practice, and in my opinion it is a sound one, and consistent with the terms of the statutes. As the vacant ground comes to be utilised for warehouses, &c., it will be entered in the ordinary local valuation roll.

The Lord Ordinary officiating on the Bills refused the appeal and adhered to the valuation appealed against.

Counsel for the Appellants the Burgh of Grangemouth — Cooper, K.C. — Jameson. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Railway Assessor—Hunter, K.C.—M. P. Fraser. Agents—Tait & Johnston, S.S.C.

HOUSE OF LORDS.

Tuesday, June 8.

(Before Earl Loreburn, Lord Atkinson, Lord Parker, and Lord Sumner.)

COTTON'S TRUSTEES *v.* INLAND REVENUE.

(In the Court of Session, July 16, 1913, 50 S.L.R. 922, and 1913 S.C. 1126.)

Revenue—Inhabited-House Duty—Exemption—"Divided into and Let in Different Tenements"—Customs and Inland Revenue Act 1878 (41 *Vict. cap.* 51), *sec.* 13 (1).

The Customs and Inland Revenue Act 1878, sec. 13, enacts—"With respect to the duties on inhabited houses . . . the following provisions shall have effect—(1) 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, the person chargeable as occupier of the house shall be at liberty to give notice in writing, at any time during the year of assessment, to the surveyor of taxes for the parish or place in which the house is situate, stating therein the facts; and after the receipt of such notice by the surveyor the Commissioners acting in the execution of the Acts relating to the inhabited-house duties shall, upon proof of the facts to their satisfaction, grant relief for the amount of duty charged in the assessment, so as to confine the same to the duty on the value according to which the house should, in their opinion, have been assessed, if it had been a house comprising only the tenements other than such as are occupied as aforesaid or are unoccupied."

Held (*diss.* Lord Sumner) that a single apartment, access to which was obtained by a door opening from a passage leading from an internal staircase, might be a "different tenement."

Circumstances in which *held*, sustaining judgment of the First Division which reversed the finding of the Commissioners, that premises fell within the terms of the section and were entitled to exemption.

This case is reported *ante ut supra.*

The Inland Revenue (Surveyor of Taxes, Farmer) appealed to the House of Lords.

At delivering judgment—

EARL LOREBURN—I think the Order of the First Division ought to be affirmed. The question depends upon the true meaning of the Customs and Inland Revenue Act 1878, section 13, and I had better state at once my own view of that section. In my opinion a house is "divided into and let in different tenements" when the rooms in it or groups of rooms in it are used and let for some purpose not common to the rest of the house and are divided off by any ordinary means, such as a door, and none the less so that the tenants of the different tenements use in common such things as kitchen, dining-room, or lavatory. If we are to make too much of structural separation we may be led away into inquiry whether one door is needed or two, whether a glass partition or a wooden screen will suffice, and so forth. If there is enough to isolate one room from the rest of the house so that it can be let separately, it will depend upon how it is let and how it is used—that is to say, used separately or not separately, for some common purpose from the rest of the building—whether there is a different tenement or not. This is a question of fact, and I do not believe any formula can be devised which shall be of automatic application. Further, I think that the words "trade or business, or any profession or calling by which the occupier seeks a livelihood or profit," are wide enough to cover all the species of vocation or work with which we are concerned in this case. So the only point is that first mentioned.

In the present case the Commissioners decided that the premises in question, 100 Princes Street, Edinburgh, were not divided into and let in different tenements within the meaning of the Act. And as their determination is conclusive unless it be erroneous in point of law, we have no jurisdiction to review it upon any issue of fact. We could, of course, interpose if it were clear that the Commissioners had proceeded upon a wrong construction of the Act, and I think they did by regarding the question as one merely of structural separation, but they have not told us what construction they placed upon it. If it were necessary I should be disposed to move that this case be remitted for that information to be given. But I do not think it is necessary, because there is another ground of law upon which I think the Commissioners are wrong. There is, upon a true construction of the Act, no evidence in this case upon which their decision can be supported. They have given us the relevant facts in detail, and we can see for ourselves that, taking those facts as found there are no materials at all upon which the conclusion they reached can be based. There was error in law because

