

pay his share is a proposition to which I cannot give any assent. I think the Sheriff-Substitute dealt most properly with this case in deciding it, and there is no plea available to this defender to entitle him to resist payment of the assessment.

LORD YOUNG—I concur.

LORD TRAYNER—I have had all through the hearing of this case some difficulty in understanding what was the ground of defence upon which the defender was insisting. The case it seems to me is an extremely simple one. By section 328 of the Glasgow Police Act 1866 the Magistrates have authority according to their discretion to construct suitable drains in any public street. In section 329 it is just as clearly enacted that when they put down a public sewer in a street where no public sewer previously existed, the expense of that is to be borne by the adjoining heritors according to the extent of their frontage. In this case there was a public sewer put down in a public street where there never had been a public sewer before. The expense has not been said to be extravagant in one way or another, and the defender is not asked to pay more than the proportion of the expense which effeirs to the extent of his frontage. I therefore think with your Lordships that the Sheriff's judgment ought to be affirmed.

LORD MONCREIFF—I concur.

The Court dismissed the appeal, found in fact and in law in terms of the findings in fact and in law of the interlocutor appealed against, and of new decreed against the defender in terms of the prayer of the petition.

Counsel for Pursuers—Lees—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Counsel for Defenders—W. Campbell, Q.C.—Macaulay Smith. Agents—Tait & Johnston, S.S.C.

*Tuesday, December 5.*

FIRST DIVISION.  
COMMISSIONERS OF INLAND  
REVENUE v. CAMPBELL.

*Revenue—Inhabited-House Duty—Occupier—Dwelling-House Partly Licensed—Inhabited-House Duty Act 1808 (48 Geo. III. cap. 55), Schedule B, Rule VI.—Inhabited-House Duty Act 1851 (14 and 15 Vict. cap. 36), schedule.*

Under the statutes imposing inhabited-house duty, 9d. per £ is exigible from dwelling-houses when the rental exceeds £60, but (14 and 15 Vict. cap. 36, sched.) only 6d. if the house "shall be occupied by any person who shall be duly licensed by the laws in force to sell therein by retail beer, ale, wine, or other liquors."

By Rule VI. of 48 Geo. III. cap. 55, Schedule B, it is provided—"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."

Part of a house belonging to A was let by him as an hotel, and the remaining part as a club. A was not himself the holder of a licence, though the tenant of the hotel was. *Held* that this house, the rental of which exceeded £60, was chargeable at the rate of 9d. per £, in respect that under Rule VI. A was the occupier, and as he did not hold a licence the premises did not fall to be assessed at the lower rate.

At a meeting of the Commissioners for executing the Acts relating to the inhabited-house duties for the County of Bute, Mr Nicol Campbell, advocate, appealed against an assessment at the rate of 9d. per £ on £440, the annual value of the premises situated in Argyle Street, West Bay, Rothesay, belonging to him.

The following statement of facts admitted or proved was made in a case stated by the Income-Tax Commissioners—"1. For the year 1879-80 the building was assessed to inhabited-house duty at the rate of 6d. per pound, under 14 & 15 Vict. cap. 36, and according to Rule VI. of 48 George III. cap. 55, Sch. B, which enacts 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: Provided that when the landlord shall not reside within the limits of the collector . . . the duties so charged may be levied on the occupier or occupiers respectively, and such payments shall be deducted and allowed out of the next payment on account of rent.' Mr Campbell appealed against this assessment; and on a case stated at his request, the Court of Exchequer pronounced judgment confirming the assessment—*Campbell v. Inland Revenue*, February 21, 1880, 7 R. 579. In that case the rate of duty was not before the Court.

"2. It was admitted that the following is an accurate description of the premises. The appellant being proprietor of the Queen's Hotel, Rothesay, erected an addition, to be occupied partly by the Royal Northern Yacht Club and partly as an extension of the hotel. On the street floor, in the new addition, the club occupy a reading-room, a committee-room, steward's

service and store-rooms, and lavatory. From the entrance-hall leading to these rooms a stair leads to a billiard-room, also occupied by the club, in a wing behind the new addition (the wing being part of the new addition). From this stair, by a landing and by an ordinary two-leaved door with the usual lock and fastenings, entrance to the dining-room, called in the agreement of lease after referred to the dining-hall on the first floor, is obtained. This is the dining-room of the hotel, which the members of the club are entitled to use—an entrance to it from the hotel is had by an ordinary door opening from the lobby of the hotel. This room is entirely in the new addition, and occupies nearly the whole space of the first floor of such addition. There are bedrooms connected with the hotel in the floor immediately above the dining-hall. The club-house is open during the whole year for the use of the members. No person sleeps in the club premises. The business of the club is transacted at the secretary's office in Glasgow. The hotel consists of the whole of the old building, the first floor of the new building, containing dining-room, etc., and the second floor of the new building, containing bedrooms, and the Yacht Club part consists of the ground floor in the new building occupied as before mentioned, and billiard-room in wing. The door by which there is internal communication between the portion of the building let to the club and the hotel has bolts, and is not opened at all when members are absent. Both of the subjects let have separate and distinct entrances from the street. The hotel-keeper has nothing to do with the taking care of and cleaning the club premises. That duty is attended to throughout the whole year by servants in the employment of the club.

