NO. 367.—COURT OF SESSION (SCOTLAND) (FIRST DIVISION):—
18th June and 16th July, 1913.

---

HOUSE OF LORDS.—12th and 15th March and 8th June, 1915.

---

# FARMER (Surveyor of Taxes) v. TRUSTEES OF THE LATE WILLIAM COTTON.(1)

---

*Inhabited House Duty—A building, consisting of a basement and six floors, originally built for and occupied as an hotel, was subsequently structurally adapted for letting to a number of different tenants. A portion of the second and third floors, which was self-contained, was let to a tenant as a dwelling-house; the owner's caretaker occupied a portion of the fifth floor as a dwelling-house, and also used a wash-house, drying room, and coal cellar in the basement. There were lavatories and a cistern and lift machinery on the fifth floor for the common use of the various occupiers. The remainder of the premises (with the exception of the lavatories and of a room on the fifth floor which was unlet) were let to various tenants who occupied one or more rooms as offices, studios, or warehouses, or for other non-residential purposes. As a rule, these rooms opened direct on to the common landings or corridors. No part of the building was occupied by the owners personally.*

Held (*Lord Sumner dissenting*), *that the building was divided into and let in different tenements which, with the exception of the dwelling house, were used for the purpose of a trade or business or profession or calling within the meaning of Section* 13 (1) *of the Customs and Inland Revenue Act*, 1878 (41 *and* 42 *Vict., cap.* 15), *and that the assessment to Inhabited House Duty should be restricted accordingly.*

## CASE.

At a Meeting of the Commissioners for the General Purposes of the Income Tax Acts and for executing the Acts relating to the Inhabited House Duties for the County of Edinburgh, held at Edinburgh on the 23rd day of February, 1911,—

The Trustees of the late William Cotton (hereinafter referred to as the appellants) appealed against an assessment made upon

---

(1) Reported (in Court of Session) 57 & 58 S.L.R. 922; [1913] S.C. 1126, and (in House of Lords) [1915] A.C. 922.

them for the year ending 23rd May, 1911, of £31 16*s.* 9*d.*, being Inhabited House Duty at the rate of 9*d.* per £ on the sum of £849, the annual value of the premises situated at No. 100 Princes Street, Edinburgh, of which they are owners. The assessment for Inhabited House Duty was made under 14 and 15 Vict. cap. 36 and the provisions of Rule 6 of Schedule B of 48 Geo. III. cap. 55.

I. The following facts were admitted or proved :—

(1) The premises, with the exception of that part of them occupied by Robert Smith, were originally built for and were occupied as an hotel, but after having been structurally adapted for use as in the year of assessment they have been for some years past, and during the year of assessment, so far as not occupied by the appellants' caretaker, let to a number of tenants who occupy the subjects let to them in some cases as offices, warehouses, or other non-residential purposes, and, in one case, as a dwelling-house. No part of the premises is occupied by the appellants personally, but their caretaker inhabits a house in the premises as hereinafter stated.

(2) The premises consist of a basement, ground-floor, and five upper floors. Part of the ground-floor of the building consists of four shops structurally separated from the remainder of the building. The part of the basement beneath these shops is also structurally separated from the remainder of the building. Neither this portion of the basement nor these shops are included in the assessment appealed against. There is an entrance to the ground-floor from Princes Street through an outer and an inner door opening into a large hall. In the hall there is a staircase and lift by which access is obtained to the upper floors; and there is also a staircase leading to the basement. Each tenant has a key of the outer door which is locked at night. The inner door is a swing door which is never fastened.

