

Wednesday, July 16.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

COTTON'S TRUSTEES v. FARMER
(SURVEYOR OF TAXES).

Revenue—Inhabited House Duty—Exemption—Separate Tenements—Tenement Occupied Solely for Purposes of Business—House Tax Act 1808 (48 Geo. III, cap. 55), Schedule B, Rule 6—Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), sec. 13 (1) and (2).

Premises which, with the exception of one part of them, had formerly been built for and occupied as an hotel, were structurally altered and let to a number of tenants, each tenant being the occupier of one or more rooms in the premises. The premises consisted of a basement, ground floor, and four upper floors, and were entered from the street through an outer and inner door opening into a large hall on the ground floor. A staircase led from the hall to the upper floors. On the ground floor there were three rooms let to one tenant, to which access was obtained by a door opening into one of them from the hall. The rooms in the upper floors opened, not directly upon the common staircase, but in each floor upon a passage communicating with it. Each tenant had a separate key for the door opening into his own part of the premises.

Held that the premises were "divided into and let in different tenements," in the sense of section 13 (1) of the Customs and Inland Revenue Act 1878.

Per the Lord President—"It is quite clear that if you had the ordinary case of a semi-exterior common stair and a set of flats opening off it there would be no question about that. Now does it make any difference that instead of having what I have called a semi-exterior common stair you have a prolongation of the common stair by an interior passage? I think it does not."

The House Tax Act 1808 (48 Geo. III, cap. 55), Schedule B, rule 6, enacts—"Where any house shall be let in different storeys, 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. . . ."

The Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), sec. 13, enacts—" . . . (1) 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. (2) 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 trustees of the late William Cotton, appellants, appealed to the Commissioners for the General Purposes of the Income Tax Acts, and for executing the Acts relating to the Inhabited House Duties for the County of Edinburgh, against an assessment made upon them for the year ending 23rd May 1911 of £31, 16s. 9d., being inhabited house duty at the rate of 9d. per £1 on the sum of £849, the annual value of premises situated at 100 Princes Street, Edinburgh, of which they were the owners. The assessment was made under 14 and 15 Vict. cap. 36 and the provisions of rule 6 of Schedule B, 48 Geo. III, cap. 55. The Commissioners having refused the appeal, the trustees required them to state a Case.

The Case stated, *inter alia*—"The following facts were admitted or proved:—1. The premises, with the exception of that part of them occupied by Robert Smith, were originally built for and were occupied as an hotel, but after having been structurally adapted for use as in the year of assessment they have been for some years past and during the year of assessment, so far as not occupied by the appellants' caretaker, let to a number of tenants who occupy the subjects let to them in some cases as offices, warehouses, or other non-residential purposes, and in one case as a dwelling-house. No part of the premises is occupied by the appellants personally, but their caretaker inhabits a house in the premises as hereinafter stated. 2. The premises consist of a basement, ground floor, and five upper floors. Part of the ground floor of the building consists of four shops structurally separated from the remainder of the building. The part of the basement beneath these shops is also structurally separated from the remainder of the building. Neither this portion of the basement nor these shops are included in the assessment appealed against. There is an entrance

to the ground floor from Princes Street through an outer and an inner door opening into a large hall. In the hall there is a staircase and lift by which access is obtained to the upper floors, and there is also a staircase leading to the basement. Each tenant has a key of the outer door, which is locked at night. The inner door is a swing door which is never fastened.

3. The basement is divided into two portions. Of these one consists of a washing-house and drying-room used by the appellants' caretaker, off the latter of which a w.c. opens, and off a lobby which leads to a coal cellar used by the appellants' caretaker, and from which lobby a staircase gives access to the hall on the ground floor. From the wash-house a door gives access to a passage, off which there open two coal cellars belonging to and used by George Cotton & Son, tobacconists, Princes Street. There also opens from the passage a door by which access is obtained to a flight of steps leading to a lane which communicates with Rose Street Lane. At the end of the said passage there is a door giving access to an open court, and from that court a door gives access to the other portion of the basement. This other portion is occupied by Messrs Oliphant, Anderson, & Ferrier as a warehouse, and from it a stair gives access to that part of the ground floor which is occupied by the said firm as a warehouse and office.

