

respondents, or any of them, from acting as councillors, magistrates, or office-bearers of the burgh in any way or to any extent which shall be inconsistent with such arrangements for the administration of the burgh as your Lordships may be pleased to make under this petition, &c.”

The two parties in the town-council were separately represented by counsel at the hearing of the petition, but no opposition was made to the application.

Authorities cited—*City Clerk of Edinburgh*, M. 7436; *Town-Clerk of Edinburgh*, M. 7437; *Walker*, M. 7447; *Kay v. Bell*, Mar. 11, 1830, 8 S. 719; *Forbes*, Dec. 22, 1838, 1 D. 351; *Fowler*, Jan. 30, 1867, 5 Macph. 337; *Miller*, June 20, 1840, 2 D. 1181; *Kidd*, Dec. 17, 1852, 15 D. 257; *Martin*, Jan. 25, 1853, ib. 312; *Greig*, Jan. 21, 1842, 4 D. 422.

The Court without delivering opinions pronounced the following order:—

“The Lords having considered the petition of William Herron, town-clerk of the royal burgh of Renfrew, and heard counsel for the petitioner, and also for the twelve persons, respondents, who since the annual election in November last constitute the full number of councillors in terms of the sett of the burgh and Acts of Parliament thereanent,—Find that it was the duty of the said twelve councillors, and they were bound under the provisions of the Act 3d and 4th William IV. cap. 76, to assemble in the town hall, or other their usual place of meeting, and there to elect from among their own number a provost, two bailies, a treasurer, and other usual and ordinary office-bearers, if any, or to fill up by such election so many of the said offices as were vacant, according to the sett of the said burgh and Acts of Parliament thereanent: Find that the said respondents have hitherto failed to perform the said statutory duty, and are still bound and obliged so to do: Therefore appoint and ordain the said twelve councillors, respondents, to assemble on Monday the 2d day of February next, in the town hall, or other usual place of meeting of the council of the said burgh of Renfrew, and then and there, by their votes or plurality of votes, to elect from among their own number a provost, one bailie, and a dean of guild, the persons so elected to hold office respectively for the same period as if they had been timeously elected according to the provisions of the said statute: Appoint the petitioner, as town-clerk, to call the said meeting, and to give not less than four days' notice thereof, and of this deliverance, to each of the said twelve councillors: Ordain each and every one of the said twelve councillors, respondents, to attend the said meeting, and then and there to act and vote in the said election along with the other councillors present, or else to allege a reasonable and sufficient cause for his absence and failure to act as aforesaid, as he shall be answerable, with certification as effeirs: Appoint the petitioner to report to the Court the whole proceedings which take place under this deliverance: Supersede further consideration of the petition till such report shall be received: Reserve the question of expenses.”

Counsel for Petitioner—Balfour—Campbell.
Agent—A. Kirk Mackie, S.S.C.

Counsel for Bailie M'Kenzie and Others—Ure.
Agents—Dove & Lockhart, S.S.C.

Counsel for the other Six Councillors—Pearson.
Agents—Pringle & Dallas, W.S.

Thursday, January 22.

FIRST DIVISION.

[Exchequer Cause.]

COWAN & STRACHAN v. INLAND REVENUE,
AND
SCOTTISH WIDOWS FUND v. INLAND
REVENUE.

*Revenue—Inhabited - House Duty—Caretaker—
Tenement—Act 48 Geo. III. cap. 53, Sched. B.
Rules 3, 5, 6, 14—Act 41 Vict. cap. 15, sec. 13,
subsecs. 1 and 2.*

Certain premises consisted of a shop on the street floor and of three flats above, extending over the shop and also over an adjoining shop. The first and third flats were occupied as show and work rooms, and had internal communication with the shop below. The second flat was occupied by the salesman of the shop, who was paid by salary. He had in addition to look after the premises and to keep the keys, for which he received no additional salary, but had the occupancy of the house, and he had also to provide dinner in the house for certain employees, for which he was paid so much per head. There was no direct internal communication between the shop and the second flat, but access to the second flat was obtained by means of a stair in the exclusive occupation of the proprietor of the shop, and access to the first and third flats, which communicated with the shop, might also be obtained by this stair. *Held* (following the *Union Bank*, Feb. 2, 1878, 5 R. 598) that the entire premises, including the second flat, were liable in inhabited-house duty.