(3) The basement is divided into two portions. Of these one consists of a washing-house and drying room used by the appellants' caretaker, off the later of which a w.c. opens, and of a lobby which leads to a coal cellar used by the appellants' caretaker and from which lobby a staircase gives access to the hall on the ground floor. From the wash-house a door gives access to a passage, off which there open two coal cellars belonging to and used by George Cotton & Son, Tobacconists, Princes Street. There also opens from the passage a door by which access is obtained to a flight of steps leading to a lane which communicates with Rose Street Lane. At the end of the said passage there is a door giving access to an open court; and from that court a door gives access to the other portion of the basement. This other portion is occupied by Messrs. Oliphant, Anderson & Ferrier as a warehouse; and from it a stair gives access to that part of the ground floor which is occupied by the said firm as a warehouse and office.

(4) The ground floor consists of the hall mentioned above in Article 2, and of three rooms occupied by Messrs. Oliphant, Anderson & Ferrier as a warehouse and office. There is also a lavatory. Access to these rooms is obtained by a door opening

into one of them from the hall above mentioned. There is also an access to one of them by large doors opening upon Rose Street Lane. The said firm also occupies a portion of the first and second floors; and the only access to this portion is by a staircase from one of the three rooms on the ground floor occupied by the firm.

(5) The first floor consists of rooms occupied by Messrs. Oliphant, Anderson & Ferrier, as stated in Article 4, of three rooms occupied by F. E. G. Hopp as an office, between two of which there is internal communication, of a single room occupied as an office by the World Missionary Conference, and of two rooms, between which there is internal communication, occupied as an office by the Empire Insurance Corporation. Each of these rooms has a door opening upon the passage which communicates with the staircase and lift. From the said passage there is a door opening on to a small lobby. Access is obtained from this lobby by a door to a room occupied as a warehouse by A. Brown, by a second door to the office of the Conservative Women's Franchise Association, and by a third door to two rooms occupied as an office by Messrs. Ashford, Thomson & Heaton. From the passage above-mentioned there is a door opening into a small lobby from which access is obtained to a coal closet and to two rooms occupied by the World Missionary Conference between which rooms there is internal communication. There are also a ladies' lavatory and w.c., access to which is obtained from a passage communicating with the staircase.

(6) The second floor consists of rooms occupied by Messrs. Oliphant, Anderson & Ferrier, as stated in Article 4, of a room occupied by Miss Fairley as an artist's studio, of two single rooms occupied by Mrs. Feely and Mrs. Fletcher respectively for business purposes, and of three rooms, between all of which there is internal communication, occupied as an office by Mr. M'Crow. There is also a coal closet. Each of these rooms has a door opening upon the passage which communicates with the staircase and lift. There is also a large lavatory communicating with the said passage. From the said passage there is a door which gives access to the rooms occupied by Mr. Robert Smith as his dwelling-house. This house, which formerly was a separate house with its own access from the street, is held on a separate title and consists of a lobby and four rooms entering therefrom on the second floor used as dining room, drawing room, bedroom and kitchen, and four rooms used as bedrooms and a bathroom on the third floor. The only access to these last mentioned rooms is by a staircase from the said lobby.

(7) The third floor consists of the said four rooms and a bath-room, occupied by Mr. Robert Smith, and of five rooms and a lavatory occupied by Cadbury Brothers Limited. A door from the stair landing gives access to a passage with which each of the rooms occupied by Cadbury Brothers Limited communicates by means of a door. The door to the lift also opens upon this passage

(8) The fourth floor consists of six rooms let to tenants and occupied for business purposes, and a lavatory. Two rooms are let to the World Missionary Conference, two rooms to the United Free Church Mission Study Council, one room to S. H. F. Capenny, and one room to the West Edinburgh Women's Unionist Association. Each room has a door opening from a passage which communicates with the staircase and lift. Off this passage at the west end there is a door which gives access to a stair which communicates with the house of the appellants' caretaker on the fifth floor. At the east end of the passage there is a door by which access is obtained to a stair leading to the fifth floor.

(9) The fifth floor consists of four rooms and a bathroom, occupied by the appellants' caretaker, which all communicate with the landing of the stair leading from the fourth floor to the caretaker's house; of three rooms, two of which are let and one is vacant; and of a place for the cistern and lift machinery. The only communication between the caretaker's house and the rest of the building is by means of a door on, and a stair leading from, the fourth floor. Each of the said three rooms has a door opening on to the landing of the stair leading from the fourth floor to them. The caretaker's house is structurally separate from these three rooms.