4. The ground floor consists of the hall mentioned above in article 2, and of three rooms occupied by Messrs Oliphant, Anderson, & Ferrier as a warehouse and office. There is also a lavatory. Access to these rooms is obtained by a door opening into one of them from the hall above mentioned. There is also an access to one of them by large doors opening upon Rose Street Lane. The said firm also occupies a portion of the first and second floors, and the only access to this portion is by a staircase from one of the three rooms on the ground floor occupied by the firm.

5. The first floor consists of rooms occupied by Messrs Oliphant, Anderson, & Ferrier as stated in article 4, of three rooms occupied by F. E. G. Hopp as an office, between two of which there is internal communication, of a single room occupied as an office by the World Missionary Conference, and of two rooms, between which there is internal communication, occupied as an office by the Empire Insurance Corporation. Each of these rooms has a door opening upon the passage which communicates with the staircase and lift. From the said passage there is a door opening on to a small lobby. Access is obtained from this lobby by a door to a room occupied as a warehouse by A. Brown, by a second door to the office of the Conservative Women's Franchise Association, and by a third door to two rooms occupied as an office by Messrs Ashford Thomson & Heaton. From the passage above mentioned there is a door opening into a small lobby from which access is obtained to a coal closet and to two rooms occupied by the World Missionary Conference, between

which rooms there is internal communication. There are also a ladies' lavatory and w.c., access to which is obtained from a passage communicating with the staircase. 6. The second floor consists of rooms occupied by Messrs Oliphant, Anderson, & Ferrier as stated in article 4, of a room occupied by Miss Fairley as an artist's studio, of two single rooms occupied by Mrs Feely and Mrs Fletcher respectively for business purposes, and of three rooms between all of which there is internal communication, occupied as an office by Mr M'Crow. There is also a coal closet. Each of these rooms has a door opening upon the passage which communicates with the staircase and lift. There is also a large lavatory communicating with the said passage. From the said passage there is a door which gives access to the rooms occupied by Mr Robert Smith as his dwelling-house. This house, which formerly was a separate house with its own access from the street, is held on a separate title, and consists of a lobby and four rooms entering therefrom on the second floor, used as dining-room, drawing-room, bedroom and kitchen, and four rooms used as bedrooms and a bathroom on the third floor. The only access to these last-mentioned rooms is by a staircase from the said lobby. 7. The third floor consists of the said four rooms and a bathroom, occupied by Mr Robert Smith, and of five rooms and a lavatory occupied by Cadbury Brothers, Limited. A door from the stair landing gives access to a passage with which each of the rooms occupied by Cadbury Brothers, Limited, communicates by means of a door. The door to the lift also opens upon this passage. 8. The fourth floor consists of six rooms let to tenants and occupied for business purposes, and a lavatory. Two rooms are let to the World Missionary Conference, two rooms to the United Free Church Mission Study Council, one room to S. H. F. Capenny, and one room to the West Edinburgh Women's Unionist Association. Each room has a door opening from a passage which communicates with the staircase and lift. Off this passage, at the west end, there is a door which gives access to a stair which communicates with the house of the appellants' caretaker on the fifth floor. At the east end of the passage there is a door by which access is obtained to a stair leading to the fifth floor. 9. The fifth floor consists of four rooms and a bathroom, occupied by the appellants' caretaker, which all communicate with the landing of the stair leading from the fourth floor to the caretaker's house; of three rooms, two of which are let and one is vacant; and of a place for the cistern and lift machinery. The only communication between the caretaker's house and the rest of the building is by means of a door on, and a stair leading from, the fourth floor. Each of the said three rooms has a door opening on to the landing of the stair leading from the fourth floor to them. The caretaker's house is structurally separate from these three rooms. 10. . . . The various occupiers . . .

are entered in the valuation roll as tenants and occupiers of the premises held by them respectively, and they are separately rated on the rents paid by them. . . ."

