legitimately objected to by the superior. On these grounds I am disposed to think that the interlocutor should be recalled, and I concur in the opinion expressed by Lord Young.

Lord Gifford—I have come to the same conclusion. I think this case attempts to push the rights of a superior under a feu-contract further than has been done in any previous case. There are two elements which are embraced in these restrictions, and it is always important to keep them separately in view—the structure of the houses to be built upon the feu, and the use or occupation of these houses—I think it is very expedient always to keep these points distinct. Now, take first the structure apart from the occupation. Suppose the back-stair was designed as the only stair of the building, and no internal staircase shown at all, I do not think it would have been an objection, looking to the other feus and to the properties around and in the neighbourhood, to have projected buildings behind the villas which are put up; and accordingly on the question of structure, apart altogether from use, supposing this back erection which is occupied by a stair had been occupied by closets or a conservatory or anything else, I do not think the superior could have prohibited it. And that brings us to the other point—the use or occupation to which the vassal proposes to dedicate the house so altered. Now, I agree with Lord Young that a stipulation that a house built structurally according to the conditions of the contract shall only be occupied by one tenant would be a very extraordinary stipulation. But we have not that question to decide here. We have not that stipulation in the feu-contract, and we cannot spell out of the feu-contract, except in a very indirect way, that the superior intended to prevent the vassal from ever having more than one tenant or more than one householder in the villa when erected. I am therefore of opinion that neither structurally nor as matter of occupation or use has the vassal here contravened the provisions of the feu-contract. Suppose this question had arisen before the villas had been erected at all, and that the vassal had submitted a plan with an outside stair, but declined to say how he proposed to arrange the use of the house internally, I doubt extremely whether the superior could have interfered, for I think the only meaning of his stipulations was to secure external amenity in the character of the buildings, and that he did not stipulate, and did not intend to stipulate, anything with reference to occupation, except in the clause specifying that the property was not to be used for hotels or shops. The complaint therefore fails on both grounds. There is not a contravention of the feu-charter as to structure, and as to the fact that the vassal intends to put two families into the house, which is admitted, that is not a thing prohibited, or which could be very easily prohibited, to a vassal under a feu-contract. Having come to these conclusions, I think that the defender should be assoilzied, sustaining the third plea-in-law, that the alterations complained of not being in any respect a violation of the defender's feu-contract, the defender is entitled to absolvitor with expenses.

The Court recalled the interlocutor reclaimed against, sustained the defender's third plea-in-law, and assoilzied him from the conclusions of the summons.

The Lord Justice-Clerk and Lord Ormidale were absent.

Counsel for Defender (Reclaimer)—Mackintosh—Wallace. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Pursuers (Respondents)—Trayner—Pearson. Agent—Alexander Morison, S.S.C.

Friday, July 16.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE v. GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Revenue—Inhabited-House-Duty—Act (57 *Geo. III. cap.* 25), *sec.* 1—*Act* 5 *Geo. IV. cap.* 44, *sec.* 4.

Held that the above enactments did not exempt from inhabited-house-duty the lower floors of a tenement which were used solely as the general offices of a railway company, and were not inhabited at night, the upper floors being used as part of a station hotel belonging to and in the occupation of the company, and communicating internally with those below.

In this case the Glasgow and South-Western Railway Company appealed to the Commissioners for the City of Glasgow against an additional assessment for the year 1879-80 of £62, 1s. 3d. as inhabited-house-duty at the rate of 9d. per £ on £1655, the annual value of certain premises in St Enoch Station, Glasgow. From the case settled by the commissioners it appeared that "the premises in question are part of a tenement or building, consisting of six floors, situated at St Enoch Station aforesaid. The first four floors from the ground or street floor inclusive are solely and exclusively occupied by the appellants as general and other offices in connection with and for the purpose of carrying on the business of the railway company. The remaining two uppermost floors of said tenement or building are solely and exclusively occupied as a part of and in connection with St Enoch Station Hotel, also situated at St Enoch Station aforesaid. The said hotel comprises, in addition to the said two uppermost floors of the foresaid tenement or building, another tenement or building attached to the former, and forming the main body of the hotel, but the said two tenements or buildings are distinct and independent, being under distinct and separate roofs. The entire hotel, inclusive of the said two uppermost floors of the tenement or building of which the premises the subject of the assessment in question are part, is also in the occupation of the appellants, by whom the business of the hotel is carried on, and the appellants have been assessed and have paid the sum of £163, 15s. for inhabited-house-duty for the same year (1879-80) on the annual value of the said hotel, inclusive as aforesaid of the said two uppermost floors. There is internal communication between the first four floors of said tenement

