

upon him for payment; that he is therefore not legally liable, and that he cannot be said to have failed to pay.

LORD BENHOLME—I am of the same opinion, and consider that this is a very clear case.

The judgment of the Sheriff was affirmed, with expenses.

Agents for Appellant—Hughes & Mylne, W.S.

Agents for Respondents—Mackenzie & Black, W.S.

BRUCE v. ROSE.

Act. Gifford and Mackintosh.

Alt. Clark, Shand, and Black.

31 and 32 Vict., c. 48, § 20—Assessor—Timeous delivery of claim. Held (affirming judgment of the Sheriff) that a claim which was posted at the last post of the day allowed by the Statute for lodging claims, and which could not and did not reach the assessor until the following day, was not timeously delivered. Observed, per LORD BENHOLME, that the claim might be in time if the failure of the assessor to receive the claim on the last day was attributable to a miscarriage over which the claimant had no control.

The following special case was stated in this appeal:—"At a Registration Court for the burgh of Tain, held by me at Tain, on the 2d day of October 1868, under and in virtue of the Act of Parliament, 31 and 32 Vict., c. 48, intituled, 'The Representation of the People (Scotland) Act 1868,' and the other Statutes therein recited, William Bruce, draper in Tain, claimed to be enrolled on the Register of Voters for the said burgh, as tenant and occupant of a house in Market Street of Tain.

"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 to be enrolled; (2) that he was assessed for and had paid poor-rates in respect of the said premises; (3) that he transmitted his claim to the assessor by posting the same at Tain, about ten o'clock, p.m., in the post-office at Tain, on 21st September 1868, duly addressed to the assessor; (4) that the latest mail from Tain to Inverness leaves Tain at twenty-five minutes past five, p.m., and that the claimant was aware, when he posted his claim, that this was so, and posted it in order that it might be transmitted to Inverness by the earliest mail on 22d September; (5) that the claim was accordingly received by the assessor on the morning of 22d September.

"John Rose, a voter on the roll, objected to the said claim, on the ground that it had not been timeously sent to the assessor.

"I rejected the claim upon the ground stated by the objector. Whereupon the said William Bruce required from me a special case for the Court of Appeal; and in compliance therewith I have granted this case.

"The question of law for the decision of the Court of Appeal is,—Whether the claim was duly and timeously sent to the assessor in terms of sects. 3 and 9 of the 'Registration of Voters (Scotland) Act 1856,' and sect. 20 of the 'Representation of the People (Scotland) Act 1868?'"

MACKINTOSH, for the appellant, maintained that it was sufficient if claims were posted on the day mentioned in the Statute.

SHAND, for the respondent, contended that, to

comply with the provision of the Statute, the claim must be posted in time to reach the assessor on the statutory day in the ordinary course of post.

LORD BENHOLME, in giving his opinion, said that if a claim was posted in time to reach the assessor in the ordinary course of post within the statutory period he might be in time even though, by any miscarriage in the post for which he was not responsible, the claim did not actually reach the assessor on the statutory day. In this case, however, the claims was posted at a time when the party must have known that it could not reach the assessor on the statutory day. He was clearly of opinion, therefore, that the provision of the Statute as to notice had not been complied with, and that the judgment of the Sheriff rejecting the claim should be affirmed.

LORD ARDMILLAN said it was clear that a party did not comply with the requirement of the Statute if he posted his claim at a time too late to reach the assessor within the statutory period in the ordinary course of post.

LORD MANOR concurred, and said that extreme inconvenience might arise if it was held that a claim posted on the statutory day was lodged in time, though it could not possibly reach the assessor upon that day.

The judgment of the Sheriff was affirmed, with expenses.

Agents for Appellant—Mackenzie & Black, W.S.

Agents for Respondent—Hughes & Mylne W.S.

FORBES v. WEBSTER.

Act. Gifford and Mackintosh.

Alt. Clark, Shand, and Black.

Tenant and Occupant—Servant of Railway Company—Defeasibility. Held (altering judgment of the Sheriff) that a station-master who occupied a house belonging to the railway company as part of the consideration stipulated for his services, and was liable to be dismissed and entitled to leave upon fourteen days' notice, had not the qualification of tenant and occupant entitling him to the franchise.

The following special case was stated in this appeal:—"At a Registration Court for the burgh of Tain, held by me at Tain on the 2d 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 Webster, station-master, Tain, claimed to be enrolled on the register of voters for the said burgh, as tenant and occupant of dwelling-house and land attached, situated at the railway station, Tain.

"The following facts were proved:—(1) That the claimant occupied, under the railway company, a dwelling-house at the station, with a garden and certain land attached, and had done so for the requisite period; (2) that the claimant paid no money rent for the house and garden, but occupies the same as part of the consideration stipulated for his services as station-master, but paid a rent of £2 for the ground other than the garden; (3) that the yearly value of the house, together with the land, was upwards of £10; (4) that the claimant had been for several years in the service of the company, and was paid by yearly salary, but was liable to be dismissed, and, on the other hand, entitled to leave the service of the company on fourteen days' notice; (5) that the company are rated to the relief of the poor, both as owners and occupants

of the subjects occupied by the claimant, who is not rated in respect of the same.

