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. . . .

(3) The sewers are constructed entirely under ground and (with the exception of the manholes) occupy no part of the surface. The length of the sewers is slightly under 100 miles. (4) The matter which the sewers convey consists of the sewage and rain water from the various buildings and premises within the city as well as surface water from the street channels. (5) The sewers are maintained by the Town Council by means of an assessment upon owners levied under the authority of the City Acts. The assessment is also applied in payment of interest on the amount borrowed to meet the cost of construction of the sewers and towards the sinking fund. (6) A statement was put in by the Town Council. The figures in that statement relating to the cost of the sewerage system as laid down within the city from 1864 to 31st May 1912 (£376,630) and the capital value of abandoned sewers (£20,000) were admitted by the Assessor, and are also admitted by the Parish Council for the purposes of this case."

The Assessor's *contention* was stated thus—"(*a*) That upon a consideration of the decisions and opinions of the Judges in the Glasgow Parks and Dundee Sewers Cases the entry has been properly made—*Parish Council of Glasgow* (*General Parks Case*), 1912 S.C. 818, 49 S.L.R. 315; and *Magistrates of Dundee*, 1912 S.C. 848, 49 S.L.R. 333. (*b*) That sewers whether without or within the burgh boundaries are 'lands and heritages' within the meaning of the Valuation Acts. (*c*) That the ownership of the sewers is in the Town Council, and not in the public, general or local, and that there being distinct ownership in the sewers, as distinguished from the ownership of the properties served by the sewers, there must appear a distinct and separate entry in the valuation roll for the sewers against the owners thereof, *i.e.*, against the Town Council of Aberdeen. (*d*) That the occupation of the sewers is that of the Town Council, and not that of the public, general or local, and that there being distinct occupation of the sewers as distinguished from the occupation of the properties served by the sewers, there must appear a distinct and separate entry in the valuation roll for the sewers against the occupiers thereof, *i.e.*, against the Town Council of Aberdeen. (*e*) That, though not profitable, the ownership and occupation of the sewers is valuable, inasmuch as by them the Town Council are enabled to fulfil a duty towards those for whom they are trustees. The value to the Town Council of the sewers is fairly measured by what they find themselves obliged to give for the same, or in their discretion think they are justified in giving. (*f*) That the sewers have to be valued as they exist, it being no concern of the Assessor whether they were acquired, or are now held, under statutory authority. (*g*) That it is not for the Assessor to consider what the effect of his entry might be as regards subsequent rateability, his duty being simply to value and enter in his roll all valuable heritable subjects inclusive of the sewers in question. (*h*) That the sewers, being 'lands and heritages' in the ownership and occupation of the Town Council of Aberdeen, the value fixed upon by the Assessor represents the fair annual value."

The *contention* of the Parish Council was substantially the same as that of the Assessor. In addition, however, they maintained that the sewers should be entered in the roll at £19,000, but at the discussion they acquiesced in the figure proposed by the Assessor.

The Town Council *contended* in answer as follows—In the first place, the public sewers of burghs laid beneath streets and other public places within the burgh boundaries are not "lands and heritages" within the meaning of the Valuation Acts, and, according to universal practice, do not enter the valuation roll of these burghs. In the second place, apart from the universal practice in Scotland, there are sound reasons why public sewers, like those in question in the present case, should not enter the valuation rolls of the burghs which they serve, and within which they are laid. (1) It is clear, as pointed out by Armour in his work on Valuation of Property for Rating in Scotland (p. 127), and, as recognised by Lord Salvesen in the recent cases of *The Glasgow Parish Council* v. *The Assessor for Glasgow*, 1912 S.C. 818, 49 S.L.R. 315, and *The Magistrates of Dundee* v. *The Assessor for Forfarshire*, 1912 S.C. 848, 49 S.L.R. 333, that public sewers "though not directly rated, do appear indirectly in the roll and contribute to the rates by enhancing the letting value of the houses which they serve." There is for this reason a clear distinction between the present case and the entry of either a private sewer, as in the *Inveresk Paper Company's* case, 1907 S.C. 747, 44 S.L.R. 433, or part of a public sewerage system, as in the case of *The Magistrates of Dundee* (*cit. sup.*), in the valuation rolls of areas which do not include premises served by these sewers. This distinction is clearly recognised by Lord Salvesen in the cases of *The Glasgow Parish Council* and *The Magistrates of Dundee* above cited. In the case of *The Magistrates of Dundee*, for example, the circumstance that part of the city of Dundee's sewerage system lay within the county of Forfar did nothing to enhance the letting value of any heritable subject in Forfarshire. It enhanced only the letting and assessable value of the buildings in the city of Dundee. (2) Public sewers are not in their own nature subjects capable of profitable or valuable occupation. They are in this respect in a similar position to public streets, which do not enter the valuation roll, and are entirely different from such subjects as municipal gas, water, and electricity undertakings, which do enter the valuation roll. Such undertakings are really commercial concerns which supply and sell valuable products to the public. The public sewers of Aberdeen, on the other hand, have been constructed by the Town Council under statutory authority in discharge of its obligations to secure

