

they of a nature to afford a qualification?

Now the Assessor has entered Mr Duncan as proprietor of house and lands within the burgh, the house being *ex hypothesi* this meter-house, and the land the land above referred to.

This entry based on property I can quite understand. But the Sheriff has struck Mr Duncan's name off the roll, in respect that even if the meter-house was to be held a building within the meaning of sec. 11 of the Reform Act 1832 there had not been sufficient occupation of it to satisfy the provisions of the section.

The difficulty I have is in satisfying myself that occupation has anything to do with the claim. Were it not that apparently I have the support of the Assessor, who has dealt with the case as one of the property franchise simply, I should be disposed to think, in face of the Sheriff who decided and the counsel on both sides who argued the case, that I must have misapprehended the facts or that there must be some statutory enactment bearing on the question which has escaped me.

Mr Duncan's claim to vote appears to me to depend entirely upon the penultimate proviso of sec. 11, which provides that persons resident within the specified area, as Mr Duncan is, shall be entitled to vote "if they are the true owners of such premises as are hereinbefore mentioned" within the burgh of £10 yearly value, "although they should not occupy any premises within its limits." Mr Duncan takes nothing from the initial and principal enactment of the section, because though he owns the land he does not occupy it, and therefore it is immaterial whether he is in occupancy of the meter-house, if it be a house or other building in the sense of the statute or not. The only question, as it appears to me, is, what is the meaning of the words "such premises as are hereinbefore mentioned" occurring in said penultimate proviso of the section? Are they confined to "house, warehouse, counting-house, shop or other building," or do they extend to the combination of any one of them with any other "house, warehouse, counting-house, shop or other building" or with land? I think that they must be held to extend to the combination. If, then, his meter-house is a house or other building in the sense of the statute, Mr Duncan being the true owner of this meter-house and land to the requisite value in combination is under the penultimate proviso of the section entitled to a vote though he occupies nothing within the limits of the burgh. It is for this reason that I have failed to understand why we should be concerned with the sufficiency of Mr Duncan's occupation. Had I to decide the case upon the question of occupancy I should have required further explanation of the grounds of the Sheriff's judgment. But as I have arrived at the conclusion that the meter-house is not a building within the meaning of sec. 11, I am able to limit myself to the first question put in this case.

The statute enumerates house, warehouse, counting-house, and shop. In that colloca-

tion I think "house" means dwelling-house, as contradistinguished from warehouse, counting-house, and shop, which covers premises occupied for residential and commercial (and under commercial, I think, agreeing with the Judges of the Court of Common Pleas in the case of *Morish v. Harris*, 1865, L.R. 1 C.P. 155, may be fairly included agricultural) purposes. And when the section adds "or other building" that expression must, I think, be interpreted on the principle *ejusdem generis* as intended to cover merely premises, however described, capable of being used for residential and commercial (or agricultural) purposes. I do not think that this meter-house falls under either category.

But I think there is a further objection to the claim, viz., that there is no possible connection between the meter-house and the claimant's property within the burgh, but only between the meter-house and Mr Duncan's house outside the burgh. It cannot in any sense be said that the meter-house, even assuming it to have any value in itself, has any joint value along with the land of which it is no adjunct. I entirely concur in the opinion of the English Judges in the case of *Morish v. Harris* that "the requirements which the statute imposes are permanence, utility, and contribution to the beneficial occupation of the land, thereby increasing its real annual value to let." Applying that to the present case, it is clear that we have not the state of circumstances to which the statutory enfranchisement was meant to apply.

The Court answered the first question in the negative, found it unnecessary to answer the second question, and dismissed the appeal.

Counsel for the Appellant—Blackburn—Cochran-Patrick. Agents—Russell & Dunlop, W.S.

Counsel for the Respondent—A. M. Anderson. Agent—Norman M. Macpherson, S.S.C.

Friday, December 22.

(Before Lord Kinnear, Lord Stormonth Darling, and Lord Johnston.)

JACK (BETT) v. EDIE.

Election Law—Occupation-Franchise—Borough Occupation-Franchise—Tenant of Houses Occupied by his Servants having Service Franchise—"Occupant as Tenant"—Representation of the People (Scotland) Act 1832 (2 and 3 Will. IV, cap. 65), sec. 11—Representation of the People Act 1884 (48 Vict. cap. 3), secs. 3, 5, and 7 (7).

A tenant farmer whose tenancy included two houses in a burgh occupied by servants in his employment, who were in the enjoyment of the service franchise in respect thereof, claimed to be entered on the roll in respect of his occupancy of said houses as tenant.

Held that the employer was not an "occupant as tenant" for the purposes of the franchise, and not therefore entitled to be enrolled, but that the occupiers of the houses in the sense of the franchise statutes were the servants who occupied the houses in virtue of their employment, and who alone were entitled to be enrolled, and that in respect of the service qualification.

