

the title under the 11th section of the Reform Act, 2d and 3d Will. IV. c. 65?"

SHAND submitted, upon the case as it stood, that under the Reform Act of 1832 ownership was a necessary qualification. Ownership there was not here, and there was no claim for enrolment on a different title, and therefore this appeal could not be supported. *Clark v. Hector, 5 Macph. 66; Robertson v. Rutherford, 3 Macph. 417.*

The Court, without hearing respondent's counsel, adhered to the Sheriff's judgment, and dismissed the appeal.

Agents for Appellant—Hughes & Myles, W.S.

Agents for Respondent—Mackenzie & Black, W.S.

JOHN GRANT.

Act. Clark, Shand, and Black.

Att. Gifford and Mackintosh.

Burgh Voters Act (1856)—Burgh—District of Burghs—Right to Object. Held that a voter in one burgh was not entitled to object to a voter in a different burgh, although these burghs formed part of a group that united in returning a member to Parliament.

In this appeal the Sheriff stated the following special case:—

"At a Registration Court for the burgh of Cromarty, held by me at Cromarty on the 5th 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, John Grant, writer in Tain, a voter on the roll made up for the burgh of Tain, objected to William Mackenzie, mason in Cromarty, being continued on the roll made up for the burgh of Cromarty as a voter for the said burgh of Cromarty. The said William Mackenzie stood enrolled as a voter in Cromarty, as owner of dwelling-house at Shore. It was objected by the said John Grant that the said William Mackenzie was not owner of the subjects on which he was enrolled. The said William Mackenzie declined to produce any writ in support of his enrolment, or to discuss the objection on the merits, and pleaded that there being no competent objection stated to his enrolment, he was not bound to do so.

"The following facts were also proved:—(1) That the said John Grant stood on the roll for the burgh of Tain as a voter for the said burgh; (2) that he did not stand on the roll for the burgh of Cromarty as a voter for Cromarty.

"I repelled the objection, and continued the name of the said William Mackenzie on the roll, on the ground that there was no competent objection to his enrolment. Whereupon the said John Grant 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 it is competent for the said John Grant, as a voter appearing on the roll for the burgh of Tain, but not appearing in the roll made up for the burgh of Cromarty, to object to the enrolment of voters entered in the list made up for the burgh of Cromarty?"

It was argued for the appellant that the right to object is given by the 4th section of the Burgh Voters' Act to any voter on the roll of the burgh. The question was whether "burgh" includes "district of burghs." That question was to be deter-

mined by reading the New Reform Act along with the "Burgh Voters Act," and, reading these two Acts together, the word "burgh" includes district of burghs. The present point was decided by the Sheriffs at Inverness in the year 1839, and the appellant's view was supported by every consideration of justice and policy.

It was answered for the respondent that the question falls to be determined by reference to the Burgh Voters Act alone. That Act provides the whole machinery of registration, and provides it exhaustively. The terms of that Act are clear. The word "burgh" is used throughout as confined to the individual burgh, and the interpretation clause does not declare that "burgh" shall include "district of burghs." That is conclusive of the present question, and it is of no moment what the Sheriffs decided in 1839 with reference not to the Burgh Voters Act, but to the Reform Act of 1832.

LORD ARDMILLAN said the claim was based on the statute of 1868; but for the question now raised the authority must be found in the statute of 1856; and in reading that statute, he was unable to come to any other conclusion than this, that there was within that statute authority which to his mind was very clear indeed for reading "burgh" in its natural and more limited meaning, as confined to a particular burgh, and not as extending to a district of burghs. The word "burgh" could not mean the whole of the contributing burghs. The right to object was co-extensive with the right to vote; and if the right to vote was limited to the burgh where the property was, the right to object must be limited in the same way. He concurred in the Sheriff's decision.

LORD MANOR was disposed to think that burghs associated together for Parliamentary purposes were to be considered as one group, and that a voter in such group was precisely in the same situation as an individual in a burgh which was single. He therefore thought that the Sheriff's judgment ought to be rescinded.

LORD BENHOLME said that, with such difference of opinion, he should have been inclined to deal with this case as with the previous one, and have taken time to consider it; but as he could not hope to have the case better argued, there would be little use in delaying their decision. He was very clearly of the opinion of his brother Lord Ardmillan, that the decision of the Sheriff should be maintained.

The Sheriff's decision was therefore sustained.

Agents for Appellant—Hughes & Mylne, W.S.

Agents for Respondent—Mackenzie & Black, W.S.

DAVID MACKENZIE.

Act. Gifford and Mackintosh.

Att. Clarke, Shand, and Black.

Burgh Voters' Act (1856) sec. 4—31 and 32 Vict. cap. 48, sec. 20—Assessor—Timeous delivery of objection—Power of Sheriff to correct enrolment.

(1) Circumstances in which held that a notice of objection had been timeously made; (2) held that a party standing on the roll on a qualification as proprietor could not be continued on a qualification as tenant and occupant, and that the Sheriff could not alter the enrolment, so as to substitute the one qualification for the other.

In this appeal the following special case was stated:—

"At a Registration Court for the burgh of Dingwall, held by me at Dingwall on the 28th day of September 1868, under and in virtue of the Act of Parliament 31 and 32 Vict. cap. 48, entitled 'The Representation of the People (Scotland) Act 1868,' and the other statutes therein recited, Alexander Cameron, a voter on the roll, objected to David Mackenzie, draper, Dingwall, being continued on the roll as a voter for the said burgh. The said David Mackenzie stood enrolled as a voter as proprietor of a house in the High Street, Dingwall.

