The Scottish Law Reporter.

WINTER SESSION, 1880–81.

In order to secure regularity of publication, it is occasionally necessary to insert the Reports of Cases slightly out of the order of dates on which they have been decided.

COURT OF SESSION.

Friday, October 15.

FIRST DIVISION.

[Sheriff of Lanarkshire.

GENTLES *v.* BEATTIE.

Process — Appeal — Expenses — Where Appeal Withdrawn in Single Bills.

An appeal against a judgment of the Sheriff of Lanarkshire was lodged in August, and appeared in the Single Bills of the first day of Session. Counsel for the appellant moved for leave to withdraw the appeal. The Court granted leave on condition of payment of £3, 3s. of expenses, intimating that this sum was to be regarded as the rule for the future in similar cases.

Counsel for Pursuer (Respondent)—J. A. Reid. Agents—W. & J. Burness, W.S.

Counsel for Defender (Appellant)—J. Burnet. Agents—Mackenzie, Innes, & Logan, W.S.

Saturday, October 16.

FIRST DIVISION.

PETITION — THE LORD ADVOCATE FOR APPOINTMENT OF INTERIM SHERIFF-CLERKS OF RENFREWSHIRE.

Public Officer—Sheriff-Clerk—Interim Appointment.

This was a petition to confirm the appointment and of new to appoint two gentlemen to the offices of Interim Sheriff-Clerks of Renfrewshire, the one for the upper ward of the county and the other for the lower, Mr Hector, the late holder of the office of Sheriff-Clerk, having died on 24th September 1880, and the gentlemen whose appointment was now asked to be confirmed having been appointed in vacation by the Lord Ordinary on the Bills. On the petition being moved in the Single Bills the Lord President requested information on the practice of appointing two gentlemen to a vacant office of the kind, and on being informed that in the case of Renfrew it had been done before, the prayer of the petition was granted, and Mr John Brough was appointed Interim Sheriff-Clerk for the upper ward of Renfrewshire, and Mr James Adam Interim Sheriff-Clerk for the lower, both gentlemen having respectively held the office of Depute Sheriff-Clerk under the late Mr Hector in these wards.

Counsel for Petitioner — Lord Advocate (M'Laren, Q.C.) Agent — C. Morton, Crown Agent.

Tuesday, October 19.

FIRST DIVISION.

[Court of Exchequer.

CORPORATION OF GLASGOW *v.* INLAND REVENUE (CORPORATION GALLERIES CASE).

CORPORATION OF GLASGOW *v.* INLAND REVENUE (KELVINGROVE MUSEUM CASE).

Revenue—Inhabited-House-Duty—Public Galleries—Museum—Exemption—48 *Geo. III. c.* 55, *Sched. B., Rules* 5 *and* 6—41 *Vict. c.* 15, *sec.* 13, *sub-secs.* 1 *and* 2.

Held that under the above enactments the Corporation of Glasgow, as trustees under a local Act of Parliament, were

liable in inhabited-house-duty, in respect of (1) public galleries for exhibiting pictures and other works of art, and (2) a public industrial and natural history museum; and that no exemption under the Act of 1878 fell to be made in respect of certain rooms in the former building which were let to a philosophical society and to an institute of engineers respectively.

The Corporation of Glasgow, as trustees under the "Public Parks and Galleries Act 1859" (22 Vict., Local and Personal, c. 17), presented two cases to the Court of Session on appeal from determinations of the Commissioners for general purposes acting under the Property and Income-Tax and Inhabited-House-Duty Acts for the lower ward of the county of Lanark. In the first of these cases they had appealed to the Commissioners against a charge of £35, 12s. 6d., made upon them for inhabited-house-duty for year 1879–80, at the rate of 9d. per pound on £950, being the annual value of premises at 270 Sauchiehall Street, Glasgow.

The facts as stated in the appeal case were as follows:—"1st, That the assessment is made in respect of the premises occupied as under, viz.:—

Galleries, known as the Corporation Galleries, occupied by the Corporation for exhibiting pictures and other objects of art, the valuation of which is . . .	£750	0	0
A caretaker's house, occupied by Alexander Tennant, the valuation of which is . . .	10	0	0
Rooms occupied by the Institute of Engineers, valued at . .	100	0	0
And rooms occupied by the Philosophical Society, valued at	90	0	0
Making in all a valuation of	£950	0	0

"2d, In the upper flat of the main building there are five rooms filled with pictures and other works of art, to which the public are admitted free.

"In the first flat a hall and two small rooms let to the Glasgow Philosophical Society, the like accommodation let to the Glasgow Institute of Engineers, and an office used by Mr Paton, the curator of the galleries.

