lease. But the lease was not terminated. One term of it was modified. The rent instead of being £39 a year was fixed at £49, but beyond that the lease was confirmed and allowed to stand.

When Mr Ormston acquired the subjects he acquired them under the burden of the current lease, and that lease, as I have said, is still subsisting. Therefore the consideration for which it was granted must still be taken into account, and the fact that the yearly payment fixed by the lease has by agreement been increased in amount seems to me to be immaterial.

I am therefore of opinion that the Assessor was right and that the determination of the Magistrates must be affirmed.

LORD DUNDAS—I am of the same opinion. In my view the minute of agreement of April 1905 was simply a pactional modification by the parties of the existing lease "during the seven remaining years" thereof to the effect of increasing the rent from £39 to £49 per annum. It was not in my opinion a new lease, and there was certainly no new tenant introduced. I see no good reason why the Assessor should not have regard to this increase in the rent as he did have regard to it, and I consider that the Magistrates were quite right in dismissing the appeal to them.

The Court was of opinion that the Magistrates were right and that the entry in the roll should stand.

Counsel for the Appellant—Macdonald. Agents—Menzies, Bruce Low, & Thomson, W.S.

Counsel for the Respondent—Grainger Stewart. Agents—Cumming & Duff, S.S.C.

Thursday, February 8.

(Before Lord Low and Lord Dundas.)

THE GLASGOW ABSTAINERS' UNION *v.* ASSESSOR FOR ARGYLLSHIRE.

Valuation Cases—Annual Value—Convalescent Home—Valuation per Bed or Percentage on Cost of Erection—Restriction on Use.

A convalescent home was erected on ground held under a feu disposition which contained certain restrictions which precluded its use for any other purpose than that of the erection and maintenance thereon of a convalescent home under the management of a certain specified body of trustees.

Held that in valuing the home for the purposes of the valuation roll regard must not be paid to the restrictions in the feu disposition, but a fair annual value must be taken at which such a subject might be expected to let if unhampered by these restrictions. Principle of valuation at £2 per bed, or 4 per cent. on cost of erection approved.

At a meeting of the Valuation Committee of the County Council of Argyll held at Dunoon on the 11th day of September 1905, for the purpose of hearing and determining appeals and complaints under the Valuation of Lands (Scotland) Acts, the Glasgow Abstainers' Union appealed against the following entry in the valuation roll for the said county for the year ending Whitsunday 1906, viz.:—

Parish of Dunoon and Kilmun.

Description and Situation of Subject.	Proprietor.	Tenant and Occupier.	Yearly Rent or Value.
Convalescent Homes, Kilmun.	Glasgow Abstainers' Union.	Proprietors.	£150.

The Committee on consideration of all the facts fixed £140 as the fair annual value of the subject. The appellants, having expressed themselves dissatisfied with this decision, craved a Case for the opinion of the Lands Valuation Appeal Court.

The Case stated:—"No witnesses were examined on behalf of parties, but the facts of the case and the contentions of parties are contained in the following statements by the appellants and Assessor:—

"*Appellants' Statement and Grounds of Appeal.*—Kilmun Seaside Home, or 'Convalescent Home, Kilmun,' as it is described in the valuation return, was erected some thirty years ago on a free site gifted by the late James Duncan, Esquire, of Benmore, in the County of Argyle, who was the heritable proprietor of the lands. Mr Duncan granted a feu disposition to certain trustees for the Glasgow Abstainers' Union, Glasgow, of whom the appellants are the successors. The site, which consists of one acre of ground, is situated about a mile from Kilmun Pier in the Benmore direction and beyond the head of the Holy Loch, and is in a somewhat isolated locality. The Home . . . is capable of accommodating when fully occupied thirty-four male and thirty-seven female patients. The staff consists and has all along consisted of one matron and six female domestic servants.

"The original cost of erecting the Home was £3,000, and it continued in the condition in which it was originally erected till last year, when, in consequence of dilapidation and the necessity of improving its sanitary arrangements, certain alterations and additions were made, and two additional sitting-rooms and accommodation for seven extra patients were provided. The Home had originally been capable of accommodating sixty-four patients, and the alterations enable other seven to be added, making in all seventy-one. . . . These additions (exclusive of the cost of improving the sanitary arrangements) increased the cost of the buildings by £750, that is to say, if the dormitory wings had been originally erected as they now are, the additional cost would have been £750, making the total cost of the buildings from the start £3,750.

"Prior to the reconstruction the Home had been assessed at £120, and thereafter the Assessor had increased the annual value by £30, making the value of the Home for the current year £150. . . .

