under the landlord's hypothec three conditions were necessary—(1) That the goods should not be deposited on the premises for a merely temporary purpose; (2) that they should be on the premises with the knowledge of the owner of the goods; (3) that the tenant should not have informed the landlord that they belonged to another person and not to him. In this instance these conditions were present. It was not necessary, although it might be important to the question, that the goods were for the use of the premises let. The landlord had a right to ask the tenant to furnish the premises let to him in a proper manner—*Jaffray* v. *Carrick*, November 18, 1836, 15 S. 43. The pulsometers were upon Bogle's premises in his capacity as a yachting agent, and the landlord was entitled to assume that these articles belonged to him—*Wilson* v. *Sponkie*, December 17, 1813, F.C.; Hunter on Landlord and Tenant, ii. 378; *Adam* v. *Sutherland*, November 3, 1863, 2 Macph. 6; *Nelmes* v. *Ewing*, November 23, 1883, 11 R. 193; Bell's Comm. ii. 31.

Counsel for the respondents were not called on.

At advising—

LORD JUSTICE-CLERK—Mr Low in his very clear speech has stated all that could be said on the appellant's behalf, but he has not succeeded in showing us that his case is well founded either in principle or authority. These articles, which are said to be the subjects of the hypothec, were not the property of the tenant, either for residential purposes or as part of his stock-in-trade. He hires premises for his business, acting as agent for different parties, and, among others, as agent for the pursuers. He was not a sale agent, but an agent to exhibit samples to induce customers to buy these articles from the manufacturers. He was a yachting agent, and as such he had samples of those machines as incident to yachting equipment, and he undertook to recommend them to persons wishing to fit out yachts. The general law of hypothec is, that property which is not the property of the tenant cannot be subject to the landlord's hypothec; and the question is, whether these engines, not being the tenant's property, come under any of the exceptions to the general law. Mr Low has not shown us that they do, and I think on principle that they do not. The exceptions to the general law depend upon the articles being subservient to the tenant's use, and all the cases turned on that. But here there is nothing of the kind. On the whole matter I think the judgment of the Sheriff-Substitute is right.

LORDS YOUNG, CRAIGHILL, and RUTHERFURD CLARK concurred.

The Court pronounced this interlocutor:—

"Find that the engines specified in the prayer of the petition belong to the petitioner, and are not subject to the hypothec of the landlord represented by the defender: Therefore dismiss the appeal and affirm the judgment of the Sheriff-Substitute appealed against: Of new grant interdict as craved.

Counsel for Pursuers (Respondents)—Jameson—Younger. Agents—J. & J. Ross, W.S.

Counsel for Defender (Appellant)—Low. Agents—Menzies, Coventry, & Black, W.S.

Friday, January 14.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

THE MAGISTRATES AND COUNCIL OF THE CITY OF GLASGOW *v.* HALL (COLLECTOR FOR CITY PARISH OF GLASGOW).

Valuation—Valuation Roll—Assessment for Poor-Rate—School-Rate—Subject not Yielding Profit—Poor-Law Amendment Act 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 37—*Valuation Act* 1854 (17 *and* 18 *Vict. c.* 91), *secs.* 6, 23, *and* 30.

The entry of the annual value of lands and heritages in the valuation roll is conclusive of the value for the year to which the roll applies, and the parochial board must, in assessing the lands and heritages for poor-rate, take such annual value, and allow therefrom the deductions mentioned in sec. 37 of the Poor Law Act 1845. It is irrelevant to allege that deduction of these items has already been made by the assessor in making up the roll.

In the amended valuation roll made up for the year ending Whitsunday 1885 the yearly rent or value of the lands and heritages belonging to the Glasgow Corporation Waterworks was fixed by the Assessor of Railways, Canals, &c., at £116,126.

In February 1885 intimation was made to the Corporation, as Waterworks Commissioners, by the Collector of Poor and School Rates for the City Parish that they were assessed for the year ending 14th May 1885, under the Poor Law Amendment Act 1845 (8 and 9 Vict. cap. 83), for the relief of the poor of that parish, and also under 35 and 36 Vict. cap. 62, for the Glasgow school rate, as owners and occupiers of lands and heritages within the parish of the annual value of £11,696, the poor and school rate upon which amounted to £807, 2s. 11d., being £563, 9s. 7d. of poor rate, and £243, 13s. 4d. of school rate.

