

ment proceeds are unsound. The sewer was constructed primarily for the benefit of householders in Dundee and in order to enable the Town Council to discharge a statutory duty towards them. Any additional comfort which visitors to Dundee enjoy through the streets being properly drained is too remote a benefit, and is not in any way different from the advantage of having a street well lighted or well watered from a town supply. But the benefits of water and gas are intended for and are enjoyed mainly by the inhabitants of the burgh or district for which the public works that supply them have been undertaken. The same is true of a sewerage system. It may well be that when the sewers are constructed entirely beneath the streets or property of a burgh they should not enter the valuation roll as a separate subject of assessment, for in reality the additional value which the houses derive from being properly drained is reflected in the rents which can be obtained for them. But the county authorities in this case derive no benefit from the existence of the sewer in their area. It does not serve any houses within it from which they are under a statutory obligation to remove the sewage, and there is no reason why a valuable heritable subject belonging to the Town Council of Dundee, and of which they have the beneficial occupation for behoof of rate-payers in their own area, should not be assessed so far as constructed within the county.

The appellants also objected to the valuation which has been put upon the sewer. The assessor has fixed this valuation by taking 5 per cent. on the ascertained cost of the sewer and adding thereto the sum of £50 which is payable for wayleave. It was pointed out by the appellants that the rate of interest which they have paid on money borrowed to construct the sewer averages 3½ per cent., and that the rate of 5 per cent. would be more than the annual payment required to pay this interest and sinking fund charges. At first sight the rate of interest seems high, but we have no materials before us that would justify a reduction of the assessor's valuation. The expense of maintenance and the renewal of the sewer when it becomes worn out obviously fall to be provided for by the owners. The hypothetical rent that they would pay if the sewer had been constructed at their request by the county authorities might therefore well amount to the 5 per cent. of the cost on which the assessor has based his calculation. At all events, in the absence of all information and evidence on the subject, we cannot affirm that the valuation is excessive, and I am accordingly of opinion that the determination of the Valuation Committee is right.

LORD JOHNSTON—I concur in the result to which your Lordships have come. There is a valuable occupation, and it must therefore be valued. The *West Kent* case, 1911 A.C. 171, is an important decision and diffi-

cult to reconcile with the *Lambeth* case, 1897 A.C. 625. But I prefer not to rest upon the English case upon rating, but rather upon our own authority of the *Inveresk Paper Company*, 1907 S.C. 747, and upon the grounds of judgment adopted by your Lordships in the *Glasgow Parks* case just decided.

LORD CULLEN—I concur.

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

Counsel for the Appellants—Clyde, K.C.—Macmillan. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Assessor—C. Murray, K.C.—Hon. W. Watson. Agents—J. & J. Galletly, S.S.C.

Saturday, February 3.

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

EDINBURGH PARISH COUNCIL v.  
LEITH MAGISTRATES.

*Valuation Cases—Public Park—Land Leased under Statutory Powers for Use as Public Golf Course—Land Yielding no Profit.*

Held that lands leased by the magistrates of a burgh in exercise of their statutory powers, for the use of the public as a park and golf course, in respect of which the charges made did not meet the expenses of upkeep, should be entered in the valuation roll at their fair annual value and not at a nominal figure.

At a Court of the Burgh Valuation Committee held at Edinburgh on 25th September 1911 the Parish Council of Edinburgh complained of the following entry in the valuation roll for the year ending Whitsunday 1912:—

Description.	Situation.	Proprietor.	Tenant.	Occupier.	Yearly Rent or Value.
Ground	Craigen-tinny	Provost, Magistrates, & Councilors of the Burgh of Leith, as Local Authority under the Public Parks (Scotland) Act 1878	The Public	Same	£1

They proposed that the following entry should be substituted therefor:—

Description.	Situation.	Proprietor.	Tenant.	Occupier.	Yearly Rent or Value.
Golf Course and Pavilion	Craigen-tinny	Provost, Magistrates, & Councilors of the Burgh of Leith, per John Russell, Town Hall, Leith, Chamberlain	..	Proprietors	£600

The Committee dismissed the complaint, and sustained the entry made by the assessor in the roll.

The complainers took a Case.

The following facts were stated in the Case to have been proved, or within the knowledge of the Committee—"1. The subjects in question, consisting of an area of ground extending to 42.62 acres or thereby, part of the estate of Craigentenny, are known as the burgh of Leith Public Park and Golf Course, and lie within the boundaries of the city of Edinburgh. The subjects are leased by the Provost, Magistrates, and Councillors of the burgh of Leith as after mentioned for the purpose of a public park and golf course, in terms of the Public Parks (Scotland) Act 1878, and the Leith Burgh Order Confirmation Act 1904.