The Representation of the People Act 1884 (48 Vict. cap. 3), sec. 3, enacts— "Where a man himself inhabits any dwelling-house by virtue of any office, service, or employment, and the dwelling-house is not inhabited by any person under whom such man serves in such office, service, or employment, he shall be deemed for the purposes of this Act and of the Representation of the People Acts to be an inhabitant-occupier of such dwelling-house as a tenant."

Section 5, enacts—"Every man occupying any land or tenement in a county or borough in the United Kingdom of a clear yearly value of not less than £10 shall be entitled to be registered as a voter, and when registered to vote in an election for such county or borough in respect of such occupation, subject to the like conditions respectively as a man is at the passing of this Act entitled to be registered as a voter and to vote at an election for such county in respect of the county occupation franchise, and at an election for such borough in respect of the borough occupation franchise." Sec. 7 (7)—"The expression 'borough occupation franchise' means . . . as respects Scotland the franchise enacted by the eleventh section of the Act of the second and third years of the reign of King Will. IV, chapter sixty-five."

The Representation of the People (Scotland) Act 1832 (2 and 3 Will. IV, cap. 65), sec. 11, enacts—" . . . Every person not subject to any legal incapacity shall be entitled to be registered as hereinafter directed, and to vote at elections for any of the cities, burghs, or towns, or districts of cities, burghs, or towns, hereinbefore mentioned, who, when the sheriff proceeds to consider his claim for registration, shall have been for a period of not less than twelve calendar months next previous to the . . . last day of July . . . in the occupancy either as proprietor, tenant, or life-renter of any house, warehouse, counting-house, shop, or other building within the limits of such city, burgh, or town, which either separately or jointly with any other house, warehouse, counting-house, shop, or other building within the same limits, or with any land owned and occupied by him, or occupied under the same landlord, and also situate within the same limits, shall be of the yearly value of £10. . . ."

This was a special case stated by the Sheriff of Fife and Kinross (KINCAID MACKENZIE) on appeal from the Registration Court for the Burgh of Kilrenny, held on 7th October 1905. The appellant was James Jack (Bett), Cellardyke, and the respondent was Harry Edie, farmer, Cornceres.

The facts of the case were stated by the Sheriff to be as follows:—"Robert M'Gregor, mandatory for James Jack (Bett), whose name is on the register of voters for said burgh of Kilrenny, objected to the name of Harry Edie being retained in the list of Parliamentary voters for the burgh of Kilrenny. Harry Edie was entered on the roll as farmer, tenant of house and land, Cornceres.

"It was admitted that the buildings in question consist of two small houses on Mr Edie's farm, which are occupied by two of his farm servants, who have the service franchise. No deduction is made from their wages in name of rent for the houses. It was conceded that Mr Edie was qualified if his occupancy of these houses was sufficient to satisfy the provisions of section 11 of the Act 2 and 3 Will. IV, chapter 65.

"The Sheriff repelled the objection, and the objector required a case."

The question of law stated by the Sheriff was—"Whether there was sufficient occupation of the houses in question to satisfy the provisions of section 11 of the Act 2 and 3 Will. IV, chapter 65?"

Argued for the appellant—There was no occupation of the houses in question by the claimant. This was simply an attempt by means of a mid-tenancy to get three votes out of this subject. Section 3 of the 1884 Act conferred the service franchise on occupants of houses of this description "as tenants." It could not be maintained that the claimant could assign his right as tenant to an ordinary sub-tenant and still preserve his qualification to vote, and the terms of the section put a servant in the same position as a sub-tenant. A man could not constructively occupy a house by sub-tenants as he might by animals or by his own family—*Urquhart v. Adam*, November 25, 1904, 7 F. 157, 42 S.L.R. 178; *Kirkwood v. M'Callum*, November 2, 1874, 2 R. 1, 12 S.L.R. 31.

Argued for the respondent—Up to 1884 occupation by servants was regarded as constructive occupation by their employer—*Richardson v. Stewart*, November 8, 1878, 6 R. 17, 16 S.L.R. 76; *Nicolson on Elections*, p. 65. It could not be said that this had been altered by the introduction of the service franchise by the 1884 Act, section 3, because the whole scheme of that Act was not to limit or take away any existing franchise but to extend the benefit of the franchise to a new class, viz., servants.

LORD KINNEAR—In this case the question of law stated by the Sheriff is, whether there was sufficient occupation of the houses in question to satisfy the provisions of sec. 11 of the Act 2 and 3 Will. IV, cap. 65. The case therefore proceeds, like the case of *Duncan v. Jackson*, just decided, on the assumption that the 5th and 7th sections of the 1884 Act import the 11th section of the 1832 Act as defining the conditions of the burgh occupation franchise. That section requires that the claimant shall have been for a period of not less than twelve calendar months next previous to the last day of July in the occupancy either as proprietor,

tenant, or liferenter of any house, warehouse, counting-house, shop, or other building within the limits of the burgh of the yearly value of ten pounds.