or building occupied as general and other offices and the two uppermost floors thereof occupied as part of the hotel, such communication being had by means of a staircase and hydraulic hoist running from the ground or street floor to the said two uppermost floors, and which staircase and hoist also afford the means of external communication from the public street to the first four floors and the two uppermost floors in common. There is also a communication by a door between each of said two uppermost floors occupied as part of the hotel and the other tenement or building adjoining, of which the main body of the hotel consists. No person whatever inhabits, dwells, or abides in the portion of the said tenement or building occupied as general and other offices as aforesaid except in the day-time only, and that for the purpose of carrying on the business of the appellants; and no person whatever engaged in such portion of the said tenement or building inhabits, dwells, or abides in the other portion thereof occupied as part of the hotel, or in the other tenement or building adjoining, of which the main body of the hotel consists.

"The appellants contended—First, That the premises, the subject of the additional assessment in question, were exempted under the Acts 57 Geo. III. cap. 25, and 5 Geo. IV. cap. 44, or one or other of them, in respect said premises are part of a tenement or building whereof such part is occupied by the appellants for the purpose of carrying on business within the meaning of said Acts, and the other part is in distinct and independent occupation by the appellants as part of and in connection with the said hotel, and as such is charged to the said duties; and the appellants referred to and founded on the 'Customs and Inland Revenue Act' (1878), sec. 13, sub-sec. 1, as inferentially supporting their interpretation of the former Acts, and contended that inasmuch as sec. 13, sub-sec. 1, of the last-mentioned Act affords relief to an owner who is chargeable as constructive occupier under Schedule B, rule 6, of the Act 48 Geo. III. cap. 55, when and in so far as the building whereof he is owner is divided into and let in different tenements or portions, and any of such tenements or portions is occupied solely for business purposes — so likewise an actual occupier of an entire building, whereof a portion is in distinct and independent occupation by him solely for business purposes, is entitled to relief in respect of such portion, the meaning and intent of the said first-mentioned Act being to place an owner chargeable to the said duties as a constructive occupier on a footing of equality with an actual occupier similarly circumstanced, but not to operate relief to such an owner if an actual occupier in similar circumstances would not be entitled to relief. Second (*separatim*), The premises, the subject of the additional assessment in question, being an assessable subject within the meaning of the 'Customs and Inland Revenue Act' (1878), sec. 13, sub-sec. 2, and as such occupied solely for business purposes, they fall under the exemption in said sub-section contained.

"The Surveyor of Taxes contended in support of the assessment that the interpretation sought by the appellants to be put on the Acts 57 Geo. III. cap. 25, and 5 Geo. IV. cap. 44, was not a correct interpretation so far as regards the exemption therein contained; and he further contended that under the Act 48 Geo. III. cap. 55, Schedule B, rules 3 and 5, the portion of the said tenement or building occupied by the appellants as general and other offices for the purpose of their business must be valued with the other portion thereof occupied as part of and in connection with the hotel, in respect there is internal communication between the former and the latter portions of the said tenements or building, and between the latter portion thereof and the other tenement or building adjoining and attached thereto, of which the main body of the hotel consists.

"The Surveyor further maintained that the section of the Act 41 Vict. cap. 13, sub-sec. 1, referred to by the appellants in support of their title to exemption, did not apply to the present case, as that clause provided for relief only where the premises are 'divided into and let in different tenements,' and any of such tenements so let are 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, or are unoccupied.' In the present case, as the Glasgow and South-Western Railway Company are occupiers of the whole tenement or building, including the portion thereof used as offices, as well as the part thereof occupied by them as a hotel, the offices must, in accordance with the Acts referred to and the cases decided by Her Majesty's Judges, be valued and assessed together with the hotel, which is occupied as a dwelling-house."

