

or value of such lands and heritages, and such yearly rent or value shall be ascertained in terms of this Act irrespective of the amount of rent payable under such lease."

At a meeting of the Magistrates and Town Council of the burgh of Edinburgh on the 11th September 1882, for the purpose of hearing and disposing of appeals against valuations made by the assessor for the year from Whitsunday 1882 to Whitsunday 1883, Mrs Elizabeth Gosnell, Reigate, Surrey, appealed against a valuation of £180 made by the assessor in respect of the house and workshop known as "Whiteford House," and situated in Galloway's Entry, 53 Canongate, in the burgh of Edinburgh, and which belonged to her, and was occupied by The Marr Typefoundry Company (Limited).

The subjects in question were let upon a lease for twenty-one years from Whitsunday 1878, at an annual rent of £120, and under the lease the tenants had the power to erect additional buildings on the ground for the purposes of their typefoundry business. For these buildings, if erected, the proprietrix was to receive no rent or consideration. No obligation was imposed upon the tenants to build.

Buildings of considerable value were erected by the tenants in virtue of the power given them to build. The assessor had arrived at his valuation by valuing these buildings, and maintained that the subjects actually upon the ground were the proper subjects of valuation, though no rent for them was payable under the lease. The appellant maintained that the actual rent stipulated by the lease must be taken. The Magistrates and Council confirmed this valuation of the assessor. The appellant took a Case for the Valuation Appeal Court.

Authority—*Coltness Iron Co.*, 1 March 1882, 19 Scot. Law Rep. 566.

At advising—

LORD LEE—The statute requires the assessor, where subjects are *bona fide* let for a yearly rent, conditioned as the fair annual value thereof, to take such rent as the value to be entered on the roll, unless the lease exceeds twenty-one years, or in the case of minerals thirty-one years. In this case the subjects are let under a lease not exceeding twenty-one years. It is not alleged by the assessor that the lease is not *bona fide*, or that the rent payable under the lease is not conditioned as the fair annual value. All that the assessor says in support of his valuation is that it is the value of the subjects actually upon the ground at the time of the valuation which must be taken. He assumes it to be a matter of course that if any additions have been made the lease must be disregarded. I am unable to reconcile this view with the terms of the statute. It is only where the subjects are not *bona fide* let, or where the rent is not conditioned as the fair annual value, or where the lease exceeds twenty-one years, that the lease can be disregarded. If additions are made under an obligation in the lease, then of course the stipulated money rent ceases to represent the fair annual value, and the subjects must be valued apart from the rent. But where as in this case additions have been made by the tenant without any obligation, and where the stipulated rent is in part paid for the power or liberty to make such additions, the statute requires the rent

to be taken. This is the principle applied in the *Coltness* case (1882), and in the cases there referred to; and it appears to me to rest upon a very obvious and substantial foundation in reason. The subjects here would not have yielded the rent of £120, but for the power and liberty of making these alterations.

I therefore think the determination of the Commissioners wrong.

LORD FRASER concurred.

The Court was of opinion "that the determination of the Magistrates and Council was wrong, and that the value should be entered at £120."

Counsel for Appellant—Jameson. Agent—John Milligan, W.S.

Saturday, February 24.

LAWSON'S REPRESENTATIVES AND
O'DONNELL.

Valuation Acts—Lease—Sub-Tenants.

Where subjects were let under a lease, and were in part sublet, held that the assessable value was the rent stipulated in the lease without regard to the rents paid by the sub-tenants.

This was an appeal by James Lawson's representatives and the Rev. Alexander O'Donnell, Falkirk, from a decision of the Magistrates and Council of the burgh of Edinburgh confirming the valuation placed by the assessor on certain subjects in Chambers Street there, of which they were proprietors. The premises were let to Francis Mohan at a rent of £80 on a lease for four and a-half years. Mohan had sublet various parts of the subject at rents amounting in all to £46, and himself occupied the remainder, which was valued by the assessor at £47. The total rental was thus £93, at which amount the assessor had entered the subjects in the valuation roll.

Argued for the appellants—The whole sum stipulated for in the lease was £80. Under the 6th section of the Valuation Act (quoted in the case immediately preceding), and on the authority of previous decisions by the Appeal Judges, the assessor must take the value stipulated for in a *bona fide* lease as the fair annual value.

Authorities—*John Bruce* (No. 58), February 8, 1868, 11 Macph. 978; *Hay & Co.* (No. 70), July 12, 1867, 11 Macph. 981.

Argued for the assessor—The rents paid by the sub-tenants was the value of the various subjects. He was entitled to enter each subject in the roll at its annual value irrespective of the rent paid under the lease.

At advising—

LORD LEE—I am of opinion that in the absence of any ground for holding that the subjects were not *bona fide* let for the yearly rent of £80, or that that rent was not conditioned as the fair annual value thereof, the increase of rent obtained by subletting some portions is not a circumstance sufficient to warrant departure from the statutory rule of valuation applicable to subjects under lease. The assessor is bound also to enter the names of

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