"In the sunk flat the caretaker's house, consisting of three rooms and kitchen.

"Behind the above building, and communicating therewith, there are three rooms, with three cloak or retiring-rooms; these rooms are filled with pictures and other works of art, to which the public are also admitted free.

"3d, There is internal communication by means of stairs and passages inside the building between the caretaker's house and all the other rooms.

"4th, The galleries are occasionally let for meetings or exhibitions."

The appellants contended—"1st, That the assessment should be relieved, in terms of sec. 13, sub-sec. 1, of the Act 41 Vict. c. 15, and also under sub-sec. 2 of the said Act.

"2d, That the galleries being the property of the whole citizens of Glasgow, and maintained by local assessments, and the premises charged not being (in the sense of the statutes imposing the assessment) an 'inhabited house,' the assessment should be relieved."

The Surveyor of Taxes submitted "that the assessment was correctly imposed, under rule 6, Schedule B, of 48 Geo. III. c. 55, and that the exceptions under sub-secs. 1 and 2 of sec. 13 of the Act 41 Vict. c. 15, do not apply, no portion of the premises being occupied 'solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit.'"

The Commissioners by a majority confirmed the assessment, they being satisfied that the premises were so occupied as not to come within any of the exemptions claimed; and, on the craving of the appellants, stated a Case for the opinion of the Court, which was subsequently heard before the First Division

Argued for the appellants—The premises in question were not an "inhabited house" within the meaning of the Act and according to the interpretation of the decisions. The Corporation could not be said to inhabit them, nor could the public. They were not resided in, nor used for trading or professional purposes. In any view, the portions let to the Philosophical Society and the Institute of Engineers fell under the exemption of the Act of 1878. These societies did meet for purposes of profit.

Authorities—*Glasgow Coal Exchange Company*, March 18, 1879, 6 R. 850; *Edinburgh Life Assurance Company*, Feb. 2, 1875, 2 R. 394; *Union Bank of Scotland*, Feb. 2, 1878, 5 R. 598; *Cowan & Strachan and Scottish Widows' Fund*, Jan. 22, 1880, 17 Scot. Law Rep. 314; *N. Campbell*, Feb. 21, 1880, 17 Scot. Law Rep. 407; *Glasgow and South-Western Railway Company*, July 16, 1880, 17 Scot. Law Rep. 768; *Clerk*, July 16, 1880, 17 Scot. Law Rep. 774.

In the second case, on which no separate argument was heard by the Court, the Corporation of Glasgow, as trustees foresaid, had appealed against a charge of £6, 3s. 9d. made upon them for inhabited-house-duty for year 1879–80, at the rate of 9d. per pound on £165, being the annual value of Kelvingrove House and Museum.

The facts as stated in the Case were as follows:—"1st, That the assessment is made in respect of the occupancy by the Corporation of Glasgow, as trustees foresaid, of the premises known as Kelvingrove House and Museum, used wholly as an industrial and natural history museum, with the exception of the assistant-curator's house. The valuation of the whole premises is £165.

"2d, The premises consist of two divisions, the old and the new. The old building is in height two storeys and attics, and is wholly used as an industrial and natural history museum, except the assistant-curator's house, consisting of two rooms and kitchen on the first flat and three rooms on the attic flat. The new building consists of one hall with a gallery, and is wholly occupied as an industrial and natural history museum.

"3d, There is internal communication by means of stairs and passages throughout the buildings.

"4th, The public are admitted free to the museum."

The Commissioners having confirmed the assessment, the appellants craved a Case.

