there was directed against the assurance company to recover the sum insured upon a life. The company pleaded that the policy had been obtained by fraudulent concealment and misrepresentation of material facts. The plaintiffs applied for inspection of (1) two reports made to the company by private friends of the assured to whom the company were referred with relation to the assured's health, and (2) a report made by a medical man to whom the assured was referred for examination on behalf of the company. At the head of the printed form of questions upon which these reports were made were statements that the company would regard the answers given as strictly private and confidential. The Court allowed inspection of the documents on the ground that they were not privileged from inspection, and regarded the statement that the report would be strictly private to mean no more than this, that the company would not needlessly disclose it. It is right, however, to notice that the Judges in that case did indicate that there might be circumstances that might warrant the extension of the rule as to privileged communications to such reports. Thus Chief-Justice Bovill said—'I do not say that in every case the Court would order such documents as these to be produced. The Court has a discretion, and is bound to exercise it according to the circumstances of the particular case. It is easy to see that in some cases these documents might be of importance, and in others not. Here there are no grounds shown by the affidavits why they should not be produced, except the mere fact that they are stated to be confidential as between the insurance office and the parties who wrote them. This is not any legal ground of privilege.' This remark had reference to what seems to be more confidential than the medical report, viz., the report of private friends as to the state of health of the insured. If the Court does possess such a discretion as is thus claimed, it can only be exercised upon very special grounds indeed. If it were made clear that the document when produced would not be competent evidence at the trial, that would be a ground for refusing an order to produce it. But such an objection to the production, though it may be suggested by a haver for the consideration of the Court, is one that can only be competently taken by a partner to the suit. The medical reports here sought to be recovered have been given (as was stated to the Lord Ordinary) by living men whose evidence may be obtained at the trial, and therefore it may be said that there is no necessity for admitting the reports which they made years ago; and consequently it is argued if any judicial discretion is to be exercised in the matter it should be in favour of the objection to production. Whether the evidence be competent or not is a question that must be argued by the parties to the cause when the reports are tendered in evidence at the trial, and cannot be determined now, and therefore there is no specialty in the present case that would induce the exercise of any discretion against the non-production."

This interlocutor was acquiesced in, and the cause was thereafter taken out of Court without further procedure.

Counsel for Petitioner—Pearson. Agent—A. P. Purves, W.S.

Counsel for Respondents—J. P. B. Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, December 14.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* COUTTS.

Revenue—Inhabited-House-Duty—Act 48 *Geo. III. cap.* 55, *Schedule B, rules* 6 *and* 14—*Act* 41 *Vict. cap.* 15, *sec.* 13, *sub-secs.* 1 *and* 2.

The proprietor of certain premises occupied one portion as his dwelling-house, another portion as a stamp office, the third portion, which was interjected between the two others, being held on lease by himself and his partner as writing chambers. There was a separate entrance to each portion, and internal communication throughout. *Held* that the entire premises being one tenement, were liable in inhabited-house-duty.

In this case Mr William Coutts, solicitor and distributor of stamps and collector of taxes at Banff, appealed to the Commissioners for the county of Banff against an assessment of £2, 12s. 6d. as inhabited-house-duty, at the rate of 9d. per £ on £70, the annual value of certain premises in Low Street, Banff. These premises formed two sides of a square, the back and the wing respectively; the back consisted of two storeys and sunk flat, and the wing, which was built at a subsequent date, of two storeys. The whole of the back, and a bedroom, bath-room, and W.C. forming the back part of the upper storey of the wing, was occupied by Mr Coutts as a dwelling-house. The front part of the upper storey of the wing, and landing there, and the back part of the ground floor of the wing and W.C. and passage thereto, were occupied as the writing chambers of Messrs Coutts & Morrison at an annual rent. The front part of the ground floor of the wing was occupied by Mr Coutts as a stamp and tax office. There were three principal entrances to the premises—one to the dwelling-house, one to the writing chambers, and one to the stamp office. From the stamp office there was a door leading into the passage to the last-mentioned W.C., and from this passage there was another door by which access could be had into another passage which led into the writing chambers on the ground floor. From this last-mentioned passage a stair led up to the landing on the second floor, and from this landing at the top of the stair there was a door leading into the bedroom before-mentioned, and from this bedroom there was another passage to the main portion of the dwelling-house. There was thus the means of internal communication throughout the whole building.

