purport. Its meaning is that in the event of an advance of capital being required for a limited purpose for the benefit of the family, the trustees should be bound to make it on being called upon.

The primary purpose for which the money is to be advanced is for purchasing a dwelling-house or residence "for herself and her said intended husband and family and furnishing the same." It is said that the words which immediately follow, "or for any other purpose," upon which the whole argument of the second parties depends, must be read as if they were entirely unconnected with those which immediately precede. I do not think so. I think the natural meaning of these words, looking to their collocation, is that they are meant to cover some purpose of the same kind, such as building a stable or addition, or at least that the purpose shall be such as permanently to benefit the family.

Then again the amount which the trustees are directed to pay out of the trust funds is not the whole of the trust funds, but such amount of them as shall be specified. And lastly, if a house is bought, the title is to be taken in the name of the trustees, and the house is to form part of the trust-funds.

If the purpose of this clause was to enable Mrs Fowler at any time if she chose to obtain possession of the whole of the trust-estate, those expressions to which I have called attention would have been absolutely superfluous. At the desire of Mrs Fowler the trustees purchased a house; she now calls upon them to sell it and give her the price. If her present argument is right, it was unnecessary to go through that farce; she could have obtained the money at once, assigning any purpose she pleased.

From this I gather, *first*, that it is not every purpose for which the trustees are bound to pay the money on the demand of Mrs Fowler; and *secondly*, that at least the trustees are not bound to pay over the whole trust-estate. Questions might have arisen as to the purposes for which the money was desired which would properly have been for the trustees and not for the Court to decide; but the question being whether the second parties are entitled to the whole trust-estate for the purpose specified, namely, to pay debts unnecessarily incurred, I am not prepared to answer that question in the affirmative.

The Court pronounced the following interlocutor:—

"Answer the question therein stated by declaring that the trustees are bound in terms of Mrs Fowler's written request to pay over to her absolutely the proceeds of the whole remaining trust-estate settled by her, including the house known as Carlogie, with offices and pertinents and furniture and furnishings therein: Find and declare accordingly."

Counsel for First and Third Parties — Balfour, Q.C.—M'Clure. Agents—Bruce, Kerr, & Burns, W.S.

Counsel for Second Parties — Guthrie, Q.C.—Clyde. Agent—R. Addison Smith, S.S.C.

Thursday, June 23.

FIRST DIVISION.

HOLLAND HOUSE ELECTRICAL MANUFACTURING COMPANY, LIMITED, PETITIONERS.

Company—Reduction of Capital—Addition of Words "and Reduced" to Name of Company—Motion to Dispense with on Presentation of Petition for Confirmation—Companies Act 1877 (40 *and* 41 *Vict. cap.* 26), *sec.* 4, *sub-sec.* 2.

The Holland House Electrical Manufacturing Company, Limited, presented a petition to the Court for an order confirming a reduction of its capital resolved on by special resolution duly passed and confirmed by the company. In Single Bills the petitioners, on moving for intimation and advertisement, craved the Court to dispense in the meantime with the addition of the words "and reduced" to the name of the company, in virtue of the powers conferred by sub-section 2 of section 4 of the Companies Act of 1877. They founded in support of their motion upon the case of *Colonial Real Property Company, Limited,* March 3, 1896, 23 R. 547.

The Court, in respect that no special reason had been adduced for granting it, *refused* the motion to dispense with the words "and reduced."

Counsel for Petitioners—Boswell. Agents—H. B. & F. J. Dewar, W.S.

Friday, June 24.

FIRST DIVISION.

LANGSTON (SURVEYOR OF TAXES) *v.* GRANT.

Revenue—Inhabited-House-Duty—Stat. 57 *Geo. III. cap.* 25, *sec.* 1—*Stat.* 5 *Geo. IV. cap.* 44, *sec.* 4—*Stat.* 41 *Vict. cap.* 15, *sec.* 13 (2).

