The Court pronounced an interlocutor repelling Mr Gowan's objections, and decerning against him to make payment of the sum certified to be due to him, with interest at 10 per cent., in terms of the 121st section of the Companies Act 1862, and of article 16th of the articles of association of the company, and finding him liable in expenses.

Counsel for Liquidator — Balfour — Pearson. Agents—Dalmahoy & Cowan, W.S.

Counsel for Gowans — Trayner — Mackintosh. Agents—Lindsay, Paterson, & Co., W.S.

Saturday, February 2.

FIRST DIVISION.

[Exchequer Cause.

UNION BANK OF SCOTLAND *v.* INLAND REVENUE.

Revenue—Inhabited House-Duty—Business Premises.

Schedule B appended to the Statute 48 Geo. III. cap. 55, enacts that "all shops and warehouses which are attached to the dwelling-house, or have any communication therewith, shall . . . be valued together with the dwelling-house" for the purposes of assessment.—*Held* that this rule is to be interpreted disjunctively, and therefore that business premises belonging to a bank which were attached to a dwelling-house occupied by the bank's accountant, but which had no communication therewith, were liable in inhabited house-duty along with the dwelling-house as one building.

The Union Bank of Scotland appealed to the Commissioners for the West District of Dumbartonshire against an assessment of inhabited house-duty, at 9d. per pound on £80, being the annual value of new premises in Dumbarton belonging to them. The premises consisted of two storeys and attics under one roof. The ground floor was used chiefly as a branch office of the bank, which was accessible only by a door opening to the public street. A small portion of the ground floor situated behind the office (but without any internal communication therewith) and the upper floor and attics formed a dwelling-house, occupied by the branch accountant of the bank as the residence of himself and family, the furniture in the house belonging to him. Access to the dwelling-house was obtained by a door opening into a passage or close leading from the street, and by a back-door opening into a court behind, which passage or close and court formed parts of the premises attached to the dwelling-house, and were used solely by the occupiers thereof. The court was enclosed by walls, excepting at the end of the passage, and there was a door on the passage at the street entrance. There was no internal communication between the bank office and the dwelling-house, or between the bank office and the court behind or the passage. To go from the one to the other it was necessary to pass along the public street. There was a bolt leading from the bank safe to and controlled from a room in the dwelling-house above.

The appellants contended (1) that as the occupation of the dwelling-house formed the basis of an assessment for inhabited house-duty, the appellants could not be liable in duty either on house or office, unless the bank corporation occupied the dwelling-house, which was not the case. The accountant occupied the house as his private residence. (2) Even assuming the corporation to be occupants of the house, the office was not liable to the duty, as it was used solely as a place of business, and had no communication with the house either internally within the fabric of the building or externally over ground forming part of the same premises. The circumstance that the office was under the same roof with the house did not of itself infer liability; if it did, every tenement consisting of separate flats in different occupation would be chargeable to duty as one house.

The surveyor contended that the bank were the occupiers of the whole premises, the accountant being in possession of the house merely as their servant, and removable at their pleasure.

The Commissioners were of opinion that the accountant's occupancy was the bank's occupancy, and confirmed the charge.

The appellants craved a Case for the opinion of the Court of Exchequer, which was accordingly stated and appointed to be heard before the First Division.

Argued for the appellants—(1) There was no "communication" in the sense of the Act between the bank and the dwelling-house, either internally within the building itself or externally over ground forming part of the same premises. Nor could the bank be held to be "attached" to the dwelling-house. Mere corporeal attachment was plainly not enough, for in this sense every house in a street was attached to it neighbour, and would be liable. There could be attachment only where there was communication, *i.e.*, the statute was not to be interpreted disjunctively. (2) To construe the rule as the Commissioners had done would inflict a hardship on small traders whose house was under £20 value, but whose shop would bring it over that amount. (3) The present case fell under the exemption granted by the Act 5 Geo. IV. cap. 44, sec. 4.

The Court intimated that the Case must be amended in order to raise the third point.

The appellant stated that he did not propose to amend.

Authorities—*Edinburgh Life Assurance Company* and *Scottish Widows Fund* v. *The Solicitor of Inland Revenue*, Feb. 2, 1875, 2 Rettie 394; *Russell* and *Salmond* v. *The Inland Revenue*, Jan. 18, 1878, *ante*, 270.

The respondents were not called upon.

At advising—

Lord President—The enactment on which the surveyor founds here is the third rule of Schedule B, appended to the Statute 48 Geo. III. chap. 55, which enacts that "all shops and warehouses which are attached to the dwelling-house, or have any communication therewith, shall, in charging the said duties, be valued together with the dwelling-house."

