is not one in which it can be represented by the liquidators that the husband became a partner by acting in any way that would make him a shareholder. Such a case I think might arise after the lapse of months or years after the marriage, and this might produce a different result, because it might then be represented that the husband had by his actings become a partner, and that the debt was therefore no longer the debt of the female contributory. But I think there is no room for that contention here. Indeed the husband's explanation that he was not even aware that his wife was possessed of this stock at all was not disputed, I think, on the part of the bank. The case is therefore one in which the lady is the contributory, and the provision of the Married Women's Property Act of 1877 limits the liability of the husband for the antenuptial debt of his wife to the means which he may acquire through his wife. I agree with your Lordship in holding that this is plainly an antenuptial debt, the date of the contraction of which is truly the date when the lady accepted the transfer of the stock and became a partner of the bank.

Lord Deas—It is right, I should explain, with reference to the question of husband and wife upon the statute, that I have no doubt about it. I agree entirely with your Lordship. Assuming the lady to have become a partner of the bank, the debt by her to the bank drew back to the time when she became a partner, and therefore it is a prior debt.

The Court accordingly, in the petition of *Wishart*, found that he was entitled to have the prayer granted upon his surrendering any estate he had obtained from his wife at marriage; and in that of *Dalziel* refused the prayer.

Counsel for Petitioner (George Dalziel)—Trayner—Strachan. Agent—Alex. Gordon, S.S.C.

Counsel for Respondents—Kinnear—Balfour—Readman. Agents—Davidson & Syme, W.S.

Counsel for Petitioner (James Wishart) — Dean of Faculty (Fraser) — Guthrie Smith. Agents—Mitchell & Baxter, W.S.

Counsel for Respondents—Kinnear—Balfour—Darling. Agents—Davidson & Syme, W.S.

Tuesday, March 18.

FIRST DIVISION.

[Exchequer Cause.

GLASGOW COAL EXCHANGE COMPANY (LIMITED) *v.* INLAND REVENUE.

Revenue—Inhabited House Duty Act (48 *Geo. IV. c.* 55), *Sched. B, rule* 5—*Customs and Inland Revenue Act* (41 *Vict. c.* 15), *sec.* 13, *subsec.* 2—*Exemption of House Occupied for Purpose of Calling of Profit.*

The Customs and Inland Revenue Act of 1878, sec. 13, subsection 2, provided that "Every house or tenement which is occupied solely for the purpose 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." *Held* that a company whose premises were principally occupied as an exchange, in which coalmasters, coal merchants, coal brokers, and others met, for membership in which a money subscription was payable, and whose premises were on occasions let for such temporary purposes as balls, bazaars, and soirees, were entitled to exemption from house duty under that section.

The Glasgow Coal Exchange Company (Limited) had appealed to the Commissioners under the Property and Income Tax Acts, &c., for Lanarkshire, against an assessment of £1660 made upon them for inhabited house-duty, at the rate of 9d. per pound, for the year 1878-79. The assessment was made in respect of the appellants' hall and side-rooms, including hall-keeper's house; and the admitted facts were—as stated in the case presented by the Commissioners—"That the Glasgow Coal Exchange Company (Limited) is a proprietory limited company formed for the purpose of profit or gain, and the halls and adjoining rooms on which they are assessed are occupied principally as an exchange and pertinents thereto, in which coalmasters, coal merchants and coal brokers and others meet, the membership subscription being one guinea and ten shillings and sixpence respectively. Further, the said buildings are let for temporary purposes, such as balls, soirees, church bazaars, and entertainments of various kinds, but have never been occupied for such purposes for more than an evening at a time, except in the instance when a church bazaar occupied the halls and ante-room for three days, and for such temporary lets money is paid to the company—they are further occupied daily by subscribers, who are supplied with newspapers and other periodicals, which is covered by the said annual subscription."

The question of law for the opinion of the Court was—"Whether the facts set out in the foregoing statement are such as (having in view rule 5 of Sch. B to the Act 48 Geo. III. cap. 55) would bring the premises assessed within the terms of the exemption contained in section 13 and subsection 2 of 'The Customs and Inland Revenue Act 1878?'"

The Act 48 Geo. III. cap. 55, Schedule B, rule 5, provided that "Every hall or office whatever belonging to any person or persons, or to any body or bodies, politic or corporate, or to any company that are or may be lawfully charged with the payment of any other taxes or parish rates, shall be subject to the duties hereby made payable as inhabited houses, and the person or persons, bodies politic or corporate, or company, to whom the same shall belong, shall be charged as the occupier or occupiers thereof."

The Customs and Inland Revenue Act 1878 (41 Vict. c. 15), sec. 13, subsec. 2, 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 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."