"4. By minute of lease, dated 25th February and 5th March 1907, Sydney Richardson Christie-Miller, for himself and as commissioner for the other proprietors of the estate of Craigentenny, let the subjects in question to the respondents, as the Local Authority for the said burgh, under the Public Parks (Scotland) Act 1878, for a period of forty years from the term of Whitsunday 1907, subject to a break in favour of the respondents at the term of Whitsunday 1927. The rent payable by the respondents under the lease is as follows—(1) For the two years from Whitsunday 1907 to Whitsunday 1909 the sum of £350 per annum; (2) for the eighteen years from Whitsunday 1909 to Whitsunday 1927 the sum of £532, 15s.; and (3) for the twenty years from Whitsunday 1927 to Whitsunday 1947 the sum of £639, 6s. per annum.

"5. The said lease contains the following provisions—(1) That the ground is let to the respondents for the purposes of a public park and golf course in terms of the Public Parks (Scotland) Act 1878, and the Leith Burgh Order Confirmation Act 1904, and any Act or Acts amending the same, and shall not be used by the respondents for any other purpose; (2) that within three years from Whitsunday 1907 the respondents shall form on the ground a proper golf course, of not less than nine holes, with appropriate putting greens, teeing grounds, and bunkers, and maintain the same during the currency of the lease; (3) that the respondents shall not allow any public meeting or entertainment to be held, or any games other than golf to be played, on the ground, or permit the ground to be used for any purpose which may prove a nuisance, but they shall be entitled to appropriate to games other than golf a specified part of the ground not exceeding two acres in extent; (4) that no buildings shall be erected on the ground other than a golf-house, shelter, tool-house, and such other buildings as may be required in connection with the use of the ground as a public park and golf course; (5) that the respondents shall, subject to the approval of the lessors, make bye-laws and regulations for the proper use of the ground, and duly enforce the same, which bye-laws shall, *inter alia*, provide that golf balls played into adjoining ground are to be held as lost, and shall prohibit players

from searching for the same and from climbing over the fences and walls; (6) that the respondents shall, within six months of the term of Whitsunday 1907, enclose the ground (so far as not done at the commencement of the lease) with an unclimbable iron fence, and maintain the boundary walls and fences during the currency of the lease; and (7) that no person other than the lessees' own proper officers shall remain on the ground between one hour after sunset and one hour before sunrise, except such persons as may be required in connection with the grazing of the subjects let.

"6. The subjects in question are now open to and frequented by the public as a public park and recreation ground. The respondents have formed on the said subjects a golf course, and allow the public to use the same, subject to rules made by the respondents in terms of said lease. No charges are made to the public for admission to the said subjects, but persons are charged sums at the rates specified for the right to play the game of golf on the subjects. The expenditure incurred in connection with the subjects has in each year since 1907 much exceeded the total revenue obtained from the subjects.

"7. In the valuation roll for the year to Whitsunday 1908 the assessor entered the respondents as proprietors and occupiers of the subjects in question, and fixed the yearly rent or value at the sum of £350, being the amount of the rent then payable under the said lease. In the valuation roll for the following year the said subjects were entered as of the yearly rent or value of £415, in view of the respondents having formed a golf course and made certain erections on the said subjects. In respect that the rent was increased in terms of the lease for the year to Whitsunday 1910, and also in respect of further tenants' improvements, the yearly rent or value entered in the valuation roll for that year was increased to £600. No appeal was taken against any of the entries above specified. In making up the valuation roll for the year to Whitsunday 1911 the assessor entered the proprietors of the estate of Craigentenny as the proprietors of the said subjects, the respondents as the tenants, and the public as the occupiers. In the roll for that year the yearly rent or value was reduced to the amount of actual rent payable under the said lease, viz.—£532, 15s. Against this entry the proprietors of Craigentenny and the respondents appealed to the Burgh Valuation Committee, craving that the respondents should be entered as proprietors of the said subjects. The respondents further craved that the public should be entered as the tenants and occupiers of the said subjects, and that the same should be entered at a nominal rent of £1. The committee sustained these appeals, and the assessor did not take the matter further. In making up his valuation roll for the year to Whitsunday 1912 the assessor, following the decision of the committee in 1910, repeated the entry as fixed by them.

