publicans to produce their business books—a proceeding which, although apparently countenanced in some quarters in England, has been generally recognised both in Scotland and England as inquisitorial and to be discountenanced. I think that to compel production of proof of turnover might very well be an indirect compulsitor to production of business books, because I can imagine in many cases that the deductions attempted to be drawn from turnover might be incapable of being rebutted except by an examination of the licencee's actual business books.

I must also add that I am doubtful whether a safe guide in this case can be found in the alleged agreement between sixty publicans in Leith and the assessor, as we have no knowledge of the circumstances or the footing on which it was made or of its result as a satisfactory basis for valuation.

With this protest I concur in disposing of the present appeal as your Lordships propose.

The Court were of opinion that the determination of the valuation committee was right.

Counsel for the Appellant—J. Wilson, K.C — Macquisten. Agents — Garden & Robertson, S.S.C.

Counsel for the Assessor—M'Clure, K.C. —Lippe. Agent—R. H. Miller, S.S.C.

Friday, December 15.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen.)

DUMFRIES ASSESSOR *v.* KIRK'S TRUSTEES.

Valuation Cases—Value—Condition other than Rent—Trustees Letting a Farm to One of their Own Number.

A farm owned by a body of testamentary trustees, of whom one was the widow of the testator, was, without advertising for a tenant, let on lease to one of their own number, the son of the testator, at a rent which was lower than the figure at which the farm had stood in the valuation roll for a number of immediately preceding years, when it had been owned and occupied by the trustees and their author. The lease contained a provision by which the tenant renounced certain claims, competent to him at outgoing, under the Agricultural Holdings (Scotland) Act 1908. The assessor disregarded the lease and entered the subjects in the valuation roll at the former valuation.

Held that in the circumstances the assessor's valuation was right.

At a meeting of the County Valuation Committee of Dumfries, held on the 13th day of September 1911, the trustees of the late Thomas Kirk as proprietors, and Thomas Kirk as tenant, appealed against the following entries in the valuation roll for the year ending Whitsunday 1912, viz.—

No.	Description and Situation of Subject.	Proprietor.	Tenant.	Occupier.	Yearly Rent or Value.
185	Farm & House, Williamsfield	Kirk, Trustees of late Thomas, farmer, per Mrs Janet Kirk, 5 Portland Place, Maxwelltown	Thomas Kirk, farmer	Tenant	£140
187	Farm & House, Charlesfield	Do.	Do.	Do.	90
189	Shootings, Do.	Do.	Do.	Do.	5

The appellants craved that the entries Nos. 185 and 187 should be reduced to £100 and £70 respectively. The Committee sustained the appeal and reduced the valuation as craved, whereupon the assessor took a Case.

The Case set forth the following *facts* as admitted or within the knowledge of the committee — "1. The appeal to the committee was at the instance of the proprietors and tenant of the two farms of Williamsfield and Charlesfield in the parish of Holywood. The proprietors are the surviving trustees (being also the widow and two sons) of Thomas Kirk, who was the proprietor and occupier of these farms for some thirteen years prior to his death in 1909. The tenant is the elder son and one of the trustees of said Thomas Kirk. At the date of the missive of let produced, the parties were residing in family together at Williamsfield.

"2. The annual value (£230) entered by the assessor in the valuation roll for 1911-12, and appealed against, is the amount at which the farms stood in the roll during the occupation of the late proprietor, and also in the years 1909-10 and 1910-11, when the occupiers were the trustees of the late proprietor (*i.e.*, the present appellants). Prior to the late proprietor entering upon occupation of the farms they were let to a tenant at a rent of £250, 18s. 11d. The two farms contain 237 acres, and the annual value appealed against was equal to 19s. 5d. per acre. The rent stipulated in the missive of let produced and founded on is equal to 14s. 4d. per acre.

"3. The subjects of appeal were not advertised to let, nor was any attempt made to let them to a neutral tenant prior to conclusion of the missive of lease produced."