there was no evidence for their conclusion. Each of the rooms or groups of rooms with which we are concerned is divided by a door from other rooms and let to a different tenant and used for some business purpose of its own not common to the rest of the house. When this house was a hotel, as it was till recently, all the rooms were used for the common purpose of the whole building. The occupiers were guests, paying of course. Now each room is in its use isolated from the rest, and the occupiers are tenants. No better illustration could be given of what is meant by being divided and let in different tenements. On this ground the decision of the Commissioners ought to be overruled, but if the facts were such that on a true construction of the Act a different conclusion could easily be reached, then there would be no power in a court of law to interfere.

I desire to say that when cases are stated for the opinion of a court of law it is very much to be desired that the point of law should be clearly stated, together with the decision upon it arrived at by the inferior court. Otherwise it may prove difficult for a court of law to distinguish between conclusions of law and conclusions of fact.

LORD ATKINSON—I concur in the judgment which has just been delivered by my noble and learned friend on the Woolsack.

LORD PARKER—[*Read by Lord Sumner*]—This is an appeal from a decision of the First Division of the Court of Session upon a Special Case stated by the General Commissioners for the Purposes of Income Tax under section 59 of the Taxes Management Act 1880. The scheme of that Act is to make the determination of the Commissioners final and conclusive on all questions of fact and to allow an appeal only on questions of law. The appeal is by way of special case stated by the Commissioners at the instance of the party aggrieved. In the special case the Commissioners are bound to set forth the material facts, and also their determination which is objected to as wrong in law. No court has jurisdiction to go behind the facts so stated, but any court which has seisin of the matter may reverse, affirm, or amend the determination of the Commissioners on any point of law.

It may not always be easy to distinguish between questions of fact and questions of law for the purpose of the Taxes Management Act 1880 or similar provisions in other Acts of Parliament. The views from time to time expressed in this House have been far from unanimous, but in my humble judgment where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment, the question is one of law only. The question in the present case is whether the facts found by the Commissioners with regard to a block of buildings situate in Princes Street, Edinburgh, and known as the "Windsor Buildings," entitle such buildings to the partial exemption from inhabited-house duty provided by sub-section (1) of the 13th section of the Customs and Inland Revenue Act 1878. This question can only be determined by putting a construction on the sub-section in question, and therefore is one of law on which the Court of Session had jurisdiction to reverse the determination of the Commissioners. The question before your Lordships is whether the Court of Session was right in so doing.

In considering this question it will, I think, be useful to direct your Lordships' attention in the first instance to the precise words of the section and sub-section in question. The words "any house" obviously mean any inhabited house assessable to duty, and it is admitted that the block of buildings in question is such a house. To bring the section into operation the house must be "divided into and let in different tenements." Obviously "divided into different tenements" is not the same as "let in different tenements." It must refer to some sort of structural division which would secure to the occupier of each divided part the exclusive use of that divided part, affording a physical barrier against intrusion by others. The floor of a corn exchange let in stands to corn merchants would not in this sense be divided into different tenements. The tenements must be so structurally divided and separated as to be capable of being a distinct property or a distinct subject of lease. This is the criterion laid down by the Lord President in *Russell* v. *Coutts*, 9 R. 261, 19 S.L.R. 197, and approved by Lord Davey in *Grant* v. *Langston*, [1900] A.C 383, at p. 397.

Besides being "divided into," the house must also be "let in," different tenements, but it has long been settled—and I think rightly settled—that the sub-section does not mean that every divided tenement must, in order to bring the sub-section into play, be the subject of an existing lease or tenancy agreement. If there be an existing intention to let the divided tenements, it is immaterial that one or more of them is or are for the time being unlet.