(10) The premises, to the extent to which they are included in the assessment, are occupied as follows :—

| | | Annual Value. | | |
|---|---|---|---|---|
| *Basement.* | | £ | *s.* | *d.* |
| William Cotton's Trustees— | | | | |
| Caretaker's washhouse, drying room and cellar | | 5 | 0 | 0 |
| Oliphant, Anderson & Ferrier. *See next entry.* | | | | |
| *Ground Floor.* | | | | |
| Oliphant, Anderson & Ferrier, Office and Warehouse ... ... ... ... ... | 3 rooms | 207 | 15 | 0 |
| Oliphant, Anderson & Ferrier occupy, in addition to these 3 rooms, part of the basement, of the first floor, and of the second floor. The subjects let to them are described in article (4) and the *cumulo* value is £207 15*s*. | | | | |
| *First Floor.* | | | | |
| Oliphant, Anderson & Ferrier. *See last entry.* | | | | |
| World Missionary Conference Offices | 2 rooms | 35 | 0 | 0 |
| ,, ,, ,, ,, | 1 room | 20 | 0 | 0 |
| F. E. G. Hopp ... ... ... ... | 3 rooms | 36 | 0 | 0 |
| Empire Guarantee and Insurance Corporation | 2 rooms | 45 | 0 | 0 |
| A. Brown, Hosiery Warehouse ... | 1 room | 47 | 10 | 0 |
| Conservative and Unionist Women's Franchise Association Office ... ... ... | 1 room | 10 | 0 | 0 |
| Ashford, Thomson & Heaton, stock and share dealers' Office ... ... ... | 2 rooms | 50 | 0 | 0 |

*Second Floor.*

| | | | | |
|---|---|---|---|---|
| Oliphant, Anderson & Ferrier. *See entry relating to them under "ground floor."* | | | | |
| Robert Smith, dwelling house ... | 4 rooms | 75 | 0 | 0 |
| Robert Smith occupies, in addition to these rooms, four rooms on the third floor. The subjects let to him are described in articles (6) and (7) and their *cumulo* value is £75. | | | | |
| Mrs. H. Feely, hairdresser's saloon ... | 1 room | 18 | 0 | 0 |
| Mrs. Lucy Fletcher, Complexion Specialist's Office | 1 room | 16 | 0 | 0 |
| Miss M. B. Fairley, Artist's Studio ... | 1 room | 30 | 0 | 0 |
| T. T. M'Crow, Merchant's Office ... | 3 rooms | 60 | 0 | 0 |

*Third Floor.*

| | | | | |
|---|---|---|---|---|
| Robert Smith. *See entry relating to him under "Second Floor."* | | | | |
| Cadbury Bros. Ltd., Warehouse and Offices | 5 rooms | 80 | 0 | 0 |

*Fourth Floor.*

| | | | | |
|---|---|---|---|---|
| World Missionary Conference Office | 2 rooms | 35 | 0 | 0 |
| United Free Church Mission Study Council Offices | 2 rooms | 28 | 0 | 0 |
| S. H. F. Capenny, Mercantile Agent, Office, | 1 room | 14 | 0 | 0 |
| West Edinburgh Women's Unionist Association Offices ... ... ... ... ... | 1 room | 12 | 0 | 0 |

*Fifth Floor.*

| | | | | |
|---|---|---|---|---|
| William Cotton's Trustees, Caretaker's House, &c. | 4 rooms | 12 | 0 | 0 |
| Miss Henderson, Artist's Studio ... | 2 rooms | 8 | 12 | 0 |
| Vacant ... ... ... ... ... | 1 room | 4 | 6 | 0 |

The various occupiers above named are entered in the Valuation Roll as tenants and occupiers of the premises held by them respectively, and they are separately rated on the rents paid by them, being the sums entered above against their several names as the annual value of the premises they occupy.

