

the occupants, and the rents payable by them, for the purposes of the Representation of the People Act. But the statutes do not authorise him to enter the value of the property above the actual rent, or to enter any portion of the subjects belonging to the proprietor at a different value from its value to him. I therefore think the determination of the magistrates wrong.

The same difficulty as that stated by the assessor was brought up early in the practice under the statute (see Case 33, 1861), and has always been held to be insufficient as a reason for setting aside the statutory rule of valuation.

The case of *Hay* (No. 70) appears to me to have settled the principle applicable to such cases as the present.

LORD FRASER—The question raised under this case is one which has frequently come up before this Court, and has been invariably determined in the same way. The rule laid down by the statute is quite explicit that the *bona fide* rent at which the subject is leased shall be taken as the annual value to be entered in the valuation roll, although the subject may have increased in value by additions made by the tenant since the lease was entered into, or although a larger amount may be collected from sub-tenants. The last occasion on which we required to consider and apply this rule was that of the *Coltness Iron Company*, March 1, 1882, 19 Scot. Law Rep. 566. I refer to the opinion that I expressed in that case as containing the grounds of judgment upon which I am prepared to decide the present case, and I need not repeat them.

I am of opinion that the determination of the magistrates must be altered, and the value entered at £80.

The Court was of opinion that the determination of the Magistrates and Council was wrong, and that the value should be entered at £80.

Counsel for Appellant — Wallace. Agent—Ebenezer Wallace.

Saturday, February 24.

THE TRUSTEES FOR THE BLYTH HALL,
APPELLANTS.

Valuation Act—Annual Value—Public Hall—Restriction on Use.

A hall had been handed over to trustees to hold and manage for the public use and enjoyment of a town, under certain restrictions as to the purposes to which the trustees might allow it to be used, the revenue from such use to be applied in payment of expenses. The hall as managed by the trustees under these restrictions was carried on at a loss. *Held* that in valuing it for the purposes of the valuation roll regard must not be paid to the restrictions in the trust-deed, but a fair annual value must be taken at which such a subject might be expected to let.

The 6th section of the Valuation Act 17 and 18 Vict. c. 91, provides—"In estimating the yearly value of lands and heritages under this Act, the

same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year."

At a meeting of the County Valuation Committee of the Commissioners of Supply for the county of Fife, held at Cupar on 12th September 1882, the trustees for the Blyth Hall, Newport, in the parish of Forgan, appealed against the following entry in the valuation roll of the said county for the year 1882-83:—

Description of Subject	Proprietor.	Occupiers.	Yearly Rent. or Value.
Blyth Hall and Keeper's House, Newport.	Trustees for the Blyth Hall, per Alex. Scott, Treasurer.	Said Trustees.	£110.

The Committee under all the circumstances fixed £80 as the fair annual value of the subjects.

The appellants' agent declared himself dissatisfied with the decision, and craved a Case for the opinion of the Valuation Appeal Court, which was stated accordingly.

The circumstances of the case are fully explained in the judgments delivered.

At advising—

LORD LEE—The subjects in this case consist of a piece of ground in Newport which is feued out to the appellants at an annual feu-duty of £29, 17s. 6d., and buildings erected thereupon for the purposes of a hall and a keeper's house. These are under the administration of the appellants as trustees of a Mrs Kerr and her husband. The trust-deed which is produced shows the purposes for which the buildings are held, and the powers of administration possessed by the trustees. I think it sufficient to observe that the main object of the bequest appears to have been to provide for the benefit of the inhabitants and town of Newport a public hall, with ante-rooms, offices, and other conveniences in connection therewith. It is provided that the subjects "shall only be used for temporary purposes such as lectures, concerts, assemblies, public meetings and other public purposes not implying any permanent or prolonged occupation of the premises by any person whomsoever, or any section of the community, to the exclusion of the above public purposes;" but this is without prejudice to the trustees allowing the use of the buildings as a library and reading rooms for the inhabitants, provided such occupation does not interfere with the above public use of the hall and ante-rooms; and the trustees have full power to make and alter such restrictions, rules, regulations, and charges as they may think right to impose for the use of the buildings, provided the same shall not be diverted to or used for any purpose whatever other than a public hall, ante-rooms, and offices. The revenue to be derived from the hall is to be applied, firstly, in payment of feu-duty, and secondly, to the maintenance of the buildings and fittings, and payment of a salary to the hall-keeper and any other officials who may be appointed, and generally in defraying all expenses necessary or reasonable; any deficiency arising in any year is to be a burden on the funds and property of the trust.

The subjects were valued by the assessor at £110, being less than 3 per cent. on the cost of the buildings, viz., £4000, not taking into account

the annual feu-duty; and he contends that the proper mode of arriving at the annual value is to consider what annual rent would have to be paid by the inhabitants were the premises let to them.