Again, although the sub-section will not be applicable where a substantial part of the house is retained or intended to be retained by the owner for his own occupation, still the mere fact that certain parts of the structure are appropriated for the common use of the occupiers of the divided tenements when let will not in every case prevent the section from applying. This is in accordance with reason and good sense, for obviously a house cannot be let in different tenements without common means of internal communication such as staircases, lifts, landings, or corridors. In every case it must be a question of degree whether those parts of the structure which are so reserved for the common use of the tenants preclude the house from being "divided into and let in different tenements" within the meaning of the sub-section. Nor in my opinion will the fact that the owner finds it necessary, in order to let the different tenements, to provide in the buildings rooms for the accommodation of porters or caretakers, deprive him of the benefit which the sub-section would otherwise confer. The occupation of such rooms may in law be the

occupation of the owner, but it is an occupation, not for his own convenience, but for the convenience of his tenants, and it is a practical necessity if the house is to be let in different tenements at all.

The sub-section in question clearly contemplates that the different tenements into which the house is divided may be let either for domestic purposes or as offices, or otherwise for business purposes. I cannot see, therefore, that the purposes for which the premises are to be used can throw any light on the meaning of the word "tenement" as employed in the sub-section. Sir George Jessel, in the case of *The Yorkshire Fire and Life Insurance Company* v. *Clayton*, 8 Q.B.D. p. 421, appears to have thought that the distinguishing mark of a "tenement" within the meaning of the sub-section must be that it constituted a house in law as opposed to a house in fact. I do not myself understand the meaning of a house in law as opposed to a house in fact, but if a house in law includes such things as shops, offices, or warehouses, which are not houses in ordinary parlance, there can be little objection to the test suggested except that it throws no light on the meaning of the sub-section. The real test must remain (1) actual structural division, and (2) an intention to let the parts so structurally divided in separate holdings for whatever purposes these parts be adapted or intended to be used. The mode or character of user is unimportant except for the purpose of considering the extent of the exemption granted by the sub-section.

The only other point to which I need refer is that when once the divided tenements have been appropriated by the owner for separate letting the mere fact that two of them are let to the same person or included in the same lease will not of itself be sufficient to prevent the section from applying —*Smith* v. *Crook*, 2 Tax Cases, p. 162.

After carefully considering the facts stated in the Special Case and the arguments advanced by counsel, it appears to me that the only substantial objections to the applicability of the sub-section are (1) that a door opening on a common passage or corridor is not a sufficient structural division to constitute that to which the door gives access a separate tenement within the meaning of the sub-section, and (2) that a single room cannot be a tenement within the meaning of the sub-section. There was, it is true, some suggestion that the appropriation of certain rooms for the accomodation of a resident caretaker, or the common use by two or more tenants of the same lavatory, took the case out of the sub-section, but these points were not pressed by the Attorney-General, and I have already stated my own view on them.

The real points are those I have indicated, and accordingly it was strenuously argued that a tenement within the meaning of the sub-section could not consist of a single room, and that even if a single room could be a tenement within the sub-section, a single door shutting this room off from a common corridor was not, though capable of being locked, a sufficient structural division. With regard to the latter point it may be observed that in the case of houses divided into and let in flats, a single locked door separating each flat from a common staircase, landing, or corridor, is the usual way of securing the occupiers of the flat from intrusion by others; and if such a door were held to be insufficient as a structural device for separating one flat from the rest of the building, I can hardly imagine any instance in which the section would be applicable at all. The real point therefore seems to be whether the tenements contemplated by the sub-section include single-room tenements. I cannot myself see any valid reason for excluding such tenements. Single-room tenements are not unknown in this country, even for domestic purposes. Single-room offices or places of business are quite common, and inasmuch as the sub-section refers expressly to tenements occupied for the purpose of trade or business, it would be strange if single-room tenements so occupied were outside the benefits conferred by the section.

