cified in the record, cross the Eden and graze on the lands of Mayfield: Find that it is not proved that the said defender failed to take reasonable precautions to prevent his cattle from trespassing on the said lands so as to warrant an interdict within the terms of the prayer of the petition: Therefore dismiss the appeal; affirm the judgment of the Sheriff appealed against; of new dismiss the petition and find the defender entitled to expenses in the Inferior Court, subject to modification; find him entitled to expenses in this Court," &c.

Counsel for Pursuer — Rhind — M'Kechnie. Agents—J. B. Douglas & Mitchell, W.S.

Counsel for Defender — Mackintosh — Ure. Agents—Dove & Lockhart, S.S.C.

Thursday, November 12.

FIRST DIVISION.

[Lord Fraser, Lord Ordinary on Exchequer Causes.

M'INNES *v.* MUAT (SURVEYOR OF TAXES).

Revenue—Inhabited-House-Duty—Separate Tenements—Customs and Inland Revenue Act 1878 (41 *and* 42 *Vict. cap.* 15), *sec.* 13, *sub-secs.* 1 *and* 2—*Act* 48 *Geo. III. cap.* 55, *Schedule B, Rule* 3.

Premises consisted of a front building of two storeys and attics with a back building of one storey. The proprietor occupied the ground floor of the front building as a shop, and the first floor and attics as a dwelling-house. *Held* that the whole premises formed one tenement for the purpose of assessment for inhabited-house-duty, and that neither of the exemptions conferred by the Customs and Inland Revenue Act 1878, sec. 13, applied.

Dugald M'Innes, wine and spirit merchant, 15 Rue-End Street, Greenock, appealed to the General Commissioners against an assessment to inhabited-house-duty made upon him for the year 1884-85, amounting to £2, 2s. 6d., being inhabited-house-duty at 6d per £ on £85, the annual value of a shop, store, and dwelling-house at 15 Rue-End Street, of which he was the proprietor and occupant. In the valuation-roll of the burgh of Greenock the annual value of the shop and store was entered at £65, and the dwelling-house at £20.

The facts stated in the Case for the Court were:—"The premises in respect of which the assessment is made consist of a building of two storeys and attics fronting Rue-End Street, and a back building of one storey. At the east end of the buildings there is an open close or passage leading from Rue-End Street to a door situated at the back and bottom of a turnpike stair, by which stair common access is obtained from Arthur Street to a property of three storeys in that street also belonging to the appellant M'Innes. Between the front and back building there is a court opening from the said close or passage, a portion of which at the inner end has been covered. The ground floor of the front building is occupied by the appellant as a shop, with a front entrance from Rue-End Street and a back entrance from the said court through the portion thereof covered as aforesaid. This back entrance not only gives access to the said shop, but also affords access by a back door to another shop, also occupied by the appellant in the aforesaid property in Arthur Street belonging to him, separately entered in the valuation-roll at a rental of £16, but not included in the present assessment. Both shops have a common entrance from the said court, and have internal communication with each other under the portion of the court covered as aforesaid. The first floor and attics of the premises assessed are occupied by the appellant as a dwelling-house. Access is obtained to the first floor by an open and uncovered stair from the said court, and to the attics by an internal stair leading from the first floor. The back building is occupied as a store or cellar entered by a door from the said court. There is internal communication by a door between the said store or cellar and the shop in Arthur Street. The appellant has thus access from the shop to the house, and also to the stores or cellars, without going into the open close or passage here referred to, but there is no communication between the shop and the house except by means of the said outside stair from the court."

M'Innes contended that the assessment should be restricted to the house, the annual value of which was £20, on the ground that there was no internal communication between the house and the shop; that the shop and store were only part of one tenement, which consisted of these subjects and the shop in Arthur Street; that the said tenement was used solely for business premises, and was part of a property which was divided into and let in different tenements, and as such he was entitled to exemption from duty thereon under the Customs and Inland Revenue Act 1878, sec. 13, sub-sec. 1; also under the second sub-section of section 13 of the same Act, as the house fell under the designation of a house or tenement according to the meaning of these words in that sub-section.

The Surveyor of Taxes contended that the shop in Rue-End Street and the dwelling-house above it formed one inhabited house in the sense of the Act; that the said shop with the store or cellar behind was attached to the dwelling-house, and that these premises being entirely occupied by the appellant he was liable to the assessment under rule 3 of Schedule B, 48 Geo. III. cap. 55.

The Surveyor further maintained that the division of a dwelling-house into different tenements, when such tenements remain in the occupation of the owner, has no effect upon the liability to inhabited-house-duty, and that the premises assessed not being divided into and let in different tenements, the exemption contained in section 13, sub-sec. 1, of the Customs and Inland Act 1878 (41 Vict. cap. 15), did not apply, and neither did the exemption in sub-sec. 2, the house not being occupied solely for trade or business purposes.

The Commissioners confirmed the assessment.

M'Innes took a Case.