The Commissioners sustained the appeal as to the writing chambers occupied by Messrs Coutts & Morrison, but refused it as to the stamp office. With this decision, in so far as it excluded the writing chambers, the Surveyor declared his dissatisfaction; and Mr Coutts, in so far as the decision included the stamp office, also declared his dissatisfaction; and in terms of section 59 of

43 and 44 Vict. cap. 19, both parties craved a Case for the opinion of the Court of Exchequer.

It was therein set forth (1) that Mr Coutts had contended—"(First) That the writing offices occupied by William Coutts & Morrison, and the stamp and tax office occupied by himself, being each a separate place of business occupied by separate and distinct persons, and the stamp office not being attached to the dwelling-house, and having no communication with it without passing through the subjects let as writing offices to the firm of William Coutts & Morrison by the said passages and stair, neither could in any sense be held as part of his dwelling-house; and (second) that the whole premises being one property, divided into and let or used in different tenements, the portion occupied solely for the purpose of the profession or calling of the occupiers is not liable to the duty, but is exempt by sub-section 1 of 41 Vict. cap. 15, section 13." (2) That in support of the assessment it has been maintained—"(First) That in the eye of the law the whole block of buildings is one inhabited dwelling-house, and that, apart from any special exemption, the assessment fell to be made upon the full *cumulo* value; that the Act 14 and 15 Vict. cap. 36, under which the assessment is made, referred back for the rates of charge to the Act 48 Geo. III. cap. 55, and that the present case fell under rules 1 and 5 of Schedule B of this latter Act; and (second) that the special exemption founded on under sub-section 1 of 41 Vict. cap. 15, section 13, plainly had reference to houses which fell to be assessed under rule 6 of Schedule B of 48 Geo. III. cap. 55, and that the premises in question are not let in such a manner as to bring the whole house within the scope of this rule 6, or the writing offices within the exemption in sub-section 1 of 41 Vict. cap. 15, section 13."

Authorities—(1) *For Coutts—The Glasgow Coal Exchange Company (Limited)*, March 18, 1879, 33 Exch. Cases; and also decision by Commissioners of Banffshire in *Crown* v. *Allan*, in 1879, acquiesced in by the Crown. (2) *For the Crown*—Nos. 2599, 2781, and 2782 English Cases, and Nos. 27, 29, 35, and 40 Exchequer Cases.

By 48 Geo. III. cap. 55, Schedule B, rule 5, it was enacted 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." By rule 6 it was enacted that "Where any house shall be let in different storeys, 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 decerned the occupier of such dwelling-house, and shall be charged to the said duties."

By the Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), section 13, sub-section 1, it was 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 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."

By sub-section 2 of the above section it was enacted 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."

At the discussion the following additional authorities were cited—*Scottish Widows' Fund* v. *Inland Revenue*, January 22, 1880, 7 R. 491; *Glasgow and South-Western Railway Company* v. *Banks*, July 16, 1880, 7 R. 1161; *Edinburgh Life Assurance Company* v. *Inland Revenue*, February 2, 1875, 2 R. 394; *Yorkshire Fire and Life Assurance Company* v. *Clayton*, March 10, 1881, 6 Q. B. D. 557, *affirmed* Weekly Notes, December 6, 1881; *Attorney-General* v. *Mutual Tontine Westminster Chambers Association (Limited)*, May 19, 1876, 1 Exch. Div. 469; *Chapman* v. *Royal Bank of Scotland*, June 3, 1881, 7 Q.B.D. 136.