The Surveyor referred to *Union Bank* v. *Inland Revenue*, Feb. 2, 1878, 5 R. 598; and *The Scottish Widows Fund* v. *Inland Revenue*, Jan. 22, 1880, 17 Scot. Law Rep. 314.

By 48 Geo. III., cap. 55, Schedule B, rule 3, it was enacted that "All shops and warehouses which are attached to the dwelling-house, or have any communication therewith, shall in charging the said duties be valued together with the dwelling-house."

By rule 5 it was enacted that "Every hall or office whatever belonging to any person or persons, or to any body or bodies politick or corporate, or to any company, that are or may be lawfully charged with the payment of any other taxes or parish rates, shall be subject to the duties hereby made payable as inhabited houses; and the person or persons, bodies politick or corporate, or company to whom the same shall belong, shall be charged as the occupier or occupiers thereof."

By rule 6 it was enacted 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."

By rule 14 it was enacted 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."

By 57 Geo. III. cap. 25, sec. 1, it was enacted that "Whereas by an Act passed in the forty-eighth year of His present Majesty, intituled . . . certain duties were granted to His Majesty . . . upon inhabited houses, as set

forth in the Schedule to the said Act annexed marked (B); and whereas it is become usual in cities and large towns and other places for one and the same person, or for each person where two or more persons are in partnership, to occupy a dwelling-house or dwelling-houses for their residence, and at the same time one or more separate and distinct tenements or buildings, or parts of tenements or buildings, for the purposes of trade, or as warehouses for lodging goods, wares, or merchandise therein, or as shops or counting-houses, and to abide therein in the day-time only for the purposes of such trades respectively, which have been charged with the said recited duties although no person shall inhabit or dwell therein in the night time; and it is expedient in such cases to exempt from the said duties such tenements or buildings, or parts of tenements or buildings, as are or shall be solely employed for the purposes herein mentioned—Be it therefore enacted . . . that from and after the 5th day of April 1817, on due proof, made in the manner herein directed to the satisfaction of the respective commissioners acting in the execution of the said recited Act, that any person or any number of persons in partnership together respectively occupy a tenement or building, or part of a tenement or building, which shall have previously been occupied for the purpose of residence wholly, as a house for the purposes of trade only, or as a warehouse for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop and counting-house, no person inhabiting, dwelling, or abiding therein, except in the day-time only for the purpose of such trade, such person, or each of such persons in partnership, respectfully residing in a separate and distinct dwelling-house or part of a dwelling-house charged to the duties under the said Act, it shall be lawful for the said commissioners, according to the provisions of this Act, to discharge the assessment made for that year in respect of such tenement which shall be so used for the purposes of trade, or so employed as a warehouse for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop and counting-house, anything in the said Act to the contrary notwithstanding."

By 5 Geo. IV. c. 44, sec. 4, it was provided that "Whereas by an Act passed in the fifty-seventh year of His late Majesty's reign, provision is made for granting exemptions to persons in trade from duties on houses, windows, and lights, and on inhabited houses, in respect of houses, tenements, or buildings, or parts of tenements or buildings, used solely by such persons for the purposes of trade, such persons respectively residing in a separate and distinct dwelling-house or part of a dwelling-house, charged to the said duties, as in the said Act described; and whereas it is expedient to extend the said exemptions to the cases herein mentioned—Be it further enacted, that upon all assessments to be made for any year commencing from and after the 5th day of April 1824, the provisions in the said Act contained for granting exemptions from the said duties to persons in trade, in respect of houses, tenements or buildings in the said Act described, shall and may be extended and applied by the respective commissioners and officers acting in the execution of the said Act and of this Act, on due proof, to all and every person, or any number of persons in partnership together, for and in respect of any house, tenement, or building, or part of a tenement or building, in the said Act described, which shall be used by such person or persons as offices or counting-houses for the purposes of exercising or carrying on any profession, vocation, business, or calling by which such person or persons seek a livelihood or profit, no person inhabiting, dwelling, or abiding therein except in the day-time only, for the purpose of such profession, vocation, business or calling, such person, or each such persons in partnership respectively, residing in a distinct and separate dwelling-house or part of the dwelling-house charged to the said duties."

