to the necessity of a judicial demand. There may be exceptional cases where an extra-judicial demand might ground a claim for payment of interest as well as of principal. But there is no such case here. The demand was made at considerable intervals of time, but the answer was given at once—"We are ready to pay the principal sum, but no more."

Accordingly, I am for holding the pursuers entitled to the principal, but not to interest.

The Court accordingly recalled the Lord Ordinary's interlocutor, and decerned in favour of the pursuers for the sum of £700, 19s. 8½d. as sued for; found the defender entitled to expenses of the debate on the question of interest; and *quoad ultra* found the pursuers entitled to expenses.

Counsel for Pursuers (Reclaimers)—Kinnear—Rutherfurd. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Defender (Respondent)—Balfour—Pearson. Agent—John Hope, W.S.

Saturday, February 21.

FIRST DIVISION.

[Exchequer Cause.

NICOL CAMPBELL *v.* THE INLAND REVENUE.

Revenue—Inhabited-House-Duty Act (48 *Geo. III. c.* 55), *Sched. B, Rule* 6 *and Rule* 14—*Hotel and Club-house Adjoining, with Door of Intercommunication.*

The proprietor of a hotel erected an adjoining building, the ground-floor of which was appropriated for a Yacht Club-house, and the upper stories as an extension of the hotel. A private door of communication led from the club billiard-room to the hotel dining-room, which was on the first floor of the new addition. Members of the club had right to use the hotel dining-room, but they alone had right of access thence to the club premises. *Held* that the proprietor was liable as landlord in house-duty on the whole building, the club-house and hotel not being "distinct properties" in the sense of rule 14, but forming one "house" in the sense of rule 6 of Schedule B of the Inhabited-House-Duty Act (48 Geo. III. c. 55), which provided that "Where any house shall be let in different stories, 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."

Observation (*per* Lord Shand) that his opinion proceeded independently of the existence of the door of intercommunication.

Mr Nicol Campbell appealed to the Commissioners for the district of Bute against an assessment of £410 made upon him for inhabited-house-duty at the rate of 6d. per £, for 1879-80, as proprietor of the buildings of which the following account was given in the Case subsequently stated on appeal:—"A few years ago the appellant became by succession the owner of the Queen's Hotel, in the West Bay, Rothesay; and being animated with a desire to benefit the town, he proposed to erect an entirely new building adjacent, which should be occupied as the headquarters of the Royal Northern Yacht Club, and in part as an extension of the hotel. . . . On the street floor in the new addition the club occupy a reading-room, a committee-room, steward's service and store-rooms, and lavatory. From the entrance-hall leading to these rooms a stair leads to a billiard-room, also occupied by the club, in a wing behind the new addition (the wing being part of the new addition). From this stair, by a landing, and by an ordinary two-leaved door with the usual lock and fastenings, entrance to the dining-room, called in the printed memorandum the dining-hall, on the first floor, is obtained. This is the dining-room of the hotel, which the members of the club are entitled to use, and entrance to it from the hotel is had by an ordinary door opening from the lobby of the hotel. This room is entirely in the new addition, and occupies nearly the whole space of the first floor of such addition. There are bedrooms connected with the hotel in the floor immediately above the dining-hall. The club-house is open during the whole year for the use of the members. The hotel consists of the whole of the old building, the second flat of the new building, containing dining-room, &c., and the third flat of the new building, containing bedrooms; and the Yacht Club part consists of the ground-floor in the new building, occupied as before mentioned, and billiard-room in wing. The door by which there is internal communication between the portion of the building let to the club and the hotel has bolts, and was not opened at all when members were absent, which was generally the whole winter. The hotel-keeper has nothing to do with the taking care of and cleaning the club premises, that duty being attended to throughout the whole year by a resident steward in the employment of the club."

In the lease by the appellant to Mr W. M. Whyte, for thirteen years from Whitsunday 1876, of the hotel and the dining-hall and bedrooms before mentioned in the new building adjoining, at an annual rent till 1883 of £270, it was declared that the tenant of the hotel should, as far as incumbent on him, implement article 6 of the articles of agreement of lease of the club-house after mentioned; and that the dining-hall should be used in connection with the hotel alone, "and that while the members of the Yacht Club may have access thereto from their own premises, they shall not be entitled to use it otherwise than as the dining-hall of the hotel;" and by the articles of agreement of lease by the appellant to the Yacht Club, for fifteen years from 1st April 1877, of the rooms of the club, together with the use of the dining-hall, to which, as stipulated by the agreement, the club were to have a private access, at an annual rent for the first seven years of £140, it was provided (article 6) "that the tenant of the hotel or his servants, or

anyone living in the hotel, unless he be a member of the club, shall have no right to the use of any of the rooms set apart for the club."

The occupancy was stated to have been in accordance with the leases referred to, and both subjects let had separate and distinct entrances to the street, with the internal communication before explained.

