

tion was submitted to the Commissioners, who deferred consideration of the matter in the meanwhile: Find that thereafter on 8th November 1888 the Commissioners, in virtue of the powers conferred on them by the said Act, and particularly section 154 thereof, declared the said street to be a street as defined in the said Act, and to be for ever afterwards vested in the Commissioners, and that it should, with the exception of the footway, be repaired and repairable by the Commissioners under the authority and powers of the said Act, and other Acts applicable thereto: Find that the fore-said assessment imposed upon the said defenders was not validly imposed under the Act, but find that the said defenders by their said actings subsequent to the said notice of assessment have barred themselves from objecting to the said assessment, and are liable therefor: Decern against the defenders as craved," &c.

Counsel for the Pursuer (Respondent)—Guthrie—Younger. Agents—Morton, Neilson, & Smart, W.S.

Counsel for the Defenders (Appellants)—The Lord Advocate—Salvesen. Agents—Sturrock & Graham, W.S.

Friday, November 29.

FIRST DIVISION.

[Court of Exchequer.]

SMILES (SURVEYOR OF TAXES) v. MERCHANT COMPANY OF EDINBURGH.

Revenue—Inhabited-House Duty—Exemption—Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), section 13, sub-section 2.

By the above sub-section it is provided that "Every house or tenement which is 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, shall be exempted" from inhabited-house duty.

The secretary of a Merchant Company had four rooms assigned to him as an office in the premises occupied by the company. Besides transacting in these rooms the legal business falling to him as solicitor of the company, he also carried on there his private business as a law-agent.

Held that the company's premises did not come under the exemption contained in the above sub-section, in respect that they were not occupied solely for the purposes of the trade or business of the occupier.

At a meeting of the Commissioners for the general purposes of the Income-Tax Acts, and for executing the Acts relating to inhabited-house duties for the county of

Edinburgh, held at Edinburgh on the 28th January 1889, and at an adjourned meeting held at Edinburgh on the 10th May 1889—The Merchant Company of Edinburgh appealed against an assessment made upon them for the year 1888-89, in the sum of £31, 17s. 6d., being inhabited-house duty at the rate of 9d. per pound on £850, the annual value of the premises occupied by them at 14 Hanover Street, Edinburgh.

There were several offices in the premises, one of which, consisting of four rooms, was occupied by Mr A. Kirk Mackie, S.S.C., secretary to the company. Mr Mackie, besides transacting on the premises all the conveyancing and other legal business falling to him as solicitor of the company, also carried on his private business as law agent and conveyancer in the rooms allocated to him in the company's offices. No rooms were set apart specially for Mr Mackie's private business.

The assessment was made under 14 and 15 Vict. cap. 36, and rule 5 of Schedule B of the relative Act 48 Geo. III. cap. 55.

The appellants contended that the premises were occupied for the purposes of business in the sense of the Act 41 Vict. cap. 15, section 13, sub-section 2, the business being the management of the Merchant Company, and charitable institutions, schools, &c., therewith connected, and maintained that the premises came under the exemption provided by 41 Vict. cap. 15, section 13, sub-section 2.

The Surveyor of Taxes Mr James S. Smiles maintained the contrary.

The Commissioners determined that the premises were business premises, and came under the exemption provided by 41 Vict. cap. 15, section 13, sub-section 2.

At the request of the Surveyor of Taxes, who expressed dissatisfaction with the above decision, the present case was stated for the opinion of the Court of Exchequer.

By section 13 of 41 Vict. cap. 15, it was enacted—"With respect to the duties on inhabited houses for the year commencing, as respects England, on the 6th day of April, and as respects Scotland, on the 25th day of May 1878, and for any subsequent year, the following provisions shall have effect. . . (2) Every house or tenement which is 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, shall be exempted from the duties by the said Commissioners upon proof of the facts to their satisfaction, and this exemption shall take effect although a servant or other person may dwell in such house or tenement for the protection thereof."

