

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

Representation of the People (Scotland) Act 1868,' and the other Statutes therein recited, John Stewart, coach clerk, Bridge Street, Wick, a voter on the roll, objected to Thomas Adam, bank-agent, Bridge Street, Wick, being continued on the roll as a voter for the said burgh. The said Thomas Adam stood enrolled as a voter foresaid, as tenant and occupant of house, Bridge Street, Wick.

"It was objected by the said John Stewart that the said Thomas Adam was not tenant of the said house. The said Thomas Adam is entered on the burgh valuation rolls for each of the years 1867-68 and 1868-69 as tenant and occupant of house in Bridge Street, Wick, of the yearly rent or value, the former year of £35, and the current year £25.

"The following facts were proved:—The voter is joint-agent at Wick for the Aberdeen Town and County Banking Company, his father being the other joint-agent, but who does not live in the house. The terms of his appointment were verbally arranged between his father and the bank. The voter has no writing instructing his appointment as joint-agent, or his right to occupy the dwelling-house on which he is enrolled. The house is the bank's property, and the bank office is part of the same building. There was nothing empowering the bank to remove him at will, neither was there anything to the contrary, so far as the voter knew, in his agreement with the bank. He has an annual salary. The right to occupy the house is part of his remuneration. Is under no obligation to reside in it, but a good house being provided for agent, he resides there.

"I repelled the objection, and continued the name of the said Thomas Adam on the roll. Whereupon the said John Stewart 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 Mr Adam is to be regarded in law as tenant?"

SHAND, for the appellant, contended that Mr Adam was removeable from the house at pleasure of the bank.

LORD BENHOLME said that this case must follow the case of the bank-agent already decided. The *onus* lay upon the appellant to prove that the right of the bank-agent to the house in this case was of a defeasible character. That had not been done, and the judgment of the Sheriff must be affirmed.

LORD ARDMILLAN concurred, remarking that the case was different from that of a claimant, because the party here was upon the roll, and that was *prima facie* evidence of his possessing an indefeasible right to the tenancy of the house; and unless that *prima facie* case could be set aside by proof upon the part of the objector, the name must be retained upon the roll.

LORD MANOR concurred.

The Court affirmed the judgment of the Sheriff, with expenses.

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

#### STEWART v. BRUCE.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Joint-Tenant and Occupant—Burgh Voters Act, —Error in Description—Right of Sheriff to Alter. Held (affirming judgment of Sheriff) that the Sheriff was entitled to correct an error

in the description of subjects upon which the qualification depended, the name of one street having been substituted for another *per incuriam*.

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 3d 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, John Stewart, coach clerk, Bridge Street, Wick, a voter on the roll, objected to George Bruce, fishcurer, Breadalbane Terrace, Pulteneytown, being continued on the roll as a voter for the said burgh. The said George Bruce stood enrolled as a voter foresaid as joint-tenant and occupant of cooperage and stores in Burn Street, Pulteneytown.

"It was objected by the said John Stewart that the said George Bruce was not joint-tenant of cooperage and stores in Burn Street, Pulteneytown, John Bruce and the voter are entered in the burgh valuation roll for the year 1867-1868, as joint-tenants and occupiers of cooperage and stores in Telford Street, Pulteneytown, of the yearly rent or value of £40, and in the valuation roll for the year 1868-1869 as joint-tenants and occupiers of cooperage and stores at 'Breast of Old Harbour,' of the yearly rent or value of £40.

"The following facts were proved:—The premises of which the party was admittedly joint-tenant are situated in an adjacent parallel street called 'Telford Street,' and the assessor explained that 'Burn' Street was inserted in this and previous years' lists *per incuriam*.

"The list of voters was altered by the Sheriff by deletion of the word 'Burn' and the insertion of the word 'Telford' in the description of the subjects.

"I repelled the objection, and continued the name of the said George Bruce on the roll. Whereupon the said John Stewart 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 Sheriff had power so to correct the list?"

SHAND, for the appellant, maintained that the Sheriff had no power to make a material alteration upon the description of the subjects claimed upon.

The Court unanimously sustained the judgment of the Sheriff.

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

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

#### STEWART v. AIRD.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

31 and 32 Vict., c. 48—Burgh Franchise—Tenant and Occupant—Exemption from Assessment. A party desired to be enrolled as tenant and occupant of a whole dwelling, for which he paid a yearly rent of £2, 15s. He had occupied for the statutory period, but had never been assessed for poor-rates, the assessor having received instructions to omit from assessment all tenants and occupants of subjects under £4 of yearly value. Held (affirming the judgment of the Sheriff) that the claimant was entitled to be put on the roll.

The following special case was stated in this