

increasing expense of the education and maintenance of the Marquess, the alternative being that the income of the fund would be added to the accumulations which are being made for his behoof.

It appears to me, looking to the authorities, that the application is one which may reasonably be granted, and as regards the amount I do not think, in view of the position of the Marquess and the necessary expense of his education, that the reporter has erred in his estimate of the sum required.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

“The Lords having considered the petition, together with the report by the Honourable James Moncreiff, and heard counsel for the parties, authorise and ordain the concurring petitioners, Donald M'Lean, Thomas Murray Mackay, and Cecil Chaplin, trustees for behoof of the Right Honourable George Granville Sutherland Leveson-Gower, Marquess of Stafford, to make payment out of the free annual income of the trust funds in their hands for behoof of the said Marquess, to the petitioner the Most Noble Cromartie Sutherland Leveson-Gower, Duke and Earl of Sutherland, of (1) (a) the sum of £407, 0s. 5d., being the amount disbursed by the said petitioner the Duke of Sutherland in the education and maintenance of the said Marquess for the year 1899 subsequent to April of that year; and (b) the sum of £643, 8s. 5d., being the amount disbursed for the same purpose for the year 1900; (2) any sums that may be disbursed by the said petitioner during the next three years, 1901, 1902, 1903, in the education and maintenance of the said Marquess of Stafford not exceeding £600 for each of the years 1901 and 1902, and not exceeding £700 for the year 1903, with liberty to the said petitioner at the end of that period to apply to the Court for such further order as may be necessary, and decern,” &c.

Counsel for the Petitioner—Balfour. Agents—Macpherson & Mackay, S.S.C.

Wednesday March 20.

FIRST DIVISION.

UNION BANK OF SCOTLAND,
LIMITED v. INLAND REVENUE.

Revenue—Inhabited House Duty—Separate Tenement—Tenement Occupied Solely for Purpose of Business—Customs and Inland Revenue Act 1878 (41 and 42 Vict. cap. 15), sec. 13, sub-secs. (1) and (2).

The Customs and Inland Revenue Act 1878, sec. 13, provides as to in-

habited house duties, sub-sec. 1, 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,” the occupier of the tenement so occupied shall be relieved of the duty; and sub-sec. 2 that “Every house or tenement which is occupied solely for the purpose of any trade or business . . . shall be exempted from the duties.” . . .

Premises owned by a bank, the whole of which were under one roof, consisted of a basement, a ground floor, and first and second floors. The first floor was let to a firm of solicitors, as chambers. The rest of the building was occupied by the proprietors, the ground floor being the bank office, and the second floor the official residence of the bank accountant. Access to the first and second floors was provided by two separate internal staircases. The bank apartments opened separately into the lobby on the ground floor. Both the first and second floors were shut off from their respective staircases by an outer door. From the accountant's house there was a bolt in connection with the bank office which controlled the opening of the safe.

The whole premises, with the exception of the floor occupied by the solicitors, were assessed for inhabited house duty. The bank claimed exemption for the ground floor, as being a separate tenement occupied solely for the purpose of a business within the meaning of section 13. *Held* that as (1) the ground floor and the second floor were not “let,” and as (2) the ground floor was not either structurally or in respect of occupation “a separate tenement,” the exemptions provided by section 13 did not apply.

At a meeting of the Income-Tax and Inhabited House Duty Commissioners for the county of Dumfries, held at Dumfries on November 21st, 1900, the Union Bank of Scotland, Limited, appealed against an assessment of £2, 12s. 6d. made upon them for inhabited house duty for the year 1900-01, at the rate of 9d. per £ on £70, the annual value of “bank” and “house” situated at No. 8 English Street, Dumfries, of which they were proprietors and occupiers.

The Commissioners were of opinion “that the assessment had been properly made on the subjects entered in the valuation roll as ‘bank and house’ of the annual value of £70,” and dismissed the appeal.

The appellants required the Commissioners to state a case.

