VALUATION APPEAL COURT.

Tuesday, December 17.

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

WILSON & COMPANY, LIMITED *v.* KINCARDINESHIRE ASSESSOR.

Valuation Cases—Subject—Advertisement Board — Erection on Premises under Agreement between Owner and Advertiser — Lands (Valuation) Scotland Act 1854 (17 *and* 18 *Vict. cap.* 91), *secs.* 1 *and* 6 — *Advertising Stations (Rating) Act* 1889 (52 *and* 53 *Vict. cap.* 27), *secs.* 2, 3, *and* 4 — *Lands Valuation (Scotland) Amendment Act* 1895 (58 *and* 59 *Vict. cap.* 41), *sec.* 4.

By agreement with the owner of certain premises an advertisement contractor acquired, for a period of three years, and for a stipulated payment of 10s. 6d. per annum, the right to erect an advertising board on a portion of the premises. The board having been erected by him on posts sunk in the ground, and an advertisement affixed thereto, he was entered in the valuation roll (1) as tenant and occupier of the site, and (2) as proprietor and occupier of the advertising board. He appealed, and maintained (1) that the entries were not justified, on the ground that he had no lease of the ground but merely a permit to set up his board; and (2) that in any event his name should be deleted from the first entry, and the second entry should be entirely deleted, on the ground that the landlord being "the person who permitted the ground to be used" for exhibition of advertisements, was, under section 3 of the Advertising Stations (Rating) Act 1889, to be deemed to be in beneficial occupation of the ground, and to be alone rateable in respect thereof.

Held that both entries in the roll were right, and in accordance with the provisions of the Valuation Acts, which were not affected by the Advertising Stations (Rating) Act 1889, even assuming that that Act applied to Scotland.

Question whether the Advertising Stations (Rating) Act 1889 applied to Scotland.

Question whether the advertising board in question was of a heritable nature, and consequently an "erection" within the meaning of the Lands Valuation (Scotland) Amendment Act 1895, sec. 4.

The Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91) enacts — Section 1 — "The commissioners of supply of every county and the magistrates of every burgh in Scotland respectively shall annually cause to be made up a valuation roll, showing the yearly rent or value for the time of the whole lands and heritages within such county or burgh respectively . . . and the names and designations of the proprietors or reputed proprietors, and where there are tenants or occupiers, of the tenants and of the occupiers thereof respectively. . . ." Section 6—"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; . . . and 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. . . ."

The Advertising Stations (Rating) Act 1889 (52 and 53 Vict. cap. 27) enacts—Section 2—"In this Act the term 'owner' means the person for the time being receiving or entitled to receive the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive or be entitled to receive the same if such lands or premises were let at a rackrent; and the word 'person' shall be deemed to include any body of persons, whether corporate or unincorporate." Section 3 —"Where any land is used temporarily or permanently for the exhibition of advertisements, or for the erection of any hoarding, frame, post, wall, or structure used for the exhibition of advertisements, but not otherwise occupied, the person who shall permit the same to be so used, or (if he cannot be ascertained) the owner thereof, shall be deemed to be in beneficial occupation of such land or part thereof, and shall be rateable in respect thereof to the relief of the poor and to all local rates, according to the value of such use as aforesaid." Section 4—"Where any land or hereditament occupied for other purposes and rateable in respect thereof to the relief of the poor and local rates is used temporarily or permanently for the exhibition of advertisements, or for the erection thereon or attachment thereto of any hoarding, frame, post, wall, or structure used for the exhibition of advertisements, the gross and rateable value of such land or hereditament shall be so estimated as to include the increased value from such use as aforesaid."