"3. The Queen's Hotel is let to Miss Sarah Thompson, under a lease for five years from the term of Whitsunday 1897, at the rent of £290 per annum; and the club-house is let to the Royal Northern Yacht Club at the rent of £150 per annum. Miss Thompson is duly licensed for the sale by retail of beer, ale, wine, and other liquors to be consumed on the premises leased to her. No licence for the sale of intoxicating liquors is held in respect of the premises occupied by the club, but members in the club-house may be supplied with liquors from the hotel.

"4. Prior to 1877 the appellant entered into an agreement of lease, by which he let to the Yacht Club for fifteen years from 1st April of that year the rooms of the club, together with the use of the said dining-room and some adjacent ground, at an annual rent of £140 for the first seven years, and of £150 for the remaining eight years. The agreement provided that the club was to have a private access to the dining-room, and that neither the tenant of the hotel nor his servants, nor anyone living in the hotel, unless he were a member of the club, should have right to the use of any of the rooms set apart for the club. By supplementary agreement between the appellant and the club, dated

7th and 9th November 1883, it was agreed that from and after 1st April 1884 the club's let should only be from year to year, and that it should not be competent to either party to put an end to any yearly occupancy unless upon twelve months' written notice; and the parties ratify the original agreement except in so far as altered by the supplementary agreement, and agree that the two agreements shall form the conditions of let between them. Since the date of the supplementary agreement, the club has remained tenant from year to year of the same subjects, at the rent of £150 per annum. The lease of the Queen's Hotel, and the agreement and supplementary agreement between the appellant and the Royal Northern Yacht Club are docketed by the Commissioners in reference hereto, and made part of this case.

"5. The appellant has been assessed and has paid inhabited-house duty at the rate of 6d. per £1 on the cumulo rent for each of the years from 1879-1880 to 1897-1898 inclusive.

"6. The appellant was assessed for the year 1898-1899 at the rate of 9d. per £1 on the total rental of £440, upon which the duty amounts to £16, 10s."

By the schedule attached to the Inhabited-House Duty Act 1851 the lower rate (6d. per £) is chargeable "where any such dwelling-house shall be occupied by any person who shall be duly licensed by the laws in force to sell therein by retail beer, ale, wine, or other liquors, although the room or rooms thereof in which any such liquors shall be exposed to sale, sold, drunk, or consumed shall not be such shop or warehouse as aforesaid."

By section 31 of the Customs and Inland Revenue Act 1871 the lower rate is chargeable on "every inhabited dwelling-house . . . which shall be occupied by any person who shall carry on in the said dwelling-house the business of an hotelkeeper or an innkeeper or coffee-house-keeper, although not licensed to sell therein by retail, beer, ale, wine, or other liquors."

The Commissioners sustained the appeal and fixed the assessment at 6d. per £.

The Surveyor obtained the present stated case.

Argued for the Surveyor—By the previous case—*Campbell v. Inland Revenue*, Feb. 21, 1880, 7 R. 579—it was settled that for the purposes of duty Mr Campbell was the occupier of this house. The lower rate of duty was only chargeable if, under the Inhabited-House Duty Act 1851, schedule (quoted *supra*), the house was occupied by a person who had a licence, or under sec. 31 of the Customs and Inland Revenue Act 1871 (quoted *supra*) by a person who kept an inn or coffee-house without a licence. The words "occupied by" must mean occupied by the occupier as defined by Rule VI. of 48 Geo. III. c. 55 (quoted *supra*), *i.e.*, by Mr Campbell. Mr Campbell was not licensed, and did not keep an inn or coffee-house, and the decision of the Commissioners was therefore wrong.

