No. 229.—COURT OF EXCHEQUER (SCOTLAND), FIRST DIVISION.

14th and 24th June, 1898.

HOUSE OF LORDS.

29th March and 28th May, 1900.

GRANT *v.* LANGSTON (Surveyor of Taxes).(1)

Inhabited House Duty.—Exemption.—House.—Tenement.—Shop under dwelling-house.—Owner-occupier.— A building of two storeys under one roof is wholly occupied by the owner, who uses the ground floor for the purpose of carrying on his trade of licensed retailer of spirits, and occupies the upper storey as his dwelling-

(1) Reported 2 F. 49.

GRANT v. LANGSTON.

house. The only access to the upper storey is by a door opening from the street.

Held, *that the ground floor is exempt from duty either as a distinct house or a tenement within* 41 *and* 42 *Vict., cap.* 15, *section* 13 (2).

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 14th day of December 1897.

Mr. John Grant, licensed retailer of spirits, appealed against an assessment of 3*l.* 5*s.* 6*d.*, being the Inhabited House Duty charged under 14 & 15 Vict. cap. 36, and Rule III of 48 George III., cap. 55, Schedule B. and the Finance Act, 1897, for the year ending the 24th day of May 1898, at the rate of 6*d.* in the pound on 131*l.*, the *cumulo* value of a dwelling-house and licensed premises situate in Bath Street, Portobello, and claimed, that the premises did not fall within the said rule, and that the duty should be confined to that portion of the premises occupied as the dwelling-house

The following are the facts found and admitted :—

(1.) The premises in question consist of a building of two storeys under one roof, of the whole of which the Appellant is both owner and occupier.

(2.) The ground floor, No. 49 Bath Street, is used by the Appellant for the purpose of carrying on the trade of licensed retailer of spirits, and the upper storey, No. 47 Bath Street, is occupied by him as his dwelling-house. The terms of his public-house certificate, which is in the form of Schedule A, No. (2), appended to the Public Houses (Scotland) Act, 1862, are, that he is authorised and empowered " to keep a public house at 49 Bath Street, Portobello . . . . for the sale in the said house, but not elsewhere . . . . of spirits, wine, porter, ale . . . . "

(3.) The only access to the dwelling-house is by the door opening from the street, No. 47 Bath Street, to the staircase leading to the upper storey, and for the Appellant to enter his licensed premises from his dwelling-house he has to descend the stair, come into the public street, and enter by the public door, No. 49 Bath Street.

(4.) The dwelling-house is not included in the premises licensed for the sale of exciseable liquors, and they are separately entered in the Valuation Roll of the City of Edinburgh, the annual value of the house being entered as 33*l.*, and of the licensed premises at 98*l.*

(5.) The licensed premises were formerly occupied by a tenant who was not tenant or occupier of the dwelling-house. No person resides in the licensed premises, as the Magistrates of Edinburgh, being the licensing authority within whose jurisdiction Mr. Grant's house is situate, have made it an unwritten condition that Mr. Grant should not reside in his licensed premises.

We, the Commissioners, being of opinion that no liability to Inhabited House Duty existed in respect of the business premises, No. 49 Bath Street, Portobello, sustained the appeal, and restricted the assessment to the duty on 33*l.*, the annual value of the dwelling-house, No. 47 Bath Street, Portobello.

Whereupon the Surveyor of Taxes, Mr. F. W. Langston, expressed dissatisfaction with our decision as being erroneous in point of law, and having required us to state a Case for the opinion of the Court of Exchequer, it is hereby stated and signed accordingly.

JAMES H. GIBSON CRAIG,
WM. WHITE MILLAR, } Commissioners.

Edinburgh,
6th April, 1898.

This case came before the First Division of the Court of Session, sitting as the Court of Exchequer, on the 14th June 1898, when the Solicitor-General and *Young*, Standing Counsel to the Revenue, appeared for the Surveyor, and the Dean of Faculty (*Asher*) and *Cooper* for the Appellant, Mr. Grant.

After hearing Counsel their Lordships took the case to *avizandum*, and on the 24th June it was advised, the decision being in favour of the Surveyor with expenses.

OPINIONS.

24th June, 1900.

Lord President.—My Lords, I have found it impossible to resist the conclusion that this case is governed by the cases of the *Scottish Widows' Fund* (1) and the *Glasgow and South Western Railway Company* (2), and that it is our duty to follow those decisions and to give judgement in favour of the Crown. But I desire to add that, so far as my opinon goes, our decision to-day is not to be held as adding any new or independent affirmance of the reasoning upon which those decisions depend.

