able, and by operation of law it falls to be divided between the widow and the next-of-kin. Now, it seems to me that when a widow has received her full legal share of the husband's succession, this is complete fulfilment of the husband's obligation to provide for her. In the present case it is admitted that the widow is entitled to receive £100, the total amount of the estate being £200.

No authority has been cited for the proposed extension of the doctrine of the liability of the deceased's estate for aliment, and such extension might lead to very inequitable results, for the claim, if it exists at all, must continue through life, and it would be in the power, for example, of a child who had spent his share of the succession, to come down at any time upon his more provident brothers and sisters for aliment.

Some of the decisions relating to aliment are cases where the conventional provisions were insufficient. Such a state of matters may very easily happen. A father whose means are small may make what he thinks at the time a suitable provision for his wife and children, and yet that provision may be quite insufficient if the father dies in affluent circumstances. The reasonableness of a provision depends upon whether it is reasonable in all the circumstances of the estate. It must further be noticed that in some of the cases cited, the provisions in favour of the claimant were of the nature of annual payments out of income. Now here the curator is entitled to go on spending the £100 which the widow gets until it is exhausted. She is therefore not at present destitute, and the necessity for a further sum for aliment may never emerge. The widow may succeeed to money, or she may die before the £100 is exhausted, and so the necessity for aliment may stop. I see no justice or equity in the money which by law belongs to the next-of-kin, being held over to meet this event which may never occur.

LORD PRESIDENT—I have examined the cases in Morison cited by Mr Craigie, and I find in them certain features widely distinguishing them from the present.

(1) Where the Court has granted additional aliment there has been a great disproportion between the income of the heir's estate and the income from the widow's share. In the case of *Thomson* the husband died infeft in only a small portion of the lands, with the result that the yield of the terce amounted to only one-sixth of the free income of the whole lands of which the husband had died possessed. There the Court held that the mere fact that there was a legal provision for the widow did not exclude her claiming further aliment; and they acted on the view that the legal provision did not afford to the widow the sort of provision which the law holds to be just.

(2) There again what the Court gave to the widow was a payment out of income, and not out of capital of the legal share of the heir or next-of-kin.

(3) Further, the criterion of the amount of aliment to be given was not the amount of the widow's income, but the amount of the total income of the estate. That that is so is clearly brought out by what was said from the bench — "Where there are no conditional provisions the widow is entitled to an aliment out of her husband's estate, suitable to its free income. When her legal provisions of terce and *jus relictæ* are not adequate to this, she is entitled to an additional aliment out of it."

Now, turning to the present case we find, in the first place, that there is no disproportion between the share taken by the widow, and that taken by the next-of-kin; on the contrary, the two shares are equal moieties of the whole estate. Second, What is asked by the widow here is not a part of the income of the husband's estate, but the capital of the whole of it; and third, the claim is put forward solely on the ground of the widow's needs, and so far from equitably adjusting the rights of the next-of-kin and of the widow, it would operate the total extinction of the rights of the next-of-kin in the succession. I think, therefore, that we should answer the second question in the affirmative.

LORD KINNEAR was absent.

The Court answered the second question in the affirmative.

Counsel for the First and Third Parties—Graham Stewart. Agents—Irons, Roberts, & Company, S.S.C.

Counsel for the Second Party—Craigie. Agents—Snody & Asher, S.S.C.

Tuesday, May 29.

FIRST DIVISION.

[Court of Exchequer.

FORBES *v.* STANDARD LIFE ASSURANCE COMPANY.

Revenue—Inhabited-House-Duty—Exemption—Business Premises—Servant Residing on Premises—Customs and Inland Revenue Act 1878 (41 *Vict. cap.* 15), *sec.* 13, *sub-section* 2.

Sub-section 2 of section 13 of the Customs and Inland Revenue Act 1878 provides that premises occupied solely for the purposes of business shall be exempt from inhabited-house-duty, and that the exemption shall take effect "although a servant or other person may dwell in such house or tenement for the protection thereof."

A company carried on business in premises consisting of two adjoining houses which communicated internally and had only one entrance from the street. Two messengers employed by the company lived on the premises, one in the attic flat of each house. The company having been assessed to

inhabited-house-duty on the annual value of the premises, appealed. They rested their appeal on the ground that the messengers were servants absolutely necessary for their business.

