depreciate the value of the remaining land, and I see no ground for distinguishing between causes of damage due to the use of the lands taken, provided that it results in the depreciation of the remainder. Noise is one of the causes of damage which Lord Chelmsford recognises as raising a claim for compensation.

It is said that the damage is consequential and remote. I do not think that it is. If it were certain that the fog-signal would be used frequently the arbiter would evidently have given a much larger sum. But I cannot consider the damage to be either consequential or remote, if it be directly due to one of the uses to which the defenders may put the land, and if it amount to the large sum of £1000.

Again, it is said that the island of Fidra from which the land was taken is separated by the sea from the pursuer's other lands. That is true, but in my opinion it is immaterial. The remaining lands are not the less injured, and the injuries for which compensation can be claimed are not limited to the adjoining lands, At least I see no principle for any such limitation. The principle is that when the use of the lands taken causes injury to the remaining lands, compensation must be made. The pursuer will be a great loser if it be not. It is not severance damage which is alone to be compensated. This is clear from the case of the *Stockport Railway Company*.

Again, it is urged that a fog-signal is not one of the specified appurtenances of a lighthouse. I think this to be immaterial. The defenders are entitled to have all the equipments in the lighthouse which they think to be requisite. That is a matter which is left to their discretion. The pursuer, to use again the language of Mr Justice Crompton, has a right to say that it is by the Act of Parliament, and the Act of Parliament only, that the defenders have done the acts which have caused the damage. If they had not taken the pursuer's lands they could not have caused the injury of which she complains.

The Court adhered.

Counsel for Pursuer—D.-F. Mackintosh, Q.C. —Dundas. Agents—Dundas & Wilson, C.S.

Counsel for Defenders — Pearson — Dickson. Agents—T. & R. B. Ranken, W.S.

Friday, March 5.

SECOND DIVISION.

[Lord Fraser, Ordinary.

CHAPLIN *v.* JARDINE.

Sale—Warranty—Timeous Rejection—Horse.

A person bought a horse on 15th January, and took delivery of it on the 28th. On 19th March he wrote to the seller saying that he had been absent from home, and did not quite know what to do about the horse, which was very vicious in the saddle; that he had not made up his mind to part with him yet, and he desired to know if the seller would change him if he decided to do so. On 24th March he wrote again saying that the horse was vicious, and he must be quit of him at once. On 1st April he wrote threatening legal proceedings if the horse was not taken back and the price returned. Thereafter he returned the horse and brought action for repetition of the price. The Court *assoilzied* the defender, on the ground that the pursuer had not timeously rejected the horse.

George Robertson Chaplin, residing at Murlingden, Brechin, on 8th May 1885 raised this action against David Jardine, a horse-dealer in Edinburgh, for the sum of £85, being the price he had paid the defender for a chestnut horse which he had bought from him on 15th January 1885, and paid for on 29th January 1885, and of which he had taken delivery on 28th January 1885. The ground of action averred by the pursuer was that the defender had warranted the horse sound in every way, and perfectly quiet in harness, but that the horse had turned out not conform to warranty. The defence was (1) no warranty given, and (2) no timeous rejection; the defender pleading—"The horse having been the property of the pursuer since the 15th day of January 1885, the present action should be dismissed with expenses."

The latter defence alone need here be referred to.

The horse was purchased on the 15th January 1885, and was delivered on the 28th of that month, and the price paid the next day. On 23d February Robert Campbell, the pursuer's coachman, wrote to Jardine as follows:—"Dear Sir,—Just a few lines to say that the horse is doing well, and expect to hear from you soon, with a little discount.—Yours respectfully, ROBERT CAMPBELL."

The pursuer stated on record that he "went from home for six weeks immediately after the said horse was sent to him, and before he had used him." On 19th March, having by that time returned home, he wrote thence to the defender, as follows:—"Dear Sir,—I have been from home for the last month, and expected to have heard from you ere this about the bay horse. I do not quite know what to do about the chesnut I bought from you. So far he has made no mistake in harness, but in saddle he is quite the most vicious animal I ever saw. He rises straight up on meeting another horse and makes for them, and altogether is a most dangerous animal both to his rider and to those he meets on the road. I haven't quite made up my mind to part with him yet, but should I do so, would you take him back and supply me with another bay or chesnut, the latter for choice?"

On 24th March the pursuer wrote as follows:—"Dear Sir,—Kindly let me hear from you by return of post in reply to my letter of last week, in which I stated that I was thinking of parting with the chesnut horse I got from you. The horse is now as vicious in harness as he was before in the saddle, and I must be quit of him at once. Have you another animal likely to suit me, bay or chestnut, not more than 15.2½. Please let me hear if it will suit you if I return the horse on Friday next per train reaching Waverley 2.25 p.m."

