

Wednesday, March 9.

SECOND DIVISION.

[Lord M'Laren.

GIBSON v. WEST LOTHIAN OIL COMPANY.

Process—Expenses—Skilled Witnesses—Act of Sederunt, 10th July 1844.

The pursuer in this action for damages for injury to his crops by the defenders' operations was unsuccessful in the Outer House, but the Inner House recalled the interlocutor of the Lord Ordinary and awarded damages. He then moved, within eight days of the decision of the Inner House, for a certificate for the expense of certain scientific witnesses adduced by him. The defenders objected that the motion could only be competently made before the Judge who took the proof. The Court held the motion incompetent and refused it.

Counsel for Pursuer—Rhind. Agent—Thomas Dalgleish, S.S.C.

Counsel for Defenders—R. Johnstone—G. W. Burnet. Agent—Robert Stewart, S.S.C.

VALUATION APPEAL COURT.

Wednesday, March 9.

(Before Lords Lee and Fraser.)

EDINBURGH GAS-LIGHT COMPANY v. THE ASSESSOR FOR LEITH.

Valuation Cases—Gas-Work—Valuation Act 1854 (17 and 18 Vict. c. 91), sec. 6.

Section 6 of the Valuation Act requires that the yearly value shall be taken to be the rent at which one year with another the subjects might in their actual state be reasonably expected to let by the year. In valuing the works of a gas company the assessor of a district through which its pipes ran proceeded on the principle of ascertaining the capital value of the undertaking, less an allowance for depreciation, and assessing the annual value at a percentage on the balance. The company maintained that he should proceed on the principle of taking the revenue of the year preceding, under deduction of expenses and tenants' profits, as the annual value to be allocated among the various parishes through which the pipes ran. On appeal the Court was divided in opinion, Lord Lee holding that the assessor was right, and Lord Fraser holding that he was wrong, and the Court being thus divided the judgment of the Magistrates, affirming the assessor's valuation, stood.

At the Court of the Magistrates of the Burgh of Leith, on 14th September 1886, for the purpose of hearing and disposing of appeals to said Court under the Act for the Valuation of Lands and Heritages in Scotland (10th August 1854) and Acts amending the same, the Edinburgh Gas-Light Company appealed against entries in the

Valuation Roll of the burgh for the year 1886-87, of the sums of £347, £31, and £220 (in all £598), for the parishes of South Leith, St Cuthbert's, and North Leith respectively, the nature of the subject valued being the Company's gas-pipes underground in these respective parishes.

In lieu of these sums the Gas Company craved that the following values should be substituted respectively, viz. £185, £16, and £117, maintaining that the valuation should be ascertained and assessed on the principle of taking the amount of revenue of the company for the supply of gas (including the sale of residual products) for their preceding financial year, and deducting therefrom the amount of expenses incurred in earning said revenue, excluding from said expenses the cost of erection of works and laying of pipes, interest on borrowed money and working capital, insurance of building and apparatus, and landlords' taxes; and after a further deduction of 5 per cent. on the amount of said expenses in name of tenants' profits, allocating the balance thus brought out to the city of Edinburgh, the county of Edinburgh, and the burgh of Leith, through all of which districts the undertaking of the company extended, in proportions corresponding to the amount expended by the company on works in each.

The Assessor, on the other hand, contended that the principle of valuation ought to be to ascertain the capital value of the company's undertaking, less an allowance for depreciation, and to assess the annual value at a percentage on the balance, which percentage he fixed at 8½ per cent. He stated that the result (£666) was so little above the valuation of last year (£598) that he had allowed last year's valuation to remain for this year.

The facts parties admitted were that the undertaking of the company lay in the city of Edinburgh, the county of Edinburgh, and the burgh of Leith, and the gross capital expenditure in these districts respectively was in the proportions (subject to correct calculation) of 96 per cent., 1¼ per cent., and 2½ per cent.

The Magistrates dismissed the appeal and sustained the valuation of the Assessor; whereupon the Company required the Magistrates to state a Case in terms of section 7 of the Valuation of Lands (Scotland) Amendment Act 1879.

It appeared from the Case stated that in order to fix the valuation of the company's undertaking in previous years, the invariable mode had been to submit to the assessor for the burgh of Edinburgh a return showing—“(1) The amount of revenue drawn by the company for the supply of gas (including the sale of coke, gas tar, &c.) for the past year; (2) The amount of expenses incurred by the company in earning such revenue, exclusive of erection of works, laying of pipes, interest on borrowed money, and landlords' taxes; and (3) The total amount expended by the company in erecting works and laying pipes in the parishes in which they are situated respectively. The assessor deducted the amount of these expenses from the amount of revenue, thus ascertaining the nett income of the company from its business, and from this nett income he allowed a further deduction of 5 per cent. on the amount of expenses in name of tenants' profits, and a fixed sum of about £700 for risk; the balance was then taken as the rental of the whole undertaking