and with your Lordship. The Lord Ordinary in his note says—"The consent of the commissioners is by section 139 of the Bankrupt Statute necessary before the trustee can call a meeting of creditors to consider an offer of composition made by a bankrupt subsequent to the meeting held after his examination." He has no power to call the meeting without it. But the Lord Ordinary does not say that if the trustee and commissioners abuse their office there is no remedy for it; he says he sees no evidence that they have done so; and we have had no intelligible statement from the bar to that effect. It must be remembered that these meetings involve expense—that the other one had failed for want of proper caution, and that this one bade fair to do so also. All that is legal and reasonable; and I am for refusing the appeal.

Lord Shand—I concur in the result at which your Lordships have arrived. The commissioners here gave what I take to be a deliverance. The bankrupt applied for their consent, and after due consideration they refused it on specified grounds. The Accountant in Bankruptcy then suggested that it was for the consideration of the bankrupt whether he should not appeal under section 169; and I think this was the right course. The deliverance is one which may fairly be brought under the notice and review of this Court by appeal, and if the bankrupt could show that there had been any abuse I think the Court might on an appeal of this kind interfere and order the required meeting to be called. But I do not think this case discloses any such abuse. On the statement we have heard the bankrupt had no estate, but, on the other hand, no sufficient caution was offered; we know nothing of "George Weldon," and the trustees and commissioners probably had information on the subject. I am clearly of opinion that we should refuse the appeal. What might be done in the case of a *bona fide* offer of composition being made with sufficient caution by a person having means, in the event of the trustee and commissioners refusing to entertain such an offer, is a different matter.

The Court refused the appeal.

Counsel for Appellant and Reclaimer—Mair. Agent—James Barton, S.S.C.

Counsel for Respondents—Rhind. Agents—J. & W. C. Murray, W.S.

Saturday, November 15.

FIRST DIVISION.

[Exchequer Cause.

THE INLAND REVENUE *v.* DOUGLAS.

Revenue—Customs and Inland Revenue Act 1878 (41 *Vict. c.* 15), *sec.* 13, *sub-sec.* 2—*Inhabited House-duty—Is a Hotel a Dwelling-house?*

Held that a hotel is liable to assessment as a "dwelling-house" under the Inhabited House-duty Acts, and that the fact that the landlord does not personally occupy it will not bring it under the exemptions of sub-section 2 of the Act, 41 Vict. cap. 15, sec. 13, applying to houses "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."

Revenue—Inhabited House-duty Act 1808 (48 *Geo. III. cap.* 55), *Schedule B, Rules* 2 *and* 6—*Customs and Inland Revenue Act* 1878 (41 *Vict. cap.* 15), *sec.* 13, *sub-sec.* 1—*Stables.*

Where a hotel and stables were occupied together, and for one combined purpose, though the rent of the one was separate from that of the other—*held* that the stables ought to be included in an assessment of the hotel under the Inhabited House-duties Acts, and did not fall under the exemptions of the 1st sub-section of the Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), sec. 13.

Observed that the same rule might not apply where the stables were occupied for the purposes of a coaching establishment separate from the hotel.

John Douglas, innkeeper, Campbeltown, appealed to the Commissioners for General Purposes of the Income-tax and Inhabited House-duties Acts for that district of Argyllshire against an assessment of £3 laid upon him by Alexander Young, surveyor of taxes, being inhabited house-duty at 6d. per £1 on the hotel and stables occupied by him, rented at £120 from the Duke of Argyll. The Commissioners having sustained the appeal, the surveyor craved a case for the opinion of the Court of Exchequer.

The case bore that "the appellant claimed total relief from the assessment under sub-section 2 of 41 Vict. cap. 15, section 13, in respect that the premises assessed are occupied solely for the purposes of his trade or business as a hotel-keeper, by which he seeks a livelihood or profit, the appellant having a separate residence for his family about three-quarters of a mile distant, the appellant or his wife and servants remaining on the hotel premises only for the conduct of the business.

"In the event of the premises not being held to come within the exemption granted by the sub-section 2, the appellant alternately claimed relief from the assessment as far as it included the stables, on the ground that the hotel and stables are distinct tenements, and separately let to him at the rents of £80 and £40 respectively, as entered in the Lands Valuation Roll for the burgh of Campbeltown, and therefore fell within the exemption granted by sub-section 1 of section 13 of 41 Vict. cap. 15.

"The stables are separated from the hotel by a court or yard surrounded by houses partly occupied by the appellant and partly by other tenants. The stable-court is behind the hotel, with entrance by a gate from a side street, and the court is in the appellant's occupation.