The real difficulty in coming to this conclusion lies, not so much in the words of the section itself, as in the cases in which its meaning has been considered. In these cases there are, no doubt, a number of expressions pointing to the conclusion that a single room cannot be a tenement within the meaning of the section, but your Lordships' attention was not called to any case, nor have I been able myself to find any case, in which the point was actually decided or which would have been decided otherwise if the interpretation of the section above suggested had been accepted. For example, the case of *The Yorkshire Fire and Life Insurance Company* v. *Clayton* (*supra*), to which I have already referred, was clearly rightly decided if only for the reason that the owners of the building in question retained and occupied for their own purposes and never intended to let a considerable part thereof. In this case, too, one of the tenements into which the building was alleged to be divided consisted of a number of single rooms opening separately on a passage or corridor and having otherwise no connection with each other. There was no suggestion that each room constituted a divided tenement which had ever been appropriated for separate letting or been intended to be let separately.

Apparently the idea that a single room could not be a tenement within the meaning of the section arose, not from a consideration of the words of the section itself, but from historical considerations. It is well known that the section was enacted to obviate the hardships felt to arise by reason of the decision in the case of the *Attorney-General* v. *Mutual Tontine Westminster Chambers Association*, 1 Ex. D. 469. In that case the tenements in question were tenements consisting of more than a single room. They were, however, the property of one owner, and therefore not distinct properties within Rule XIV of the Act of 1808. It appears to have been thought that the section passed to obviate the hardship

entailed by this decision ought therefore to be confined to tenements of a similar character.

Mr Justice Lindley is said to have adopted this view when the case of *The Yorkshire Fire and Life Insurance Company* v. *Clayton* came before the Divisional Court, 6 Q.B.D. p. 557. If he did so it was with considerable hesitation. In my opinion, however, Mr Justice Lindley was not considering the case of single rooms let separately, but the case of a number of single rooms, each opening on a common corridor, let together, and it is not improbable that this mistake as to his meaning had considerable influence in determining what was said by other learned Judges in later cases.

In my opinion a remedial section such as the one in question ought, if the words admit, to be construed to cover all cases where the hardship exemplified in the particular case which led to its enactment exists. It would have made no difference to the hardship if the tenements in the particular case in question had been single-roomed tenements. A house divided into single-roomed tenements being separate properties would have been within the fourteenth rule under the Act of 1808, but a house so divided being the property of one owner would not. There would be the same hardship. Why, therefore, should the remedial section be held inapplicable? I can see no reason.

Another case often relied on as an authority that a single room cannot be a tenement within the meaning of the 13th section is *Russell* v. *Coutts*, to which I have already referred. Here the house was clearly outside sub-section (1), for the owner occupied a considerable part for his own purposes, part as a residence and part, consisting of a single room, as a stamp office. An attempt was made to bring this stamp office within the second sub-section, but this attempt failed on the ground that it was not a tenement within that solution, but a single room forming part of a larger tenement. I cannot read the case as a decision to the effect suggested.

Again, there is the somewhat similar case of *Clerk* v. *The British Linen Company*, 12 R. 1133, 22 S.L.R. 750. Here, too, the owner occupied part of the house for his own purposes, and there was a room on the ground floor and certain rooms on the first floor let to a single tenant as offices. All of the rooms on the first floor opened on a common corridor and had no internal communication, and this common corridor formed also the access to the third floor. It was quite clear, therefore, that section 13, sub-section (1), could not apply. The decision does not really touch the point your Lordships have to decide.

There are other cases of a similar character to which I need not refer. None of them are really in point, even if they were binding on this House. Under these circumstances I do not think your Lordships need hesitate to put on the sub-section the construction I have suggested, if it otherwise commend itself to your Lordships' judgment.

I am of opinion, therefore, that the appeal should be dismissed.

LORD SUMNER — In this case the Commissioners have furnished a description of the building in question, partly in words and partly by plans, so full that your Lordships know as much about it as they did. The rest is matter of law. The question is, "Does No. 100 Princes Street, Edinburgh, being such as we thus know it to be, come within the words of the Customs and Inland Revenue Act 1878, section 13, sub-section (1)?"

It was built as a dwelling-house, and once was an hotel. Several single rooms on various floors are separately let as single rooms without accessories for what I will take broadly to be business purposes. Collectively they form a substantial part of the entire house, and as a house is only divided into a particular species of parts, if it is all so divided this circumstance alone would suffice to prevent the house from being "a house divided into and let in different tenements," unless each of these single rooms is held to be a "tenement" within the section. "Substantially all divided" no doubt opens the door to looseness, for it makes "all" mean not "all" but "nearly all," but I think this cannot be helped. After all, a five-storey house must have stairs, and cannot well have five separate stairs, all giving access from the same street.

