source in order to find it. When people engage in a game which is dangerous, or in which accidents may happen, every player taking part in it takes on himself the risks incident to being a player, and will have no remedy against anyone from whom he may receive injury in the course of it unless violence or unfairness has been used towards him. He takes the risks incident to the game, and the results must remain where they fall. And I should say the same principle would govern where romping suddenly arises amongst workmen. The rompers take the risks incident to their romping, and unless there is foul play there will be no liability for accidental injury by one workman to another. I should go the length of saying that if two men engage in a pugilistic combat each must take the black eyes or the bloody noses which the other gives him; and the same with a bout at single-stick, if both voluntarily engage in it each must take the raps he gets, and if there be no foul play there can be no accident giving rise to liability of the one to the other. We are familiar in the criminal courts with the law where death to one of the parties is the result of a fair fight. The surviving combatant will be responsible for culpable homicide, because he has committed a breach of the peace, but if the fight has been perfectly fair the punishment is generally almost nominal. Here there was a romp going on. I think it is according to the evidence that the pursuer took no part in it, and therefore that he did not take the risks incident to it, and without any fault on his part nearly lost his life. I think that was attributable to the fault of the defender, who I think attacked the pursuer, and technically assaulted him, though he did it playfully and with no bad intention, for if a man playfully attacks another to make him engage in sport, I think that is an assault, and if injury results that constitutes an actionable wrong. I have therefore arrived at the same conclusion as the Sheriff-Substitute.

Lord Rutherfurd Clark—I am of the same opinion. I think it is clear that the pursuer took no part in this frolic, and that he was knocked over by the fault of the defender, and therefore that the judgment of the Sheriff-Substitute should be reverted to.

Lord Craighill was absent on Circuit.

The Court pronounced the following interlocutor:—

> "Find in fact that the injury sustained by the pursuer on the occasion set forth in the petition was caused by the fault of the defender: Find in law that the defender is liable to the pursuer in damages: Therefore sustain the appeal; recal the judgment of the Sheriff appealed against; affirm the judgment of the Sheriff-Substitute, and of new ordain the defender to make payment to the pursuer of the sum of £50 thereby found due in name of damages, with interest," &c.

Counsel for Pursuer (Appellant)—Strachan—Watt. Agent—Andrew Urquhart, S.S.C.

Counsel for Defender (Respondent)—Guthrie. Agent—John Macpherson, W.S.

Wednesday, June 17.

FIRST DIVISION.

[Exchequer Cause.

CLERK (SURVEYOR OF TAXES) *v.* THE BRITISH LINEN COMPANY BANK.

Revenue—Inhabited-House-Duty—Separate Tenements—Customs and Inland Revenue Act 1878 (41 *and* 42 *Vict. cap.* 15), *sec.* 13, *sub-secs.* 1 *and* 2.

A banking company were proprietors of a building of which the front portion of the ground floor was occupied as bank premises, while the back portion was used by their agent as an office for the sale of stamps and the collection of taxes in the course of his duty as sub-collector for the district. The first floor was entirely occupied by the bank agent as writing chambers in connection with his business as a law-agent. The second or attic floor was used by the accountant of the bank as a dwelling-house. Access to the tenement was obtained by two doors, one of which was a public access from the street to the bank premises only. The other was a side door opening into a lobby, whence there was a stair to the first floor, and thence by another passage and stair to the dwelling-house on the second floor. A person in the dwelling-house had thus access into any part of the whole building without going outside. *Held* (following *Russell* v. *Coutts*, 9 R. 261) that there being thus internal communication from the dwelling-house throughout the whole building, the bank and other business premises were not "separate tenements" exempt from inhabited-house-duty as being "occupied solely for the purposes of any trade or business," and therefore exempt from duty in respect of 41 Vict. c. 15, sec. 13.

This was an appeal by the Surveyor of Taxes from the decision of the Commissioners for executing the Acts relating to the inhabited-house-duties for the county of Selkirk. The Commissioners, sustaining an appeal against the assessment laid on under the Inhabited-House-Duty Acts by the Surveyor, had relieved the respondents the British Linen Company of assessment upon certain premises as far as occupied for business purposes. The following facts were set forth in the case for appeal:—The property charged with assessment (which belonged to the British Linen Company) consisted of a building of three floors fronting Market Place of Selkirk. The front portion of the ground floor, valued at a rental of £45, was occupied exclusively as bank premises by the British Linen Company, while the back portion was occupied as an office for the sale of stamps and the collection of taxes by Mr John Steedman, solicitor, who was the bank's local agent at Selkirk, and also sub-distributor of stamps and sub-collector of taxes for the district.

