Saturday, July 7.

FIRST DIVISION.

[Exchequer Cause.

CORKE (SURVEYOR OF TAXES) *v.* BRIMS.

Revenue—Inhabited-House-Duty—Separate Tenements—48 *Geo. III. c.* 55, *Schedule B, Rule* 6—41 *Vict. c.* 15, *sec.* 13, *sub-sec.* 1.

The proprietor of certain premises let one portion as bank offices, another as a dwelling-house, the remainder being let as writing chambers to the firm composed of himself and his partner. The entrance to each portion was by a separate door opening from a common vestibule which communicated with the street, and there was no internal communication by which it was possible to pass from the house into the bank or writing chambers. *Held* that the property was "divided into and let in different tenements;" that the bank and writing offices being occupied solely for business purposes, were therefore exempt from inhabited-house-duty; and that the house being under £20 in value was not liable for inhabited-house duty.

In this case Mr James Brims, solicitor and bank agent, Thurso, appealed to the Commissioners for the County of Caithness against an assessment of £1, 10s. as inhabited-house duty at the rate of 9d. per £ on £40, the annual value of certain premises in Thurso of which he was owner. The premises consisted of (1) bank offices rented by the Bank of Scotland at £20 per annum, Messrs Brims (the owner) & Mackay being joint-agents; (2) house occupied by Mr Alexander Mackay (one of the agents) at a rental of £10; (3) writing offices occupied by Messrs Brims & Mackay, solicitors, at a rental of £10. The premises comprised two contiguous houses, one containing the bank offices and house, the house being partly over and partly behind the bank, and the other the law offices. The street door opened into a common lobby or vestibule, from which separate doors led into the dwelling-house, the bank, and the bank consulting room respectively. There was communication between the bank consulting-room and the writing offices, but the only door which would have given internal communication throughout had been nailed up. The bank authorities only rented the bank offices, Mr Mackay himself renting the house—it being quite optional so far as the agreement with the bank was concerned whether his house should be in the same building as the bank offices.

The Commissioners sustained the appeal, with which decision the Surveyor declared his dissatisfaction, and in terms of section 59 of 43 and 44 Vict. cap. 19, craved a Case for the opinion of the Court of Exchequer.

It was therein set forth:—"Mr Brims stated that his own private dwelling-house was situated at a distance from the premises in question, and that he was assessed for inhabited-house-duty in respect thereof, and pointed out that though there was internal communication between the bank office and the bank consulting room, and between the bank consulting room and the writing offices occupied by Messrs Brims & Mackay, there was no internal communication between the dwelling-house occupied by Mr Mackay and the other part of the premises, except that access to the house was by a common entrance from the street, which also gave access to the offices rented by the bank, and that there was no communication otherwise. He also pointed out that the dwelling-house might be occupied by any person not connected with the bank or with Messrs Brims & Mackay, and that the annexed plan shewed that there was a separate entrance from the street to the writing offices. Mr Brims further stated that the occupation by him of any part of the premises was as a partner of the firm of Messrs Brims & Mackay and not as an individual. He therefore contended that the premises charged consisted of three separate tenements, capable of being, and were actually, let to separate tenants; that the bank offices and law offices were used solely for business or professional purposes, and consequently were exempt under section 13 of 41 Vict. cap. 15; and that the residence being under £20 in value was not liable.

"The Surveyor of Taxes, Mr B. Corke, contended (1) that there being internal communication throughout the whole premises as shewn by the plan, they were to be looked upon as one house let to different persons, and chargeable on the landlord under rule 6 of 48 Geo. III. cap. 55, Schedule B; and (2) that 41 Vict. cap. 15, section 13, did not apply, as in consequence of the internal communication the lettings could not be held to be 'different tenements' in the meaning of the Act. In support of this contention he referred to the Judges' remarks in Exchequer Court Cases, Nos. 48, 52, and 55, where it was laid down that the different tenements must be structurally divided, which was not the case here, where there was internal communication throughout.