The Lands Valuation (Scotland) Amendment Act 1895 (58 and 59 Vict. cap. 41), sec. 4 enacts—"Section 6 of the Valuation Act 1854 shall be read and construed as if the following proviso were inserted . . . —'Provided also that where any lessee of any such lands and heritages, holding under a lease or agreement, the stipulated duration of which is twenty-one years or under from the date of the entry under the same, and in the case of minerals thirty-one years or under from the date of such entry, has made or acquired erections or structural improvements on the subjects let, and

where the actual yearly value of such erections or structural improvements cannot, under the provision of section 6 of this Act, be entered in the valuation roll, such erections or structural improvements shall be deemed to be lands and heritages within the meaning of this Act, and such lessee shall be deemed to be proprietor thereof for the purposes of this Act, and the assessor shall ascertain the yearly value of such erections or structural improvements as a separate subject by taking the amount of rent, if any, in addition to the rent stipulated to be paid under such lease or agreement at which, one year with another, the subjects let, and such erections or structural improvements might together in their actual state be reasonably expected to let from year to year in consequence of such erections or structural improvements having been made, and shall make a separate entry thereof in the valuation roll, setting forth all the particulars relating thereto, as hereinbefore provided with respect to other lands and heritages.'"

At a meeting of the County Valuation Committee of the County Council of the County of Kincardine, held on the 12th day of September 1912, A. J. Wilson & Company, Limited, 154 Clerkenwell Road, London, E.C., *appellants*, appealed against the following entries in the valuation roll of the said County of Kincardine for the year 1912-13:—

Description and Situation of Subject.	Proprietor.	Tenant.	Occupier.	Yearly Rent or Value.
Site for advertising board, Cammachmore, Newtonhill	Robert Bridgeford, Publican	A. J Wilson & Co., Ltd., 154 Clerkenwell Rd., London, E.C., *per* James B. Connon, Solicitor, Stonehaven.	Tenants	10s. 6d.
Advertising board, Cammachmore	A. J. Wilson & Co., Ltd., 154 Clerkenwell Rd., London, E.C., *per* James B. Connon, Solicitor, Stonehaven.		Proprietors	10s.

and craved that their name should be deleted from the first entry, and that the second entry should be deleted entirely. The Valuation Committee, however, refused the appeal, whereupon the appellants craved a Case for the opinion of His Majesty's Judges.

The Case was thus stated—"No evidence was led, but the agent for the appellants produced a copy of a letter, dated 22nd July 1910, from Robert Bridgeford, the proprietor of the site of the board, to the appellants, constituting the agreement in virtue of which the said board was erected on the site in question, and the Assessor produced a letter, dated 27th August 1912, from himself to the said Robert Bridgeford, the reply thereto, dated 3rd September 1912, and a copy letter, dated 3rd August 1910, from the appellants to the said Robert Bridgeford, certified by the latter. The copy letters so produced were accepted by the parties as true copies. The appellants admitted that they were owners of an advertising board erected, in pursuance of the agreement contained in the said letters between themselves and the said Robert Bridgeford, on the vacant ground in front of the inn at Cammachmore, in the parish of Fetteresso, owned and occupied by the said Robert Bridgeford; that the board was an ordinary advertising board, erected upon posts sunk into the ground and supported by wooden props or stays, and that there was displayed on each side of the board an advertisement of Dunlop tyres."

The letters referred to, passing between Robert Bridgeford and Wilson & Company, were in the following terms:—

"To Messrs A. J. Wilson & Company, Limited, Advertisement Contractors, 154 Clerkenwell Road, London, E.C.

"Sirs—On payment in advance of an annual sum of ten shillings and sixpence I agree to permit you to affix a Dunlop tyre poster on that part of my premises at Aberdeen Road arranged by myself and Mr J. I. Paxton, of Messrs A. J. Wilson & Company, Limited, this permission to remain in force for a period of three years, and thereafter to be put an end to by either party giving three months' notice in writing. You to have reasonable access to the premises for the purpose of taking down, repairing, or renewing the said poster, and no other advertisement of a tyre to be displayed on the same field, wall, fence, or house. "R. BRIDGEFORD,

"Cammachmore, Newtonhill, N.B.