The first floor consisted of four rooms and a lavatory. They were not enclosed by themselves, but each room entered from a passage running along the side of the building. They were all occupied by Messrs Lang & Steedman, solicitors, of which firm Mr Steedman was sole partner, in

connection with their business as law-agents; and in one of the rooms, which was occupied by Mr Steedman personally, banking business was also transacted by him when not in the agent's room on the ground floor. For the stamp office and the rooms on this floor Mr Steedman paid a rent of £30 to the bank.

The second or attic floor, valued at a rental of £15, was reached by a door in the passage on the first floor (marked D on a sketch produced), and thence by a staircase exclusively belonging thereto. It was occupied by the bank accountant or senior clerk of the branch, and for it he paid no rent. He kept the key of this door. In going from his house to the bank, or *vice versa*, the occupant could only do so by this door, and then through by a door (marked C on the plan) on the ground floor between the stamp office and the bank.

There were two entries to the premises, first, by a door (marked A on the sketch) leading direct from the street to the rooms occupied for banking purposes, and second, by a side door (B) from a passage running along the side of the building, and which side door opened into a vestibule or lobby having an access to the banking rooms on the right and the stamp office on the left, and from which a stair rose to the upper floors. Access would be had by either of these entries A or B throughout the whole building.

The bank rooms could be, and after business hours were, shut off from the rest of the premises by the door marked C, which locked from either side. The public entrance to the stamp office and the upper portions of the building was by the side door B.

The assessment against which the bank had appealed to the Commissioners was at the rate of 9d. per pound on £90, the *cumulo* value of the premises above described.

It was maintained for the bank before the Commissioners that the premises above described consisted of three separate tenements, which were capable, without change or alteration, of being let to separate tenants; that the whole of the first floor, which completely intersected the building, was, in point of fact, let and occupied as a separate tenement; that the upper floor, which alone was occupied as a dwelling-house, was a separate tenement; that the bank and stamp offices and the law office premises were used solely for business or professional purposes, and were therefore exempt in terms of 41 Vict. c. 15 (Customs and Inland Revenue Act 1878), sec. 13.

It was maintained for the Surveyor of Taxes that the premises did not fall under the exemption founded on by the bank, the principal portion being in the occupation of the bank itself or its officers, the remainder being occupied by Mr Steedman in his law and stamp business; that there was no structural division thereof into separate tenements, and there being an internal communication throughout the whole, which was used by the accountant daily as the bank's official resident on the premises, and which was the only access from the bank to his dwelling-house when the bank office was closed for the night.

The Commissioners found that the appellants were entitled to be relieved of the said assessments, so far as regards the portion of the premises occupied for business purposes in terms of section 13 of the Act 41 Vict. c. 15, and that the dwelling-house being a separate tenement and under the value of £20, was not liable to be assessed, and therefore sustained the appeal.

The Surveyor of Taxes took the present Case for the opinion of the Court.

Argued for him—This building was not a tenement used solely for business within the sense of the statute, because the accountant of the bank, who was not a caretaker, occupied the top flat. This was a stronger case than the *Scottish Widows Fund*, January 22, 1880, 7 R. 491, because the access to this top flat was through the bank premises, and not by means of a common outside stair as was the case there. The question was, whether this could be called a property divided into or let in different tenements. It could in no reasonable sense be so said. The top flat could not with any safety be let to anyone but the accountant of the bank, or some such other person. There was no distinction between this case and the case of *Russell* v. *Coutts* (December 14, 1881, 9 R. 261), for the accountant's house could in no sense be called a separate tenement; there was no structural division between it and the bank and stamp offices.

Replied for the bank—The Commissioners were right in relieving from the assessment, for the dwelling-house occupied by the accountant was a separate tenement. The criterion of separateness was from the lessee's point of view, *i.e.*, from the interior. When once he was in his house, no-one could enter except by his door (D in the plan), of which he kept the key. The bank and stamp offices were complete separate tenements. If the chambers and the top flat were let to separate tenants there would be no doubt about the case, on the authority of *Nisbet* v. *M'Innes, Mackenzie, & Lochhead*, July 15, 1884, 11 R. 1095. It could not make any difference that the tenant of the top flat was the accountant of the bank. There was no appreciable distinction between this case and the case of *Corke* v. *Brims*, July 7, 1883, 10 R. 1128. There the separate tenements opened into a common vestibule. Here there was a stair and passage in common. The tenant of the top flat had to leave his own house before he could get into any of the other premises. His house was structurally separate from the bank and stamp offices.

Sub-sec. 1, sec. 13, of 41 Vict. c. 15, provides that "Where any house being one property shall be divided into and let in different tenements, and any 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 town 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-duty shall, upon proof of the facts to their satisfaction, grant relief from the amount of duty charged in the assessment, so as to conform 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."