Argued for him—Although the house was not let out to separate tenants, yet it was structurally divided, and was capable of being

separately let, while by far the larger portion of the tenement thus structurally divided was used solely for business purposes. The decision of the Commissioners ought, accordingly, under sub-sections 1 or 2 of section 13 of the Revenue Act of 1878, to be reversed.

Authorities—*Scottish Widows Fund* v. *Solicitor of Inland Revenue*, Jan. 22, 1880, 7 R. 491; *Russell* v. *Coutts*, Dec. 14, 1881, 9 R. 261; *Corke* v. *Brims*, July 7, 1883, 10 R. 1128; *Nisbet* v. *M'Innes*, July 15, 1884, 11 R. 1095; *Allan* v. *Thomson*, July 15, 1884, 21 S.L.R. 741.

Replied for the Surveyor of Taxes—The case did not fall under the exempting clauses. (1) It did not fall under sub-section 1, because the building was not let out in separate tenements; (2) and it did not fall under the second sub-section, because the house which the appellant occupied himself was not occupied solely for business purposes, but partly as a dwelling-house.

Authority—*Union Bank* v. *Solicitor of Inland Revenue*, Feb. 2, 1878, 5 R. 598.

At advising—

Lord President—The Commissioners tell us that the subject of assessment here is the annual value of the shop and store and dwelling-house situated at No. 15 Rue-End Street, of which Mr M'Innes, the appellant, is proprietor and occupant. They say, further, that the premises consist of a building of two storeys and attics fronting Rue-End Street, and a back building of one storey. And they say further, that between the front and back buildings there is a court opening from a close or passage, a portion of which at the inner end has been covered. The ground floor of the front building is occupied by the appellant as a shop with a front entrance from Rue-End Street, and a back entrance from the court through the portion of the court that is covered. This back entrance not only gives access to the shop, but also affords access by a back door to another shop, also occupied by the appellant in the property in Arthur Street belonging to him, separately entered in the valuation-roll at a rental of £16, but not included in the present assessment. Both shops have a common entrance from the court, and have internal communication with each other. The first floor and attics of the premises assessed are occupied by the appellant as a dwelling-house.

Now, upon these facts I cannot entertain the smallest doubt that the Commissioners were right in their determination, because they are precisely the same kind of facts which were before the Court in the two cases of *The Union Bank* and *The Scottish Widows Fund*—that is to say, the person who is assessed, and who is in the position of the appellant, is the proprietor and occupant of the entire house which forms the subject of the assessment. It is plain, therefore, that he cannot be within the meaning of the first sub-section of section 13 of the Act 41 and 42 Vict. cap. 15, because the house is not let out in separate tenements; on the contrary, it is all in the personal occupation of the proprietor. And he cannot be under the exemption of the second sub-section, because his house which he occupies himself is not occupied solely for business purposes, but partly as a dwelling-house. We have nothing to do with the internal communications or questions of that kind here at all. The whole house which is assessed is occupied by one person, and occupied partly as a dwelling-house, and therefore the assessment is good.

Lord Mure—I am of the same opinion. It appears to me from the facts of the case as stated that this case does not come within either of the exempting sections in section 13 of the Act of 1878.

Lord Shand—I am of the same opinion. The first sub-section I think does not apply, because we have not a statement by the Commissioners that any part of this tenenent is let, and the second sub-section has not the effect contended for, because the case is directly ruled by the case of *The Scottish Widows Fund*. Whether the appellant could get a different case another year on these tenements or not I cannot tell. I have been looking at the plan, and I rather think the Commissioners must have deliberately intended to fix this as a tenement by itself, because when I look at the parts coloured yellow they are really blocked off from the rest of the building by very thick walls and by quite separate entrances, and I am rather disposed to think the Commissioners have done that deliberately. But if that is not so, the appellant will have an opportunity of raising that in another Case.

Lord Adam—I am of the same opinion.

The Court upheld the determination of the Commissioners.

Counsel for M'Innes—Kennedy. Agent—John Macpherson, W.S.

Counsel for Surveyor of Taxes—Lorimer. Agent—D. Crole, Solicitor of Inland Revenue.

Thursday, November 12.

FIRST DIVISION.

[Exchequer Cause—Lord Fraser, Ordinary.

THE COMMISSIONERS OF INCOME TAX *v.* THE HIGHLAND RAILWAY COMPANY.

Revenue—Income Tax—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 100), *Sched. A, Rule* 3—*Profits—Deductions.*

A railway company under powers conferred upon them by statute to act as carriers both by sea and land, for some years worked their own sea traffic by means of steamers belonging to themselves. Thereafter they sold these vessels and entered into an agreement with a steamboat owner, whereby he was to receive a certain proportion of the passenger and traffic receipts, and was on his part to provide the steamers and to run them on certain stated routes. In assessing the income tax payable by the company for the year subsequent to this arrangement coming into force, the Commissioners proceeded (under rule 3 of Schedule A of the Income Tax Act of 1842) by computation based on the profits of the year preceding that of assessment. In doing so they maintained that no profit or loss on steamers ought to be included since the