The appellants produced a certificate by the Medical Officer of Health in conformity with the requirements of 3 Edw. VII., c. 46, Section 11.

II. For the appellants it was contended that the only part of the said premises in respect of which Inhabited House Duty is leviable is the house occupied by Mr. Robert Smith, at a rent of £75, and that in terms of Section 1 of 57 George III. c. 25, Section 25 of 30 and 31 Vict. c. 90, and Section 13 of the Customs and Inland Revenue Act, 1878. They further contended that in any event the said duty was not leviable in respect of the part of the premises which is unlet. They further maintained that as they were not liable in payment of the said duty on the remainder of the said premises, and as the house occupied by Robert Smith was the only house therein on which the duty was leviable, they were not liable to be assessed for the duty upon the said house, and that the duty was recoverable under 48 Geo. III. c. 55, Schedule B (1), from Robert Smith. They

further maintained that the premises, so far as they are used as a dwelling-house, are used for the sole purpose of providing separate dwellings, and that by virtue of Section 11 (1) (a) of the Revenue Act, 1903, the value of the caretaker's house being £12 falls to be excluded from the annual value of the premises for the purposes of the said duty.

III. The Surveyor of Taxes (Mr. Richard Farmer) contended that the building is correctly assessed as one subject under the 6th Rule of Schedule B of 48 Geo. III. cap. 55.

That as the building is neither structurally divided into and let in different tenements nor occupied solely for the purpose of any trade or business, there is no exemption under either Sub-section (1) or Sub-section (2) of Section 13 of the Customs and Inland Revenue Act, 1878.

That Section 11 of the Revenue Act, 1903, has no application in that the building is not used for the purpose of providing separate dwellings within the meaning of that Section, and, alternatively, that if it were so used relief could only be granted to the extent of £12 in respect of the caretaker's house, which is the only dwelling-house of an annual value not exceeding £60.

IV. The Commissioners having considered the facts and arguments submitted to them, held that the premises were not divided into and let in tenements within the meaning of the Customs and Inland Revenue Act, 1878, Section 13 (1), and that Section 11 of the Revenue Act, 1903, had no application, and they refused the appeal.

V. Whereupon the appellants expressed their dissatisfaction with the determination of the appeal as being erroneous in point of law, and having duly required the Commissioners to state and sign a case for the opinion of the Court of Session as the Court of Exchequer in Scotland, this case is stated and signed accordingly.

JOHN A. MACONOCHIE WELWOOD,
R. G. WARDLAW-RAMSAY,
H. E. RICHARDSON,
} Commissioners.

LESLIE BALFOUR MELVILLE,
Clerk to Commissioners.

Edinburgh, 15th May 1913.

---

The case was heard by the First Division of the Court of Session on the 18th June, 1913, and judgment issued on the 16th July, 1913, in favour of the Appellants, with costs.

INTERLOCUTOR.

Edinburgh, 16th July, 1913. The Lords of the First Division having considered the Stated Case and heard Counsel for the parties thereon, Reverse the determination of the Commissioners

and Remit to them to discharge the assessment: Order repayment of the Inhabited House Duty paid on the sum of £849, and decern: Find the Appellants entitled to expenses, and Remit the Account thereof to the Auditor to tax and to report.

(Signed) DUNEDIN,
I.P.D.

---

OPINIONS.