the public health of the community. These public sewers are as it were an extension of the Town Council Cleansing Department. The Town Council derives no rental or income from them. They are of the nature of a burden on the municipality, the cost of which is met by a rate levied under statutory authority on the owners of property within the burgh. In the third place, if any entry of the sewers falls to be made in the valuation roll, the value put upon them should, for the reasons immediately above stated, be a purely nominal one—say £1 sterling. In any event the Assessor's valuation of £17,000 is grossly overstated. The total cost of the sewerage system within the burgh to date has been £376,630. Part of the system, however, of the capital value of £20,000 has been abandoned, and is not now in use. It has also to be kept in view that the life of a sewer is reckoned at fifty years, and that if depreciation at the rate of two per cent. per annum on the various sewers, from the dates of their construction, is taken into account, a further sum of £128,435 must be deducted from the original cost before the actual value of the sewerage system can be ascertained. If these deductions are made, it will be found that the present capital value of the system is only £228,195. In order to arrive at the annual charge which is levied on owners to meet the cost of the system, it must be kept in view that the cost of the various sewers has been met by the Town Council out of money borrowed on the security of the sewer rate. At the present moment this money is borrowed at a rate, after taking into account stamp duty, commission to lenders and other expenses connected with the various loans, of 3½ per cent. per annum, or at an annual cost, on the basis of the present value of the sewers, as above set forth, of £7987. From this sum has to be deducted the annual cost of maintenance, cleaning, repairs, &c. amounting to £3000, and there is then left a net annual value of £4987. If the assessable value is taken at one-fourth of the net annual value on the analogy of what is done in the case of the gas, water, and electricity undertakings, a value of £1247 is brought out."

Lanark Case.

In this case the appeal related to sewage purification works, constructed by the Town Council of Lanark in connection with their sewage system, and situated within the burgh. These had been entered by the Assessor in the valuation roll at a value of £210, but the entry had been deleted by the Valuation Committee.

The contentions of the Assessor, and the Town Council are covered by those stated by the parties in the Aberdeen case *supra*. Parties were agreed, that in the event of its being held that the purification works should enter the roll, £187 might be taken as representing their fair annual value.

The two cases were heard together, and the arguments of parties sufficiently appear from the contention given above. The following additional authorities were referred to — *West Kent Main Sewerage Board* v. *Dartford Union*, [1911] A.C. 171; *Ystradyfodwg & Pontypridd Main Sewerage Board* v. *Benstead*, [1906] 1 K.B. 294, [1907] 1 K.B. 490, [1907] A.C. 264; *Bwllfa and Merthyr Dare Steam Collieries* (1891), *Limited* v. *Pontypridd Water-works Company*, [1903] A.C. 426.

At advising—

Aberdeen Case.

LORD SALVESEN — The question in this case is whether the Town Council of Aberdeen fall to be entered in the valuation roll as proprietors and occupiers of the sewers by which the drainage of the city is conveyed to the sea. These sewers have been constructed under statutory powers, and are mainly formed under the public streets of the city, although in certain cases they have been carried through unenclosed or other lands. With the exception of the manholes the sewers are constructed entirely under ground, and their length is slightly under a hundred miles. The matter which they convey consists of sewage and rain water from the buildings and streets within the city. They are maintained by means of an assessment levied upon owners under the authority of sundry local Acts.

The Assessor entered their annual value at the sum of £17,000, but the Valuation Committee sustained an appeal at the instance of the Town Council, and directed that the entry should be deleted from the roll.