Lord Adam.—I am of the same opinion. In my view the case is ruled by the previous decisions, and I express no opinion as to whether those decisions were right or wrong.

---

(1) 1 T.C. 247. (2) 1 T.C. 325.

GRANT v. LANGSDON.

Lord McLaren.

Lord McLaren.—My Lords, I am perfectly satisfied that the point raised is established by a series of decisions, and in these circumstances I have not thought it necessary to give any independent consideration to the subject because of the obvious inconvenience of re-opening questions that have been settled. I therefore offer no independent opinion one way or the other as to the application of this Act of 1878 as constituting exemption.

Lord Kinnear.—My Lords, I agree with you Lordships that the question is decided by a series of judgments which are binding upon this Court.

Lord President.—We reverse the decision.

29th March, 1900.

On the 29th March 1900, the case came before the House of Lords on the appeal of Mr. Grant.

Asquith, Q.C. (*F. L. Cooper* with him), for the Appellant.—The first quest on is whether the case falls within Rule III of 48 Geo. III, c. 55, Schedule B., directing that all shops or warehouses attached to the dwelling-house, or having any communication therewith, shall in charging the duty be valued together with the dwelling-house. This is not a shop or warehouse, but licensed premises, a public-house. A public-house has never been treated as a shop in any Act of Parliament. Then the public-house is not " attached to " the dwelling-house nor has it any communication therewith. These words were intended to apply only where part of a dwelling-house was appropriated for shop purposes by the man residing there. They were not intended to cover the case of a man dwelling next door to his shop. " Communication " must have meant special private communication, and not merely communication by going into the street. The practice, especially in Scotland, is now to build separate dwelling-houses or flats over shops.

Rule IV. shows that in a very analogous case the Legislature directed a separate charge. Rule VI shows that but for that Rule the different tenements would be separately assessable. Rule XIV provides for the separate assessment of separate parts of a house. If there are in fact two separate tenements it is not seen how either unity of ownership or unity of occupation can make any difference unless the Act of Parliament expressly says so. In the present case these two buildings are separately entered in the Valuation Roll for all rating purposes ; they are treated as two separate things ; they have been in fact separately occupied, and there is nothing to prevent them from being so again to-morrow. The mere fact that the man living in the dwelling-house leases the public-house below his house cannot, it is submitted, increase the assessable value of his dwelling-house as an inhabited dwelling-house. 57 Geo. III, c. 25, shows

the intention of the Legislature throughout to have been that where a separate part of the premises is used for trade purposes alone, the value of it shall not be added to the assessment of the part that is used for residence.

The Schedule to the Act 14 & 15 Vict., c. 36, treats the words "shop or warehouse" as not in themselves including a public-house or other licensed premises.

Even if Rule II. of Schedule B applies, the effect of 41 & 42 Vict., c. 15, sec. 13 (2), is to afford exemption in respect of the part of the premises occupied for the sale of liquor. The English case *Chapman* v. *Royal Bank of Scotland* (1) is in point. In the present case the Judges in the Court below considered themselves bound by certain Scotch cases, of which one was *The Scottish Widows' Fund* (2). But the judgment in that case proceeded entirely upon the assumption that the whole building, including the portion occupied by the cashier, was the assessable subject. and decided that because the cashier could not be regarded as a caretaker the exemption in 41 & 42 Vict., c. 15, sec. 13 (2), did not apply. The other Scotch case relied on by the Judges was *Glasgow and South Western Railway Company* v. *Banks*(3), but the decision there merely followed that in the *Scottish Widows' Fund* case (2).

F. J. Cooper.—The Scotch Judges, in their decision, lost sight of the distinction between a dwelling-house and a tenement. *In re Campbell*(4) shows that the word "tenement" was there regarded as meaning a separate part of one building. The same words in this series of statutes should be construed in the same sense. *In Russell* v. *Coutts*(5) the Lord President defined a tenement as a part of a house so divided and separated as to be capable of being a distinct property or a distinct subject of lease. In the present case the Appellant could sell the public house and the first floor to different people. The present case is a stronger one than *Corke* v. *Brims*(6), where you could pass from one part of the premises to another without going out into the public street. In *Smiles* v. *Crooke*(7) and *Allan* v. *Miller*(8) the landlord was treated as letting two tenements and the shop was exempted. Why then here should the Appellant be liable not only upon the house but also on the shop, because he chooses to occupy them himself instead of letting them to somebody else ?

