

Fifeshire (1888, 15 R. 629, 25 S.L.R. 460), ought to have been followed. The Valuation Committee, in holding that no distinction should be recognised between first year's and subsequent years' grass, had not acted in accordance with the views laid down in the case of *Duffus*. It had further been decided that rousp expenses were not a proper deduction from the grazing value—*Lockhart v. Assessor for Lanarkshire*, 1922 S.C. 450, 59 S.L.R. 295.

Argued for the respondent—The course proposed by the assessor of dealing with the separate items of grass land in detail was an alteration on a general rule, and if he desired to take it he ought to state precisely on what grounds he had proceeded. The principle laid down in the case of *Duffus* was not one which the Valuation Committee were bound to apply in every possible case; they were entitled to discard it when they saw as a practical matter that it would operate unfairly, as it would in the present case. To regard it as a rule of universal application which must be applied in all conceivable circumstances would be going beyond the scope of that decision. In view of the express statement of the Valuation Committee that the course which they had adopted was that which appeared to them just and reasonable, they were entitled to decide as they had done.

LORD HUNTER—The question raised in this case is a short one. The respondent is the proprietor and occupier of a farm which for some time was let as an agricultural subject. It was then put into grass parks and afterwards during the war broken up. It has now again been put into grass parks, and these grass parks are let at a certain rent per annum. Now I think it is shown from the case that in respect that some of the grass is one-year grass and of the remainder some is two-year grass and some old grass, the proprietor receives a larger rent than he would have got had the whole attained to the condition of permanent old grass.

The Valuation Committee in considering what was a proper sum to enter in the valuation roll seem to have regarded this fact as a circumstance distinguishing this case from the case of *Duffus* (1919 S.C. 484, 56 S.L.R. 115), where this Court followed the principle laid down by Lord Fraser in the earlier case of *Berwick* (1888, 15 R. 629, 25 S.L.R. 460) as applicable to cases where ground is let as grass parks at a certain rent, the ground being used as grazing for merely half the year and for half the year remaining idle.

I am unable to accept the distinction which has been taken by the Committee between the case of *Duffus* and the present case. In the present case it is true that a considerable expenditure has recently been made by the landlord upon the ground. In consequence of that expenditure he receives a higher rent than he otherwise would do. But of course if the proprietor of a heritable subject chooses to render his subject more valuable by expenditure upon it, it follows that when the question of assessing its value

arises the assessor must consider the subject in the state in which he finds it, and cannot because of that special expenditure submit the subject to any special treatment in arriving at his valuation.

In the present case, therefore, I think that the Committee erred, and that they should have taken, following the decision in *Duffus*, the rents actually received for the grass parks in the condition in which they were at the time when they were let, subject, of course, to the recognised deductions.

LORD SANDS—I regret that in this case we cannot sustain the determination of the Valuation Committee which, when I first read the case, seemed to me reasonable and sensible. But the rule is well established that when land is laid out in grass it must, apart from special circumstances, be valued according to the rents which are received from it in that state, and not according to the value which on an estimate it would yield had it been occupied as arable land. The peculiarity in this case, however, which impressed the Committee was that though the land was in grass it was, so to speak, in a state of transition in so far as it had not settled down into ordinary and permanent grazing. I am sorry that I am unable to sustain that fact as differentiating the case from that of *Duffus* (1919 S.C. 484, 56 S.L.R. 115) sufficiently to enable us to reach a result different from that which was reached in that case. No doubt the rule that when land is let for less than a year the seasonal rent is to be taken as the standard of value is a rule of practice, not a rule of law. The circumstances may be so special as to render this standard inappropriate in a particular year. But the circumstances of the present case are not so special as to warrant a departure from the general practice.

LORD ASHMORE—I concur with your Lordship.

The Court were of opinion that the determination of the Valuation Committee was wrong, and that the subjects should be entered in the valuation roll at the annual value of £334.

