

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.

All. 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 Guthrie, 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 Burgh 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,

and under the same roof, shut in by one front door, and forming part of one tenement. These offices, under whatever tenure, were all held under the same tenure. The claimant was dismissible at the pleasure of the bank, and could be turned out of the bank at a moment's notice, and out of the other

LORD MANOR said that these were all cases of bank-agents occupying premises in connection with the bank, which they got as part of their remuneration. They had felt these to be cases in the decision of which there was very considerable difficulty and great anxiety in drawing a line of distinction. The inclination of the Court was, as far as possible, to admit gentlemen holding such substantial qualifications as these parties did. They were all on the roll, and that was a circumstance somewhat favourable to them. They thought that the objector disputing the right to the name on the roll was bound to adduce evidence of some sort which should go to show that they ought never to have been there. In the case of *Gilbert Brydone* there was no evidence adduced as conclusively showing that he held his position in such a precarious tenancy as not to entitle him to be continued on the roll. That was his opinion of the case of *David Guthrie*. As to the case of *George Agnew Main*, it was clearly proved that he was dismissible at pleasure; and he was disposed to affirm the decision of the Sheriff in the latter case, and reverse it in the cases of *Guthrie* and *Brydone*, and place their names on the roll.

LORDS BENHOLME and ARDMILLAN concurred.

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

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

APPEALS FROM WIGTOWN COUNTY.

M'GAW v. MAITLAND.

Act. Guthrie.

Al. Scott and Campbell.

Valuation Roll—Owner—31 and 32 Vict., c. 48, sec. 5. A party was entered in the valuation roll for the current year as owner of subjects of the value requisite under the 5th sec. of the Statute. In the previous valuation roll the subjects were entered at a lower value, and the value of the combined valuation rolls was insufficient. Held that the current valuation roll is conclusive as to value, but that the previous valuation roll is not so.

The following special case was stated in this appeal.—“At a Registration Court for the county of Wigtown, held by me at Stranraer on the 2d day of October 1868, and in virtue of the Act of Parliament 31 and 32 Vict., c. 48, entitled the ‘Representation of the People (Scotland) Act 1868,’ and the other Statutes therein recited, John Maitland, gentleman, Balgreggan, Stonykirke, a voter on the roll, objected to Peter M'Gaw, joiner, Drumore, parish of Kirkmaiden, being entered or retained on the roll as a voter for the said county. The said Peter M'Gaw stood entered in the assessor's list of persons entitled to be registered as a voter as proprietor of dwelling-house and joiner's shop, Mill Street, Drumore, parish of Kirkmaiden, and county of Wigtown.

“It was objected by the said John Maitland, that the said Peter M'Gaw's name did not appear on the

valuation roll of the requisite value for last year; that he had not a sufficient title; and that the subjects specified in the assessor's list had not been of sufficient value for the requisite period.

“The following facts were proved, viz.:—The voter, the said Peter M'Gaw, is and has been for a period of six calendar months next preceding the 31st day of July 1868 the proprietor of said lands and heritages, of the yearly value required by the 5th section of said Act, but the said subjects appear on the valuation roll for the year ending at Whitsunday 1868 in name of said Peter M'Gaw as such proprietor of the value of only £4, subject to deduction of 14s. 6d. of feu-rent, and in the valuation roll for the current year of the value of £6, subject to the same deduction.

“I sustained the objection, and expunged the name of the said Peter M'Gaw from the roll. Whereupon the said Peter M'Gaw 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 said Peter M'Gaw is entitled to be registered, although the yearly value of his subjects does not appear from the valuation roll of the county for the year ending at Whitsunday 1868 to have been so much as £5.”

LORD ARDMILLAN said he thought this was a bad objection. There could not be a doubt that under the 5th section of this Act the party must have been owner of a subject of the yearly value of £5 during six months. It was not merely the present value, but the value in question must have existed for more than six months. But when the existing value appeared from the existing valuation roll, he thought that it was not in the power of the claimant or owner, on the one hand, nor of the objector on the other, to challenge the value stated in the valuation roll. That valuation roll went no farther back than Whitsunday last, and he did not see any necessity for making the valuation roll *probatio probata* of the value between the months of January and Whitsunday. In fact, it would be *probatio probata* of a matter that was contrary to the truth, because the man was in possession of a house of the true value from the 1st January. The valuation roll of 1867-68 was framed before the six months' possession commenced, and it would be a very strange thing to hold it as conclusive proof of the possession. He thought they should repel this objection.

LORD BENHOLME said that if it was necessary to prove the value by the two rolls, they would then require to prove more than six months' possession. By such a construction of the Statute they would change the period of possession required by the Legislature from six months to twelve months. He thought it would be a strained construction of the Statute to require that the possession should be proved by the two valuation rolls. He was therefore of opinion that this was a bad objection, and that the decision of the Sheriff should be reversed and the name of the claimant restored to the roll.

LORD MANOR concurred.

Agents for Appellant—J. M. & J. Balfour, W.S.
Agents for Respondent—Maitland & Lyon, W.S.

KINNA v. M'CRINDLE.

Act. Guthrie. Al. Campbell.

Valuation Roll—Owner—Value. Held that subjects not being proved to be of the requisite value