At advising—

LORD PRESIDENT—I confess I think the precise facts as to the occupation of this inhabited house belonging to Mr Coutts are better discovered from the plans than from the Case. The statements in the Case are not very clear and distinct to my mind, but the plans are perfectly so. This is one inhabited house which is the property of Mr Coutts, but it is occupied in different ways. A portion of it is occupied as a dwelling-house by Mr Coutts himself, another portion of it is occupied as a stamp office by Mr Coutts, and a third portion of it is occupied by Mr Coutts and his partner Mr Morrison as writing chambers. Now, these are all parts of the same inhabited house, and it is past all dispute that they communicate with one another. It is said, indeed, that the doors of communication are so arranged that Mr Coutts only can use these different doors of communication. The dwelling-house on the upper storey extends beyond what it does upon the ground floor. Upon the ground floor it is confined to what is called the old house, but in the upper storey it extends not only over the old house but over the back part of the new house.

The back part of the new house below that portion occupied as part of the dwelling-house is occupied as part of the writing chambers of Coutts & Morrison, and the front part is occupied as the stamp office. On the upper floor over the stamp office there are three additional rooms, occupied by Coutts & Morrison's writing chambers. On the ground floor there is a door of communication opening from the stamp office into the premises of Messrs Coutts & Morrison, and by means of a staircase from that passage there is a communication to the whole of the upper storey of what is called the new house; and there is a door of communication between that portion of the house which is occupied as part of Mr Coutts' dwelling-house and the front part of it, which is occupied by Coutts & Morrison's writing chambers. So that as far as Mr Coutts is concerned he may enter by any one of the entrances from the street, and being once within this inhabited house he can pass by means of these various doors and passages to any part of the entire house.

Now, the first question comes to be, whether the stamp office is within the exemption contained in sub-section 2 of section 13 of the Act of 1878? That provides—"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 duty." Mr Coutts maintains that he occupies this stamp office for the purpose of his business as a distributor of stamps, and that it is within the meaning of this sub-section a house or tenement occupied solely for that purpose. That is a contention which I think it is impossible to sustain. It is not a house or tenement within the meaning of that sub-section, but it is simply a room in the inhabited house belonging to and occupied by Mr Coutts, and such a room is not within the meaning of that sub-section. That seems to me to be too clear to require any further statement or argument.