Certain other premises consisted of three flats and an area or sunk flat. The ground or street flat and the one immediately above were occupied by a Society for the purpose of carrying on the business of Mutual Life Assurance. The area or sunk flat was occupied as a dwelling-house by one of their messengers for the protection of the premises, and had internal communication with the two flats occupied as the offices of the society. The third flat, being the one immediately above the office, was occupied as a dwelling-house by the cashier of the society, who got the house, unfurnished, as part of his salary, and without any special arrangement as to his ceasing to occupy the house on his ceasing to hold office under the society. It had no internal communication with the other flats, but was entered by a stair common to it and to the occupiers of the adjoining house. *Held* that the entire premises, being one tenement belonging to one person, and no portion being let to

another person, were liable in inhabited-house duty, inasmuch as they were not occupied "solely for the purposes of any trade or business, or of any profession or calling," in terms of the 13th section, subsec. 2, of the Act 41 Vict. cap. 15.

In the first of these cases Messrs Cowan & Strachan, silk mercers, appealed to the Commissioners for the County of Edinburgh against an assessment of "£21, 5s. made upon them for inhabited-house duty at the rate of 6d. per £ on £850, the annual value of the premises occupied by them at 15 Princes Street, Edinburgh. The premises consisted of a shop on the street or ground floor, and of three flats above, which extended not only over the shop occupied by the appellants, but also over the adjoining shop, owned and occupied by Messrs Thomas Methven & Sons, seedsmen and florists. The first and third flats were occupied by the appellants as show and work rooms, and have internal communication with the shop below. The second flat was occupied as a dwelling-house by William Douglas, who was a salesman of the firm, paid by salary. In addition to his duties in that capacity, he had to look after the premises over-night and on Sundays, to open them in the morning, and to superintend the cleaning, to wait in the business premises until all goods were despatched, to close the shop, and to keep the keys. For the discharge of these duties he received no additional salary, but was allowed the occupancy of the house (unfurnished) as an equivalent. By a separate contract Douglas provided dinner in the house for certain of the employees of the firm, and for this he was paid so much per head. This flat (which was separately assessed for property-tax at a rental of £50) had no internal communication with the other parts of the building, but access was obtained to it by means of a stair rising from a passage between the shops occupied by the appellants and Messrs Methven & Sons. This last-named firm had right to the use of the passage, from which they had a side entrance to their shop. The appellants, however, had the exclusive right to the stair, but originally it had been the common stair of the tenement.

"The Commissioners were of opinion that the appellants were liable for inhabited-house duty on the whole premises as charged, and accordingly they refused the appeal and confirmed the assessment."

On the craving of the appellants a Case was then stated for the opinion of the Court of Exchequer.

It was narrated in the Case (1) that the appellants had contended "(first) that the shop on the ground floor, and the first and third flats connected therewith, and used exclusively as business premises, were not liable to inhabited-house duty; but that the second flat, having a separate entrance by a passage common to the appellants and the occupant of the adjoining shop, must be held to be a distinct subject, liable to inhabited-house duty on the annual value thereof, and they craved that the assessment should be restricted accordingly. And (second) alternatively, that if the premises were held to be in the occupation of the appellants through their servant, they were only so occupied for the purpose of protection, and therefore came under the exemption granted by the Act

41 Vict. cap. 15, sec. 13, subsec. 2." (2) That in support of the assessment it had been argued "that the second flat was really in the occupation of the appellants through their servant, and that although there was no internal communication there was attachment, and that therefore the whole premises were chargeable under the Act 48 Geo. III. cap. 55, Schedule B., Rule 3. And further, that the premises did not come under the exemption granted by the Act 41 Vict. cap. 15, sec. 13, subsec. 2, in respect that the terms of the statute, 'although a servant or other person may dwell in such house or tenement for the protection thereof,' were not applicable to the case of an employee holding a position such as that held by Mr Douglas, and reference was made to the case (No. 1115) of the *National Bank of Scotland*, decided by the Judges in Scotland 26th July 1870."