Counsel for the Assessor—Keith. Agents—Ross Smith & Company, S.S.C.

Counsel for the Respondent—Duffes. Agents—Thomson, Dickson, & Shaw, W.S.

Thursday, January 24.

(Before Lord Hunter, Lord Sands, and Lord Ashmore.)

M'CORQUODALE v. ASSESSOR FOR SUTHERLANDSHIRE.

Valuation—Value—Salmon Fishings—Deductions—Purchase of Net Fishings by Upper Proprietors in order to Improve Rod Fishing—Cost of Purchase to be Taken into Account in Assessing Value of Rod Fishings.

Held that where the proprietors of the salmon fishings of the upper reaches of a river had bought up the net fishings at its mouth in order that the rod fishing on the river might be improved, the expense of the purchase was an element to be taken into account in assessing the value of the river fishings.

Valuation Cases—Value—Salmon Fishings—Deductions—Expenses to be Taken into Account in Assessing Value of Rod Fishings on River—Expense of Watchers—Expense of Attendance at Sluices.

Held that the expense of the services of river watchers, so far as they were rendered on behalf of the tenant of the fishings, and also the expense of attendance at sluices on the river in order to regulate the flow of water, formed a proper deduction in estimating the value of the salmon fishings on a river for the purpose of assessment.

At a meeting of the Valuation Committee of the county of Sutherland, held at Golspie on 14th September 1923, Harold M^cCorquodale, Torrish, Helmsdale, appellant, appealed against the following entry in the valuation roll for 1923-24, viz.—

Parish of Kildonan.

| No. | Description and Situation of Subject. | Proprietor. | Tenant and Yearly Occupier. | Rent or Value. |
|-----|---------------------------------------|--|-----------------------------|----------------|
| 173 | Angling, river Helmsdale | Harold M ^c Corquodale, per J. Sutherland, estate agent, Dornoch | Proprie- tor | £1160 |

and craved that the valuation be reduced to £720.

The Committee having fixed the annual value at the sum of £812 the appellant obtained a Case for appeal.

The Case stated—“The following facts were admitted or found to be proved by the Committee:—1. The river Helmsdale has a course of about 20 miles through the Strath of Kildonan, entering the sea at the village of Helmsdale. It is a famous and early river, most attractive to anglers, and maintaining a reputation for good sport hardly equalled in Scotland. The angling in the river Helmsdale and salmon fishings in the estuary of the river, as well as in the sea from the Ord of Caithness to Lothbeag Point, belong to six *pro indiviso* proprietors, of whom appellant is one. The river is divided into twelve beats and the beats are fished by the proprietors in rotation. They have equal interests in the river and also in the salmon sea fishings. 2. The appellant in 1919 purchased (a) lands of Torrish, (b) 1/6th share of angling in river Helmsdale, and (c) 1/6th share of salmon net fishings for the sum of £26,000. 3. Prior to 1900 the salmon sea coast fishings were let to Messrs J. Sellar & Sons, and the salmon net fishings at the mouth of the river were worked by the Duke of Sutherland, the then proprietor, but in 1900 the salmon net fishings at the mouth of the river Helmsdale and also on the sea coast from the Ord of Caithness to Lothbeag were let to the Helmsdale angling tenants at a rent of £450, and these tenants continued to pay that rent up to 1919 when they purchased

