

Wednesday, March 6.

FIRST DIVISION.

[Exchequer Cause.

ALLAN v. MILLER.

Revenue — Inhabited House-Duty — Different Tenements—Tenement Occupied for the Purpose of Trade—Exemption—Act 41 Vict. cap. 15, sec. 13, sub-sec. 1.

This sub-section provides that “when 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,” the premises occupied for the purposes of trade or business shall be exempt.”

Where two separate tenements in one building were occupied from year to year by a tenant at a *cumulo* rent of £25—one tenement being occupied for the purposes of trade, and the other as a dwelling-house—neither tenement taken separately being of the annual value of £20, the Court held that the tenant was entitled to exemption from inhabited house-duty.

Mr William Miller, baker and spirit retailer, appealed against an assessment made upon him for the year 1887-88, of 12s. 6d., being the inhabited house-duty at the rate of 6d. per £ on £25, the annual rent of dwelling-house and shop occupied by him at 59 Main Street, Rutherglen.

The appellant was tenant and occupier from year to year of the above-mentioned premises at a *cumulo* rent of £25. The premises consisted of a front building of one storey and attics, and two back buildings separate from one another and attached to the front building. One back building had internal communication with the attics of the front building, and along with the attics was occupied by the appellant as his dwelling-house. The other back building had internal communication with the ground floor of the front building, and was along with the said ground floor occupied by the appellant for the purposes of his business. There was no internal communication between the ground floor and the attics of the front building. It was agreed that if the premises occupied by the appellant as his dwelling-house and the premises occupied by him for the purposes of his business were to be deemed separate tenements, neither would be liable in house-duty in respect that the proportion of rental applicable to each tenement would be under £20.

The Commissioners after hearing parties sustained the appeal and discharged the assessment.

“Note.—The decisions in the cases Nos. 22 and 23 referred to by the Surveyor (*Russell*, 4 R. 1143, and *Salmond*, both decided by Lord Curriehill, March 6, 1877), were given solely on the terms of the 48 Geo. III. cap. 55, Schedule B. rule 33, which enacts 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.’ The exempting Act, 41 Vict. cap. 15, has since been passed, and provides (section 13, sub-section 1), that ‘when 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,’ the premises occupied for the purpose of trade or business shall be exempt.

“The Commissioners cannot distinguish between the present case and the case of *Smiles v. Crooke*, March 6, 1886, 13 R. 730, referred to by the appellant. They do not think that anything turns, as is suggested by the Surveyor, on the regularity of the structure of the premises, and on this point would refer to the earlier case of *Corke v. Brims*, July 7, 1883, 10 R. 1128, in which the dwelling-house was situated partly behind and partly above the business premises, and both opened into a common vestibule situated in the inside of the street door. The only real difference between *Corke v. Brims* and the present case is, that in the former case the dwelling-house and business premises were let to different tenants, while in the present case they are let to the same tenant. But in this respect the present case is identical with *Smiles v. Crooke*, which decided that the first sub-section of the 13th section of the 41 Vict. cap. 15, applied, and the exemption took effect even although the dwelling-house and business premises were let to the same tenant at a *cumulo* rent.”

At the request of the Surveyor the present case was presented under the Taxes Management Act 1880 for the opinion of the Court.

The Act 48 Geo. III. cap. 55, Schedule B, rule 33, enacts 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 the Act 41 Vict. cap. 15, sec. 13, sub-sec. 1, it is enacted that “When 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,” the premises occupied for the purpose of trade or business shall be exempt.

Argued for the Surveyor—The dwelling-house and shop formed one assessable subject in the occupancy of one tenant, held at one *cumulo* rent, and was clearly chargeable under 3rd rule of Schedule B, of the Act 48 Geo. III. cap. 55. The premises were neither divided into nor let in different tenements as required by the recent statute. The case was entirely different from that of *Smiles v. Crooke*, where the premises consisted of four storeys, each forming a separate and distinct tenement.

At advising—

LORD PRESIDENT—There is one point where it is possible to make a distinction between the present case and the case of *Smiles v. Crooke*, and the question is whether that is a material point. In the case of *Smiles v. Crooke* there was a written lease, and the tenements let were described as separate subjects in the lease. Here there is no written lease, and the subjects are just occupied from year to year. But if in fact they are separate tenements so as to answer the description of “different tenements” under section 13, sub-section 1 of the Act 41 Vict. cap. 15, then if there had been a lease they must have been separately described or they would have

been imperfectly and improperly described. I think therefore the distinction taken is not a material one, and that the case is ruled in terms by the judgment in the case of *Smiles v. Crooke*.

LORD RUTHERFURD CLARK and LORD ADAM concurred.