*Lord President.*—This is an appeal against a finding of the Commissioners of Inland Revenue, and has to do with an assessment for Inhabited House Duty made upon the premises situated at No. 100, Princes Street, commonly known as the Windsor Building. It seems to me that the question is one of fact, and fact entirely. The history of this legislation, as your Lordships know, is long, and has been illustrated by many cases. Originally under the operation of the Act 48 Geo. III., cap. 55, and of the 6th Rule of Schedule B of that Act, if there was any dwelling-house in a house—using the word "house" to mean that space which is included within the exterior walls of the whole building—if there was any portion of it occupied as a dwelling-house, then the whole house became liable for Inhabited House Duty. Then came certain exemptions with regard to business premises, and certain others with regard to offices. But I may pass over the earlier legislation and go straight to the provision upon which the whole question turns—the 13th Section of the Customs and Inland Revenue Act, 1878. That section provides (sub-section (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," Inhabited House Duty is not to be imposed upon these tenements which are occupied solely for the purposes of trade or business. In order, therefore, to claim the exemption you have got to prove two things, first of all, that the house is divided into and let in different tenements, secondly, that the tenements are occupied for business purposes. In this present case there is no question about the latter branch. The tenements in respect of which exemption is claimed are undoubtedly occupied as business premises. As a matter of fact, there is only one residential house in the whole place. It is in a certain portion of the building and is entirely self-contained, that is to say, it has a door of its own, and once the occupier is inside that door, so long as he keeps it shut, two results follow: first, that he cannot get access to any other parts of the house except those let to himself, and second, that he can get access to all parts of the house which were let to him.

I think the case raises, as I say, a pure question of fact. We are told on the authority of several English judgments that what I may call the genesis of that clause in the statute was an intention to do away with the hardship which was considered to be

inflicted by the decision in *Attorney-General* v. *Mutual Tontine Westminster Chambers Association* (May 16, 1876, 1 Exch. Div. 469). I refer to the judgment of the Master of the Rolls (Jessel) in the case of the *Yorkshire Fire and Life Assurance Company* v. *Clayton* (March 10, 1881, 6 Q.B.D. 567, affirmed December 6, 1881, 8 Q.B.D. 421).(1) The learned judge there described what has happened. He describes, and the other judges describe, the change that has come over building methods and how flats, which, as your Lordships know, had long been common in Scotland but which were not well known in England, had become a very well-known form of building; how, until Section 13 of the Act of 1878, although those flats were really distinct and separate, yet they would not be so considered, and any large building which included many flats would have been held as one building, and, therefore, an inhabited house if only one portion of it were inhabited; and how the law was changed.

I think your Lordships must take the state of the building as you find it, and, therefore, I do not think myself that it is perhaps of very great value to ponder deeply upon the particular plans which were the subject of discussion in particular cases. If you take it by cases, then I think the case might be put as it was put by Lord President Inglis in the case of *Clerk* v. *British Linen Company*,(2) when he says, "Is this case to be regulated by the "judgment in the case of *Coutts*,(3) or by that in the case of "*Corke* v. *Brims*?"(4) I do not read what his Lordship said. I think, if you put it in that way, this case resembles *Corke* v. *Brims*(4) and not *Coutts*.(3) I put my judgment in this way: I think that all those various tenements into which the whole building is divided are separate tenements. It is quite clear that if you had the ordinary case of a semi-exterior common stair and a set of flats opening off it, there would be no question about that. Now does it make any difference that instead of having what I have called a semi-exterior common stair, you have a prolongation of the common stair by an interior passage? I think it does not.

I quite agree that if all you can say in fact is that there are various rooms in the house to which any person in the house has access, then the house has not been divided into separate premises, such as I find in this house. My judgment upon the fact, as a juryman, is that each of those tenements is separately let to a separate person, who has a separate front-door key to his own premises, with which nobody else has anything to do; and, in particular, that the one person who is a house occupier is entirely separate from all the rest, being entirely self-contained and kept by himself, and having nothing to do with the rest of the house except, I agree, that he has not only to come down the stair, but, in order to reach the head of the stair, he has to pass along a landing. I do not think that makes any difference. I think this house is truly divided into separate tenements, and that

(1) 1 T.C. 336 and 479. (2) 2 T.C. at p. 98. (3) 1 T.C. 469.
(4) 1 T.C. 531.

the judgment of the Commissioners is wrong, and that relief ought to be granted.