The other question regards a part of this inhabited house occupied by Messrs Coutts & Morrison as writing chambers. Now, it is said that this is within the meaning of sub-section 1 a part of a divided house let as a different tenement, and the case depends entirely upon the construction of the words in sub-section 1. It has been said that this sub-section 1 is very difficult of construction, and particularly that there is a great difficulty in fixing precisely the meaning of the word "tenement" or "different tenements." I confess I do not experience that difficulty at all, because I find it solved by going back to the original statute which imposed the duty upon inhabited houses. I find the word used there in such a way as to make it perfectly clear what is meant by it. The 6th article of Schedule B of the 48th of Geo. III. provides—"That where any house shall be let in different storeys, tenements, lodgings, or landings, there the owner of the entire house shall be deemed to be the occupier of the whole, although it is occupied separately by different persons." Now, the word "tenements" there occurs in connection with storeys, lodgings or landings; and certainly to a Scotch lawyer, whatever it may do to anybody else, that at once suggests the mode in which houses are occupied in those large buildings that we have in Edinburgh and other towns, where the different tenements are approached by a common stair. The 14th article of that same schedule provides that where any dwelling-house shall be divided into different tenements, being distinct properties, then they may be separately assessed in the duty. It is plain, therefore, from these two articles, taken together, that the meaning of the word "tenement" in this statute is a part of a house so divided and separated as to be capable of being a distinct property or a distinct subject of lease. Now, if that is not a sufficient definition of the word "tenement," I am afraid we shall require another. But it enables me to construe without difficulty this first sub-section. The sub-section is no doubt expressed in rather a cramped way, and it is rather elliptical, but reading it more at large I should say the meaning of it is this—to bring a case within the exemption there must be a house belonging to one owner so structurally divided into different tenements as to be capable of being separately owned or separately let, and these different tenements must be either all separately let or all for the time unoccupied, or some of them separately let and some of them for the time unoccupied. I think that exhausts the whole words and meaning of this sub-section. Now, the only question in the present case is, whether we have got in the possession or occupation of Messrs Coutts & Morrison a separate or different tenement, separately let within the meaning of these words, and I think the facts of the case do not amount to such a separation of these rooms of the inhabited house belonging to Mr Coutts as to make it a separate tenement, and so within the exemption. It appears to me that Mr Coutts is really in the occupation of the whole of this inhabited house; he has access to every part of it; no doubt he occupies some of the rooms jointly with his partner in business, Mr Morrison, and that is all that can be said about it. There is the form of a rent paid by the firm of Coutts & Morrison to Mr Coutts. That is all quite right, but paying a rent for the occupation of two or three rooms in any house will not constitute these rooms into a separate tenement unless there is that structural division which makes a separate tenement such as could be the subject of a separate property or a separate lease; and here we certainly have nothing of that kind. Whether the circumstance of Mr Coutts being in the occupation himself of a part of the inhabited house—even supposing it were divided structurally into separate tenements—would prevent the application of this clause, I desire to give no opinion, because I do not think it is at all necessary for the decision of this case, and one cannot help seeing that there must be difficulty in that question, because learned Judges in the other end of the Island have differed upon it, but it is not at all necessary for the judgment in this case.

I am for altering the determination of the Commissioners in so far as concerns Messrs Coutts & Morrison, and affirming the rest of their determination.

Lord Mure—On admitted facts as explained in the Case, and by the plans, the house here in question is an inhabited house belonging to Mr Coutts, built at different times, but built, in as far

as we can see, for the occupation of the proprietor. The manner of occupation is this:—On the back wing, which adjoins the original house, being built, a considerable portion of it was connected with the bedroom flat of the old house for additional bedroom accommodation, and it is at present so occupied by the proprietor. The rest of the same flat in the new wing is occupied by Mr Coutts and his partner as part of their writing offices, having been let by him to the firm, and there is a door of communication between the offices and the bedroom flat which is used by Mr Coutts for his convenience. The lower part of this wing behind is also let to and occupied by the firm, with the exception of the rooms occupied by Mr Coutts as his stamp office. This office has a separate entrance from the street, but there is the means of communication with the premises let to the firm by a door which Mr Coutts also uses for his personal convenience.

In these circumstances I am of opinion, 1st, that the stamp office does not fall under sub-sec. 2 of the 13th section of the Act. It is not a separate tenement, but a couple of apartments in the lower part of the back wing of Mr Coutts' own house. It is just in substance the same sort of occupation of a portion of his own house by him for business purposes as there was in the *Glasgow and South-Western Railway* case, where the railway occupied the upper portion of their own premises as a hotel, and the lower as their offices. 2d, As regards the premises occupied by the firm, they are just a portion of the apartments of the wing of the house, let to the firm, but with no structural separation in the proper sense of that expression; and although the firm may have no right to use the doors of communication between their part of the premises and the old house and stamp office, it is admitted that these doors are used by Mr Coutts when it suits his convenience. These premises cannot therefore, in my opinion, be said to come within the operation of sub-division 1 of the 13th section of the statute.