Held, on the authority of *Scottish Widows' Fund Society* v. *Solicitor of Inland Revenue*, January 22, 1880, 7 R. 491, and *Glasgow and South-Western Railway Company* v. *Banks*, July 16, 1880, 7 R. 1161, that the proprietor of premises consisting of two storeys, of which he occupied the upper as a dwelling-house, while in the lower he carried on the trade of a licensed retailer of spirits, there being no internal means of communication between the two storeys, was not entitled to exemption from inhabited-house-duty as regards

that portion of the premises used as a public-house.

Question, whether the cases so followed were decided right.

This was an appeal by F. W. Langston, Surveyor of Taxes, from a decision of the Income-Tax Commissioners for the County of Edinburgh.

The case stated by the Commissioners bore that Mr John Grant, licensed retailer of spirits, appealed against an assessment of £3, 5s. 6d., being the inhabited-house-duty at the rate of 6d. in the £ on £131, the *cumulo* value of a dwelling-house and licensed premises situate in Bath Street, Portobello, and claimed that the duty should be confined to that portion of the premises occupied as a dwelling-house. The following facts were found and admitted—"1. The premises in question consist of a building of two storeys under one roof, of the whole of which the appellant is both owner and occupier. 2. The ground floor, No. 49 Bath Street, is used by the appellant for the purpose of carrying on the trade of licensed retailer of spirits, and the upper storey, No. 47 Bath Street, is occupied by him as his dwelling-house. The terms of his public-house certificate, which is in the form of Schedule A, No. (2), appended to the Public Houses (Scotland) Act 1862, are that he is authorised and empowered 'to keep a public-house at 49 Bath Street, Portobello . . . for the sale in the said house, but not elsewhere . . . of spirits, wine, porter, ale . . .' 3. The only access to the dwelling-house is by the door opening from the street, No. 47 Bath Street, to the staircase leading to the upper storey, and for the appellant to enter his licensed premises from his dwelling-house he has to descend the stair, come into the public street, and enter by the public door No. 49 Bath Street. 4. The dwelling-house is not included in the premises licensed for the sale of exciseable liquors, and they are separately entered in the valuation roll of the city of Edinburgh, the annual value of the house being entered as £33, and of the licensed premises as £98. 5. The licensed premises were formerly occupied by a tenant who was not tenant or occupier of the dwelling-house. No person resides in the licensed premises, as the magistrates of Edinburgh, being the licensing authority within whose jurisdiction Mr Grant's house is situate, have made it an unwritten condition that Mr Grant should not reside in his licensed premises." The Commissioners concluded by saying that being of opinion that no liability to inhabited-house-duty existed in respect of the business premises No. 49 Bath Street, Portobello, they had sustained the appeal, and restricted the assessment to the duty on £33, the annual value of the dwelling-house No. 47 Bath Street, Portobello.

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 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 . . . 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 respectively 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., cap. 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 . . . and whereas it is expedient to extend the said exemptions to the cases herein mentioned—Be it futher enacted, that upon all

assessments to be made for any year commencing from and after the 5th 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 daytime 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."

The inhabited-house-duty was repealed in 1834 by 4 and 5 William IV. cap. 19, but was re-imposed by 14 and 15 Vict. cap. 36, which also expressly revived, with certain exceptions, the powers, provisions, rules, regulations, &c., contained in Schedule B of 48 Geo. III. cap. 55.

By 41 Vict. cap. 15, sec. 13, sub-sec. (2), 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 for the protection thereof."

