up the pictures or account for the price of them.

It was not contended that Smith and Hewat had entered into a fraudulent scheme to defraud the marriage-contract trustees of property under the trust. The whole transaction had been gone about in good faith. The true state of the case appears to me to be contained in the third plea-in-law for the defender — [*His Lordship read the plea*]. I think that is a sound proposition, and directly applicable to the facts of the case, and I think we should recal the judgment of the Sheriff-Substitute and assoilzie the defender.

LORD YOUNG—I concur. I think that the defender in this case was a *bona fide* onerous holder of the pictures.

LORD RUTHERFURD CLARK—I think it is out of question here to impute fraud to the defender. He holds these pictures for value, and he got them in an honest transaction.

LORD TRAYNER concurred.

The Court pronounced this judgment—

"Find in fact (1) that Mr Hewat remained in possession of the furniture and other effects conveyed in his contract of marriage; (2) that the defender received the pictures mentioned in the prayer of the petition in security of an onerous obligation without notice or knowledge of the conveyance in said marriage-contract: Find in law that the defender is not bound to deliver the said pictures to the pursuer, or to account for the price or value thereof: Therefore sustain the appeal: Recal the interlocutors of the Sheriff-Substitute appealed against: Assoilzie the defender from the conclusions of this action: Find him entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for Appellant—W. Campbell—Hunter. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Respondent—Wallace. Agent—Lindsay Mackersy, W.S.

Wednesday, January 27.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* PETRIE.

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

A hotel and stables were occupied together, though between them there ran a passage over which the public had a right-of-way. In addition to the hotel the landlord carried on a horse-hiring business, and kept horses at livery in the stables. *Held*—following the case of *Douglas* v. *Young*, November 14, 1879, 7 R. 229—that the stables ought to be included in an assessment of the hotel under the Inhabited-House-Duties Acts.

William Petrie, hotel-keeper, appealed to the Income Tax Commissioners for the Forfar district of the county of Forfar against the assessment made upon him for the year 1891-92 of £1, 19s., being the inhabited-house-duty at the rate of 6d. per pound on £78, the annual value of the hotel and stables and coach-house occupied by him, so far as the said assessment included the stables and coach-house.

The Commissioners having sustained the appeal, Robert S. Smith, the Surveyor of Taxes, expressed his dissatisfaction with the decision as being erroneous in point of law, and requested a case to be stated for the opinion of the Court of Exchequer.

The following facts were set forth in the case stated by the Commissioners—"First, the appellant is proprietor and occupier of the licensed premises situated as after mentioned, known as the Salutation Hotel, and of stables and coach-house adjoining. Second, the said hotel has a frontage both to East High Street and South Street, Forfar, with a bar entrance at the junction of those streets. The principal entrance to the hotel is from South Street. There is another entrance to the hotel from East High Street. The kitchen door of the hotel enters from a passage running from South Street to East High Street at the back and side of the hotel. The said passage separates the hotel from the stables and coach-house, which are under an entirely separate roof from the hotel building, and are situated at the back corner thereof. The carriage entrance to the stables and coach-house is from East High Street, the said passage being only a foot-passage from South Street. Third, it was stated by the appellant that the general public have a right-of-way over this passage, and that it is subject to a servitude of passage in favour of three feuars having properties adjoining. This statement was accepted as correct by the Surveyor. Fourth, in addition to the hotel business the appellant carries on a horse-hiring business, and puts up horses at livery in the said stables. It was admitted by him that people who put up their horses in the said stables frequently partake of refreshment in the said hotel. Fifth, it was agreed by both parties that the value of the hotel was £58 per annum, and that the value of the stables and coach-house was £20 per annum. The appellant claimed relief from the assessment as far as it included the stables and coach-house, on the ground that the hotel and the stables and coach-house are distinct tenements separated from each other by the public right-of-way and servitude of passage above mentioned. The Surveyor Mr R. S. Smith, on the other hand, contended that the hotel and stables and coach-house formed one assessable subject, and were all chargeable under the second rule of Schedule B of the Act 48 Geo. III. c. 55, and in support of his con-

tention he referred to the case of the *Inland Revenue* v. *Douglas*, November 15, 1879, 7 R. 229."

The Inhabited-House-Duty Act 1808 (48 Geo. III. c. 55), Schedule B, rule 2, provides that "Every coach-house, stable, . . . and all other offices . . . belonging to and occupied with any dwelling-house, shall, in charging the said duties, be valued together with such dwelling-house."

The Customs and Inland Revenue Act 1878 (41 Vict. c. 15), sec. 13, sub-sec. 1, enacts—"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 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, if convenient, 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 on 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."

No appearance was made for Petrie, the respondent, but counsel was heard for the Surveyor of Taxes, who maintained that the stables belonged to and were occupied with the hotel, and therefore fell to be assessed along with it. The mere fact that the stables were physically separated from the hotel by a road or passage was no ground for holding them to be a distinct tenement liable to be assessed separately. The cases of *Douglas* v. *Young*, November 14, 1879, 7 R. 229, and *Cheape* v. *Kinmont*, November 27, 1888, 16 R. 144, conclusively settled that mere physical severance did not affect the unity of an assessable subject.

At advising—

LORD PRESIDENT—I think this case has been wrongly decided, and that the appeal must be sustained. The case of *Douglas* v. *Young* certainly comes extremely near it, the only points of difference being apparently that this is a passage, and in *Douglas'* case the intervening space was denominated a court or yard; and in the second place, that whereas in *Douglas'* case the court seems to have been partly occupied by the innkeeper and partly by other people, this passage is the subject of a public right-of-way, and a servitude right in favour of three feuars having properties adjoining. But those are obviously very unsubstantial distinctions, and do not seem to avail to take this case out of the application of the rule on which the decision in *Douglas* v. *Young* proceeded. I think that these stables, on the facts set out here, are occupied with the dwelling-house, and it being now settled law that a hotel is to be treated as a dwelling-house, I think that in this case the stables are an adjunct of the dwelling-house, and not the less because they are separated by a passage over which other persons have a right to go.

LORD ADAM—I am of the same opinion. I think these stables belong to the dwelling-house in this case.

LORD M'LAREN—I think this case is ruled by that of *Douglas*, which was the case of a hotel not occupied personally by the landlord's family, because they had a separate residence, but a hotel in the strict sense of the term. Now, I do not think that I should ever have found out for myself that such a hotel was an inhabited house, and not a place of business occupied by the owner for the purposes of profit, but as that has been established we must accept it as part of the law applicable to the inhabited-house-duties, and it appears to me to be quite conclusive as a precedent in the present case.

LORD KINNEAR—I agree with your Lordship.

The Court pronounced the following interlocutor—

"Reverse the determination of the Commissioners for General Purposes: Sustain the assessment, and decern; and remit to the said Commissioners to refuse the appeal."

Counsel for Inland Revenue — A. J. Young. Agent—The Solicitor of Inland Revenue.

Friday, January 29.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

NAPIER, SHANKS, & BELL *v.* HALVORSEN.

Arrestment jurisdictionis fundandæ causa—Jurisdiction—Foreigner.

A firm of shipping agents in Leith acted as agents for the owners of a ship (one of whom was a foreigner) down to 1st May 1891, on which date the ship was sold. Although there was no settlement between the parties till 12th August, it appeared from the books of the Leith agents, and the evidence of one of the partners of the firm, that on 1st May there was a small balance due to them by the owners of the ship.

Held that the Court had no jurisdiction over the foreigner by reason of arrestments *ad fundandam jurisdictionem* used against him in the hands of the shipping agents on 3rd June.

By contract constituted by letters and