Upon the receipt of this notice the Corporation objected, and represented to the collector that he had failed to make the deduction allowed by section 37 of the Poor Law Amendment Act of 1845, which provides—"That in estimating the annual value of lands and heritages 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 under deduction of the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same, provided always that no mine or quarry shall be assessed unless it has been worked during some part of the year preceding the day on which the assessment may be ordered to be levied."

The collector, on the grounds stated below, refused to make the deductions demanded, maintaining that every proper deduction had already been made.

The Corporation offered the collector the amount of the assessment less 20 per cent., a deduction which had been allowed in previous years as hereafter explained, which offer he re-

fused. He thereafter obtained a warrant from the Sheriff against the Corporation for recovery of £887, 17s. 2d., being the assessment, with the addition of £80, 14s. 3d. added for costs. This warrant was followed on 24th June 1885 by a poinding of certain property belonging to the Corporation as Commissioners.

On 20th October a note of suspension was presented by the Corporation, praying the Court to interdict the collector from enforcing the disputed assessment and the warrant to poind and the execution of poinding.

It appeared from the admissions of the parties that in prior years the practice had been, in working out the provisions of the section, to allow the complainers a deduction of 20 per cent. on the value.

The respondent (the collector) explained that in the year now in dispute he was carrying into effect the principle of valuation fixed by the Lord Ordinary on the Bills in an appeal decided by him on 30th September 1884; that the yearly value as originally fixed by the Assessor of Railways and Canals was £131,404, against which the Corporation had appealed, and this interlocutor had been pronounced by the Lord Ordinary on appeal—"Finds that in fixing the annual rent or value of the lands and heritages belonging to the appellants a deduction should be allowed from the gross revenue of all necessary outlays for management, maintenance, and repairs which are properly chargeable against revenue, and not merely a proportion of these charges; *quoad ultra* dismisses the same, and remits to the assessor to amend the valuation in accordance with this interlocutor" [see *ante*, vol. xxii. p. 10]; that the Assessor had proceeded to reduce his valuation in terms of the judgment of the Lord Ordinary by "allowing a deduction from the gross revenue of all necessary outlays for management, maintenance, and repairs which were properly chargeable against revenue;" that in doing so he allowed the items then claimed as deductions from the valuation roll by the complainers themselves, which items were the cost of repairs on the works and bridges, half wages of inspectors, clerks, artisans, half rates and taxes, half auditor's and assessor's fees, the law and parliamentary expenses, the cost of materials, horse's food, workmen's houses, and insurance. The result was that the amended valuation roll fixed the value at £116,126, as above stated.

The complainers replied that the deductions referred to by the respondent were made for the purpose of ascertaining the sum to be entered in the valuation roll as the value of their property, and were quite separate and distinct from those which they were entitled to under section 37 of the Poor Law Act, viz., "probable annual average cost of repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same." They maintained that the provisions of the Valuation of Lands Act, and particularly of section 30 thereof, were conclusive on the question of value, and that the respondent was therefore not entitled to inquire how the roll was made up and the value therein entered arrived at, or the purposes for which any deductions claimed under it had been allowed.

The Lord Ordinary appointed the complainers to lodge in process a note of the several heads under which they claimed deductions and the amount they claimed.

They lodged a minute claiming under (1) the head of *repairs*, the cost of repairing works and bridges, and also one-half the wages of workmen engaged thereat, and one-half the expense of the materials, in all £8299, 3s. 3d.; (2) under the head of insurance, a sum of £27, 1s. 9d. as insurance on buildings; (3) under the head of other expenses not included in these items, a sum of £572 for one-half horses' keep, one-half rent of workmen's houses, also the charges for law business, and Parliamentary charges, and a sum of compensation to certain owners of fishings; (4) one-half of rates and taxes, one-half of fee to public assessor for valuation roll, and stamps for mortgages, £5054, 15s. 11d.—or in all under the four heads, £13,953, 17s. 9d.; and further, they craved to be allowed certain sums for depreciation and deterioration of the subjects belonging to them. These items, therefore, as appeared from the minute, were, except the claim for depreciation, the items which had been, as the collector stated, allowed by the assessor in arriving at the valuation which he had entered on the roll.