By the Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), sec. 13, sub-sec. 1, it was enacted 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 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 on the value according to which the house should in their opinion have been assessed if it had been a house comprising only the tenements other than such as are occupied as aforesaid, or are unoccupied."

By sub-section 2 of the above section it was enacted 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."

The commissioners sustained the appeal and granted the appellants relief from the assessment, being of opinion that the premises, the subject of the additional assessment in question, fell within the exemption contained in the Acts founded on by the appellants.

The Surveyor thereupon requested a Case to be stated for the opinion of the Court, in terms of Act 37 and 38 Vict. cap. 16, sec. 9, and the present case was stated accordingly.

It was admitted in argument by the Railway Company that the case of the *Scottish Widows Fund* v. *The Inland Revenue*, *supra*, p. 314, ruled the present, unless the provisions of 57 Geo. III. cap. 25, sec. 1, and 5 Geo. IV. cap. 44, sec. 4, which had not been specially brought under the notice of the Court in that case, were held to confer an exemption. The arguments on these enactments sufficiently appear from the opinions of the Court.

Additional authority — *Campbell* v. *Inland Revenue*, Feb. 21, 1880, *supra*, p. 407.

At advising—

Lord President—It appears that the Glasgow and South-Western Railway Company have two large tenements at their station in St Enoch Square in Glasgow, which are for the most part occupied together as a hotel. The two tenements stand close to one another, and the business of the hotel is carried on for the most part in one of these tenements, but the two upper floors of the other tenement also communicate with the rest of the hotel, and are occupied as part of the hotel. The four lower storeys of that second tenement are occupied for purposes connected with the business of the railway company, apparently as warehouses or something of that kind. Now, the question which is raised by this case is, Whether the railway company are liable for inhabited-house-duty on the whole of these two tenements, or whether that portion of one of them which is occupied for business purposes enjoys an exemption under the Acts of Parliament.

At first sight this case seemed to be clearly ruled by our judgment in the case of the *Scottish Widows Fund*, and it was conceded that that judgment did rule the present, if it is a sound judgment and proceeds on a full consideration of the statutes. But it was maintained that there are clauses in some of the statutes conferring this exemption which were not brought under the notice of the Court, or at least were not properly expounded to the Court, in argument in the case of the *Scottish Widows Fund*. If that be so, it is certainly quite right that we should reconsider our judgment in the *Scottish Widows Fund* case. But before adverting to the particular statutes which form the basis of the argument for the railway company, it is desirable to see how the case stands under the judgment of the *Scottish Widows Fund*, or rather what is the import and effect of the statutes applicable to a subject of this kind as fixed by our judgment in that case.

It appears to me that a house, meaning thereby an entire tenement or building, may be placed in three different positions. It may be occupied by a variety of persons, the owner of the entire tenement letting out portions of it for different purposes to different tenants. That is one case. Another case is, that the entire tenement may be divided into separate properties, and in that case it has always been the law that the separate properties are separately assessable to the inhabited-house-duty. But in the other case of the house being let out in portions to different tenants for different purposes, the law under the general Act—the 48th of George III.—was that the owner of the entire tenement was held to be the occupier for the purposes of the Act, and was assessable to the inhabited-house-duty for the entire house or tenement. Then there is a third case, and that is the case of a house—by which of course I mean an entire tenement or building — belonging to one proprietor, and used and occupied by him for various purposes without being let out at all.