Argued for the appellants—The premises here were "divided into and let in different tenements" in the sense of section 13 (1) of the Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), and so the only part of them in respect of which inhabited house duty was payable was the part occupied by Mr Smith as a dwelling-house; and the duty so payable was leviable upon Mr Smith himself, and not upon the appellants—House Tax Act 1808 (48 Geo. III, cap. 55), Schedule B, rule 1. The remainder, with the exception of the caretaker's house, being divided into tenements which were occupied solely for the purposes of trade or business or were unoccupied, was exempt—House Tax Act 1817 (57 Geo. III, cap. 25), section 1; Inland Revenue Act 1867 (30 and 31 Vict. cap. 90), section 25; Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), section 13. The caretaker's house was exempted under sub-section 2 of section 13 of the Act of 1878; alternatively, its annual value being below £20, it was exempted under section 11 of the Revenue Act 1903 (3 Edw. VII, cap. 46). Counsel cited the following cases:—*Scottish Widows' Fund Society v. Solicitor of Inland Revenue*, January 22, 1880, 7 R. 491, 17 S.L.R. 314; *Glasgow and South-Western Railway Company v. Banks*, July 16, 1880, 7 R. 1161, 17 S.L.R. 768; *Russell v. Coutts*, December 14, 1881, 9 R. 261, 19 S.L.R. 197; *Corke v. Brims*, July 7, 1883, 10 R. 1128, 20 S.L.R. 778; *Nisbet v. M'Innes, Mackenzie, & Lochhead*, July 15, 1884, 11 R. 1095, 21 S.L.R. 740; *Grant v. Langston*, June 24, 1898, 25 R. 1040, 35 S.L.R. 815, *rev.* May 28, 1900, 2 F. (H.L.) 49, 37 S.L.R. 691; *London and Westminster Bank v. Smith*, [1902] 87 L.T. 244; and referred to Piper's House Tax Laws.

Argued for the respondent—The premises were not divided into different tenements in the sense of sub-section 1 of section 13 of the Customs and Inland Revenue Act 1878, and so there was no exemption from inhabited-house duty. In order to have the benefit of sub-section 1 the different tenements into which a house is divided must be each "so divided and separated as to be capable of being a distinct property or a distinct subject of lease" (*per* Ld. Pres. Inglis in *Russell v. Coutts*, *cit. supra*, at 9 R. p. 265). The different parts of the present premises were not so divided and separated, and so the premises must be treated as a *unum quid*, and not being used solely for the purposes of business or trade they could not have the benefit of sub-section 2 of section 13 of the 1878 Act. The provision in sub-section 2 with regard to a caretaker's house did not apply in the case where a property was divided into different tenements, and so, if the Court should hold that the premises were so divided, inhabited-house duty would still be payable in respect of that part of them occupied by the appellants' caretaker. Section 11 of the Revenue Act of 1903 had no application in a case

like the present; the premises here, so far as they were used as a dwelling-house, were not used "for the sole purpose of providing separate dwellings." Counsel cited the following cases:—*Clerk v. British Linen Company*, June 17, 1885, 12 R. 1133, 22 S.L.R. 750; *Chapman v. Royal Bank of Scotland*, June 3, 1881, 7 Q.B.D. 136.

At advising—

LORD PRESIDENT—This is an appeal against a finding of the Commissioners of Inland Revenue, and has to do with an assessment for inhabited-house duty made upon the premises situated at No. 100 Princes Street, commonly known as the Windsor Building. It seems to me that the question is one of fact, and fact entirely. The history of this legislation, as your Lordships know, is long, and has been illustrated by many cases. Originally under the operation of the Act 48 Geo. III cap. 55, and of the 6th Rule of Schedule B of that Act, if there was any dwelling-house in a house—using the word "house" to mean that space which is included within the exterior walls of the whole building—if there was any portion of it occupied as a dwelling-house, then the whole house became liable for inhabited-house duty. Then came certain exemptions with regard to business premises, and certain others with regard to offices. But I may pass over the earlier legislation and go straight to the provision upon which the whole question turns, the 13th section of the Customs and Inland Revenue Act 1878. That section provides—"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," inhabited-house duty is not to be imposed upon these tenements which are occupied solely for the purposes of trade or business. In order, therefore, to claim the exemption you have got to prove two things—first of all, that the house is divided into and let in different tenements; secondly, that the tenements are occupied for business purposes. In this present case there is no question about the latter branch. The tenements in respect of which exemption is claimed are undoubtedly occupied as business premises. As a matter of fact there is only one residential house in the whole place. It is in a certain portion of the building and is entirely self-contained—that is to say, it has a door of its own, and once the occupier is inside that door, so long as he keeps it shut, two results follow—first, that he cannot get access to any other parts of the house except those let to himself, and second that he can get access to all the parts of the house which were let to him.