Inhabited house duty originated in 1778 (28 Geo. III, c. 26), and from the first the incidence of the duty, when a house is divided into different parts, inhabited by different persons or families, has been specially provided for. From the first "tenement" was used in all the statutes as a term descriptive of a kind of such parts. It never seems to have had any precise meaning. It has never received any statutory definition. It has never, so far as I can discover, meant a "room" simply. In 48 Geo. III, c. 55, Schedule B, Rule 6, "tenement" is used both as one of the parts of the house and as a homonym for the house itself. It succeeds in being at the same time the part and the whole. Similar elasticity is found in the Metropolitan Police Act (2 and 3 Vict. cap. 47), sec. 46, which provides in one and the same section that the police may "enter into any *house or room*" used for stage plays and not being a licensed theatre; that thereupon any person "keeping *any house or other tenement* for the purpose of being used as an unlicensed theatre" incurs penalties; and finally, that conviction therefor shall not exempt "the keeper of any such *house, room, or tenement*" from the penalties for keeping a disorderly house, on which see the judgment of Martin, B., in *Fredericks* v. *Howie*, 31 L.J., M.C. 249. Again, the Income Tax Act 1853, sec. 36, enacts that "any house or building let in different *apartments or tenements* and occupied by two or more persons severally, shall nevertheless be charged

as one entire *house or tenement.*" Where there is a clear opportunity of using the word "tenement" as equivalent to one room it is carefully avoided. The Statute 5 Geo IV, cap. 44, sec. 4, which extends the exemption granted under 57 Geo. III, cap. 25, sec. 1, to "any tenement or building or part of a tenement or building used as offices or counting-houses" stops short of saying "*any room* in a building used as an office" or even "any tenement in a building used as an office," and both by its language and by the provision that this exemption is not to extend to chambers in Inns of Court, shows that even the part of a tenement of which it speaks is something in the plural—something used as offices and similar to chambers in Inns of Court, which typically are aggregates of rooms. I think the first question on this appeal is—"Can a room—just four bare walls with a floor and a ceiling, with a window on one side and a door opening into a common corridor on the other, without any lobby or ante-room or other separation from the rest of the house than its interior walls and ceiling and floor—be held to be what the Act calls a tenement?"

"Tenement" in the sub-section is evidently something of which we can predicate that it is a sub-division of a house, and that it is capable of being let separately from other sub-divisions. This excludes the case of a one-roomed house. I suppose separate letting and occupation are what the word "different" really means, for the tenements cannot be the same and so far must be different, and there is no point in insisting that they need not be identically similar. Further, a tenement must be something which is capable of occupation for a business purpose. It is clearly a physical division. Mere letting does not divide, and mere separate letting does not in this sense make a tenement, but the section does not in terms indicate what the fashion of that physical division may be. Would an uncovered yard, a dark cellar, the cavity under the slope of a roof, a large verandah, a space on a floor undefined by any marks or bounds though capable of being ascertained and defined, fall within the term? Such questions are not fantastic. When a large building put up for a special purpose—an hotel, a sanatorium, a world's fair, or an amusement palace—fails of its purpose and comes down in the world, every part of it seeks its tenant, regardless of any original intention to divide or let it, and a good agent is ingenious to find a use and a rent for apparently useless spaces. It is hard to say what there is in the physical bounds of the single rooms in this case that qualifies them to be tenements. Is it because the space is visibly bounded? Then all houses are divided, or virtually divided, into tenements? Is it the roof? Is it four walls or three or two? Is it the window? I can hardly think it is the door or the materials of the wall, slender or substantial, permanent or temporary, transparent or opaque. A curtain to be drawn or a door to be left ajar might be as characteristic of a room as any other species of partition. Finally the house must not only be capable of being let and occupied in different tenements, but it must be so let. I think it has been rightly decided to be enough if the whole is intended to be so let, though possibly at any given moment some of the tenements may be unlet. Nor does the section say divided into tenements and let in corresponding tenements or in an equal number of tenements. I do not see anything to prevent more tenements than one being included in one letting, or to require tenements so let in one hiring to be contiguous, or connected either laterally or perpendicularly. The question is, Are they tenements?