Lord Shand—I concur in the opinions which your Lordships have delivered. It appears to me, in the first place, to be clear that this old house and the wing which has been built as an addition to it form one house or tenement. It is true that in building the wing as an addition to the house there appears to have been no communication opened between the old house and the wing on the ground floor, but when we turn to the plans of the upper floor we find that there is an important passage connecting the upper floors, so as I think to make them one house: the purpose of that passage was to enlarge the old house by providing as an addition to it upstairs a bed-room, dressing-room, and water-closet and bath, and these are all occupied by Mr Coutts now as part of his house. I observe it is stated in the Case that the roofs of the back and wing are on the same level, but are totally unconnected except by an ordinary metal gutter, which is common to both; but I do not think that makes any substantial difference. It is just the case of an old house having had an addition built to it, and although the roofs are only connected by a common metal gutter, I think this is substantially a house which is in the same position as if it were all under one roof. That being so, there are two questions raised—first, in regard to the stamp office, and secondly, in regard to the office or rooms occupied by Messrs Coutts and Morrison; and I think these ought to be taken separately.

In regard to the stamp office, it is true that the direct entrance to the stamp office is separate from that to the house, although it is also true that from the upper floor of the house, by means of internal doors of communication, Mr Coutts can go from his dwelling-house, through the passages connecting his dwelling-house and the other parts of the premises, to the stamp office without going outside. But in regard to the stamp office the exemption is claimed, not under sub-section 1st, but under sub-section 2d, of section 13 of the Act of 1878. It is clear that sub-section 1 would not avail Mr Coutts in this question, because it cannot be said that the stamp office is a part of that which I have called one house or building which has been let by him. He has not let the stamp office. He is himself the occupant of the house and of the stamp office. The question, and the only question, for determination upon this part of the case is whether sub-section 2 gives the exemption. Now, that sub-section provides 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, shall be exempted from the duties. What I have already said seems to me to exclude the application of that section. It appears to me that this is one house or tenement, for the reasons I explained at the outset; and if they be one house or tenement, then it is not occupied solely for the purposes of Mr Coutts' profession or calling, because he occupies part of it as his dwelling-house and part of it as his stamp office. And therefore it appears to me that this sub-section does not apply. I may say that I am also of opinion that the case is directly ruled by that of the *Scottish Widows' Fund*. In that case there was an entirely separate entrance to the dwelling-house above the Widows' Fund office, which dwelling-house was occupied by one of the clerks of the office; the remainder of the building, by much the larger part of it, was occupied for business purposes, and the argument maintained was that the large part of the building occupied for business purposes was within the meaning of sub-section 2 a house or tenement by itself occupied solely for the business of the society. But we were unanimously of opinion that that part of the house or tenement occupied for business was not a house or tenement by itself, but that the whole building must be taken as a house or tenement, and we therefore held that it was not made out that that whole house or tenement was occupied solely for the purposes of the trade or business. It therefore appears to me that that is a direct authority upon this question.

There remains the question as to Messrs Coutts & Morrison's office, consisting of several rooms on the first floor and rooms upon the second floor of the wing attached to the house. It has been argued that in no possible view can there be exemption on account of Coutts & Morrison's offices, because in order to let in sub-section 1st the whole property must be divided into and let in different tenements, and that in this case it appears that Mr Coutts, the proprietor, himself