"Dated *July 22nd* 1910."

"A. J. Wilson & Company, Limited, Advertisement Contractors, Printers, &c., 154 Clerkenwell Road, London, E.C.

"*3rd August* 1910.

"R. Bridgeford, Esq., Cammachmore, Newtonhill, N.B.

"Dear Sir—We have pleasure in confirming our Mr Paxton's interview with you, and agree to pay you the sum of 10s. 6d. per annum for a double-sided Dunlop sign to be erected on your property; we accordingly enclose herewith postal order, value 10s. 6d., in payment for the first year's rent in advance; kindly sign the receipt attached hereto, and return to us at your early convenience. The sign will be erected by Mr Milne in the course of a few weeks. —Yours faithfully,

"A. J. WILSON & CO., LTD.
p.p. E. M. S."

The County Valuation Committee, having heard the agent for the appellants and the Assessor, found (1) that the appellants were lessees of the site of the board under the agreement contained in the letter, dated 22nd July 1910, from Robert Bridgeford to the appellants, and the appellants' reply thereto, dated 3rd August 1910, and that they accordingly fell to be entered in the valuation roll as tenants

and occupiers of the said site; (2) that the board was an erection made by the appellants in terms of section 4 of the Lands Valuation (Scotland) Amendment Act 1895, and that the appellants accordingly fell to be entered in the roll as proprietors and occupiers thereof; (3) that the Advertising Stations (Rating) Act 1889, cited by the appellants, did not apply to Scotland, and in any case dealt exclusively with assessment, and did not in any way affect any entries required by the Valuation Acts to be made in the valuation roll. They accordingly sustained the entries made by the Assessor.

Argued for the appellants—The first entry in the roll was not justified by the provisions of the Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. cap. 91). The agreement between the parties under which the board was erected was not a lease of the ground, but merely a licence to enter on the ground for a limited purpose—*Provincial Bill-Posting Company* v. *Low MoorIron Company*, [1909] 2 K.B. 344. The case of *Beith* v. *Glasgow Assessor*, June 4, 1904, 6 F. 504, 41 S.L.R. 589, was distinguished by the fact that there there was an actual lease of the ground. The second entry on the roll ought to be deleted on the ground that the board was not an "erection" within the meaning of the Lands Valuation (Scotland) Amendment Act 1895 (58 and 59 Vict. cap. 41), in respect that it was not of a heritable nature and might be removed by the appellants at will. Under the Advertising Stations (Rating) Act 1889 (52 and 53 Vict. cap. 27) the appellants' name should not have entered the roll, but only that of Bridgeford, who "permitted" the advertisement. The appellant here was not truly the occupier of the ground—*Burton* v. *St Giles Assessment Committee*, [1900] 1 Q.B. 389; Ryde on Rating (3rd ed.), pp. 96 and 810. There was nothing in the Act of 1889 which excluded its application to Scotland, and therefore it must be taken to apply—*Bridges* v. *Fordyce*, March 7, 1844, 6 D. 968, *aff.* 6 Bell 1; *Perth Water Commissioners* v. *M'Donald*, June 17, 1879, 6 R. 1050, 16 S.L.R. 619; *Lord Advocate* v. *Lord Saltoun*, June 7, 1860, 3 Macq. 659, at p. 671. It had been recognised as applying to Scotland in *Fry* v. *Edinburgh Assessor*, March 7, 1893, 20 R. 622, 30 S.L.R. 612.