Now, under the earlier statute certainly, whatever might be the purposes for which portions of the building were occupied, the owner would be assessable as the occupier of the entire tenement. Of that there can be no doubt. But certain changes have been made upon these rules of the early statute, and one statute in particular—the latest of all—the Act of 1878—introduces some very important changes. It deals with the case of a house being let out by its owner in different portions to different tenants, and in certain circumstances grants relief for those portions of the house that are let out and occupied for business purposes. The other and earlier statutes had before that given relief for separate tenements and separate parts of tenements belonging to different owners occupied exclusively for business purposes. But the case that is before us at present is the last case that I mentioned, viz., the case of an entire house belonging to one proprietor, but occupied by himself—entirely occupied by himself—but different parts of it for different purposes. And the question comes to be, whether that case is provided for by any of the statutes? There certainly is no provision for that case in the Act of 48 of George III., and it is just as little apparently contemplated in the latest statute of 1878. But the argument which was addressed to us was, that the 57th of George III., c. 25, followed by the 5th of George IV. c. 44, gives relief from the inhabited-house-duty for business purposes although the entire tenement may belong to one owner. If that is so, then our judgment in the case of the *Scottish Widows Fund* is erroneous; but it depends entirely upon whether these two statutes are susceptible of the construction which is thus sought to be put upon them.

Now, I am of opinion that the 57th of George III. c. 25, does not contemplate the case of separate parts of tenements being relieved, the whole tenement being the property of one owner; and if that is the case with regard to the 57th of George III., I think it must be equally so in the case of the 5th of George IV. c. 44, which merely extends the provisions of the 57th of George III. in the manner which I shall immediately explain. But the language of the 57th of George III. is first to be considered. Now, the first section of that statute proceeds upon a special preamble. It sets out the previous Act of the 48th of George III., and then it proceeds—"Whereas it has become usual in cities and large towns and other places for one and the same person, or for each person where two or more persons are in partnership, to occupy a dwelling-house or dwelling-houses for their residence, and at the same time one or more separate and distinct tenements or buildings or parts of tenements or buildings for the purposes of trade, or as warehouses for lodging goods, wares, or merchandise, or as shops and counting-houses, and to abide therein in the day-time only for the purposes of such trades respectively, which have been charged with the said recited duty"—that is to say, the premises occupied for trade purposes only have been charged under the authority of the 48th George III. with the inhabited-house-duty,—"although no person shall inhabit or dwell therein in the night-time, and it is expedient in such cases to exempt from the said duties such tenements or buildings or parts of tenements or buildings as are or shall be solely employed for the purposes herein mentioned." Now, I think in this preamble we find the key to the construction of the enactment. It is intended to give relief from taxation to something which has been previously subjected to taxation, and that is tenements or buildings or parts of tenements or buildings which have been charged with the said recited duties. It is such only that are in contemplation

of this clause of the statute. Now, under the 48th of George III. no part of a tenement could be charged to the said recited duties unless it was a separate property. A tenement let out by its owner to different tenants for different purposes was charged as an entire tenement, and no part of that tenement was charged to the said recited duties. Therefore it follows of necessity that the parts of tenements which are here to be exempted or relieved are those parts of tenements which were charged with duty under the said recited Act as parts of tenements—that is to say, parts of tenements belonging to separate owners. Now, what is the enactment—[*reads as above*]. Then it is further provided that this relief is to be given after the entire tenement has been brought in as a subject of assessment, and the relief is to be given upon due proof being made that the separate portions of the tenement, or the whole tenement itself, is used exclusively for the purposes of trade. The moment it ceases to be used for the purposes of trade exclusively, the right to obtain the relief comes to an end, and each year relief requires to be claimed under the 2d section of the Act upon due proof that the exclusive occupation for the purposes of trade exists during that year.

Now, then, what is the result of all this? It seems to be that the statute of the 57th of George III. did not intend to alter in an indirect and almost unintelligible way the rule of the 48th of George III., which provided that where tenements are let out or occupied for different purposes, the whole tenement belonging to one owner, the owner was to be considered as the occupier and charged with the assessment. If it had been the purpose of the statute to repeal that very important and very clearly expressed rule of the old statute, it surely would have done so. But instead of that, all that is done, so far as I can see, is to take up the subject of tenements or parts of tenements which under the 48th of George III. are assessable to the inhabited-house-duty, and to deal with such tenements as are assessable to that duty only. And accordingly, when you come to look at what parts of tenements are assessable under the 48th of George III., you find it to be parts of tenements belonging to different owners and nothing else. And thus the operation of the 57th of George III. is limited in that way, and cannot possibly be held to extend to such a case as the present, or to the analogous case of parts of a tenement being let out by the owner for different purposes. I am therefore of opinion that the argument upon this statute advanced on the part of the railway company fails entirely. And if that be so, it is almost needless to say that he derives no advantage from the 5th of George IV., because that is merely extending to occupation for professional purposes the exemption which was given in the other statute for trade purposes. There are, no doubt, some very awkward expressions or forms of expression in the 4th section of the 5th of George IV., but one of these, and almost the only one that creates the slightest difficulty in reading the statute, appears to me to be simply a misprint, where, talking of the house in which the trader or partner of a trading company dwells, it speaks of "the" dwelling-house or part of "the" dwelling-house charged to the said duty. The whole phrase—the whole sentence—is borrowed from the earlier statute, and the change from the indefinite to the definite article—from "a" to "the"—is just a plain mistake or misprint—I really do not know which. But anyone who reads that clause, I think, must be satisfied that this is so.

