tion. It was held also, no doubt, that percentage upon capital expended is not to rule exclusively. For capital may be unprofitably expended. But the capital value of the works and even the cost of the works was not discountenanced as a legitimate factor. Nor can I agree that both modes were condemned. Neither was to be taken exclusively. The questions put by the Judges in the *Dumbartonshire* cases show that cost of erection was considered to be one of the factors which may enter into the question of annual value of property occupied by the proprietor for such purposes. And it is necessarily so. For it is impossible to ascertain the rent at which such subjects in the occupation of proprietors might be reasonably expected to let one year with another without taking into account the return for which the proprietor could afford to give possession, as well as the sum which a tenant could afford to pay, and the demand for premises of that kind. It seems to me very clear that this is a fair mode of valuation as against the proprietor in occupation. He could not complain of their being valued upon the principle of ascertaining the rent at which he could afford to let them. For that is simply adopting the calculations on which he himself must have proceeded in laying out his money; and unless he can show (which is not here attempted) that his expenditure has not answered his purpose, and that the works cannot be carried on in these premises so as to yield a fair return, the least that he can expect is to be valued at what a prudent speculator would feel bound to charge against himself as rent, before beginning to estimate profits, viz., a fair percentage upon the capital sunk in the heritable property. Further, I think that a percentage upon capital value, although not to be taken exclusively as the rule of valuation, gives an intelligible and legitimate factor in estimating annual value, not only as against the proprietor, but as against all concerned where the subjects are occupied by the proprietor for trading purposes. For just as an intending purchaser considers the number of years' rental in estimating capital value or price, so I think the price or capital value may be considered, and must be considered in the case of subjects occupied by the proprietor in estimating the annual value with which he is bound to charge himself as rent.

It is contended for the assessor that the annual value must be ascertained by a comparison of income and expenditure, because a hypothetical tenant would inquire into these matters. One objection to this plan is that it involves apparently the necessity of taking into account not only the value of the heritable subjects, but also of the moveable plant, which is all inextricably mixed up with the heritage by the method of calculation adopted by the Commissioners in this case. But I hold the argument to be altogether fallacious. Neither the assessor nor any other ratepayer has anything to do with profits. The subjects must be entered at their annual value though no profits are made, and the annual value cannot be increased on account of the profits being large. The effect of an increase of profits will probably appear in another way, viz., by other works of the like kind being constructed, and the value of lands and heritages in the district being enhanced in ordinary course.

On the whole, I am of opinion that in this case, there being no suggestion that the works have been so constructed as to afford no criterion of lettable value, the method proposed by the appellants is the more reasonable of the two plans before us. And adopting that method, I should have thought that 8½ per cent. upon capital value was a liberal allowance for rental, and quite as much as the proprietors are bound to charge against themselves as rent before striking the profits of the concern. But as your Lordship proposes to reduce the magistrates' valuation only to £1099, and that is not greatly above the amount brought out by estimating the lettable value in a manner consistent with the statute, I agree in fixing that sum.

As to the pipes, I should have been disposed at first sight to think them moveable in the absence of any statutory authority for laying them, or arrangement giving them fixity of tenure. They are just a means of conveyance, like the cart carrying candles from the manufactory to the houses where they are used. But this point I hold to be settled by decision the other way, and I see no reason to disturb the practice founded on that decision.

The Court were of opinion "that the determination of the Magistrates and Town Council was wrong, and that the value should be entered at £1099."

Counsel for Gas Company—J. P. B. Robertson. Agents—Frasers, Stodart, & Ballingall, W.S.

Counsel for Assessor — Jameson. Agent — Andrew Allan.

Saturday, February 24.

GOSNELL, APPELLANT.

Valuation Cases—Lease—Meliorations by Tenant.

Subjects were let for 21 years for business premises at a fixed rent, the tenant to have right to erect additional buildings on the ground during the lease, but not to be liable in any rent for such additional buildings. The tenant having erected such buildings, *held* that their value was not to be added to the sum stipulated in the lease in assessing the annual value of the subjects.

The 6th section of the 17th and 18th Vict. cap. 91 provides—"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: Provided always that if such lands and heritages be let upon a lease the stipulated duration of which is more that twenty-one years from the date of the same, or in the case of minerals more than thirty-one years from such date of entry, the rent payable under such lease shall not necessarily be assessed as the yearly rent

or value of such lands and heritages, and such yearly rent or value shall be ascertained in terms of this Act irrespective of the amount of rent payable under such lease."