"In answer to the first ground of appeal, the surveyor contended that the exemption granted by sub-section 2 of 41 Vict. cap. 15, read in the light of previous enactments, applied only to premises used for trade or business purposes during the day, and not used for residence; and that the house occupied by the appellant being a hotel was essentially an inhabited house used for residence, in which parties dwelt or resided during the night as well as by day, and therefore did not come within the exemption claimed.

"In answer to the alternative contention of

the appellant the surveyor maintained that under rule 2 of 48 Geo. III. cap. 55, Schedule B, the stables, offices, and yard belonging to and occupied with the hotel fell to be included in the assessment. The stable-court is behind the hotel and enclosed by walls, with entrance by a gate from a side street, and although they are separately entered in the valuation roll, and separate rents payable for the hotel and stables, the surveyor contended that these circumstances could not exclude the operation of the rule of the Act under which the assessment is made, and that the duty was chargeable on the full rent of the whole premises.

"The Commissioners find that the hotel is occupied by the appellant or his wife at night, and also by servants for management and for carrying on the business of the hotel throughout the year. The appellant's separate residence is about three-quarters of a mile distant from the hotel, and is a house of four rooms and kitchen and conveniences. The appellant's family consists of six children, and this house is occupied by appellant and his family only."

The Act 48 Geo. III. cap. 55, Schedule B, provided—Rule 2—"Every coach-house, stable, ... and all other offices . . . . belonging to and occupied with any dwelling-house, shall, in charging the said duties, be valued together with such dwelling-house." Rule 6—"Where any house shall be let in different storeys, tenements, lodgings, or landings, and shall be inhabited by two or more persons or families, the same shall nevertheless be subject to, and shall in like manner be charged to, the said duties as if such house or tenement was inhabited by one person or family only; and the landlord or owner shall be deemed the occupier of such dwelling-house, and shall be charged to the said duties." . . . .

Section 13 of the Act (41 Vict. c. 15), sub-section (1), provided—"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 from the amount of duty charged in the assessment, so as to confine the same to the duty or 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." Sub-section (2)—"Every house or tenement which is occupied solely for the purpose of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, shall be exempted from the duties by the said Commissioners upon proof of the facts to their satisfaction, and this exemption shall take effect although a servant or other person may dwell in such a house or tenement for the protection thereof."

No appearance was made for Douglas, but counsel on the other side were heard in terms of 37 Vict. c. 16, sec. 10.

Authorities—*The Glasgow Coal Exchange Company* v. *Solicitor of Inland Revenue*, March 18, 1879, 6 R. 850; *The Edinburgh Life Assurance Company* v. *Solicitor of Inland Revenue*, February 2, 1875, 2 R. 394.

At advising—

Lord President—In this case the appellant in the Court below sought relief from the assessment under the Inhabited House-duties Act in respect of premises occupied by him as a hotel; and it is stated in the case that the hotel is occupied by the appellant or his wife at night, and also by servants, for the management and carrying on of the business of the hotel throughout the year. The appellant has a residence about three-quarters of a mile distant from the hotel—a house of four rooms and a kitchen. The appellant's family consists of six children, and this house is occupied by the appellant and his family only. That is the only statement of fact we have in this case, and it is not by any means satisfactory. Still this at least appears quite clear, that the premises which are assessed are occupied as a hotel, by which of course we understand that they are occupied not as a tavern or a place where the public receive refreshment during the day, but are occupied by guests at night, who sleep there as well as eat and drink. And the question comes to be, Whether such premises are entitled to be exempted under the second sub-section of sec. 13 of 41 Vict. cap. 15, which provides that "every house or tenement which is 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, shall be exempted from the duties by the said Commissioners upon proof of the facts to their satisfaction, and this exemption shall take effect although a servant or other person may dwell in such house or tenement for the protection thereof?"

Now, it is contended that the case falls within the operation of this section, because the premises are occupied by the appellant for the carrying on of the trade or business of a hotel-keeper, and not as a dwelling-house. But it is necessary to read this clause of exemption in connection with all the other legislation upon the subject. We had occasion to consider the whole series of statutes in the case of the *Glasgow Coal Exchange Company*, and I there stated, with the concurrence of all the other members of the Court, that the result of the whole legislation was that all premises which are not dwelling-houses, but which are occupied for the purposes of trade, or for exercising a professional business, avocation, or calling from which profit is derivable, are exempt from this duty, even though occupied at night by a care-taker who dwells in them.