Now, that must be read along with the 5th and 7th sections of the Act of 1884. It is indispensable to consider the Act of 1884, both because the Franchise Acts must be read together as a whole, and also because it is the Act of 1884 which creates the uniform qualification in burghs and counties which now determines the occupation franchise. But although the 11th section is repealed in so far as it enacts a franchise, the conditions required by it are retained in so far as applicable to the franchises enacted by the Act of 1884. The facts stated are that the respondent is tenant of two small houses which are occupied by two of his farm servants, who have the service franchise, by which I understand the Sheriff to mean that the servants inhabit by virtue of their service, and that the dwelling-houses are not inhabited by the person under whom they serve, and that they therefore inhabit as tenants in the sense of the statute. They pay no rent for the houses. The question is whether the servants or the farmer whom they serve is the occupant as tenant. I think that is answered by the plain words of the 3rd section of the Act of 1884, which are these—"Where a man himself inhabits any dwelling-house by virtue of any office, service, or employment, and the dwelling-house is not inhabited by any person under whom such man serves in such office, service, or employment, he shall be deemed for the purposes of this Act and of the Representation of the People Acts to be an inhabitant-occupier of such dwelling-house as a tenant." It follows from the plain meaning of these words that the tenants and occupiers of these two houses are the two servants and not their employer. No authority has been cited for the proposition that a person who does not personally inhabit a house, but has let it to a sub-tenant by whom alone it is occupied, nevertheless remains the tenant for the purposes of the electoral franchise. The case of *Kirkwood v. M'Callum* (2 R. 1) is a direct authority to the contrary. The employer in this case does not satisfy the conditions, because, although he is tenant as in a question with his landlord, he is not occupant as tenant for the purposes of the franchise, inasmuch as he has assigned the right to his two servants as his sub-tenants. I propose, therefore, that the question be answered in the negative.

LORD STORMONTH DARLING—I concur.

LORD JOHNSTON—The servant who fulfils the requirements of sec. 3 of the Representation of the People Act 1884 is to be deemed "to be an inhabitant-occupier" of his dwelling-house "as tenant." That, then, is the position of Mr Edie's servants.

To qualify Mr Edie under the 11th section of the Reform Act 1832 he must be "in the occupancy" "as tenant" of the same houses which are for the purposes of the

Representation of the People Act 1884 deemed to be inhabited and occupied by his servants as tenants. Mr Edie may be tenant of the houses, but he has placed his servants in the position constructively at least of his sub-tenants. If there is a sub-lease of premises the tenant cannot plead his sub-tenant's occupancy as constructively his occupancy for the purpose of the 11th section of the Reform Act 1832, and I think this must apply even though the sub-tenancy is constructive, and by virtue of the 3rd section of the Act of 1884 only.

I therefore answer the question in the case in the negative.

The Court answered the question in the negative.

Counsel for the Appellant—A. M. Anderson. Agent—N. M. Macpherson, S.S.C.

Counsel for the Respondent—Blackburn—Cochran Patrick. Agents—Russell & Dunlop, W.S.

Friday, December 22.

(Before Lord Kinross, Lord Stormonth Darling, and Lord Johnston.)

WHITELAW v. M'GOWAN.

Election Law—County Occupation Franchise—Personal Occupancy—Temporary Absence on Business from Qualifying Premises—Representation of the People (Scotland) Act 1868 (31 and 32 Vict. c. 48), sec. 6—Representation of the People Act 1884 (48 Vict. c. 3), sec. 5 and 7 (6).

A person claimed to be registered as a voter for a county under the occupation franchise in terms of the Representation of the People Act 1884 (48 Vict. cap. 3), sec. 5.

It appeared that during twelve months prior to the application the claimant was temporarily absent from the qualifying premises for the purposes of his business, but that during that period the premises had been occupied by his wife, and that the furniture therein was his property. *Held* that the claimant's occupancy as tenant of the premises sufficiently satisfied the requirements of the statute notwithstanding his absence from them, and that therefore he was entitled to be registered.

The Representation of the People Act 1884 (48 Vict. cap. 3), section 5, enacts—"Every man occupying any land or tenement in a county or burgh in the United Kingdom of a clear yearly value of not less than ten pounds shall be entitled to be registered as a voter, and when registered to vote at an election for such county or burgh in respect of such occupation, subject to the like conditions respectively as a man is at the passing of this Act entitled to be registered as a voter and to vote at an election for such county in respect of the county occupation franchise, and at an election for such