

GREENOCK TRUSTEES, APPELLANTS.
 The SHAW'S WATER COMPANY, . . . RESPONDENTS.

Municipal Assessment.—Circumstances in which (reversing the Judgment of the Court of Session) it was held by the House that the Respondents, under certain local Acts, and also under the Scotch Valuation Act, had been properly assessed by the Appellants in respect of certain feu duties.

1862.
 July 28th.

The Appellants are trustees of the town of Greenock, having power under a local Act of imposing and levying certain regulated assessments to meet the charges of municipal expenditure (*a*).

The Respondents, on the other hand, are a corporation whose chief function (under the authority of another local Act) is to furnish the town and harbour of Greenock with a constant supply of pure and fresh water, which they do by collecting what is called the Shaw's Water into a great reservoir, and thence distributing it for the accommodation of the inhabitants.

As the water passes to the town it propels the machinery of certain mills erected under feu rights granted by the Water Company, in return for which they receive from the millers certain pecuniary duties or ground annuals.

The question for determination was, whether the Water Company was liable to assessment in respect of these pecuniary feu duties or ground annuals. The *Lord Ordinary* decided in the affirmative. The Inner House (First Division), on the 1st February 1862, reversed his decree (*b*). Hence this Appeal.

(*a*) See *suprà*, vol. 2, p. 151.

(*b*) See Second Series of Court of Session Cases, vol. 24, p. 1306.

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Mr. *Rolt* and Mr. *Anderson* were of Counsel for the Appellants.

The *Attorney-General* (a), Mr. *Mure*, and Mr. *Brown* were heard for the Respondents.

The following opinions were delivered on the motion for judgment.

*Lord Chancellor's
opinion.*

The LORD CHANCELLOR (b) :

My Lords, the Respondents are a Company incorporated for the purpose of supplying water to the town of Greenock. Under the powers granted by their Acts of Parliament they have constructed large works, including reservoirs and aqueducts or watercourses, within the burgh of Greenock, by means of which they collect and conduct the water for the use of the town and the ships in the harbour. As the reservoirs are at a considerable elevation above the level of the town, the fall in the stream of water as it flows down the aqueduct or watercourse is considerable, affording a constant supply of water power ; and accordingly the Company is empowered to feu sites for mills upon the line of their watercourse, and also to contract to supply water power to the mills at such annual rate as may be agreed on. Accordingly, under feu contracts entered into by the Company, mills have been erected along the line of and adjoining their watercourse, and the Company has engaged to supply water for the purpose of driving the machinery in those mills at various annual sums which are reserved and made payable by the feu contracts.

In these contracts provision is made to the end that the water supplied as a driving power may not be diminished or deteriorated in its passage through the mill, but may be returned again to the water-

(a) Sir Roundell Palmer.

(b) Lord Westbury.

course, so that it may flow on to the town of Greenock.

The sums paid to the Company for water power constitute a considerable portion of its revenue ; and in respect of their annual income derived from this source, the Company are assessed by the Appellants, who are trustees under a Local Act, the 3rd Victoria, Chapter 27, at the annual sum of 976*l*.

By the 51st section of that Local Act it is provided,

That the assessment to be levied upon any mills erected or hereafter to be erected upon any of the falls or mill sites of the Shaw's Water Joint Stock Company shall not in any case exceed the rate of four shillings for each and every horse-power of such falls or mill sites respectively, such horse-power to be reckoned and computed according to the regulations of the said Shaw's Water Joint Stock Company.

It is this section which has given rise to the present controversy, the Respondents contend that the mills are rated in respect of the water power supplied to them, and that to rate the Respondents in respect of the water so supplied would be to rate the same property a second time. But in my opinion this is erroneous. The mill is rated in respect of its own independent value, which is no doubt increased by the water power, and the Respondents are properly rated in respect of the waterworks of which they are the possessors and occupiers, and by means of which they receive and enjoy as part of their revenue the income, which has been assessed at the sum of 976*l*. per annum. This sum is not income arising from anything which is in the exclusive occupation of the millers, but it is income derived and enjoyed from and in respect of the works within the burgh of Greenock which are in the occupation of the Company. The water way will give an additional value to two properties, which are the subjects of distinct occupation.

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The water in passing through the mill augments the value of the mill, and the money received for the service done by the water is incident to the possession of the waterworks from which the water is supplied. The provisions with respect to the water in the feu contracts show that the stream of water in its transit through the mill is still the property of the Company, and that it is not in the possession of the miller, who has only a qualified user of it.

