hesitation in concurring with your Lordship on the main question—that the tenor of the deed has been proved.

The next point is this, Was this deed which was made in 1874 an existing deed in 1883 when the testator died? The suggestion is made that it may have been a new deed or a codicil; but there is no trace of any such deed. No question was put in regard to that; and I think it as plain as anything can be that the deed made in 1874 remained until the end as the instrument by which the testator's affairs were to be regulated. On the whole matter I entirely agree that decree should be given in terms of the conclusion of the summons.

Lord Rutherfurd Clark—I am of the same opinion.

Lord Young was absent.

The Court found the tenor proved in terms of the conclusions of the summons.

Counsel for Pursuers—Rhind—M'Neil. Agent—Thomas Sturrock, S.S.C.

Counsel for Defenders—Pearson—M'Lennan. Agent for Defenders—Liddle & Lawson, S.S.C.

Tuesday, July 15.

FIRST DIVISION.

[Exchequer Cause.

NISBET (SURVEYOR OF TAXES) *v.* M'INNES, MACKENZIE, & LOCHHEAD.

Revenue—Inhabited House-Duty—Separate Tenements—Act 48 *Geo. III. c.* 55, *Sched. B, Rule* 6—*Act* 41 *and* 42 *Vict. c.* 15, *sec.* 13, *sub-sec.* 1.

A building which was the *pro indiviso* property of the individual members of a firm of writers was let as follows:—The ground floor was occupied partly by a bank as a branch office and partly by a bookseller as his shop. The first floor was occupied by the firm as writing chambers, and the second floor and attics were let to the bank along with the office on the ground floor at a *cumulo* rent. By an arrangement between the bank and one of the partners of the firm, the latter became occupant of the second floor and attics. Access was obtained to the first and second floors by a vestibule and stair. There was no internal communication between the writing chambers and the dwelling-house. *Held* (following *Corke* v. *Brims*, July 7, 1883 10 R. 1128) that the dwelling-house was in the sense of the Inhabited House-Duty Acts a different tenement from the rest of the building.

At a meeting of the Commissioners for Income Tax and Inhabited House-Duty for the Upper Ward of Renfrew, held at Paisley on 2d April 1884, Messrs M'Innes, Mackenzie, & Lochhead, writers in Paisley, appealed against an assessment for 1883-84 of £4, 13s. 9d. made upon them for Inhabited House-Duty at the rate of 9d. per £1 on £125, the annual value of the premises No 7 Gilmour Street, Paisley, occupied partly by the appellants as writing chambers.

The building forming Nos 6 and 7 Gilmour Street consisted of three stories and attics, and belonged *pro indiviso* to the individual members of the appellants' firm. The ground floor was occupied partly by the Commercial Bank of Scotland, Limited, as a branch office, and partly by a bookseller as a retail shop, both entering directly from the street by separate doors. These business premises were not embraced in the assessment. The first flat or floor was occupied by the appellants as writing chambers, and was entered in the valuation roll at a yearly rent or value of £80, and the second flat or floor and attics were occupied as a dwelling-house, and were let by the proprietors (the appellants) to the Commercial Bank of Scotland, Limited, along with the branch office on the ground floor, at a *cumulo* rent of £200, conform to a regular lease for ten years, commencing Whitsunday 1877. By an arrangement between Mr Ross, the bank's agent, and Mr Lochhead (a partner of the appellants' firm), to which the appellants were no parties, Mr Lochhead became the occupant of the second flat and attics at Whitsunday 1881 at a yearly rent of £45. Access to the first and second floors was obtained by a lobby or vestibule on the ground floor and a stair. The writing chambers were shut in by a glass door on the first floor, which was locked at night, and the dwelling-house was shut in by a door at the top of the stair. The stair to the attics was within the dwelling-house. There was no internal communication between the writing chambers and the dwelling-house. At the threshold of the lobby or vestibule, on the ground floor, there was an outer or street door, which enclosed the first and second floors. It was locked at night, and the street bell was connected with the dwelling-house above.

The appellants claimed relief to the extent of the duty charged on the writing chambers.

They contended that the dwelling-house and writing chambers were clearly separate and different tenements, and were not only capable of being let, but were let and occupied, as such, and that the writing chambers being occupied solely for business or professional purposes, were exempt from Inhabited House-Duty, under The Customs and Inland Revenue Act 1878 (41 and 42 Vict. c. 15), sec. 13. sub-sec 1; they founded on the case of *Corke* v. *Brims*, July 7, 1883, 10 R. 1128.

The surveyor of taxes contended that the premises assessed were in reality one tenement or dwelling-house, and being occupied in part by the proprietors, were not "let in different tenements," so as to come under 48 Geo. III. c. 55, Sched. B, rule 6, or the exemption contained in 41 and 42 Vict. c. 15, sec. 13, sub-sec. 1.