Held that in the above sub-section the words "for the protection thereof" applied to "servant" as well as to "other person," and that the company's premises were not entitled to exemption, in respect that on the company's own statement the messengers did not dwell in the premises solely for their protection.

Opinion by Lord Adam, that the exemption might apply although more than one person resided upon the premises, if the sole object of their residence was the protection of the premises.

Opinion reserved on this point by Lord M'Laren.

The Standard Life Assurance Company was assessed to inhabited-house-duty for the year 1893-94 on £1100, the annual value of premises belonging to and occupied by them in George Street, Edinburgh. They appealed against the assessment to the Commissioners for General Purposes, who held that the premises fell within the exemption provided by sub-section 2 of section 13 of the Act 41 Vict. cap. 15, and section 24 of the Act 44 and 45 Vict. cap. 12. The Surveyor of Taxes being dissatisfied with this decision, the present case was stated for the opinion of the Court of Exchequer.

It appeared from statements made in the case that the premises consisted of the adjoining houses, Nos. 3 and 5 George Street. There was internal communication between the houses, and owing to structural alterations the entrance to the premises were from No. 3 George Street only. Two messengers employed by the company resided on the premises, one in the attic flat of each house.

The case further contained the following statements—"The appellants explained that their company practically consisted of two offices, viz.—(1) The Standard Life Assurance Company, which since its foundation in 1825 occupied the premises No. 3 George Street, and (2) The Colonial Life Assurance Company, which was founded in 1845, and occupied the premises No. 5 George Street, and which was amalgamated with the Standard Company in 1865. Although since the amalgamation there is only one board of directors, and one manager for both, there is a separate staff of clerks for each, and the books and funds of the two companies are kept quite distinct and separate. They further explained that the two offices had separate messengers prior to the amalgamation, and that as the duties of both are distinct from one another, the appointments have been kept seperate ever since. The appellants therefore contended that the two messengers residing in the attic flats of Nos. 3 and 5 George Street were absolutely necessary for their business, and must be held to be servants in the sense of the Acts 41 and 42 Vict. cap. 15, section 13, and sub-section 2; and 44 and 45 Vict. cap. 12, section 24; and that as no other person resided therein these premises should be exempted from inhabited-house-duty. . . It was explained that the duties of the two messengers were . . . to look up the premises at night and open them in the morning, and in the daytime to go errands, deliver letters, attend in the lobby, and perform various miscellaneous duties of a similar nature."

"They (the appellants) rested their appeal on the fact that the messengers were servants absolutely necessary for their business (not merely for the protection of the premises)." . . .

Section 13 of the Customs and Inland Revenue Act 1878 provides—"With respect to the duties on inhabited houses, . . . 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 for the protection thereof."

Section 24 of the Customs and Inland Revenue Act of 1881 provides—"With reference to the exemption from the duties on inhabited houses given by sub-section 2 of section 13 of the Customs and Inland Revenue Act 1878, the term 'servant' shall be deemed to mean and include only a menial or domestic servant employed by the occupier, and the expression 'other person' shall be deemed to mean any person of a similar grade or description not otherwise employed by the occupier, who shall be engaged by him to dwell in the house or tenement solely for the protection thereof."

Argued for the Surveyor of Taxes—The company's premises were to be treated as one assessable subject, and the question was whether they were entitled to exemption as being occupied solely for the purposes of business. The Act under which inhabited-house-duty was charged was 14 and 15 Vict. cap. 36, and that Act referred back to the earlier Act 48 Geo. III. cap. 55. By rule 5 of Schedule B of the earlier Act duty was charged on the offices of companies. The statutes under which exemption was claimed by the Standard Company were 41 Vict. cap. 15, sec. 13, sub-sec. 2, and 44 and 45 Vict. cap. 12, sec. 24. The latter Act was merely interpretative, and declared that the word "servant" in the Act of 1878 should include only a "menial or domestic servant" employed by the occupier, and the expression "other person" any person of a similar grade or description not otherwise employed by the occupier. The objections to the company's claim for exemption were these—In the first place, the messengers who resided in the premises did not come within the description "menial or domestic servant," and in the second, even if they did, they were not there to protect the premises, but for the purposes of the company's business. Even if these two objections were ill-founded, the exemp-