The appellant claimed exemption from assessment for house-duty in respect of 48 Geo. III. cap. 55, Schedule B, rule 14, which provided that "Where any dwelling-house shall be divided into different tenements, being distinct properties, every such tenement shall be subject to the same duties as if the same was an entire house, which duty shall be paid by the occupiers thereof respectively."

He argued that the properties let were clearly distinct, and the tenants were the occupiers in the meaning of the Act.

The surveyor of taxes, on the other hand, relied on rule 6 of the schedule, which provided that "Where any house shall be let in different stories, 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."

He contended that the appellant as landlord was liable, on the ground that the buildings being let to different persons, and a door of communication existing between the different portions so let, they were not "distinct properties" in the sense of rule 14.

The Commissioners unanimously confirmed the assessment, and afterwards stated this Case for Mr Campbell to the Court of Exchequer, which was heard before the First Division.

Authorities—*Scottish Widows Fund* v. *Inland Revenue*, Feb. 2, 1875, 2 R. 394; *Attorney-General* v. *The Mutual Tontine Westminster Chambers Association, Limited*, May 16, 1876, 1 L.R. (Ex. Div.) 469; *Inland Revenue* v. *The Scottish Widows Fund*, Jan. 22, 1880, 17 Scot. Law Rep. 314.

At advising—

Lord President—The case which has now been stated by Mr Kinnear with his usual ability and ingenuity has never hitherto been determined, but I think it has been all but determined by the cases which have been recently before us. We have had occasion to consider the 6th rule of Schedule B in the 48th of Geo. III., and also the 14th rule, and upon these occasions I certainly made up my mind very clearly as to what was the meaning of both the one rule and the other; and whether I did upon the occasion of giving judgment in the *Scottish Widows Fund* case precisely interpret these rules—as I am prepared to do in the present case—or not, I think, at all events, the way in which we dealt with these rules in that case almost necessarily led to the conclusion in this case at which the Commissioners have arrived.

[*After reading the 6th and 14th rules of the Schedule of Act in question quoted above*]—Now, in the first place, there is a clear distinction in the 6th and 14th rules between the word "house" or "dwelling-house" and the word "tenement." The former is the larger and more comprehensive term, and signifies the entire building, which is divided into different tenements occupied by different persons. A tenement is a portion of the dwelling-house separately occupied. These are plainly the statutory meanings of these two words. And that is borne out very strongly by the 13th section of the Customs and Inland Revenue Act of 1878, sub-section 1, which I need not read, because in the whole course of legislation on this subject the words which we are now construing have throughout one distinct and well-ascertained meaning.

Now, that being so, what is the provision of rule 6, and what is the provision of rule 14, taking the two together? It simply comes to this, that where a dwelling-house, meaning an entire block of building, is the property of one individual, but is divided into different occupations or tenements let to different tenants, the landlord or owner of the entire block of building is to be taken as the occupier of the entire block of building, and assessed as if he occupied the whole himself; but where the entire block of building is divided into tenements in the same manner as is contemplated by the 6th section, but these tenements are distinct properties belonging to different owners, then the incidence of the duty is to be upon the occupant of each separate tenement. Now, if that is the distinct and clear construction of these two rules, there is an end of this case, because there cannot be the smallest doubt in the case before us that the entire building is the property of one owner, and it is let in separate parts to two distinct tenants. Therefore I am clearly of opinion that the determination of the Commissioners is right.

Lord Deas and Lord Mure concurred.

Lord Shand—I am of the same opinion. If in order to make this one house within the meaning of rule 6 of the statute, so that the duty on that house should be chargeable against the landlord as an entire subject, it were necessary to take into view the existence of the door of communication, I should have considerable difficulty in affirming the decision of the Commissioners. I do not say that I have made up my mind upon it, but I think the use is of a very limited kind, and it would require very serious consideration whether such a communication and such a use would make this one house, but I agree with your Lordship in thinking that really there is no difficulty under rule 6. The simple question to be solved is, What is the meaning of the word "house" in the opening part of that rule? Does it or does it not mean building? and I am of opinion that it does mean building. We have it again occurring at the end of the rule "house or tenement," and there the word "tenement" is used as meaning the same thing as "house." But taking it as house or tenement, it is a house or tenement let in "different stories, tenements, lodgings, or landings" that is dealt with, and that is just the ordinary case of a large building consisting of different flats which the landlord or proprietor has let off in different flats. If he has done so, then he is to be regarded as the occupier, and he is the person who is made subject to the inabited-house-duty. The practical result is, I

think, that those who are imposing assessments of this kind and collecting them are entitled to treat him as the occupier of the whole, and if it be contended, as in a question between tenants of particular flats and the landlord, that they ought to bear a proportion of the inhabited-house-duty, that must be made matter of arrangement or stipulation between them in order to secure that object, but in a question between the Crown and the landlord of such a house, I think the landlord is the occupier of the house as a whole.