It seems to me therefore that that is an end of the case, because if the railway company can obtain no advantage from these two sections, they have nothing to say against the application of the judgment in the *Scottish Widows Fund* case. But it may be just as well to notice that the latest statute of all—that of 1878—seems to be quite inconsistent with the notion that any of these provisions—particularly the provision of the 57th of George III.—were intended to have any of the effects attributed to it by the railway company. The first sub-section of section 13 relates to the case of a house being one property divided into and let in different tenements, and where some 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; and in that case the person chargeable as occupier of the house—that is, the owner of the entire house—shall be at liberty to give notice in writing at any time during the year of assessment to the surveyor, and upon certain proof he is to obtain relief of a portion of the assessment corresponding to that part of his premises which is let out for trade purposes or for professional purposes. Now, observe there that this last Statute of 1878 continues in full force so far the rule of the Act of the 48th of George III. It still keeps the owner of the entire tenement as the person chargeable as occupier. There is no change in that respect. But according to the argument of the railway company, that change had been made in the meantime by the 57th of Geo. III., by some language which certainly in its direct meaning does not effect any such purpose. But it seems to be contended that in some indirect and not very intelligible way the great fundamental rule of the 48th of George III., that the owner of the tenement shall be the person chargeable to the inhabited-house-duty, was put an end to. But here it remains in the year 1878 untouched, just as it was in the 48th of George III.

Then when you come to the second sub-section another observation occurs which is very important. It deals with the case of a house or tenement occupied solely for trade purposes or professional purposes, although a caretaker shall dwell on the premises. Now, that takes one back a little to the history of what occurred about the exemption of such premises. First of all, premises occupied for trade purposes were alone exempted by the 57th of George III. Then that exemption was extended to premises occupied for professional purposes, and then by the Act of 1869—the 32d and 33rd of Victoria—there was an enactment to the effect that premises occupied for trade purposes should be exempt although a caretaker dwelt on the premises; but that statute did not allow a caretaker to dwell on the premises in the case of premises let for professional purposes. Now, observe what takes place here in this second sub-section. The third sub-section repeals that enactment about the caretaker in the Act of 1869, and it enacts that every house or tenement which is occupied solely for the purposes of trade or of any profession or calling shall be exempted upon

proof of the facts to the satisfaction of the commissioners, and this exemption shall take effect although a servant or other person may dwell in such house or tenement for the protection thereof. Now, observe that in this, the existing enactment regarding the exemption of premises occupied for trade or professional purposes, there is no mention of a part of a tenement at all. So that if the mention of a part of a tenement is necessary in order to let in the contention of the railway company that a part of their premises being occupied for railway purposes should be exempt, they could not get their exemption under this section, for there is nothing said about a part of a tenement at all. What would be the consequence? The consequence would be—if the argument is sound—that a part of a tenement belonging to one owner, if occupied for trade purposes or for professional purposes, is exempt from taxation, but they would not be entitled to have a caretaker, and it would not be exempt if a caretaker dwelt therein, because that exemption depends entirely upon the Act of 1878. And there would be this strange anomaly, that while the Act of 1878 deals with the entire subject, and lays down rules which cover the entire subject of exemption, these trade purposes or professional purposes would exempt an entire house occupied for such purposes even though a caretaker dwelt therein, but would not exempt a part of a tenement occupied for such purposes if a caretaker dwelt therein. Now, such anomalous results as that are, I think, sufficient in themselves to show that any construction of these earlier statutes that would lead to such results must be unsound.