On 20th May 1886 the Lord Ordinary (Lord M'Laren) pronounced this interlocutor—"Finds that the complainers are entitled to deduction of the estimated or probable annual average cost of the repairs, insurance, and other expenses which are necessary to maintain the water-works and others constituting their undertaking in their existing state, and all rates, taxes, and public charges payable in respect of the same: Finds that the complainers are liable to be assessed for the relief of the poor on the annual value of their undertakings as appearing on the valuation roll, *videlicet*, on the sum of £114,670" [*i.e.*, the £116,126 above stated, after taking off £1456 applicable to certain works known as the River Supply Works, about which there had been no appeal to the Lord Ordinary on the Bills] "under deduction as aforesaid: Finds the circumstances stated showing that the various elements of deduction here specified were to certain effects taken into account by the Court in fixing the annual value of the said undertaking do not constitute a relevant answer to this complaint, and appoints the case to be further heard on the question of the amount of the deduction being made in terms of the preceding findings, and of the Poor Law Amendment (Scotland) Act 1845.

"*Opinion.*—The complainers, the Magistrates of Glasgow, are proprietors of a public undertaking, being the Glasgow Water-Works, the annual value whereof, as stated in the valuation roll for the current year, is £114,670.

"They have been assessed for the relief of the poor in the City Parish of Glasgow, and for school rate, on the full annual value of their undertaking, and they have presented this note of suspension for the purpose of establishing their claim to the deductions specified in the 37th section of the Poor Law Amendment (Scotland) Act for repairs, public burdens, and others.

"The defence, shortly stated, is, that under an appeal to the Lord Ordinary on the Bills against the assessor's valuation, Lord Kinnear, the Lord Ordinary officiating in the Bill Chamber, after

hearing counsel, reduced the assessable value by taking off a sum which his Lordship held to be the equivalent of the cost of maintenance, repairs, public burdens, and other outgoings. Thus, it is said for the defender, the complainers have already received the benefit intended by the statute in another form, and are not entitled to a second deduction in respect of the same outgoings.

"The apparent reasonableness of this contention appeared to me to recommend it to favourable consideration, but while willing if possible to give effect to it, I have not been able to remove the impression I originally formed of its essential unsoundness.

"I cannot adopt the suggestion that the Lord Ordinary on the Bills, in reducing the assessor's valuation to a lesser figure, was making the deduction contemplated by the Poor Law Amendment Act.

"It is settled by decisions of this Court, and is matter of, familiar and unvarying practice, that the deductions authorised by the Poor Law Act of 1845 are deductions to be made in diminution of the sum in the valuation roll. This was of course known to the counsel who argued the case, and to the Lord Ordinary, and in the report of the case which has been furnished to me there is nothing which suggests in the faintest degree that the Lord Ordinary was asked to anticipate, or meant to anticipate, the Poor Law deductions from rental.

"The fixing of the annual value is very much a discretionary proceeding. The Judge is not bound by any fixed rules, and his decisions have not been considered always to have the same finality as regards future valuations which we are accustomed to attribute to the decisions of a Judge on strictly legal questions. It is therefore for consideration whether in this question I ought to look to the grounds of the Lord Ordinary's decision at all, or to look at anything except the sum in the valuation roll, taking that sum at a gross valuation from which certain statutory deductions are to be made.

"I may say, however, that I have carefully considered the note of Lord Kinnear's opinion, and that in my apprehension it does not support the respondent's contention.

"I understand that his Lordship expressed the difficulty which has been felt in similar cases of realising the case of a hypothetical tenant who would take over such an undertaking as the Glasgow Water-Works at a yearly rent, especially in view of the statutory provision to the effect that the proprietors of the undertaking are not to make a profit by the sale of the water beyond the surplus which they are authorised to set aside as a sinking fund,

"It is plain enough, and it is known to the profession, that the application of the Valuation Act to public undertakings is difficult, and that the value of such concerns is arrived at by a highly artificial system of rules, which, as I have said, are not strictly obligatory, but are used as guides to the ascertainment of a reasonable value. In ascertaining the rent to be given by the hypothetical tenant every element is taken into account which a tenant would consider preparatory to making his offer. Amongst these, repairs, insurance, maintenance, rates, and taxes are of course considered, because no tenant in considering what rent he could afford to give would omit to take account of such outgoings. The larger the outgoings the less rent would the tenant be able to give, other circumstances being supposed equal, and therefore outgoings are rightly and necessarily allowed for in making the valuation as deductions from the gross income of the hypothetical tenant. But a deduction from gross income and a deduction from assessable value are very different things, and the Lord Ordinary in making the first of these deductions left the second entirely unaffected.

