Wednesday, December 28.

OUTER HOUSE.

[Lord Stormonth Darling.

PHILLIPS *v.* H. M. ADVOCATE.

Revenue — Public-House — Licence - Duty— Offices Occupied with Licensed House— Stable—Inland Revenue Act 1880 (43 *and* 44 *Vict. cap.* 20), *sec.* 43.

Section 43 of the Inland Revenue Act 1880 imposes duties on retailers of spirits varying according to "the annual value of the dwelling-house in which the retailer shall reside or retail spirits, together with the offices, courts, yards, and gardens therewith occupied." *Held*, in computing the rent of premises under this section, the rent of a stable, let with the premises, and used by the retailer as a livery stable, fell to be included, although it was separated from the premises by a fence, and there was no general access to the premises from it except by the public road.

This was an action at the instance of George Phillips, vintner, Caledonian Tavern, Arbroath, against the Lord Advocate as representing the Board of Inland Revenue, concluding for repayment of £10, 5s. 10d. licence-duty paid by him under protest.

The facts in the case are fully set forth in the opinion of the Lord Ordinary (STORMONTH DARLING).

On 28th December the Lord Ordinary assoilzied the defender from the conclusions of the action.

Opinion.—"The licence-duty payable by a retailer of spirits varies according to the annual value of the premises which he occupies; and it is provided by section 43 of the Inland Revenue Act of 1880, that this value is to include not merely the dwelling-house in which he resides or retails spirits, but also the "offices," courts, yards, and gardens therewith occupied." The question here is whether these last words cover certain stables and a stable-yard at the back of the pursuer's public-house in Arbroath. The facts are extremely simple. The pursuer took the whole premises on lease from the Caledonian Railway Company in 1889 by the missive No. 45 of process, at a slump rent of £25, and he has continued to hold them by tacit relocation ever since the expiry of the period of eighteen months mentioned in the missive. The landlords have never recognised any division of the rent, and the premises were always entered as one subject in the valuation roll till last year, when a change was made at the request of the pursuer, £19 being entered as the rent applicable to the public-house, and £6 as the rent applicable to the stables—a perfectly fair division, if division there is to be. The public-house enters from a street called South Grimsby, but there is another street at right angles called West Grimsby, from which there is an entrance to the stable-yard and to some of the stables as well. When the pursuer applied for the transfer of the certificate, the magistrates of the burgh insisted on a wooden fence eight feet high being erected at the back of the public-house to shut off the stable-yard, as a safeguard against persons obtaining access to the premises in a clandestine way, and there is now no access from the house to the stables except by the public street or through a small door in a hen-house, which is only used by the pursuer and his servants. The stables are used on market days chiefly for the accommodation of farmers and other persons visiting the town, and generally speaking a charge for the stabling is made at ordinary rates. Some of these persons—perhaps most of them—seek refreshment at the public-house, but others do not. When they do they go round by the public street to the door of the tavern in South Grimsby Street. Now, on these facts, it was strongly maintained by the pursuer that the stables were so effectually cut off from the public-house by the fence I have referred to that they form no part of the certificated premises; but that, I venture to think, is not the question. I am told that my judgment in *Kirk's* case (5 S.L.T. 143), in which the Crown acquiesced, proceeded on the principle that the test of liability was the value of the certificated premises and no other; but I was there dealing with the dwelling-house of the publican, a separate subject from his spirit shop, separately entered in the valuation roll, and admitted by the Crown to be no part of the certificated premises. I held—and I venture to think rightly—that it did not fall within the description of the dwelling-house in which he retailed spirits. But I was not called on to discuss the words which follow about "offices, courts, yards, and gardens," and anything which I said about these was plainly *obiter*. I do not know whether the certificate of a public-house which according to the statutory form authorises the publican to sell liquors "in the said house but not elsewhere" might as a matter of construction be held to extend to a yard or garden connected with the public-house. For the purposes of the present question it seems to me immaterial whether it would or not, because the 43rd section first speaks of the "dwelling-house in which the retailer shall reside or retail spirits," and then goes on to mention the offices and so on "therewith occupied." The whole question therefore is, whether on the facts these stables are occupied along with the public-house in the sense of the statute. I think they are. Cases might perhaps be figured in which a garden, for example, could not be said to be occupied with the public-house merely because it was held from the same landlord and included in the same lease, but here these stables, whether you have regard to their local situation, the manner in which they are held, or the use to which they are put, are simply adjuncts of the house and nothing else."

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

Counsel for the Defender — Sol.-Gen. Dickson, Q.C. — Young. Agent — P. J. Hamilton Grierson, Solicitor of Inland Revenue.