Without giving up at all the Appellant's first contention, which is that the shop is not taxable at all, it is claimed that in view of the decisions referred to, if the shop is *primâ facie* taxable, it is within the exemption in 41 & 42 Vict., c. 15, sec. 13 (2), which applies to every house, or part of a house.

---

(1) 1 T.C. 363. (2) 1 T.C. 247. (3) 1 T.C. 325.
(4) 1 T.C. 255. (5) 1 T.C. 469. (6) 1 T.C. 531.
(7) 2 T.C. 162. (8) 2 T.C. 466.

GRANT v. LANGSTON.

capable of being held separately, which is occupied solely for the purposes of trade.

Reverting to the first contention, "attached to" in Rule III. must mean "forming part of" just as the front room of a house would form part of the house though it were made into a shop instead of a dining-room.

In *Hall* v. *Box*(1) it was held in connection with building restrictions that a public-house is not a shop.

Sir R. E. Webster, A.G. (the *Lord Advocate*, the *Solicitor-General for Scotland*, and *A. J. Young* with him), for the Surveyor.—A man inhabits a house though he inhabits it for the purpose of trade only. Shops or other business premises are liable to Inhabited House Duty unless they are within the exceptions or exemptions. (*See* Bramwell, B., in *Rusby* v. *Newson*(2).) So far there has been no case in which the owner and occupier of a whole house occupying part for residence and part for trade has been successful in obtaining exemption. You are entitled to look to the four walls and the roof, and if you find an ordinary house with two floors under the one roof to say at first that that is a dwelling-house. Chargeability will therefore attach unless an exemption can be claimed under some express words of the Statute.

It is impossible to read Schedule B to the Act 48 Geo. III, cap. 55, without coming to the conclusion that all premises occupied whether for trade or for residence were intended to be liable to duty. Rule III merely defines what should be included within the house. It was put in to provide for, *e.g.*, a case in which a shop had been built on a garden in front of a dwelling-house. The Legislature was dealing with some addition made to the dwelling-house. In such a case you were not for Inhabited House Duty purposes to value the shop by itself, but to take for the purposes of valuation both the shop and the dwelling-house to which it was attached. Rule IV. was necessary to enable the particular subject matter, the chambers, to be dealt with as though it were a separate house. Rule V was inserted to bring within the ambit a case in which it might be urged that the hall was not occupied or inhabited. Rule VI. was to enable the tax to be recovered from one person instead of several. Rule XIV deals only with different ownerships.

Dealing with the Schedule to 14 & 15 Vict., c. 36, this is a dwelling-house, and in a shop which is part of it either goods are sold or liquor is drunk.

Section 13 (1) of 41 & 42 Vict., c. 15, does not include the case, as here, where the person who is the owner of one property himself occupies the two parts and does not let it. To come within

(1) 18 W.R. 820. (2) 1 T.C. at p. 18.

the words of the exception you must find the letting off of a tenement to a separate person, and the occupation by that lessee or tenant of the part let off solely for the purpose of trade. Sub-section (2) was not intended to be a section separate from sub-section (1). It is a further relief in aid of the same subject-matter. Its object was to say that if you had a separate house, or a separate tenement, wholly occupied for trade, as in the immediately preceding sub-section, then you are allowed to have the benefit of the reduction, although there was a caretaker residing on the premises. It was, at all events, mainly intended to meet the case of a caretaker. If, as argued, for the Appellant, it was intended to make a separate exception in favour of every case in which part of the house was so separated that it could be made a separate tenement, then sub-section (1) would be wholly unnecessary.

Chapman v. *Royal Bank of Scotland* (1) cannot be regarded as deciding anything more than that if you have a building so constructed that the occupier can turn it into two separate buildings, you can claim exemption. In that case the fact that there was a party wall between the two different portions was very important. Further, in that case there was a separate letting of the upper part of the premises. The case is no authority for the proposition that two parts of an ordinary house occupied by the same person are to be treated as separate tenements.

The ratio decidendi of the two Scotch cases, the *Scottish Widows' Fund* (2) and *Glasgow and South Western Railway* v. *Banks* (3) was that there is no justification for claiming exemption where the whole house is occupied by the person who is occupying the residential part, notwithstanding that there is structural division between the trade and the residential part. They are good decisions if the view above put forward, that 41 and 42 Vict., c. 15, sec. 13 (2), requires a tenement to be separately let as well as structurally divided, is correct.