Argued for the Assessor—Both entries in the roll were authorised by the Valuation (Scotland) Acts. This case was ruled by the decision in *Beith* v. *Glasgow Assessor*, *cit. sup.* It was immaterial that the ground in question here was of small extent. It had an ascertained annual value of 10s. 6d., and was occupied by the appellant under an agreement which fell within the definition of a lease (Rankine on Leases, p. 1). The first entry in the roll was therefore justified—*Taylor & Company* v. *Overseers of Pendleton*, 1887, L.R., 19 Q.B.D. 288. The phraseology of the Advertising Stations (Rating) Act 1889 showed that it did not apply to Scotland, but was clearly intended to be confined to England and Ireland. In any event that was purely a rating Act, and could not override the Valuation Acts, or affect the duties of the Assessor in making up the valuation roll—*Glasgow Parish Council* (*General Parks Case*), 1912 S.C. 818, 49 S.L.R. 315. The advertising board in question was an "erection" within the meaning of the Valuation Act 1895, and therefore the second entry was correctly made by the Assessor.

At advising—

In the absence of LORD CULLEN, his opinion was read by LORD JOHNSTON, who intimated that it was the opinion of the Court.

LORD CULLEN—The appellants in this case carry on the business of advertising contractors. In July 1910 they made an agreement with Robert Bridgeford, innkeeper, Cammachmore, Newtonhill, Kincardine, whereby Mr Bridgeford, who is the owner of the premises now in question, agreed by letter of 22nd July 1910 to permit the appellants "to affix a Dunlop tyre poster on that part of my premises at Aberdeen Road arranged by myself and Mr J. I. Paxton, of Messrs A. J. Wilson & Company, Limited, this permission to remain in force for a period of three years, and thereafter to be put an end to by either party giving three months' notice in writing." The consideration stipulated for is a payment to Mr Bridgeford of ten shillings and sixpence. The appellants are to have reasonable access to the premises "for the purpose of taking down, repairing, or renewing the said poster," and it is provided "no other advertisement of a tyre to be displayed on the same field, wall, fence, or house."

The appellants, following on said agreement, erected on the selected site a wooden board displaying an advertisement of Dunlop tyres. The said board is described in the case as "an ordinary advertising board erected upon posts sunk into the ground and supported by wooden props or stays."

In these circumstances the Assessor made two entries in the county valuation roll. In the first place he entered the ground occupied by the advertising board at the value of 10s. 6d., Mr Bridgeford as the proprietor thereof, and the appellants as the tenants. In the second place, proceeding on the Lands Valuation (Scotland) Amendment Act 1895, he entered the board itself as a heritable erection falling to be valued in terms of that Act, and the appellants as the proprietors and occupiers thereof at the annual value of 10s.

No question has been raised in this appeal as to the amount of the annual values so entered by the Assessor.

The appellants maintain, *inter alia*, that the first of these two entries is not justified by the Act of 1854. They say that the agreement between them and Mr Bridgeford does not amount to a lease, but what they describe as a licence to go on the ground and to do something on it, to wit,

to set up the advertising board. It appears to me that this question is ruled by the decision of this Court in the case of *Beith* v. *Assessor for Glasgow*, 6 F. 504. The question there related to a hoarding erected by Beith, an advertisement contractor, along the frontage of certain unoccupied ground situated at the junction of two streets in Glasgow. He had right only to use the ground for the hoarding, and he paid the owners a sum of £25 per annum. The Assessor entered the site of the hoarding in the valuation roll at the annual value of £25, on the footing that it had been let to Beith at that rent. This entry was upheld. Lord Kyllachy, who gave the leading judgment, said—"The extent of the ground is of no consequence, nor does it matter whether it is simply a strip of frontage or includes the area around which the frontage extends. It is equally immaterial for what purpose the ground was let. The tenancy was an ordinary tenancy of land at a yearly rent, and as such it is, under the statute, imperative that it should enter the valuation roll, and enter it exactly in terms of the entry complained of."

I do not think the appellants have succeeded in showing that there is any real difference between that case and this. The ground here in question is of trifling extent. But it has an ascertained annual value of 10s. 6d., the amount of which is paid, under contract, by the appellants for the right to occupy it in the way they do, and I can see no good reason why this ascertained annual value should not enter the valuation roll. A proprietor of land may turn it to annual value in many different ways, and if he lets it he may let it in such portions, large or small, as may yield the highest return or as best suits himself. If he owns a field, of a very small portion of which he grants a right of occupancy for a stated annual payment (as here), and which *quoad ultra* he lets for grazing purposes to some one else for a stated annual payment, the two payments received by him make up together the total annual value by way of rent drawn by him from the ground, and the smaller must enter the roll as well as the larger.