the salmon net fishings, and their names were entered as proprietors in the valuation rolls for the county at the same yearly rent or value. Two of the Helmsdale river proprietors are the Duke of Sutherland and the Duke of Portland, who are also proprietors respectively of Badanloch and Suisgill, and who have let their right of angling in the river Helmsdale along with shootings, and consequently have not appealed against the salmon net fishings being included in the valuation roll at £450. The actual rents received by them from the tenants are entered in the valuation roll. [A table was appended showing the entries in the cases of actual lets in the valuation rolls of the county of the shootings and angling of Badanloch and Suisgill for the years mentioned.] 4. That the salmon net fishings at the mouth of the river Helmsdale and on the sea coast from the Ord of Caithness to Lothbeag Point have not been worked since 1900, and that in 1900 they were let by the Duke of Sutherland, the then proprietor, to the river angling tenants at £450 per annum, and have appeared annually in the valuation rolls since that year at that figure. 5. That there has been no increase in the rent or yearly value as appearing in the valuation rolls of the county of the angling of the river Helmsdale since the salmon net fishings ceased to be worked. 6. Prior to 1919, when the appellant purchased the estate of Torrish and shootings and angling pertaining thereto, he was tenant thereof from the Duke of Sutherland, and the yearly rent or value appearing in the valuation rolls prior to that date for same was £800, 19s. 9d., and this figure continued to be entered in subsequent valuation rolls with appellant entered as proprietor. In 1922-23 the entry in the valuation roll of that year was—Shootings and Angling, Torrish; Proprietor, H. M^cCorquodale; Tenant, Proprietor; £800. 7. That the valuation roll entry applicable to appellant's 1/6th *pro indiviso* share of the river angling in 1922-23 was £500; that said figure of £500 was not based on lets by the appellant, but as during the season 1923—11th January to 30th September—the appellant let part of his angling, the assessor resolved to assess on the basis of these lets and the appellant made no objection to the principle. 8. That the anglings were let by the appellant for—

| | | |
|---|-------|-----------|
| February | - - - | £ 75 0 0 |
| March | - - - | 150 0 0 |
| April (first week) | - - - | 37 10 0 |
| June | - - - | 200 0 0 |
| July | - - - | 200 0 0 |
| | | £662 10 0 |
| From which there is deducted for ghillies | - - - | 55 0 0 |
| | | £607 10 0 |

That the assessor's estimate of the value of the unlet anglings accepted by the appellant is—

| | | |
|---------------|-------|-----------|
| 3 weeks April | - - - | £112 10 0 |
| May | - - - | 150 0 0 |
| | | 262 10 0 |

Carry forward, £870 0 0

| | | | |
|---|------|---|-----------|
| Brought forward, | £870 | 0 | 0 |
| That the assessor's estimate for the remainder of the season, viz., January, August, and September, is— | | | |
| January - | £ 40 | 0 | 0 |
| August and Sep- tember - | 250 | 0 | 0 |
| | | | 290 0 0 |
| | | | £1160 0 0 |

That the appellant proposes for these months as follows:—

| | | | |
|-----------------------------|-----|---|---|
| January - | £ 0 | 0 | 0 |
| August and Sep- tember - | 150 | 0 | 0 |

And that the assessor and appellant are at issue as to whether £1160 or £1020 should be taken as the angling value, from which the appellant claimed the following deductions:—

| | | | |
|--|-----|----|----|
| 1/6th of wages to river watchers, amounting to £422, 18s. 9d., as per abstract of wages | £70 | 9 | 10 |
| 1/6th of expenditure on hatcheries, amounting to £87, 9s. 6d., as per note of expenditure on hatcheries | 14 | 11 | 7 |
| and 1/6th of expenditure on boats, bridges, &c., amounting to £44, 3s. 3d., as per note of expenditure on boats, &c. | 7 | 7 | 3 |

and also occupier's rates.