The missive of let produced and referred to provided, *inter alia*, as follows—"The first parties hereby let to the second party and his heirs, but expressly excluding assignees and sub-tenants, legal or conventional, and creditors or managers for creditors in any shape or form, and declaring that this lease shall in their option terminate in the event of the bankruptcy or declared insolvency of the second party, all and whole the farms of Williamsfield and Charlesfield, with the shootings thereon, all lying in the parish of Holywood and county of Dumfries, and all as at present occupied by the second party, and that for and during the space of one year from the term of Martinmas Nineteen hundred and ten, which is hereby declared

to have been the term of his entry thereto, until the term of Martinmas Nineteen hundred and eleven, and thereafter from year to year until brought to a legal termination; declaring that it shall be in the power of either party to terminate the lease at any term of Martinmas on giving written notice to the other party at least six months prior to eleventh November of the intention to terminate the same: And the second party binds himself and his heirs, executors, and representatives whomsoever, jointly and severally, to pay to the first parties and their successors the annual rent of one hundred and seventy-five pounds—being one hundred pounds for Williamsfield, seventy pounds for Charlesfield, and five pounds for the shootings—and that half-yearly at Whitsunday and Martinmas, beginning the first payment of eighty-seven pounds ten shillings at Whitsunday Nineteen hundred and eleven, and the second payment at Martinmas Nineteen hundred and eleven for the first year's possession, and so forth half-yearly during the continuance of this lease, with interest thereon at five per cent. per annum from the term of payment till paid: And the second party accepts of the subjects hereby let and whole buildings thereon as in good and sufficient tenantable condition and repair, and agrees to upkeep the same and whole dykes, ditches, fences, drains and others in the like good state, and to leave them so at the expiry hereof: And the second party further agrees that, as he is not being asked to pay for seeds or for any unexhausted improvements at entry, he will not have any claim against the first parties at his outgoing under the Agricultural Holdings (Scotland) Act 1908, or at common law, and will have no claim for seeds at his outgoing, and he also agrees that on notice of termination being given on either side he will remove at the ensuing term of Martinmas without any other warning or process of removing for that effect."

The agent for the appellants quoted the following cases—*Alexander* v. *Assessor for Kirkcudbright*, 19th February 1890, 17 R. 835, 27 S.L.R. 630; *M'Lachlan* v. *Assessor for Ayr*, 17th February 1897, 24 R. 735, 34 S.L.R. 618; *Bowman* v. *Assessor for Inverbervie*, 14th February 1900, 2 F. 607; and *Reid* v. *Assessor for Orkney*, 12th February 1902, 4 F. 543, 39 S.L.R. 854.

The committee were of opinion (1) that the rent stipulated in the lease was less than the true annual value of the subjects, (2) that while the lease stipulates a consideration other than the rent, the amount of such consideration does not appear material, and (3) that they were bound by the decisions quoted by the agent for the appellants.

The assessor *contended*—The missive of lease produced should be disregarded *quoad* the rent stipulated, in respect of (*a*) the relationship of the parties, (*b*) the previous annual value of the subjects, and (*c*), the fact that no attempt had been made to let the subjects to a neutral tenant. Further, under the lease produced, the present tenant renounced all claims competent to him under the Agricultural Holdings (Scotland) Act 1908, or at common law, which was a consideration other than rent.

The respondents contended in answer—(*a*) that the relationship of the parties was irrelevant, (*b*) that the clause in the missive of lease founded on by the assessor did not stipulate a consideration other than the rent, and, in any event, was not enforceable, and (*c*), that as the assessor had led no evidence to show that the lease was not a *bona fide* one, or that the trustees received any higher rent than that stipulated therein, the county valuation committee were bound to enter in the valuation roll the rent stipulated in the lease irrespective of its amount.

The following additional authorities were referred to in argument—*Hutcheon* v. *Peterhead Assessor*, February 17, 1891; Lands Valuation Reports 1888-96, No. 126; *Bell* v. *Edinburgh Assessor*, May 12, 1904, 6 F. 501, 41 S.L.R. 490; *Higgins* v. *Lanarkshire Assessor*, 1911 S.C. 931, 48 S.L.R. 357; *Alexander* v. *Assessor for Kirkcudbright*, February 19, 1890, 17 R. 835, 27 S.L.R. 630; *Mackay & Company* v. *Edinburgh Assessor*, 1907 S.C. 766, 44 S.L.R. 435.

LORD JOHNSTON—In this case I quite concede to Mr Chree (for the trustees) that there is no implication of a positive nature which can be deduced from the fact that there is an intimate relationship between the lessor and the lessee, but the circumstance is not an element which can be by any means excluded, and it has greater or less weight according to the intimacy of the relationship. I do not think there can be anything more intimate than the relationship between a mother and her eldest son.