"The same distinction might indeed be taken respecting private property. I can imagine a tenant anxious to remain in his house, warehouse, or farm, making a calculation to find what was the highest rent he could afford to offer on the footing that he was to undertake repairs, taxes, insurance, and charges. He would certainly consider such repairs, taxes, &c., as elements of deduction from gross profits before he could arrive at the sum available for rent. But none the less would he be entitled when he came to settle with the inspector of poor to claim that these very elements should be deducted from the actual rent stated in the valuation roll, and to pay poor-rate only on the difference.

"It appears to me, indeed, that there is no real inconsistency between the judgment I propose and that which was given in the valuation roll appeal case, nor is there in reality a case of double deduction. The same elements undoubtedly enter into the two computations, but they enter these in different ways and for different purposes. Nothing is more common in the more complicated arithmetical operations than that the same factor should appear more than once in different stages of the computation without any doubt being thereby suggested as to the validity of the formulæ or the correctness of the arithmetical processes by which the desired result is attained."

Thereafter his Lordship pronounced this further interlocutor—"Finds that the complainers are entitled to deduction of the whole of the sums claimed in their minute under the head of repairs, insurance, rates, taxes, and public charges: Finds that they are not entitled to deduction of the third, fourth, and fifth items of miscellaneous expenses, being compensation to owners of fishings and charges for law and Parliamentary expenses: Finds that the deductions herein allowed amount to £13,648, 15s. 11d.: Finds that the complainers are not entitled to the additional deductions claimed in respect of depreciation or deterioration of the subjects belonging to them, and lastly, that the value on which the complainers ought to be assessed is £102,478, being the value stated in the valuation roll, £116,126 under deduction of the foresaid sum of £13,648: Therefore suspends the notice of assessment, warrant, and execution of poinding in so far as the same are in excess of assessment applicable to the said sum of £102,478: *Quoad ultra* dismisses the note of suspension, and decerns: Finds the complainers entitled to expenses," &c.

The collector reclaimed, and argued—The result of the Lord Ordinary's judgment was to give a deduction again which the assessor had already made in making up the roll. The Court, though not itself a Valuation Court, could inquire into the manner in which the roll had been made, and, so doing, could give effect to the circumstance

that a double deduction was the true nature of the claim made by the complainers. There were no tenant's profits in the present case, as the subject did not admit of them; instead thereof the Lord Ordinary proposed to allow as deductions landlord's taxes because of the peculiarity of the subject. What was let in the present case was the rates and the right to collect them, and the assessable amount should be the annual returns less working expenses

Authorities—*North British Railway Company* v. *Assessor for Leith*, February 9, 1854, 11 R. 558; *Caledonian Canal Commissioners* v. *Assessor of Railways and Canals*, September 29, 1886, 24 S.L.R. p. 80; *Mersey Dock Commissioners*, L.R., 9 Q.B. 92; *Edinburgh and Glasgow Railway Company* v. *Adamson*, June 28, 1855, 17 D. 1007; *Dundee Gas Commissioners*, January 12, 1881, 9 R. 1240; *Sharp* v. *Latheron Parochial Board*, July 12, 1883, 10 R. 1163.

Replied for complainers—The amount stated in the valuation roll, which was the basis for assessment, was gross rental. It was impossible to get behind the valuation roll, and from the sum there set down the respondents were entitled to certain deductions under sec. 37. This was not a case of double deduction at all, as all that the assessor had to do was to find gross rental, and, having it, to allow certain deductions therefrom. What the valuation roll showed was gross rental, as clearly appeared from the terms of section 6.

Authorities—*Edinburgh and Glasgow Railway Company* v. *Meek*, December 10, 1864, 3 Macph. 229; *City of Worcester Droitwich Assessor*, L.R., 2 Ex. Div. 49; *Mersey Docks* v. *Liverpool*, L.R., 9 Q.B. 92; Poor Law Act (England), 6 and 7 Will. IV. c. 96, sec. 1; Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. c 91), secs. 6, 30, 35.

At advising—

Lord President—This is a suspension by the Magistrates and Council of Glasgow, as Commissioners under the Glasgow Corporation Waterworks Act of 1855, against the collector of poor-rates of the City Parish, and the ground of complaint is, that in charging the lands and heritages belonging to these commissioners for poor-rates, the collector has not deducted the average cost of repairs, insurance, and other expenses necessary to maintain the lands and heritages in their actual state, and the rates, taxes, and public charges payable in respect of the same, under the provisions of the 37th section of the Poor Law Amendment Act 1845. The answer which the collector makes to this complaint is that these deductions have already been made to a greater or less extent in making up the valuation roll and ascertaining the annual value of lands and heritages in terms of the Valuation Act 1854.

