constitute a judge an arbiter of civil rights between them. But they cannot by minute appoint any person an arbiter to pronounce a sentence of fine or imprisonment. I think the case on which this objection is based has nothing to do with the matter.

We have therefore to consider the case on the merits. The questions raised are three. First—Are the proceedings here taken competent in the Sheriff Court? There can be but one answer to that, and the reports supply numerous cases in which it has been exercised.

The second question is—Was the decision of the Sheriff-Substitute right that he could not look at the proceedings in the action of interdict or consider who was in the right there? I am of opinion that the Sheriff-Substitute was clearly right. Persons are not entitled to disobey an order made by the Court and then to claim to show that the Court ought not to have made the order.

The third question is whether this is a bad decree because it imposed a fine on the respondent without him being present. The test of that matter is this—could the present appellant have suspended the decree by which he was fined. I hold that he could not. The ground of the argument is that persons in criminal cases cannot be sentenced in their absence without special provision therefor in the statute which creates the offence. But this is not a criminal proceeding, but a method by which the Court protects its own authority from contempt. It is usual to summon the person charged with contempt to the bar; but I think that Lord President Inglis put that matter, not on any duty to the respondent, but on the view that this being a matter of public interest, it was proper to insist on the person being present. The rule is not universal, because there was cited at any rate one case in which the person charged was not at the bar, the complainer saying that he did not desire him to be brought there. If it is a right of the respondent it could not have been waived by the complainer.

There is another reason why a criminal court does not sentence a person unless he is present. It vindicates its authority by fugitation. But a civil court cannot fugitate, and therefore it seems to me to be out of the question that the court should not be able to vindicate its authority simply because the respondent resorts to the expedient of staying away. I cannot say I think it makes the decree in any way vitiated that the respondent was not present.

I am therefore for refusing the appeal.

LORD M'LAREN—I concur with your Lordship's judgment.

LORD PRESIDENT—Lord Kinnear, who was present at the hearing, also concurs in the judgment.

The Court dismissed the appeal.

Counsel for Defender and Appellant—Craigie, K.C.—A. M. Stuart. Agent—Alexander Ramsay, S.S.C.

Counsel for Pursuers and Respondents—Hunter, K.C.—Munro. Agents—St Clair Swanson & Manson, W.S.

REGISTRATION APPEAL COURT.

Monday, December 18.

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

EMMERSON *v.* OLIVER.

Election Law—Household Franchise—Occupation for Twelve Calendar Months—Entry on First Day of the Twelve Months—Disqualification of Occupier—Representation of the People (Scotland) Act 1868 (31 *and* 32 *Vict. c.* 48), *sec.* 3—*Representation of the People Act* 1884 (48 *Vict. c.* 3), *secs.* 2 *and* 7 (4).

The tenant of a house situated in a county entered on his tenancy on 1st August 1904, and claimed at a Registration Court held in October 1905 to be enrolled as a voter in respect thereof. *Held* that the claimant was not qualified by possession for "not less than twelve calendar months next preceding the last day of July," as required by statute, his possession having been one day short of that period.

Waddell v. *Macphail*, December 2, 1865, 4 Macph. 130, 1 S.L.R. 50, *followed*.

The Representation of the People (Scotland) Act 1868 (31 and 32 Vict. cap. 48), sec. 3, enacts—"Every man shall . . . be entitled to be registered as a voter, and, when registered, to vote at elections for a member or members to serve in Parliament for a burgh, 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 . . . (2) 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 within the burgh. . . ."

The Representation of the People Act 1884 (48 Vict. cap. 3), sec. 2, establishes a uniform household franchise at elections in all counties and burghs throughout the United Kingdom, and provides that every man in possession of a household qualification in a county in England or Scotland shall be entitled to be registered as a voter, and when registered, to vote. Section 7 (4) enacts—"The expression 'a household qualification' means, as respects Scotland, the qualification enacted by the third section of the Representation of the People (Scotland) Act 1868, and the enactments amending or affecting the same, and the said section and enactments shall, so far as they are consistent with this Act, extend to counties in Scotland. . . ."

This was an appeal by way of special case stated by the Sheriff of Roxburgh, Berwick, and Selkirk (CHISHOLM) from a decision at a Registration Court held by him at Hawick on 4th October 1905.