"The Surveyor also referred to the fact that the landlord occupied part of the premises himself, and drew attention to the Judges' remarks on a similar point in case No. 48, and pointed out that the fact that Mr Brims paid house-duty elsewhere did not affect the liability of these premises."

By 48 Geo. III. cap. 55, Schedule B, rule 6, it was enacted 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 where the landlord shall not reside within the limits of the collector, or the same shall remain unpaid by such landlord for the space of twenty days after the same is due, the duties so charged may be levied on the occupier or occupiers respectively; and such payment shall be deducted and allowed out of the next payment on account of rent."

By the Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), sec. 13, sub-sec. 1, it was enacted 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, or of any profession or calling by which the occupier seeks a livelihood or profit, or are unoccupied, the person chargeable as occupier of the house shall be at liberty to give notice in writing at any

time during the year of assessment to the surveyor of taxes for the parish or place in which the house is situate, stating therein the facts, and after the receipt of such notice by the surveyor, the commissioners acting in the execution of the Acts relating to the inhabited-house-duties shall, upon proof of the facts to their satisfaction, grant relief from the amount of duty charged in the assessment so as to confine the same to the duty on the value according to which the house should in their opinion have been assessed if it had been a house comprising only the tenements other than such as are occupied as aforesaid or are unoccupied."

Authorities for the Inland Revenue—*Russell* v. *Coutts*, Dec. 14, 1881, 9 R. 261; Excheq. Cases, Pt. 24, p. 69; *Yorkshire Fire & Life Assurance Co.* v. *Clayton*, March 10, 1881, 6 Q.B.D. 557, *aff.* 30 W. R. 174; Excheq. Cases, Pt. 21, p. 336, *aff.* Pt. 23, p. 476.

Counsel for the respondent was not called upon.

At advising—

Lord President — There are three separate occupations of the house in this case. One is a bank office, which is occupied by Messrs Brims & Mackay, as joint-agents for the Bank of Scotland, at a rent of £20; the second is writing chambers, occupied by the same firm as solicitors at a rent of £10; and the third is a dwelling-house or place of residence occupied by Mr Alexander Mackay, one of the partners of Brims & Mackay, at a rent of £10. Now, the only question of the slightest importance here is whether the part of the house occupied by Mr Mackay as a dwelling-house is a separate tenement within the meaning of the statute, because if it be separate, then there can be no assessment such as is proposed by the Surveyor of Taxes here; for whether the other two portions—namely, the bank offices and the writing chambers—are considered as separate or one, they are plainly occupied for the purposes of business, and therefore are exempt; and therefore, if it be a separate tenement, the house occupied by Mr Mackay is also exempt. The whole point therefore is whether Mr Mackay's house is really a separate tenement. The case of *Russell* v. *Coutts*, which is mainly relied on by the surveyor here, is essentially different in this respect, that in that case when Mr Coutts entered from the street into the house occupied by him, he had means, without coming out of his door again, of ranging over the entire buildings. There was no physical division of the entire premises into separate parts, in such a way that when he was in one part of the premises he could not get access to the other. Once entered by the street door, he had the means of going into every room in the entire building. Now, in the present case Mr Mackay, who occupies a dwelling-house here, has an entirely separate door of entrance to his house. It is not indeed immediately from the street that that door has an entrance. There is a small lobby or vestibule from which three doors open—one into the bank only, another into the bank consulting-room, and the third, which is in the centre, is the outer door of Mr Mackay's house; and when he has once entered in at that door and shut it behind him he cannot obtain access from the premises in which he finds himself to any other part of the building except that which is occupied by him as his residence. Now, one would think the distinction between the two cases is so perfectly obvious upon that simple statement that it is in vain to say that the one case is parallel with the other. I am clear that *Russell* v. *Coutts* is an authority in support of the determination of the Commissioners here as being a judgment requiring for its basis the very thing that is wanting in this case. Now, I confess that is so very clear to my mind, after the frequent occasions we have had to examine the statutes regulating the inhabited-house-duty, that I should not have thought it worth while to say more on the subject than simply to point out the distinction between this case and the case of *Russell* v. *Coutts*, but Mr Lorimer has brought under our notice a judgment by the Court of Appeal in England in the case of the *Yorkshire Fire & Life Insurance Company*, and in so far as the facts of that case are concerned, it appears to me that the judgment could be nothing else than what it was. I find it distinctly stated there that the building in respect of which the assessment was made consisted of several floors. One floor was occupied as offices by the appellants, who were owners of the building. There were also offices occupied by a bank, and other offices occupied by a civil engineer. The first floor was occupied by a firm of merchants and a civil engineer, and the second floor consisted of rooms occupied as residences by the curates of St Mary's Church, Hull, and by a caretaker. Now, when you compare that statement with the plans which were produced along with the case nothing could be clearer than this, that that house which contained all these different occupants was a house which had one common entrance from the street, and when once you entered that door from the street every part of the house was open to you, that is to say, nothing stood in your way except the doors of the particular rooms that were occupied by the different persons described as bank agents and engineers and dwellers, and so forth; and in the second floor, which was very much relied upon by Mr Lorimer in arguing the case, the plan shows distinctly that when you go up the stair to that second floor there is just a series of sitting-rooms and bed-rooms, each having its door opening into the common passage or staircase. A more thoroughly undivided house, in so far as physical division is concerned, it is almost impossible to conceive. Therefore the principle of that case is, I think, entirely in accordance with the judgments which we have hitherto pronounced upon these Acts of Parliament. No doubt there are some things said and quoted from the opinions of the Judges which I confess I should not be very willing to accept as a thoroughly sound exposition of some of the clauses of the statute, but I cannot think that that alters the nature of the case as an authority upon the statute. Certainly it is only in one or two opinions of the learned Judges that these expressions occur, and there is one of the learned Judges—Lord Justice Cotton—whose opinion I think explains the principle of this construction of the statute in a very clear and satisfactory manner. He says:—"The first question one has to consider is, whether these words 'Where any house shall be divided into and let in different tenements,' require that there should be some physical divi-