In re Campbell (4), *Russell* v. *Coutts* (5), *and Corke* v. *Brims* (6), all show the necessity for the express exemption given by 41 & 42 Vict., c. 15, sec. 13 (1). All that *Smiles* v. *Crooke* (7) and *Allan* v. *Miller* (8) decided is that if a landlord lets off to a trade tenant a subject-matter which is itself separate and can be used for trade purposes he shall be allowed to claim the benefit of 41 & 42 Vict. c. 15, sec. 13 (1). That sub-section only applies where there is a landlord.

The general effect of the whole of this legislation is that there is nowhere to be found an exemption for the owner of a house, in the ordinary sense of the word, who himself occupies the whole,

---

(1) 1 T.C. 363. (2) 1 T.C. 247 (3) 1 T.C. 325.
(4) 1 T.C. 255. (5) 1 T.C. 469. (6) 1 T.C. 531.
(7) 2 T.C. 162. (8) 2 T.C. 446.

GRANT v. LANGSTON.

simply upon the ground that a part of his occupation has been devoted to the purposes of trade, and that such part is so arranged as to be structurally separated from the part which he occupies for dwelling purposes.

The Lord Advocate.—The word " tenement " in sub-section (2) of 41 & 42 Vict., c. 15, sec. 13, is either pleonastic for " house " or was inserted by reference to Rule XIV. of Schedule B.

Cooper (in reply).—Rule III of Schedule B shows that the original Taxing Act did not apply to a shop pure and simple, but only to such shops as were attached to or had communication with a dwelling-house. The taxing of shops was only introduced as auxiliary to the taxing of dwelling-houses in such cases where it would be difficult to decide where the house ended and the shop began. 57 Geo. III, c. 25, was passed to provide for cases where under Rule VI. a shop in a house let in tenements, the shop-keeper dwelling elsewhere, would otherwise be chargeable with the rest of the house.

Sub-section (2) of 41 & 42 Vict., c. 15, sec. 13, supplements sub-section (1) and applies whether or not a house *is let* in tenements, and confers exemption if either the house or the tenement is occupied for purposes of trade.

JUDGMENT.

The Lord Chancellor.—My Lords, I think this is one out of many similar cases in which the difficulty of construction arises from an alteration in things which, notwithstanding alterations retain their original names, while the Legislature in retaining the original name in a Statute legislates by using words in a wholly artificial sense.

A hundred years ago there was not much difficulty in saying what was a " house," but builders and architects have so altered the construction of houses, and the habits of people have so altered in relation to them, that the word " house " has acquired an artificial meaning, and the word is no longer the expression of a simple idea, but to ascertain its meaning one must understand the subject matter with respect to which it is used in order to arrive at the sense in which it is employed in a Statute.

With the most sincere respect for the authority of Sir George Jessel, I cannot help thinking that his reasoning in the Westminster case is unsatisfactory. No one will doubt the soundness of the maxim which he quotes as the basis of his judgment, but as usual it is the application of it which raises the difficulty. Indeed, I think it is true to say that the judgment to which I refer proves too much for the purpose of its final conclusion. It establishes undoubtedly that the word " house " is an ambiguous word ; it shows that you must search otherwise than in the word itself what is the meaning in which the Legislature has used it,

since the natural and ordinary meaning of an ambiguous word cannot be ascertained without the context. Now the instances to which the learned judge referred, such as the two Temples constituting one house, or houses such as Christ Church, Oxford have as little to do with structure, architecture, form of building, or occupation as with the complexion of the inhabitants.
"House" in one sense means simply a community ecclesiastical or secular, having common revenues, common objects, and in pre-reformation times, vows or obligations common to those who joined it. Accordingly, the word "house" has no common or ordinary meaning so fixed and definite that by the mere use of the word you can determine in what sense the Legislature has used it.

I think the original idea of an inhabited house was that of a building inhabited by one person (with his family) responsible for the tax, who was himself the inhabitant of the whole of the house. But very soon questions began to be raised as to what constituted the unity of a house; one side of a whole street is in one sense structurally one building, but the separate unity of each of the structures with all its arrangements for occupation by one family and its head was, of course, recognised as a house separately liable to the tax. Even semi-detached houses were always recognised as two houses, although they were structurally one and protected by one roof; but controversies have arisen in respect of rating for the poor, for purposes of taxation and for the franchise, and decisions have been arrived at not always satisfactory or reconcileable with each other. An outer door and a common or separate staircase have been most commonly the tests applied, and I am not myself able to see how the case of chambers in an Inn of Court and the decision of the Westminster case are reconcileable with each other. But the Legislature went further in respect of artificially creating more houses than one out of a house which was in every ordinary sense one taxable house by giving from time to time exemptions from taxation to parts of structures which were in every sense structures adapted and probably intended originally for the occupation of one inhabitant as head of a family. Sir George Jessel himself, in the *Yorkshire Fire and Life Insurance* v. *Clayton* (1), said :—"In modern times a practice has grown up of putting separate houses one above the other; they are built in separate flats or houses; but for all legal and ordinary purposes they are separate houses."