The appellant further claimed a deduction of £75, being 1/6th share of £450, the yearly value of salmon net fishings at the mouth of the river Helmsdale and the sea coast from the Ord to Lothbeag Point, and 1/6th of the rates of the salmon net fishings (owners' and occupiers'), amounting last year to £267, 1s. 8d., of which 1/6th is £44, 10s., if the salmon net fishings continue to be entered in the valuation roll at £450. 9. That the assessor's estimate of the yearly value of the angling of the river Helmsdale, so far as belonging to the appellant, in the months of January and August and September is fair and reasonable, and that from the grounds of appeal lodged it appears the appellant is not now contesting the assessor's estimate of the value of the angling during these months. 10. That the Helmsdale angling proprietors appealed against the salmon net fishings remaining in the valuation roll at £450, claiming that same should be entered at nil in respect that they were not worked, but at the hearing of the appeal it was intimated that two out of the six *pro indiviso* proprietors, namely, the Duke of Sutherland and the Duke of Portland, were not appealing. That the appeal was dismissed, and accordingly the salmon net fishings continue to be entered in the valuation roll at £450. 11. That the average catch by rods on the river Helmsdale from 1882 to 1900—nineteen years—during the time the salmon net fishings were worked and before the dams and hatcheries referred to were erected, was 864, and the average catch from 1901 to 1904 inclusive after the salmon net fishings ceased to be worked was 860. The dams at Badanloch and Loch-an-Ruathair were erected in 1902 and 1903 respectively. 12.

That the evidence adduced by appellant did not support his contention that there was any improvement in the catch in the river subsequent to 1900, when the salmon net fishing at the mouth of the river and in the sea ceased to be worked. That so far as the values of the angling in the river are concerned it was proved that there has been no increase in the yearly rent or value since 1900."

The Case further stated—"The Valuation Committee having considered the facts admitted or proved, the evidence adduced, the productions lodged, the whole circumstances of the case, and having heard the appellant's agent and assessor thereon, allowed appellant's claim for deduction of occupier's rates from the gross yearly rent or value of the angling, and accordingly reduced the assessor's valuation from £1160 to £812, and disallowed the deductions claimed by the appellant for 1/6th share of expenditure on river watchers, hatcheries, and boats, as per statements lodged by appellant, and appended hereto, in respect that such payments were made by the proprietor for the protection or improvement of his own property, and that such payments do not form proper deductions from the gross rent, and also disallowed the deductions claimed by appellant in respect of the salmon net fishings appearing in the valuation roll at £450, on the ground that the appeal against this entry in the valuation roll was dismissed, and also on the ground that these salmon net fishings must be entered in the valuation roll at their yearly rent or value although not worked by proprietors."

Argued for the appellant—The question was, What was the lettable value of the subjects in the case? and in order to ascertain the actual value of the angling it was important to consider whether the net fishings at the mouth of the river were being carried on. This the Valuation Committee had failed to do. An allowance by way of deduction from the rent ought to be made in respect of these net fishings. The rent paid by the tenant was a composite sum, and included payment for the various services rendered by the landlord over and above the enjoyment of the salmon fishings on the river. The tenant was paying, *inter alia*, for a guarantee that the net fishings would not be used. Where, as here, the tenant was provided with special facilities for catching salmon, which he was also prepared to pay for, the expense of providing them was a proper subject for deduction. Further, where, as here, the landlord supplied the services of river watchers the same reasoning applied. What the river watchers were protecting was not the heritage but the fruits of it, and in the tenant's interest. Similarly the expense connected with the working of dams and sluices were proper deductions, since without these the tenant would not obtain the sport he paid for. The following cases were cited:—*Dee Salmon Fisheries Company, Limited v. Assessor for Aberdeen*, 1915 S.C. 790, per Lord Salvesen at p. 786, 52 S.L.R. 178; *Lord Middleton v. Assessor for Ross-shire*, 1882, 10

R. 28, 19 S.L.R. 564; *Baird*, 1861, 24 D. 1456; *Assessor for Elginshire v. Duke of Richmond and Gordon*, 1905, 7 F. 424, 42 S.L.R. 512.

Argued for the assessor—There was no evidence that the discontinuance of the netting had improved the value of the rod fishing. There was no increase in the number of salmon taken since the netting stopped. The inference therefore was that any improvement there might be was due to the construction of hatcheries and dams, but these items of expenditure were entirely proprietor's outlays for the purpose of preserving the heritable subject. As regards watchers, their duties were entirely different from those of ghillies, whose services were required by the tenant, and their wages therefore were not fairly deductible, being simply expenditure by the proprietor to prevent poaching. They were employed to maintain the value of the heritable subject in the interest of the landlord. Any services they might render to tenants would if they existed at all be very trifling. The expense connected with the upkeep of boats and the payments for killing vermin were not deductible, as none of these items were incurred for the improvement of the fishing. Reference was made to *Armour on Rating* (2nd ed.), p. 74, and to *Leith v. Leith*, 1862, 24 D. 1059.

