have been amended on appeal, and those in which the Court proceeded in the cases of *Stevenson* and of *Barlas*, I have deemed it right to adhere to the course adopted in these cases, and that without offering any opinion on the merits of the questions raised on the terms and effect of the title, and of the possession which is alleged to have followed upon these titles.

Counsel for Appellant—Comrie Thomson—Gunn. Agents—Paul, Forres—Robert Stewart, S.S.C.

Counsel for Respondent—Mackay. Agent—W. Grant, Forres.

COURT OF SESSION.

Wednesday, October 1.

CORPORATION OF GLASGOW, ETC. *v.* ASSESSOR OF RAILWAYS AND CANALS.

Valuation — Exemption — Valuation of Water-works yielding no Profit—Allocation of Total Valuation among various Parishes.

Held (following *Dalbeattie* case, 19 Scot. Law Rep. 568) that water-works belonging to statutory trustees, who raised a revenue by assessment, but were prohibited by their statutes from making a profit out of the undertaking, had an annual assessable value, consisting of the revenue remaining after meeting the necessary outlays for management and maintenance.

A portion of the annual revenue raised by the assessment was required for payment of annuities, forming part of the consideration payable for prior undertakings acquired by the trustees. *Held* that there was no claim for deduction of the annuities, since they were part of the revenue arising from the trustees' ownership of the subjects forming the undertaking.

Held (following the *Dundee* case, 21 Scot. Law Rep. 261) that the principle of allocating the total valuation of water-works situated in different parishes, both within and without the area of distribution, is to allocate to each parish the proportion of the total valuation which the cost of the works in that parish bears to the cost of the whole.

The Valuation of Lands Act 1854 (17 and 18 Vict. c. 91) provides by section 6—"In estimating the yearly value of the 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 a 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."

By the interpretation clause (section 42) the expression "lands and heritages" is declared to include water-works.

The Assessor of Railways, Canals, &c., acting under the Act, in making the valuation for the year ending at Whitsunday 1885 of the undertakings of the Edinburgh and District Water Trustees, the waterworks undertakings of the Corporation of Glasgow, and of the Corporations of Dundee, Aberdeen, and Dunfermline, fixed the value of these undertakings on principles which were objected to by them, and the present appeals to the Lord Ordinary on the Bills were taken under the statute for the purpose of having the valuations altered. The case of the Corporation of Glasgow was taken as a test case raising the questions involved in the appeals by the corporations and trustees owning the various undertakings.

The Assessor had fixed the annual value of the water undertaking of the Corporation of Glasgow at £131,404. This was arrived at by taking the gross revenue at £157,701, and deducting therefrom for working charges £22,736, and for percentage on capital necessary to carry on the business, interest on value of meters, plant, &c., £3561 — in all £26,297, leaving the sum of £131,404, fixed by him as the annual value to be entered on the roll.

This valuation was objected to by the Corporation on the grounds (1) that the Corporation were prohibited by their statutes from making any profit from the supply of water, but were bound to supply it within the area of distribution at cost price, any surplus revenue of one year to be carried to the credit of next year's account, and any deficit to be made up by assessments during the next year. Since then, there being no profit, the undertaking was not capable of being let from year to year to a tenant, it had no value in the sense of the statute. The assessments which could be levied were limited to the amount of revenue actually required to pay working expenses, interest on, and liquidation of debt. (2) Assuming that the subjects ought to be entered on the roll—By the Acts under which the undertaking was held by the Corporation, a part of the revenue was annually applied to a sinking fund intended to provide for the eventual payment of the debt. The sum put to this sinking fund ought to be deducted from the valuation. (*b*) The Corporation were obliged to provide a large annual sum to pay certain perpetual annuities which were part of the price which the Corporation had paid in order to acquire certain former works. The amount of these annuities ought to be deducted. (*c*) There ought to be a deduction for working charges and repairs which were properly chargeable against revenue.

An appeal was also taken by the Parochial Boards of the Barony Parish and the City Parish of Glasgow, and (in the case of the Edinburgh Water-works) by the St Cuthbert's and Canongate Combination Parochial Board, Edinburgh.

The appeals by the Parochial Boards were on these grounds—(1) That the Assessor had allowed deduction of the whole salaries paid to the departments of the engineer, clerk, and treasurer instead of only one-half thereof; (2) that the allocation of the sum taken as the annual value had been made by the Assessor on the principle that where the works were situated in various parishes, some of which were outside the area of distribution, there should be allocated to each parish in which the works were the proportion of the total annual value which the structural cost of the works in each parish bore to the total struc-

tural cost. That was the rule applied in the *Dundee* case last year (see *ante*, Dec. 21, 1883, 21 Scot. Law Rep. 261), but it was an erroneous principle, the true principle being to apportion the *cumulo* valuation among the parishes in which the area of distribution was situated, which area was the only profit-producing part of the undertaking and might be let to a tenant, and to hold the other portions of the undertaking which yielded no profit as being of no value; or otherwise, to hold the value of the portions of the undertaking outside the area of distribution to be the value of the land occupied, as compared with the same extent of land in the immediate neighbourhood, together with 4 per cent. on the cost of the structural works erected thereon, and to apportion the remainder of the *cumulo* valuation among the parishes in which the area of distribution, being the profit-producing part of the undertaking, was situated. This principle had been adopted in England.