The next question relates to the separate entry of the advertising board itself at the annual value of 10s. This entry has been made on an application of the Lands Valuation Amendment Act of 1895. That Act was passed to meet a class of case which often presented itself where a tenant holding at a fixed rent, under a lease of not more than twenty-one years' duration, or in the case of minerals thirty-one years, had put up for the purposes of his occupation houses or other erections on the land let to him. Under the Act of 1854 the rent in the lease fell to be taken as the measure of valuations, and the houses or other erections could not be entered in the roll, seeing that the proprietor received nothing in respect of them. The Act of 1895 met such cases by providing that where such a tenant "has made or acquired erections or structural improvements on the subjects let," these shall be entered in the roll as lands and heritages within the meaning of the Act of 1854, and that the tenant shall be deemed to be proprietor thereof for the purposes of that Act.

The question which here arises is whether the said advertising board is a heritable erection of the kind falling within the meaning of the Act of 1895. There is no definition of the word "erection" in that Act. And so, I take it, one is thrown back on the general rule that all lands and heritages which have an annual value must be entered in the roll at that value. And as the board has, *ex concessis*, an annual value of 10s., it follows that, if it is heritable in character, it must be entered in the roll. Now on the question whether the board is so affixed to the ground as to be *pars soli*, we had no argument at all from the appellants' counsel, owing, no doubt, to the appellants having desired to concentrate attention on the effect of the Advertising Stations (Rating) Act 1889, to which I shall refer immediately. No authority of any kind was quoted. The topic was merely mentioned and left. The question may perhaps come to be a nice one; and I have not considered it incumbent on me to make an investigation, which the appellants themselves have not essayed, into the very numerous authorities in this difficult branch of law. The board is undoubtedly firmly fixed to the *solum*. The Valuation Committee have upheld the Assessor's view that it is a heritable erection under the Act of 1895. The appellants have not chosen to submit any real argument on the subject. I propose therefore that we should not interfere with the determination of the Valuation Committee. This will only rule the present year's roll. In case the question should be properly put before us in any future year I entirely reserve my opinion on it.

I have so far dealt with the case from the point of view of the Lands Valuation Acts of 1854 and 1895. The appellants, however, laid the stress of their argument on the Advertising Stations (Rating) Act 1889, the leading provisions of which are quoted in the case. The appellants, under section 3, contended that the owner Mr Bridgeford, should be entered in the roll both as owner and occupier of the ground occupied by the advertising board in question. In their first ground of appeal they contend that "they are exempt" under the Act of 1889. This appears to mean exemption from rateability.

The Act of 1889 was brought prominently before this Court in the case of *Beith*, which I have already referred to, and the question was there raised whether it applied to Scotland. Grave doubts were expressed both by Lord Kyllachy and by Lord Stormonth Darling as to whether it did so apply. There is no exclusion of Scotland in the Act. But there is a good deal about it to suggest that the case of Scotland was, at least, in no way before the minds of its framers. There is in the Act a linking together of occupancy and rateability which reflects the rating law of

England but is in dissonance with that of Scotland, where rating on occupancy alone is exceptional. It would appear from section 6 of the Act relative to Ireland that there are special Acts there in force regarding the valuation of rateable property; and that section makes special provision for the application of the Act of 1889 to Ireland in view of these. No special provision of any kind is made with regard to Scotland, although the incidence of rating generally is here different from that obtaining in England, and a valuation roll which, *inter alia*, forms the basis of rating is annually made up under special Acts confined to this country which are self contained and prescribe how that roll shall be framed. The valuation roll so made up in terms of our Lands Valuation Acts is not exclusively a basis for rating. It also, for example, bears on the registration of parliamentary voters. Thus the 17th section of the Act 19 and 20 Vict. c. 58, provides that the valuation roll made up in terms of the Act of 1894 shall form *prima facie* proof as to gross rent or value, also "that the persons therein set forth as proprietors, tenants, and occupants respectively have, for the period to which such valuation applies, been such proprietors, tenants, and occupants respectively as therein stated."

