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.

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*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 wheelbarrows, 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.,

that he can take his carts on the pier without paying anything, no separate charge being made for any cart except when it is embarked or is landed. Now, notwithstanding the disadvantage alluded to, the case expressly sets forth "That such carts and wheelbarrows, &c., were constantly taken down the pier without charge for the purpose of removing goods." Such being the statement in the case, the contention of the assessor cannot be reconciled with it. That contention is as follows:—"That by their (the owners') exclusion of other horses and carts from the pier, the owners had a monopoly of the carting business to and from it, which was an advantage they enjoyed from which all others were debarred; and that the revenue or value of that advantage was heritable, and moderately estimated at £156, 10s." Now, it is the law that where a trade is a monopoly attached to particular premises, the monopoly practically belongs to the landlord, and he would therefore expect his rent to be in proportion, not only to the value of the premises *per se*, but also to the value of the trade they enable a tenant to carry on. But it must be a monopoly pure and simple. If it is only some slight advantage for managing the business which a tenant would possess if the subject were leased, this would not be a ground for treating the return from that business as a heritable subject to be valued; and I cannot say that because the owners have the right to bring a horse and a cart down the pier while the general carter has only a right to bring a cart, and is obliged to draw it up to the end of the pier before he can yoke his horse, that the owners have a monopoly requiring the cartage business to be entered as an item in ascertaining the annual value. I am therefore of opinion that £156, 10s. ought to be deducted from the yearly rent or value of £1217, 16s., as fixed by the Commissioners.

LORD KINNEAR concurred.

The Court was of opinion that the determination of the Valuation Committee was wrong, and that the sum of £156, 10s. should be deducted from the sum of £1217, 16s., leaving as annual value the sum of £1061, 6s.

Counsel for Appellants—W. Campbell. Agents—Skene, Edwards, & Bilton, W.S.

Counsel for Assessor—Pearson. Agent—R. Kinloch, W.S.

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# COURT OF SESSION.

*Tuesday, February 27.*

## FIRST DIVISION.

[Sheriff of Forfarshire.

### ADAM & SONS *v.* KINNES.

*Process — Appeal — Competency—*Cessio*—Debtors (Scotland) Act* 1880 (43 *and* 44 *Vict. cap.* 34), *secs.* 8 *and* 9*—Sheriff Court (Scotland) Act* 1876 (39 *and* 40 *Vict. cap.* 70), *sec.* 26, *sub-sec.* 4.

An interlocutor by a Sheriff pronounced in terms of sec. 9, sub-sec. (1), of the Debtors (Scotland) Act 1880, in a petition at the instance of a creditor, finding that there is *prima facie* evidence of notour bankruptcy, and appointing the petitioner to follow forth the further procedure required by the statute, and the defender to appear for examination, cannot competently be appealed to the Court of Session.

The Debtors (Scotland) Act 1880, sec. 8, provides that "Any creditor of a debtor who is notour bankrupt within the meaning of the Bankruptcy (Scotland) Act of 1856, or of this Act, may present a petition to the Sheriff of the county in which such debtor has his ordinary domicile, setting forth that he (the debtor) is unable to pay his debts, and praying that he may be decerned to execute a disposition *omnium bonorum* for behoof of his creditors, and that a trustee be appointed who shall take the management and disposal of his estate for such behoof, and such process shall be taken and deemed to be a process of *cessio*. In the petition there shall be inserted a list of all the creditors of the debtor, specifying their names, designations, and places of residence, so far as known to the petitioner, and with the petition shall be produced evidence that the debtor is notour bankrupt."

Sec. 9, sub-sec. 1, provides that "The Sheriff, if he is satisfied that there is *prima facie* evidence of notour bankruptcy, shall issue a warrant appointing the petitioner to publish a notice in the *Edinburgh Gazette* intimating that such a petition has been presented, and requiring all the creditors to appear in Court on a certain day, . . . and the Sheriff shall further ordain the debtor to appear on the day so appointed for the compearance of creditors in the presence of the Sheriff, for public examination; and the debtor shall, on or before the sixth lawful day prior to the day so appointed, lodge . . . . a state of his affairs, subscribed by himself, and all his books, papers, and documents relating to his affairs, in the hands of the Sheriff-Clerk."

Sub-sec. 2 of the same section provides for the examination of the debtor in public Court, in the Sheriff's presence. Sub-sec. 3 provides that the Sheriff shall, on such examination being taken, "allow a proof to the parties, if it shall appear necessary, and hear parties *viva voce*, and either grant decree decerning the debtor to execute a disposition *omnium bonorum* to a trustee for behoof of his creditors, or refuse the same *hoc statu*, or make such other order as the justice of the case requires."

Sub-sec. 4 provides that "Any judgment or interlocutor or decree pronounced in such petition may be reviewed on appeal in the same form, and subject to the like provisions, restrictions, and conditions as are by law provided in regard to appeals against any judgment or interlocutor or decree pronounced in any other process of *cessio bonorum*."

John Adam & Sons, plasterers, Dundee, presented a petition in the Sheriff Court of Forfarshire at Dundee against James Kinnes, ironmonger, Dundee, praying the Court to ordain the defender to execute a disposition *omnium bonorum* for behoof of his creditors, and to appoint a trustee who should take the management and disposal of his estate for such behoof.

The petitioners set forth that they were creditors of the defender in respect, *inter alia*, of