*Lord Kinnear.*—I agree with your Lordship and for the reasons your Lordship has stated.

*Lord Mackenzie.*—I also agree with your Lordship. I think the question to be decided now is merely a question of fact, and I certainly agree with the observations made by your Lordship as to its not being useful to lay the plans which have been made the ground of judgment in one case alongside the plans which have been produced in the case under consideration in order to see whether there is any analogy between the one case and the other. The principles to be applied have been clearly defined. They were laid down by the Lord President in *Russell* v. *Coutts*,(1) and quoted by the Lord Chancellor in the case of *Grant* v. *Langston*.(2) He only advocated the application of those principles, and made no comment.

It was pointed out in the Case of the *London and Westminster Bank*,(3) to which we were referred, that each case must be decided on its own circumstances; and it is, I think, apparent that the development building, and the erection of large tenements divided into flats, or subdivided into different subjects each capable of being made the subject of a separate lease, show how little use it is to go back to cases which were dealing respectively with a house in Banff and a house in Wick. In the present case we are dealing with a large building in Princes Street, Edinburgh which had been converted on account of the exigencies of the time into different tenements. It is quite apparent, in regard to the dwelling-house occupied by Robert Smith, that it is entirely shut off and, therefore, satisfies all the canons that were laid down in such a judgment as that of Lord Brampton in the case of the *London and Westminster Bank*.(3) This house was formerly a separate house with a separate entrance from the street and with a separate title, and the mere fact that in order to get access to it now one requires to go along a common passage, does not make it any different from flats to which access is got from a common stair. It is, of course, obvious that one cannot subdivide by contract merely. There must be more than that. I think that the description given of the subjects shows clearly, when the provisions of the Act of 1878 are applied, that the building is divided into and let in different tenements, and that the bulk of those are occupied solely for the purposes of trade or business.

---

Notice of Appeal having been given, the case came on for hearing before the House of Lords on the 12th and 15th March, 1915, before Earl Loreburn and Lords Atkinson, Parker and Sumner, when judgment was reserved. The Attorney-General

(1) 1 T.C. 469. (2) 4 T.C. 205. (3) (1902), 87 L.T. 244.

(Sir John Simon, K.C., M.P.), the Solicitor-General for Scotland (Mr. T. B. Morison, K.C.), Mr. William Finlay, K.C., and Mr. R. C. Henderson appeared as Counsel for the Crown, while Mr. Clyde, K.C., and Mr. Latter appeared as Counsel for the Respondents.

On the 8th June, 1915, Judgment was delivered against the Crown, with costs, Lord Sumner dissenting.

JUDGMENT.

*Lord Loreburn.*—My Lords, 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 an 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 until 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 over-ruled, but if the facts were such that on a true construction of the Act a different conclusion could reasonably 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.*—My Lords, I concur in the judgment which has just been delivered by my noble and learned friend on the Woolsack.

*Lord Parker of Waddington* (read by Lord Sumner).

My Lords, 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.

My Lords, it may not always be easy to distinquish 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 thirteenth 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 other. The floor of a corn exchange let in stands to corn merchants would not in this sense be divided into different tenements. The tenement 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., p. 261),(1) and approved by Lord Davey in *Grant* v. *Langston* (1900, A.C., at p. 397).(2) 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

(1) 1 T.C. 469. (2) 4 T.C. 205.

provide in the building 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 is a practical necessity if the house is to be let in different tenements at all.

My Lords, 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),(1) 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 included in the same lease, will not of itself be sufficient to prevent the section from applying. *Smiles* v. *Crooke* (2 T.C., p. 162).

My Lords, 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 accommodation 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.

---

(1) 1 T.C. 336 and 479.

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, even 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*,[1] 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*

(1) 1 T.C. 336 and 479.

*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*(1) 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*(2) 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 sub-section, 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., p. 1133).(3) 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.

My Lords, 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

(1) 1 T.C. 336 and 479. (2) 1 T.C. 469. (3) 2 T.C. 95.