In the second case the Scottish Widows Fund and Life Assurance Society, 9 St Andrew Sq., Edinburgh, had appealed to the Commissioners against an assessment of £40, 13s. 9d. made upon them for inhabited-house duty on a rental of £1085, the annual value of the premises belonging to them at the above-named address, at the rate of ninepence per pound. The premises consisted of three flats and an area or sunk flat; the ground or street flat and the one immediately above were occupied by the Society for the purpose of carrying on the business of Mutual Life Assurance. The area or sunk flat was occupied as a dwelling-house by one of their messengers for the protection of the premises, and had internal communication with the two flats occupied as the offices of the Society. The third flat, being the one immediately above the office, was occupied as a dwelling-house by the cashier of the Society, who got the house unfurnished as part of his salary, and without any special arrangement as to his ceasing to occupy the house on his ceasing to hold office under the Society. It had no internal communication with the other flats, but was entered from a stair No. 10 St Andrew Square, between the premises occupied by the Society and those belonging to Mr William Christie, clothier, &c., No. 11. This stair, which was under the roof of No. 11, and not of No. 9, was common to the appellants and to Mr Christie and his tenants in the flats above his shop.

The Commissioners were of opinion that the appeal fell to be decided in conformity with the judgment of the Court of Exchequer (Scotland) in the case of the *Commercial Bank of Scotland* (February 7, 1879, not reported), and accordingly they refused the appeal, and confirmed the assessment.

On the craving of the appellants a Case was then stated for the opinion of the Court of Exchequer.

It was narrated in the Case (1) that the appellants had contended "(first) that schedule B, Rule 3, of the Act 48 Geo. III., cap. 55, did not apply to business premises such as those in the present case, and that consequently such business premises, falling to be rated separately, were within the exemption created by the Act 41 Vict. cap. 15, sec. 13, subsec. 2, and the only assessable subject was the dwelling-house; and (second, and *separatim*) that the premises in question fell within the exemptions created by the combined action of subsections 1 and 2 of section

13 of the said Act, 41 Vict. cap. 15, and the assessment ought to be restricted to that referring to the value of the dwelling-house alone.” (2) That in support of the assessment it had been maintained, “*first*, that the first objection was groundless, as offices were not charged under the third but under the fifth rule of the schedule of the Act above quoted; and *second*, that although the access to the flat occupied by the cashier was by a common stair outside the building in which the offices of the Society are situate, the flat itself was under the same roof with, and was really attached to and formed part of, the premises of the Society, and that being occupied by one of their officers, who did not reside therein for the protection of the premises, the whole building was thereby rendered liable to inhabited-house duty, which was chargeable *in cumulo* against the Society.”

By 48 Geo. III. cap 55, Schedule B, rule 3, it was enacted that “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 rule 5 it was enacted that “Every hall or office whatever belonging to any person or persons, or to any body or bodies politick or corporate, or to any company, that are or may be lawfully charged with the payment of any other taxes or parish rates, shall be subject to the duties hereby made payable as inhabited houses; and the person or persons, bodies politick or corporate, or company, to whom the same shall belong, shall be charged as the occupier or occupiers thereof.”

By rule 6 it was enacted that “Where any house shall be let in different stories, 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.”

By rule 14 it was enacted that “Where any dwelling-house shall be divided into different tenements, being distinct properties, every such tenement shall be subject to the same duties as if the same was an entire house, which duties shall be paid by the occupiers respectively.”

By 41 Vict. cap. 15, sec. 13, subsec. 1, it was provided that “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 the 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.”

By subsection 2 of the above section 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.”