On the other hand, it is contended by the appellants that the sum to be inserted in the roll is the amount of the annual receipts realised from the hall in its actual state after deducting necessary outgoings, and an abstract of the accounts for 1882 is produced for the purpose of showing that the annual receipts have been less than the expenditure—in short, that the institution hitherto had not been self-supporting. It is argued that the restrictions imposed by the trust-deed, and by the character of the building, makes it impossible to value the premises as a lettable subject.

It must be observed that under the Valuation Acts the assessor has nothing to do with questions of rating or taxation. His duty is to make up a valuation roll of lands and heritages according to the statute. Such cases, therefore, as *The Mayor of Worcester v. The Droitwich Poor Law Union*, L.R., 2 Exch. Div. 49, are in my opinion of no application.

The question is, According to what rule ought the assessor to proceed in ascertaining the yearly value of such a subject? The statute undoubtedly requires that it shall be valued "in its actual state." But it also requires that the annual value "shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year." Is there is any impossibility in valuing it upon this principle as a lettable subject? I think that the appellants have failed to show any such impossibility. There is no restriction, either legal or physical, so far as appears from the case and the relative trust-deed, which should render it at all reasonable in my opinion to doubt that if the subjects were confiscated and exposed to be let as they stand, and under no other restrictions than those expressed in the trust-deed, a rent might be obtained. The cost of the subjects may not afford by itself a sufficient guide to the annual value; for the cost of providing such a hall for a small place like Newport may exceed the means and demands of the inhabitants to such an extent that even 3 per cent. upon such cost cannot be expected. It has accordingly been decided that cost of erection cannot be taken as the sole basis for estimating annual value. But it does not appear that Newport is so small and insignificant a place that no rent could be got for a building of this kind to be occupied for similar purposes. The accounts show that in 1882 there were receipts amounting to £96. They do not show that more might not have been obtained by a different scale of charges under judicious management, such as no doubt is exercised by the trustees. Be this as it may, however, I think that it would be clearly contrary to the statute to make annual value dependent on a balance between earnings and expenditure in such a case as this. I am of opinion that the principle of valuation adopted by the assessor, and sanctioned by the Committee, is the sound one, and that the amount modified by the Committee is reasonable. I therefore think the decision of the Committee is right.

LORD FRASER—This case has reference to a

public hall, with offices, situated in Newport, in the parish of Forgan, which was erected under powers granted in the trust-deed of two persons of the name of Kerr. By this deed the trustees conveyed to trustees a piece of vacant ground in Newport upon which they were directed to build a public hall, ante-rooms, and offices for the use of the public, but "declaring that on no ground or pretext whatever shall the same be diverted to or used for any purpose whatever other than a public hall, and ante-rooms, offices, and others in connection therewith . . . but the same shall only be used for temporary purposes, such as lectures, concerts, assemblies, public meetings, and other public purposes not implying any permanent or prolonged occupation of the premises by any person whomsoever, or any section of the community, to the exclusion of the above public purposes." A public hall held under such restricted conditions as these could not, as might be expected, turn out to be a profitable pecuniary institution. The accounts for the year 1880 show a difference between revenue and expenditure of £6, 3s. 11d. in favour of expenditure, and for the year 1881 the loss is £26, 10s. 4d. Thus, no revenue remains over in the hands of the trustees, the logical result of which is, according to the appellants' argument, that the annual value must be entered in the valuation roll as nothing. They were willing, however, that the hall should be entered as of the annual value of £40, and the keeper's house at £10, and the Commissioners, "under all the circumstances, fixed £80 as the fair annual value of the subjects."

Now, if the annual value of the property which is to be entered in the valuation roll is to be held to be the same thing as the remunerative value to the particular occupier, the appellants' contention would be quite sound, and the entry in the roll should be *nil*. But this is an entire fallacy. The question in all these cases is, seeing that the property must be valued as it exists, is the value to be measured by the direct pecuniary profits of the occupation or by the accommodation supplied. Now, here a distinction must be drawn between private property and property held by a public body, acting in virtue of statutory powers, who have a limited right of assessment, such as water companies and gas companies, and are not merely trading companies, but statutory trustees. In such a case the value must be ascertained with reference to the restrictions imposed by the statute as to the exercise of the powers of assessment. In such a case the question is not how much rent a tenant would give if he had power to exact from the water or the gas he supplies any sum as the price thereof which he pleased, but how much a tenant would give who had no further powers of exaction from the public than those limited by the statute. We had occasion to consider this question last year in reference to *The Dalbeattie Waterworks*, March 1, 1882, 19 Scot. Law Rep. 568, and referring to what was then said I need not dwell further upon this particular class of cases.