LORD MURE and LORD SHAND were absent.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellants—Young. Agent—The Solicitor of Inland Revenue.

Counsel for the Respondents—Vary Campbell—Gillespie. Agents—Wylie & Robertson, W.S.

Wednesday, March 20.

FIRST DIVISION.

[Lord Trayner, Ordinary.]

GARDINER AND OTHERS v. MACFARLANE,
M'CRINDELL & CO. AND ANOTHER.

Ship—Charter-Party—Demurrage—Undue Detention—Damages—Lien on Cargo.

A charter-party provided, "Charterers' responsibility to cease on cargo being loaded, provided the cargo is worth the freight at port of discharge. Owners to have lien on cargo for freight, dead freight, and demurrage."

Held, in the absence of anything in the charter-party showing that the parties intended otherwise, that "demurrage" fell to be interpreted in its strict legal sense; and that the owners' lien on cargo for demurrage did not free the charterers from an action of damages for the undue detention of the vessel at the port of loading.

Observed (per Lord Adam) that "demurrage" ought always to be so construed, unless the charter-party made it clear that it was the intention of parties that the word should be used in another and a wider sense.

This was an action by the owners of the ship "Lismore" against the charterers for damages for undue detention of the vessel at the port of loading. The charterers pleaded that the action was excluded by the terms of the charter-party, which, *inter alia*, provided that the "Lismore," then at Hull, should proceed to Sydney, and there receive from the charterers' agent a cargo of coals, and being so loaded should proceed to San Diego, and deliver them there, the freight being a specified rate per ton. The charter-party contained the following among other clauses—"To be loaded as customary at Sydney, N.S.W. To be discharged as customary . . . and at the rate of not less than 100 tons of coal per working-day, to commence when the ship is in berth and ready to discharge, and notice thereof has been given by the master in writing; and ten days on demurrage, over and above the said laying-days, at 4d. per register ton per day." . . . Charterers' responsibility to cease on cargo being loaded, provided the cargo is worth the

freight at port of discharge. Owners to have lien on cargo for freight, dead freight, and demurrage."

The "Lismore" arrived at Sydney on or about 15th August 1888, but she was not loaded with her cargo, and did not sail for San Diego until 2nd December.

James Gardiner & Company, the registered owners of the "Lismore," raised the present action against Macfarlane, M'Crindell, & Co., merchants, Liverpool, and George Gray Macfarlane, merchant, Glasgow, the only known partner of the said firm, concluding for £5000 as damages for undue detention of the vessel at Sydney.

The pursuers averred that upon the arrival of the "Lismore" at Sydney due notice was sent to the defenders' agents, and that they were requested to arrange for loading her under the charter-party; that to enable the outward cargo to be fully discharged 500 tons of coals were required for stiffening; that it was not until 10th September that the full 500 tons were supplied, and that thus there was delay in getting the outward cargo discharged, for which the charterers were responsible. The pursuers averred further that the "Lismore" ought to have been loaded by the 4th October; that by her detention till December the bottom of the vessel became so foul that they had to place her in dock to be cleaned, and that considerable expense was thereby occasioned through the defenders' fault. They also averred that they had suffered loss by the detention of the vessel, and by the defenders' failure to provide cargo.

The defenders alleged that any delay that had occurred arose from a strike at the collieries near Sydney; that the ship was not ready to load her cargo until 14th September; that she was loaded in regular colliery turn with a full cargo; and that any delay which took place in loading the ship at Sydney was due entirely to causes for which, in terms of the charter-party, the charterers were not responsible.

The pursuers pleaded, *inter alia*—" (3) That the defenders were not freed by the terms of the charter-party from liability for detention at the port of loading."

The defenders pleaded, *inter alia*—" (1) Irrelevancy. (2) The ship having loaded a cargo worth the freight at the port of discharge, the defenders are, in terms of the charter-party, freed from all responsibility to the pursuers for the damages claimed."

On 28th February 1889 the Lord Ordinary (TRAYNER) repelled the defenders' first and second pleas-in-law, and allowed the parties a proof of their averments.

"*Opinion*.—The charter-party founded on in this case provides that the 'Lismore' shall proceed to Sydney and there load a complete cargo of coals, with which she shall proceed to San Diego. The 'Lismore' arrived at Sydney about the 15th August last, but she was not loaded with her cargo, and did not sail for San Diego until the 2nd December. The present action is brought to recover damages from the charterers on the ground that the 'Lismore' had been unduly detained by them at Sydney; and the defence urged *in limine* (and the only defence I have now to consider) is that, in respect of the cesser and lien clauses in the charter-party, the defenders are not liable in the damages claimed.