Both cases, which were appointed to be heard before the First Division, were argued on the same day, and were advised together.

At advising—

LORD PRESIDENT—The first case that was argued to-day is the case of Cowan & Strachan, and although we did not think it necessary to call for an answer on the part of the Crown, we thought it desirable to hear both cases before we decided either, because they both depend in some degree upon the same statutes, but we must take them separately now, because they undoubtedly depend upon different clauses of the statutes, and upon different views of the same statute.

Now, in the case of Cowan & Strachan, the premises occupied by them consist of a shop on the street floor and three flats above, extending over an adjoining shop occupied by another person. The first and third flats are occupied by the appellants as show and work-rooms, and have internal communication with the shop below—that is to say, you can from the shop below on the street floor go up by a stair to the first and third flats. The second flat, between the first and third, is occupied as a dwelling-house by a person of the name of Douglas, who is the appellants' salesman, and who is paid by a salary. He lives there apparently with his family. He takes charge of the premises undoubtedly, but he cannot be said in any ordinary sense of the word to be a mere caretaker. On the contrary, he has very large responsibilities laid upon him in connection with the conduct of the appellants' business. He gets this dwelling-house as part of his remuneration for the services which he performs, and in that dwelling-house, by a separate arrangement, we are told that he provides dinner for certain of the employees of the firm. Now, this house as occupied by Mr Douglas enters from a stair. The passage leading from the street to that stair is common to the appellants and their next door neighbours Messrs Methven, seedsmen, but the stair belongs exclusively to the appellants. Mr Douglas' house enters from that stair, and so do the first and third flats, occupied as part of the business premises of Cowan & Strachan, so that the stair being exclusively in the occupation of the appellants, the part of their premises occupied by Douglas by means of that stair communicates with the other portions of their premises occupied as show-rooms; and thus there is really internal communication between Mr Douglas' dwelling-house and the portions of the building—indeed all the building which is occupied as a shop or business premises.

Now, the question is, whether under the construction of the 3d rule of Schedule B of the Act 48 Geo. III., chapter 55, the whole premises are assessable as a dwelling-house with business pre-

leases attached, and if there could have been any doubt on the construction of the statute, I think it has been already decided by this Court in the case of the *Union Bank* (Feb. 2, 1878, 5 R. 598). There was a point intended to be raised in the *Union Bank* case, but which we could not decide because it had not been properly brought out, but the point which we did decide was the construction and effect of that rule 3 to which I have referred, and in accordance with that decision I cannot say that I have the slightest doubt that the duty has been properly assessed in this case.

Then we come to the case of the *The Scottish Widows Fund*, which undoubtedly requires more careful consideration—in the first place, because we have no previous case deciding the point, and, in the second place, because it depends upon a different view of the statutes altogether from that which applies to the case of *Cowan & Strachan*, and requires a very careful consideration of the different clauses of the Acts, and a special consideration of the precise meaning of the words used in the series of statutes.

As to what the condition of this house or building belonging to the *Scottish Widows Fund* would have been as an assessable subject under the Act 48 George III. cap. 55, I do not think there can be any doubt—the entire building which belongs to the Society is an assessable subject under that statute. The duty is laid upon inhabited dwelling-houses, but it must be observed that according to the construction put upon these words in the statute itself they comprehend not merely houses in which people live—that is to say, in which they eat and sleep—but also houses which are occupied in different ways although nobody eats or sleeps in them at all. The 5th rule of the Schedule B is that undoubtedly under which this house would have fallen as regards the part of it occupied as business premises by the *Scottish Widows Fund Society*, and the words are these—“Every hall or office whatever belonging to any person or persons, or to any body or bodies politic, or corporate, or to any company, that are or may be lawfully charged,” &c. Now, that is just as much as to say a hall or office is for the purpose of this Act an inhabited dwelling-house. Now, supposing that under this Act of 48 George III. a building such as we are dealing with here, belonging to one proprietor, is used partly for living in and partly for carrying on business in, I cannot in the least degree doubt that it is just one inhabited house within the meaning of this statute, because a part of an inhabited house does not cease to be a part of an inhabited house when it is occupied as an office, but, on the contrary, is declared to continue to be an inhabited house notwithstanding that there is no person living in it. And therefore to say that you must lay on two different duties—one upon the portion of the house that the proprietor lives in, and another upon the portion of the house that he carries on his business in—is, I think, under this Act an absurdity; and this is still further illustrated by a consideration of some of the other words which are not specially applicable to the case in hand. Suppose that a proprietor, instead of occupying the entire building himself, lets it out to a number of tenants. That case is provided for by the 6th rule. And, again, the 14th rule provides for the other case, where an entire

