The SOLICITOR-GENERAL—Certainly.

SCOTT said they had got here that very kind of house which their Lordships had desiderated.

After further argument,

LORD ARDMILLAN said they were just re-hearing, re-arguing, and re-considering a case on which they had already bestowed great pains, and which they had decided. He could see no distinction.

Their Lordships concurred, and reversed the Sheriff's judgment, without expenses.

Agents for Appellant—Hamilton & Kinnear, W.S.

Agents for Respondent—Tods, Murray, & Jameson, W.S.

MARY BROWN *v.* INGRAM.

Act. Solicitor-General and Scott.
Alt. Shand and Guthrie.

Female—Tenant and Occupant—Burgh Voters Act—Section 3. Held that a female has no right to the franchise.

The following special case was stated in this appeal:—"At a Registration Court for the Burgh of Stranraer, held by me at Stranraer on the 30th day of September 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, Mary Brown, grocer, Fisher Street, Stranraer, claimed to be enrolled on the register of voters for the said burgh as inhabitant occupier, as tenant of dwelling-house in said Fisher Street.

"The following facts were admitted:—The claimant is and has been for a period of not less than twelve calendar months next preceding the last day of June an inhabitant occupier as tenant of the said dwelling-house within the burgh of Stranraer.

"But the claimant is a female; and Alexander Ingram, writer in Stranraer, a voter on the roll, objected to the said claim on the ground that the claimant, not being a man, is not entitled to be registered as a voter under section 3 of said Statute.

"I rejected the claim. Whereupon the said claimant 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 a female claimant is entitled to be registered as a voter?"

SCOTT, who appeared for the appellant, said that on this case several others depended. The claimants were all carrying on business in the same way as men, having the same liabilities. They paid taxes, and thought they had a right to have their opinions on these matters. They claimed to vote under the 3d section of the Reform Act of 1868, providing that every man should be entitled to be registered as a voter and to vote unless subject to any legal incapacity. There were two things he had to argue upon. These were the word "man," and the concluding words of the clause, "not subject to any legal incapacity." He had to inquire whether the word man in this Act might be held to include woman—whether, in fact, she was the Statute man—and, if so, whether she was subject to legal incapacity. Under the Reform Act 2d and 3d Will. IV., the word "person" was used—"Every person shall be entitled to vote." This question, therefore, could not have arisen in its present shape under that Act, and they had the further protection of the Romilly Act. In the recent Act the word "man" was used; and what their Lordships had to construe was that word "man." In popular and scientific language, he argued, the word included woman. Taken in natural history, it would include woman. He asked their Lordships to construe the word as in popular language, unless there was something repugnant in the Act. He asked their Lordships to apply the interpretation clause of 13th and 14th Vict., which held that words importing the masculine gender should be deemed and taken to include females also, unless the contrary as to gender or number was expressly provided. There was not a word in the Act of 1868 that expressly provided that the word man should not include females. As to the second question, he submitted that women had no legal incapacity in this respect. Women had a right to vote in the election of a schoolmaster as heritors, and there was as great a qualification there as in the right to vote for a member of Parliament. Another public duty women were entitled to perform was to vote for a member of parochial boards. He had excerpts from the municipal records showing that women had been elected burgesses of Edinburgh. There was nothing special in this right to the suffrage to disqualify female voters. She could be a trustee, and this involved the most delicate and difficult duties that a person could be called on to perform. Why, then, deprive her of her right to vote for a member of Parliament, who had to decide on matters in which she was deeply interested?

LORD ARDMILLAN—Can she be a member of Parliament? Your argument implies it.

SCOTT—I think she can on the general question, unless there is some special provision in the Act against it.

SCOTT, concluding, said he maintained that the word man included woman—an argument unassailable under the Romilly Act; and that there was no legal incapacity.

GUTHRIE, in reply, and in reference to the Romilly Act, said that the word "import" had a different meaning to "express," and in that view of the case the word man might be quite sufficient to exclude the meaning which his friend contended for. He was not aware that the Romilly Act had been held to go so far as his learned friend held. If the word "man" had occurred in the Poor-law Act instead of "person" the case would have been different, and would have excluded woman. The word man must be taken to mean a male person in distinction to a female. To put this strange construction upon the Romilly Act would be to change the whole constitution of the country, for it was a principle that it was always to be presumed that the Legislature, when it made known its intention, should express it in clear and explicit terms.

