details, the Court is debarred from entertaining such question, with the absurd result that they could not in consequence deal effectively with the question of value, even though they may have no power to order the roll to be corrected in the detail which they have thus had incidentally to consider. In this I think I am supported by Lord Dundas in deciding the *British Linen Company* case (*supra*), where he says (p. 516) that the matter competent to be submitted to the Court "must be one which consisted of, or at all events included, a question of value."

The appellant here maintains that the value of his holding should be entered at £3, 11s. 6d., being his former crofting rental, and not at the sum of £7, 7s. 6d., which the Assessor has put upon it. The interest in this particular case is small. But it is, I understand, a test case, and will have an important bearing upon Highland valuations.

It is true that the appellant was until 1905 a crofter holding under the proprietor of the estate of Glendale at a fair rent, fixed by the Crofters Commission, of £3, 11s. 6d. In 1905 the Congested Districts Board purchased the estate of Glendale, and having broken up the estate into small holdings they effected a sale of No. 12 in the township of Skiniden to the appellant, with entry at Whitsunday 1905. The price was made payable by instalments of £4, 12s. 6d. per annum, spread over fifty years, the instalments consisting of a portion of the price and interest on the balance calculated at the low rate of 2¾ per cent. per annum. Though possession was given, the title was not to be transferred until the price was fully paid, and until that time arrived—and it might be accelerated at the pleasure of the purchaser—his right must continue to stand on the agreement or minute of sale, which contains a number of restrictive conditions. But none the less, from the date of his entry under this minute he has ceased to be a crofter and has become proprietor. It is sufficient to refer to the Crofters Act 1886 to show that he has ceased to be a crofter. Neither does he now satisfy the definition of crofter, nor do any of the provisions of the Act any longer apply to him. It is impossible that he can at one and the same time hold the position of crofter at a fair rent, which he neither pays to his former landlord nor to the Congested District Board, and proprietor on the terms stipulated in the minute of sale, the payments under which are not rent but the price at which he has purchased, with interest added to admit of deferred payment. The question is not in the least affected by the fact that until the price is fully satisfied, though proprietor, he possesses under certain conditious contained in the minute of sale, and without a feudal title.

It is clear, therefore, that the appellant fails in his contention that the Assessor's valuation is to be replaced by his old crofting rent, as though he were still a crofting tenant, and as this is the sole ground of appeal, his case fails. Whether the Assessor's valuation of £7, 7s. 6d. is the true letting value of the appellant's holding, or whether the true letting value is the old fair rent, I am not called upon to consider, as the case contains no materials to enable me to judge. I think that it is very improbable that the fair rent, which is fixed under very anomalous conditions, partly depending on the crofting tenure and partly enacted by statute, is the true letting value of the subjects in their actual condition now that the land is freed from crofting tenure. But in this case the Court can only determine, as the Valuation Committee have done, that the subjects in question must be entered, not at the old crofting rent pure and simple, but at their true letting value, whatever that may be, in terms of the Lands Valuation Act. And that, for the purposes of this case, must be held to be the value put upon them by the Assessor, for there are no materials enabling the Valuation Committee or this Court to review the valuation. I therefore propose to your Lordships that we find the determination of the Valuation Committee to be right.

LORD SALVESEN—I concur.

LORD CULLEN—I also concur.

The Court held that the determination of the Valuation Committee was right.

Counsel for the Appellant—Chisholm, K.C.—Malcolm. Agents—Malcolm Graham Yooll, S.S.C.

Counsel for the Assessor—Constable, K.C.—Hon. W. Watson. Agents—Baillie & Gifford, W.S.

Wednesday, December 13.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen).

PHILIP *v.* ELGIN ASSESSOR.

Valuation Cases—Subjects—Separate or Cumulo Entry—Hotel and Adjacent Stables—Finance (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8), *sec.* 43 *and Sched. I.*

A hotel and stables, owned and occupied by the same person, and separated by a stable-yard to which both had access, were together entered in the valuation roll at a certain *cumulo* value. The proprietor, looking to the mode in which licence duty was charged under the Finance (1909-10) Act 1910, section 43, and Schedule I, while acquiescing in the amount of the valuation, appealed on the gorund that the hotel and stables should be entered separately, the valuation being split up between them.

Held (*diss.* Lord Salvesen) that in the circumstances the hotel and stables had been properly entered in the valuation roll as a *unum quid*.