Appearance was made for the Commissioners of Supply of the county of Stirling, who were interested (in the *Glasgow* case) in the last-mentioned question, and contended that the allocation made on the principle of the *Dundee* case, *sup. cit.*, was right, and should be affirmed. A similar appearance was made for the Commissioners of Supply of Midlothian (in the *Edinburgh* case).

The Lord Ordinary after hearing counsel issued the following interlocutor in the appeal of the Corporation of Glasgow:—"The Lord Ordinary having considered the appeal and heard counsel, finds that in fixing the annual rent or value of the lands and heritages belonging to the appellants, a deduction should be allowed from the gross revenue of all necessary outlays for management, maintenance and repairs which are properly chargeable against revenue, and not merely of a proportion of such charges. To this effect and extent sustains the appeal; *quoad ultra* dismisses the action and remits to the Assessor to amend the valuation in accordance with the interlocutor.

"*Note.*—Two questions have been argued in this and in the corresponding appeals for the Corporations of Edinburgh, Aberdeen, Dundee, and Dunfermline."

"It is maintained that although the water-works are not exempt from valuation, and must be entered in the valuation roll, they have in fact no nominal value in the sense of the statute, because the Commissioners are prohibited by their Act of Parliament from making profit from the supply of water, and therefore can derive no revenue from their undertaking beyond what is necessary for the actual cost of supply. The question thus raised by the appellants appears to me to have been virtually if not in terms decided against them by the judgment of Lords Lee and Fraser in the case of *The Local Authority of Dalbeattie* (see *ante* March 1, 1882, 19 Scot. Law Rep. 568), and apart from that decision I should have had no difficulty in holding that the main contention of the appellants is unfounded. I agree that in following out the rule of valuation prescribed by the statute it must be assumed that if the water-works are let the tenant would be subject to the same restrictions as to the rates to be levied as are imposed upon the corporations. It may be therefore that if he were prohibited by statute from levying water-rates to an amount that would leave a surplus in his hands after meeting the necessary outlays for management and maintenance, it must be held that there could be no rents in the sense of the statute. But, on the other hand, if after meeting these expenses, there is still a surplus revenue, such surplus not representing tenants' profits to any extent but being payable to the owner exclusively for the use of the heritable subjects, must in my opinion be considered as rent in the sense of the statute. I agree therefore with what was said by Lord Fraser in the case cited, that property which is capable of yielding a net annual revenue beyond the necessary outlay for repairs and other expenses which must be paid in order to command that revenue, is property that must be valued, and I think this view entirely in accordance with the English decision founded on by the appellants.

"The alternative mode of valuation by taking a percentage upon the cost of construction which is proposed by the appellants appears to me to be inconsistent with the statute, since the rule prescribed by the 6th section required that the revenue derived by the owner of lands and heritages in respect of his ownership shall be taken as the yearly rent or value.

"The only question for consideration therefore comes to be, what are the deductions which should be made from the gross revenue for the purpose of determining the rent? The most material deductions claimed by the appellants are for the annuities payable to the shareholders of the Glasgow and Gorbals Water Companies, whose undertakings they acquired by purchase and for payments made towards a sinking fund. I am of opinion that as regards these items the claim for deduction is inadmissible. It is immaterial for what purpose these annuities are paid or by whom they are received. The material question is whether the money which goes to pay them is revenue arising to the appellants from their ownership of the heritable subjects under valuation. If it be so, it forms the value or a part of the value of these subjects for the purposes of the Valuation Act, and it is just as irrelevant to inquire whether after it has come into the hands of the Commissioners it is applied towards the payment of debt as it would be to enter into a similar inquiry with reference to the uses to which the owner of any other heritable subjects might find it necessary to apply his rents. It is said that the annuities which are payable to the shareholders of former water companies are in truth the proceeds of works which are now obsolete, and which are not the property of the corporation. But the revenue on which the valuation has been calculated is not derived from these obsolete works but from water rates levied from the ratepayers in respect of the advantage they derive from the existing reservoirs and water-works of the corporation, or in other words, in respect of their use of the heritable subjects under valuation.

"The claim for deduction of working charges and expenses of maintenance, on the other hand, is in my opinion well founded. The distinction between landlords' and tenants' charges appears to me to be inapplicable to a case such as the present, where in consequence of statutory restrictions it is impossible that there should be in fact a division of revenue between the landowner and

a tenant. The true view in my judgment is that stated by Lord Fraser, that the net income derived from the water-rates after deduction of all necessary outlays is the yearly rent or value of the water-works.