"The feu-disposition referred to, a copy

of which was produced and founded on, contains sundry very stringent conditions. The trustees are taken bound to erect buildings on the site 'to be used as a seaside home for convalescent poor' and to keep in all time coming upon the ground disponed houses and buildings to be used only as a seaside home for the convalescent poor 'to be used and managed by the directors thereof from time to time as a seaside home for the benefit of the poor of Glasgow and elsewhere who may be convalescent from sickness or infirmity,' always in harmony with the principles expressed in the feu disposition, and it is expressly declared that the buildings shall not be used 'by said union or association or society for any other purpose' and 'no intoxicating liquor shall be manufactured on the said ground or on the buildings thereon or used as beverages therein, nor shall the said ground or buildings be used for selling or distributing such liquors as beverages in any way, and in the event of the union being dissolved or ceasing to exist, the trustees are directed to hold the same for, and shall convey the same to, the Lord Provost and Magistrates of the City of Glasgow to be used by them in trust as a seaside home for the convalescent poor, and to be managed and used by them, or by any person or society or organisation to whom they may grant the use thereof, on the same principles and conditions as the said Abstainers' Union use and manage the same and as hereinbefore expressed and not otherwise.'

"The funds for carrying on the home are entirely supplied by voluntary contributions from the charitable public, and no charge of any description is made upon the patients as a condition of admission, and nothing is received from them, and there is no revenue or income derivable from the home.

"The district in which the Home is situated is very sparsely populated. The Home itself is isolated, and there is no other purpose to which the buildings can be used than a convalescent home managed on the principles set forth in the disposition. It is not capable of being used as a church or school or mission hall, as there is no need for such in the district and no population from which to fill or with which to occupy the home. There is ample provision elsewhere for all the wants of the inhabitants in these respects. The patients in the Home for the most part are sent down from Glasgow, and are, as far as possible, of the poorer working class whom a short residence in the Home after illness will fit for resuming their work as breadwinners.

"The appellants contended that the restrictions referred to and the whole circumstances do not justify an annual value of more than £80. The appellants maintain that the Home is valued much in excess of similar institutions, and instanced the case of the Dunoon Seaside Convalescent Home which cost £23,000 and which is valued at £440, also the case of Lenzie Convalescent Home which cost £15,000 and is valued at £180. Reference was also made to the case of *Nordach-on Dee Sanatorium* —a paying concern which cost £52,107— (inclusive of goodwill), and was valued by the Court on appeal at £800 (27th February 1905, 42 S.L.R. 503), and to the case of *Blyth Hall Trustees* (February 24, 1883, 10 R. 659, 20 S.L.R. 433), where a public hall (deriving a revenue) and which cost £4000 was assessed at £80. . . ."

"*Assessor's Statement.* — The Assessor maintained that this is a subject beneficially occupied by the proprietors, and capable of being let to a tenant. It had been assessed for over twenty years at £120. It is a plain building, well adapted for the purpose for which it was built. There is no building in the neighbourhood of the same character, and no means therefore of comparison with other subjects. The appellants admit that there were sixty-four beds in the Home when the valuation was £120, which would make the valuation work out at about £2 per bed. During the past year the accommodation has been increased until the Home is now capable of accommodating seventy-one patients, besides a staff of seven servants, and if this method of fixing the valuation were adopted, the valuation should be £142 plus the servants' accommodation at the same rate per bed, or £156 for the whole. This is the method adopted in the case of *Woodilee Asylum* (*Barony Parochial Board*), April 2, 1877, 4 R. 1149, but the rate per bed in that case is £4; in the case of the *Roselee Asylum, Midlothian*, the annual value of which was fixed at £2, 10s. per bed; and in the *Banffshire District Lunacy Board* case (July 2, 1870, 11 Macph. 982), where the rate per bed was £3. Taking the mean between these three, the rate per bed would be £3, 10s., and the valuation £248. In the case of *Nordrach-on-Dee Sanatorium*, referred to by appellants' agent, the cost of the buildings is not stated. They are valued in the prospectus at £24,219, and the annual value is £800. *The Dunoon Seaside Homes*, referred to by the appellants as costing £23,000, is of no value as a comparison, as the buildings are very costly as compared with the Kilmun Home. The accommodation is not stated.

"If the cost of erection is taken (and this course is sanctioned by the Judges, as reported in the case of *St Cuthbert's Co-operative Association, Limited*, February 19, 1896, 23 R. 681, 33 S.L.R. 487, where their Lordships stated that in the absence of other materials 'Cost is a proper element in estimating value') the cost admitted by the appellants is £3750, and at five per cent, is a moderate rate for a property capable of being let and beneficially occupied by a tenant, which would make the valuation £187, 5s. The Assessor maintained that whether by a rate per bed or by cost of erection his valuation ought to be increased."