The commissioners, by a majority of two to one, confirmed the assessment, they being satisfied that the premises were so occupied as not to come within the exemption.

The Exchange Company appealed, and argued—The company was a proprietory limited company formed for the purpose of profit. The pursuers had no distinctive name perhaps, but that was not necessary. The nature of the business was described in the case with perfect accuracy and intelligibility. The members of the company were not a class of persons identical with the coal-masters and others who made use of the exchange, although some individuals might belong to both classes. It was the company who were occupiers, and who were assessed, and it was their business therefore which must be looked to in this matter. That business was plainly one of profit, whatever might be the purposes for which those who made use of the rooms came there. The appeal ought to be sustained.

Authorities—*The Edinburgh Life Assurance Company and The Scottish Widows Fund* v. *Inland Revenue*, February 2, 1875, 2 R. 394; *Aitken* v. *Harper*, November 16, 1865, 4 Macph. 36; 48 Geo. III. c. 55, Sched. B, rule 5; 57 Geo. III. c. 25, sec. 1; 5 Geo. IV. c. 44, sec. 4; 32 and 33 Vict. c. 14, sec. 11.

Argued for the Inland Revenue—It was not easy to say what was the nature of the trade carried on by this company. It had no name, and no very distinct character. But admitting that the company had a profession or trade of some sort which it carried on with a view to profit, that was of little moment here; for the words of the Act were "house or tenement which is occupied solely for the purpose of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit." Now, the occupiers here were the coal merchants and others who frequented the rooms, and it was not contended that their company was for the purpose of profit. Besides, the coal merchants and the members of the Exchange Company were practically one and the same persons.

At advising—

Lord President—The question raised in this case is whether the appellants are exempted from the duties leviable on inhabited houses? The case is stated under the Customs and Inland Revenue Act 1874 (37 Vict. chap. 16), sec. 9. The inhabited-house duty was in its institution originally very extensive, and may be described generally as being an assessment upon all occupied houses. That was in fact the meaning of the word "inhabited house" at the time of the original enactment on the subject. Subsequent Acts of Parliament narrowed the extent of that very much, and the question comes to be, whether this Coal Exchange Company, who appeal against the deliverance of the commissioners, fall within the list of those exemptions?

The first exemption that was made from the tax was introduced by the Statute 57 Geo. III., cap. 25, which exempted buildings occupied entirely for the purposes of trade. Trade was stated to mean the trade of merchants. It was held that the exemption was confined substantially to warehouses for the storing of goods belonging to wholesale merchants in the premises occupied by them in carrying on their business, and specially occupied by retail traders. A little later the Legislature thought fit to extend the exemption still further—by the Statute 5 Geo. IV., cap. 44—to premises which were occupied (as it was generally described) for business purposes—that is to say, for the purpose of carrying on any profession, business, or calling. Taking these two statutes together, I think the fair result may be said to be that premises which were occupied exclusively for business purposes, whether for the purposes of trade or for the carrying on of any profession or calling, were exempted from the tax.

But then there remained this peculiarity, that if anyone lived in the premises in which either trade or business was carried on that destroyed the exemption, and brought the premises within the category of inhabited houses. To remedy that so far, the Act of 32 and 33 Vict. cap. 14, sec. 11, provided that the presence of a person living in the house for the purpose of merely taking care of the premises should not prevent the exemption applying in the case of premises occupied for trading purposes. But that left the law in a very peculiar position, because premises occupied for trading purposes might have somebody there for taking care and still be exempt, while premises occupied either for professional or business purposes would not be exempt if anybody dwelt in them, even for the simple purpose of taking care of them. Now, it was to remedy this defect that the enactment of last year was passed; and I think the object is very plain on the face of it. It is to put premises occupied for the carrying on of any profession, calling, or business in the same position as trading premises are placed by the former Act; and so the legislation, as far as this matter of exemption is concerned, is now complete, and it may be generally stated as resulting in this, that premises which are not dwelling-houses, but are occupied entirely for business purposes, whether trading purposes or professional purposes, or for the carrying on of any other business, shall be exempt, even although there be a caretaker dwelling upon the premises.

Now, the question comes to be, whether this Coal Exchange Company (Limited) is, in respect of the occupation of its premises, in the position contemplated by the law as it now stands? I am of opinion that it is. I think that upon the statement of facts before us, beyond which we cannot go, this Coal Exchange Company is carrying on a business in the rooms set forth as their premises, and a business of a perfectly intelligible kind; it is carrying on the business of a coal exchange. That is the primary purpose to which its premises are devoted. It furnishes accommodation to persons in the coal trade to meet together in its premises and buy and sell, or to deal with one another in any other way they think fit; and it provides them with accommodation of various kinds to make them comfortable in carrying on this business with one another.