I think the case raises, as I say, a pure question of fact. We are told on the authority of several English judgments that what I may call the genesis of that clause in the statute was an intention to do away with the hardship which was considered to be inflicted by the decision in

Attorney-General v. Mutual Tontine Westminster Chambers Association (May 16th 1876, 1 Exch. Div. 409). I refer to the judgment of the Master of the Rolls (Jessel) in the case of the *Yorkshire Fire and Life Assurance Company v. Clayton* (March 10, 1881, 6 Q.B.D. 557, *affd.* December 6, 1881, 8 Q.B.D. 421). The learned Judge there describes what has happened. He describes, and the other Judges describe, the change that has come over building methods, and how flats, which as your Lordships know had long been common in Scotland but which were not well known in England, had become a very well-known form of building—how, until section 13, although those flats were really distinct and separate yet they would not be so considered, and any large building which included many flats would have been held as one building, and therefore an inhabited house, if only one portion of it were inhabited, and how the law was changed.

I think your Lordships must take the state of the building as you find it, and therefore I do not think myself that it is perhaps of very great value to ponder deeply upon the particular plans which were the subject of discussion in particular cases. If you take it by cases, then I think the case might be put as it was put by Lord President Inglis in the case of *Clerk v. British Linen Company*, when he says "Is this case to be regulated by the judgment in the case of *Coutts*, or by that in the case of *Corke v. Brims*?" I do not read what his Lordship said. I think, if you put it in that way, this case resembles *Corke v. Brims* and not *Coutts*. I put my judgment in this way—I think that all those various tenements into which the whole building is divided are separate tenements. It is quite clear that if you had the ordinary case of a semi-exterior common stair and a set of flats opening off it there would be no question about that. Now does it make any difference that instead of having what I have called a semi-exterior common stair you have a prolongation of the common stair by an interior passage? I think it does not.

I quite agree that if all you can say in fact is that there are various rooms in the house to which any person in the house has access, then the house has not been divided into separate premises such as I find in this house. My judgment upon the fact as a jurymen is that each of those tenements is separately let to a separate person, who has a separate front-door key to his own premises with which nobody else has anything to do, and, in particular, that the one person who is a house occupier is entirely separate from all the rest, being entirely self-contained and kept by himself, and having nothing to do with the rest of the house—except, I agree, that he has not only to come down the stair but in order to reach the head of a stair he has to pass along a landing. I do not think that makes any difference. I think this house is truly divided into separate tenements, and that the judgment of the Commissioners is wrong, and that relief ought to be granted.

LORD KINNEAR—I agree with your Lordships and for the reasons your Lordship has stated.

LORD MACKENZIE—I also agree with your Lordship. I think the question to be decided now is merely a question of fact, and I certainly agree with the observations made by your Lordship as to its not being useful to lay the plans which have been made the ground of judgment in one case alongside the plans which have been produced in the case under consideration in order to see whether there is any analogy between the one case and the other. The principles to be applied have been clearly defined. They were laid down by the Lord President in *Russell v. Coutts*, and quoted by the Lord Chancellor in the case of *Grant v. Langston*. He only advocated the application of those principles, and made no comment.

It was pointed out in the case of the *London and Westminster Bank*, to which we were referred, that each case must be decided on its own circumstances; and it is, I think, apparent that the development of building, and the erection of large tenements divided into flats, or subdivided into different subjects, each capable of being made the subject of a separate lease, show how little use it is to go back to cases which were dealing respectively with a house in Banff and a house in Wick. In the present case we are dealing with a large building in Princes Street Edinburgh, which had been converted, on account of the exigencies of the time, into different tenements. It is quite apparent, in regard to the dwelling-house occupied by Robert Smith, that it is entirely shut off and therefore satisfies all the canons that were laid down in such a judgment as that of Lord Brampton in the case of the *London and Westminster Bank*. This house was formerly a separate house with a separate entrance from the street and with a separate title, and the mere fact that in order to get access to it now one requires to go along a common passage does not make it any different from flats to which access is got from a common stair. It is, of course, obvious that one cannot sub-divide by contract merely. There must be more than that. I think that the description given of the subjects shows clearly, when the provisions of the Act of 1878 are applied, that the building is divided into and let in different tenements, and that the bulk of those are occupied solely for the purposes of trade or business.

The Court pronounced this interlocutor—
". . . Reverse the determination of the Commissioners and remit to them to discharge the assessment: Order repayment of the inhabited-house duty paid on the sum of £849, and decern. . ."

Counsel for the Appellants—Cooper, K.C.—Maitland. Agents—Henderson & Munro, W.S.

Counsel for the Respondent—Solicitor-General (Anderson, K.C.)—J. A. T. Robertson. Agent—Solicitor of Inland Revenue (Sir Philip J. Hamilton Grierson).