I think, therefore, the true question here comes to be, whether the premises in this case are a dwelling-house within the fair construction of the statute. I am of opinion that this hotel is a dwelling-house within the meaning of the statute. I know of no other purpose to which this house is put except that of a dwelling-house, and it appears to me to be quite immaterial under the statutes to which I refer whether the person who occupies the house is himself the only dweller in the house, or whether he entertains a

great variety of guests for limited periods who pay for the accommodation which they receive. In short, I think the guests in a hotel are dwelling there in the proper sense of the term, and are not at the same time dwelling anywhere else; and therefore that these premises are occupied as a dwelling-house.

Now, this tax was originally imposed by the 48th of Geo. III. cap. 55, upon dwelling-houses throughout Great Britain; and all exemptions which subsequent statutes have introduced must be read with special reference to that general enactment.

Upon the first point raised in the case I have therefore no doubt. But it is maintained further that the stables which are occupied by this hotel-keeper ought to be dealt with separately from the house, and that they being occupied for business purposes only, and not as a dwelling-house, ought to be exempted from the duty. Now, the ground upon which that is maintained is the provision contained in the first sub-section of this same section 13, which I have already mentioned in reference to the first part of the case. But it appears to me that that sub-section has been mis-read; and in order to understand it fully it is quite necessary to go back to the enactments in the 48th of Geo. III. cap. 55, because in Schedule B, which contains the rules for charging the duties on inhabited houses, we have a provision in the sixth of these rules, for the case of houses let in separate apartments, and it is provided that they shall be assessed as one house. Under the second rule it is provided that every coach-house, stable, brew-house, wash-house, wood-house, and so forth, enumerating a great many other things "belonging to and occupied with any dwelling-house, shall in charging the said duty be valued together with such dwelling-house."

Now, the section in the recent Act (41 Vict. cap. 13) relied upon (the first sub-section of section 13) provides that—"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 shall, upon proof of the facts to their satisfaction, grant relief from 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 has been a house comprising only the tenements other than such as are occupied as aforesaid or are unoccupied."

Now, it appears to me very clear that the object of that provision is to alter the sixth rule, but not to interfere in any way with the second rule, which provides that stables and premises of that kind shall be assessed along with the house to which they are attached. Therefore that second rule remains untouched by subsequent legislation. But it is contended that the stables in this case are let for a separate rent from the hotel. But it does not appear to me that that makes any difference. They are occupied together, and for one combined purpose, so far as we can gather from anything that is stated in the case. I can quite understand a person in the position of the appellant here having an establishment of stables and coach-houses, and so forth, which he occupied solely for a purpose not necessarily connected with his hotel—for the purpose of a great coaching establishment and the like; and I am not by any means prepared to say that such premises as these so occupied would necessarily be assessable along with a hotel merely because they were in the occupancy of the same person. But there is nothing here to lead us to suppose that the stables in question are anything but ordinary hotel stables; and therefore I think there can be no relief on that branch of the case any more than on the other.

Lord Deas—The first question is, Whether this house is to be regarded as an inhabited house and dwelling-house, and so liable to the inhabited house-duty?

Now, it is not disputed that the house is a hotel in the full sense of that word—a hotel in which people are accommodated by day and by night, and, in short, in which they live and dwell just as much as if it was their own house. So far as the business is concerned, it goes on by night as well as by day; and the servant or servants who are there are not there to take care of the premises, but in order to attend to the guests, and to carry on the business of the hotel. It would be a very remarkable thing if every hotel were to be exempted from this tax because the landlord or proprietor of the hotel, or the tenant in the position of a landlord, did not himself sleep in that hotel. We all know that many proprietors or lessees have a number of hotels in different places—in different parts of the country—sometimes in England as well as in Scotland. These parties cannot sleep in all their hotels; and it would be a very curious result if the one the party sleeps in were to be taxed and not the others. I do not know what would become in that case of the assessment upon the railway companies who have large hotels at different stations in which hundreds of people dwell and are accommodated. It would surely be very anomalous if because the landlord was the railway company, and did not sleep in any of them, that they were to be exempted from the inhabited house-duty. I do not think that is at all a right construction, and I have therefore no doubt upon that point.

The other point is certainly a more delicate one. It depends, as your Lordship has put it, on whether the landlord is carrying on a separate kind of business in his stables and offices from that which is carried on in the hotel. That certainly, as your Lordship has remarked, is a thing that might quite well be. There might be a posting establishment quite separate from the hotel; and I should not be prepared any more than your Lordship to say that such an establishment, or the premises for such an establishment, would be liable to the inhabited house-duty along with the hotel. But I agree with your Lordship that in this case the occupation of the stables and offices is so connected with the hotel and the business carried on in the hotel that they must be regarded

as one and the same concern. I am of opinion on these grounds that these premises must be all included in the valuation and liability for the inhabited house-duty.