It was suggested in the argument for the Inland Revenue that the people who resort there, and who may be called members of this exchange, are in reality the partners of this Coal Exchange Company (Limited). If that were so it might introduce a totally different element into the case,

but nothing of the kind has been stated by the commissioners. And I take the facts as they are stated by the commissioners to mean this, that the Coal Exchange Company (Limited) and its partners are entirely distinct and separate from the persons who resort there for the purpose of taking the benefit of the coal exchange. It may very well be—and I am quite willing to assume that it is so—that some of these members may be shareholders in this company. That would not make the least difference in the state of the case; but that the two are identical is not the fact before us at all, and cannot be taken for granted.

Now, as I said before, this is quite an intelligible business for the company to carry on, and I do not think it matters in the least degree, this being a primary use they make of their buildings, that they also let them to be used for other and temporary purposes—that is to say, for a night or two days, or something of that kind. Nothing is more common than for persons to have large premises which they use for one purpose as their primary purpose, but let them out occasionally for other purposes. Take, for example, the ordinary case of a hotel-keeper who has large rooms in his hotel. His business is that of a hotel-keeper, but it is not in the least degree inconsistent with his carrying on that business that he should also let his larger rooms for public meetings and any similar purpose. And just so here. The Coal Exchange Company use these premises primarily as a coal exchange, but at other times, at times of the day when they are not wanted for the coal exchange or at times of the week or times of the year when they are not wanted for that purpose—they are let for balls, bazaars, and other temporary purposes of that description. Now, I do not think that interferes in the least degree with the central fact of this case, that the company are carrying on in these premises for profit or gain the business of a Coal Exchange, and they appear to me to fall clearly within the statutes as they now stand.

I am therefore for reversing the determination of the commissioners.

Lord Deas—I have arrived at the same opinion. It rather appears to me that this Exchange Company are either carrying on one calling in these premises or they are carrying on two callings. If they are carrying on the business or calling of a Coal Exchange Company, then they are plainly exempted; but if they are carrying on the calling or business of letting these premises for balls and amusements, I think they are equally carrying on a business. If they are exempted on either of these grounds they must be exempted on both of them.

Lord Mure concurred.

Lord Shand—I have come to be of the same opinion. I think, in order to the sound construction of the statute one must ascertain at the outset who are the occupiers of these buildings, and I think, within the meaning of the statute the occupiers of the buildings are plainly the Coal Exchange Co. They occupy the greater part of the building by using it as a coal exchange, where, as I understand, they provide their own servant to take charge of it, and where they allow coal merchants, coal brokers, coal masters, and others, the privilege of resorting, with the use of newspapers and periodicals and general use of the building as an exchange, upon a return in the shape of an annual subscription varying from a guinea to 10s. 6d. The persons who come in that temporary way cannot be represented as occupiers of the building in any sense. The Coal Exchange Co. are occupiers for the purposes of a coal exchange. And in regard to the other uses made of the building, the Coal Exchange Co. are also the occupiers. Although they may give over the use of some of the rooms, as has been explained, for an evening at a time, or a day or two at a time, when the halls are occupied by a church bazaar or the like, still on these occasions the people are there merely temporarily, not in any proper sense as occupiers of the building, and that being so the provision of the statute is this, 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. The occupiers here being the Coal Exchange Co., they are occupying those premises solely, so far as they are concerned, for the purpose of earning profit, either in so far as the premises are occupied as a coal exchange or in so far as there are other temporary lets.

I observe that the Surveyor, in the argument which has been submitted, and which seems to have weighed with the commissioners, puts the case thus—that, although the premises are let by the company with a view to profit, the exemption regarded only the purposes for which they are occupied by the various persons to whom they are let, and that as they are not in all cases occupied for purposes by which the temporary occupier seeks a livelihood or profit, they do not fall within the terms of the section. But I do not think that what the statute has regard to here is such use as may be made of the premises by those whom the surveyor calls "temporary occupiers." If that were so, there would be considerable room for the argument maintained by the Crown, and if the words used in the statute had been "every house or tenement which is used solely for the purposes of any trade or business," and nothing further, it would have been different. But I think the statute has no regard to temporary occupiers having the use of premises in this way, it may be for two or three days or two or three evenings at a time. It regards rather the nature of the trade or business of the person who is really the occupier—in this case the Coal Exchange Company—and as they occupy solely for the purpose of profit, in making as large a return from their building as they can, I think they are within the terms of this clause of exemption.

The Court reversed the determination of the commissioners, and remitted to them to disallow the assessment.

Counsel for Coal Exchange Company (Appellants)—Balfour—Jameson. Agent—J. F. Weir, S.S.C.

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