Argued for the appellant—The decision of the Commissioners was erroneous, and contrary both to the statutes and to the decisions. A long series of cases had settled the point that a person in the respondent's position was not entitled to exemption. The whole house formed one assessable subject, and the absence of internal means of communication between the upper and the lower floors made no difference on the legal aspect of the case. No one was entitled to exemption under the statutes who did not reside in a separate and distinct dwelling-house or part of a dwelling-house—*Scottish Widows' Fund Society* v. *Solicitor of Inland Revenue*, January 22, 1880, 7 R. 491; *Glasgow and South-Western Railway Co.* v. *Banks*, July 16, 1880, 7 R. 1161. See also *Russell*, March 6, 1877, 4 R. 1143; *Union Bank* v. *Solicitor of Inland Revenue*, February 2, 1878, 5 R. 598; *Clark* v. *British Linen Co.*, June 17, 1885, 12 R. 1133; *Smiles* v. *Crooke*, March 6, 1886, 13 R. 730; *M'Innes* v. *Muat*, November 12, 1885, 23 S.L.R. 115; *Commercial Bank*, 1 Tax Ca. 222; *London Library*, 2 Tax Ca. 594; *British Linen Co.*, 3 Tax Ca. 198; *Yorkshire Insurance Co.* v. *Clayton*, 1881, L.R., 8 Q.B.D. 421.

Argued for the respondents—The Commissioners' decision was right. The respondents were entitled to exemption under section 1 of 57 Geo. III. cap. 25. It was quite true that in the case of the *Glasgow and South-Western Railway, ut sup.*, the Lord President had said that that statute "did not contemplate the case of separate parts of tenements being relieved, the whole tenement being the property of one owner." But his Lordship's commentary on the statute was not necessary to the decision of the case, which fell under 5 Geo. IV. cap. 44. In that case, moreover, there was communication between the two sections of the house, and that made all the difference—*Chapman* v. *Royal Bank*, 1881, 7 Q.B.D. 136. The respondents were also entitled to exemption under sec. 13 (2) of the Act 41 Vict. cap. 15. There could be no doubt as to the meaning of the word "tenement"—*Campbell* v. *Inland Revenue*, February 21, 1880, 7 R. 559; *Russell* v. *Coutts*, December 14, 1881, 9 R. 261. The premises here fell within the definition laid down in the latter case. See also *Riley* v. *Read*, 1879, 4 Ex. D. 100. In any event a public-house was not a shop or warehouse and liable to duty within the meaning of Schedule B of 48 Geo. III.—*Bishop of St Albans* v. *Battersby*, 1878, 3 Q.B.D. 359.

At advising—

LORD PRESIDENT—I have found it impossible to resist the conclusion that this case is governed by the cases of the *Scottish Widows' Fund* and the *Glasgow and South-Western Railway Company*; and that it is our duty to follow those decisions and to give judgment in favour of the Crown. But I desire to add that, so far as my opinion goes, our decision to-day is not to be held as adding any new or independent affirmance of the reasoning upon which those decisions depend.

LORD ADAM—I am of the same opinion. My opinion in this case is entirely governed by the previous decisions, and I think it would be matter for serious argument whether these are right or wrong.

LORD M'LAREN—I am perfectly satisfied that the point raised is established by a series of decisions, and in these circumstances I have not thought it necessary to give any independent consideration to the subject because of the obvious inconvenience of reopening questions which have been settled. I therefore offer no independent opinion on one side or the other as to the application of the Act of 1878 as constituting an exemption.

LORD KINNEAR—I agree with your Lordship that the question is decided by a series of judgments which are binding on this Court.

The Court reversed the determination of the Commissioners.

Counsel for the Appellant — Sol.-Gen.

Dickson, Q.C. — A. J. Young. Agent — P. J. Hamilton Grierson, Solicitor to the Board of Inland Revenue.

Counsel for the Respondent—D.-F. Asher, Q.C.—Cooper. Agent—James Purves, S.S.C.

Friday, June 17.

SECOND DIVISION.

[Sheriff of Renfrew and Bute.

RUSSELL *v.* M'LEISH & M'TAGGART.

Reparation—Negligence—Defective Plant—Liability of Person other than Employer for Defective Plant.