On 1st April the pursuer's brother wrote to Jardine as follows:—"Sir,—My brother, Mr G. R. Chaplin of Murlingden, Brechin, has written to me regarding the chestnut horse he bought from you some time ago, and also in reference to the bay horse of his which is or was in your possession. He has repeatedly written to you

himself, and as he has had no reply, he has placed the matter in my hands. From the result of inquiries made on my behalf, I find the career of the chestnut horse both *before and since* he came into your possession is far from satisfactory, and I now beg to give you notice that, unless you write to me to the above address on receipt of this letter, intimating your readiness to take back the chestnut, and either return the bay horse you had for sale, or send a cheque for the price you received for same, also the amount paid you by my brother for the chestnut, I will place the whole affair in the hands of the police, and instruct our lawyers to see that you are dealt with accordingly."

On the same date the defender had written to the pursuer stating that if the pursuer came to Edinburgh he would negotiate an exchange.

No arrangements having been come to, the pursuer's agents on 28th April wrote demanding return of the price. The horse had been returned early in April and placed in a livery stable in Edinburgh.

At the proof John Duncan, who succeeded Campbell as the pursuer's coachman, deponed—"I think I was at Murlingden about a week before the pursuer returned from England [early in March]. I had the horse in question out before that. I had him out twice in single harness. He did not behave very well; in passing other horses on the road he would rear and plunge to get on them. I concluded from that that the horse was a stallion or a rig; he behaved himself like that. He acted in the same way on both occasions; I had difficulty in keeping him in."

Pending the dispute the horse was sold under warrant of Court, and the price consigned.

The Lord Ordinary (Fraser) found that there was a breach of warranty, and that the pursuer timeously called upon the defender to take back the horse and refund the money, which he refused to do. His Lordship therefore found the pursuer entitled to decree for £85, the sum sued for, less the price consigned in Court, which he granted him warrant to uplift.

"*Note.*— . . . From the time of the delivery to the time when the pursuer peremptorily required the defender to take back the horse there elapsed a period of two months. A vendee is bound to make timeous rejection if the article he receives is said to be disconform to contract, but what is timeous rejection depends upon the circumstances of the case. If the defect of the article is immediately discoverable, then there should be immediate rejection, but if such discovery cannot be obtained without the use of the article for some time, such prompt action in the way of rejection is not necessary. The circumstances which rendered the horse sold by the defender to the pursuer restless in harness was quiescent in the ordinary condition of things, and only developed itself under the stimulus of temptation and opportunity. It was when the animal was in the company of, or met on the road, other horses that he became excited, restless, and vicious. The pursuer was absent for six weeks after the horse had been delivered, and he had not an opportunity of himself properly ascertaining the character of the animal until his return. The plea of bar founded upon the delay cannot in the circumstances be stated as against this action." . . .

The defender reclaimed.

At advising—

Lord Young—[*After expressing his opinion that no breach of warranty had been proved*]—The horse was purchased on the 15th January, and was delivered on the 28th, and the price was paid the next day. Now, we hear nothing about the horse till the 23d February, when the defender gets a letter from the pursuer's coachman telling him that the horse was doing well. This was after the horse has been four weeks in the pursuer's possession. We are told on record—and I do not doubt the statement—that the pursuer left home and "was absent for six weeks immediately after the said horse was sent to him, and before he had used him." Now, I do not think any responsibility can rest upon the defender for this, because the pursuer left the horse during his absence in the hands of his coachman, who, it is natural to suppose, would be competent to judge of it and attend to his interests during that absence. That brings me to the letter written to the defender by the pursuer on 19th March, in which he says he has been absent from home and does not quite know what to do about the horse. He explains that the horse is so far quiet in harness, but very vicious in the saddle, and then he adds that he has not quite made up his mind to part with him yet. This is a remarkable letter to have been written on 19th March about a horse which had been delivered on the 28th January. On the 24th March we have the nearest approach to an offer to return the horse, in a letter in which the pursuer refers to his former letter, in which "I stated that I was thinking of parting with the chestnut horse." He says he was only "thinking of parting" with it. This has not the complexion of a proposal to return it as for breach of warranty or as disconform to bargain. We then on 1st April have the letter from the pursuer's brother, who threatens that if the horse is not taken back, or a cheque for the price paid for it sent at once, the affair would be placed in the hands of the police. Then on 28th April Messrs Russell & Dunlop, the pursuer's agents, write threatening legal proceedings unless the pursuer's request is complied with. In my opinion, then, under these circumstances, the horse has not been timeously rejected.

Lord Craighill—I am of the same opinion. I do not think that breach of warranty has been proved. As regards the giving timeous notice. During his absence at Torquay the pursuer left the horse in charge of his coachman, who tried it before his master's return, and the coachman was plainly made aware of the horse's behaviour before the 19th, for he says in his evidence—"I think I was at Murlingden about a week before the pursuer returned from England. I had the horse in question out before that. I had him out twice in single harness. He did not behave very well; in passing other horses on the road he would rear and plunge to get on them. I concluded from that that the horse was a stallion or a rig; he behaved himself like that. He acted in the same way on both occasions; I had difficulty in keeping him in." In these circumstances I think there was not timeous rejection.