Lord Shand—I am of the same opinion. There can be no doubt that this hotel is occupied as an inhabited house or dwelling-house. The case does not show very distinctly whether the person charged with the duty himself resides in the house at night. There is a passage which might be read as meaning that either he or his wife resides in the house at night. But I do not think it of any consequence how that may be, because it is clear that there are servants permanently there residing in the house by day and by night, and also that there is constantly a number of guests in the house who occupy it as a dwelling-house. It is a dwelling-house clearly in the ordinary sense of the term. Although the person charged with the duty as occupier of the house does not personally reside there, if he keeps it, using it as a residence for his servants and guests, it is nevertheless an inhabited house, and accordingly the case falls plainly within the spirit and letter of the earlier Acts of Parliament. The only question that arises is, whether the exemption in the statute of 41 Vict. cap. 15, can, notwithstanding that this is the very kind of house that it was intended to make subject to taxation, be held to relieve the occupier of the house from the duty. That statute provides that "Every house or tenement which is occupied solely for the purpose of any trade or business, or of any profession or calling by which the owner seeks a livelihood or profit, shall be exempted from the duties by the said Commissioners upon proof of the facts to their satisfaction;" and then follow what I think are very important words—"And this exemption shall take effect although a servant or other person may dwell in such house or tenement for the protection thereof." I think it is impossible to read that exemption in the way that seems to be contended for by the occupier here, as it would exempt from the duty a person who was carrying on a business the very purpose and object of which is to make profit of the house as a dwelling-house. He is carrying on a business there no doubt, but the business he is carrying on is to use the building as a dwelling-house—being the very class of house that the statutes are intended to include and make liable to assessment. That is quite apparent when one looks at the concluding words. The exemption is to have effect although the owner's servant or other person may be there, if there merely for the protection of the house—showing that the exemption cannot on any reasonable construction of it be applied to a house which is obviously used as a dwelling-house, and as to which the success of the business carried on depends on its being constantly used as a dwelling-house.

On that branch of the case, accordingly, I have no difficulty in agreeing with your Lordships. I think the occupier of this house is responsible for it as an inhabited house, because he occupies it as a dwelling-house through his servants and the guests he may receive.

On the second point I have nothing to add. I think the case shows that these stables are in the first place in connection physically to some extent with the hotel, and in the next place are used in connection with the private hotel business. Taking the case as of that kind, I am of opinion that no distinction can be made between the hotel and the stables as a part of the premises.

Lord Deas—As has been observed now and formerly, there is a want of precision in the statement of the case, particularly in the words alluded to by Lord Shand, which might lead to the supposition that the man or his wife sleeps in the hotel. I understand that in reality neither of them do so.

Lord Shand—For my part I think that quite immaterial.

Lord President—And so do I. I deal with the case as the ordinary case of an hotel.

Lord Mure was absent.

The Court reversed the decision of the Commissioners, and remitted to them to confirm the assessment, and refuse the appeal.

Counsel for Inland Revenue—Lord Advocate (Watson) — Solicitor-General (Macdonald) — Rutherfurd. Agent — D. Crole, Solicitor of Inland Revenue.

Tuesday, November 18.

FIRST DIVISION.

[Lord Craighill, Ordinary.

RICHARDSON *v.* WILSON.

Reparation — Newspaper Libel — Publication of Summons just Called in Court.

Held that a summons which has only been called in Court cannot lawfully be made public, and that a claim of damages at the instance of a third party (a stranger to that suit) against a newspaper editor for publishing such a summons, which contained statements alleged to be false and injurious to him, was therefore relevant.

Robert Richardson, a sheriff-officer, brought this action of damages for libel against John Wilson, printer and publisher of the *Edinburgh Evening News*. An article had appeared in several issues of that newspaper on 2d July 1879 in the following terms:—

"Action of Damages by an Edinburgh Artist.

"An action has been called in the Court of Session before Lord Craighill by John Le Conte, Glanville Place, Edinburgh, in which he sues W. S. Douglas, Greyfriars Place, for reduction of a deed of poinding, and sale following thereon, at the defender's instance, and payment of £300 in name of damages. The pursuer says that during the last forty years in which he has followed his profession he has accumulated a vast number of proofs and copies of rare old engravings, and persons in search of such works of art were wont to come to him to be supplied with such. The defender, he alleges, formed a scheme for obtaining possession of these works of art, and in pursuance of this scheme he is said to have instructed Robert Richardson, a sheriff-officer, to execute a pretended poinding and sale of the whole effects of the pursuer upon a small-debt decree for £12, 4s. 1d., dated 12th July 1876, at the instance of the defender against pursuer. The sheriff-