I am of opinion with the Lord Ordinary that that answer is not a relevant answer to the complaint. But as I do not arrive at that conclusion on the same grounds as the Lord Ordinary, I think it necessary to explain precisely the view I take of these statutes—I mean the Poor Law Act 1845 and the Valuation Act 1854.

The 37th section of the Poor Law Act 1845 imposed two duties on the collector of poor-rates or on the parochial board. It provided that "in estimating the annual value of lands and heritages, 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." That rent having been ascertained, the board was then directed further to make the deduction which I have already mentioned.

The effect of the Valuation Act (17 and 18 Vict. c. 91) was to transfer the first of these duties from the assessing board to the assessor created by the latter statute. The parochial board and its officers have no longer anything to do with estimating the annual value of lands and heritages. They have only to take the estimate of the value of these lands and heritages as it appears in the valuation roll of the year, and then to make the deductions specified in the 37th section. The Valuation Act proceeds upon this consideration, that "it is expedient that one uniform valuation be established of lands and heritages in Scotland, according to which all public assessments leviable, or that may be levied, according to the real rent of such lands and heritages, may be assessed and collected, and that provision be made for such valuation being annually revised." The term "real rent" there is used as in contrast with the old valued rent. The valuation is made under the statute for the purpose of fixing the value with reference to all assessments that are levied on what may be called actual value, or the real rent of the lands, as opposed to any artificial or ancient kind of valued rent. The first important section in the statute for the present purpose is the 6th, which really repeats the words in the 37th section of the Poor Law Act so far as regards the estimate of the annual value. It says—"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." That I take to mean the gross rent of lands—the amount of the actual rent paid, if there be any, or the equivalent of that by calculation or estimate if there be not. And while these words themselves are quite sufficient to show that the entry in the valuation roll is to be an entry of gross rent, that is made still more clear by a subsequent part of the section, which provides that "where such lands and heritages are *bona fide* let for a yearly rent conditioned as the fair annual value thereof, without grassum or consideration other than the rent, such rent shall be deemed and taken to be the yearly rent or value of such lands and heritages in terms of this Act." It is quite plain therefore that the intention of the statute is that where lands are let on lease, and the rent stipulated in the lease is the full payment made for the possession of the lands, that is to be taken as the "yearly value in terms of this Act," and that of course must be gross rent. Then, this matter of ascertaining the value is carried through by the machinery which is provided in the Act, which lays the estimating of the value on the assessor, the estimate of the assessor being subject to review by the commissioners of supply of every county and the magistrates of every burgh, with appeal to the Lord Ordinary on the Bills or to two Judges, under the 8th section of the statute, whose determination upon an appeal

shall be final and conclusive and not subject to review. It may be as well to mention in passing that by a subsequent statute (30 and 31 Vict. c. 80, and 42 and 43 Vict. c. 42), the commissioners may be asked to state a Case for the opinion of two Judges of the Court of Session, and the determination of the two Judges is declared by the latter statute to be as the judgment of the commissioners was, final and conclusive, and not subject to appeal. So that wherever the value of lands and heritages has been ascertained under these Acts, it is final and not subject to appeal, and the entry in the valuation roll necessarily remains for a year and is the ruling estimate for that period. The matter cannot be carried any further.

The clauses to which I have hitherto been referring are applicable to what may be called ordinary lands and heritages. But there are certain kinds of lands and heritages which, being of a very peculiar description, especially as regards annual value, require a different arrangement, and accordingly in the case of railways and canals there is a special provision in the 21st section. It is very difficult to estimate railways and canals according to the rule prescribed in the 6th section, because the subjects are not generally let, or very capable of being let, and accordingly to ascertain their annual value by reference to the yearly rent at which they may be expected to let is not a very good criterion. Accordingly a special provision is made by the 21st section for the case of railways and canals—the leading object of that section being, however, to enable the assessor to divide the *cumulo* value of the whole subject between the different parishes through which the railways and canals pass. But for this purpose there is a rule provided—a purely artificial rule—requiring that there shall first of all be an ascertainment of *cumulo* rent or value, and a certain deduction made in respect of the stations, wharves, docks, and such like things which form part of the composite subject, and it is needless to pursue that further. It is enough to say that the rule there established, although it is not perhaps the best that could be devised, has been acted on for a long time and seems to work well enough.

