if the licensee does certain acts his licence will be forfeited. That is the plain meaning of it. Well, you will look in vain in this statute or in this Provisional Order for anything that defines the conditions upon which the licence is to become forfeited. It is plain, then, that this clause does not make any provision for the licensee forfeiting his licence, and it is equally plain to my mind that it does not contain any power either to revoke or suspend the licence. I therefore agree with the motion which has been made by your Lordship that the interlocutors be reversed.

LORD ROBERTSON—I am of the same opinion.

The first question is whether the proposed form of licence does or does not accurately state the restrictions imposed by the statute on dealers in ice cream. It seems to me that it does not, and that it purports to impose on the dealers more restrictions than does the statute. I can find no warrant in the statute for forcing the dealer to close his premises at the hours during which he is forbidden to sell ice cream, and I know of no principle upon which the magistrates can be held entitled to take out what they may consider a weak prohibition by imposing an additional one. The licence would compel a man who had a general baking or confectionery business to shut shop at the specified hours merely because one (and it might be an unimportant) item of his business was ice cream. If the Legislature should in the future come to estimate the importance of ice cream higher than it seems to do at present it may adopt the stringent measure proposed. But in the meantime the respondents must be content to keep pace with the Legislature.

I further think that the respondents in the third condition arrogate to the Magistrates a power not conferred on them.

As regards lawful days, I think Sundays are not, in the sense of the Act, lawful days, on the principle stated in this House in the case of *Phillips* v. *Innes*, February 20, 1837, 2 S. & M'L. 465. As regards the other days described in the proposed licence, I do not feel called on to discuss dubious questions about public fasts which have little or no practical importance, and shall only remark that it is quite out of place for a licensing body to put into the licence their gloss on the statute on such points whether it be more or less probably correct. On the present point the respondents, I have no doubt with the best intentions, have gone out of their way to court discussion.

The next question is as to the form of action. Now, the substance of the matter is that the Magistrates have publicly threatened to impose and enforce on a lawful trade restrictions which are illegal. This being so it would be unfortunate if it were necessary that a lawful trade should be interrupted and harassed by actual prosecution. It seems to me that the action of declarator which is peculiar to the Scots system exactly meets the case. It is quite a mistake to assume that this trader requires to postulate what he has not got, viz., a licence, in order to find himself a title to sue. His title is his trade, which the respondents avow that they intend to interfere with by refusing to give a trader a licence except upon terms more onerous than the law allows. In my opinion the appellant has a perfectly good title to have those restrictions declared illegal.

Ordered that the interlocutors appealed from be reversed, and that it be declared that the Magistrates are not empowered to grant licences to ice-cream vendors for premises in the City of Edinburgh for the keeping for sale or sale of ice-cream, subject to any conditions other than those specified in section 80 of the Edinburgh Corporation Act 1900 as amended by the Edinburgh Corporation Order 1901, or in accordance therewith, and the licence (proposed by the Magistrates) is not conform to the said statutes.

Counsel for the Pursuer, Reclaimer, and Appellant—Crabb Watt, K.C.—T. B. Morison—Crabb Watt junior. Agents—Donaldson & Nisbet, S.S.C., Edinburgh—Traill, Howell, & Page, London.

Counsel for the Defenders and Respondents—Cripps, K.C.—Cooper, K.C.—H. W. Beveridge. Agents—Thomas Hunter, W.S., Town-Clerk, Edinburgh—A. & W. Beveridge, Westminster.

COURT OF SESSION.

Tuesday, November 22.

FIRST DIVISION.

[Exchequer Cause.

MURDOCH *v.* INLAND REVENUE.

Revenue — Inhabited-House-Duty — Two Houses Belonging to Different Owners and Held by Different Parties Connected so as to Form One Dwelling-House in Joint Occupation — Inhabited-House-Duty Act (48 *Geo. III, cap.* 55), *Schedule B, Rules* 1, 6, *and* 14—*Customs and Inland Revenue Act* 1878 (41 *Vict. cap.* 15), *sec.* 13.

Two originally distinct houses were in the possession, the one of a father, who was part owner, the other of his son, who was the tenant of an uncle. They established between the houses internal communication by a doorway made in the separating wall. The son who was tenant and one daughter slept in the rented house, and its sitting-rooms were used by the son for professional purposes. The father and the rest of his household slept in the other house. All meals were taken in this house and were cooked in its kitchen. Only one servant was kept.

Held that the two houses formed one dwelling-house in the joint occupation of the father and the son, on whom

the assessment for inhabited-house-duty fell to be made jointly and in one sum.