That being the first consideration, I then look to the lease to see whether there is anything in the lease which would bear one way or another upon its *bona fide* character, and I find two things which to my mind are conclusive. In the first place there is a reduction of rent, not upon a previous lease, but upon the valuation acceded to for thirteen years by the previous proprietor and by the present lessors for two seasons more. There is, in the second place, a most important admission, namely, that the lease is granted to the son without advertisement, and still more, without taking skilled advice. Considering that this was a lease by trustees to one of their number—a lease which, except through consent would be invalid as in a question with the trust estate—I consider that the two facts which I have mentioned are practically conclusive. But there is a further fact, viz., that the lease when it is scanned turns out to be a lease containing clauses and wanting clauses which would never have been inserted or omitted in a lease to an outsider. I do not think, for instance, that a lease of that sort could have been granted by trustees to an outsider, particularly with the clause with regard to waygoing. Although there might not be anything in

the lease in point of money to justify the conclusion that there is a consideration other than rent conditioned, still this is a clause of a character which indicates that but for the relationship of the parties a lease in those terms would never have been given. I conclude, therefore, that there is more in this case than the mere relationship of the parties, and there is therefore sufficient to satisfy me, as apparently the valuation committee were satisfied, that the rent stipulated was less than the true annual value of the subjects. We cannot adopt that view just straight from the committee, because we do not know how far, in entertaining that view, they were not going upon personal knowledge of general lets. But I come to the same conclusion on the grounds which I have stated.

Now the committee having come to that conclusion, and having rejected the appellant's argument as to consideration other than rent, seem to have thought themselves precluded by decisions from giving legitimate effect to that conclusion. I cannot see exactly upon what they were proceeding, for on examination of the decisions referred to I cannot see that they were bound to infer anything else from the fact of relationship of the landlord and tenant than that the rent was quite possibly an inadequate rent, and were therefore bound to apply themselves to the circumstances and to determine whether in the circumstances the lease really was conditioned on considerations other than rent and the rent inadequate.

I think therefore that the judgment of the valuation committee should be altered, and, as there is no evidence, there is no alternative for us in this case but to accept for the current year the rent stated by the assessor, which was the rent at which the premises were entered in the previous years.

LORD SALVESEN—I am of the same opinion. Leaving out of view, as we are bound to do, the findings with regard to the value of the subjects let which have been derived from the personal knowledge of the valuation committee, I think this is a narrow case. Substantially I regard it as a let by a mother to her son, because while the trustees appeared as the lessors the mother was the person who had the true interest in the fixing of the rent. Now mere relationship is not sufficient to justify the Court in disregarding the lease, but if there is evidence from which you can infer that the sum mentioned in the lease is less than its fair value, then the rent is not, in terms of the Valuation Act, "conditioned as the fair annual value" of the subjects, but proceeds on the favour and affection which the lessor, who in this case was the mother, had for her tenant.

The only fact from which we can draw any inference with regard to the actual value of these subjects is that for thirteen years the father, who was the owner, was assessed at £235 annually, and that this lease is for a sum of £175 or a reduction of £60. If there had been evidence led by the respondents here to the effect that they had tried to get a tenant and had failed to get any offers for more than £175, I think that that would have displaced the presumption that arises from this sudden fall in value and the relationship of the parties to the lease. But it is a matter of admission that they have never advertised the subjects at all or sought to obtain any tenant other than the eldest son. That by itself would be sufficient for the decision of this case; but even if this view were open to doubt I do not think we can leave out of view the circumstance that this lease is a yearly lease with clauses of an unusual nature, and that these may have entered into the question of fixing the rent, seeing that the tenant gave up any claim which he might otherwise have had under the Agricultural Holdings Act. We cannot tell what the value of that renunciation may be. I think we were informed that it is probably not enforcible, but the parties to the lease must have thought that it had some value, and it is at all events binding in honour upon the lessee whether it is binding upon him in law or not. Accordingly I think that was a consideration other than rent which entitles us to disregard the lease, and as we have no other materials for fixing the fair value, to revert to the old valuation at which the subjects had stood for thirteen years.

LORD CULLEN—I concur.

The Court were of opinion that the determination of the valuation committee was wrong and sustained the assessor's valuation.

Counsel for the Appellant—Hon. W. Watson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Respondent—Chree. Agents—Beveridge, Sutherland, & Smith, W.S.

COURT OF SESSION.

Saturday, December 9.

FIRST DIVISION.

[Sheriff Court at Perth.

WILLIAMSON *v.* STEWART.

(Sequel to *Stewart* v. *Williamson*, 46 S.L.R. 918, 1909 S.C. 1254, and 47 S.L.R. 536, 1910 S.C. 47).

Lease — Outgoing — Valuation of Sheep Stock—Arbitration—Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 11 (3) *and Second Schedule*, 9.

In a case stated under the Agricultural Holdings (Scotland) Act 1908, to obtain the opinion of the Sheriff upon the correct method of valuing a sheep stock to be taken over at the end of the lease by the proprietor or incoming