house or building like this is divided into separate tenements, being different properties belonging to different owners; there the opposite rule prevails, and each owner becomes assessable, or the occupier under each owner becomes assessable for his own tenement only. Now, all that I think under the Act 48 Geo. III. is extremely clear and intelligible, and I do not think there can be the smallest doubt that if we were here dealing with the present case under the Act 48 Geo. III. or any of the subsequent statutes, the assessment must be held to be good, for it is laid upon a property which, in the whole, notwithstanding the different ways in which it is occupied by its proprietor, is one assessable subject. Then, under the Act 14 and 15 Vict. cap. 36, I think it will be found that the same result follows. The house-duty with which we are dealing was repealed at one time in the reign of William IV., but it was re-imposed by the statute of Her present Majesty, and in re-imposing it at a different rate from the old statute, this Act of 14 and 15, cap. 36, of Her Majesty's reign just re-enacted in regard to that duty all the rules and regulations and penalties and forfeitures which had existed under the previous statute of 48 Geo. III., and among other things I think it revived and made applicable to the new duty the provisions of Schedule B and the rules in that schedule. So that, without going through the provisions of that statute in detail, I content myself with saying that I think that is the result.

Now, it must be observed that down to this time there were no exceptions whatever beyond those which existed in the old Act of 48 Geo. III. The exempting clauses with which we have become familiar are of later date than this Act 14 and 15 Vict. c. 36 and under this statute it appears to me, that as under the Statute 48 Geo. III. c. 55, the building belonging to the *Scottish Widows Fund* would have been assessable as one single tenement, no part of it being occupied in such a way as to create any exemption. Well, then, in the progress of legislation we see that, while exemption was originally confined to persons in trade—shopkeepers and occupants of warehouses—it came to be extended to business premises of a different kind, and without going through those exemptions and the history of them, which would be of no manner of value here, we come down to the latest of these statutes, which is really the rule for the exemptions upon which we must act now—the *Customs and Inland Revenue Act 1878*. The 13th section of that Act provides, that with respect to the duties on inhabited houses after such and such a year, the following provisions shall have effect, and the first of these is—[reads as above]. Now, it is quite clear that this first subsection deals precisely with the same case that the 6th rule of Schedule B of the Act 48 George III. dealt with. That is the case where the proprietor of an entire house lets it out in different portions to different tenants. Under the Act 48 George III. he was held to be the occupier of the entire house, and was liable for the entire duty charged upon the whole house, but exemptions having been introduced in favour of trade or business premises since that statute, it seemed only reasonable that in such a case the person who is described here as the person chargeable “as occupier of the house”—that is, under rule 6 of Schedule B, the proprietor of the

entire house—should be exempted from duty in so far as portions of his house had been let out for and used as business premises only. Now, that is the object of the first subsection of the first clause of exemptions in this statute, and there is just one other, and that is contained in the second subsection. It is expressed in very general terms undoubtedly, but its meaning, I think, after this examination of the statute, is not doubtful—[reads as above]. Now, be it observed that this deals with a house or tenement as being the assessable subject. The assessable subject, apart from this exemption altogether, in the present case is the building, and the entire building, occupied by the Scottish Widows Fund, and the fair meaning of these words “every house or tenement,” I think, is every house or tenement belonging to one proprietor, because if the house or tenement was divided between several proprietors, the unrepealed provisions of the Act 48 George III. would make each separate proprietor assessable for his own share of the duty.