As the nature of things does not supply the meaning of the word, I seek it in the use of the word in ordinary speech when employed in such a connection as the present. I can scarcely doubt that from 1778 onwards there have been numerous instances in which houses of ordinary construction and containing many ordinary rooms have come to be inhabited separately and often room by room by separate persons or families, but I have been quite unable to find any instance in which, under any of the Acts in force from time to time, such rooms have been held to be or have been spoken of as being tenements, whereas in case after case it has been clearly said that they are not. The name has been held applicable to all sorts of groups of rooms when contiguous and demarcated as a distinct group from the rest of the building by some definite physical feature, but to a plain single room even when occupied for the purposes of business, never.

If the question be the meaning attached to a word among those who are accustomed to use it, I presume it does not matter whether the word is used in an *obiter dictum* or in the very expression of a *ratio decidendi*. No case which binds your Lordships decides the point, not even *Grant* v. *Langston* (*supra*), and as I take it that the bare word "tenement" has not a different meaning in sub-section (2) of section 13 from that which belongs to it in sub-section (1), I conceive that cases on either sub-section are equally useful for this purpose.

"It is difficult," says Lindley, J., in *Yorkshire Insurance Company* v. *Clayton*, 6 Q.B.D. p. 561, "to say what a 'different tenement' is, but my impression which I get from the discussion in *Attorney-General* v. *Mutual Tontine Westminster Chambers Association*, L.R., 10 Ex. 305, and L.R. 1 Ex. D. 469, is that the expression indicates a tenement complete in itself, not mere rooms opening on to a common staircase." I think that on the facts this sentence was part of that very learned Judge's *ratio decidendi*, for some of the separate tenancies seem to have been tenancies of single rooms opening off a common passage. In affirming this decision Jessel, M.R., observes (8 Q.B.D. p. 423)—"I understand tenement . . . to mean a legal house as distinguished from an ordinary house"—he is clearly referring equally to section 13 as to Rule 6 of Schedule B—and on page 424, "a meaning can be fairly given to the word 'divided,' if the word 'tenement' be read not as that which is

held in tenure but as that which in law is a house." Brett, L.J., agreeing, says (page 425)—"What then we have first to construe are the words 'shall be divided into different tenements.' It seems to me that they mean where the tenement, which is part of the house, is so structurally arranged that it may be used or actually occupied, as people in ordinary parlance would say, as a man's own house, office, shop, or warehouse. . . . The question is whether it applies to the case now before us, which is that of a house which is not at all different in structure and arrangement from any ordinary house," and he then decides that it does not. So Cotton, L.J., observes, p. 427. "What is the meaning of 'shall be divided into different tenements' if it is to mean something different from separate lettings? Without dealing with all possible cases it is sufficient to say that here there is no division of the house at all except that which exists in all houses which have different floors and separate rooms."

Again, in *Chapman* v. *Royal Bank of Scotland*, 7 Q.B.D. 136, Huddlestone, B., says, p. 141, and not, I think, *obiter*—"From the description of this part of the premises given in the case it does not appear that the upper floors are structurally divided into different tenements, though the different rooms or portions of the premises may be occupied by different persons." If, as in the present appeal, each occupier holds several rooms, and not one only, the case is *a fortiori*. Hawkins, J., concurring, says (page 144)—"It was contended . . . that the exemption applied where there was the mere letting of separate portions of the house, even though there was no structural division. I do not so construe the words . . . there must be such a division that anyone going over the premises would say" (that is from the construction of the premises, not from the circumstances of the occupation) "'this is one tenement, that is another.' . . . There must be a sort of division analogous to what we find in sets of chambers and a great many of those mercantile buildings which have been erected to so great an extent lately in the City of London. There must be the letting of a separate tenement other than a mere apartment," and this he confirms at 1900 A.C. 401. In *Lord Walsingham* v. *Styles*, 3 Tax Cas. 247, the Divisional Court (Mathew and Cave, JJ.) decided that Walsingham House did not come within the exemption granted by section 13, sub-section (1), on the ground that "though a large part is let out in separate tenements, the remainder are separate rooms opening on a corridor. There are servants' rooms, rooms devoted to the ordinary purposes of an hotel, a kitchen, and offices."