Upon the general question, therefore, I am of opinion that the view taken by the *Lord Ordinary* is correct, and that the Interlocutor appealed from is erroneous, and ought to be reversed.

My Lords, there is a minor ground on which it is clear that the Interlocutor of the Court of Session is wrong. Under the Scotch Valuation Act the Respondents have had the entirety of their works valued by the Government assessor, who has fixed the sum of 976*l.* (at which the Respondents are rated by the Appellants) as the annual value of such part of the Respondents' works as are situate within the burgh of Greenock, being the premises to which this Appeal relates; and by the 33rd section of the same Act it is in effect enacted that the valuation appearing on the valuation roll shall be always deemed and taken to be the just amount of real rent for the purposes of every county, municipal, parochial, or other public assessment, or for any assessment rate or tax under any Act of Parliament, and that the same shall be assessed and levied according to the same yearly rent or value accordingly. Therefore it is plain that so long as the valuation remains the Appellants are not only justified, but bound to assess the Respondents at this sum of 976*l.*, being the annual value fixed by the assessor on their property in the burgh of Greenock. As this valuation still continues, the Interlocutor of the Court

of Session is plainly at variance with the Act of Parliament.

It is said that this valuation may be corrected in a future year, which is true if it be wrong ; but for the reasons already given I am of opinion, and submit to your Lordships that the assessment is correct, and that the Interlocutor of the Inner House ought to be reversed, and the Interlocutor of the *Lord Ordinary* restored and affirmed, and the prayer of the Reclaiming Note refused with expenses.

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Lord CRANWORTH :

The whole case turns upon the question as to the rating of the mills. Pursuantly to the provisions of the Act the mills have been regularly assessed according to the amount of horse-power which they respectively enjoy. It was argued that to make the Respondents pay any rate for the water which they supply to the mills would be to make a second assessment on property already rated. But this is not so. If the owner of a house in a town rated at 50*l.* a year were to discover a spring of water in his house, by means of pipes connected with which he should be able to supply pure water to ten adjoining houses at a rate of 5*l.* per house, his house would properly be rated thenceforth at 100*l.* instead of 50*l.*, and every one of the ten houses would also be properly rated at the additional value which was conferred on them by a stream of pure water. The rateable value of the house supplying, as well as of all the houses supplied, would be increased, and so become liable to an increased assessment.

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But it was further argued that the Respondents could not be treated as being in the occupation of the water supplied to the mills. The mill sites, it was truly said, have been feued out to the millers, and are

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therefore no longer occupied by the Water Company, and these sites in most, if not in all cases, comprise the solum of the aqueduct over which the water passes, and so are in the occupation, not of the Company, but of the millers.

Some question was raised as to how far the feu contracts with the millers did pass the solum of what was feued, so as to carry with it a right to the water, but I do not think it necessary to go into this inquiry. By the 48th section of the Water Company's Act they are authorized to feu out mill sites, and by the next section to contract for the supply of water to the feuars of such mill sites. The Legislature plainly considered the Company as continuing in the enjoyment of the running water, however they might have dealt with the soil over which it passed. Indeed, on no other hypothesis could they continue to carry into effect the purposes of the Act, which was to secure a constant supply of water to the town and harbour of Greenock; what is rated, and properly rated, is the entire waterworks of those works treated as a whole. The Respondents are in possession; they derive their revenue from the works as one entire undivided property, extending through several parishes, and the only difficulty in such cases is to say how much beneficial occupation there is in each parish through which the entire property extends. But here the Legislature has interfered; for by the Scotch Valuation Act of 1854 (17 & 18 Vict. c. 91.), the Commissioners of supply in every county and the magistrates of every burgh are authorized and required to make annually a valuation of all lands and heritages in every parish in the county and in every burgh respectively. And the Legislature, seeing that in the case of railways, canals, waterworks, and other like undertakings traversing many parishes, there might

often be great difficulty in fixing fairly the value of such undertakings, and the part fairly attributable to each parish, has provided that in such cases the Treasury shall appoint a special assessor, and directions are given by the Act as to the mode in which the assessment shall be made and apportioned among the several parishes in which the works of the railway, canal, or other company are situate. The valuation so made is liable to be questioned in the mode pointed out by the Act, but unless so questioned is to be final for the year for which it is made. With respect to railway and canal companies no option, as I understand the Act, is given; they are obliged to have the valuation of their undertakings made by the Government assessor. But with respect to Waterworks Companies the case is different. They are at liberty to insist on having their works valued by the Government assessor as one entire heritage, and the value apportioned among the several parishes in which they are situate, or they may leave every parish in which any part of their works is situate to value that part singly according to its value. The Respondents have since the passing of the Act of 1854 had their entire works valued by the Government assessor, probably because they thought that the most beneficial course to be pursued by them, and it is by his decision that the sum of 976*l.* has been fixed as the value of so much of the works as is situate in the town of Greenock.