"It was objected by the said Alexander Cameron, that the said David Mackenzie was not proprietor of the house in respect of which he was enrolled as a voter. The said David Mackenzie produced no writs or other evidence of his right as proprietor, but pleaded—(1) That no timeous notice of the objection had been given to the assessor; and (2) that he was tenant and occupant of the house or shop for which he was enrolled; and he moved the Court to correct his enrolment by entering his name on the register as tenant and occupant of a shop instead of as proprietor of a house in High Street.

"The following facts were proved:—(1) With regard to the notice, that the notice of objection was posted in Dingwall, duly addressed to the assessor at Inverness, in time for transmission to Inverness by the latest post on the 21st September; (2) that the envelope enclosing the objection bore the Inverness post-mark of the 21st September, but the same was not delivered at the assessor's office until the first delivery of letters in Inverness on the morning of the 22d September. And with regard to the merits of the objection, it was admitted—(1) That the voter was not proprietor of the house for which he stood enrolled; and (2) that he was tenant of the said house, and occupied the same as a shop.

"I sustained the objection, and ordered the name of the said David Mackenzie to be expunged from the roll. Whereupon the said David Mackenzie required from me a special case for the Court of Appeal, and in compliance therewith I have granted this case.

"The questions of law for the decision of the Court of Appeal are—(1) Whether the notice of objection was timeously transmitted to the assessor in terms of section 4 of the Registration of Voters (Scotland) Act 1856, and the 20th section of the Representation of the People (Scotland) Act 1868? (2) whether the party, being truly not proprietor of the subject for which he was enrolled, was entitled to remain, or to be continued on the roll in that character? and (3) whether it was competent to the Sheriff, and whether he was bound, to correct the enrolment of the voter, in terms of the motion made by him to that effect, as above set forth?"

MACKINTOSH addressed the Court in support of the appeal, maintaining that the notice was not timeously given, because it was not posted in time for delivery on the 21st September. He also contended that the Sheriff had power to correct the description of the claim; and that therefore the claim ought to have been admitted.

LORD BENHOLME was of opinion that the decision of the Sheriff must be affirmed, and the appeal dismissed. The notice was posted in time, and the Sheriff could not have corrected the claim of a proprietor to the claim of an occupant.

LORD ARDMILLAN and LORD MANOE concurred, and the appeal was dismissed.

Agents for Appellant—Mackenzie & Black, W.S.
Agents for Respondent—Hughes & Mylne, W.S.

THOMAS ARTHUR.

Act. Young and Mackintosh.

Alt. Clark, Shand, and Black.

Tenant and Occupant—31 and 32 Vict., c. 48, sec. 3

—Burgh Franchise—Dwelling-house—Part of a House—Interpretation Clause—Separate Rating. Held, in conformity with judgment in the case of *Archie* (altering the judgment of the Sheriff), that the occupant of part of a house was occupant of a dwelling-house in the sense of the Act, but that not being separately rated to the relief of the poor, he had not the qualification for the franchise under the third section of the Act.

The following special case was stated in this appeal:—"At a Registration Court for the revision of the register of voters for the burgh of Kirkwall, held by me at Kirkwall on the 9th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict., cap. 48, entitled 'The Representation of the People (Scotland) Act 1868,' and the other statutes therein recited, Thomas Arthur, seaman, tenant and occupant of a house in Long Wynd, Kirkwall, claimed to be admitted on the register of voters for the said burgh, as tenant and occupant of a house in Long Wynd, Kirkwall.

"The claimant produced in support of his claim the writ, of which a copy, so far as material, is appended hereto, and which is to be held as embodied in this case, and to constitute part thereof, viz.:—Excerpt from the minutes of the Parochial Board of Kirkwall and Saint Ola, instructing the collector of poor-rates to make up a roll charging proprietors of premises under £4 rent with the assessments leviable from their tenants, in terms of the Valuation Act, without prejudice to the relief to be granted, in terms of the 42d section of the statute, which minutes are respectively dated 6th June, 3d October, 9th November, all in the year 1855.

"The following facts were also proved:—The claimant has occupied for more than twelve months next preceding the last day of July 1868 a dwelling consisting of one room, in a land or tenement in Long Wynd of Kirkwall, for which he pays a rent under £4 per annum. This tenement consists of three storeys or flats, including the ground floor, and there is one street or main door and one wooden stair common to all the tenants of the tenement, forming the entrance and access to all the flats. Every flat contains one room on the right hand and one room on the left hand of the stair. Each room is occupied by a separate tenant or family, being six tenants in all. The door of each opens on the landing-place of the stair, and all the rooms are separate from each other by the stair, or by being on different flats of the tenement. The claimant's room is on the second flat. He has not been exempted from payment of poor-rates on the ground of inability to pay, neither is he separately rated for the relief of the poor, nor assessed at all, or tendered payment of rates.

"John Mitchell, shipowner, Albert Street, Kirkwall, a voter on the roll, objected to the said claim of Thomas Arthur, on the ground that the claimant occupies only a part of a house, which part is not a separate dwelling-house separately rated to the relief of the poor, in terms of the 3d and 59th sections of the Scotch Reform Act 1868; that separate rating is a condition of the franchise in regard to parts of a house so occupied; that he is not rated separately, and for these reasons that he is not entitled to be registered as a voter.