Now it appears to me that apart from the exemption created by the Act 41 & 42 Vict., cap. 15, s. 13, I should have great difficulty in holding this building to be one inhabited house within the various alterations which the Legislature has introduced into what it has for fiscal purposes called a "house." It appears to me that in the language of Sir George Jessel there are two houses built one above the other. I suppose no one

(1) 1 T.C. 336.

GRANT v. LANGSTON.

The Lord Chancellor.

would dream of calling them one house if the same conditions which are found to exist here were found to exist in the same structures built side by side and not one above the other, and if it is possible to have one house built over another house then all that has been held to constitute a separate house exists here; there is nothing which is held in common; the one structure is superposed upon the other and that is all.

With respect to the exemption I do not think what has been said by the Lord President in *Coutts* v. *Russell* (1) can be made clearer—that in his own words, "the word 'tenement' in the Statute means part of a house so structurally divided and separated as to be capable of being a distinct property or a distinct subject of lease." There is no doubt that if this is right, and I am by no means prepared to say it is wrong, the house which is here described is undoubtedly capable of being a separate property or separately leased, but I have more difficulty in seeing that it is structurally divided if I assume that the whole building is one house.

If, as some of your Lordships seem to think, the exemption was introduced so as to alter the law as it was declared to be in the Westminster case, I cannot think it was very happily done. In this legislation "tenement," "attached," "property," all require definition. I am not sure that I know what is a tenement as applied so such a subject matter, though, as I have said, I am not prepared to differ with the Lord President; nor is it perhaps very material to consider it further, since for the reasons I have given I think this, that is, the ground floor house, is not an "inhabited house" within the Statute, and therefore I agree with your Lordships that this appeal should be allowed and the decision of the Commissioners restored.

Lord Macnaghten.—My Lords, I think the claim of the Crown cannot be sustained.

The question seems to me to depend entirely upon the true construction of sub-section 2 of section 13 of the Customs and Inland Revenue Act, 1878. The argument on behalf of the Crown, as I understood it, was that sub-section 2 was to be treated for all practical purposes as part of sub-section 1; that the purpose of sub-section 2 in substance was to provide that in the case of premises used for professional purposes, as well as in the case of trade premises, the mere circumstance that a caretaker resided therein should not make the building liable to taxation as a dwelling-house, and that the effect of reading the two sub-sections together was to limit the application of sub-section 2 to buildings chargeable as an entire house or divided into tenements, being distinct properties.

I think the two sub-sections are quite independent, distinct in origin, and diverse in operation. The object of sub-section 1 was

(1) 1 T.C. 469.

to remedy the hardship exemplified in the case of the *Attorney General* v. *Mutual Tontine Westminster Chambers Association* (1876, L.R. 1 Ex. Div. 469). The Association has erected blocks of buildings structurally divided into separate tenements or suites of apartments. Some had been let for residential purposes, some as offices or chambers, while others were still unlet. Under Rule VI of the Act of 1808 the Association was held to be chargeable as the occupier of these buildings, and liable for duty in respect of all the separate tenements or suites of apartments, whether let or unlet.

The evolution of sub-section 2 was a more gradual process. It was marked by successive relaxations in favour of trade. Rule III of the Act of 1808 provided that all shops which were attached to the dwelling-house or had any communication therewith should be valued with the dwelling-house. If that rule had remained unaltered there could have been, according to the decided cases, no doubt as to the Appellant's liability. The first change was made in 1817. The Act of that year (57 Geo. III. c. 25, s. 1) takes note of the fact that it had become usual for tradesmen and shopkeepers to carry on their business in one house and to reside in another. It enacts that tenements or buildings, "or parts of tenements or buildings," previously occupied as dwelling-houses by persons who since had gone to reside in taxable dwelling-houses elsewhere, should be discharged from assessment when used wholly as houses for trade or as warehouses for goods or as shops or counting houses. The Act of 1824 (5 Geo. IV. c. 44) extended this exemption to persons using any house, tenement, or building, " or part of a tenement or building " for the purpose of any profession, vocation, business, or calling by which they seek a livelihood or profit. A further concession was made in 1867. By section 25 of the Inland Revenue Act of that year (30 & 31 Vict. c. 90) it was enacted that in order to entitle the occupier of " any tenement or building or part of a tenement or building " to exemption, on the ground of such premises being occupied for trade purposes only, it should not be necessary to prove, nor should the proof be required, that such occupier resided in a separate and distinct dwelling-house or part of a dwelling-house chargeable with the said duties. Section 11 of the Inland Revenue Act, 1869 (32 & 33 Vict., c. 14), provided that " any tenement or part of a tenement " occupied as a house for the purposes of trade only should be exempt, although a caretaker dwelt in it for the sake of protection.