At advising—

Lord President—The two cases before us seem

to present no difficulty in the construction of the Inhabited-House-Duty Acts, and are substantially settled by the principles which we have laid down in previous cases. Taking the case of Kelvingrove Museum as the first, because the most simple, the facts are these—that the assessment is made in respect of the occupancy by the Corporation of Glasgow, as trustees under a Local Act, of the premises known as Kelvingrove Museum, which seems to be kept entirely as an industrial and natural history museum, with the exception of some apartments which are occupied as the dwelling-house of the assistant-curator. It is one house, with internal communications by means of stairs and passages throughout. The museum of course is intended to be exhibited to the public, and admission to it is free. It has been contended, in the first place, that the magistrates of Glasgow, holding this building for the benefit of the community, are not in the position of occupiers of the house, and that the house itself is not within the meaning of the statute an inhabited house. It seems to me impossible to give any weight to either of these contentions. It is needless to say at this time of day that an inhabited house does not mean a place of residence — that habitation in the sense of the statute may consist of any kind of occupation of a house or building. If it be not unoccupied—that is to say, without any use made of it at all—then it is an occupied house within the meaning of the Act, and being occupied, it is also within the meaning of the statute an inhabited house. But then it is contended further that the case falls within the exemptions contained in the 13th section of the 41st of Victoria, cap. 15. There are two cases for exemption there under the two sub-sections 1 and 2. As regards sub-section 1, it is quite clear that that cannot by any possibility apply to this museum, because that sub-section applies only to the case where parts of the house are let out to different tenants for different purposes, or are at least occupied by persons for different purposes. This museum is occupied entirely by the magistrates of Glasgow for one purpose. The second sub-section contains an exemption of a different kind, but it is just as clear that that cannot apply, because it exempts only such premises as are occupied solely for the "purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit;" and in no sense whatever can the occupation by the magistrates as statutory trustees be described in these words. Therefore the assessment is obviously quite rightly made in regard to the case of the museum.

The case of the Corporation Galleries stands in a somewhat different position, for the house there consists of several parts occupied in different ways. There is, in the first place, a portion of the premises known as the Corporation Galleries, and occupied by the Corporation for exhibiting pictures and other objects of art, which is the greater part of the building. But there is also a caretaker's house, and there are rooms occupied by the Institute of Engineers, and also rooms occupied by the Philosophical Society. The owners of the entire house are undoubtedly the magistrates of Glasgow, as trustees under the Local Act which I have already mentioned, and therefore the case falls within the 6th rule of Schedule B of 48 of Geo. III., as being the case of a house "let in different storeys, tenements, lodgings, or lands, and inhabited by two or more persons or families, in which case the house is to be subject to, and shall in like manner be charged, the said duties as if such house or tenement was inhabited by one person or family only, and the landlord or owner shall be deemed the occupier of such dwelling-house, and shall be charged for the said duties." It is clear, I think, that that rule applies to this case. The greater portion of the house is occupied by the trustees as owners, but other portions of it are occupied by the Philosophical Society and by the Glasgow Institute of Engineers as tenants, and if the case stood upon the original statute only there would be no more to be said. But it is maintained that under the first sub-section of section 13 of Act 41 Vict. cap. 15, there is relief in so far as concerns that portion of the premises which are occupied by those two societies, the Philosophical Society and the Glasgow Institute of Engineers. The provision is this—"Where any house, being one property, shall be divided into and let in different tenements, and any of such tenements are occupied solely for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, or are unoccupied," then after certain notice the Commissioners may grant relief from the assessment. Now, I think it may be doubted how far the appellant here has placed himself in a position to take advantage of this clause of exemption supposing it to apply to his case, because the statute requires that a particular notice shall be given where such relief is claimed, and a notice, not of a formal character merely, but a notice containing a distinct statement of the facts in respect of which the relief is claimed. That is to be given to the surveyor within a certain period, and ajudicated upon separately by the Commissioners. But the respondent here has taken no objection to this question being raised upon the present case, and it would not be desirable to avoid determining the point merely upon the ground of that technicality, and therefore I am quite prepared to give my opinion as to to the applicability of this subsection to the case in hand. No doubt the portions of the premises here occupied by the Institute of Engineers and the Philosophical Society are quite within the description of this clause in so far as they are portions of a building let in different tenements. But it is not in every case where portions of a building are let in different tenements that relief is to be given; it is only where these separate portions of the house are "occupied for purposes of trade or business, or profession or calling by which the occupier seeks to make a livelihood or profit;" and the appellant has never been able to explain in the course of the argument how the Institute of Engineers or the Philosophical Society are earning a livelihood by carrying on the discussions which take place in these rooms. The discussions, no doubt, may be very useful in themselves, and very profitable in a certain sense to the members of these societies, but there is neither livelihood nor profit in the sense of the statute to be derived from any amount of discussion. Therefore I think, plainly, that section of the statute does not apply, and I need hardly say that the second section, although pleaded upon also in the case of the galleries, is just as clearly inapplicable. In both cases, therefore, I think the assessment must be confirmed.

Lords Deas, Mure, and Shand concurred.

The Court affirmed the determination of the Commissioners in both cases.

Counsel for Appellants—Asher—Robertson. Agents—Campbell & Smith, S.S.C.

Counsel for Inland Revenue — Solicitor-General (Balfour, Q.C.)—Rutherfurd. Agent—D. Crole, Solicitor of Inland Revenue.

Wednesday, October 20.

SECOND DIVISION.

SPECIAL CASE — CAMPBELL'S TRUSTEES AND OTHERS.