A window-cleaner was sent by his employers, a window-cleaning company, to clean the roof-lights of a foundry. The arrangement between his employers and the foundry owners was that the window-cleaners should bring with them all necessary appliances. He went to the foundry without taking with him any planks to stand on while cleaning the roof-lights, some such appliance being necessary for that purpose. Upon going up to the roof he found some planks which were lying on the roof-beams in a position convenient for the execution of his work, and which had been used both by the foundry owners' workmen and by window-cleaners on former occasions for work about the roof. He received no express permission to use these planks from the foundry owners. When he was standing upon one of them engaged in his work it suddenly gave way owing to its being in a rotten condition, and he fell to the ground, sustaining injuries which caused his death. The condition of the plank could have been discovered by examination. In an action of damages by his widow against the foundry owners, *held* that in the circumstances above detailed they were not liable.

This was an action brought in the Sheriff Court at Paisley by Mrs Elizabeth Fields or Russell, widow of David Russell, window-cleaner, Paisley, for her own interest and as tutor and administrator-in-law for her pupil daughter, against M'Leish & M'Taggart, ironfounders, Paisley, in which the pursuer craved decree for the sum of £600 as damages for the death of her husband.

Proof was led, from which it appeared that on 24th February 1897 the pursuer's husband was sent, along with a fellow-workman called Watson, by his employers, the Scottish Window-Cleaning Company, to clean the roof-lights of the defenders' foundry. The arrangement between the defenders and the Scottish Window-Cleaning Company was that the men sent to clean the windows should bring with them all that was required for the job. In order to clean the roof-lights it was necessary that the men should get up to the beams, and that they should have some planks or staging to stand on. On the occasion in question Russell and Watson arrived at the defenders' foundry without bringing any planks with them. Upon their arrival they met Mr M'Leish, a partner of the defenders' firm. They told him that they were the window-cleaners, and asked how they were to get up to the roof. In reply to this inquiry Mr M'Leish said to them that they might either ascend by the crane or borrow a ladder from a neighbouring joiner. They then went off in the direction of the crane, while Mr M'Leish entered the office and saw no more of them. They went up to the roof by climbing the frame of the crane, and on getting up to the beams they found planks laid across the beams in a convenient position for their purpose, and accordingly they made use of these planks to stand on while cleaning the roof-lights. After they had been engaged on this job for about an hour, and after they had cleaned three out of the four roof-lights, when they were cleaning the fourth light, one of the planks upon which they were both standing gave way and they fell to the ground and were seriously injured, Russell's injuries resulting in his death. It was proved that the plank which gave way and caused the accident was old and rotten, and that its condition might have been easily discovered if it had been examined by the defenders. The planks which were used by the window-cleaners upon this occasion had been used upon previous occasions for work about the roof of the foundry both by the defenders' employees and also by employees of the Scottish Window-Cleaning Company.

Watson, who also raised an action against the defenders, deponed as follows:—"The authority we had for using these planks for the window-cleaning was that we found them in position when we went to the work. We saw one of the partners at the gate, and in his presence, without objection, we started to go up and began using them."

The defenders pleaded—"(2) The said David Russell not having been injured through any fault of the defenders, or of anyone for whom they are responsible, the defenders are entitled to be assoilzied. (3) The defenders being under no obligation to provide staging or tackle for the said David Russell, he used their planks at his own risk. (4) In any event, the said David Russell's negligence having materially contributed to cause his injuries, the pursuer is barred from insisting on compensation for his death."

By interlocutor dated 20th January 1898 the Sheriff-Substitute (COWAN) found that the defenders were liable in reparation to the pursuer, and decerned against them accordingly for the sums of £80 to be paid to the pursuer on her own behalf, and of £50 to be invested for the pupil child.

The defenders appealed to the Sheriff (CHEYNE), who on 25th February 1898 issued the following interlocutor—"Recals the interlocutor of the Sheriff-Substitute of date 20th January last: Finds in fact (1) that on 24th February 1897 the pursuer's husband, the now deceased David Russell,