tion did not apply where more than one person lived in the premises. The exemption of business premises was first introduced by the Act 57 Geo. III. cap. 25, sec. 4. It applied only where premises were used solely for the purposes of business without further qualification. By 6 Geo. IV. cap. 7, sec. 7, the Commissioners were empowered to grant licences authorising the occupiers of business premises to appoint any one of his servants to watch there during the night, and it was provided that the abiding of such licensed servant should not render the occupier liable to duty. That provision only allowed one watchman to be so licensed, and the later Acts, while allowing the servant to reside on the premises without the necessity of a licence, were not intended to extend the exemption to cases where more than one servant lived on the premises—32 and 33 Vict. cap. 14, sec. 11; 41 Vict. cap. 15, sec. 13, sub-sec. 2.

Argued for the Standard Company—The first question was, whether the exempting clause in the Act of 1878 covered the case of a messenger employed by a company such as this, and it was clear that it did. A messenger was a servant, and was clearly within the description "menial or domestic servant" in the later Act. The residence therefore of a messenger on the premises did not disentitle the company to claim the exemption. Nor was it an essential that the messenger, who was the servant of the company, should reside there solely for the protection of the premises, for a distinction was drawn, especially in the later Act, between the "servant" of the occupier and the "other person" who might be employed by him to look after the premises. The latter must be engaged "solely for the protection" of the premises, but that condition did not apply to the servant of the company. But if it were held that the words "for the protection thereof" referred both to "servant" and "other person," the company could still claim the exemption, because looking to the size and character of the premises, two persons were necessary for their protection, and the messengers were there for their protection. It would be unreasonable to construe the exempting clause as only allowing one person to reside on the premises for their protection. There were many buildings where the protection afforded by the presence of only one person would be quite inadequate, and the general rule of interpretation was that words in the singular included the plural—Interpretation Act 1889 (52 and 53 Vict. cap. 63), sec. 1. It was also open to question whether Nos. 3 and 5 George Street could really be taken as one house. They had been separate until recently, and were not necessarily one house although they had internal communication—*Corke* v. *Brims*, July 7, 1883, 10 R. 1128; *Falconer* v. *M'Guffie*, December 10, 1891, 19 R. 295.

At advising—

Lord President—This appeal relates to the premises which are named or numbered 3 and 5 George Street, Edinburgh, and are occupied by the Standard Life Assurance Company.

Now, I must say I think the case is a very clear one for the Crown. To begin with, Nos. 3 and 5, although they bear a name which sounds in the plural, are neither more nor less than one house—that is to say, if you go back to the beginning of things you will find that No. 3 was one house and No. 5 was another house, but at the present time they have this strong element of solidarity, that there is but one door to the building, and the owner of the building and the occupants of the building are just one company. It is true that for their convenience, and apparently following out tradition, they have kept the two branches of their business more or less apart, and that the partition of the staff corresponds with the former differences between the two houses, but that cannot found any distinction in favour of the Standard Insurance Company on the present question about inhabited-house-duty. Well, then, this being one house, we find that there are living in it as inhabitants two servants of the company. Now, on looking at the existing statutes, and perhaps still more, on looking at the *catena* of statutes upon the subject to which Mr Young has very properly referred, this stands out quite clear, that while the Legislature were minded to exempt from the duty houses which were occupied solely as business premises, there occurred the slight complication that sometimes a man had to sleep in the house for its protection, and it was plain enough that that circumstance did not, in the view of the Legislature, and ought not to, detract from the exemption—the fact of the man living in the house being more or less incidental to the proper exercise of the trade or calling on which the exemption is to be conferred. Therefore when we come to the existing statutes, this is the expression used by the Legislature—"Every house or tenement" is to be exempt "which is occupied solely for the purposes of any trade or business; and this exemption shall take effect although a servant or other person may dwell in such house or tenement for the protection thereof." Now, I think it is hopeless to maintain that these last words "for the protection thereof" do not apply to the word "servant" as well as to the words "other person." The permission or licence given to the trader is merely to keep his house protected. If he likes to have one of his own servants, let him do so. If he wants to have caretakers let him have caretakers, but the words "other person" are clearly put there in order to cover the case of someone who employs, not one of his staff, but an outsider, to protect his house; but in the case of the servant, as in the case of an outsider, the legitimacy of his residence there, in the question of exemption, is determined by the question—Is he there for the purpose of protecting the house or not? When we look at the reason of the thing, it is manifest that if the Legislature intended to exempt persons who let their servants live in the house, although

not required for the protection of the house, any number of people might be furnished with dwelling-houses within a building of this kind, and that would entirely defeat the purposes of the Revenue Statutes.