Trust—Administration—Legacies—Time of Payment—Intention.

C. died leaving a trust-disposition and settlement in which she directed her trustees, *inter alia*—(1) to realise her whole estate with all convenient speed; (2) to pay certain enumerated legacies "at the first term of Whitsunday or Martinmas six months after my death;" (6) As an alimentary provision to the heir of entail who should succeed to her estate of D., to pay him the free income arising half-yearly as soon as convenient after the same falls due, beginning the first term's payment as at the term of Whitsunday or Martinmas twelve months after my death for the half-year preceding, and so on termly and continually during the life of the heir-of-entail." She died at 9 o'clock on the morning of 15th May 1880. *Held* that, looking to the intention of the testatrix as shown by the various clauses of the trust-deed, the legacies fell to be paid on Martinmas 1880.

Opinion (*per* Lord Young) that the word "month" must, unless where otherwise expressed, be computed according to its primary signification as a lunar month.

Miss Laura Islay Campbell of Dunstaffnage, in the county of Argyll, died in London at 9 o'clock on the morning of the 15th day of May 1880, leaving a trust-disposition and settlement in which she directed her trustees, after collecting her whole estate and effects, and paying her debts, &c., to (2), "as soon as convenient after my death, deliver, and, at the first term of Whitsunday or Martinmas six months after my death, pay or account for all such bequests and legacies as I may thereafter direct." The fourth and fifth purposes of the trust contained a list of the legacies, which amounted to £3900, exclusive of legacy-duty, and the last purpose of the trust was in the following terms:—"(*Lastly*) I hereby direct my trustees to hold the whole residue and remainder of my said estate and effects for the liferent behoof of Alexander James Henry Campbell, at present in Australia or elsewhere abroad, or failing him the heir-of-entail who shall at the said term of Whitsunday or Martinmas six months after my death be in possession of the family estate of Dunstaffnage; and my trustees shall pay to such heir-of-entail the free income arising from the said residue half-yearly, as soon as convenient after the same falls due, beginning the first term's payment as at the term of Whitsunday or Martinmas twelve months after my death for the half-year preceding, and so on termly and continually during the life of the heir-of-entail," the same being declared alimentary; "and upon the decease of such heir-of-entail my trustees shall, as soon as convenient thereafter, pay and make over the whole free residue and remainder of my said estate and effects to the heir-of-entail who shall thereupon succeed to the said estate of Dunstaffnage as his own absolute property." The said Alexander James Henry Campbell returned from Australia in the end of 1879, and was the heir in possession of the entailed estate of Dunstaffnage.

The trustees, who appeared as the first parties in the case, contended that Miss Campbell having died on the morning of the Whitsunday term 1880, the first term of Whitsunday or Martinmas six months after her death was the term of Whitsunday 1881; that her pecuniary legacies were not payable till that term; and that the residue of her trust-estate would fall to be liferented by the heir-of-entail who should at the said term be in possession of the said estate of Dunstaffnage. It was, on the other hand, contended for the second parties, who were the heir-of-entail and the legatees, that the first term of Whitsunday and Martinmas six months after Miss Campbell's death was the term of Martinmas 1880.

The question proposed for the opinion and judgment of the Court was—What is the first term of Whitsunday or Martinmas six months after Miss Campbell's death within the meaning of the trust-disposition and settlement?

Argued for first parties—The word "month" was declared by Act of Parliament to signify a calendar month, just as in the case of bills of exchange. The six months after the death of the testatrix were therefore to be computed as calendar months, and thus the legacies did not fall to be paid till Whitsunday 1881.—13 Vict. c. 21, sec. 4; Chitty on Bills, p. 264.

Argued for second parties—This was not a case where the somewhat artificial rules of law for the computation of time arrived at in regard to deathbed and the construction of the Bankruptcy Statutes were to be applied, but a case where the intention of the testatrix must be given effect to. She made the term of payment six months after her death in order to give her executors time to realise her estate. By computing the term of payment of the legacies at Whitsunday 1881 the alimentary provision made to the heir of entail, to take effect at the first term of Whitsunday or Martinmas twelve months after her death, would fall to be paid on the same day as the legacies which she had specially declared to be payable at the first term of Whitsunday or Martinmas six months after her death, whilst her intention clearly was that the first alimentary payment out of the residue should only be made six months after the legacies were disposed of. (2) The computation must be made by lunar months in the absence of authority to the contrary, and therefore on either view the legacies fell to be paid at Martinmas 1880.

At advising—

Lord Justice-Clerk—As a reasonable result of the whole case, and without going into subtle-