

*In the
Supreme
Court of
Canada.*

No. 7.

Factum
of the
Attorney-
General of
Canada—
continued.

By sec. 27 of the Representation of the People (Scotland) Act, 1868 (31 & 32 Vict., c. 48), "every person whose name is for the time being on the register . . . of the general council of such university, shall, if of full age, and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such University," and by sub-s. 2 of sec. 28 of the same Act "all persons on whom the university to which such general council belongs has . . . conferred" certain degrees are to be members of the general council of the respective universities. The appellants, who were women, were graduates of the University of Edinburgh—a university within the meaning of the Act—and as such had their names enrolled on the general council of that university, and they claimed the right to vote in the election of the parliamentary representative of the university, on the ground that they were "persons" within the meaning of the Act.

Lord Loreburn L.C., after referring to the legal incapacity of women at common law from voting, said (pp. 160-161):—

"If this legal disability is to be removed, it must be done by Act of Parliament. Accordingly the appellants maintain that it has in fact been done by Act of Parliament . . . I will only add this much to the case of the appellants in general. It proceeds upon the supposition that the word "person" in the Act of 1868 did include women, though not then giving them the vote, so that at some later date an Act purporting to deal only with education might enable commissioners to admit them to the degree, and thereby also indirectly confer upon them the franchise. It would require a convincing demonstration to satisfy me that Parliament intended to effect a constitutional change so momentous and far-reaching by so furtive a process. It is a dangerous assumption to suppose that the legislature foresees every possible result that may ensue from the unguarded use of a single word, or that the language used in statutes is so precisely accurate that you can pick out from various Acts this and that expression and, skilfully piecing them together, lay a safe foundation for some remote inference. Your Lordships are aware that from early times Courts of law have been continuously obliged, in endeavouring loyally to carry out the intentions of Parliament, to observe a series of familiar precautions for interpreting statutes, so imperfect and obscure as they often are."

Lord Ashbourne made the following remarks (pp. 162-163):—

"In 1868 the Legislature could only have had male persons in contemplation, as women could not then be graduates, and also because the parliamentary franchise was by constitutional principle and practice confined to men . . ."

"I can, then, entertain no doubt that, when examined, 'person' means male persons in the Act. The parliamentary franchise has always been confined to men, and the word 'person' cannot by any