Now, when we turn to the statement on the face of this case, it becomes as clear as anything can be, that these two messengers who live in this one house which bears the plural name, are not there for the protection of the premises but for the general purposes of the business. That is said in so many words. The Standard Company rested their appeal on the fact that the messengers were servants absolutely necessary, for what? for their business, and not merely for the protection of their premises. Now, it seems to me that that puts the Standard Company entirely out of Court.

I am therefore clearly of opinion that these premises are assessable, and that we must reverse the decision of the Commissioners.

LORD ADAM—I am of the same opinion. The appellant referred to the words of subsection 2 of section 13 of the Act 41 Vict. cap. 15. That sub-section gives exemption from premises being assessed as inhabited houses where such premises are solely occupied for the purposes of trade or business; and then it goes on to say that this exemption shall take effect although a servant or other person may dwell in such premises for their protection. In the matter of protection, I think it is impossible to apply the last clause of that section—"although a servant or other person may dwell in such house or tenement for the protection thereof"—to the words "other person" by themselves. I do not think the meaning of that clause is modified by section 24 of 44 and 45 Vict., because that is an interpretation clause, and merely reads into the clause the words "menial or domestic servant." It does not at all affect the application of the condition that the servant who is a menial or domestic servant shall also reside there for the protection of the house.

In the next place, I do not think it necessarily must be a servant or other person. There may be facts which would show that more than one was *de facto* residing in the premises for the purpose of protecting them. There is the case of Buckingham Palace which was taken as an illustration. There might be dozens of people put there necessarily for the protection of the premises. But then I think this case entirely fails upon the facts. As your Lordship has pointed out, it is perfectly obvious that the two messengers do not live in the house for the protection of the premises, and are not there solely for that purpose. No doubt, as Mr Dundas says, the greater the number the greater the protection, but there can be no doubt at all that these two messengers are kept there for the convenience of the company.

LORD M'LAREN—I concur, but I would wish to say that I reserve my opinion on the question of whether the provision, or rather the exemption, applicable to the case of a servant or other person dwelling in the premises for their protection can ever be extended so as to include a plurality of persons in that position. I think the case contemplated is a case of usual occurrence, that there may be some person living in business premises during the night who can be there to open the door in case of fire or emergencies of any kind. I do not think that the case contemplated is that of complete protection of the premises against external risks, but merely that there may be some one there for protection in the sense I have mentioned, and as a means of communication between persons outside who may have cause to come to the building. However, that point is not raised here, because it is not stated that the messengers in the present case were there solely for the protection of the premises.

LORD KINNEAR—I agree with your Lordship. It is probably unnecessary to decide whether the residence of two or more persons in a building devoted solely to the purposes of trade or business would deprive that building of the exemption accorded to buildings of this class, provided it appeared that two or more persons were living in the building solely for protecting it, because I agree with your Lordship that it is clear enough on the face of this statement that the two messengers are not occupying premises solely for the protection of those premises. I think that is a sufficient ground of judgment.

The Court reversed the determination of the Commissioners and sustained the assessment.

Counsel for the Surveyor of Taxes—Solicitor-General (Shaw, Q.C.) — Young. Agent—Solicitor of Inland Revenue.

Counsel for Standard Life Assurance Company — H. Johnston — D. Dundas. Agents—Dundas & Wilson, C.S.

Thursday, May 31.

SECOND DIVISION.

[Sheriff of Ayrshire.

BARON DONINGTON *v.* MAIR AND OTHERS.

Road—Public Right-of-Way for Foot-Passengers over Road—Obstructions—Gates.

The proprietor of a road over which there was a public right-of-way for foot-passengers, but for no other traffic, erected at each end two gates, one 9 feet wide and locked, the other a swing gate 2 feet 9 inches wide and unfastened. The road was unfenced, and the proprietor desired to prevent the trespass of animals and the use of the road for wheeled traffic. The swing-gates were sufficient for the passage of foot-passengers.