Argued for the appellants—The principle of valuation of such institutions at so much per bed was erroneous. The proper principle was cost of erection, but at a rate of 2 per cent. instead of 5 per cent. as proposed by the Assessor. This rate of 2 per cent. had been adopted in the following cases—

Blyth Hall Trustees v. *Assessor for Fifeshire*, 24th February 1883, 10 R. 659, 20 S.L.R. 433; *Barony Parochial Board* (*Woodilee Asylum*), 2nd April 1877, 4 R. 1149; *Banffshire District Lunacy Board*, 2nd July 1870, 11 M. 982. Counsel also referred to Armour on Valuation, p. 259.

Argued for the respondent—The Assessor was willing to take the valuation at £140, which in the circumstances was moderate. The proper principle to adopt here was percentage on cost of erection, and 4 per cent. was the proper rate. The figure brought out by this method corresponded in amount with a valuation on the basis of the number of beds, taking a rate of £2 per bed. The valuation of the building on this principle had been allowed to stand for twenty years without objection.

LORD LOW—It is plain that so long as this convalescent home is held and administered in terms of the feu-disposition it cannot be let to a tenant. That, however, is no reason why the annual value should not be ascertained for valuation purposes. I agree with the opinion expressed by Lord Fraser in the case of the *Blyth Hall Trustees* (10 R. 659) that, in circumstances such as those with which we are now dealing, restrictions imposed by a private individual in regard to property which he has placed in trust, and which prevent the use of the property being a remunerative occupation, must be disregarded in ascertaining the annual value.

Now if the Home in question were put in the market I see no reason why a tenant should not be readily enough obtained. The premises, I imagine, would be suitable for a sanatorium or a hydropathic establishment, or some use of that kind.

What, then, is the rent for which the Home might be expected to be let? There is one circumstance which appears to me to be material, and that is that the Home was entered, apparently without objection, in the valuation roll for twenty years as of the annual value of £120. There was then accommodation in the building for sixty-four patients, and the value fixed was a little less than £2 per bed. That is a common basis for the valuation of subjects the profits from which depend upon the accommodation for patients or guests, and £2 per bed appears to be a moderate estimate. There is another method by which the valuation may be checked, and that is by taking the interest upon the cost of the building. The building in this case cost £3000, so that the valuation of £120 was just 4 per cent. upon the cost, which does not strike one as being more than a moderate return upon the capital expended.

The occasion of the present appeal was that an addition was made to the Home at a cost of £750. The result of the addition was that the accommodation was increased from sixty-four to seventy-one patients, and the committee of the County Council have raised the valuation to £140 per annum. That is entirely in accordance with the principle upon which the subjects were valued before the addition, because the amount fixed is still a little less than £2 per bed, and is as nearly as possible 4 per cent. upon the cost of erection.

I am therefore of opinion that there is no reason to interfere with the determination of the committee.

LORD DUNDAS—I agree with your Lordship, and I do so all the more readily that the Committee have come to this decision with a full local knowledge, and had all the facts before them.

The Court were of opinion that the determination of the Valuation Committee was right,

Counsel for the Appellants — Graham Stewart. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Respondent — Pearson. Agents — Pearson, Robertson, & Findlay, W.S.

COURT OF SESSION.

Saturday, January 27.

SECOND DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

BAIRD (LIQUIDATOR OF DAVID GILLIES & SONS, LIMITED) *v.* GILLIES AND OTHERS.

Arrestments—Debt Due by Company in Liquidation—Proper Method of Arresting—Arrestment in Hands of Liquidator as Individual Ineffectual.

An arrestment "in the hands of you, A, accountant, Glasgow," of "the sum of . . . due and addebted by you to B . . ." the schedule of arrestment in no way indicating that the debt was due by A in any other than a private capacity, *held* ineffectual to attach a sum to which A as liquidator of a limited company had ranked B in respect of a debt due by the company to him.

Per Lord Stormonth Darling—"The proper way to arrest the funds of a company in liquidation is to arrest the debt as due by the company itself and the liquidator as such."

The firm of David Gillies & Sons, smiths and engineers, Bonnybridge, of which Archibald C. Gillies was a partner, became incorporated as a limited company under the Companies Acts. The company subsequently went into liquidation, and John Baird, accountant, 173 St Vincent Street, Glasgow, was appointed liquidator thereof. Archibald C. Gillies lodged a claim in the liquidation for sums, partly preferable, due to him by the company, and the liquidator having admitted him to a ranking, he became entitled by way of dividend out of the company's estate to the sum of £40, 18s. 10d.

In 1897 the firm of David Gillies & Sons, and the individual members of the firm, had