sion of the house so as to make separate portions of it to be treated as separate tenements, or whether a separate letting and a separate holding is sufficient to satisfy the words of the Act. To hold that 'shall be divided into and let in different tenements' means 'let' simply would be entirely altering the words of this section, and it would be departing in a very gross way from the rule of construction, that if there is an ordinary meaning which can be given to words that meaning shall be given to them. I think, therefore, one cannot say that these words are satisfied where there is a letting of a house not having a structural division into separate holdings. Here there is no division of the house except that which exists in all houses of different floors and separate rooms." . . . . Now, if that is an accurate description of the case that was before the Court, it certainly can have no possible application here, and it is quite plain, I think, notwithstanding some of the expressions to which I have referred, that the judgment of the Court did not really go beyond this, that they could not hold the exemption to apply where the only division that existed was that which exists in all houses of different floors and separate rooms. In the present case there is as plainly a separate dwelling-house here as there is in the numerous large lands in the city of Edinburgh, and in other Scotch towns where flats constitute separate dwelling-houses, and half-flats constitute separate dwelling-houses, entering from a common stair by separate doors, each forming the door of entrance to the house occupied by one particular tenant or proprietor, for, be it observed, these divisions are of such a nature that there is no difficulty in the proprietorship of each separate portion of the tenement being different altogether. But in the case with which the Court of Appeal were dealing—the case of the *Yorkshire Fire and Life Insurance Co.*—that would have been altogether different. You cannot say that a room in a house where the only division is what exists in all houses where there are separate floors and separate rooms, each room with its own door is a separate tenement; and that appears to me to be the true test as to whether a part of a large house of this kind is or is not within the fair meaning of the statute a separate tenement. I am therefore for affirming the determination of the Commissioners.

Lord Deas—I was not present at the discussion in *Russell* v. *Coutts*, but I quite agree with the principle upon which your Lordships decided that case. I think this case is quite different, and after the statement of the case and the explanations we have had of the plan, I am of opinion that the decision which your Lordship proposes to pronounce in this case is altogether correct. I do not think there is any reason to make any further remark upon the case.