So far the relaxations in favour of trade introduced by the Acts of 1867 and 1869 had not been extended to premises used for professional purposes. But in 1878, when the Legislature dealt with the house tax for the purpose of remedying the hardship which occurred in the case of the Westminster Chambers Association, occasion was taken to put premises used for pro-

GRANT v. LANGSTON.

Lord Macnaghten

fessional purposes precisely on the same footing as premises used for trade purposes, and section 11 of the Act of 1869 was then repealed.

It is to be observed that while section 11 of the Act of 1869 is repealed, section 25 of the Act of 1867, though apparently suspended, is not repealed. Now the Act of 1867, following the language of the earlier Acts, speaks of "any tenement or building or part of a tenement or building." The Act of 1878, section 13, sub-section 2 uses the expression "house or tenement." I do not think that it could have been intended to cut down or narrow the concession introduced by the Act of 1867. The more compendious phraseology to be found in the Act of 1878 was, I suppose, adopted because the previous sub-section shows that the word "tenement" is used as meaning a division or part of a house.

In the present case it is not necessary to consider whether there must be a structural division or physical separation when exemption is claimed for part of a building as being used for trade or professional purposes only, because the two portions of the building belonging to the Appellant are divided so completely that in fact they form separate houses. It is said they are not "distinct properties." That is true. But there is not in sub-section 2 of section 13 of the Act of 1878, any more than in section 25 of the Act of 1867, anything requiring that when a tenement or part of a house used for trade purposes only is a portion of a building, the rest of which is used as a dwelling-house, the two portions must be "distinct properties" in order to enable the occupier of the trade premises to claim exemption, and certainly there is no reason why such a condition should be introduced if it is not prescribed in terms by the enactment.

I am therefore of opinion that the claim of the Appellant ought to be allowed. In coming to this conclusion your Lordships will not, I think, be differing from the opinion of the learned Judges of the Court of Session, although in deference to previous rulings the actual decision was the other way.

My noble and learned friend, Lord Morris, desires me to express his concurrence.

Lord Davey.—My Lords, if the question on this appeal depended only on the proper constuction of the rules contained in Schedule B to the Act 48 Geo. III, c. 55, I should have some difficulty (having regard to the cases already decided on these Acts both in England and in Scotland) in avoiding the conclusion that this entire building is liable to be assessed to the inhabited house duty as one dwelling-house. There is this difference between the circumstances of the case decided in the English Court of Appeal, *Attorney-General* v. *Mutual Tontine Westminster Chambers Association* (1. Ex Div. 469) and the

present one, viz., that in the Westminster case there was one door opening on the street, and one staircase common to th occupiers of all the suites of rooms into which the building was divided, whereas in the case before your Lordships each portion of the building has a separate entrance from the street, and no part of the building is used in common by the occupiers of the ground floor and the first floor. Whether that difference is sufficient to make any real distinction, or whether I should have decided the Westminster case in the same way as it was decided by the Court of Appeal, it is not necessary for me to say, because I think that the case falls within the exemption contained in sub-section 2 of section 13 of 41 and 42 Vict., c. 15 The first sub-section applies to a house being one property which is divided into and let in different tenements. Two conditions are required. It must be both divided into and also let in different tenements. It has deen decided in England that there must be a physical division of the house into different tenements, and that the word " tenement " is used in order to comprise the different kind of things (such as shops, warehouses, or offices) into which a house may be divided (*Yorkshire Insurance Company* v. *Clayton*, 8 Q.B.D. 421 (1), and see *Chapman* v. *Royal Bank of Scotland*, 7 Q.B.D. 136 (2)). In the Scotch case of *Russell* v. *Coutts* (9 R. 261) (3) the Lord President says: " 'Tenement' in this statute means a part of a house so structurally divided and separated as to be capable of being a distinct property, or a distinct subject of lease " ; and Lord Shand says: " 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 themselves."