But when a private individual dedicates a portion of his property for the accommodation and enjoyment of the people in his native village, under restrictions which prevent it being a remunerative occupation, the annual value in such a case must be ascertained without reference to these restrictions. The accommodation to this

section of the community still remains, and like hospitals and charities, which yield no pecuniary profit, such property must be valued without reference to its being a paying or a losing concern, in consequence of the arbitrary restrictions imposed by the truster. If the institution cannot be carried on profitably in consequence of the restrictions, the people for whose instruction and enjoyment it was erected have the remedy in their own hands by supplementing the generosity of the donor, and subscribing a fund which would make the revenue and the expenditure meet. In the meantime this hall has a value which must be estimated, and the only question is upon what basis the estimate is to be made. To take a percentage upon the cost of the ground and the cost of erecting the building is sometimes a fair way of ascertaining how much rent could be obtained for the property. But this holds only and principally with reference to trading and manufacturing establishments. A better criterion would have been to have ascertained what the hall could have let for as a mission or dissenting church or as a school; but no information of this character is given to us in this Case, and therefore, on the whole, I do not see my way to differ from the conclusions of the Commissioners fixing the value at £80.

The Court was of opinion that the determination of the Valuation Committee was right.

Counsel for Assessor—Baxter.

Counsel for Appellants—Hay. Agents—Rhind, Lindsay, & Wallace, W.S.

Saturday, February 24.

(Before Lord Fraser and Lord Kinnear.)

HUNTER'S TRUSTEES' CASE.

(*Ante*, vol. xix. p. 592, 11th March 1882.)

Valuation Cases—Pier—Monopoly of Business carried on on Subjects.

Where the proprietors and occupiers of a pier carried on a carting business, and had under their bye-laws the exclusive right of bringing horses upon the pier, but the public had the right to bring upon the pier, for the purpose of traffic to and from vessels calling there, carts and other vehicles not yoked to horses—*held* that the proprietors had not such a monopoly as to make the revenue derived from the business of cartage a heritable subject requiring to be valued.

At a meeting of the Valuation Committee of the Commissioners of Supply for the county of Argyle, to dispose of appeals from the valuation of the assessor for the year ending Whitsunday 1883, Hunter's trustees appealed against the valuation placed upon the Dunoon Pier. The assessor had fixed the valuation at £1217, 16s. The revenue from dues on goods and passengers was £63 in excess of that of the previous year. The principal dispute between the parties related to a sum of £156, 10s. as revenue from cartage. The income from carting as an element of valuation for the year ending Whitsunday 1882 had been disallowed by the Valuation Appeal Court as previously reported, on the

ground that the carting business of the trustees was not a monopoly, but was open to other carters. It was now established to the satisfaction of the Committee of the Commissioners of Supply that there was no separate charge for carts entering on the pier except for those passing over it for embarking or landing; that with a view to the safety of the public, no horses except those belonging to Hunter's trustees were allowed on the pier, that any other carts going upon the pier for the purpose of removing goods to and from vessels had to be taken along it without horses; that such carts and also wheel-barrows were constantly taken along it without charge for the purpose of removing goods.

The Commissioners, on the ground that these facts established a monopoly on the part of the trustees, sustained the sum of £156, 10s. as a proper item in the valuation, and confirmed the valuation at £1217, 10s.

Hunter's trustees took this Case.

Lord Lee as one of Hunter's trustees declined, and the Case was heard before Lords Fraser and Kinnear.

Argued for appellants—The Court last year had decided that the revenue derived from cartage was not heritable in its nature, and this was merely an attempt to get behind that decision. The trustees had no monopoly of cartage, as other carts came upon the pier for the purpose of removing goods from the steamers, but they could not allow horses unused to the work to come upon the pier, as that would be detrimental to the public safety.

Argued for the assessor—The trustees had here a monopoly of the cartage on the pier, and some value ought to be assigned to it as belonging to the pier, which is a heritable subject. The 6th section of the Lands Valuation Act provides that the yearly value should be taken to be "the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year," and in case of a tenant taking the pier such a right in the business of cartage as the appellants had would add greatly to the rent.

At advising—

LORD FRASER — The case which has been presented to us this year in reference to the Dunoon Pier contains certain corrections upon the case of last year. These have reference to the carting which is done upon and from the pier, and the revenue derivable from which we excluded last year as a thing not to be estimated in ascertaining annual value. We proceeded upon the statement that the carting business was open to all the world as well as to the owners of the pier, whereas it now appears that the general public have not the same convenience in carrying on the carting business which the owners of the pier possess. The latter are entitled to bring a horse and cart to the sea end of the pier, while the general public are prevented from bringing a horse, although they may bring carts without horses, and also wheel-barrows, and carry off their goods and distribute them through the town, provided the vehicle they use is not dragged by a horse while going along the pier. Of course this is a very great disadvantage that the general carter has in competition with the pier carter. But he has one advantage which we thought last year he did not possess, viz.,