or sunk flat. The ground or street flat and the one immediately above were occupied by a Society for the purpose of carrying on the business of Mutual Life Assurance. The area or sunk flat was occupied as a dwelling-house by one of their messengers for the protection of the premises, and had internal communication with the two flats occupied as the offices of the society. The third flat, being the one immediately above the office, was occupied as a dwelling-house by the cashier of the society, who got the house, unfurnished, as part of his salary, and without any special arrangement as to his ceasing to occupy the house on his ceasing to hold office under the society. It had no internal communication with the other flats, but was entered by a stair common to it and to the occupiers of the adjoining house. *Held* that the entire premises, being one tenement belonging to one person, and no portion being let to