The facts stated by the Sheriff in the case were—"At a Registration Court for the county of Roxburgh held by me at Hawick on 4th October 1905, George Emmerson, Whitrope, Riccarton Junction, claimed to be enrolled as tenant of a house at Whitrope aforesaid, which claim was objected to by Thomas Henry Armstrong, Solicitor, Hawick, as mandatory for John Oliver, Solicitor, Hawick, a voter on the roll. The facts are that Emmerson entered on his tenancy of the house on 1st August 1904, and has been in continuous occupation thereof until now. There is no written lease. It is also to be noted that the 31st July in the year 1904 was a Sunday. I held that there had not been occupation for twelve months previous to 31st July 1905 as required by the statute (see *Waddell* v. *Macphail*, 1 S.L.R. 50), and further, that the provisions of section 35 of the Burgh Voters Registration Act 1856 (19 and 20 Vict. c. 58) do not apply to the case."

The question of law for the decision of the Court of Appeal was—"Was there a tenancy giving the household qualification?"

Argued for the appellant—The occupancy here was sufficient. The terms of the statute fell to be liberally construed so as to afford a qualification if the occupation was begun at any time during the first day of August. It would be too strict a reading of the statute to exclude the appellant here. The case of *Waddell* v. *Macphail*, December 2, 1865, 4 Macph. 130, 1 S.L.R. 50, relied on by the Sheriff, was a very old case.

Counsel for the respondent was not called upon to reply.

LORD KINNEAR—This is a very short point. If there was any ambiguity in the terms of the statute I could understand the argument that it should be liberally interpreted.

It would, however, be impossible to fix a point of time more explicitly than the statute has done, and we have no power to extend the time fixed.

The statute requires twelve months' occupancy prior to 31st July, and the question here is whether the appellant is disqualified by the fact that his occupancy was for a day less than the required period. I think there is no doubt that he is disqualified. The point has been already settled by authority in the case of *Waddell* v. *Macphail* (4 Macph. 130), referred to in the case stated by the Sheriff, and, apart from authority, I do not see how we can find that a day less than twelve months is not less than twelve months. I am therefore of opinion that the question must be answered in the negative, and the Sheriff's judgment affirmed.

LORD STORMONTH DARLING and LORD JOHNSTON concurred.

The Court answered the question in the negative and dismissed the appeal.

Counsel for the Appellant—A. M. Anderson. Agent—Alexander Ramsay, S.S.C.

Counsel for the Respondent—G. Moncrieff. Agent—William Boyd, W.S.

Monday, December 18.

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

M'KEE *v.* ORR.

Election Law—Process—Procedure—Adjournment—Lodger Franchise—Failure of Claimant to Appear after Citation—Motion for Adjournment in order to again Cite the Claimant Refused.

A person claiming to be enrolled as a voter under the lodger franchise, whose claim was objected to, was cited under warrant of the Sheriff-Substitute to appear at a diet of the Court. He failed to appear, and a motion for an adjournment in order that he might be again cited was refused by the Sheriff-Substitute. *Held* that the granting of an adjournment depending upon the reasonableness of the motion was a matter for the discretion of the Sheriff; and that, as the stated case contained no material for the Court to decide whether the motion was reasonable or not, the Sheriff's judgment must be upheld.

Election Law—Evidence—Lodger Franchise—Claim and Declaration—Presumption in Favour of Claimant's Qualification—Rebutting the Presumption on Facts Ascertained from Valuation Roll—Registration Amendment (Scotland) Act 1885 (48 *and* 49 *Vict. cap.* 16), *sec.* 14.

The Registration Amendment (Scotland) Act 1885 (48 and 49 Vict. cap. 16), sec. 14, enacts—"In the case of a person claiming to vote as a lodger, the declaration annexed to his notice of claim shall for the purposes of revision be *prima facie* evidence of his qualification."

Where a claimant under the lodger franchise, duly cited, failed to appear, the Sheriff found that the *prima facie* evidence of the qualification, contained in his declaration was rebutted by facts disclosed by the assessor from the valuation roll, and there being no other evidence in support of the claim, rejected it. *Held* that there being no question raised as to the competency of the evidence on which the Sheriff proceeded, and his decision being on a matter of fact, the Court could not competently interfere.

This was an appeal from a Registration Court, held at Port-Glasgow on 4th October 1905, by James M'Kee against George Orr.

The facts stated by the Sheriff-Substitute (NEISH) were—"At a Registration Court for the burgh of Port-Glasgow held by me at Port-Glasgow, on Wednesday, 4th October 1905, James M'Kee, rivetter, 5 Laird Street, Port-Glasgow, claimed to be enrolled as a voter in the burgh in respect of a lodger qualification. . . .

"George Orr, slater, Huntly Place, Port-Glasgow, a voter on the roll of the burgh, objected to the name of the said James M'Kee being added to the roll, and cited