occupies the house, in which he dwells, and the stamp office, and therefore this sub-section cannot apply to the case. As your Lordship has observed, that raises a question upon which a difference of opinion has occurred amongst eminent Judges in England, and I shall not express any opinion upon it. I shall only say this, that upon the argument which we have heard on these cases, I am not satisfied at this moment that the circumstance that the proprietor himself occupies part of the building would exclude sub-section 1, and if it were necessary to determine that point in the Crown's favour in order to decide this question, I should not be prepared at this moment so to decide. But assuming for the purposes of this case that sub-section 1st does apply to a case where part of a house or building has been divided into and let in different tenements, I am of opinion that in this case Mr Coutts cannot get the benefit of this sub-section. If it had appeared or been the fact that the doors of communication shown on these plans as existing on the 1st and 2d floors of this building had been built up or permanently closed, I should have been of opinion that the exemption did apply to the part of the premises occupied by Coutts & Morrison; for in that case we should have had these premises with a separate entrance of their own, which admitted the partners of that firm and their clerks and people going there on business, and no one else, to the portion of the building given off to Coutts & Morrison. There would, in my opinion, in that case have been such structural division in this building as amounted to the creation of a different tenement let to Coutts & Morrison by Mr Coutts. But it makes all the difference, I think, that there is not that permanent structural division. We have here, in the first place, a door of communication between the upper part of this dwelling-house and the passage leading into Coutts & Morrison's office, and we have in addition another door of communication between the stamp office and the passage on the ground floor, which again leads into Coutts & Morrison's offices both downstairs and above. I do not say that that second door of communication is of the same importance in this case as the upper one which connects the dwelling-house with the offices; and it may be that if the door of communication from the dwelling-house to the offices had been permanently closed, that would have been enough to make the case one for exemption. But as it is, I think the case does not come within sub-section 1 as being a house—one property divided into and let in different tenements, because there is not a structural division which would make the offices of Coutts & Morrison a different tenement.

It is said, no doubt, in this case that the passage or communication is only used occasionally by Mr Coutts during the pleasure of his firm, for his personal convenience, and out of office hours. It is extremely difficult to accept that, or to see why a door of communication of that kind should be used out of office hours, when it must be of more convenience to Mr Coutts during the day and during office hours; but even taking it so, the passage is available at all hours of the day; and that being so, it appears to me that you cannot predicate of Coutts & Morrison's office that it is a separate tenement structurally divided from the house. Upon that ground I agree with your Lordships in holding that sub-section 1 does not apply. And I may just observe that if we were to hold in this case that this door of communication which may be used by Mr Coutts at any time—and I assume is used by him only, or persons at his house—were not held as a communication which distinguished the case from a structural division, I do not know where in other cases it would be possible to draw the line. We should have other cases in which a door of this kind existed and was used all day long, it might be, or where two or three such doors were used, and the same argument would apply. I think the line must simply be drawn by looking at the particular premises, and ascertaining whether they are so structurally shut off from the rest of the building occupied as to form an entirely separate tenement of itself, and I do not think Coutts & Morrison's office is in that position.

The Lords reversed the determination of the Commissioners in so far as they had sustained the appeal as to the writing chambers occupied by Coutts & Morrison, and *quoad ultra* affirmed the determination.

Counsel for the Inland Revenue—Lord Advocate (Balfour, Q.C.)—Solicitor-General (Asher)—Rutherfurd. Agent—D. Crole.

Counsel for Coutts — Trayner — Mackintosh. Agent—A. Morrison, S.S.C.

Thursday, December 15.

SECOND DIVISION.

[Lord Adam, Ordinary.

GLEN *v.* LYON AND OTHERS.

(Before Lord Justice-Clerk, Lord Young, and Lord Craighill.)

Passive Title—Apparent Heir—Statute 1695, *c.* 24—*Ratification of a Null Deed.*

An heir-apparent ratified a disposition granted by his deceased predecessor in favour of his widow of certain heritable subjects, the disposition being null from defects in its execution. The Court *repelled* an action of reduction raised (after the widow and her successors had possessed for forty-five years) at the instance of a subsequent heir — who made up a title as heir-at-law to the original disponer, passing over the apparent heir — on the ground that the possession of the widow under the deed and the ratification was truly possession by the heir-apparent, and that the ratification was a "deed" of the apparent heir for which the pursuer was liable under the Act 1695, cap. 24.

Writ—Notary—Ex facie *Nullity—Presumption.*

Held that a disposition of heritage executed in 1836 by a notary before four witnesses was null *ab initio*, and could not form a title on which prescription could proceed.

Question—Whether a deed of ratification of such a disposition, granted by the heir-apparent of the disponer, constituted, when read along with the disposition, a title which, for-