But the subject we are dealing with here is not a railway or a canal, although it is a subject of a kind in some degree resembling a railway or a canal, because it is situated in a variety of parishes. Accordingly, section 23 provides for the case of such works,—"Where any water company or gas company, or other company, having any continuous lands and heritages liable to be assessed in more than one parish, county, or burgh, shall desire to have such lands and heritages assessed by the assessor of railways and canals under this Act, it shall be competent to such water or gas or other company to make intimation in writing of such desire, . . . and thereupon such assessor of railways and canals shall be exclusively charged, subject to appeal as herein provided, with the valuation of the lands and heritages in Scotland of such water or gas or other company in terms of this Act." And the assessor is to inquire into and fix *in cumulo* the yearly rent and value "in terms of this Act." Now, that certainly can mean nothing else than to inquire into and fix the gross rent or value, because in the leading section—section 6—that is the thing to be ascertained and entered upon the valuation roll; and the object of this section is to ascertain the same thing in regard to those special kinds of lands and heritages, which are not very easily brought within the rule of the 6th section. Accordingly, the words "in terms of this Act" must be held to refer back to that 6th section. Then the section goes on further to provide, that having ascertained the *cumulo* rent or value, the assessor is "to set forth in such valuation roll, in columns, the yearly rent or value, in terms of this Act, *in cumulo*, of the whole lands and heritages in Scotland belonging to or leased by each such water, gas, and other company respectively, and forming part of its undertaking, the names of the several parishes, counties, and burghs in which its said lands and heritages, or any part thereof, are situated, and also the yearly rent or value, in terms of this Act, of the portion in each such parish, county, and burgh, separately and respectively, of the lands and heritages belonging to or leased by each such water, gas, and other company respectively, and forming part of its undertaking." Then, in case the company who is applying under the 23d section to have the lands valued should be dissatisfied with the determination of the assessor of railways and canals, there is a provision for an appeal to the Lord Ordinary on the Bills, and in this appeal the Lord Ordinary on the Bills is made final, just as in the ordinary case the two valuation Judges are.

Before observing further upon the effect of these clauses, it is necessary to take into account section 33, which provides, "Where in any county, burgh, or town, any county, municipal, parochial, or other public assessment, or any assessment, rate, or tax under any Act of Parliament is authorised to be imposed or made upon or according to the real rent of lands and heritages, the yearly rent or value of such lands and heritages as appearing from the valuation roll, in force for the time under this Act, in such county, burgh, or town, shall, from and after the establishment of such valuation therein, be always deemed and taken to be the just amount of real rent for the purposes of such county, municipal, parochial or other assessment, rate, or tax, and the same shall be assessed and levied according to such yearly rent or value accordingly, any law or usage to the contrary notwithstanding." Now, taking these two sections together, it appears to me that when the valuation has been made, either under the 6th, or the 22d, or the 23d section of the statute, by the assessor of railways and canals, and where that has been acquiesced in, or taken to appeal, and finally determined, in the one case by the valuation Judges and in the other case by the Lord Ordinary on the Bills, it is impossible to go back in any way on what has been done. The assessment, if acquiesced in, of course puts an end to every such inquiry, and if there is an appeal, in the one case or in the other, the judgment of the Court of appeal is final, and cannot be reviewed by any Court.

The natural conclusion to be drawn from these clauses appears to me to be, that when there is presented to us an entry in the valuation roll, according to which the assessment has been laid on, either with or without deduction, as may be the case with the particular assessment in question, we are bound to take the entry in the valua-

tion roll as conclusive evidence of what is the gross rent or annual value of the lands and heritages in question. We have no jurisdiction to inquire whether the valuation Judges, in the one case, or the Lord Ordinary in the other, have been right or wrong in affirming or altering the determination of the assessor. It would be to review their judgment if we were to consider how they arrived at the result, or whether they arrived at it rightly; and that is specially excluded by the provisions of this Act of Parliament which declare their determinations to be final. Therefore the simple ground on which I reach the conclusion that the answer made to the complainers is irrelevant is this, that it is impossible for anyone here in this process to impugn the entry in the valuation roll for the year in question. It is conclusive, and it does not matter whether it was rightly arrived at or not, because the statute says it shall be held to be right—there shall be no review of it—it is final and conclusive.