Upon the whole matter I am very clearly of opinion that there is nothing in the two statutes which have been relied upon in the argument to interfere at all with the rule laid down in the case of the *Scottish Widows Fund.*

Lord Deas—I am certainly of opinion that this case is ruled by the case of the *Scottish Widows Fund* and some other cases that were decided at the same time, and the only question therefore is, Whether the judgment in the case of the *Scottish Widows Fund* and these other cases was sound? There are here four floors from the ground tenement upwards which are occupied entirely for other purposes than those of a hotel, but the railway company is proprietor of all these, and occupies the whole, and if the rule laid down in the case of the *Scottish Widows Fund* is sound, it must necessarily occasionally include cases in which the proportions occupied for trade and business purposes are of an extent somewhat startling as compared with the portions occupied as a dwelling-house or hotel. That necessarily follows from the rule being a general one. But I am of opinion with your Lordship that these cases were rightly decided, and that that which is said to have been overlooked in the argument does not, when you look into the Act of Parliament, make any difference. And therefore I have no difficulty in coming to the same conclusion which your Lordship has come to—that these cases are applicable, and that they were rightly decided.

Lord Mure—It is admitted in the argument in this case that it was ruled by the decision in the case of the *Scottish Widows Fund*, but it was very anxiously contended to us on the part of the railway company that certain Acts of Parliament affecting questions of this description had not been fully brought before the Court when it disposed of the *Scottish Widows Fund* case, and that under the operation of the provisions of these Acts the railway company were here exempt from taxation. These statutes were the 57th of George III. and the 5th of George IV., which your Lordship has referred to. I have carefully examined the provisions of these statutes, and considered the argument adduced to us upon the cases, and I have come to the same conclusion as your Lordship that the provisions of these statutes are not sufficient to operate as an exemption from the claim here made by the assessor upon the railway company, and that the rule which we laid down in the case of the *Scottish Widows Fund* is one that must be applied in this case also. I do not detain your Lordships by a detailed examination of the provisions of the Acts of 57 George III. and 5 George IV. I concur in the reasoning upon which your Lordship has arrived at the conclusion stated, and that being so I adhere to the short opinion which I gave in the *Scottish Widows Fund* case, to the effect that a tenement of this sort in the occupation of the owner partly for hotel purposes, and partly for the purposes of the business that they carry on as a railway, does fall within the provisions of the statute of the 48th of George III., and that there is nothing in the exemption in the later Act of 1878 that takes it out of these provisions.

Lord Shand—The only ground on which the Court has been asked to reconsider the decision in the case of the *Scottish Widows Fund* is that the provisions of the two statutes which your Lordships have mentioned have been either overlooked or not duly pressed in the argument in that former case. My recollection of the argument in that case is that these statutes were very fully before the Court; and the only reason why their provisions are not prominently brought out in the judgment there is, because for the purposes of that case it seemed unnecessary to do so. But having been invited to reconsider the effect of the provisions of the Act 57 George III. and the Act 5 George IV., I quite agree with your Lordships in the view which you take. It appears to me that the first of these statutes—particularly the 57th of George III.—in its title, in its preamble, and in its first enactment, was intended to introduce an exemption in favour of premises occupied for purposes of trade only, where no part of the same building or tenement was occupied as a dwelling-house, but that if any building was partly occupied for purposes of trade and partly occupied as a dwelling-house it still remained subject to assessment. It is not disputed that prior to the Act 57 of George III. the property now in question was liable to assessment as a building which is only partly occupied for purposes of trade, but is in another part of it occupied as a dwelling-house. The preamble of the Act of 57 George III. is to this effect, that—[*His Lordship here quoted the preamble as above*]. That clearly, I think, does not provide for the case in which the occupier is at once in one part of the building carrying on his trade and in another part of it residing, but gives an exemp-

tion to buildings which are wholly occupied for trade, the persons so occupying them for trade having a separate dwelling-house altogether. And as it is in the preamble, so it is in the enacting words, where, after describing the premises occupied for trade which are to be exempt, the exception goes on—[*His Lordship here quoted the provision as above*]. There, I think, the enactment is distinctly to the same effect. Accordingly it appears to me that the Glasgow and South-Western Railway Company, which are occupying different parts of one and the same building for the purposes of trade and as a residence, is not included in this statute.