Argued for Mr Campbell—Even if Mr Campbell was under Rule VI. the occu-

pier, he was constructively carrying on the business of a hotel through his tenant, as in the cases where a hydropathic company or a railway company had been held to be carrying on similar occupations through their managers—*Strathearn Hydropathic Co. v. Inland Revenue*, June 14, 1881, 8 R. 798; *Glasgow and South-Western Railway Co. v. Banks*, July 16, 1880, 7 R. 1161; *Inland Revenue v. Grant*, June 24, 1898, 25 R. 1040. It was not necessary, under the Customs and Inland Revenue Act 1871 (quoted *supra*) that the occupier should hold a licence. But it was not necessary to hold that the words “occupied by” in the Acts of 1851 and 1871 meant occupied by the landlord under Rule VI. The natural meaning was the *de facto* occupier. Even in Rule VI, itself the word “occupier” was used in both senses—in the first clause as the landlord or owner, in the last as the *de facto* occupier. If on either of these arguments it were held that the rooms used as an hotel were subject to the lower rate, the same rule must be applied to the rooms used as a club, on the principle recognised in the cases already cited, that if every part of a house was inhabited the whole was subject to duty. The house must be taken to be a *unum quid*—if any part was subject to the lower duty, the whole was.

LORD PRESIDENT—It appears to me that the Commissioners have erred in deciding that in this case the rate of duty should be 6d. and not 9d. per £.

In considering the question it is material to observe what was decided in *Campbell v. Inland Revenue* (7 R. 579) not only upon the construction of the statutes, but also upon the facts of this particular case. In giving judgment in that case the Lord President said (p. 582)—“Now, in the first place, there is a clear distinction in the sixth and fourteenth rules between the word ‘house’ or ‘dwelling-house’ and the word ‘tenement.’ The former is the larger and more comprehensive term, and signifies the entire building which is divided into different tenements occupied by different persons. A tenement is a portion of the dwelling-house separately occupied.” On that reasoning the Court decided that Mr Campbell was to be deemed to be the occupier of the whole building, and was liable for inhabited-house duty on that footing. Accordingly, Mr Campbell does not now maintain that he is not liable to be so charged, but he complains of the rate at which he is charged. It appears to me, however, that the reasoning which we have heard to-day in regard to the rate would, if carried to its legitimate conclusion, result in the entire exemption of Mr Campbell, and the virtual reversal of the previous decision.

The first and most material provision in regard to this matter is Rule VI. of 48 Geo. III. c. 55, Sched. B. It says—[*His Lordship read the rule*]. This is the charging clause, and it in effect provides that the landlord or owner, when he has let to different tenants, shall be chargeable as the occupier, for the purposes of the Act. It

is probably true, as was pointed out during the argument, that in the latter part of the rule the word “occupier” is used in a different sense, *i.e.*, to denote the tenant or *de facto* occupier, but the occupier with whom we are now concerned is the statutory occupier Mr Campbell. Accordingly, unless there is something in subsequent legislation to divest Mr Campbell of the character of occupier for the purposes of this charge, he must remain liable under rule VI. On this point we were referred to the schedule appended to the Act of 1851 (14 and 15 Vict. c. 36), which contains the following provision:—“Where any such dwelling-house shall be occupied by any person who shall be duly licensed by the laws in force to sell therein by retail, beer, ale, wine, or other liquors,” . . . “there shall be charged for every 20s. of such annual value of such dwelling-house the sum of 6d.,” and the question appears to me to be what is meant by the words “shall be occupied by any person” in that provision. If the words of the schedule had been “where the occupier of any such dwelling-house shall be duly licensed,” &c., it would have been very difficult to maintain that the provision did not refer to 48 Geo. III. c. 55, the definition being carried forward by the subsequent legislation, for the purpose of charging the duty. There would in that view be nothing to repeal the provision that where the landlord or owner lets to a number of tenants, he is, for charging purposes to be deemed to be the occupier, and I find nothing which could in my view effect such a repeal. It seems to me that the words “where such dwelling-house shall be occupied” by “a person duly licensed,” means “where the occupier is duly licensed,” and the like consideration appears to me to apply to the provision in the Customs and Inland Revenue Act 1871 (sec. 31), which is in very similar terms.

If I am right in thinking that the definition of the word “occupier” contained in Rule VI. of 48 Geo. III. c. 55, is carried forward throughout the subsequent statutes, the question comes to be, whether Mr Campbell, who has already been declared by this Court to be the occupier of this building, has a licence. He has not, and accordingly this is not a case to which the schedule of the Act of 1851, or section 31 of the Act of 1871, applies, because this dwelling-house—which means the whole building—is not occupied by a person who has a licence. A part of it is occupied by a person who has a licence, but he is not the occupier in the sense of Rule VI. of 48 Geo. III. c. 55, Sched. B. I do not think that the provisions of the Acts of 1851 and 1871 alter the very intelligible scheme by which in cases like the present the person to whom the whole building belongs is treated as the occupier.