My Lords, I agree with this definition of the word " tenement " in this section of the Act, and I think it must have the same meaning in sub-section 2 as it has in sub-section 1. The second sub-section exempts 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," and it also provides that the exemption shall take effect although a caretaker may dwell in such house or tenement. The words are perfectly general. There is nothing about letting. The owner may be the occupier of the tenement.

It was argued that the words " house or tenement " are used pleonastically because it was said these are so used in a section of an earlier Act. But it is a sound rule of construction that you must give to each word used in an Act of Parliament its significance if you can do so without violating other provisions of the Act. It was also said that the word " tenement " should be confined to the case where a tenement is separately assessable under Rule XIV of 48 Geo. III. I see no reason for cutting down the generality of the words in that manner. If that had

(1) 1. T.C. 336. (2) 1 T.C. 363. (3) 1 T.C. 469.

GRANT v. LANGSTON.

Lord Davey.

been the intention it would have been easy to have expressed it. No difficulty is suggested in applying the words of the sub-section according to their literal meaning, and I think that the Legislature intended to exempt from the tax every " tenement " (in the sense which that word bears in this section) used for the purposes of trade or business or professionally. This public house is in my opinion clearly either a separate house as some of your Lordships think or a separate tenement within the meaning of the sub-section to which I have referred, and I therefore think it should be declared that it is exempted from the tax.

Lord Brampton.—My Lords, I also am of opinion that the tenement numbered 49 Bath Street, Portobello, in which the Appellant carries on the trade or business of a licensed public house under the Public Houses (Scotland) Act, 1862, is out liable to the duty imposed by the House Tax Act, 1851, to be assessed and levied according to the rules contained in Schedule B of the Statute 48 Geo. III. c. 55. But I feel somewhal diffident in expressing all the reasons whith have influenced me, seeing that they are not entirely those which have guided my noble and learned friend Lord Davey to the same conclusion.

By section 1 of the Act of 1851 it was enacted that in lieu of the duties then payable there should be assessed upon inhabited dwelling-houses throughout Great Britain the duties set forth in the Schedule to that Act, with respect to which it was by section 2 enacted that the Rates contained in the Schedule B to the Act of 48 Geo. III. should be in full force as they were in regard to certain then already repealed duties.

By Rule III of Schedule B all shops and warehouses which are attached to the dwelling-house, or have any communication therewith, shall in charging the duties be valued together with the dwelling-house.

The Schedule to the Act of 1851 declared the duty of 6*d.* in the pound of the annual value to be payable for every inhabited dwelling-house which with the household and other officers, etc., therewith occupied is worth the annual rent of £20, or upwards : " Where such dwelling-house should be occupied by any person in trade who should expose for sale and sell any goods, etc., in any shop or warehouse being part of such dwelling-house, and in the front and on the ground or basement storey thereof. And also where such dwelling-house should be occupied by a person who should be duly licensed to sell therein or retail beer, ale, wine, or other liquors, although the room or rooms thereof in which such liquors shall be exposed to sale, sold, drunk or consumed should not be such shop or warehouse. And upon dwelling-houses not so occupied a duty of 9*d.* in the pound of the annual value."

The premises, the subject of the assessment now in question, consist of a building facing Bath Street, Portobello, of two storeys in height, one above and supported by the other, the lower one resting upon the earth. One roof covers the whole building, but each storey is so structurally composed and arranged for permanent occupation by a separate occupier that there is no internal communication of any kind between the two storeys nor any common staircase or access to or from the street, or from any part of the ouside of the premises, each having a separate entrance or entrances therefrom. In short, it would be impossible to erect two separate houses under one roof, or to divide one building into two distinct and separate houses, more completely than has been accomplished in the building now under consideration. Indeed, before the Appellant opened the lower house or storey as a public-house, it was let to a separate tenant, the Appellant occupying only the upper house or storey as he does now. No person resides in the licensed premises. In law, I think that each of these storeys constitutes a distinct and separate house, each of which, if inhabited as a dwelling, should be separately assessed to the duty imposed by the Statute, but neither of which could be legally so assessed unless so used. They are not the less two houses because they are both owned and occupied by one and the same person.

