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 But although the 11th section is repealed in so far as it enacts a franchise, the conditions required by it are retained in so far as applicable to the franchises enacted by the Act of 1884.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 subtenant 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 sublease 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 subtenancy 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 Kinnear, 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

burgh in respect of the burgh occupation franchise." Section 7 (6)—"The expression 'county occupation franchise' means . . . as respects Scotland, the franchise enacted by the sixth section of the Representation of the People (Scotland) Act 1868."

The Representation of the People (Scotland) Act 1868 (31 and 32 Vict. cap. 48), section 6, enacts—"Every man shall be entitled to be registered as a voter, and when registered to vote at elections for a member to serve in Parliament for a county, who, when the Sheriff proceeds to consider his right to be inserted or retained in the register of voters, is qualified as follows—that is to say (1) . . . (2) Is and has been during the twelve calendar months immediately preceding the last day of July in the actual personal occupancy as tenant of lands and heritages within the county of the annual value of fourteen pounds or upwards, as appearing on the valuation roll for such county . . ."

This was an appeal, by way of stated case, from a Registration Court for the county of Dumfries, held on 6th October 1905, in which James Walter Whitelaw, Solicitor, Dumfries, acting on behalf of Richard Jones, quarry foreman, Locharbriggs, was appellant, and James Hairstens M'Gowan, Ellangowan, Dumfries, was respondent. At the said Court M'Gowan had objected to Jones' name being retained on the list of voters, which objection had been sustained.

The facts of the case as stated by the Sheriff-Substitute (CAMPION) were as follows—"That Richard Jones had for the requisite period been tenant of a dwelling-house at Locharbriggs; that the subjects were entered in the valuation roll as of the yearly value of £13; that the said Richard Jones was in actual personal occupation of the said dwelling-house up to September 1904, when he left this country for Greece in order to fulfil a year's engagement there as quarry-manager; that this engagement being completed he returned to Locharbriggs on 8th October 1905, and again took up residence there; that during his absence from this country the foresaid house has been occupied by his wife, and that the furniture therein is his property. I sustained the objection on the ground that Richard Jones had been absent from the foresaid dwelling-house during the greater part of the qualifying period, and that his absence having been rendered necessary by his business engagement before referred to interrupted the continuity of his occupation of said house, and so disqualified him."

The question of law for the decision of the Court was—"Whether in the circumstances stated Richard Jones is entitled to be enrolled under the occupation franchise in terms of section 5 of the Representation of the People Act 1884 in respect of said dwelling-house."

Argued for the appellant—The requirement of the statute as to "actual personal occupancy" did not involve the necessity of personal residence—*Wetherhed* v. *Moffat*, November 8, 1878, 6 R. 20. Occupation by wife and family was quite sufficient, provided the absence as here was merely temporary—*Manson* v. *Sinclair*, 19th December 1868, 7 Macph. 329, 6 S.L.R. 49. The Sheriff-Substitute had dealt with this case as if it were one of household qualification and involved the inquiry whether the claimant was an "inhabitant-occupier." In the same way as a stable might be occupied by horses or a woodyard by wood for the purposes of the Act, a house might be occupied by a wife and family—*Lunan* v. *Allan*, November 13, 1880, 8 R. 13, 1 S.L.R. 69; *Johnston* v. *Buchanan*, 6th November 1879, 7 R. 7, 17 S.L.R. 163; *Lynn* v. *Henderson*, November 27, 1893, 1 S.L.T. 342.

Argued for the respondent—Personal residence was necessary to give a qualification, otherwise any number of votes might be secured by one person in different constituencies. The absence of the claimant was not voluntary. He was under a legal obligation to remain away for a whole year—*Stewart* v. *M'Fadzean*, December 20, 1890, 18 R. 349, 28 S.L.R. 196; *Rintoul* v. *Falconer*, December 6, 1898, 1 F. 207, 36 S.L.R. 185. Civil possession was not enough, but that was all that Jones had in this case—*Allan* v. *Smith*, November 5, 1879, 7 R. 6, 17 S.L.R. 158.