"9. The complainers led evidence—(1) Of the rent paid under the lease for the current year, and also to the effect that the true yearly rent or value of the said subjects was £600; this amount was arrived at by adding to the rent presently payable under the said lease a sum in respect of the improvement constituted by the respondents having enclosed the ground in the manner specified in the said lease, formed a golf course, and made certain erections on the subjects: And (2) Of examples of subjects both in Edinburgh and the county of Midlothian leased by the Corporation for the purposes of public parks, golf course, &c., entered in the valuation roll at the actual rents paid, which were not nominal."

The Valuation Committee in dismissing the complaint were of opinion—"1. That the said lease of the subjects being for a period exceeding twenty-one years, the respondents, the Provost, Magistrates, and Councillors of the burgh of Leith, fell to be deemed and taken to be the owners of the subjects, and to be entered in the valuation roll as such. 2. That the subjects being appropriated to the use of the public for the purposes of exercise and recreation, the public were correctly entered in the roll as the tenants and occupiers thereof. 3. That since 1907 the expenses of maintenance have in each year exceeded the revenue obtained from the subjects. 4. That the said lease being for a period exceeding twenty-one years, the committee were not bound by the rent stipulated for in the lease. 5. That the subjects being appropriated as aforesaid fall to be valued on that footing, and subject to the restrictions and conditions affecting the same; and that on this basis a nominal sum represented the maximum rent at which the subjects could be let in their present condition."

The complainers contended that, on the question of valuation, the case of the *Parish Council of Edinburgh, &c. v. The Assessor for Edinburgh, &c.*, 1910 S.C. 823, 47 S.L.R. 414, was not applicable to the present case; that 'the public' should be deleted from the entry in the roll, and the respondents entered as the occupiers of the subjects in question; that in regard to the yearly rent or value of the said subjects, the same should be arrived at by taking the rent payable under the lease and adding thereto the same sum which the assessor did in fixing his valuation of the subjects for the year 1909-10 in respect of tenants' improvements; and in any event, that the subjects in their actual state were of the yearly rent or value of at least £600.

The respondents maintained that as the subjects were held on lease for more than twenty-one years they were to be deemed to be the owners thereof in terms of section 6 of the Lands Valuation Act 1854, and as the subjects were appropriated to the use of the public for the purposes of exercise and recreation, the respondents were correctly entered in the valuation roll as owners, and the public as the tenants and occupiers of the same, and

that in regard to the yearly rent or value of the subjects they fell to be valued on the footing that they were so appropriated, and subject to the restrictions affecting the same; that on this basis, and keeping in view that the cost of maintaining the subjects for the use of the public was in excess of the revenue which could be obtained therefrom, the nominal sum of £1 represented the maximum rent at which the subjects could be let in their present condition.

In argument the following additional authorities were referred to by counsel for the respondents—*Glasgow and Govan Parish Councils v. Glasgow Assessor*, 1911 S.C. 988, 48 S.L.R. 677; *Lambeth Overseers v. London County Council*, [1897] A.C. 625; *Blyth Hall Trustees v. Fifeshire Assessor*, February 24, 1883, 10 R. 659, 20 S.L.R. 433; *Carnegie Dunfermline Trustees v. Dunfermline Assessor*, 1909 S.C. 678, 46 S.L.R. 451.

At advising—

LORD JOHNSTON—In 1907 the Magistrates of Leith obtained a lease from the estate of Craigentenny of forty-two acres of land, outside the boundary of their burgh and in the parish of Edinburgh, for the space of forty years at a gradually increasing rent. That rent for the year in question is £532, 15s., and as a condition of the lease the magistrates have had to expend considerable sums, which have materially increased the value of the occupation. The purpose of the lease was to form a golf course for the public of Leith in substitution for Leith Links, which under the Leith Provisional Order 1904 are now closed to such games.

As the lease is for forty years the magistrates are properly entered as proprietors in terms of the Valuation Act 1854. Their powers to acquire the ground are derived from the General Public Parks Act 1878, and their own Provisional Orders of 1904 and 1907. The Act of 1878 empowers to lease as well as to purchase. If magistrates desire to acquire land for the purpose of the Act they may do so by voluntary transaction; if they require to acquire compulsorily they may obtain a Provisional Order under a special code provided by the Act. And the Act empowers to assess for its purpose and to borrow. One of the special conditions of this lease is that the land is to be used for no other purpose than that of a golf links. And the Act gives power to the magistrates to make charges for the privilege of using the links, which powers have been exercised, but the charges made do not produce enough to meet the rent and cost of upkeep.

The Valuation Committee have sustained an entry of the Magistrates of Leith as proprietors, which is correct, and of the public as tenants and occupants, which in my opinion is incorrect, and have sustained a nominal valuation on the assumption that the case is governed by the decision of this Court in the case of the *Parish Council of Edinburgh v. The Assessor of Edinburgh* (1910 S.C. 823).