This Court and the inferior valuation tribunals under the Scottish Lands Valuation Act are not directly concerned with rating, the incidence thereof, or any exceptions therefrom. Their function solely is to make up annually a valuation roll in terms of these Acts. Now the Advertising Stations (Rating) Act of 1889 bears to be a rating statute. In its application to England, presumably, no difficulty presents itself, as there is in England as I understand no valuation roll made up under independent Lands Valuation Acts as in Scotland, and what is made up is a rating roll. The Act of 1889, as I have mentioned, specially provides for the case of Ireland. But it contains nothing, as I can construe it, which repeals or alters for Scotland the provisions of the Scottish Lands Valuation Acts regulating the mode of making up the yearly valuation roll under these Acts. And upon these I think we are bound to proceed. I do not from this point of view deem it necessary or fitting to express any opinion on the question of the application of the Act of 1889 to Scotland. If it does so apply I can see difficulties in working it out. I limit myself to the opinion that it does not alter the prescribed mode of making up the valuation roll under our Lands Valuation Acts.

Following the views which I have expressed, I am of opinion that this appeal should be refused.

The Court were of opinion that the determination of the Valuation Committee was right, and dismissed the appeal.

Counsel for the Appellants — Wilton. Agents—Davidson & Syme, W.S.

Counsel for the Assessor — A. Brown. Agent—W. B. Rainnie, S.S.C.

Tuesday, December 17.

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

ABERDEEN ASSESSOR AND PARISH COUNCIL *v.* ABERDEEN TOWN COUNCIL.

LANARK ASSESSOR *v.* LANARK TOWN COUNCIL.

Valuation Cases—Subject—Sewer and Purification Works—Value.

Burgh assessors having entered in the valuation roll, in one case sewers, and in another case sewage purification works, both lying within burgh, the town councils appealed.

Held that both subjects were rightly entered in the burgh valuation roll at figures representing their fair annual value.

Observations on the method to be adopted in calculating the fair annual value of sewers.

Aberdeen Case.

At a Court held at Aberdeen on the 10th day of September 1912, for the purpose of hearing appeals and complaints against valuations for the current year made by the Assessor, the Lord Provost, Magistrates, and Town Council of the City and Royal Burgh of Aberdeen appealed against the following entry in the valuation roll for the city for the year ending at Whitsunday 1913:—

Description of Subject.	Proprietor.	Tenant and Occupier.	Yearly Rent or Value.
Burgh of Aberdeen sewers	Town Council	Proprietors	£17,000

and craved that the said sewers should not be entered in the valuation roll, and that the said entry should be deleted.

The Magistrates having heard the arguments for the parties and considered the whole case, were of opinion that the sewers in question ought not to be entered in the valuation roll, and accordingly at an adjourned Court held on the 17th day of September 1912 sustained the appeal and directed that the entry should be deleted from the roll.

The Assessor and the Parish Council took a Case for the opinion of His Majesty's Judges.

The Case for appeal was thus stated—"No evidence was led, but the following *facts* were admitted—(1) The sewers in question were formed partly by the Aberdeen Police Commissioners and partly by the Town Council under the powers contained in the Aberdeen City Acts 1862 to 1911. The powers and duties of the Aberdeen Police Commissioners are now vested in the Town Council under the Aberdeen Municipality Extension Act 1871. The sewers are formed under the public streets of the city (with certain exceptions where it was found to be necessary to carry them through enclosed or other land) and discharge into the sea through an outfall sewer constructed across the river Dee. . . .