Now, taking it in that sense, every house or tenement belonging to one proprietor is to be exempt upon certain conditions. The first condition is, that it is to be occupied “solely for the purposes of any trade or business or of any profession or calling.” If it is not occupied solely for that purpose, it is not within the subsection. In the second place, while there is a provision that a caretaker may dwell in the premises without derogating from the condition that it is to be occupied solely for business purposes, it is quite clear that if anybody other than a caretaker, or higher in his position, or different in his character from a caretaker, occupies the premises or part thereof, those premises are not within the exemption. Tested by that construction of the statute, what have we here? I have no doubt a caretaker lives in the area flat of this building, and if he were the only occupant of the premises besides the persons who carry on the business of life assurance, why, that would be no objection at all to the application of the exemption; but part of this assessable subject is occupied by another man altogether as a dwelling-house. No doubt he is an officer of the company, but it does not in the least degree alter the nature of the case that he is an officer of the company, because he occupies the upper floor of this building as a dwelling-house; and, therefore, it cannot be affirmed, in the words of this clause of exemption, that the tenement is occupied solely for business purposes. I think, therefore, that in this case also, the duty has been properly laid on.

LORD DEAS concurred.

LORD MURE—In regard to the first case, I think it is quite distinctly ruled by the decision in the *Union Bank* case referred to; I have no doubt upon that point.

The other case has been argued very fully. I come to the same conclusion as your Lordship, that under the provisions of the Act 48 George III. cap. 55, and the rules and regulations there laid down, the property belonging to the Scottish Widows Fund is assessable as one subject. That being the case, the only point for consideration is whether the 13th section of the Act 41 Vict. cap. 15, exempts that property from the assessment to

which it was subjected. Subsection 2 is very precise to the effect that the exemption is applied to tenements occupied solely for the purpose of any trade or business. That is not the case with this tenement. One of the flats of it is occupied simply as a dwelling-house by one of the officials, who gets that dwelling-house to live in, and so does not come within the description of the subdivision, and accordingly it is not occupied solely for the purposes of trade.

LORD SHAND—I do not think it necessary to say anything about the case of *Cowan & Strachan*. As your Lordship has said, it is ruled by that previous case to which reference has been made.

In regard to the case of the Scottish Widows Fund, the question seems to turn entirely upon the meaning to be attributed to the second subsection of clause 13 of the statute 41 Vict. cap. 15. Now, I think in the first place, in regard to the facts of this case as appearing on the statement of the Commissioners, that the building—the whole of this building—is plainly occupied by the Scottish Widows Fund Society. It is true that part of it is used as a dwelling-house by one of their servants; but that is not in the capacity of a tenant, but simply as representing them, and his occupancy could practically be brought to an end at any time they chose. Therefore this building is entirely occupied by the Scottish Widows Fund Society.

In the next place, part of this building is certainly a dwelling-house, and that being so, it appears to me that the only question which remains is whether the words “house or tenement” in subsection 2 are not to be read as referring to the whole of this building in the circumstances in which the case arises. It is not a case in which a building is divided amongst different proprietors. It is a building which is the property and in the occupation of one proprietor; and that being so, it appears to me that the words “house or tenement” in this section, must be read with reference to the whole building, and unless it can be predicated that that building in its entirety is occupied solely for the purpose of trade or business, or profession or calling, by which profit is gained, the exemption does not apply. You cannot say that of this building, because part of it is used as a dwelling-house. I therefore agree in the result arrived at by your Lordships.

The Court affirmed the determination of the Commissioners in both cases.

Counsel for *Cowan & Strachan*—Wallace.
Agent—Lindsay Mackersy, W.S.

Counsel for the Scottish Widows Fund—Balfour—Graham Murray. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Inland Revenue—Lord Advocate (Watson)—Solicitor-General (Macdonald)—Rutherford. Agent—The Solicitor of Inland Revenue.