Lord Davey, in *Grant* v. *Langston*, 1900 A.C. at p. 397 (a case which does not decide this point), in adopting the definition of "tenement" given by Lord President Inglis in *Russell* v. *Coutts*, *supra*, dwells upon the physical division which it involves, and equally adopts the words of Lord Shand in the same case—"The line must simply be drawn by looking at the particular premises and ascertaining whether they are so structurally shut off from the rest of the building occupied as to form an entirely separate tenement of themselves"; and I think the expression of Lord Macnaghten on page 395, "tenement is used as meaning a division or part of house," is nothing to the contrary, since, in any sense of the word different from Lord Davey's, it would apply to a cupboard, or a chimney, or a drain.

To turn to the Scotch cases. In *Russell* v. *Coutts*, *supra*, Lord President Inglis, having said that a "tenement in this statute means a part of a house so structurally divided and separated as to be capable of being a distinct property or a distinct subject of lease," proceeded to hold that the large room used as a stamp office was not within the sub-section, saying that it was simply a room in Coutts's house, "such a room is not within the meaning of the sub-section," viz., sub-section (2), while the writing chambers, which were a group of rooms structurally separate within the building, were held to be within sub-section (1). In *Corke* v. *Brims*, 10 R. 1128, 20 S.L.R. 778, the Lord President (Inglis), agreeing with the *Yorkshire Fire Insurance* case, observes—"When you go up the stair . . . there is just a series of sitting-rooms and bedrooms, each having its door opening into the common passage or staircase. A more thoroughly undivided house, in so far as physical division is concerned, it is almost impossible to conceive."

Both in this case and in *Clark* v. *British Linen Company Bank*, *supra*, the Court distinguishes *Russell* v. *Coutts*, *supra*, where it had been held that the writing chambers were sufficiently separated to be exempt, by pointing out that when Coutts had gone in at his front door he had the means of ranging over the whole place, and therefore the separate rooms, though physically divided in a sense, were not such physical divisions as to be tenements. The tenor of the judgment in *Smiles* v. *Crook*, 13 R. 730, 23 S.L.R. 489, is to the like effect. Before passing from the cases I will refer to the decisions of Walton, J., in *Hillman* v. *Anderson*, 5 Tax Cas. 493, and also in *London County Council* v. *Cook*, 1906, 1 K.B. 278, where he held, on a cognate statute, the Customs and Inland Revenue Act 1890, section 26, sub-section (2), that a mere cubicle was not a "dwelling-place," saying "that which is really a bedroom and nothing more than a bedroom" is not a dwelling.

It may be said that these cases appear to confuse the word "tenement" with the words "divided into," and attribute to the former what really comes from the latter, but I think the answer is that the quality which is incorporeal in a tenement within the section is given by the words "let in," while that which is corporeal is given by "divided into," and tenement is still a general term, but, although general, more specific than "part" of a house. In the full width of Lord President Inglis's definition I do not see why a space on a floor physically separated from the rest by a painted boundary line, or a safe in safe

deposit, might not be tenements. Each is divided from the rest so as to be capable of exclusive possession, of separate letting, and of use for business purposes. The same might be said of a locked-up cupboard.