SOLICITOR-GENERAL said the question brought forward was one of very general application. In the 3d section of the Act of 1868, the word man was employed; but in the Statute of 1832, the word used was person. The question to consider was not the word man, but whether or not the person who was a woman was subject to any legal incapacity. There was much prejudice to encounter, women not being considered fit for the rude duty of voting for a member of Parliament; but it was a duty to rise above such prejudice. In early times women, while they had very heavy duties laid upon them, were not considered adapted for all the privileges of men, but it had not been shown that the statute or common law of the country held them to be incapacitated for exercising the franchise. There was nothing that presented the resemblance

of authority against the claim now made. It was true that women were not formerly so demonstrative in asserting their claims as now, but it did not follow that they were to lose their right because they had thought it inexpedient to exercise it. What their Lordships had to decide—to decide for the first time in this country—was whether woman was subject to any incapacity which prevented her from exercising the franchise. She had what constituted the right to the franchise, but the right was subject to the qualification that the individual was under no legal incapacity. That woman had not all the privileges of man was not worth a feather's weight in the argument. We had women who, by virtue of property, like men had the right to the franchise. Woman was a heritor just because she had that amount of property necessary in law to entitle her to the office. With the views with which we had been bred up we had come to believe that in this matter of women's right to vote the thing was not well fitted for them, and they were not well fitted for it. But how could these incapacities be urged when we had a Queen upon the throne? Whatever might be said of the inexpediency or impropriety of admitting women to the franchise, could be no argument in a country like this, where we were graciously ruled by her present Majesty. When we submitted to the Queen's beneficent rule, we need have no fear, if we admitted women to vote, that our rights would suffer, or that women themselves would be degraded. He submitted that the claim ought to be sustained and the finding of the Sheriff reversed.

SHAND thought the arguments of his learned friend might have been much more fitly addressed to the Legislature than to the Court. The fact that the right had never hitherto been claimed was sufficient to show that there had existed an incapacity. Down to the date of the Statute of 1868 no right of the kind ever existed, and certainly neither was claimed nor exercised. Common law disability existed, and Lord Romilly's Act could not remove that disability. He did not see, taking the opposite view, why women should not go into Parliament or become soldiers. When an order went out to raise so many men, men meant women; and if women chose to come forward and take Her Majesty's shilling, there was no reason why they should not.

LORD ARDMILLAN said this was an important and interesting question. If the objection rested upon any supposed inferiority of women such as was recognised and enforced in olden times, when they were treated as inferiors, and when even their testimony in Courts of justice was rejected, he certainly would be disposed to sustain the claim. He thought the progress of society had absolutely and most justly overruled all that stamp of inferiority. But the peculiarity of the case was that, though all that inferiority was removed, we had a century or more of history with a number of different Acts relating to election of the members of Parliament; and every one of them down to the date of this last Act, even read by Lord Romilly's Act, could be only read grammatically and reasonably as limiting the franchise to males. The Acts in the reign of Queen Anne—the 12th Queen Anne, and the 7th George II., and several more—had avowedly reference to freehold qualifications, which were all confined to men. Now, he thought that one of the elements which constituted the soundest and broadest basis for the common law of the country was to be found in the constitutional recognised exercise of principles and practice which formed the law. Our common law would be reduced to an exceedingly bald and narrow field if we excluded that portion which rested on the old and settled customs, because he thought it was a remarkable circumstance, that long after all that inferiority was removed—most properly removed—from women, there was not one solitary instance—he would not say of a woman voting—but of a woman claiming to vote, or raising the question. There had been no judgment of any Court high or low recognising it, and there had been no practice to support it. In the Statute they were now construing, the 56th section of the Statute saved not only the previous laws, but all laws, customs, and enactments conferring any right to vote or otherwise relating to representation in Parliament. Now, he held it to be an ancient law, custom, and enactment that the voting for members of Parliament had been for an immense period of time limited to men, and that was seen by the 56th section of this Act. No doubt the Act of Lord Romilly, if they read it in a particular way, might be held to override all the others, but he did not think it could be so read; it was not intended to be so read, and he could not in the face of this 56th section give it that construction. He could not conceive any ground for sustaining the right to vote in which they could not also sustain the right to sit in Parliament. Persons were entitled to vote and to be elected—entitled to sit and vote for representation. This was the more supported by the fact that there was a statutory enactment required to permit the eldest sons of Peers to have their present privilege, and the principle was that whoever could do the one could do the other. It is the law that a husband votes on his wife's property. Therefore while the lady was married her husband represented her, and he could by the courtesy of the land vote on the same property when he became a widower. If the right is lost while the lady is married, this result takes place—(1) that this is a premium upon the unmarried state, which he should think a thing not acceptable to ladies, and far from acceptable to gentlemen, and (2), that this is a premium upon the demise of husbands, because her right to vote would revive when she became a widow. He was clearly of opinion that there is no right to vote.

LORD MANOR concurred in every word spoken by Lord Ardmillan. He thought women were disqualified from voting by the common law and custom of this country—by the constitution of this country, to establish and settle which nothing was so important, nothing operated so strongly, as any continued use and custom. He found that in this Act, under which this question arose, there was a most express reservation in saving all existing laws and customs in force in reference to legislation and voting, and he did not find anything in this Act that implied any intention to alter this. He thought it was very important to observe that this was not claimed as a new right; it was claimed now, for the first time, as a right which had existed for a very long period. It was said that the non-exercise of the right could not impair the right itself; but it was very important, in the construction of the law, to look to the provisions which this particular Statute made with respect to the rights of husbands and heiresses. The right of her property shall not be exercised by herself, but by her husband as her true and proper representative; but then they came to the case of a woman possessing property in her own right after her husband's death, and there was

nothing said in regard to the corresponding right in the widow to that possessed by the widower. As regarded the Act of Lord Romilly, it did not say wherever "man" was used woman should be implied; but it said wherever words were used "importing" the masculine gender that it should include females also. In the present Act we had the word "man" expressed in most direct terms. It was quite clear that, had it been the intention of the Legislature to alter the word, it would have been done. He was quite satisfied that this was a case in which the claim could not be maintained.