Argued for the Surveyor of Taxes—The business carried on by the company was not truly business for the purpose of making profit in the sense of the Act, but was merely the administration of large accumulations of trust funds. The exemption therefore given by the Act did not apply. The fact that part of the funds administered was a Widows' Fund did not alter the case—*Incorporation of Tailors of Glasgow v. Inland Revenue*, May 26, 1887,

14 R. 729. Further, it could not be said that the premises were occupied solely for business by which the occupier sought to make profit, because certain rooms were occupied by the secretary for the purposes of his own private business as well as that of the company.

Argued for the Merchant Company—The intention of the Act was to exempt business premises, as distinguished from dwelling-houses, from assessment. All premises therefore which were occupied solely for business purposes fell under the exemption. It made no difference that there were several people who occupied the premises, so long as the occupation was purely a business occupation. The landlord was always to be taken as the occupier. In any view, the management of the various trusts by the company, and more particularly the Widows' Fund, was the transaction of business for the purpose of making profit thereby in the sense of the Act—*Glasgow Coal Exchange Company*, March 18, 1879, 6 R. 850; *St Andrew's Hospital, Northampton v. Sheersmith*, July 2, 1887, 2 Crown Collection of Income-Tax Cases, 219, No. 89.

At advising—

LORD PRESIDENT—In this case the Commissioners "having considered the nature of the occupancy of the premises . . . are of opinion that the premises are business premises, and come under the exemption provided by 41 Vict. c. 15, section 13, subsection 2."

Now, this question is one of large importance, and I think that before deciding it we should require further information as to the nature of the business which is carried on in the premises.

There is, however, a ground upon which I clearly think the exemption cannot be sustained—that is, that a portion of the premises are occupied not for the Merchant Company's business alone, but for the business of a law-agent, Mr Mackie, who is the secretary of the company, but who also carries on a private business as law-agent in a portion of the premises.

The exemption under the second subsection of section 13 is thus expressed—"Every house or tenement which is 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, shall be exempted from the duties by the said Commissioners upon proof of the facts to their satisfaction," and so forth.

Now, the condition of exemption there is that the tenement or house must be occupied solely for the purposes of the trade or business of the occupier. The occupier here is the Merchant Company, but it is plain upon the statement of the case that the premises are not occupied solely for the purpose of the occupiers' business. It is stated that "Mr A. Kirk Mackie, the secretary of the company, besides transacting on the premises all conveyancing and other legal business falling to him as solicitor of the company, also carried on his private business as law-agent and conveyancer in

the rooms allocated to him in the company's offices." It is also stated that he occupies four rooms, but no part of these is, it is said, set apart for his private business.

Now, I am of opinion that that of itself is sufficient without anything further to show that the house is not occupied solely for the business, whatever it may be, of the company, and therefore the occupier is not, I think, entitled to the exemption under the clause.

LORD SHAND—I agree with your Lordship in thinking that there is difficulty in the question whether the premises can be regarded as premises in which the occupier is carrying on business and is seeking profit. I think that before we could decide the question we should require a full statement to be made of the nature of the business, and the way in which the profit is made.

There is, however, the point to which your Lordship has referred, but on which the Surveyor of Taxes has not stated any argument, and I am of opinion that it is sufficient for the decision of the case. The "occupier" of the premises is the Merchant Company, and the occupier is the person or company to be assessed. The statute provides that the exemption is only to be given where the business carried on is the business of the occupier solely, whereas here the premises are also in the occupation of someone else. A portion of them is occupied by Mr Mackie for the purposes of his own private business as a law-agent. It may be that where the occupation is in every sense an occupation solely for business purposes, as here, it is expedient that the privilege should be extended beyond the strict words of the statute, but the language is precise, and I do not think that the Court can grant the exemption. The words of the clause appear to me clearly to exclude exemption when the business is not solely that of the occupier.

LORD ADAM and LORD M'LAREN concurred.

The Court reversed the determination of the Commissioners for general purposes of the Income-Tax Acts, and sustained the assessment in dispute.

Counsel for the Inland Revenue—Sol.-Gen. Darling—Young. Agent—David Crole, Solicitor of Inland Revenue.

Counsel for the Merchant Company—Vary Campbell—Graham Murray. Agent—Alex. Horn, S.S.C.