I do not propose to cite more than one authority in support of this veiw, viz., that of Sir George Jessel, M.R., in the *Yorkshire Insurance Company* v. *Clayton* (1881) 8 Q.B.D. 424 (1) :— "Formerly," said that learned Judge, "houses were built so that each house occupied a particular site, but in modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys, but for all legal and ordinary purposes they are separate houses, Each is separately let, and separately occupied, and has no connection with those above or below, except in so far as it may derive support from those below instead of from the ground as in the case of ordinary houses. The Legislature" (referring to the Act 41 Vict.) "evidently intended to extend the same class of taxation to this new sort of houses as applied to houses built in the old style."

The building formed by these two storeys ought not, as I think, to be treated as one house let in different storeys, within the meaning of Rule VI. of 48 Geo. III., c. 55, Schedule B, so as to make the landlord liable to be assessed in respect of the whole building in the event of his living in the one storey, and letting the other. Nor do I think that owning and occupying as he does both storeys of the building, the lower floor can be treated as a shop attached to the upper floor as a dwelling-house, and valued with it in the assessment under Rule III., and this for two reasons : first, because, although it might for some purposes in strictness be called a shop, because goods in the shape of beer

(1) 1 T.C. 336.

GRANT v. LANGSTON.

Lord Brampton.

spirits, &c., are sold therein by retail, it is not necessarily "a shop" within the meaning of the House Tax Acts. (See the Schedule to 14 & 15 Vict., c. 36, which recognises that a dwelling-house may be occupied by a person licensed to sell therein exciseable liquors without the room in which the sale takes place being a "shop,") Moreover, even if the lower floor could be treated as a shop, it is not, in my opinion, attached to the dwelling-house in the sense contemplated by the Act; for, in my judgment, the Act did not intend the word "attached" to be satisfied by mere contact of some part of the two structures, but intended that it should be so attached for its use with the dwelling-house in the same way that by Rule II. offices and buildings "belonging to and occupied with the dwelling-house are for the purpose of the assessment to be valued with it." It is further to be observed that no part of the trade of the public-house could be carried on in the dwelling storey, for the licence in this case is only to sell on the ground storey, and any sale elsewhere would be illegal; though in the case of the sale by retail of ordinary goods they might be sold as well in the dwelling-house as in a shop.

The cases of the *Attorney-General* v. *The Mutual Tontine Association* (L.R. 1 Ex. Div. 469), *Rusby* v. *Newson* (L.R. 10 Ex. 322) (1), and the *Yorkshire Fire and Life Insurance* v. *Clayton* (6 Q.B.D. 557, C.A. 8 Q.B.D. 421) (2), have no application to this case if my view is correct, for they were all clear cases of separate houses with many rooms in each, let to various occupiers, the whole house being assessable upon the landlord, and the structural arrangements being very different from those of the present building.

The 41 and 42 Vict., c. 15, was passed for the purpose of removing the hardship which was put upon a landlord by the existing state of the law as declared by the Tontine case, and to provide for the cases in which houses are let out in separate tenements, and tenements occupied solely for trade purposes. By 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 occupiers seek a livlihood or profit, or are unoccupied, the person chargeable as occupier of the house shall be entitled to relief so as to confine the amount of duty to that to which it should have been assessed if it had been a house comprising only the tenements other than such as are occupied as aforesaid or are unoccupied." This section applies only to houses being one property structurally divided into and let in different tenements. That could not apply to premises like the present, where the owner and occupier is the same person, and the building, though formed of two separate and distinct tenements, is not let out as such. The second sub-section, however, applies to every house or tenement which is occupied solely

(1) 1 T.C. 15. (2) 1 T.C. 336.

for the purposes of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, and provides that such house or tenement shall be exempted from the duties, on proof of the facts to the satisfaction of the Commissioners, even although a person may dwell in such house or tenement for the protection thereof. This sub-section exempts the occupier, whether he be the owner or a mere tenant of any tenement solely occupied as mentioned. The present case clearly comes within it.

As the result of a careful consideration of this case I am of opinion that the Appellant is entitled to relief from duty in respect of his restaurant premises, being No. 49 in Bath Street, upon two separate grounds :—1st, that he never was liable to be assessed in respect of it, because if it constituted in itself a separate and distinct house it was never an "inhabited dwelling-house," and therefore was not assessable ; 2nd, that if it ought to be treated as a tenement severed from a larger house, it is by 41 & 42 Vict., c. 15, expressly exempt from assessment to the house duty on the ground that it was and is solely devoted to trade and business, and *that* a trade or business which was licensed to be carried on only within the licensed area of the ground storey.

The Appeal therefore ought to be allowed with costs.

Question put—
That the Order appealed from be reversed.

The Contents have it.

That the Respondents do pay the Appellant the costs both here and below.

The Contents have it.