The Inhabited-House-Duty Act (48 Geo. III, cap. 55), Schedule B, Rule 1, for charging the duties, enacts—"The . . . . duties to be charged annually on the occupier or occupiers for the time being of every such dwelling-house . . . . and to be levied on him, her, or them." . . . Rule 6—"Where any house shall be let in different stories, 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 deemed the occupier of such dwelling-house, and shall be charged to the said duties." Rule 14—"Where any dwelling-house shall be divided into different tenements being distinct properties, every such tenement shall be subject to the same duties as if the same was an entire house, which duty shall be paid by the occupiers thereof respectively."

The Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), section 13, enacts—"(1) 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 by which the occupier seeks a livelihood or profit," the Commissioners shall, on proof of the facts, grant relief. (2) Every house or business, or of any profession or calling 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."

This was an appeal by Alexander Murdoch, librarian, Glasgow, and George Bain Murdoch, M.D., Glasgow, under the Taxes Management Act 1880 (43 and 44 Vict. cap. 19) against an assessment for inhabited-house-duty on the annual value of Nos. 25 and 27 Bank Street, Hillhead, Glasgow, which the Income-Tax Commissioners for the Lower Ward of the county of Lanark had made on them jointly and in one sum, and had fixed at £92.

In the case for the opinion of the Court of Exchequer the Commissioners stated:—

"The following facts were admitted or proved—1. (*a*) No. 25 Bank Street belongs to the appellant Alexander Murdoch and his wife; No. 27 Bank Street belongs to George Bain. In 1900 George Bain and the appellant George Bain Murdoch verbally agreed, the first named to let and the second named to take No. 27 Bank Street for five and a-half years from Martinmas 1900 at the yearly rent of £40. The tenancy of the appellant George Bain Murdoch subsisted during the year of assessment. The appellant George Bain Murdoch is a nephew of George Bain and a son of the appellant Alexander Murdoch. (*b*) Nos. 25 and 27 Bank Street are dwelling-houses of three storeys each, basement, ground floor, and first floor. When originally built they were two distinct and independent though adjoining dwelling-houses. There is now, and has been for the last three years, internal communication between them by means of a doorway made in the separating wall of the houses. The doorway, which is without a door, is on the ground floor, is six feet six inches in height and three feet in width, and gives access from the lobby of No. 25 to a pantry in No. 27, which is entered by a door from the lobby of No. 27. The houses were separately assessed to inhabited-house-duty for the years prior to the year 1902-1903, the assessor being unaware of the houses having been internally connected by means of the doorway. (*c*) The appellant Alexander Murdoch and the members of his family, other than the appellant George Bain Murdoch and a daughter, sleep in No. 25 Bank Street. The appellant George Bain Murdoch and the daughter referred to sleep in No. 27 Bank Street. The public rooms of No. 27 Bank Street are used by the appellant George Bain Murdoch for the purposes of his practice as a doctor. The appellant Alexander Murdoch and all the members of his family, including the appellant George Bain Murdoch and the daughter referred to, take their meals in No. 25 Bank Street. (*d*) Only one servant is kept for both houses. Her wages are paid by the appellant Alexander Murdoch. The meals of all the inmates of Nos. 25 and 27 Bank Street are cooked in the kitchen of No. 25 Bank Street. The kitchen of No. 27 is not used as a kitchen.

"2. The appellants maintained—(1) That No. 25 Bank Street and No. 27 Bank Street are distinct properties in separate ownerships, separately occupied, and should be separately assessed; (2) that No. 25 Bank Street is occupied by the appellant Alexander Murdoch, who should be assessed on £47, being the amount of the assessment made on the appellant Alexander Murdoch for Income-Tax (Schedule A) in respect of No. 25 Bank Street; (3) that No. 27 Bank Street is occupied by the appellant George Bain Murdoch, who should be assessed on £40, being the sum at which No. 27 Bank Street is let to him; and (4) that the opening of a door of communication did not constitute the appellant Alexander Murdoch occupier of No. 27 Bank Street, nor the appellant George Bain Murdoch occupier of No. 25 Bank Street. The appellants referred to 48 George III, c. 55, Schedule B, Rule 14, and to the *Attorney-General* v. *Mutual Tontine Westminster Chambers Association, Limited*, 1876, 1 Ex. D. 469; the opinion of Lord President Inglis in *Campbell* v. *Inland Revenue*, February 21, 1880, 7 R. 579, 27 S.L.R. 407; and the *Glasgow and South-Western Railway Company* v. *Banks*, July 16, 1880, 7 R. 1161, 27 S.L.R. 768.