Now, if it had been intended by the appellant here to maintain that the business premises which

we have to deal with are not within the meaning of the statute, that would have required to be raised in the Court below, and brought up for review in the ordinary way. But it has not been so raised, and it is not now proposed to amend the case so as to embrace that question. The only point to decide is, whether the bank are liable to be assessed for the bank premises and dwelling-house above as one tenement, of which they are the proper occupiers in the statutory sense. The bank's agent or accountant, who manages the affairs of the bank in the business premises, lives in the dwelling-house, which is situated partly above those business premises and partly at the back of them.

But upon two grounds the bank maintains that they are not liable—in the first place, on the ground that they are not occupants, and, in the second place, on the ground that the premises cannot be valued together, because there is no communication between the one set of premises and the other—no internal communication of any kind, and no external communication of any kind over the ground belonging to the same party.

Now, as to the first of these questions—as to their being the occupants—I do not think any separate argument has been maintained on that, and I rather think if the second was decided against the bank, the first follows of necessity. The question is, What is meant by the statute by the words "attached to the dwelling-house, or have any communication therewith?" Does it mean that the business premises must be attached to the dwelling-house in such a way as to have communication therewith? Or does it mean, on the other hand, that if the two are attached, then they are to be liable whether there is any internal communication at all? In short, are we to read these words as disjunctive, and hold that there will be liability for common assessment if the business premises and the dwelling-house are either attached to one another or have communication with one another. I am of opinion that the latter is obviously the sound construction of the statute. I think it is intended that this rule should apply wherever the business premises and the dwelling-house are attached to one another, although there may not be internal communication. And I think it is also quite possible under this section that business premises and a dwelling-house may be liable to be assessed in the manner there provided if they have a communication with one another, although they may not be immediately attached to one another—in short, that there are two separate things intended to be provided in that statute. If that be so, then it is plain that these two subjects, the business premises and the dwelling-house, are to be charged as one set of premises and one occupation; and if they are to be charged as one occupation and one set of premises it seems to me quite obvious that the bank are the occupiers, and not their servant, who merely carries on their business for them. That is quite in consistency with all the previous decisions on these statutes as regards the meaning of the word which I have been commenting upon in the third rule. I think the construction is extremely well stated by Lord Curriehill, who was Lord Ordinary in both of the cases referred to—the cases of *Russell* and *Salmond*.

I am therefore for affirming the deliverance of the Commissioners.

Lord Deas—It is contended for the bank, in the first place, that there is no liability because there is no internal communication. If your Lordship is right, and if I am right, in thinking that these places are not in communication internally, there is an end of that part of the case, and the question comes to be, whether they are attached the one to the other? Now, I have no doubt that this dwelling-house and this office are attached to each other. They are so physically; and then they are attached moreover by that very important bolt, which is important upon both branches of the argument. I cannot imagine any kind of attachment more important than that between the safe of the bank, in which they kept their money, and the residence of the bank's accountant.

And upon the other branch of the case, it is of importance likewise, because it goes very deep into the question whether there is separate and independent occupancy of the house. It is out of the question to suppose that this gentleman can sublet his house and still retain his connection with the bank. I think the bank would certainly have something to say to that. He is put there for the safety of the bank and for the safety of the bank's safe—the most important purpose he is there for—and therefore that goes to the question, whether he is the servant of the bank, because it is said he pays rent as a separate and independent tenant. In every point of view, therefore, I am of opinion that those two places—the house and the office—are occupied together in the sense of the statute. The occupancy must cease the moment the accountant ceases to be the servant of the bank.

Lord Mure—I am of the same opinion.

According to my recollection, this matter was substantially decided by some of the older decisions on the same point—and I find it was so in 1870—when various banks in various parts of the country tried every possible means to bring themselves under the exemption. In the case of the *British Linen Company's Bank*, (Reports of Exchequer Causes, p. 6, 7, and 12), there was a communication from the teller's room to the lower part of the house where the porter lived, so there was internal communication. But here I agree with your Lordship in the chair that it is not necessary there should be internal communication if substantially the building belonged to and was occupied by the bank, as it is here occupied by their accountant; and if the premises are all attached to each other in the sense of being one building, it would be a strange thing to say that if a man went out into the street and walked in at the back-door he should be exempt, but that if he walked down a passage internally the house should be liable to taxes. It is not sound in principle. I therefore agree with your Lordship in the chair.

Lord Shand—I am of the same opinion.

The Court according affirmed the determination of the Commissioners.

Counsel for Union Bank—Kinnear—Wallace. Agents—J. & F. Anderson, W.S.

Counsel for Inland Revenue—Solicitor-General (Macdonald)—Rutherfurd. Agent—David Crole, Solicitor of Inland Revenue.