Certainly, looking at the history of these Acts, and especially at 57 Geo. III, cap. 25, section 1, 5 Geo. IV, cap. 44, section 4, and 32 and 33 Vict. cap. 14, section 11, "tenement" seems to have been used during more than a century in the sense of something which would have been a house, though only a little one, if it could. Circumstances and architects may have made it a house on the top of or underneath other houses, like a flat, or a house which is part of one storey, though, if it had been put on end by itself instead of being laid on its side in company with other similar houses, it would have been an independent little house. The indications of separate structure may be rudimentary. Expressions like "shut off" or "self-contained" may be vague. An ante-room or a lobby, a front door, even though there is no back door; a structural sub-division, which gives no support to the general structure, but only catches the eye or the fancy, may in this connection seem to receive an exaggerated importance. If we were free to resort to pure reason or to simple English, instead of being bound to construe a taxing Act, I daresay it would be better to get rid of all these niceties both in the building and in the enactment, and to say that tenement is *nomen generalissimum*, and covers everything from a room to a phalanstery, but we are not. I will venture to adopt the language of Lord Halsbury with regard to sub-section (2), only substituting for his word "decisions" the words "the language of the decisions"—"The whole question is entirely covered by decisions, and certainly I am not disposed to alter, except for very strong reasons, that which has been accepted as the rule in a somewhat complicated and difficult question, which the Legislature has called on His Majesty's Judges to solve"—*London and Westminster Bank* v. *Smith*, 87 L.T., p. 245. The object of the section, it is true, is remedial, and, as far as its language admits, it ought to be construed favourably to the taxpayer. Each of these lettings is separately rated, as we were told, and one would be glad that that which is separate enough to bear a burden for local purposes should be held to be separate enough to obtain an exemption for imperial purposes, but unfortunately that which is rated is a hereditament and that which escapes is a tenement. Such is law.

I think that there is a further difficulty in the respondents' way. If the caretaker's rooms are consistent with exemption it must be because they are caretaker's rooms as such, since the adverse decision of the Commissioners precludes any reliance on a distinction between a reasonable and an unreasonable amount of space for such purposes. Again, the result is the same if reliance is placed on the business necessity for having a resident caretaker, unless that necessity is too plain and universal to be gainsaid. There is no finding in the respondents' favour on the subject. Since this set of rooms is not separately let, the fact of its occupation by the caretaker prevents sub-section (1) from applying in the accepted meaning of "wholly divided into and let in separate tenements," unless it can be said that a caretaker who resides on the premises is necessary to the letting of the premises in tenements, and not merely convenient. This certainly is not established. Some blocks of business premises have a caretaker resident on the premises, others have not. There is another difficulty. If the resident caretaker, and therefore the rooms which he occupies, be a necessity, like the common lavatory and the common stairs, I think his rooms, so regarded, though they are a tenement, are not a different tenement. If so, the house is not wholly divided into different tenements. On the other hand, if his rooms be regarded as what they really are, namely, his rooms, they are a tenement which is not let, and then the house is not wholly let in different tenements. It is only possible to give the go-by to the caretaker's rooms by theoretically assimilating them to the common stairs, which we know to be contrary to the fact, or by ignoring them and the difficulty which they present altogether, which virtually amends the Act so as to make them an exception.

As to sub-section (2), 100 Princes Street is not a house or tenement occupied solely for business purposes, but is a private house or tenement structurally connected with a number of business houses or tenements and with some business premises which are neither.

With all respect, I think that the appeal should be allowed, and that the judgment appealed against should be reversed and the decision of the Commissioners should be affirmed.

Their Lordships upheld the order appealed from but amended it by inserting after the word "paid" the words "except that the duty relating to the tenement occupied by Robert Smith be retained by the Crown," and found the appellants liable in expenses.

Counsel for the Inland Revenue (Appellants in the House of Lords)—The Attorney-General (Sir J. Simon, K.C.)—The Solicitor-General for Scotland (Morison, K.C.)—W. Finlay, K.C.—R. C. Henderson. Agents—Sir P. J. Hamilton Grierson, Solicitor of Inland Revenue in Scotland—H. Bertram Cox, London.

Counsel for Cotton's Trustees (Respondents in the House of Lords)—Clyde, K.C.—A. M. Latter. Agents—Henderson & Munro, W.S., Edinburgh—Capron & Company, London.