At a meeting of the Magistrates and Town Council of the burgh of Edinburgh on the 11th September 1882, for the purpose of hearing and disposing of appeals against valuations made by the assessor for the year from Whitsunday 1882 to Whitsunday 1883, Mrs Elizabeth Gosnell, Reigate, Surrey, appealed against a valuation of £180 made by the assessor in respect of the house and workshop known as "Whiteford House," and situated in Galloway's Entry, 53 Canongate, in the burgh of Edinburgh, and which belonged to her, and was occupied by The Marr Typefounding Company (Limited).

The subjects in question were let upon a lease for twenty-one years from Whitsunday 1878, at an annual rent of £120, and under the lease the tenants had the power to erect additional buildings on the ground for the purposes of their typefounding business. For these buildings, if erected, the proprietrix was to receive no rent or consideration. No obligation was imposed upon the tenants to build.

Buildings of considerable value were erected by the tenants in virtue of the power given them to build. The assessor had arrived at his valuation by valuing these buildings, and maintained that the subjects actually upon the ground were the proper subjects of valuation, though no rent for them was payable under the lease. The appellant maintained that the actual rent stipulated by the lease must be taken. The Magistrates and Council confirmed this valuation of the assessor. The appellant took a Case for the Valuation Appeal Court.

Authority—*Coltness Iron Co.*, 1 March 1882, 19 Scot. Law Rep. 566.

At advising—

Lord Lee—The statute requires the assessor, where subjects are *bona fide* let for a yearly rent, conditioned as the fair annual value thereof, to take such rent as the value to be entered on the roll, unless the lease exceeds twenty-one years, or in the case of minerals thirty-one years. In this case the subjects are let under a lease not exceeding twenty-one years. It is not alleged by the assessor that the lease is not *bona fide*, or that the rent payable under the lease is not conditioned as the fair annual value. All that the assessor says in support of his valuation is that it is the value of the subjects actually upon the ground at the time of the valuation which must be taken. He assumes it to be a matter of course that if any additions have been made the lease must be disregarded. I am unable to reconcile this view with the terms of the statute. It is only where the subjects are not *bona fide* let, or where the rent is not conditioned as the fair annual value, or where the lease exceeds twenty-one years, that the lease can be disregarded. If additions are made under an obligation in the lease, then of course the stipulated money rent ceases to represent the fair annual value, and the subjects must be valued apart from the rent. But where as in this case additions have been made by the tenant without any obligation, and where the stipulated rent is in part paid for the power or liberty to make such additions, the statute requires the rent to be taken. This is the principle applied in the *Coltness* case (1882), and in the cases there referred to; and it appears to me to rest upon a very obvious and substantial foundation in reason. The subjects here would not have yielded the rent of £120, but for the power and liberty of making these alterations.

I therefore think the determination of the Commissioners wrong.

Lord Fraser concurred.

The Court was of opinion "that the determination of the Magistrates and Council was wrong, and that the value should be entered at £120."

Counsel for Appellant—Jameson. Agent—John Milligan, W.S.

Saturday, February 24.

LAWSON'S REPRESENTATIVES AND O'DONNELL.

Valuation Acts—Lease—Sub-Tenants.

Where subjects were let under a lease, and were in part sublet, *held* that the assessable value was the rent stipulated in the lease without regard to the rents paid by the subtenants.

This was an appeal by James Lawson's representatives and the Rev. Alexander O'Donnell, Falkirk, from a decision of the Magistrates and Council of the burgh of Edinburgh confirming the valuation placed by the assessor on certain subjects in Chambers Street there, of which they were proprietors. The premises were let to Francis Mohan at a rent of £80 on a lease for four and a-half years. Mohan had sublet various parts of the subject at rents amounting in all to £46, and himself occupied the remainder, which was valued by the assessor at £47. The total rental was thus £93, at which amount the assessor had entered the subjects in the valuation roll.

Argued for the appellants — The whole sum stipulated for in the lease was £80. Under the 6th section of the Valuation Act (quoted in the case immediately preceding), and on the authority of previous decisions by the Appeal Judges, the assessor must take the value stipulated for in a *bona fide* lease as the fair annual value.

Authorities—*John Bruce* (No. 58), February 8, 1868, 11 Macph. 978; *Hay & Co.* (No. 70), July 12, 1867, 11 Macph. 981.

Argued for the assessor—The rents paid by the sub-tenants was the value of the various subjects. He was entitled to enter each subject in the roll at its annual value irrespective of the rent paid under the lease.

At advising—

Lord Lee—I am of opinion that in the absence of any ground for holding that the subjects were not *bona fide* let for the yearly rent of £80, or that that rent was not conditioned as the fair annual value thereof, the increase of rent obtained by subletting some portions is not a circumstance sufficient to warrant departure from the statutory rule of valuation applicable to subjects under lease. The assessor is bound also to enter the names of