

"It was objected by the said John Stewart that the said Alexander Johnston is not tenant and occupant for full statutory period. The said Alexander Johnston is entered in the burgh valuation roll for the year 1867-1868 as tenant and occupant of photographic rooms in Bridge Street, Wick, of the yearly rent or value of £10, and in the valuation roll for the year 1868-1869 as tenant and occupier of photographic rooms in the same street, at a yearly rent of £20.

"The following facts were proved:—That the premises on which voter is entered were taken in April 1867, on the understanding that the premises then in course of fitting up as a photographic studio should be finished as soon as possible; that they were so far completed prior to Whitsunday 1867 that he took a photograph in them, and went in and out to them superintending the progress of the fittings, and he began to use them permanently as his place of business in September 1867. He paid £11 of rent.

"I repelled the objection, and continued the name of the said Alexander Johnston 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—Do the facts proved establish tenancy and occupancy for the statutory period?"

SHAND and CLARK, for the appellant, contended that the occupancy of the premises did not commence till September 1867.

MACKINTOSH and GIFFORD pointed out that the new premises were merely an extension of the old premises, and they maintained that the tenant's occupancy had commenced when the internal fitting-up commenced, and not when it was finished.

LORD ARDMILLAN was of opinion that the tenant was really occupant of the house from the time that the internal fittings commenced.

LORDS MANOR and BENHOLME 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. MACBEATH.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Burgh Franchise—Owner—Title. A party on the roll, without a written title, had occupied a house as owner, paid taxes, &c., since 1845. He was objected to that he was not owner. Objection sustained, a title of ownership being indispensable.

The following special case was stated in this appeal:—"At a Registration Court for the burgh of Wick, held at Wick on the 5th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., c. 48, intitled, '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 Peter Macbeath, blacksmith, Louisburgh, Wick, being continued on the roll as a voter for the said burgh. The said Peter Macbeath stood enrolled as a voter foresaid, as owner and occupant of house in Louisburgh, Wick.

"It was objected by the said John Stewart that the said Peter Macbeath is not owner. The said Peter Macbeath is entered in the burgh valuation-

rolls for the year 1867-68, and for the year 1868-69, as proprietor and occupant of a house of the yearly rent or value of £3.

"The following facts were proved:—That he has no written title; that he has possessed as owner, and paid all public and parochial burdens as owner, and expended money on property since 1845; and his possession has not been disturbed by any one.

"I repelled the objection, and continued the name of the said Peter Macbeath 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:—Is it necessary to instruct ownership under 'The Representation of the People (Scotland) Act 1868' by production of a written title? or, Is the voter entitled to be registered on the facts proved, without such title?"

LORD ARDMILLAN said that he was very sorry to come to the conclusion that this was a bad vote, because he entertained strongly the opinion that it was not necessary to produce a conclusive and complete written title to make a man owner in the sense of the Statute. He thought that if a man, upon the facts stated to them, had clearly the means of establishing by action that he had a good title, and of enforcing the giving him of a good title as owner, they might sustain his title, although he could not produce now a good written title. In this case, however, there was nothing of this kind; and it was not the law of Scotland that possession without any scrap of title made a man owner. He thought they must reverse the judgment of the Sheriff in this case.

LORD MANOR concurred with Lord Ardmillan. A title of ownership was absolutely indispensable. It might not be completed, but there must be a regular formal written title.

LORD BENHOLME concurred.

The Court unanimously reversed the judgment of the Sheriff, and ordered the names of Peter Macbeath and other five voters, whose qualification depended upon the same question of law, to be expunged from the roll.

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

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

MANSON v. SINCLAIR.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Tenant and Occupant—Continuity of Residence—Absence for 12 Months. Held that absence for 12 months from one's house, although he intended to return and did return, and the premises were not in the interval let for hire, but were occupied by members of the claimant's family, was fatal to a claim.

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 7th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., c. 48, intitled 'The Representation of the People (Scotland) Act 1868,' and the other Statutes therein recited, George Manson, fisherman, Bank Row, Pulteneytown, claimed to be enrolled on the Register of Voters for the said burgh, as inhabitant occupier, as tenant of a dwelling-house, Bank Row, Pulteneytown.