The following were the facts set forth in the case as found or admitted:—“1. The whole premises at No. 8 English Street, Dumfries (of which the subjects of appeal form part), are owned by the bank, and entered in the valuation roll of the burgh of Dumfries (Fourth Ward) for the year 1900-1901 as follows:—

No.	Description and situation of subject.		Proprietor.	Tenant.	Occupier.	Inhabitant Occupier.	Yearly Rent or Value.
	Description.	Situation.					
807	Bank and house	8 English Street	Union Bank of Scot. (Ltd.), per Francis W. Gibb, agent do.	...	Proprietors	Geo. Powrie Mitchell, accountant	£70
808	Office	do.	do.	Craig & Geddes, solicitors	James Geddes, solicitor	...	30

"2. The whole premises above described (Nos. 807 and 808 of the valuation roll) are under one roof, and are correctly shewn on the plans, which are docqueted by the Commissioners in reference hereto, and made part of this case. These premises consist of four floors, viz., sunk, ground, first, and second floors. Of these the second and ground floors and the whole of the sunk floor, with the exception of a store, which form the subjects of appeal, are occupied by the proprietors, i.e., the bank, while the first floor and a store on the sunk floor are let to and occupied by a firm of solicitors, all in manner after described:—(1) Access to the ground floor from English Street is obtained by the front door of the building. This door opens into a vestibule. From this vestibule a stair, afterwards called the front stair, leads to the first floor of the building, a door opens into the telling-room of the bank, and another door opens into a passage from which access is obtained (a) to the agent's room; (b) to a washing-house; (c) to the stair connecting the ground and sunk floors; (d) to the back stair which connects the ground and second floors; and (e) to the back doors of the building. The bank safes are situated between the agent's room and the telling-room, and there is a door forming a direct access between those two rooms. (2) The second floor wholly consists of a dwelling-house occupied by the bank accountant *ex officio*. From this dwelling-house a door opens on to the back stair, which forms the communication to the ground floor. This stair gives access to the second floor only. From the bank accountant's house on this floor there is a bolt in connection with the lock of the bank safe for the cash, which bolt controls the opening of the safe. (3) The sunk floor consists of (a) a store-room used in connection with the bank offices; (b) a coal cellar; (c) a wood cellar; (d) a small cellar not assigned to any special use; and (e) a store-room used by the firm of solicitors who are tenants of the office on the first floor. (4) The washing-house upon the ground floor is used by the accountant as part of the premises occupied by him *ex officio* as his dwelling-house, and he has, along with the bank, the joint use of the coal cellar and the wood cellar on the sunk floor. 3. The whole of the first floor (with the exception of the space occupied by the back stair leading from the ground floor to the second floor) is let as an office to and is occupied by a firm of solicitors. From this floor a door opens on to the front stair, which forms the access to the vestibule on the ground floor. This stair gives access to

the first floor only, and the occupiers of the office on that floor have the exclusive use of it. Half-way up this stair there is a door communicating with the back stair, but it has been kept locked continuously for the last two years, i.e., since the first floor ceased to be occupied by the former agent of the bank. Inhabited house duty has not been charged on the rent of the first floor since it has been separately let as an office."

The following were the contentions of the parties:—"For the Bank it was contended (1) that the premises occupied for the business purposes of the Bank are not an inhabited dwelling-house within the meaning of the Acts 48 Geo. III. cap. 55, and 14 and 15 Vict. cap. 36; and (2) that even if the premises occupied for the business purposes of the bank were assessable under 48 Geo. III. cap. 55, and 14 and 15 Vict. cap. 36, they are exempted from inhabited house duty by the Act 41 and 42 Vict. cap. 15, section 13 (2), as being (a) occupied solely for the purposes of the business or profession of banking, or (b) as being either a separate 'house' or a separate 'tenement' occupied solely for the purposes of the business or profession of banking within the meaning of the Act 41 and 42 Vict. cap. 15, section 13 (2). For the Crown it was contended (1) that the premises which form the subject of appeal are liable under 48 Geo. III. cap. 55, schedule B, and 14 and 15 Vict. cap. 36; and (2) that they do not fall under any of the exemptions granted by 41 and 42 Vict. cap. 15, section 13, inasmuch as (a) exemption 1 requires that the property should be let in different tenements, while here there is no letting, and (b) exemption 2 requires that the house or tenement should be occupied solely for the purposes of a trade or business, while here a part is occupied for residential purposes."