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By section 33 of the Act 1854 it is enacted :

That 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 authorized to be imposed and made upon or according to the real rent of the 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

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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.

It is clear, therefore, that under the express provisions of that Act the Appellants were bound to assess the Respondents at the sum found by the assessor to be the value of their works properly assessable on the burgh of Greenock ; and even if in ascertaining that value, the assessor had made any mistake it could not now be corrected. I have, however, already stated that in my opinion there was no mistake, and I therefore think that the *Lord Ordinary* was right in assoilzieing the Pursuers, and in finding the Respondents liable to expenses, so that the Interlocutors complained of ought to be reversed.

*Lord Chelmsford's
opinion.*

Lord CHELMSFORD :

My Lords, the question to be determined is, Whether according to the terms of the summons of declarator the Appellants are entitled to impose on or levy from the Respondents “ Assessments in respect of any annual
“ duties payable under feu contract with the proprie-
“ tors of any mills or other buildings erected upon
“ any of the falls or mill sites held of the pursuers
“ upon or along the Shaw's water aqueduct.”

Both the *Lord Ordinary* and the Judges of the First Division seem to have considered that the validity of the assessment depended upon whether the solum of the aqueduct (by means of which the water for which the annual duties were paid passed to the mills) was in the millowners or in the Water Company. It may, perhaps, be difficult to collect from the feu contract whether the soil of the aqueduct is granted to the millowners ; but it seems to me that the Appellants may afford to concede this point, and yet successfully contend for the propriety of the assessment upon the Company.

The Counsel for the Respondents stated the question to be, Whether the millowners or the Company were to be rated in respect of the annual duties payable under the feu contract. If this really were the question, the decision would not be difficult. It certainly would be extraordinary to lay a rate upon the millowners in respect of an annual payment which is not a benefit to them, but a burden upon their lands. The millowners are not assessable in respect of the water supply, though the quantity of the supply of water may at their option be taken as the means of ascertaining the assessable value of their occupation. But they are at liberty to have the valuation made according to the yearly rent or value. In neither mode of rating could the annual duties which they pay to the Water Company come within the reach of the rate.

The Water Company are clearly liable to assessment by the Greenock Trustees, and the assessable subject upon which the rate is to be laid is their waterworks generally, according to the yearly rent and value under the Valuation Act. In ascertaining the yearly rent or value, are the annual duties paid by the millers to enter into and form part of the valuation, or to be altogether excluded? In other words, are the Company over-rated to the extent of these annual duties? This question might, and probably ought, to have been decided in another forum. If the Water Company considered that they had been improperly assessed, they ought to have appealed to the Trustees, and from them to the sheriff or his substitute, whose judgment or decision would have been final and conclusive. But, passing by the subject of jurisdiction altogether, the question seems to be reduced to the simplest point. The Water Company are assessable in respect of their waterworks as a whole. The aque-

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duct, whether the solum of it is in the Company or in the millowners, is at all events a part of the waterworks. It is clear that the waterworks generally must be assessed upon the yearly value of the entire subject. The annual duties paid by the millers for the water supply are part of the yearly rent or value ; no person is rated separately in respect of them, and no reason exists for separating the aqueduct from the rest of the works as a distinct subject of assessment. If this separation were to be made, a large portion of valuable property would escape assessment altogether. It could not, for the reasons given, be laid upon the millowners ; and if it were not imposed upon the Company they would not be assessed according to the entire value of their waterworks.

It was asserted in argument that if the Company were rated for the increased value of their property arising from these feu duties, the same subject matter would be twice rated. But this is not the case. If the millers are rated according to the amount of horsepower, it has been shown that the water duties would not be reached by such an assessment ; and even if they were to elect to have their mills rated in the same manner as other property, although the rate upon them might be higher, in consequence of the increased value of their mills occasioned by the water supply, the duties which they are liable to pay would not be any part of the subject of this assessment, but would rather be a deduction to be made before the rateable value could be ascertained.

Upon these short grounds I agree that the Interlocutors appealed from ought to be reversed.

Ordered accordingly.

MAITLAND & GRAHAM—MUGGERIDGE & BELL.