LORD HUNTER—In this case, where the subjects of valuation are the angling rights in the river Helmsdale, certain questions have been raised which appear to involve points of principle. It is only in so far as such points are raised that we can express our opinion, because as regards actual figures the case is in a wholly unsatisfactory position.

In my opinion—I think I am speaking for the other members of the Court as well as myself—the Committee went wrong in making no allowance in respect of the circumstance that the proprietor was paying a large sum in respect of net fishings which he was under an obligation not to utilise. There is evidence to the effect—and it seems hardly to require evidence—that if a river is fished by net at its mouth, the value of their fishings to upper proprietors will be substantially less than if there were no net fishing. In this particular case the proprietors of the upper fishings banded together and bought up the net fishings, with the result that when considering the actual rents received for the whole year one must remember that they were based upon the understanding that there would be no net fishing. I do not say—and I do not think it is proved in this case—that the deduction to which the proprietor is entitled is the full amount he pays in respect of the net fishings. Upon this matter of amount I have, however, no doubt the good sense of the parties will enable them to arrange some figure that will be satisfactory.

As regards the other matters raised, Mr Cooper, quite rightly I think, did not argue any claim to a deduction in respect of the hatcheries and the bridges, but he did suggest—and in this his senior supported his argument—that there was room for a

deduction in respect of the watchers and to some extent in respect of the dams. Here I think it is reasonably clear that the whole amount claimed does not fall to be deducted. Counsel for the assessor were right in suggesting that to a substantial extent the services rendered by the watchers were services on behalf of the proprietor of the heritage and not wholly on behalf of the tenant. But in so far as they were services rendered on behalf of the tenant it appears to me that they form a good deduction. This view is in accordance with the statement of opinion made by Lord Salvesen in the case of the *Dee Salmon Fisheries Company v. Assessor for Aberdeen*, 1915 S.C. 790, 52 S.L.R. 178.

As regards the question of expense connected with the dams, a claim in respect of maintenance of the structures would in my judgment be a bad claim, because that is a matter for the landlord. But it was pointed out to us that in order to enable the tenant to fish the river satisfactorily it was necessary that he should have someone to regulate the flow of water by opening and shutting the sluices, and I think that expenditure made in that connection forms a proper deduction.

We shall accordingly continue the case to allow parties to come to an arrangement which they can intimate to us and to which we can give effect for this year.

LORD SANDS and LORD ASHMORE concurred.

The Court were of opinion that the determination of the Valuation Committee was wrong, and with the consent of parties fixed the annual value of the subjects for the current year at £750.

Counsel for the Appellant—MacRobert, K.C.—Cooper. Agents—Macpherson & Mackay, W.S.

Counsel for the Assessor—D. P. Fleming, K.C.—Normand. Agents—Mackenzie & Kermack, W.S.

Wednesday, January 30.

(Before Lord Hunter, Lord Sands, and Lord Ashmore.)

VISCOUNTESS COWDRAY v.
ASSESSOR FOR ABERDEENSHIRE.

Valuation Cases—Value—Shootings—Grouse Moor in Occupation of Proprietor—Evidence of Value—General Increase in Letting Value of Similar Subjects—Extract Produced by Assessor from Valuation Roll—No Evidence Given by Assessor—Onus of Proof.

A grouse moor the valuation of which previous to the war had been £425 was during the war entered in the roll at £100. The valuation was afterwards increased to £130, and subsequently to £200. In the year in question, the moor being in the occupation of the proprietor, the assessor proposed to increase