mean, as respects Scotland, the qualification enacted by the third section of the Representation of the People Act 1868; and that qualification is that a man of full age and not subject to any legal incapacity is and has been for a period of not less than twelve calendar months next preceding the last day of July an inhabitant occupier as owner or tenant of any dwelling-house. So far, therefore, all that the claimant has to prove is that at the time when the Sheriff proceeded to consider his right to be inserted in the register of voters he was an inhabitant occupier as tenant of his dwelling-house at Talla, and that his occupation of the house as the tenant had endured for twelve months preceding the last day of July. The third section of the Act of 1884, which is supposed to introduce a new and different franchise, seems to me to do no more than define the franchise already enacted by the second section so as to make it include a particular case which had not previously been held to fall within the language of the Act of 1868. It enacts that "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, he shall be deemed for the purposes of the Representation of the People Acts to be an 'inhabitant occupier' of such dwelling-house as a tenant." What the claimant has to prove therefore is still inhabitant occupancy as a tenant for the qualifying period and nothing more. He may establish his right in that character by proving that he has occupied by virtue of a service or employment, or by proving that he has occupied by virtue of an ordinary contract of lease for the payment of rent. But in either case the only condition he has to satisfy beyond proving his title of tenancy is to show that he has in fact occupied the house as inhabitant for twelve months before the last day of July. It is conceded that this is enough if his title of tenancy is a contract of service or employment. In that case it is admittedly of no consequence that his occupancy may be terminable on the termination of his employment, as indeed it must be if he occupies by virtue of his employment alone.

But it is maintained, and the Sheriff has held, that an additional condition of indefeasibility of title is required if he occupies as tenant not under a contract of employment but under a lease. I think this distinction is baseless. What is required is tenancy for the prescribed period. and I am unable to find any reason for holding that a condition which is admittedly consistent with tenancy in the sense of the statute when it attaches to a contract of employment is yet fatal to the statutory conception of tenancy when it is found in a direct contract of lease. The conditions which the statute requires are, first, that the man must be an inhabitant occupier as tenant at the time when his claim is considered, and secondly, that he must have been so for a period of twelve months. If these two conditions are satisfied there is nothing in the statute to suggest that he is disqualified by reason of his title of occupancy having been potentially defeasible, if it has not been in fact defeated during the prescribed period of possession. If it has stood as a valid title for that period, there is no ground for inquiry as to the risks to which it may possibly have been exposed in events which have not happened.

I will only add with reference to the cases cited by the respondent's counsel that the authority of *Rose* v. *Grant* and other cases, in which it was held that occupancy under a contract of service could not qualify as a tenant, appears to me to be displaced by the third section of the Act of 1884; and on the other hand that *Campbell* v. *M'Lachlan* is not in point because it decided only that possession by virtue of no title or contract whatever was not occupation as a tenant. There is nothing in the view I have stated to imply that a merely precarious possession without any title at all is equivalent to tenancy either under a lease or a contract of employment; and so far as they only negative that suggestion the previous cases are not altered by the new Act.

If your Lordships take the same view, I would propose that we should not answer the question put to us in the terms in which it is stated, but that we should find that the appellant has a qualification as inhabitant occupier as a tenant, and remit to the Sheriff to insert his name in the Register.

The Court sustained the appeal, and remitted to the Sheriff to add the claimant's name to the roll of voters for the counties of Peebles and Selkirk.

Counsel for the Claimant and Appellant —A. M. Anderson. Agent—P. Gardiner Gillespie, S.S.C.

Counsel for Objector and Respondent —Ferguson, K.C.—M. P. Fraser. Agents—Russell & Dunlop, W.S.

COURT OF SESSION.

Thursday, November 24.

OUTER HOUSE.

[Lord Kyllachy.

TOUGH *v.* MACDONALD.

Process—Reclaiming Note Refused as Incompetent—Second Reclaiming Note—Administration of Justice and Appeals Act 1808 (48 *Geo. III*, *c.* 151), *sec.* 16.

The defenders in an action, against whom decree had been pronounced in the Outer House, presented a reclaiming note, to which, by the inadvertence of their printers, was appended a copy of the record in a previous action between the same parties instead of the copy of the record in the action. Copies of the wrong record were also boxed.

The reclaiming note having been re-

fused as incompetent, in respect of the failure of the reclaimers to box copies of the record in the action, the reclaimers presented to the Lord Ordinary a minute stating the circumstances and craving leave to reclaim. The Lord Ordinary (Kyllachy) *granted* leave, in terms of section 16 of the Act 48 Geo. III, c. 151, to present a second reclaiming note.