Lord Rutherfurd Clark—I am of the same opinion. I think there has been no breach of warranty shown here. But I am clear that even if the pursuer had proved this, he has not availed

himself in due time of the legal remedy provided him by returning the horse.

The Lord Justice-Clerk concurred.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defender.

Counsel for Pursuer—Low—Dundas. Agents Russell & Dunlop, W.S.

Counsel for Defender—Darling—Hay. Agents—Reid & Guild, W.S.

Saturday, March 6.

FIRST DIVISION.

[Exchequer Cause.

SMILES (SURVEYOR OF TAXES) *v.* CROOKE.

Revenue—Inhabited-House-Duty—"Let in Different Tenements"—Act 48 *Geo. III. c.* 55, *Schedule B, Rule* 6—*Customs and Inland Revenue Act* 1878 (41 *Vict. cap.* 15), *sec.* 13, *sub-sec.* 1.

The proprietor of a house let to one person the three upper floors, which entered from the street by a separate door and passage. The first floor was used as a photographic studio, and the second and third floors as a dwelling-house. The subjects were let under one lease (in which they were separately described) at a *cumulo* rent. The only communication between the studio and the dwelling-house was by the stair leading from the street. There was a door from the dwelling-house to the stair, and internal communication between the two floors of which the dwelling-house consisted. *Held* that the studio and the dwelling-house were in the sense of the Inhabited-House-Duty Acts different tenements.

At a meeting of the Income-Tax and Inhabited-House-Duty Commissioners for the county of Edinburgh, held at Edinburgh on 9th December 1885, William Crooke, photographer, appealed against an assessment made upon him for the year 1885–86 of £9, 7s. 6d., being inhabited-house-duty at the rate of 9d. per pound on £250, the *cumulo* annual rent of a dwelling-house and photographic studio occupied by him at No. 103 Princes Street, Edinburgh. The premises were part of a building consisting of a ground or basement floor and three flats above, all the property of the Edinburgh Royal Infirmary. The ground or basement floor, No. 103 Princes Street, which had a separate entrance from the street, was let to Messrs Edwin Pass & Son, perfumers, and was occupied by them solely as a shop, and was not assessed for inhabited-house-duty.

The three upper flats, which entered from the street by a separate door and passage, were let to and occupied by Crooke; the first flat was used as a photographic studio, and the second and third flats as a dwelling-house. These subjects were separately described in, but were let under one lease, dated 7th May 1884, at the *cumulo* rent specified therein, viz., £250. It was admitted that the annual value of the dwelling-house was £80, being the rent paid by the previous tenant, who occupied the house only. The whole of the premises occupied by Crooke were shut in by a street door at the foot of the stair, which remained open during business hours, but was shut at night and fastened by means of a latch. The only communication between the studio and the dwelling-house was by the stair which led from the street, and to which Crooke had the sole access. The studio (occupying the whole of the first flat) had originally two doors to the stair, the one leading to a room at the back and the other to one at the front. One of these, however, was latterly always closed by a bolt on the inside. The dwelling-house consisted of two flats, which were connected with one another by an internal stair, but there was only one door to the outer stair.

Crooke contended that he was entitled to exemption in respect of the studio, as it and the dwelling-house were separate subjects, and were separately specified in his lease, and further that the access from the street by the stair referred to did not constitute internal communication. He further contended that the dwelling-house and studio formed part of a house of which the shop tenanted by Edwin Pass & Son also formed a part, and that being let in different storeys and inhabited by two or more persons or families, it thus fell to be assessed under the 6th rule of Schedule B, 48 Geo. III. cap. 55, and came under the exemption granted by 41 Vict. cap. 15, section 13, sub-section 1.

The Surveyor of Taxes, James S. Smiles, maintained that the exemption referred to did not apply. The premises occupied by the appellant formed one tenement, with an independent entrance, to which he as occupier had the sole right. The dwelling-house and studio were "attached," and being all enclosed by the entrance door from the street, and not being occupied solely for the purposes of any trade or business, formed an assessable dwelling-house in the sense of the Inhabited-House-Duty Acts.

The Commissioners were of opinion that the premises were so structurally divided as to form two separate subjects, and that the charge should be restricted to the duty on £80, the annual value of the portion occupied as a dwelling-house.

The Surveyor took a Case, from which the foregoing narrative is taken.

The Surveyor argued that the case was distinguishable from *Corke* v. *Brims*, July 7, 1883, 10 R. 1128; and *Nisbet* v. *M'Innes, Mackenzie, & Lochead*, July 15, 1884, 11 R. 1095, because the whole subjects were let to one person.

The respondent's counsel was not called upon.

At advising—

Lord President—The point as it has now been stated by Mr Lorimer depends upon the construction of section 13, sub-section 1, of 41 Vict. c. 15, the words of which are—"When 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," then substantially there is to be an exemption of that part from inhabited-house-duty.

The words which create the difficulty which Mr Lorimer suggested are "divided into and let in." I do not think that means that the house