Therefore I think we should be overstepping our jurisdiction altogether if we inquired in what manner this entry in the valuation roll was arrived at. It stands as for the year—the ascertained gross yearly rent or value of the subject; and according to the 37th section of the Poor Law Act, the person assessed is entitled to have certain deductions made from that gross rent or value. This is sufficiently apparent upon the face of the statute, as I have read it, but to remove all doubt upon the subject there is section 41, which provides that nothing in the Valuation Act shall alter or affect any classification, or any deduction or allowances, or power of making deductions or allowances from gross rental, made or possessed by anyone entitled to impose or levy assessments, but the same shall not affect the value to be inserted in the valuation roll in terms of this Act. Therefore I am clearly of opinion that we cannot touch the entry in the valuation roll, or inquire in any way in what manner it was ascertained or reached. Upon these grounds I am for substantially adhering to the judgment of the Lord Ordinary.

Lord Mure—I am also for adhering to the judgment of the Lord Ordinary, and I have no difficulty in concurring with what your Lordship has said on the clauses of the two statutes—that is, of the Poor Law Act and the Valuation Act. I have no doubt as to the finality of the decision of the Lord Ordinary on the Bills when acting as an Appeal Judge under the Valuation Act in cases which come before him—on appeal from decisions of the railway assessor, which is the only kind of case that comes before him on appeal. We cannot get behind the valuation fixed by the assessor, and that fixed by the Lord Ordinary. That is the valuation which regulates the imposition of assessments, as provided in the Valuation Act. I think this Court has no jurisdiction to interfere, or to inquire into the way in which the Lord Ordinary on the Bills proceeded, or as to what he actually did. The amount so fixed by him is, under the provisions of the 41st section of the Valuation Act, subject to the deductions which may have been provided by any other Act of Parliament, in the shape of deductions from the gross rent of the property to be assessed.

In illustration of that view, it appears to me that when we look at the 6th section of the Valuation Act, it contains precisely the same provisions up to a certain point as the provisions of the 37th section of the Poor Law Act. That is to say, it contains the provisions of section 37 up to that part of section 37 where the deductions to be made are specified. In the 6th section of the Valuation Act, there is no provision about making the deductions at all. Therefore when the assessor under the Valuation Act makes up his roll in terms of the 6th section, it is a roll for gross rent; and from that roll so made up the deductions specified in the 37th section of the Poor Law Act may still be made in laying on the assessment. Indeed the board are bound to make them. That, I think, is the fair reading of the 6th section of the Valuation Act as compared with the 37th section of the Poor Law Act. I think, moreover, that that point is authoritatively decided in the case of *The Edinburgh and Glasgow Railway Company* v. *Meek*, 3 Macph. 229. If, therefore, a proposal had been made to get behind the valuation made up by the assessor, it is quite clear to me we could not do that; there is no jurisdiction to do it, for the assessor's valuation is final.

In the same way, in the case of railways and canals, if an appeal is made to the Lord Ordinary on the Bills, his decision is final. At first I must say I had some difficulty in this case on the point whether the assessment made up under the provisions of the 21st, 22d, and 23d sections of the Act relative to railways and canals is laid upon gross rental. Do those provisions provide for the making up a roll which is to determine gross rental in the sense of the statute? By the 41st section of the statute it is only the gross rental that is to be made the subject of deductions. That is the expression in the 41st section, and my difficulty was this, what is fixed as gross rental under the 6th section is made by section 22 subject to deductions. The 20th section provides for the appointment of an assessor. Of section 22 the heading is this:—"Mode in which the yearly rent or value of railways and canals is to be ascertained;" and it defines the mode of ascertaining the yearly value of railways and canals. The provisions are:—"The yearly rent or value, in terms of this Act, of the lands and heritages in any parish, county, or burgh belonging to or leased by any railway or canal company, and forming part of the undertaking of such company, shall be ascertained as follows"—not in terms of the 6th section, but "as follows;" and then, "there shall be deducted in the first place, from the *cumulo* yearly rent or value of the whole lands and heritages in Scotland as aforesaid of each such railway or canal company," and so on. Now, that directs the deductions to be made from the *cumulo* value of the lands. The difficulty I had was whether a roll made up beginning with a deduction of 3 per cent. can be said to be a valuation roll setting forth the gross rental under the 41st section, the deduction having been appointed to be made under section 22 on the *cumulo* rental. What was brought out as the value of railways and canals is not gross rental (as in section 41), but a reduced rental, as provided in the 22d section. I thought that a point of considerable nicety. But I have come to be of opinion that it is practically settled by the same decision in *Meek's* case to which I have already referred. There the Court unanimously held that

a deduction was to be made in the case of a railway company. That railway company was assessed by the Assessor of Railways, and those provisions to which I have referred were necessarily before the Court. I hold the decision to be applicable here, and it settles the point that from the valuation made up by the Assessor of Railways and Canals the same deductions have to be made as those that fall to be made by the assessor who acts under the 6th section.