The Administration of Justice and Appeals Act 1808 (48 Geo. III, c. 151), sec. 16, enacts:—"If the reclaiming or representing days against an interlocutor of a Lord Ordinary shall from mistake or inadvertency have expired, it shall be competent, with the leave of the Lord Ordinary, to submit the said interlocutor by petition to the review of the Division to which the said Lord Ordinary belongs; but declaring always that in the event of such petition being presented, the petitioners shall be subjected in the payment of the expenses previously incurred in the process by the other party."

In this action the Lord Ordinary (KYLLACHY) on 8th June 1904 pronounced decree in terms of the conclusions of the summons.

The defenders presented a reclaiming note to the Second Division, but inadvertently appended to the reclaiming note a copy of the closed record in a previous action between the same parties, instead of the record in the present action. Copies of the wrong record were also lodged and boxed.

The circumstances under which the wrong record was attached to the reclaiming note were as follows:—The defenders instructed their printers to print the reclaiming note and append the closed record, which they would obtain from the pursuers' printers, who, according to the ordinary practice, had printed the boxing copies of the closed record at the time the record was closed, and had meantime retained them to await a reclaiming note, if any, by either party. At the same time the defenders' agents wrote the agents of the pursuers requesting them to instruct their printers to hand boxing copies of the record to the defenders' printers, which they agreed to do. The defenders' printers applied to the pursuers' printers for the boxing copies accordingly, and received from them what purported to be the closed record in the action. The reclaiming note was thereupon printed and boxed and lodged on June 21, 1904, with copies of the said record so supplied appended thereto. It was not again seen by the defenders or their agents until the case was called in the Short Roll of the Second Division on November 4, 1904, when it was discovered that the record which had been boxed to their Lordships was not the closed record in the present action.

On 15th November 1904 the Second Division refused the reclaiming note as incompetent, in terms of section 18 of the Judicature Act 1825, in respect that the defenders had failed to box along with the reclaiming note copies of the record in the action.

The defenders thereafter presented a minute to the Lord Ordinary in terms of section 16 of the Act 48 Geo. III, c. 151, setting forth the facts above stated, and craving leave to reclaim.

In support of their application for leave to reclaim the minuters cited the following authorities—*Mills* v. *Hamilton*, June 6, 1829, 7 S. 716; *Magistrates of Leith* v. *Lennon*, November 23, 1875, 3 R. 152, 13 S.L.R. 84; *Steedman* v. *Steedman*, March 19, 1887, 14 R. 682, 24 S.L.R. 476; *Watt's Trustees* v. *More*, January 16, 1890, 17 R. 318, 27 S.L.R. 259.

The pursuers argued that leave to reclaim should be refused, in respect that the re claiming days had not expired from "mistake or inadvertency" in the sense of section 16 of the Act of 1808, and that it was incompetent for the Lord Ordinary to grant leave to reclaim after the Inner House had written upon a reclaiming note and pronounced a final interlocutor.

On 24th November the Lord Ordinary (KYLLACHY) pronounced the following interlocutor:—"The Lord Ordinary having considered the minute . . . and heard counsel, grants leave to reclaim as craved."

Opinion.—"I think that the theory of the statutory enactment must be held to be that a reclaiming note not printed within the reclaiming days or otherwise irregular is no reclaiming note at all. In the same way if such reclaiming note has on presentment been refused as incompetent, that refusal simply ascertains that there has been no valid reclaiming note. I take it therefore that the position is the same as if a reclaiming note had not been presented, or, being presented, had been put aside as a nullity. In other words, Mr Macphail is in the position of having hitherto presented no reclaiming note against my judgment. Therefore having in view the opinions expressed in the case of *Steedman*, and apparently endorsed in the case of *Watt*, I see no reason why I should not allow Mr Macphail's client to present a new reclaiming note, leaving it to the Division to deal with it as it thinks fit."

[On 29th November 1904 the defenders presented a second reclaiming note to the Second Division against the Lord Ordinary's interlocutor of 8th June 1904. On 8th December defenders' counsel appeared in the Single Bills, and moved that the case should be sent to the roll. Pursuers' counsel opposed the motion on the ground that the reclaiming note was incompetent, the reclaiming days having expired, and that not "from mistake or inadvertency." In deference, however, to a suggestion from the Bench that in the circumstances the objection should not be pressed, the objection was withdrawn, and the Court pronounced this interlocutor—"Appoint the case to be put to the roll on condition of the reclaimers paying the expenses up to this date."]

Counsel for the Pursuers—M'Lennan—Craigie. Agents—Miller & Murray, S.S.C.

Counsel for the Defenders — Macphail. Agents—Lindsay, Howe, & Co., W.S.