Since the Valuation Act was passed in 1854 sewers have never entered the valuation roll of any burgh, the general view taken by assessors apparently being that such sewers, although not directly rated, did appear indirectly in the roll, and contributed to the rates by enhancing the letting value of the houses which they served. This is the view taken by Mr Armour in his work on rating, and affords an explanation of the practice which has hitherto prevailed. The action of the Assessor of Aberdeen therefore constitutes a new departure, which, if it be sustained, cannot fail to have very wide-reaching results. Personally I cannot but regret this attempt to disturb a practice which has so long prevailed, and which, but for the difference in the incidence of the various rates which are levied on the basis of the valuation roll, would be of no practical importance. The Parish Council, however, who are charged with the duty of levying poor and school rates, find it in their interests that every kind of heritage which is capable of a separate valuation should enter the roll. The higher the assessable value of lands and heritages within their area, the lower will be the rate which they require to levy in order to meet a given annual expenditure, and as the sewage rate is levied upon owners only, while the poor rate is payable equally by owners and occupiers, the inclusion of this substantial new item hitherto exempt from taxation affects the proportion of taxes falling to be contributed by a large body of individual taxpayers. It is not therefore surprising that the

Parish Council have appeared to support the Assessor's appeal, and indeed it is perhaps not unfair to assume that the innovation is due to their initiative.

Two alternative views were presented on behalf of the Town Council. They maintained (1) that sewers are not lands and heritages within the meaning of the Valuation Act of 1854, and (2) that they are parts or pertinents of subjects which have already been included in the roll, and that there is thus a double valuation if they are separately rated.

The first view was based on the language of section 42, which provides that the expression "lands and heritages" shall extend to and include the subjects therein specially enumerated. It was maintained that this enumeration is exhaustive, and that as drains and sewers are not mentioned, they are not lands and heritages within the meaning of the Act. The argument would have been irresistible if instead of using the words "shall extend to and include" the statute had simply said "shall mean"; but I think it is well settled that an interpretation clause in the form of section 42 is exegetical merely, and does not really define. Now it has already been decided in two cases in this Court (*The Inveresk Paper Company*, 1907 S.C. 747, and *Magistrates of Dundee*, 1912 S.C. 848) that an underground sewer falls within the description of lands and heritages, and, as it is capable of being separately valued, must enter the valuation roll. The question was perhaps not concluded by these two decisions, for the argument on section 42 was not there pointedly maintained, but having heard what was to be said upon it, I see no reason to doubt the soundness of the decisions arrived at.

The alternative argument for the respondents was that the drains of Aberdeen are pertinents of the buildings, and that their value is already included in the rental. I have great sympathy with this view. The rating value of any urban tenement must to some extent depend on the fact that it is connected with an efficient drainage system. It may further be said that the modern method of conveying sewage and surface water in underground pipes is merely a civilised substitute for the gutters by means of which all liquid sewage as well as rain water was in ancient times carried away. I am, however, unable to sustain the view that the system of sewers constructed by the Town Council and under their administration can be regarded as a pertinent of the buildings which they drain. These buildings belong to other proprietors, and it is difficult to understand how the the property of the corporation can be regarded as pertinents of the properties of individual citizens of Aberdeen. Whether sewers may on other grounds be exempt from assessment is not a matter with which we are concerned. Our sole duty is to see that all lands and heritages enter the valuation roll at their fair annual value. It is worthy of note, however, that in England it has now been settled by a decision of the House of Lords that sewers, whether overground or underground, are rateable notwithstanding that they had enjoyed an exemption from taxation for a period of several hundreds of years (*West Kent Main Sewage Board*, 1911, A.C. 171).

The remaining question is at what yearly value the system of sewers ought to be entered. On this matter I am bound to say that we do not receive much assistance from counsel on either side, and I think we are only in a position to fix the principles on which the valuation should be made, leaving the parties to adjust the figure. The only possible hypothetical tenant for such a system would be a body having the like statutory duty to drain the City of Aberdeen that is laid upon the respondents by their various local Acts. What would such a tenant give by way of rent for the existing system? Obviously no more than it would cost him year by year if he provided a new system for himself. The items of annual expenditure would thus be, in the first place, interest on the capital sum expended on efficient sewers which would all be utilised in connection with the system, such interest being taken at 3¼ to 3½ per cent. In addition he would have to provide a sinking fund to meet the annual depreciation of the sewers. The Assessor admits that 33½ years is less than the probable life of a sewer pipe, and it was conceded in argument that probably the true figure might be taken at fifty years, although it is conceivable that some portions of the system might not be subject even to so much depreciation as that, as, for instance, if there are any stone-built culverts or the like. Third, the tenant would have to meet the expense of maintenance, which must be distinguished from cost of renewals, as otherwise depreciation would be twice charged. These appear to be the chief items which the hypothetical tenant would take into account in fixing his rent. It was suggested that as the sewers are already old the capital value of the system on which interest falls to be annually charged should be taken at the depreciated value. I do not think so. So long as the sewers are efficient the hypothetical tenant would pay the same rent, as his only alternative would be to construct new sewers for himself. These being the main considerations, no doubt the parties will be able to adjust the proper figure at which to enter the undertaking for the present year. It may be that other considerations may enter into the calculation, but as the question of value has not been fully gone into, either in the case or in the argument, we have not the means of determining these. I desire, however, to guard myself against the assumption that this valuation will necessarily fix the valuations of other undertakings of a similar character, although no doubt it will go far to determine the basis of such valuations.