By 48 Geo. III. c. 53, Sched. B, rule 6, it is 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 said duties, provided," &c.

By the 41 and 42 Vict. c. 15 (The Customs and Inland Revenue Act 1878), sec. 13, sub-sec. 1, it

is 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 the 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."

The Commissioners sustained the appeal, and the surveyor took a Case.

The surveyor argued that this case was distinguishable from *Corke* v. *Brims*, *supra cit.*, because here the person who occupied the dwelling-house was one of the proprietors.

The Court, without delivering opinions, held that the case was ruled by *Corke* v. *Brims*, and affirmed the determination of the Commissioners.

Counsel for Surveyor of Taxes—Trayner—Lorimer. Agent—D. Crole, Solicitor of Inland Revenue.

Counsel for M'Innes, Mackenzie, & Lochhead—Pearson. Agent—A. Kirk Mackie, S.S.C.

Tuesday, July 15.

FIRST DIVISION.

[Exchequer Cause.

ALLAN (SURVEYOR OF TAXES) *v.* THOMSON.

Revenue—Inhabited House-Duty—Separate Tenements—Act 48 *Geo. III., c.* 55, *Sched. B, Rule* 6—*Act* 41 *and* 42 *Vict., c.* 15, *sec.* 13, *sub-sec.* 1.

The proprietor of a two storied building let part of the ground floor as a public-house. The upper flat consisted of two houses, one let to the tenant of the public-house, the other being occupied by the proprietor. The public-house had a door to the street, and another to a back court, but there was no internal communication between it and the dwelling-house above. The upper flat was reached by means of a close running from the street to the back court, and an outside stair at the back of the building. At the top of the stair there was an outside door opening into a lobby, inside which there were two doors, one to each house. *Held* that the portion of the ground floor occupied as a public-house was not liable to be assessed for Inhabited House-Duty.

At a meeting of the Commissioners of Income Tax and Inhabited House-Duty for the Middle Ward of the county of Lanark, held at Hamilton on the 24th of April 1884, David Thomas Thomson, Campbell Street, Hamilton, appealed against a charge of £1, 11s. 6d. made upon him for Inhabited House-Duty, under 48 Geo. III, cap. 55, Sched. B, rule 6, for the year 1883-84, at the rate of 9d. per £ on £42 in respect of premises in Campbell Street of which he was proprietor.

The premises consisted of a building of two stories. On the ground floor there was a public-house let to John Ramage at a rent of £19, and a small house of two apartments, rent £7, with a close or passage running between the public-house and the small house from the street to the back court behind the building. The small house was entered by a door in the close, and was not included in the charge. The upper flat consisted of two houses, one let to and occupied by Ramage, the tenant of the public-house below, at a rent of £11, the other being occupied by the landlord Thomson, the appellant, the annual value of which was £12. The public-house had a door to the street and another to the back court, but there was no internal communication between it and the dwelling-house above. The upper flat of the building was reached by means of the close above mentioned and an outside stair at the back of the building, and the appellant and Ramage entered by the same outside door at the top of the stair, and from a small lobby inside this door there were two doors, one to each house. The house occupied by Ramage was directly over the public-house, and that occupied by the landlord was, to the extent of three apartments, over the small house and the passage below, but the remaining fourth apartment was over the public-house.

The appellant claimed relief on the ground that the houses occupied by Ramage and himself were two distinct houses, each having a separate door shutting it in.

The surveyor of taxes contended that as there was an outside door by which both houses were reached, and as the public-house was below, and thus attached to the house occupied by Ramage, who was also the occupier of the public-house, the whole—*i.e.*, the whole building except the small house below, should be held to be one house under the meaning of the House-Duty Acts, and accordingly he craved a confirmation of the charge.

He referred to Exchequer Cases Nos. 22 and 23, viz., *Russell* v. *Webber*, and *Salmond* v. *Webber*, March 6, 1877, not reported.

The Commissioners by a majority of two to one were of opinion that the public-house as forming part of a common tenement, and not communicating internally with the dwelling-house above, should not be included in the charge, and accordingly restricted the assessment to £23 at 9d.

The surveyor took a Case, and argued that the exemption in the Customs and Inland Revenue Act 1878 (41 and 42 Vict. cap. 15), sec. 13, sub-sec. 1 (quoted in the immediately preceding case of *Nisbet*, *supra* p. 740), did not apply.

There was no appearance for the respondent.

The Court, without delivering opinions, affirmed the determination of the Commissioners.

Counsel for Surveyor of Taxes—Trayner—Lorimer. Agent—D Crole, Solicitor of Inland Revenue.