Argued for the appellants—The bank premises occupied for the business purposes of the bank did not fall to be assessed. The true principle upon which to decide the question was whether this part of the premises was in fact occupied solely for business premises. The opinions of the House of Lords in *Grant v. Langston*, May 28, 1900, 2 F. (H.L.) 49, left open to consideration the point whether this was not a truer test to use in deciding the question than physical division of the house into different tenements. In other words, occupation was of more importance than physical structure. The definition of "tenement" by the Lord President in *Russell v. Coutts*, December 14, 1881, 9 R. 261, at 265, as "a part of a

house so divided and separated as to be capable of being a distinct property or a distinct subject of lease" applied precisely to the premises occupied by the bank for business purposes, and accordingly they fell under the exemption in section 13, sub-section 2 of the Act of 1878—*Corke v. Brims*, July 7, 1883, 10 R. 1128. In *Smiles v. Crooke*, March 6, 1886, 13 R. 730, where the exemption conferred by section 13, sub-section (1), of the Act was held to apply, there was less physical separation of the tenements than here.

Argued for the respondents—The point differentiating this case from that of *Grant v. Langston*, *supra*, was that here there was internal communication between the floor occupied by the accountant and the bank premises proper. There was clearly also identity of occupation between the two. The case accordingly was analogous to *Russell v. Coutts*, *cit.*, rather than to *Corke v. Brims*. See also *Clerk v. British Linen Company*, June 17, 1885, 12 R. 1133; *Campbell v. Inland Revenue*, February 21, 1880, 7 R. 579.

At advising—

LORD M'LAREN—In this case the Union Bank appeals against an assessment for inhabited-house-duty in respect of premises occupied by the bank in English Street, Dumfries. The whole premises are under one roof, and they consist of a basement, a ground floor, and first and second floors. The first floor is let to a firm of solicitors as writing chambers, and duty is not claimed by the Crown as upon this floor. The rest of the building is occupied by the proprietors, the Union Bank of Scotland, the ground floor being the bank office, where its business is transacted, and the second floor being the official residence of the accountant of the bank. Access to the various floors is provided by an internal staircase. The bank apartments open separately into the lobby on the ground floor. The first floor, as to which no claim is made, is shut off from the staircase by an outer door at the landing, and the second floor is also shut off from the staircase by an outer door. From the bank accountant's house on this floor there is a bolt in connection with the lock of the safe in the bank office, which bolt controls the opening of the safe. These are the material facts as stated in the printed case.

The bank claims exemption from taxation for the premises occupied for the transaction of its business. The exemption is claimed alternatively under the 1st and 2nd sub-sections of section 13 of the Revenue Act 1878 (41 and 42 Vict. cap. 15).

I think it is sufficiently clear that in such a case no claim of exemption can be admitted under the terms of the 1st sub-section. The condition of a claim under sub-section 1 is that "a house, being one property, shall be divided into and let in different tenements." Now, the only part of this bank property which is let is the first floor. It appears to me to fulfil the prescribed condition, but I do not express an unqualified opinion as to this, because the Crown has not made a claim.

No other part of the building is let; the bank accountant is not a tenant, but occupies the second floor as part of his emoluments, and presumably only while he continues in his employment. On this part of the argument I shall say no more, except to point out that in the case of *Grant v. Langston* Lord Davey calls attention to this point, and says "two conditions are required." It (the house) must "be both divided into and also let in different tenements."

The effect of the second sub-section calls for more careful consideration. It is in effect a general exemption of every house or tenement which is occupied solely for the purposes of any trade, business, profession, or calling; and then it is added that the exemption shall take effect although a servant or other person may dwell in such house or tenement for the protection thereof. In order that the bank may have the benefit of this exemption it must be shown that the part of the building which is appropriated to the purposes of its business is a "house or tenement" taken by itself, and independently of its physical connection with the part occupied as the accountant's house. In *Russell v. Coutts*, 9 R. 261, at 265 (1 Tax Ca. 469) the Lord President said with reference to a case of this nature—"The word 'tenement' in the statute means part of a house so structurally divided and separated as to be capable of being a distinct property or a distinct subject of lease." This definition was quoted with approval by two of the noble Lords who took part in the judgment in *Grant v. Langston*, 2 F. (H.L.) 49, and I accept it as an authorised exposition of the enactment. But then we have to determine on the facts of this case whether the bank premises are thus structurally divided and separated from the bank house occupied by the accountant. One element which has been considered important is awaiting. The bank premises are not shut off by a separate main door from the rest of the building. The telling room and the manager's room each communicates directly with the lobby and staircase leading to other parts of the building, and in particular to the accountant's house. But to my mind the conclusive element is that there is not separate occupancy in any real sense. A residence is provided for the bank accountant because it is considered inexpedient that the bank should be left unguarded, and this motive is very clearly traceable in the arrangement by which a bolt passing right through the building from the bank safe is controlled by the accountant from his sleeping apartment. This is structural connection—it is at least inconsistent with the notion of complete structural separation—and it is plain that while that connection exists the second floor could not be let to or occupied by a tenant who was not an officer of the bank.