"Alexander Forbes, a voter on the roll, objected to the said claim, on the ground that the claimant was not tenant of the subjects in respect of which he claimed.

"I admitted the claim, whereupon the said Alexander Forbes required from me a special case for the Court of Appeal; and, in compliance therewith, I have granted this case.

The question of law for the decision of the Court of Appeal is—Whether, in the circumstances above set forth, the claimant is to be considered as tenant of the subjects in respect of which he claims, in the sense of sect. 3 of the Representation of the People (Scotland) Act 1868?"

MACKINTOSH, for the appellant, maintained that this case fell to be regulated by the case of the farm-servant decided upon the previous day. The features which distinguished the case of the farm-servant from that of ordinary tenancy were these:—(1) The relation of master and servant subsisted between the claimant and the party from whom he held the house; (2) the house was held under the contract of service, at least under no separate contract from that of service; and (3) the claimant paid no rent for the house in money, but received it for his services. From these three a fourth feature was deduced, viz.:—(4) that the claimant's right, depending on the contract of service, it was defeasible at pleasure. Upon a complex view of these whole circumstances, the Court held that the case in question was one where the occupancy was not the claimant's occupancy, but the occupancy of his master. He contended that all the above features equally concurred here, and that therefore the case fell to be ruled by that of the farm-servant.

SHAND, for the respondent, maintained that the station-master was actually tenant of the house which he occupied, because he had an indefeasible right to the house so long as he held his situation. He could not be turned away without fourteen days' notice, and as he had occupied the house for the statutory period, and his right was indefeasible so long as he did not get fourteen days' notice, he was entitled to be enrolled. He submitted that the right to fourteen days' notice distinguished this case from that of the farm-servant.

The Court unanimously sustained the appeal, reversed the judgment of the Sheriff, and ordered the name of the claimant to be expunged from the roll.

Agents for Appellant—Mackenzie & Black, W.S.

Agents for Respondent—Hughes & Mylne, W.S.

#### FORBES v. ROSS.

Act. Gifford and Mackintosh.

Alt. Clark, Shand, and Black.

31 and 32 Vict., c. 48, § 3—*Owner and Occupant—Assessment for Poor-Rates—Inability to Pay.* A party in 1858 had been exempted from the rate imposed on him as occupant in respect of inability to pay, and that rate has never been paid. In 1858, and since then, he has been assessed as owner, and has paid his rates. Held that he was not disqualified under the proviso of the 3d section of the Statute.

The following special case was stated on this appeal;—"At a Registration Court for the burgh of Tain, held by me at Tain on the 1st 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, Alexander Forbes, solicitor in Tain, a voter on the roll, objected to Hugh Ross, labourer, Tain, being continued on the roll as a voter for the said burgh.

"The said Hugh Ross stood in the assessor's list of persons entitled to be registered as voters for the burgh as owner and occupant of dwelling-house, Academy Street.

"It was objected by the said Alexander Forbes that the said Hugh Ross was disqualified, in respect of exemption from poor-rates on the ground of inability to pay, and in respect of failure to pay all poor-rates that had become due by him up to the 15th of May last

"The following facts were proved:—(1) That the said Hugh Ross was exempted in the year 1858 from the rate then assessed upon him as occupant of the said house in respect of poverty, and that he had not, since 1858, been assessed as occupant. (2) That the rate so assessed upon him in 1858 had never been paid, but was considered by the parochial board as passed from, and not due by Ross, in respect of his exemption in 1858. (3) That in 1858, and every subsequent year, Ross had been regularly assessed for poor-rates as owner of the said house, and had regularly paid his rates.

"I repelled the objection, and continued the name of the said Hugh Ross on the roll. Whereupon the said Alexander Forbes 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, in the circumstances above set forth, Ross is to be held as disqualified under the proviso in section 3 of the Representation of the People (Scotland) Act, requiring payment by the voter of all poor-rates that have become due by him up to 15th May in any given year. (2) Whether Ross is to be held as disqualified under the proviso in the said section, rendering it a condition of the right to the franchise that the voter shall not, during the period of twelve months preceding 1st August in the present year, have been exempted from payment of poor-rates on the ground of inability to pay."

MACKINTOSH, for the appellant, submitted that as this party had been exempted from poor-rates on the ground of inability to pay, he was disqualified, because that exemption had subsisted from 1858 downwards.

The Court unanimously affirmed the judgment of the Sheriff.

Agents for Appellant—Mackenzie & Black, W.S.

Agents for Respondent—Hughes & Mylne, W.S.

#### STEWART v. ADAM.

Act. Clark, Shand, and Black.

Alt. Gifford and Mackintosh.

*Tenant and Occupant—Bank-agent—Defeasibility—Onus.* Special circumstances in which held that a bank-agent was entitled to be retained on the roll on a qualification as tenant and occupant. Observed, that if a party stands on the roll that is a *prima facie* evidence that he has an indefeasible right, and that the *onus* of proving defeasibility lies on the objector.

The following special case was stated in this appeal:—"At a Registration Court for the burgh of Wick, held by me at Wick on the 5th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., cap. 48, intituled 'The