Sub-sec. 2 of the same sec. (13) provides—"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."

At advising—

LORD PRESIDENT—The building that we have to deal with in the present case, as I understand it, fronts a street in Selkirk, and the only door of access to the building facing that street is the door marked A upon the plan of the ground floor. Now, that is a door intended entirely for the customers of the bank, and it is not used by other people apparently, and is obviously so placed with reference to the various apartments into which the bank premises are divided as not to be of any use except as a door for the entrance of customers and the public. The whole of the front part of the ground floor is occupied by the bank premises, and the proper entrance to the other portions of the building is by an entry or lane which runs down to the left-hand side of the front part of the ground floor, and terminates in an entrance or door marked B. The back part of the premises on the ground floor is occupied as a stamp office, Mr Steedman, the bank agent, being also collector of stamps. Then above that again, on the first floor of the building, the rooms are occupied as business premises by Mr Steedman, who is also a solicitor or writer, and that first floor is entered to by a staircase from the stamp office premises below. The first floor is entirely devoted, as I understand, to the business of Mr Steedman as a solicitor. The second floor—the top floor of the building—is occupied by the bank accountant as a dwelling-house. He pays no rent for it, but enjoys it as part of the emoluments of his office. He finds his access to his dwelling-house by entering by the door B on the ground floor, ascending the staircase which connects the ground floor with the first floor, and when on the first floor he proceeds along a passage which adjoins all the rooms occupied by Mr Steedman as his writing-chambers, and off which all his rooms enter, until he comes to a door D at the foot of a stair which leads up to the top flat forming his dwelling-house. That is the state of occupation of the premises. I should add that there is another door which is marked C upon the plan of the ground floor, and which connects the stamp office premises behind with the bank premises in front.

Now, in that state of the facts, I think there are two things very clear. In the first place, the accountant's entrance to his dwelling-house from the outside must be by the door B, and when he has entered the door B he cannot reach his own premises without going through the premises occupied as a stamp office and also through the premises occupied as writing chambers by Mr Steedman. It is quite true that the portion of the building which he occupies as a dwelling-house is a floor by itself—the upper floor. But that is the only means of access. Again, when he is in his house on the upper floor, he has the means of obtaining access to every other part of the building. There is no part of the building with which he cannot communicate without going into the outer lobby.

Now, the question comes to be, I think, in short, this—whether this case is to be regulated by the judgment in *Russell* v. *Coutts*, or by the judgment in *Corke* v. *Brims?* and I shall just take the liberty of reading the view which I took of the distinction between these two cases in determining the latter of them, viz., *Corke* v. *Brims*. I said, "The case of *Russell* v. *Coutts* which is relied on by the surveyor here is essentially different in this respect, that in that case when Mr Coutts entered from the street into the house occupied by him, he had means without coming out of his door again of ranging over the entire buildings. There was no physical division of the entire premises into separate parts in such a way that when he was in one part of the premises he could not get access to the other. Once entered by the street door he had the means of going into every room in the entire building. Now, in the present case [that is, *Corke* v. *Brims*] Mr Mackay, who occupies the dwelling-house here, has an entirely separate door of entrance to his house. It is not indeed immediately from the street that that door has an entrance. There is a small lobby or vestibule from which three doors open, one into the bank only, another into the bank consulting room, and the third, which is in the centre, is the outer door of Mr Mackay's house and when he has once entered in at that door and shut it behind him he cannot obtain access from the premises in which he finds himself to any other part of the building except that which is occupied by him as his residence." Now, if you put in place of Mr Mackay there, or of Mr Coutts in the other case, the accountant of the bank here, who is the person who has the dwelling-house on the premises, is it not perfectly plain that the description of Mr Coutts' position is exactly that of the accountant here, and the description of Mr Mackay's position in the other case is plainly distinguishable? In short, it appears to me that this case precisely answers to the description of Mr Coutts' position in the case of *Russell* v. *Coutts*, and therefore I am for altering the deliverance of the Commissioners and sustaining the assessment.

LORD MURE—I am entirely of the same opinion. I think the case is precisely on all-fours in its leading circumstances with the case of *Coutts* v. *Russell*, and I think the admission in the case as regards the position of the accountant, and how he gets from one part of the place to the other, shows that most distinctly. He goes from the upper premises that he occupies, through the passages and past the doors of the business rooms, and down to the bank by the door C in any way he likes. He can get from his own part of the house without being under any necessity of going to the street or getting in by different doors. The whole place is connected together in that way, and therefore I think we must come to the same conclusion as your Lordships came to in the case of *Coutts*.

