

list. This, no doubt, imposes a hardship upon the objector. But the hardship would be equally great, if a voter should be disqualified by an unauthorized act of the overseers. I am of opinion that the service of the notice was not a compliance with s. 100, and that the voter ought not to have been called upon to prove his qualification.

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DENMAN, J. I am of the same opinion. It is hard, no doubt, that an objector should lose his power of objecting through a mistake of the overseers. We, however, have only to put a proper interpretation upon s. 100 of 6 Vict. c. 18. I agree that the words "said list of voters" mean the last register as sent by the clerk of the peace and the list of new claims. The alteration of the list was an unauthorized act of the overseers, and I think the objector, if he chose to avail himself of the privilege of sending his notice by the post, was bound to see that he sent it to the place of abode as it appeared on the register. I therefore agree with the rest of the Court that the decision of the revising barrister was wrong. I must, however, observe that it would have been much more satisfactory to my mind if the case had been argued on both sides.

*Decision reversed.*

Attorneys for appellant: *Coode, Kingdon, & Cotton, for John Daw, Jun., Exeter.*

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SHERWIN, APPELLANT; WHYMAN, RESPONDENT.

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Nov. 19.

*Parliament—County Vote—Sufficient Description of Qualification—"Rent-charge on freehold house"—Amendment—Form of Consolidated Appeal—Indorsement on Case—6 Vict. c. 18, ss. 40, 42-44, 100.*

It is not necessary that the indorsement on the back of the case in a consolidated appeal, should set forth the names, &c. of all the appellants; it is sufficient if it give the name of the person who appeals on behalf of himself and the other appellants, the names &c. of the other appellants appearing in the body of the case.

The qualification of a county voter was described in the third column of the list as "rent-charge on freehold house":—

*Held*, that the description was sufficient as pointing to a freehold rent-charge, or that, if not, the revising barrister should have amended.

APPEAL from the decision of the revising barrister for the southern division of the county of Derby.

The respondent duly objected to the name of the appellant

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being retained upon the list of voters for the parish of St. Alkmund, Derby, and grounded his objection on the third column of the register in respect of the nature of the appellant's interest in the qualifying property.

The entry on the list of voters was as follows: "Sherwin, Samuel;" "Cherry Street, Derby;" "Rent-charge on freehold house." "Parker Street, W. B. Sherwin, owner."

It was contended on behalf of the objector that the qualification of the appellant as stated in the list of voters was insufficient in law to entitle him to vote, on the ground that the rent-charge was not stated in the third column to be a "freehold rent-charge."

It was contended on behalf of the appellant that the qualification as stated was sufficient. That a freehold rent-charge was the only rent-charge which could confer a vote, and that therefore the omission of the word "freehold" was immaterial, and at most a misnomer or inaccurate description, and further, that the barrister had power to amend by adding the word "freehold," if amendment was necessary.

The barrister was of opinion that under 8 Hen. 6, c. 7, a freehold tenure was the very essence of this qualification, and that this did not appear on the face of the list, either by an absolute statement or by necessary implication; from this it followed that in his opinion the case was not one of misnomer or of inaccurate description within s. 101 of the Registration Act, 1843, and that there was no power to amend under s. 40 of the same Act. He consequently expunged the name from the list of voters.

The names of fourteen other persons, contained in a schedule annexed to this case, and all in like manner duly objected to by the said respondent, were expunged upon the same grounds from the lists of voters for the several parishes of St. Alkmund, Derby, Litchurch and Littleover, in the said southern division of the county of Derby. Their several cases depend on the same points of law as this case, and ought to be consolidated therewith.

If the Court should be of opinion that the decision was wrong, then the names of the appellant and the said several other persons are to be restored to the said several lists of voters with or without amendment as the Court shall think fit.

Then followed the signature of the revising barrister and the following statements were appended :

"I, for myself, and on behalf of all the other persons who are interested as appellants in this matter, and whose names are written in the schedule herewith annexed, do appeal against this decision and agree to prosecute this appeal.

(Signed) "Samuel Sherwin."

"I agree to appear and answer this consolidated appeal.

(Signed) "Robert Whyman."

Then followed the schedule.

The indorsement on the back of the case signed by the barrister only gave the name of Samuel Sherwin, Cherry Street, Derby, as appellant, and that of Robert Whyman, of London Street, Litchurch, as respondent.