"The following facts were proved:—That the voter has been for some years tenant of the premises claimed on; the furniture in the house be-

longs to him; he occupied the premises personally until September 1866, when he went to Glasgow, and wrought on a canal boat there, which he continued to do until September 1867, when he returned to the premises claimed on to reside there, as throughout his absence he had intended to do. During the whole period of his tenancy of the premises, and during his absence, his mother and brother resided in them, and without paying rent, but his brother supports himself. Robert Sinclair, messenger-at-arms, Louisburgh Street, Wick, a voter on the roll, objected to the said claim, on the ground that the claimant has not resided for the statutory period.

"I rejected the claim of the said George Manson. Whereupon the said George Manson required from me a special case for the Court of Appeal, and in compliance therewith I have granted this case."

SHAND, for the appellant, maintained that the absence of the claimant being merely temporary, and it having been all along his intention to return to the premises of which he was all along the tenant, he was really an inhabitant occupier in the sense of the Act.

The Court, without hearing the opposite counsel, approved the judgment of the Sheriff, LORD BENHOLME remarking that the absence of a twelve-month must be held as fatal to the claim.

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

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

STEWART *v.* PHIMISTER.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Tenant and Occupant—Tenant—Owner. Circumstances in which held that a party had sufficiently established tenancy so as to entitle him to be retained on the roll, and was not disqualified on the ground that he was truly owner of the subjects.

"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., c. 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 John Phimister, fish-curer, Willow Bank, being continued on the roll as a voter for the said burgh. The said John Phimister stood enrolled as a voter foresaid, as tenant and occupant of cooperage and stores.

"It was objected by the said John Stewart that the said John Phimister is not tenant. The said John Phimister is entered in the burgh valuation-roll for the year 1867-68 as tenant and occupier of cooperage and stores in High Street, under Mrs George Phimister, at a yearly rent of £9, and of a store, also in High Street, under John Cleghorn, at a rent of £9; and in the roll for the year 1868-69, he is entered as tenant and occupant of cooperage and stores in High Street, under Mrs Phimister, at a rent of £9, and of a store under John Cleghorn at a rent of £7.

"The following facts were proved:—That the cooperage in High Street belonged to the voter's father, who died intestate ten years ago; that the voter was his eldest son. He was then a minor, and on attaining majority did not, and has not, disturbed his mother's possession, and he agreed to pay, and does pay, a yearly rent to his mother for

that cooperage and store. He has never conveyed the property to her, or to any one.

"I repelled the objection, and continued the name of the said John Phimister 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 state of facts makes the voter's holding of the cooperage and store other than tenancy?"

The Court affirmed.

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

STEWART *v.* RUTHERFORD.

Act. Clark, Shand and Black.

Alt. Gifford and Mackintosh.

Tenant and Occupant—Agent—Rates. Circumstances in which held that tenancy had been established by a party who occupied a house as agent for a society, and paid neither rates nor taxes.

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 Gilbert Brydone Rutherford, Captain, R.N., Murchison Street, Pulteneytown, being continued on the roll as a voter for the said burgh. The said Gilbert Brydone Rutherford stood enrolled as a voter foresaid, as tenant and occupant of house and pertinents, Murchison Street, Pulteneytown.

"It was objected by the said John Stewart that the said Gilbert Brydone Rutherford was not tenant. The said Gilbert Brydone Rutherford is entered in the burgh valuation-roll for each of the years 1867-1868 and 1868-1869 as tenant and occupier of house and grounds in Murchison Street, Pulteneytown, of the yearly rent or value of £40.

"The following facts were proved:—The voter, who is agent and factor at Pulteneytown for the British Fisheries Society, occupies the house referred to, and which is the property of his constituents, the Society. The furniture of it is the Society's almost entirely. He has no written agreement with the Society as to its occupation. Before his appointment as factor, he wrote asking what the emoluments were, and the secretary informed him by letter that the salary was so much a-year of money, with right to occupy a dwelling-house which had been built for the agent. He had no other agreement, and that letter was lost. Having been appointed upwards of three years ago, he has since possessed the premises, but the Society pays poor-rates and all taxes. The occupation of the house is not necessary for the discharge of his duties, although one of the rooms is an office in which books and papers of the Society lie; the duties might be done though he lived in any other house in the neighbourhood; he has a commission as factor, but no agreement to hold office for any particular period; he entered on his duties and to the house in June 1865. His predecessor had died in that month.

"I repelled the objection and continued the name of the said Gilbert Brydone Rutherford on