LORD KINNEAR—The question put to the Court in this special case is whether the appellant "is entitled to be enrolled under the occupation franchise in terms of sec. 5 of the Representation of the People Act 1884 in respect of" a dwelling-house. But that enactment refers to the 6th section of the Act of 1868 for the definition of the county occupation franchise; and the true question we have to consider, therefore, is whether the appellant was, during the twelve months immediately preceding the last day of July, in the actual personal occupancy as tenant of lands and heritages within the county of the annual value of £10 or upwards. The facts on which this question arises are that he was tenant of a house at Locharbriggs of the requisite value during the whole period of twelve months; that he had himself lived in the house up to September 1904; that at that time he left this country for Greece in order to fulfil a business engagement; that this engagement being completed he returned to Locharbriggs on the 8th of October 1905 and again took up his residence there; and that during his absence from this country his wife continued to live in the house and that the furniture was his property. The Sheriff has held that the absence of the appellant interrupted the continuity of his occupancy and so disqualified him, but I am unable to agree with that opinion. He seems to have assumed that personal occupancy necessarily means residence. But the two things appear to me to be different. The statute requires that the voter shall have a right of possession as tenant, and secondly, that he shall have actually exercised that right by occupying the premises. But if these two conditions are satisfied nothing more is necessary. Now the appellant's right as tenant is not disputed; and if the tenant of a house has furnished it so as to

make it habitable for his family, lives in it with his wife as long as he is in this country, and leaves his wife to live in it while he is absent from this country, it appears to me that he is still occupant as tenant notwithstanding his absence. I am of opinion, therefore, that the question should be answered in the affirmative.

LORD STORMONTH DARLING—I entirely concur with your Lordship. If this had been a claim under the "household qualification," I think the Sheriff's judgment would probably have been right, because he would then have been obliged to inquire whether the claimant was an "inhabitant occupier."

But the claim here is under the "county occupation franchise," and I agree with your Lordship that there has been sufficient "actual personal occupancy" as that phrase is used in the 6th sec. of the Act of 1868, notwithstanding the appellant's absence for some months from this country. I therefore agree that the appellant is entitled to be enrolled, and that the question in the case ought to be answered in the affirmative.

LORD JOHNSTON—I think that the only difficulty in this case has been created by an attempt to confuse the county occupation franchise with the county household franchise, and by citing cases on the construction of the provisions which introduced the latter as authorities for the construction of the provisions which introduced the former.

For the household qualification in counties the Act of 1884, section 7 (4), refers one back to the Act of 1868, section 3, where the qualification is defined as that of "inhabitant-occupier, or owner, or tenant of any dwelling-house."

But the Act of 1884, section 5, defines the qualification for the occupancy franchise as simply "occupying any land or tenement in a county . . . of the clear yearly value of not less than £10." And if by reference that section requires one to consider the Acts of 1868 and 1832, then that of 1868 uses the phrase "actual personal occupancy," and that of 1832 the phrase "in the occupancy as proprietor, tenant, or liferenter."

A man cannot inhabit except personally, but he may occupy personally without inhabiting. In the present case I think that Richard Jones has done so, and that he is therefore entitled to be retained on the register. I therefore answer the question in the case in the affirmative.

The Court answered the question in the affirmative.

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

Counsel for the Respondent—T. B. Morrison. Agent—T. & T. Galletly, S.S.C.

COURT OF SESSION.

Saturday, February 3.

FIRST DIVISION.

[Lord Low, Ordinary.

BARBOUR *v.* RENFREWSHIRE LOWER DISTRICT COMMITTEE.

Public Health—Infectious Diseases—Milk Supply—Prohibition of Milk Supply by Order of Sheriff—Compensation for Stopping Milk Supply from Dairy—Liability of Local Authority of District where Dairy is Situated—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. cap.* 38), *secs.* 60 (2), (3). (7), *and* 164.

An outbreak of infectious disease having occurred in a burgh, the medical officer thereof intimated to the local authority of the adjoining county that he had evidence against the milk supplied from a farm within its district. The county local authority having resolved that no order prohibiting the farmer from supplying milk was necessary, the burgh local authority appealed to the Sheriff, who granted the order. The farmer claimed compensation under section 164 of the Public Health (Scotland) Act 1897. Both local authorities denied liability, maintaining that it was the other which was liable.

Held that the county local authority in whose district the farm was situated was the one liable.

The Public Health (Scotland) Act 1897, section 60, enacts—"(1) If the medical officer of any district has evidence that any person in the district is suffering from an infectious disease attributable to milk supplied within the district from any dairy situate within the district . . . such medical officer shall visit such dairy and . . . (2) If the medical officer of any district has evidence that any person in the district is suffering from any infectious disease attributable to milk from any dairy without the district, or that the milk from any such dairy is likely to cause any such disease to any person residing in the district, such medical officer shall forthwith intimate the same to the local authority of the district in which such dairy is situate, and such other local authority shall be bound forthwith by its medical officer to examine the dairy . . . and by a veterinary surgeon . . . to examine the animals therein, previous notice of the time of such examination having been given to the local authority of the first-mentioned district in order that the medical officer or any veterinary surgeon . . . may, if they so desire, be present at the examinations referred to, and the medical officer of the second-mentioned local authority shall forthwith report the results of his examination, accompanied by the report of the veterinary surgeon, if any, to that local authority or any committee of that local authority appointed . . . to deal with such matters. (3) The