For these reasons I am of opinion that the proper answer to the question is that the rate of 9d. per pound should be restored.

LORD ADAM—I am of the same opinion. I think Mr Millar was right in saying that these provisions are varied and sometimes

difficult to construe. Now, we have, under the 6th Rule of the Act George III. this very clearly indicated, that a person, owner of a house, who may never live within a 100 miles of it, is nevertheless in the sense of the Act the occupier, and your Lordship has pointed out in applying that to this case—it has been previously settled between the same parties—that the house in question is to be treated, because it is let to two parties, as a *unum quid*, and as a consequence, equally by the Rule of George III., that the owner is to be treated and assessed as occupier of that house. Accordingly Mr Campbell has been so assessed, and it is he and nobody else who has to pay this assessment. Well, then, we come to the schedule in the Act of 1851, and we find that it is applied to the case of a dwelling-house, but it is the case of a dwelling-house occupied by a person who shall be duly licensed. Well, the question is, Is this appellant here in that position? If his tenant were coming here and saying, “I have been assessed, and I am occupying the whole of this as a dwelling-house,” that would be quite a different case; but the case we have to deal with is—This gentleman, Mr Campbell, the owner, and by statute the occupier of the house, comes forward to tell us he is entitled to a 6d. rate, because he occupies a dwelling-house and has a right to sell spirits there. I say that is not true in point of fact, and the statute does not apply to that.

LORD M'LAREN—The question we have to consider arises upon the schedule to the Act of 14 and 15 of the Queen, which is set out in the case. And to illustrate my reading of the schedule I will suppose that the premises here in question had been let by Mr Campbell to a hotel-keeper in whole, and that the hotel-keeper afterwards sublet the club premises on a lease for the purposes of the club. I take it that in that case the hotel-keeper would only get a licence for such part of the premises as he retained in his own possession and under his control, and that the licence would certainly not extend to the club, because no licensing authority is entitled to grant a licence to any person except in respect of the premises which he occupies, and as to which he is able to enforce the performance of the conditions of his certificate. Now, if that had been the case, I put the question, whether it would be possible for the tenant of the hotel to claim that he should be liable to be assessed only at the lower rate of duty in respect of the entire building. The answer I think would be that the exemption in the schedule only applies to a dwelling-house occupied by a person who is duly licensed to sell liquor therein, and therefore the exemption must be limited to so much of the property as is licensed for the sale of liquor. In the case I am supposing, I presume the club would be assessed at the higher rate, and the licensed premises at the lower rate. But then the case is complicated by this consideration, that the owner of the premises has granted two different leases

to two different persons, the one being the hotel-keeper and the other the club, but for fiscal purposes the owner is to be treated as occupier. The words are, “such subjects shall be subject to taxation as if they were in the occupation of one person, and the owner shall be deemed to be the occupier.” Now, that being so, it appears to me that the owner is no more in the position of saying that the whole dwelling-house has been licensed for the sale of liquor by retail than his tenant would be in the case I have supposed, because unless the licence extends to the entire subject you are not within the words of the exemption in the schedule. As to whether the claim might be successfully made for the assessment of the hotel part of the building only at the lower rate, I have not formed any opinion, because that case is not before us. But I can conceive an argument in favour of that construction which would have more plausibility than the argument in this case, because the alternative is higher or lower duty. I am of opinion that the determination of the Commissioners is wrong, and that the higher rate of duty is exigible.

LORD KINNEAR—I am of the same opinion, although I am not quite sure I agree entirely in thinking that the word occupier is used in two different senses in the Act of 48 George III. It rather appears to me, as a matter of verbal construction, that it is used only in one sense in Rule VI. That rule has really two branches. In the first place, it enacts that where a house shall be made in different storeys or tenements or lands, it is to be charged as if it were inhabited by one single person. And then it goes on, not to describe the owner as occupier, but to enact that the landlord or owner shall be deemed occupier, and shall be charged the same duties. In the first place, a house is to be treated as one, and in the next place, the owner is to be treated as occupier whether he is or not. It then goes on to provide that if the owner does not reside within the limits of the collector, and the duties are not paid for a certain time, then the actual occupiers may be assessed. Therefore the clause appears to me to be perfectly well framed as a matter of verbal construction. Now, it is common ground that this house is to be treated as a single house in the sense of the rule, and that the respondent is the landlord or owner, and is to be treated as occupier and to be charged with duty; and the question is whether he is to be charged at the rate of 9d. or 6d. I entirely agree with what was said by your Lordship in the chair, that that question depends upon whether the occupiers of the house in question is within the words of the schedule of the Act of 1851 applicable to the case of a dwelling-house occupied by a person duly licensed to sell by retail beer, ale, wine, and other liquors. Is this respondent in this case, who is to be treated as if he were an occupier, a person licensed to sell by retail beer, ale, or wine, or other liquors in the premises in question? At present I am

quite clear that he is not, and therefore I entirely concur in the conclusions at which your Lordships have arrived.