*H. S. Giffard, Q.C.*, (*Gorst* with him), for the respondent, objected that the case as stated by the revising barrister did not comply with the provisions of the Registration Act, 1843, ss. 44, 45, with reference to consolidated appeals. It is necessary in order to comply with the provisions of the statute that the names and places of abode of all the appellants should appear in the indorsement signed by the barrister: *Wanklyn v. Woollett* (1) decides that the 45th section imposes in the case of consolidated appeals all the requisites of the 42nd section as to single appeals. It follows, therefore, that all the names should appear on the indorsement. *Wilde, C.J.*, in delivering judgment, says, that the identity of all the parties to the appeal can only be established by the signature of the barrister to the indorsement, that being the mode of authentication pointed out by the Act. Here there is no signature of the barrister to the indorsement recognising the right of each appellant to appeal, for only one appellant's name is indorsed. There is nothing to shew that there were several appeals to consolidate.

[KEATING, J. The statement as to the consolidation is in the body of the case.]

There is nothing in the body of the case to shew that there actually were several appellants who all gave notice of appeal. All that is found is that several cases depended on the same point. It is quite consistent with the case that several of the claimants were satisfied with the barrister's decision and did not want to

(1) 4 C. B. 86; 16 L. J. (C.P.) 144.

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appeal. In the case of the appeal failing the respondent has a right to have the necessary formalities as to consolidating the appeal appear on the face of the case, inasmuch as his right to costs may depend on their observance.

[KEATING, J. We must no doubt be able to see from the case that there were really several appeals which have been consolidated, but surely that sufficiently appears, taking the indorsement together with the body of the case.

BRETT, J. It would be extremely inconvenient if it were necessary to indorse a large number of names.]

COLERIDGE, C.J. I am of opinion that this case must proceed. There are four sections of 6 Vict. c. 18 to which our attention has been drawn. The 42nd section gives the procedure in the case of single appeals. The 43rd section may be passed over. The 44th section enacts the mode of procedure with regard to consolidated appeals, and the 45th section enacts that in and with regard to every such consolidated appeal the like proceedings shall be had and taken, and the like rules and regulations shall apply as in the case of any other appeal under this Act. I should quite agree that if it did not appear that substantially the mode of procedure pointed out by s. 44 had been complied with, the preliminary objection must prevail. I am, however, of opinion that all the conditions of the 44th section do sufficiently appear from this case to have existed. It appears from the case that fourteen other persons named in the schedule were all objected to, and their names were expunged on the same grounds. The barrister states that "their several cases all depend on the same point of law as this case, and ought to be consolidated therewith." It seems to me that, according to a reasonable construction, the case does sufficiently show that there were fourteen appeals which the barrister was of opinion should be consolidated. If any doubt could exist, it further appears that Sherwin did, in the form prescribed by the 44th section, undertake to be appellant in the consolidated appeal on behalf of himself and the others, and Whyman undertook to be respondent. Though their signatures are subsequent to the barrister's signature of the case, still they are anterior to that of the barrister to the indorsement, and we

must take it that by his signature to that indorsement he authenticates what is in the body of the case and schedule. Therefore, it seems that the conditions of the 44th section, which governs this case, are sufficiently complied with. We were pressed with the authority of the case of *Wanklyn v. Woollett* (1). When that case is carefully considered it will appear to be distinguishable from the present. There the Court were asked to try an appeal which did not fulfil the requisites of the Act, inasmuch as it did not comply with a direction which, by the 62nd section, is made a condition precedent to the appeal, viz., the signature of the barrister. The Court held that such signature was a condition precedent, and that inasmuch as it had not been appended to the case in due time the Court had no jurisdiction. That case is entirely different from the present.

KEATING, J., concurred.

BRETT, J. It seems to me that the 42nd section taken by itself is a mere directory enactment as to single appeals, and that the 44th section is also a mere directory enactment as to consolidated appeals; but that, as to the 42nd section, a part of that which is directed to be done, is by the 62nd section made into a condition precedent. It is enacted by the 42nd section that "the said barrister shall read the said statement to the appellant in open Court, and shall then and there sign the same," and "the said barrister shall then indorse upon every such statement the name of the county, &c., and shall sign and date such indorsement." If that had only appeared in the 42nd section, I think it would have been directory; but the 62nd section says, that "every appellant, &c., shall transmit to the masters of the said Court of Common Pleas the statement in writing so signed by the revising barrister as aforesaid." That, it appears to me, makes the signature of the barrister a condition precedent, and this is what, in my opinion, the case of *Wanklyn v. Woollett* (1) decided. Wilde, C.J., refers to both the 42nd and 62nd sections, and it is on the latter that he bases the decision that as the case was not signed there was no jurisdiction. The same point was also decided in *Burton v. Brooks*. (2) Now s. 44 seems to me to be in like manner directory

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(1) 4 C. B. 86; 16 L. J. (C.P.) 144. (2) 11 C. B. 41; 21 L. J. (C.P.) 7.