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.*—My Lords, 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. 3, 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. 3, c. 55, Schedule B, Rule 6, " tenement " is used both as one of the parts of the house and as 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 & 3 Viet., c. 47, s. 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 Mr. Baron Martin in *Fredericks* v. *Howie* (31 L.J.M.C., 249). Again, the Income Tax Act, 1853, Section 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. 4, c. 44, s. 4, which extends the exemption granted under 57 Geo. 3, c. 25, s. 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 anteroom or other separation from the rest of the house than its interior walls and a 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?

My Lords, 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*;(1) 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 Mr. Justice Lindley 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* " (Law Reports, 10 Ex.D., 305, and Law Reports, 1 Ex.D., 469), "is that the expression indicates a tenement complete in itself, "not mere rooms opening on to a common staircase."(2) 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, Sir George Jessel, Master of the Rolls, observes (8 Q.B.D., p. 423), "I understand tene-" ment . . . to mean a legal house as distinguished from an "ordinary house."(3) He is clearly referring equally to Section 13 as to Rule 6 of Schedule B, and on p. 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 is "in law a house."(3) Lord Justice Brett agreeing, says (p. 425) "the words 'shall be divided into different tenements' mean "where the tenement which is part of the house is so structurally

(1) 4 T.C. 205. (2) 1 T.C. at p. 341. (3) 1 T.C. at pp. 481-2.

" 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 " ;(1) and he then decides that it does not. So Lord Justice Cotton observes " 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 there is no division " of the house at all except that which exists in all houses which " have different floors and separate rooms."(2)

Again, in *Chapman* v. *Royal Bank of Scotland* (7 Q.B.D., p. 141) Mr. Baron Huddleston says, 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 per- " sons."(3) If, as in the present Appeal, each occupier holds several rooms, and not one only, the case is *a fortiori*. Mr. Justice Hawkins, concurring, says (p. 144), " It was con- " tended . . . 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 construc- tion 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,"(4) and this he confirms at 1900 Appeal Cases, p. 401. In *Lord Walsingham* v. *Styles* (3 T.C., p. 247) the Divisional Court (Justices Mathew and Cave) 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., p. 397)(5) (a case which does not decide this point) in adopting the definition of " tenement " given by Lord President Inglis in *Russell* v. *Coutts* (9 R., p. 261),(6) dwells upon the physical division which it involves, and equally adopts the words of Lord Shand in the same case : "The line must be simply drawn by looking at the " particular premises and ascertaining whether they are so " structurally shut off from the rest of the building occupied as

(1) 1 T.C. at p. 483. (2) 1 T.C. at p. 485. (3) 1 T.C. pp. 366-8.
(4) 1 T.C. at p. 371. (5) 4 T.C. 205. (6) 1 T.C. 469.

" to form an entirely separate tenement of themselves " (1); and I think the expression of Lord Macnaghten, on p. 395, " tene- " ment is used as meaning a division or part of house " (2) 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* (9 R., p. 261), 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' house: " Such a room is " not within the meaning of the sub-section," (3) namely, 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., p. 1128)(4) the Court of Session agreeing with the Yorkshire Fire Insurance Case(5) observes: " When you go up the stairs there is just a " series of sitting rooms and bedrooms, each having its door " opening into the common passage and staircase. A more " thoroughly undivided house, in so far as physical division is " concerned, it is almost impossible to conceive."(6) Both in this case and in *Clerk* v. *British Linen Company Bank* (12 R., p. 1133)(7) the Court distinguishes, *Russell* v. *Coutts*, (8) 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 division as to be tenements. The tenor of the Judgment in *Smiles* v. *Crooke* (13 R., p. 730)(9) is to the like effect. Before passing from the cases I will refer to the decisions of Mr. Justice Walton in *Hillman* v. *Ankerson* (5 T.C., p. 493) and also in *London County Council* v. *Owen Cook* (1906, 1 K.B., p. 278)(10) 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 Inglis's definition I do not see why a space on a floor, physically separated from the rest by a painted