The Parish Council of Edinburgh have appealed. The proprietors of the land who are now receiving a rent of £532, 15s., not unnaturally make common cause with the Magistrates of Leith, as the result of the Committee's judgment is to let them go scot free in the matter of local taxation.

I do not think that it is necessary for me to do more than refer to your Lordships' judgment in the *Glasgow General Parks* case, and to say that the present case shows to what an extravagant result the decision on which the Committee have based their determination is capable, and logically capable, of being pushed.

I propose therefore to your Lordships that the valuation of £600, at which the subjects stood for the year 1910, be reverted to.

LORD SALVESEN—I concur.

LORD CULLEN—The subjects in question in this case, known as the Leith Public Park and Golf Course, are let by the proprietor of the land to the respondents the Leith Corporation under the lease mentioned in the case, which is for forty years with a break at 1927. They are expressly let only for the purpose of a public park and golf course in terms of the Public Parks (Scotland) Act 1878, and are used as much by the inhabitants of Leith. The respondents have laid out a golf course, and they levy charges from players, but no charge is made for admission to the park. The regulation and control of the subjects is in the hands of the respondents, who maintain them and attend to the general management of them.

As the lease is for a period exceeding twenty-one years, the respondents have been entered in the roll as proprietors. The "public" are entered as the "occupiers." The annual value is entered at the merely nominal sum of £1, by way of expressing the view of the assessor and the Valuation Committee that for the purposes of the valuation roll the subjects fall to be regarded as having no annual value.

We are not empowered to alter the entry in the "occupiers" column. It appears to me, however, that the occupiers of the subjects are none of the individual inhabitants who, less or more, and from time to time, use the parks without occupying, nor all of them together, but the respondents, who are the tenants and who occupy the subjects in order to discharge their functions of controlling and managing them so that they may be duly available for use by such of the inhabitants as choose to use them.

As regards the valuation, I am clearly of opinion that the entry of the subjects at a nominal or no value is wrong. The subjects are let by the owner to the Corporation at a large rent. Had the duration of the lease not exceeded twenty-one years, the rent payable under it would have fallen to be entered in the roll as the annual value in terms of section 6 of the Act of 1854. As, however, the lease is for forty years, the respondents are, under that section, deemed to be proprietors, and the yearly

rent or value falls to be ascertained irrespective of the amount of rent payable under the lease. On this footing the figure of £600 proposed by the appellants was not challenged by the respondents in their argument before us. I am therefore of opinion that the determination of the Valuation Committee should be altered, and that the subjects should be entered in the roll at the annual value of £600.

The Court were of opinion that the determination of the Valuation Committee was wrong, and that the subject should be entered in the roll at £600.

Counsel for the Complainers—Dean of Faculty (Dickson, K.C.)—Kemp. Agents—R. Addison Smith & Co., W.S.

Counsel for the Respondents—Morison, K.C.—Lippe. Agents—R. H. Miller & Co., W.S.

## COURT OF SESSION.

Saturday, February 3.

### SECOND DIVISION.

[Lord Hunter, Ordinary.

MACNABS v. MACNAB.

*Process—Partnership—Petition for Dissolution—Competency—Expediency—Necessity for Inquiry into Disputed Matters of Fact—Court of Session (Scotland) Act (Distribution of Business Act) 1857 (20 and 21 Vict. cap. 56), sec. 4—Partnership Act 1890 (53 and 54 Vict. cap. 39), sec. 35.*

The Partnership Act 1890, sec. 35, enacts that "on application" by a partner the Court may decree a dissolution when a partner has been guilty of such conduct as in the opinion of the Court is calculated to prejudicially affect the carrying on of the business.

Two of three partners presented a petition to the Junior Lord Ordinary for dissolution of partnership under the foregoing section and averred continued inattention to business and habits of intoxication on the part of the third partner. The latter denied the petitioners' averments.

*Held (approving and applying dicta per L. P. Kinross and Lord M'Laren in Wallace v. Whitelaw, February 23, 1900, 2 F. 675, 37 S.L.R. 483) that inquiry into disputed matters of fact being necessary, procedure by petition was inexpedient and inappropriate, and that an action of declarator must be brought.*

The Court of Session (Scotland) Act (Distribution of Business Act) 1857 (20 and 21 Vict. cap. 56), sec. 4, enacts—"All summary petitions and applications to the Lords of Council and Session which are not incident to actions or causes actually depending at the time of presenting the same shall be brought before the Junior Lord Ordinary