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only with regard to consolidated appeals; but it says that "the said barrister shall in such case state in writing the case, and his decision thereon in manner hereinbefore mentioned, &c., and shall read such statement and sign the same as hereinbefore mentioned." It incorporates that part of s. 42 which says that there must be a signature, and so it thereby incorporates that part of s. 62 which applies to the signature of the barrister, and consequently it is necessary that the indorsement should be signed by the barrister. That indorsement is to contain the name of the appellant, that is, as it appears to me, in a consolidated appeal, the name of the appellant selected by the barrister to represent the others. Thus, if there was here a consolidated appeal, if there were different appellants, and the barrister selected Sherwin to be appellant in such appeal, the conditions of the Act have been complied with. This reduces the question to one of construction of the case, and I agree, for the reasons given by my Lord, that it sufficiently appears upon the case that there were several appellants, and that the appeal was consolidated, and Sherwin named by the barrister as appellant.

GROVE, J., concurred.

*Sir H. James, A.G.* (with him *Edwards*), for the appellants. The qualification was sufficiently described, or, if not, the revising barrister had power to amend, and should have amended. No rent-charge but a freehold rent-charge would give the qualification, and, therefore, no one could be misled by the description of the qualification: *Warburton v. Denton*. (1) The result of the cases is that if the description taken in one sense applies to that which would be a qualification, and in the other sense to that which would not, it must be taken in the former sense. [He cited *Longfield v. O'Connor*, cited in *Rogers on Elections*, 11th ed. pp. 141, 142; *West v. Robson* (2); *Nicholls v. Bulwer* (3); *Howitt v. Stevens*. (4)]

*H. S. Giffard, Q.C.* (with him *Gorst*), for the respondent. The cases cited are distinguishable from the present case. There the question was whether the barrister had power to amend, and it was held that he had. But he appears here to have found as a

(1) Law Rep. 6 C. P. 267.

(3) Law Rep. 6 C. P. 281.

(2) 3 C. B. (N.S.) 422; 27 L. J. (C.P.) 262.

(4) 5 C. B. (N.S.) 30; 28 L. J. (C.P.) 105.

fact that the qualification was not so described as to be capable of being commonly understood.

[KEATING, J. Even if that be so, he seems to have intended to refer the question, whether he was right in so thinking, to us as part of the case.]

The Court cannot say that his finding was wrong. If the description, though inaccurate, is such that it would be popularly understood to refer to the qualification claimed, the barrister may amend to render it accurate; but if it would not be popularly understood to refer to such a qualification, he cannot. The question, therefore, is whether the word "rent-charge" must be considered as necessarily, in popular parlance, meaning a freehold rent-charge. [He cited *Birks v. Allison*. (1)]

COLERIDGE, C.J. I am of opinion that this appeal must be allowed, and the decision of the revising barrister reversed. It seems to me that he intended to leave to us two questions: viz., whether the qualification was sufficiently described, and, if not, whether, under the circumstances, he had power to amend. He decided in the negative on both points: he thought that the qualification was insufficiently described, and that it was so insufficiently described as to deprive him of the power of amendment. I am of opinion that he was wrong on both points. I should have thought, speaking for myself, the description was good enough as it stood. The principle of the decision in *Howitt v. Stevens* (2) seems to me to be this, viz. that when the description of the qualification describes that which is a qualification or that which is no qualification, the Court will not be astute to give it the latter effect. Secondly, if that be not so, I think the case was well within the power of amendment given by the Act. If the barrister meant to hold that, because the freehold nature of the rent-charge did not appear by absolute statement or necessary implication, there could be no power of amendment, he seems to me to have come to a wrong conclusion as to the nature of the power of amendment given to him. Therefore, looking at the description as it stands or with relation to the power of amendment, I think our decision must be for the appellants.

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(1) 13 C. B. (N.S.) 12; 32 L. J. (C.P.) 51.

(2) 5 C. B. (N.S.) 30; 28 L. J. (C.P.) 105.

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KEATING, J. I also think that the barrister was mistaken on both points. It seems to me that the description of the qualification as it stands is sufficient. It is only a freehold rent-charge that can amount to a qualification. I do not see why the description should be read as meaning that which would not give a vote. I think it is reasonably capable of the interpretation put on it by my Lord, viz. as being such a rent-charge as would constitute a qualification, that is, a freehold rent-charge. If it were otherwise, I should think there can be no doubt whatever that it was the duty of the revising barrister to make it sufficient if necessary by the addition of the word "freehold," and that such an alteration was entirely within his powers. I cannot agree with Mr. Giffard that the barrister intended to conclude us by finding that it was not such a description as would be commonly understood.