(1) 1 T.C. at p. 478, quoted 4 T.C. at p. 217.
(2) 1 T.C. at p. 474.
(3) 4 T.C. at p. 216.
(4) 1 T.C. 531
(5) 1 T.C. 336 and 479.
(6) 1 T.C. at p. 535.
(7) 2 T.C. 95.
(8) 1 T.C. 469.
(9) 2 T.C. 162.
(10) 5 T.C. 173.

boundary line, or a safe in 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 Vic., 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 "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.

My Lords, 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 and 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.

*W. Finlay*, K.C.—Before your Lordship puts the question, may I just mention a point on the form of the Order? It will be within your Lordship's recollection that in the Court of Session —the Order is to be found at p. 11 of the Appellant's Case—the Court of Session were of opinion, as the majority of your Lordship's House are, that relief fell to be granted by virtue of Section 13 of the Act of 1878; but the Order of the Court of Session, I think it must be by a slip, orders repayment of the whole amount of duty. It is, I understand, common ground between the parties that duty would fall to be paid in respect of the tenement occupied by Robert Smith, and I would submit, and I think my learned friend Mr. Latter will not differ from me—I make no comment as to affecting costs,—that an amendment would be required providing that the duty should be repaid except so far as regards the duty relating to the house occupied by Robert Smith.

*Earl Loreburn.*—Wait a moment, please. Except that the duties relating to the tenements.

*W. Finlay*, K.C.—Relating to the tenement occupied by Robert Smith.

*Lord Parker of Waddington.*—There may be other tenements, may there not?

*W. Finlay*, K.C.—There might, my Lord, but I do not think I ought to seek to argue that—we did not below; we may another year. But it was conceded as regards Robert Smith, and I only ask it as to Robert Smith, as to which there is no dispute.

*Earl Loreburn.*—The words will be, "Amend the Order by "adding at the end thereof"?

*W. Finlay*, K.C.—Yes, my Lord, the Order is "Ordered repay- "ment of the Inhabited House Duty paid," and the amendment I suggest is by adding the words "except the duty on the tene- "ment occupied by Robert Smith."

*Earl Loreburn.*—Where are the words to be added?

*W. Finlay*, K.C.—After the word "paid," my Lord, I think, would be right.

*Earl Loreburn.*—After the word "paid", add "except that "the duty relating to the tenement occupied by Robert Smith "shall be paid to the Crown."

*W. Finlay*, K.C.—Yes.

*Earl Loreburn (to Mr. Latter).*—Is that your view?

*Mr. Latter.*—My Lord, I do not object to the substance of what has been suggested by my learned friend subject to this, that I do not want there to be anything in the nature of a decision as to who is the person who is to be assessed or is to pay.

*Earl Loreburn.*—But is the money in Court?

*Mr. Latter.*—No, my Lord, it has been repaid altogether.

*Earl Loreburn.*—Then, all that has to be said is "that the "duty relating to the tenement occupied by Robert Smith shall "be retained by the Crown."

*Mr. Latter.*—It has been repaid to the taxpayer.

*Earl Loreburn.*—What are we to say? You are agreed about the substance. Do not let us have any trouble about the words.

*Mr. Latter.*—So long as it is understood that there is no question as to liability between the two parties.

*Earl Loreburn.*—The Crown will treat you properly, and if there is any mistake you can come here afterwards.

*W. Finlay*, K.C.—Yes, my Lord, we are content with those words, if there is no difficulty.

*Questions put.*

That the Order appealed from be reversed.

*The Not Contents have it.*

That the Order appealed from be amended by the insertion after the word "paid" of the words "except that the duty "relating to the tenement occupied by Robert Smith be retained "by the Crown."

*The Contents have it.*

That the Appellant do pay to the Respondents their costs of this Appeal.

*The Contents have it.*