LORD SHAND—I am of the same opinion, The question arises under sub-section 1 of section 13 of the statute of 1878. The provision is that

where any house not 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, then assessment is to be imposed upon the inhabited part of the house only. It is necessary therefore that it should be shown in reference to this property that there is part of it divided into and let in different tenements. Now, the only parts of the whole premises that are let are the stamp and tax office, and the writing chambers above. These are undoubtedly let, and if it could be shown not only that these were let, but that they could fairly be described as being structurally divided so as to constitute them separate tenements, then I think the section would apply. But I agree with your Lordships in holding that the facts of this case do not show that they are structurally so divided. It is said that the case is the same as *Corke* v. *Brims*, or that there is a difference in degree only, because there was there a common passage or vestibule, and as there is a common stair here in addition to the passage the principle must be the same. But I do not think that reasoning is sound. I think the difference in degree may make all the difference on the result. I should say on the facts that were stated in *Brims'* case that there was in a reasonable sense a structural division so as to constitute an entirely different tenement. I should say on the facts here that I cannot reach that result in regard to the stamp office and the premises above it for the reason explained by your Lordship, that really anyone getting entrance to the bank premises is in a position to range over every part of the premises; and so also of anyone getting in at the back entrance, which is a door opening at once into the stamp office, into the writing chambers above, and into the floor above that, although that floor is shut off by another door. I do not think that this case can be substantially differentiated from the case of *Coutts*, and certainly not from the case of *The Yorkshire Fire and Life Insurance Company* v. *Clayton* [March 10, 1881, L.R. 6 Q.B.D. 557, *aff.* December 6, 1881, L.R. 8 Q.B.D. 421; also reported Revenue Cases, No. 56]—which was cited in the case of *Coutts*, and formed the subject of observations there. I am therefore of opinion with your Lordships that the appeal in this case ought to be sustained.

Lord Adam—I am of the same opinion, and have nothing to add.

The Court reversed the determination of the Commissioners, and sustained the assessment to the full amount, with costs.

Counsel for Surveyor of Taxes—Moncreiff—Lorimer. Agent—D. Crole, Solicitor of Inland Revenue.

Counsel for British Linen Co.—Gloag—H. Johnston. Agents — Mackenzie & Kermack, W.S.

LANDS VALUATION COURT.

Wednesday, June 17.

(Before Lord Lee and Lord Fraser.)

SMITH *v.* ASSESSOR FOR ARGYLL.

Valuation Cases—Valuation Roll—No Change of Circumstances—Valuation of Lands (Amendment Act 1879 (42 *and* 43 *Vict. cap.* 42), *secs.* 7, 8, 9.

The valuation roll for a county or burgh for each year is a new roll, and anyone entered therein is entitled to appeal against the entry, and to have evidence led and the appeal determined in the ordinary way, notwithstanding that the point raised was discussed and settled before the valuation committee or magistrates in the preceding year, and that the entry complained of is a mere copy of the entry then fixed.

Notes of Evidence—Evidence laid before Judges—Duty of the Judges on Appeal.

When the evidence taken before the valuation committee or magistrates is recorded and laid before the Judges along with findings in fact, the Judges, while entitled to examine the evidence, will not, unless the great weight of evidence is against the findings, disregard them.

The Valuation of Lands (Scotland) Amendment Act 1879, sec. 7 (42 and 43 Vict. cap. 42) provides —"In the case of persons entitled to appeal against valuations made by assessors under the Valuation of Lands (Scotland) Act it shall be lawful for such person appealing, or for such assessor if he shall apprehend the determination of the commissioners of supply in any county, or the magistrates of any burgh, upon such appeal as to the yearly rent or value of the lands and heritages to which such appeal relates, to be contrary to the true intent of said Acts, and shall then declare himself dissatisfied with such determination, to require the said commissioners or magistrates to state specially and to sign the case upon which the question arose, setting forth the facts proved, together with the determination thereupon, and to transmit such case to the Commissioners of Inland Revenue, to the end that the same may be submitted to any two Judges in the Court of Session who shall be named for that purpose from time to time by Act of Sederunt of the said Court for their opinion thereon."

At a Court held by the Valuation Committee of the Commissioners of Supply of the county of Argyll, held on 11th September 1884, Thomas Valentine Smith, Esq. of Ardtornish, appealed against the following entry in the valuation roll:—"No.—9956. Description of Subject—Ardtornish, Achranich, Acharn, &c. Proprietor—Thomas Valentine Smith. Occupier—Proprietor. Tenant—Occupier. Yearly Rent or Value—£1874, 8s."

Mr Smith claimed that the valuation of his property ought to be reduced to £1401, 10s.

The assessor stated to the Committee that the entry in the valuation roll was merely a repetition of that of last year, which had been fixed by the Court after an exhaustive inquiry, and hearing