Lord Mure—I concur in thinking that this case is quite different from that of *Russell* v. *Coutts* which has been referred to. I see there we were all unanimous in the opinion that the case was one in which it was open to Coutts to get to every part of the premises by doors connected with his dwelling-house, and that in point of fact he did so whenever it suited his convenience. Now in the present case it is shown in the plan that this vestibule has at one side of it the bank office, at the other side the consulting office of the bank, and these are let to the Bank of Scotland, and you cannot get from either of the rooms of the bank, as they are at present fitted up, into the house occupied by Mr Mackay except by going through the vestibule, in which there is a house door leading into the lobby of Mr Mackay's house by a separate entrance altogether. That is quite distinct from the case of *Coutts*. I think it is a separate tenement in these circumstances, and that the bank and consulting room are let as a separate tenement in the fair sense and meaning of the statute. Looking into the opinions given in the *Yorkshire Fire and Life Insurance Coy.* referred to, it seems to me that the Judges there took the view expressed by Mr Justice Grove, who says—"The house must be substantially divided and let in different tenements so as to constitute independent tenements." Now, when these rooms are let to the Bank of Scotland, and the house is let to Mr Mackay, I think the house is so arranged that it becomes an independent tenement in the sense indicated by Mr Justice Grove. Then he says again—"Where the house is a house divided into separate and exclusive tenements, if I may use the term, then these tenements which are occupied for the purposes of trade shall be exempt." Now, these are exclusive tenements in this case. In fact, Mr Mackay being one of the bank agents, must get to his house by different means from what he gets to the premises let to the bank, and it is a separate tenement in that way. I agree in the result at which your Lordships have arrived.

Lord Shand—I am of the same opinion. The question is, whether this is a case in which the party is entitled to the exemption provided by sub-section 1 of section 13 of the statute of 1878? and the decision of the question depends upon whether the Court is in a position to affirm that this house though one property is divided and let in different tenements, certain of which tenements are occupied exclusively for the purpose of a business or profession. Now, I think, looking to the arrangements of these premises and the divisions which exist separating the business premises from the dwelling-house, the property is one which is not only let in different tenements but is divided into different tenements, and I think the distinguishing feature of the case is that after the entry to the vestibule, which no doubt is common to the dwelling-house and the business premises, the dwelling-house is entirely shut off from the business premises by means of a door of its own which completely incloses and divides it from the rest of the building. The case is entirely different from that of *Coutts*, because there is no internal door of communication here, as there, by which a person once inside the dwelling-house might range over the whole premises. If indeed the door A B shown upon the plan in this case, which has been permanently closed, had been a door which was open and used, the case would have been different, but the fact that that door is shut, and that thereby anyone entering the business premises is confined to these alone and cannot get into the dwelling-house above without entering by the proper entrance door for these premises, completely distinguishes the two cases. In regard to the *Yorkshire* case

I have only to say that I think there is a clear distinction between it and the present. In the case of the *Yorkshire Insurance Coy* there were no doubt separate holdings. The premises on the second floor and third floor were let to separate tenants—parts of them—but though there were separate holdings there was no division such as the statute requires. There was no physical or structural division of any kind. Here there is a physical or structural division consisting of the front door of the dwelling-house which shuts it off from everything else. It appears to me that the circumstance that you have that structural difference clearly distinguishes the case from that of the *Yorkshire Insurance Coy.*, and I am therefore of opinion with your Lordships that the decision of the Commissioners was right.

The Court affirmed the determination of the Commissioners.

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

Counsel for the Respondent—R. Johnstone. Agents—Hamilton, Kinnear, & Beatson, W.S.

Saturday, July 7.

OUTER HOUSE.

[Lord M'Laren, Lord Ordinary on Teinds.

CUMMING AND OTHERS (HERITORS OF ARBROATH) *v.* THOMSON (MINISTER OF ARBROATH).