LORD BENHOLME said that by the common law of Scotland—the constitutional law—testified by right and authorised by continued and uninterrupted practice, there was to be inferred the disqualification of the female sex in the exercise of the franchise. He did not trouble himself much about the interpretation of Lord Romilly's Act; he looked exclusively to what was meant by a legal incapacity; and from all that could be gathered from our common law, or invariable custom, he was of opinion that they must confirm the Sheriff's decision.

Agents for Appellant—Tods, Murray & Jameson, W.S.

Agents for Respondents—Hamilton & Kinnear, W.S.

GUTHRIE *v.* ADAIR.

Act. Shand and Guthrie.
Alt. Solicitor-General and Scott.

Tenant and Occupant—Bank Agent—Defeasibility. Circumstances in which a bank agent continued on the roll. *Observed* (per LORD MANOR) that the fact of a bank agent being on the roll was a circumstance favourable to him, which threw the burden upon a party challenging his right of adducing evidence to show that he should never have been admitted.

The following special case was stated by the Sheriff:—"At a Registration Court for the burgh of Stranraer, held by me at Stranraer 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, William Taylor, residing in Princes Street, Stranraer, a voter on the roll, objected to the name of David Guthrie, banker, 22 Church Street, Stranraer, being continued on the roll as a voter for the said burgh. The said David Guthrie stood enrolled as a voter in said burgh as tenant and occupant of dwelling-house and writing offices, 22 Church Street.

"It was objected by Mr Guthrie that the notice of objection given to the assessor was not according to the form No. 4 of schedules of the Burgh Voters Act 19 and 20 Vict., cap. 58, as required by section 4 of that Act, inasmuch as it bears to be signed by a mandatory for the objector, and to be an objection to the voter being retained in the list of persons entitled to vote in the election 'of a member for the Wigtown district of burghs.'

"I found that the said notice of objection was addressed and headed 'To the assessor of the Burgh of Stranraer,' and was acted on by him as a notice applicable to this burgh. I also found that the separate notice of objection, served on Mr Gurthrie, was headed 'Burgh of Stranraer.' The said notices are hereto subjoined. I farther found that John M. Adair, by whom the said notices are signed, is a procurator in this Sheriff-court, and also holder of a written and duly tested mandate, signed by William Taylor, and dated 20th September 1868, authorising Mr Adair to sign and lodge notices of objection in terms of the Burghs Voters Act 1856, 'to all and sundry parties entered, or claiming to have their names entered or retained on the registration of voters for the burgh of Stranraer, for doing which this shall be your sufficient mandate and authority.'

"I repelled the objection to the said notice of objection.

"The following facts were proved:—Mr Guthrie is, and has been for several years, agent at Stranraer for the Union Bank of Scotland, and has conducted the bank business in offices forming part of a house, in which he has also resided. The house also contains writing-offices for his separate law business; and these, and the part of the house in which he has resided, were wholly furnished by him. The whole premises belong to the bank. Mr Guthrie entered to the dwelling-house and writing-offices at Whitsunday 1852, having been appointed bank agent in February preceding. The writing-offices are on one end of the house, and the bank-offices on the other end—the law-offices and the bank offices having separate doors from a common lobby. An outside door incloses the doors to all the offices and house, and an inner door from the said lobby gives access to the dwelling-house alone. The bank safe is locked by means of a bolt connecting with a bedroom in the house above. The poor-rates have been assessed on the bank as owner, and on Mr Guthrie as tenant or occupier, the dwelling-house at £24, and writing-offices at £11, per annum—Mr Guthrie being in the assessment roll entered in the column headed tenants or occupiers. These and other taxes were formerly paid by Mr Guthrie, but for two or three years past have been repaid to him by the bank. He was appointed agent at a salary specified in a letter 'with the house rent free.' No other evidence was adduced regarding the terms of the appointment to the agency, or the terms on which Mr Guthrie has occupied the premises. No witness was adduced except Mr Guthrie himself.

"I found the tenancy not proved, and sustained the objection, and expunged the name of the said David Guthrie from the roll. Whereupon the said David Guthrie, by his counsel, 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—(1) Whether the notice of objection is sufficient? (2) Whether the voter can be held to have been in the occupancy of the subjects on which he is registered as tenant, within the meaning of section 11th of the Act 2 and 3 William IV. cap. 65."

The cases of *Gilbert Brydone* and *George Agnew Main* depended on the same questions of law.

SHAND, for the appellant, argued that the claimant was not a servant in the proper sense; for even if their Lordships took it that he was dismissible at pleasure, he still could not be removed from the premises; there was nothing in the lease to show it.

SCOTT, for the respondents, said the specialty of the case was, that these offices were all parts and portions of a single house, the property of the bank. The appellant did not claim on the bank offices—that would be too extravagant a claim—but he tried to get enrolled on the dwelling-house and writing-offices, as if they stood on a different ground. They were all held on the same tenure,