LORD CULLEN—[*Read by Lord Johnston*] —I concur in the result at which your Lordships have arrived.

The subjects in question are the city sewers of Aberdeen. These are heritable

subjects of large annual value. They are owned by the respondents, the Lord Provost, Magistrates, and Town Council of the city and royal burgh of Aberdeen.

The question has been raised whether such sewers are in their nature a species of property falling within the scope of the words "lands and heritages" as used in the Act of 1854. I am of opinion that they are sewers not specifically mentioned in the enumeration contained in the 42nd section of that Act. But that enumeration has never, so far as I am aware, been regarded as an exhaustive enumeration of all the different species of property falling to be entered in the valuation roll. In the *Inveresk* case a mill aqueduct was held to be a subject falling to be entered in the roll; and last year we sustained an entry in the roll for the county of Forfar of a portion of the main outlet sewer of Dundee. Sewer pipes are, moreover, *ejusdem generis* with water-pipes and gas-pipes, which are undoubtedly proper subjects of valuation.

In no previous instance, it would seem, have the sewers of a town been entered in a burgh valuation roll. This fact cannot in itself justify a continuance of the practice of omitting them, but can only, at the most, suggest for consideration whether there may not underlie the practice some good ground of principle which supports it. In England prior to 1911 underground sewers had for centuries been treated as exempt from rating, but this *de facto* exemption was, in the *West Kent* case, found to rest on no legal principle, and it was there decided that such sewers are rateable subjects in England.

The respondents in this case do not rest their argument merely on the practice which has hitherto prevailed of omitting town sewers. They advance the view that that practice is not an arbitrary one, but is founded on sound principle. In support of it they represent that the annual value of such sewers is already contained in the roll, although not *eo nomine*. Town sewers, they say, are of the nature of pertinents of the houses, which would not command the lettable values at which they stand in the roll but for the existence of the sewers. It may be observed that the town sewers in question do much more than serve the houses in the town. They carry off the surface drainage of the town, and they are, in the legal sense, pertinents of any or all of the houses. They form a general system of drainage serving various uses, and they are in the separate ownership of the respondents. That the existence of the sewers is essential to the present letting value of the houses which they serve is true. But it is no ground for omitting particular lands and heritages having an annual value from the valuation roll that their existence is essential to the values at which other lands and heritages of different owners are there entered. There is a necessary interdependence of values between many species of property, particularly in a town. The existence of a dock, for example, may be said to create the assessable annual values of certain kinds of property surrounding it. Dwelling-houses in a town would not command the rents they do if they did not have available a water supply, and gas or electric lighting, as well as sewers. And water-pipes and the heritable properties embraced in gas and electric lighting undertakings enter the valuation roll. It is, in my opinion, fallacious to say, as the respondents do, that the annual value of their sewers is already entered in the roll. In plain fact it is not. And it seems to me to be no answer to say, that because of the existence of the omitted sewers, other lands and heritages included in the roll are so included at values which they would not otherwise possess. Each particular land or heritage must be dealt with by itself, and be entered at such annual value as it has for the year, under the existing circumstances affecting its value, and although that value may be enhanced or created by the existence of other properties belonging to different owners.

I am accordingly of opinion that the Assessor was right in entering the sewers in question in the burgh valuation roll. As to the value at which they should be entered, I concur in what has been said by Lord Salvesen.

LORD JOHNSTON—I also concur.

Lanark Case.

LORD SALVESEN—This appeal relates to certain purification works situated in the royal burgh of Lanark. Following the principles laid down in the Aberdeen case we hold that the value of these works must enter the roll. Parties have relieved us of any difficulty as to value, because they are agreed that £187, 10s. represents the fair annual value of these works. The valuation roll falls to be altered accordingly.

The Court were of opinion that the subjects in question should be entered in the valuation roll.

Counsel for Aberdeen Assessor—C. D. Murray, K.C.—Lippe. Agents—Macpherson & Mackay, W.S.

Counsel for Aberdeen Parish Council—A. R. Brown. Agents—Alex. Morison & Co., W.S.

Counsel for Aberdeen Town Council—Chree, K.C.—Hon. W. Watson. Agents—Gordon, Falconer & Fairweather, W.S.

For the Lanark Assessor—Party.

Counsel for Lanark Town Council—Morton. Agent—R. G. Bowie, W.S.