"3. Mr David Callum Letham, surveyor of taxes, maintained—(1) That Nos. 25 and 27 Bank Street constituted, for the purposes of inhabited-house-duty, one inhabited dwelling-house which is not divided into

different tenements within the meaning of Rule 14 of Schedule B of 48 George III, chapter 55, and is occupied by the appellants in common, living in family together, and should be assessed as a dwelling-house in the joint occupation of the appellants Alexander Murdoch and George Bain Murdoch; and (2) that the assessment should be made on one sum of £97, being the amount *in cumulo* of the assessments for Income-Tax (Schedule A) made in respect of Nos. 25 and 27 Bank Street. The surveyor referred to *Swain* v. *Fleming*, 1899, 81 L.T.R. 202, 4 Tax Cases 107, in support of his contention that properties owned by different persons may be conjoined in one assessment to inhabited-house-duty, and as to the effect of putting a door in the separating-wall of adjoining houses he quoted the observation made by Lord Chancellor Halsbury in the course of the argument in *London and Westminster Bank* v. *Smith*, 1902, 4 Tax Cases, p. 517, viz.—'If you were to put a door in the separating-wall of a semi-deaached villa it would then constitute one thouse within these Acts.'

"4. The Commissioners found, on the evidence submitted to them, that Nos. 25 and 27 Bank Street formed in their present state one dwelling-house, which is in the joint occupation of the appellants Alexander Murdoch and George Bain Murdoch, and were accordingly of opinion that the assessment for inhabited-house-duty in respect of Nos. 25 and 27 Bank Street should be made on the appellants Alexander Murdoch and George Bain Murdoch jointly and in one sum. The Commissioners fixed the assessment at £92, being the *cumulo* amount of (*a*) the amount (£47) of the assessment for income-Tax made in respect of No. 25 Bank Street, and (*b*) the amount (£45) to which the assessment for Income-Tax made in respect of No. 27 Bank Street was reduced on appeal."

The case was appointed to be heard before the First Division.

Argued for the appellants—There were here two separate houses; or otherwise there was one house divided into two tenements separately owned and occupied, which would bring the case under rule 14 of Schedule B of 48 Geo. III, cap. 15—(*Campbell* v. *Inland Revenue*, February 21, 1880, 7 R. 579, 17 S.L.R. 407). The tenements here were separate and distinct; they were separately owned, and they were separately let. The making of the doorway did not make them one — L. J. Vaughan Williams in *Browne* v. *Furtado* [1903], 1 K.B. 723. A separate tenement was a separate holding, *i.e.*, let separately, and if separately owned it fell to be separately assessed however it might be used. The assessor's cases were not in point.

Argued for the respondents—The tax was by rule 1 of 48 Geo. III, cap. 15, Schedule B, put upon the occupier, and the question in this case was what was occupied. The question of ownership or leases did not come in. The internal communication pointed to the houses being occupied together and forming one unit for the assessment—*Glasgow and South Western Railway Company* v. *Banks*, July 16, 1880, 7 R. 1161, 17 S.L.R. 768; *Russell* v. *Coutts*, December 14, 1881, 9 R. 261, 19 S.L.R. 197; *Yorkshire Fire and Life Insurance Company* v. *Clayton*, 1881, L.R., 8 Q.B.D. 421. Though some of the cases had been decided upon section 13 of the 1878 Act they were applicable. Rule 14 of 48 Geo. III, cap. 55, could not govern this case, as it applied to a unit being divided up into separate tenements, and here it was separate units which had been united and there were no separate tenements. The whole facts pointed to a joint occupation and one establishment —*Grant* v. *Langston* [1900], A.C. 383; *Union Bank* v. *Foster*, March 20, 1901, 3 F. 771, 38 S.L.R. 464, 4 T.C. 385, were also referred to.

At advising—

LORD PRESIDENT—The question in this case relates to the mode in which numbers 25 and 27 Bank Street, Glasgow, should be assessed for inhabited-house-duty.

[*His Lordship narrated the facts as stated.*]

I am of opinion that the decision of the Commissioners is right. Although the two houses were originally separate and independent structures, separately occupied, they have ceased to be so by the opening of the doorway which always remains a free and open channel of communication between them, and by both houses being occupied in common by the appellants and their respective families just as if they were one family. This one inhabited house has not been divided into separate "tenements" in the sense of the Acts. No part of the house is a separate tenement, so as to be exempted from inhabited-house-duty on the ground of its being a "tenement occupied solely for the purposes of trade or business" under sub-section 2 of section 13 of the Act of 41 Vict. cap. 15, or upon any other ground.