I have therefore no difficulty in affirming the decision of the Lord Ordinary, and think his interlocutor should be affirmed.

Lord Shand—I am of the same opinion. I think the judgment of the Lord Ordinary ought to be affirmed.

It really seems to me to be absolutely plain, as the result of section 33 of the Valuation Act, that the gross rent which is brought out by the Assessor of Railways and Canals, or by the commissioners in the ordinary case who deal with such valuations, is to be taken as conclusive for the purpose of any parochial assessment. The clause expressly provides that the amount of rent so fixed shall be deemed and taken to be the just amount of real rent for the purpose of such parochial assessment. That being so, we have thereby provided the first thing required by those who are imposing an assessment under the Poor Law Act. We have the rent thereby fixed; and all that those who are imposing that assessment have to do thereafter is to proceed to make the deductions which the Poor Law Act in itself authorises. I agree with your Lordship in thinking that we must take what we find in the valuation roll as conclusive, and that we have no authority to inquire into the particular mode in which that figure was reached, or to consider what deductions the assessor or the Lord Ordinary dealing with the matter had in view. Upon that ground I agree with your Lordships in thinking that the judgment should be affirmed.

I am, however, bound to say further that the counsel for the reclaimers have entirely failed to satisfy me that the view taken by Lord Kinnear is unsound in fixing the figure he did. They have not satisfied me that he has made in any true sense the same deductions which it was said are now asked for a second time. Certainly his Lordship in reaching the sum which he thought right, and fixing the valuation, did not profess to make deductions. His Lordship, on the contrary, was seeking to reach a rent, and not, having reached a rent, to make deductions from it. The mode in which he thought he could proceed in fixing that was to look at the income and to make certain deductions from income or revenue as the means of reaching what he was to regard as the gross rent to be entered in the valuation roll. A deduction for any such purpose is, in my opinion, not a deduction from rent in the sense contended for here; and therefore if it were competent for us to go into that question at all I should agree with the Lord Ordinary.

I shall only say this further: A desire was expressed on the part of the reclaimer that there should be an expression of opinion as to the judgment of Lord Kinnear and those of the other Judges who have dealt with this matter of valuation in the Bill Chamber. Even if it were competent for us to give such an expression of opinion, I should be very slow to do so, for this amongst other reasons, that the question that has been discussed before the Court was not whether the valuation roll originally made up and settled by Lord Kinnear was a right valuation. The argument was directed to another purpose, and any incidental argument in reference to the judgment of Lord Kinnear in the Valuation Court would not be exhaustive on a question of this kind.

But I am clear that as the statute makes the Lord Ordinary sitting in review of the Assessor of Railways and Canals final in the matter of valuation, he must be the Judge of that matter, and this Court has no power to deal with it, and I think it would be improper that we should express any opinion upon it. If the parties should be advised that considerations have not been hitherto laid before the Lord Ordinary who deals with these valuations, which might affect his judgment, the proper course to pursue is to bring that under the attention of the Judge by an appeal when the proper time comes. The parties must judge for themselves whether there are other new circumstances or new arguments which have not hitherto been presented which might lead to a refusal to give deductions which have hitherto been allowed. With those matters we cannot deal, and I do not think the desire which the reclaimers expressed to have an opinion on that subject can be gratified in this case.

Lord Adam—The yearly rent or value of the subjects in this case was ascertained by the Assessor of Railways and Canals under the 23d section of the Lands Valuation (Scotland) Act. In my opinion the rent or valuation was ascertained by the assessor as the yearly rent or value which, under section 33 of the Act, must be taken as the rental for assessment in all cases where the assessment is upon real property. Therefore it is beyond all question that the yearly rent or value, as specified in the 33d section, is gross rent; and if that is so, it seems to me necessarily to follow that the Waterworks Commissioners are entitled to the deductions specified in the 37th section of the Poor Law Act. Upon these grounds I have no hesitation in coming with your Lordship to the conclusion that the interlocutor must be upheld. The case is quite clear.

As to whether the Lord Ordinary is right in the matter of making the deductions in questions, I have not the slightest idea. The matter is so entirely artificial, and it is so impossible to suppose a hypothetical tenant who would pay rent, that I have not an idea whether the deductions are properly made or not. I am glad to say it is out of my province to deal with this matter, because the Lord Ordinary is final.

I am therefore of opinion the Lord Ordinary's interlocutor should be adhered to.

The Court adhered.

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