(See *Reid and Others* (*Provost and Magistrates of Arbroath*) v. *Presbytery of Arbroath*, March 13, 1883, *ante*, p. 499.)

Church—Glebe—Burghal Parish—Royal Burgh—Where Lands Erected into Royal Burgh are partly Urban and partly Rural.

The burgh of A. with the common muir and other lands were erected into a royal burgh in 1599. The boundaries of the parish of A. were identical with those of the royal burgh. Thereafter the common muir and other lands was feued out into farms, &c., which were held feu of the magistrates, and out of the teinds of which the minister of the parish received stipend. He was provided with a manse by the heritors. *Held* (by Lord M'Laren), in an application by the minister to have a glebe designed to him, that the parish had not changed its burghal character, and was not to be regarded as a parish containing a royal burgh and having a landward district, but as a burghal parish, and that the minister was therefore *not entitled* to a glebe.

On 2d January 1883, as stated in the previous report (*ante*, p. 499), the Presbytery of Arbroath, in a petition of the Rev. James Thomson, minister of Arbroath, to have a glebe designed to him and his successors in office, found, "in respect that the minister of Arbroath is minister of a royal burgh having a landward district annexed, (1) that he is by law entitled to have a glebe designed to him; (2) that the heritors of the parish are bound to provide the same," and decerned accordingly, and remitted to the heritors to consider and report as to the piece of ground most suitable.

An appeal to the Sheriff under the Ecclesiastical Buildings and Glebes (Scotland) Act 1868, secs. 3 and 4, praying him to stay the proceedings before the Presbytery and dispose of the same himself, and to dismiss the petition, was presented against this judgment of the Presbytery by the present appellants, who were a committee of the heritors of the parish. The minister appeared to support the judgment of the Presbytery finding him entitled to a glebe, and a record was made up.

The facts, as ascertained by the proof and productions and the admissions of parties, were:—By a charter of *novodamus* dated 23d November 1599, King James the Sixth, on the narrative that the town of Aberbrothock, with the houses, buildings, lands, parts, pendicles and pertinents thereof lying within the regality of Aberbrothock and sheriffdom of Forfar, was of old erected into a free burgh, and endowed with all the liberties and privileges thereto pertaining, and that the ancient infeftment and evidents of the burgh had been lost in the civil wars of his minority, ratified the ancient erection of the burgh of Aberbrothock into a free burgh, and of new did erect and incorporate the said burgh, "with all and sundry houses, buildings, tenements, gardens, acres, wastes, tofts, crofts, and others lying within the burgh roods and territory thereof into a free burgh and burgh royal in all time coming," and did of new grant to the burgh, and the Provost, bailies, councillors, free burgesses, and inhabitants "All and sundry the said houses, buildings, tenements, gardens, acres, wastes, tofts, crofts, and others lying within the said burgh roods and territory thereof, together with the burgh roods themselves, infield and outfield lands, with all other lands far and near, parts, pendicles, and pertinents of the same thereto belonging, and specially the lands called the common and commonfaulds, with the common muir of Aberbrothock, and lands of muirlands, together with common loans, and all belonging thereto." The boundaries of the lands and territory of the burgh of Aberbrothock, as contained in the charter, were the same as those of the parish of Arbroath, with two exceptions—(1) a piece of ground known as the Abbey precinct, comprising the ancient site of the Abbot's residence, with its gardens and orchard, &c., and now lying in the heart of Arbroath, and covered with buildings with the exception of a small space called the Abbey Green, left open for the use and recreation of the inhabitants; (2) the small croft of Barngreen, also built over by part of the town. These two pieces of ground lay within the parish but were not contained in the charter. A portion of the modern town of Arbroath lying outside the limits of the royal burgh as erected by the charter lies within the adjoining parish of St Vigeans, and part of the stipend of the minister of Arbroath is paid by the heritors of St Vigeans. The two parishes were at one time united, and no formal decree of disjunction and erection exists, but for a very long period Arbroath has been considered as a separate parish. The town of Arbroath was made a Parliamentary