"The question as to the allocation of the valuation among the various parishes in which the works are situated would have been one of difficulty were it now to be decided for the first time, but it has been fully considered and determined by Lords Lee and Fraser in the case of the *Dundee Waterworks*, and their judgments must be taken as ruling the present case. The main ground on which it is challenged appears to be founded on a misconception of the principles of valuation. It is said that the only profit-producing part of the undertaking is the area of distribution. But there is no profit from the undertaking except what represents the rent of the entire heritable subjects, and if there were any such profit it would not enter the valuation. It is true that the area of distribution derives an advantage from the distribution of cheap water, in which the parishes outside that area do not participate, and that advantage will be represented by an increase in the rateable value of the houses within the area of distribution. But the water-rates which are levied in return for that advantage are payable for the use which the ratepayers may take of the entire works and reservoirs which are required for bringing the water of Loch Katrine into Glasgow, and not for the use of that part of the works alone which is situated within Glasgow.

"I agree with Lord Fraser that no sound distinction can be taken between different portions of the entire works as being more or less direct or indirect sources of revenue.

"I should add that in allocating the valuation according to the cost of the structural works, I understand the assessor to have taken also into account the value of the *solum* which had been acquired. The allocation would otherwise be inequitable. But as the point is not taken in the appeals against the allocation, I assume that it is not raised by the method of valuation adopted, and have not thought it necessary to deal with it in the interlocutors disposing of these appeals."

In the appeal by the Parochial Boards the Lord Ordinary dismissed the appeal, referring in his note to the interlocutor and note in the appeal by the Corporation of Glasgow as fully stating the ground of judgment.

Counsel for Parochial Boards—Lord Advocate Balfour, Q.C.—Dickson—Ure. Agents—James M'Caul, S.S.C.—John Gill, S.S.C.—Mackenzie, Innes, & Logan, W.S.—W. & J. Burness, W.S.—Morton, Neilson, & Smart, W.S.

Counsel for Commissioners of Supply—Keir—Guthrie—Dundas. Agents—Dundas & Wilson, C.S.

Counsel for Corporation of Glasgow—J. P. B. Robertson—Hay. Agents—Millar, Robson, & Innes, S.S.C.—Rhind, Lindsay, & Wallace, W.S.

Thursday, October 17.

SECOND DIVISION.

[Sheriff of Forfarshire.

MACFARLANE *v.* THOMSON.

(See *ante*, vol. xxi. p. 577.)

Process—Sheriff—Appeal to Court of Session—Extracted Decree—Court of Session Act 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 68—*Competency.*

In a Sheriff Court action the defender was assoilzied with expenses by the Sheriff Substitute. On appeal the Sheriff adhered, and thereafter the Sheriff-Substitute gave decree for the taxed amount of the defender's expenses. The defender extracted only the decree for expenses, and the pursuer paid part of them. Thereafter the pursuer appealed to the Court of Session against the interlocutor of the Sheriff. The defender objected to the competency of the appeal. *Held* that the interlocutor of the Sheriff disposing of the merits of the cause not having been extracted the appeal was competent.

The Court of Session Act 1868 provides by sec. 68 that at expiration of the period of twenty days after the date of a judgment in a Sheriff Court the Clerk of the Court may, if no appeal have been taken, give out the extract, "it being competent however to take such appeal at any time within the period of six months from the date of final judgment in the cause unless the judgment has previously been extracted or implemented.

David Macfarlane, boiler maker, raised an action in the Sheriff Court of Forfarshire at Dundee against William B. Thomson, engineer, for compensation for bodily injuries sustained by him while working in the defender's employment.

On 20th July 1883 the Sheriff-Substitute (CHEYNE) pronounced an interlocutor containing certain findings in fact, assoilzieing the defender from the conclusions of the action, and finding him entitled to expenses.

On 6th October the Sheriff (TRAYNER) adhered with additional expenses.

On 16th October the Sheriff-Substitute decerned against the pursuer for payment of the taxed amount of the defender's account of expenses.

On 31st October the defender extracted the last-mentioned decree, viz., that for expenses. He did not extract that of the Sheriff.

This decree for expenses was in part implemented by the pursuer by payment to the defender of a portion of the expenses decerned for.

On 13th March 1884 the pursuer lodged an appeal to the Court of Session against the interlocutor of the Sheriff of 6th October.

At the calling of the case on the Short Roll the defenders objected to the competency of the appeal and argued that the appeal was incompetent because it was lodged after final judgment in the cause had been both extracted and implemented. He had no interest to extract anything but the decree for expenses. That decree was included in, and could not be separated from, that on the merits, and extract of it was equivalent to extract of the decree of absolvitor.

Pursuer replied—The defender could not bar