The Court reversed the determination of the Commissioners appealed against, and sustained the assessment at ninepence per pound.

Counsel for the Inland Revenue—Jameson, Q.C.—A. J. Young, Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for Campbell—Galbraith Millar. Agents—Macrae, Flett, & Rennie, W.S.

## REGISTRATION APPEAL COURT.

Thursday, December 7.

(Before Lord Kinnear, Lord Trayner, and Lord Kincairney.)

MILLER v. BRUCE.

*Election Law—Lodger Franchise—Interrupted Residence—Representation of the People (Scotland) Act 1868 (31 and 32 Vict. c. 48), sec. 4.*

The claimant of a lodger vote for the burgh of Leith occupied a room of the statutory value in his father's house from Friday till Monday of each week. During the week he occupied lodgings in Dundee, where he was employed as a shipping clerk, but he was not enrolled there as a voter. *Held* that he had not been resident during the statutory period required by the 4th section of the Representation of the People (Scotland) Act 1868.

Robert Scott Bruce claimed to be enrolled in the register of voters for the burgh of Leith as a lodger. Prior to 31st July 1898 he was enrolled as a lodger voter in respect of his exclusive occupancy, under a contract with his father, of a room of the statutory value in the house of the latter in Albany Street, Leith. From 31st July 1898 to 31st July 1899 he was employed as a shipping clerk in Dundee, where he occupied lodgings, but was not enrolled as a voter, and had made no claim. Every Friday evening he returned to Leith, and occupied the said room in his father's house, until the following Monday morning, when he again left for Dundee. Occasionally he occupied the room for a night in the middle of a week. During his absence it was unoccupied. R. H. Miller, a voter on the roll, objected to the claim, on the ground that the claimant had not resided in his lodgings in Leith during the twelve months immediately preceding the 31st July 1899.

The Sheriff (RUTHERFURD) repelled the objection, and sustained the claim; and on the request of the objector, stated a case for appeal, in which the foregoing facts were set forth.

The question of law for the decision of the Court of Appeal was—"Whether the claimant has or has not sufficiently complied with the condition as to residence contained in The Representation of the People (Scotland) Act 1868, sec. 4 (3)?"

Argued for the appellant—The Sheriff had wrongly admitted the claim. The only test in such a case was by computation of the time during which the claimant occupied his lodgings. On the facts it could not be said that he had "resided" there during the statutory period—31 and 32 Vict., c. 48, sec. 4 (3). The case was different where the occupier returned to his home or wife and family. These elements were not here, and could not apply to one claiming as a lodger—*Smith v. Falconer*, December 20, 1890, 18 R. 343; *Rintoul v. Falconer*, December 6, 1898, 1 F. 207.

Argued for the respondent—The Sheriff's judgment was right. The question was one of fact not of principle. Uninterrupted residence was not essential—*Bond v. Overseers of St George's Parish*, November 11, 1870, L.R., 6 C.P. 312; *Sim v. Galt*, November 22, 1892, 20 R. 84. Here there had been sufficient residence to satisfy the statutory conditions. It should not be left out of view that the claimant had made no claim to be enrolled in Dundee.

LORD KINNEAR—I should be sorry to lay down any rule inconsistent with that read to us from the judgment of the Court of Common Pleas in the case of *Bond*, and which we ourselves have frequently had occasion to lay down—the rule, namely, that uninterrupted residence day after day for a period of twelve months is not necessary in order to constitute the statutory qualification, but that in each case it is a question of circumstances whether there has been such occupancy as will satisfy the statutory condition. Now in the present case I am unable to affirm that there has been such occupancy of the premises in Leith to which the claimant returns from his place of business in Dundee, as to satisfy the condition of the statute. I think that the present case resembles the case of *Rintoul* much more than that of *Sim*.

LORD TRAYNER—I agree.

LORD KINCAIRNEY—This is an extremely narrow question, but I am not prepared to dissent.

The Court sustained the appeal, and remitted to the Sheriff to expunge the claimant's name from the register of voters.

Counsel for the Appellant—A. M. Anderson. Agents—Emslie & Guthrie, S.S.C.

Counsel for the Respondent—Salvesen, Q.C.—Constable. Agent—A. J. Simpson S.S.C.