The Court affirmed the judgment of the Commissioners.

Counsel for Appellant—Kinnear. Agents—Macrae, Flett, & Rennie, W.S.

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

COURT OF TEINDS.

Monday, February 23.

(Before the Lord President (Inglis), Lord Mure, Lord Gifford, Lord Shand, and Lord Rutherfurd Clark.)

THE DUKE OF ATHOLE *v.* THE LORD ADVOCATE AND OTHERS.

Teinds—Valuation—Approbation of Report of Sub-commission—Where the Sub-commissioners Found that the Teinds were to be Valued along with the Stock, but Added a Valuation of the Teinds Separately.

The Sub-commissioners of 1629–35 found that the teinds of a certain parish were to be valued together with the stock, "becaus the samyn teinds are possest be the heretors of longtyme bygane for payment of a silver dewtie." The bishop as titular protested against this finding, and appealed to the Great Commission, alleging that the teinds should be valued according to a rental which he produced, and he offered to prove by the oaths *de calumnia* of the heritors "that the samen rentall was the treu rentallit bolls yat yair lands payit of auld." The separate findings of the report of the sub-commission with reference to the particular lands of the parish in many instances contained, in addition to the value of the lands, stock and teinds together, a statement of the annual value of the teinds as "led," "rentallit," or "payit of auld." In an action of approbation and ratification of the report of the sub-commission as regarded these lands, and valuation of the teinds in terms thereof, by a heritor against the Crown, as coming in place of the bishop—*held* that the lands were to be valued stock and teind together in terms of the report, and that the valuation should be ascertained by taking one-fifth of the reported rent of stock and teind without deduction of feu-duty or such like.

Observations (*per* Lord Gifford) on the interpretation of old judicial or quasi-judicial records.

This was an action of valuation and approbation at the instance of the Duke of Athole against the Lord Advocate as representing the Crown, the titular, as in place of the Bishop of Dunkeld, of the teinds of the united parishes of Little Dunkeld and Logieallochie, and of the parish of Caputh, and of the united parishes of Auchtergaven and Logiebride, and against the ministers of these parishes. The object of the action was to obtain decree of ratification and approval of a report by the Sub-commissioners appointed to value the teinds of the lands within the Presbytery of Dunkeld, and of valuation of the teinds in conformity with the report in so far as it related to the teinds of certain lands in the above parishes now belonging to the Duke of Athole. The Lord Advocate and the minister of the united parishes of Little Dunkeld and Logiealllochie appeared to defend the action.

The valuation of the parish of Little Dunkeld, as contained in the report of the Sub-commissioners, was as follows:—

"The kirk of Litill Dunkeld, being ane kirk of the patrimonie of the Bischoprik of Dunkeld, hes anexit yairto ye kirkis of Logyaloquhie and Dowallie. And Mr Williame Glass, thesaurare of Dunkeld, is actuall minister, and hes ane locall stipend payit to him be the heretors and intrometters with the teynds at comand and directioun of the Bishop of Dunkeld, titular.

"It is fundin that the rent of the lands, stok and teind, is sufficiently prowine, as is gevin in be the heretors in maner following—As also the Bischope of Dunkeld compeirand be Wm. Fyff, hes pror., producit the rentall of the teinds of the saids lands lyand wtin the said parochine of Litill Dukeld and Dowallie, alledgit payit of auld. And ane sumonds. dewlie execute and endorsat againe the heretors and takisme. for pruving of the samen, and to gif yair aithes *de calumnia* gif yei. knew that the samen rentall was the trew rentallit bolls yat yair lands payit of auld; and in respect of no cpeirance, the said Wm. Fyff, pr. forsaid, desyrit they sould be haldine *pro confesso* on the auld rentallis. And becaus the samyn teinds are possest be the heretors of long tyme bygane for payment of ane silver dewtie, the Sub-comissioneris. fand be yr. interloqr. that they wald proceid in the valuaoun. for stok and teind joyntlie togidder according to the probatioun usit be the saids heretors. And the said Wm. Fyff, pr. forsaid for the said Reverend, appeillit to the Great Comissioun. and protestit for remead *prout de jure.*"

Then followed a number of findings with reference to particular lands in the parish, and among others the following belonging to the pursuer, and of which he sought approbation:—

"Finds ye lands of Ladywell, by ye comoditie. of ye myln yairof, pertenng to Mr James Stewart of Ladywell, and his pairt of the landis of Litill Dunkeld, to be worth in yeirlie rent of stok and teind of silver dewtie yeirlie vc mkis mol. Burdenit wt. ye feu meilles and teind silver.

"And the teind scheawis of the halff landis of Litill Dunkeld, led be the minister, qlk. ar rentallit to . . . . . iij bolls teind, and four merkis payet to him for the uther halff of the saids lands.

"Findis the aikers of land in Litill Dunkeld, pertenig to Johne M'Keandlay yair, ar worth,