The next question is, whether the Act of 5th George IV. goes any further? and I confess that for a time I was impressed with the argument which my friend Mr Asher pressed on the use of the expression "the dwelling-house" in that statute. But I am quite satisfied that there is nothing whatever in that argument. The preamble of the 5th George IV. is that it is desirable to extend the exemption, which the Legislature had previously given in favour of proper trade premises, to offices and counting-houses and places of that class; and the purpose of the statute is to extend the exemption from strictly trade premises to the larger class of what I may call business premises. There is no intention to carry that exemption one particle further. The language of the two statutes is precise. The single change that occurs is the use of the definite article "the" instead of the indefinite article "a," but I am quite satisfied in looking at that statute that it does not introduce the change which the railway company here maintain, or give room for the argument which was pressed for them. I think that where a person had a separate dwelling-house as a separate tenement, and occupied his other premises for trade or business only, the premises occupied for trade or business only and exclusively were exempt; but if you have a combined occupation, partly trade and partly residence, then I hold there is no exemption. And so I think the new argument, as I may call it, against the decision in the *Scottish Widows Fund* case entirely fails.

The Court reversed the decision of the Commissioners and sustained the assessment.

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

Counsel for Railway Company—Asher—Pearson. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Friday, July 16.

FIRST DIVISION.

[Exchequer Cause.

CLERK (TREASURER TO THE COMMISSIONERS OF SUPPLY OF DUMFRIESSHIRE) *v.* INLAND REVENUE.

Revenue—Income-tax—Schedule A—Exemption—Police Station.

Held that police stations which were constructed and supported entirely out of the police assessments for the county, although the pay and clothing of the police were in part defrayed by Government, were proper subjects of income-tax under Schedule A.

In this case the Treasurer to the Commissioners of Supply of Dumfriesshire appealed to the Commissioners of Income-tax for the county against an assessment under Schedule A, made in respect of certain police stations belonging to the Commissioners of Supply. From the case as settled by the Income-tax Commissioners it appeared that "the appellant stated, as a preliminary ground of appeal, that at a meeting of Income-tax Commissioners, held at Dumfries on 1st May 1872, the Commissioners of Supply appealed against charges made on the premises in the parish of Dumfries belonging to them, and occupied as police stations, and relief was granted. He further stated that the police stations in Dumfriesshire had never been assessed, and that, except in the instance before referred to in 1871, no attempt had been made to assess them.

"On the merits the appellant stated that the Commissioners of Supply are bound by statute (20 and 21 Vict. cap. 72) to maintain a police force in the county for the public service; that in order to fulfil the said statutory obligation it is necessary to provide police stations at different police districts into which the county is divided, which stations are used partly as strong-rooms and partly as lodgings for the police-constables serving in the several districts; that said stations yield no return, the strong-rooms being used for the temporary detention of offenders, and the lodgings and offices being given to the constables, as being necessary for the performance of their duties. The police force is annually inspected by a Government officer, and if he reports it efficient (as has always been done in the case of the Dumfriesshire force) the Treasury grants one-half of the expense of pay and clothing, and the rest of the cost of the establishment is defrayed by means of the 'Police Assessment,' which is a compulsory rate levied upon all lands and heritages within the county. He contended—(1) that the decision of 1st May 1872 should be taken as a precedent in the present case; (2) that the stations are not assessable, as they yield no rent; (3) that as the stations are provided by means of a compulsory rate, the assessing of them would be imposing a tax upon a burden. He referred to the following cases—*The Queen* v. *Inhabitants of St Martin's, Leicester*, and *The Queen* v. *Inhabitants of Castle View*, June 13, 1867, L.R., 2 Q.B. 493.

"The Surveyor of Taxes replied—*Preliminary*—That the decision of 1st May 1872 was by the commissioners for general purposes, and for a