LORD ADAM—The first question in this case is whether for the purposes of the Act Nos. 25 and 27 Bank Street, Glasgow, are to be treated as one single dwelling-house? Now, that appears to me to be a question of fact, and it depends on the structural condition of these premises at the date of assessment. I do not think that there is any conflict in this inquiry as to what the state of these buildings was. The houses were originally separate houses, but their present condition is this, that a doorway has been opened through the partition wall which formerly divided each house. The result is that that there is internal communication all over these two houses from the one to the other, and that internal communication in its present state cannot be cut off, because there is no door or anything of that sort in the doorway to prevent such communication. That being the condition of these houses, I do not doubt that they are in the sense of the Act one dwelling-house, and should be so considered. Well, then, the next question is, how are they occupied? The one house, No. 25, belongs to Alexander Murdoch, and the other house,

No. 27, is rented by George Bain Murdoch, the other appellant. Now, the way they are occupied is this—Alexander Murdoch and his family, except a daughter and the other appellant, sleep in No. 25. His son, the other appellant George Bain Murdoch, and the daughter referred to, sleep in No. 27, and the public rooms of No. 27 are used by George Bain Murdoch in his practice as a physician, but all the rest of the premises, as it appears to me, are used and occupied in common. That is the only separate occupation. The families take their meals in common. One kitchen, that of No. 25, is used for preparing these meals, there is only one servant for both families, and in every respect, except what I have stated, these premises are used in common. That being so, is that a joint occupation or is it a separate occupation? It humbly appears to me that the conclusion at which the Commissioners of Income-Tax have arrived is right, and that this is not a separate occupation but a joint occupation. I do not think it makes any difference in the matter of fact as to joint occupation that the one house belongs to the one appellant and the other house is held by a tenant. If that be so, I think that is an end to the case. But we were referred to Rules 6 and 14 of the Act of 48 Geo. III, c. 55, Sched. B, which it is said may be construed into a different determination. I do not think it necessary to read these rules at length, because I find in the case of *Campbell* v. *Inland Revenue*, 7 R. 579, that an exposition by the late Lord President Inglis of the true meaning and effect of these rules is there set forth. I entirely agree with it and cannot express it in better language. What he says is this —"What is the provision of rule 6 and what is the provision of rule 14, taking the two together? It simply comes to this, that where a dwelling-house, meaning an entire block of building, is the property of one individual, but is divided into different occupations or tenements let to different tenants, the landlord or owner of the entire block of building is to be taken as the occupier of the entire block of building, and assessed as if he occupied the whole himself." Now, this is not a case of only one owner, and it is not a case in my view and in your Lordship's view of a separation into distinct tenements, and therefore it is not one falling under rule 6. Then he goes on to say under rule 14—"But where the entire block of building is divided into tenements in the same manner as is contemplated by the 6th section"—that is, distinct tenements—"but these tenements are distinct properties belonging to different owners, then the incidence of the duty is to be upon the occupant of each separate tenement." But in my opinion, and I understand in your Lordship's, this is not a case where the dwelling-house in question is divided into distinct tenements or separate tenements, and rule 14 does not apply. For these reasons I agree with your Lordship that the determination of the Commissioners is right, and should be affirmed.

LORD M'LAREN—I concur.

LORD KINNEAR—I also concur. In this case the two houses were originally separate, and were thrown into one by the opening up of a communication, which, according to the structure of the building, cannot be closed without structural alterations. If the mode of occupation were material to the question, the building is occupied by one family with one servant. It seems to me immaterial that one of the rooms is set apart for the separate use of the son for the purposes of his profession, because the fact that one person living in family with others in one house has a separate sitting-room does not make the house in which he lives with others two houses. It still remains one house. I agree with Lord Adam that the rules relied upon do not apply, because this is not a case of one entire block of buildings separated into distinct tenements.

The Court affirmed the judgment of the Commissioners.

Counsel for the Appellants — Younger. Agents—R. & R. Denholm & Kerr, S.S.C.

Counsel for the Respondents The Inland Revenue—The Solicitor-General (Dundas, K.C.) — A. J. Young. Agent — Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Tuesday, November 22.

SECOND DIVISION.

[Sheriff Court at Airdrie.

TRAINER *v.* ROBERT ADDIE & SONS' COLLIERIES, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7, sub-sec. (2), *First Schedule, sec.* 1 (*a*) — *Dependants — Wholly or in Part Dependent—Parent and Child—Mother in Reformatory at Time of Son's Death.*

In an arbitration under the Workmen's Compensation Act 1897, in which a widow, the mother of an only son who had been killed in the course of his employment, claimed compensation from his employers, it was proved that for the previous eighteen years the claimant had spent much of her time in prison, that during the four years preceding her son's death she was at liberty for only ten months, in the course of which she occasionally earned a little by outdoor work, but was otherwise entirely dependent on her son, who contributed five or six shillings a-week to her support, and that at the date of his death she was confined in an inebriate reformatory under sentence of the Sheriff for two and a-half years.

Held that the claimant at the date of her son's death was not wholly or in part dependent upon his earnings