Without going into further detail on the facts of the case my opinion is that there are such means of internal communication and such structural connection between the apartments occupied directly by the

bank and the apartments occupied by its accountant, and also such identity of occupation as make it impossible to dissociate the two floors, and to treat the business premises as a separate tenement in the sense of the 13th section of the Act of 1878.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellants—Dundas, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

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

Tuesday, March 5.

SECOND DIVISION.

[Exchequer Cause.
[Lord Stormonth-Darling,
Ordinary.]

LORD ADVOCATE v. WATHERSTON'S TRUSTEES.

Revenue—Legacy Duty—Legacy Duty Act 1796 (36 Geo. III. cap. 52), secs. 21 and 23—Legacy Free of Duty—Compromise—Legacy Taken under Will or Compromise.

The Legacy Duty Act 1796, sec. 21, enacts, "that if any direction shall be given by any will or testamentary instrument for payment of the duty chargeable upon any legacy or bequest out of some other fund, so that such legacy may pass to the person or persons to whom or for whose benefit the same shall be given free of duty, no duty shall be chargeable upon the money to be applied for the payment of such duty, notwithstanding the same may be deemed a legacy to or for the benefit of the person or persons who would otherwise pay such duty."

Section 23 enacts—"Where any legacy or part of any legacy, . . . whereon any duty shall be chargeable by this Act . . . shall be released for consideration or compounded for less than the amount or value thereof, then and in such case the duty shall be charged and paid in respect of such legacy or part of legacy . . . according to the amount taken in satisfaction thereof, or as the consideration for release thereof or composition for the same."

A testatrix by various testamentary writings bequeathed a number of legacies, of which some were declared to be free of legacy duty, and others were not. Questions having arisen as to the validity and effect of the said testamentary writings, all the parties claiming an interest in the deceased's estate entered into a deed of agreement and compromise, whereby they agreed that the said writings should be con-

strued as if they formed a valid will by which the deceased bequeathed the legacies specified in the agreement, and that she should be held to have died testate to that effect, and further declared that all the legacies were to be free of government duties of whatever kind. The legacies payable under the agreement were in each case of about half the amount bequeathed by the deceased. The legatees received payment of the sums so agreed on free of legacy duty, which was paid by the trustees out of other funds in their hands. In an action by the Crown claiming legacy duty from the trustees upon the sums paid by them as duty upon the said legacies, the trustees tendered payment of legacy duty in respect of the sums paid as duty upon those legacies which the deceased had not expressly declared to be duty free, but resisted the claim made in respect of the sums paid as duty upon those legacies which the deceased had declared to be duty free.

Held (rev. Lord Stormonth-Darling, Ordinary) that it was by virtue of the testamentary writings of the testatrix that the legatees took their legacies as reduced in amount under the agreement, that consequently, notwithstanding the compromise and the provisions of section 23, section 21 applied to the sums paid as duty upon those of the legacies which the testatrix had declared free of legacy duty, and that accordingly the Crown's claim for legacy duty upon these sums could not be sustained.

Opinion (per Lord Young) that the exemption provided by sec. 21 was equally applicable to all the legacies, whether declared by the testatrix to be duty free or not.

This was an action at the instance of the Lord Advocate, on behalf of the Commissioners of Inland Revenue, against James Balfour-Kinnear, W.S., and another, trustees and executors of the late Miss Christian Elizabeth Watherston, in which the pursuer claimed a sum of £250, 7s. 6d., being legacy duty alleged to be due by the defenders as trustees.

Miss Watherston died unmarried on 11th January 1898, predeceased by her parents, leaving three testamentary writings dated respectively 25th October 1896, 17th December 1896, and 18th January 1897, by which she bequeathed a number of legacies, some free of legacy duty and others not. She died possessed of heritable and moveable estate of which she was the absolute owner, and at the time of her death she was entitled to dispose by will of the estate placed in trust by her father's trust-conveyance, dated 27th February 1886, and also of the residue of his estate under his trust-disposition and settlement dated 20th May 1895.

On Miss Watherston's death the validity and effect of her testamentary writings were challenged by her next-of-kin and others. Ultimately the questions which were thus raised were settled, all the par-