BRETT, J. I am of the same opinion. I take it as clear that the description of the qualification in the third column need never be strictly accurate. It is enough if, though the description be not strictly accurate, the qualification be sufficiently described to be capable of identification. If this description had been equally applicable to either of two different qualifications, I should have had the same doubts as I expressed in the cases of *Townshend v. Marylebone* (1), and *Ford v. Boon*. (2) I should have doubted whether the qualification was so sufficiently described as to be capable of identification. It is to be noticed, however, that the majority of the Court in the former case, and the whole Court in the latter, thought that a description capable of being applied to either of two different qualifications was capable of amendment. That case is stronger than the present. Here the description, though not strictly accurate, because it might describe only a chattel interest, if it were the description of a qualification at all, could only be the description of one qualification, viz. a freehold rent-charge. Therefore, I incline to think that no amendment was required; but the case of *Howitt v. Stevens* (3) and *Birks v. Allison* (4),

(1) Law Rep. 7 C. P. 143.

(3) 5 C. B. (N.S.) 30; 28 L. J.

(2) Law Rep. 7 C. P. 150.

(C.P.) 105.

(4) 13 C. B. (N.S.) 12; 32 L. J. (C.P.) 51.



which followed it, are absolute authorities for shewing that the barrister might have amended. The barrister decided that it did not appear expressly or by necessary implication that the rent-charge was freehold, and therefore that it followed that it was not a case of misnomer or inaccurate description, and, consequently, he had no power to amend. It seems to me that this decision was erroneous in point of law, and that he had power to amend. He ought, therefore, to have gone on, and satisfied himself whether the description was sufficient for the purposes of identification, and if so, then whether the voter had the qualification described. He stopped short, and inquired into neither of the two subsequent questions on the ground that neither expressly nor by necessary implication it appeared that the rent-charge was freehold. It appears to me that his decision was wrong, and must be reversed.

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GROVE, J. I am of the same opinion. It seems to me that in construing these provisions, we have to look to the object for which they were enacted. The description of the qualification is required for the purpose of enabling any person to look into the validity of the claim, and that he may know what is the nature of the qualification claimed, as, for instance, whether it is freehold or leasehold. It seems to me that this would be sufficiently provided for, if enough were stated to distinguish the qualification claimed from all other qualifications given by the Act, for that would sufficiently inform any one what qualification was claimed. I do not see in the present case how any one could be misled as to the nature of the qualification claimed. I do not agree with the revising barrister that the nature of the qualification is to be so exactly described as to amount to a definition of it. Then, secondly, I do not think the power of amendment is limited to cases of inaccurate description within the 101st section. The words of the two sections are different. That section speaks of an "inaccurate" description; the 40th section speaks of an "insufficient" description. The power of amendment appears to me to depend wholly on the 40th section, and the test given by that section is whether an amendment will alter the nature of the qualification. It seems to me quite clear that the addition of the word

1873 “freehold” in the present case would not have altered the nature of the qualification.

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*Decision reversed.*

Attorney for appellant: *Greenfield.*

Attorney for respondent: *Somerville.*

Nov. 19.

LORD RENDLESHAM, APPELLANT; HAWARD, RESPONDENT.

*Parliament—County Vote—Irish Peer.*

An Irish peer, who is not one of the representative peers for Ireland, nor the representative of any constituency in Great Britain, is not entitled to be placed on the register of voters.

APPEAL from the decision of the revising barrister for the eastern division of the county of Suffolk.

Objection was made to the name of the appellant, Baron Rendlesham, on the list of voters.

The appellant was, during the qualifying period, an Irish peer, and was not, and never had been, a representative peer or a member of parliament. He was duly qualified to have his name retained in the list and to be registered as a voter in respect of the qualification described in the list, unless disqualified by the fact of his being an Irish peer.

It was contended on behalf of the objector that the appellant was not entitled to have his name retained upon the list by reason of his being an Irish peer. It was contended on behalf of the appellant that, as a peer of Ireland elected a member of the House of Commons, and who had not declined to serve as such member, was entitled to vote at the election of knights of the shire, and that as the appellant was in other respects qualified to vote, he was entitled to be registered in order to enable him to exercise such right of voting in the event of his being elected a member of the House of Commons and not declining to serve as such member.

The revising barrister decided that the appellant, being a peer, and not during the qualifying period, nor at the time of the registration, elected a member of the House of Commons, was not