At a Court of the County Valuation Committee of the County of Elgin, held at

Elgin on 19th September 1911, John Philip, Strathspey Hotel, Grantown-on-Spey, appealed against the following entry in the valuation roll of the county for the year ending Whitsunday 1912:—

Description and Situation of Subjects.		Proprietor.	Occupier.	Yearly Rent or Value.
Description.	Situation.			
Strathspey Hotel, Garden, & Stables	70-72 High Street	John Philip, Hotelkeeper	Proprietor	£116

The appellant craved that the above entry should be deleted from the roll and the following entries inserted in place thereof:—

Description and Situation of Subjects.		Proprietor.	Occupier.	Yearly Rent or Value.
Description.	Situation.			
Hotel	70 & 72 High Street	John Philip, Hotelkeeper	Proprietor	£80
Stables, Coach-houses, Harness Room, Hay and Corn Lofts, &c.	Spey Avenue	Do.	Do.	£36

He explained that he did not ask that the value of the subjects as a whole should be reduced, but that the rent or value should be allocated between the hotel and the stables. He also explained that the principal object in getting the subjects separated was to enable him to take advantage of a reduced hotel licence duty.

The Valuation Committee being of opinion that the hotel and stables were properly entered as one subject, dismissed the appeal.

The appellant took a Case for the opinion of His Majesty's Judges.

It was stated in the Case that the following *facts* were admitted or proved or within the knowledge of the Committee—"The subjects, consisting of the Strathspey Hotel, gardens, and stables, are situated at the corner of High Street and Spey Avenue, Grantown-on-Spey. The hotel is situated in the main street of the town—High Street—and possesses a commodious bar and good accommodation for commercial travellers and other customers, visitors, and other guests. The stable-yard is entered from Spey Avenue. The stables are situated immediately behind and adjacent to the hotel, there being access from the back door of the hotel to the stable yard. The public enter the hotel from High Street, and the stables from Spey Avenue. The stables consist of stalls for twelve horses in all, one stable built of stone having accommodation for six horses, and another built of stone and wood and having also accommodation for six horses. There is a large coach-house of wood, a smaller coach-house, and the usual accessories of harness room, loft, &c., and a spacious yard. There is no internal communication between the hotel and the stables. The stables being structurally separate, could be separately let.

"2. The business carried on in the stables is partly a hiring business and partly as an adjunct to the hotel business. The appellant, in addition to other carriages for hire, has an omnibus which regularly attends the stations at Grantown-on-Spey on the Highland and the Great North of Scotland Railway lines. These stations are situated respectively about half-a-mile and a mile and a quarter from the hotel. This 'bus conveys customers and visitors and guests to and from the hotel. It also conveys passengers to and from the stations who do not go to the hotel.

"3. Hitherto the hotel and stables have been assessed as one subject. For some years, up to and including the year 1909-10, the valuation for the whole subjects was one sum of £130. The Assessor proposed for the year 1910-11 the same valuation of £130. The appellant appealed against that valuation on the ground that formerly his licence duty was £30, and that it was considerably increased under the Finance (1909-10) Act 1910. The appeal was granted on this ground, and the valuation reduced from £130 to £116.

"4 The full licence duty for the subjects under section 43 of the Finance (1909-10) Act 1910, and First Schedule (C, I, 1) is one half of the annual value, thus making the duty £58. The Commissioners of Customs and Excise, however, have under paragraph 3 of Provisions applicable to Retailers' On-Licences in the First Schedule to the said Act, admitted for the year 1910-11 that the hotel in question is situated in a place where visitors resort only during certain seasons of the year. The minimum licence duty payable for a "seasonal" hotel is £30 in the case of premises of an annual value not exceeding £100, and in any other case £50."

Argued for the appellant—The hotel and stables ought each to be entered separately in the roll. In view of the manner in which the increased licence duty was imposed in the case of "seasonal" hotels, it was important for the appellant that the valuation of these licensed premises should not exceed £100. The stables and hotel were separate subjects, and separate and independent businesses were carried on in them. They were capable of being separately let, and were thus distinguished from the class of subjects dealt with in *M'Jannet*, March 1st, 1882, 10 R. 32, 19 S.L.R. 590, which required to be let as a whole. There being no internal communication between the stables and the hotel they fell to be entered separately in the roll—*Bank of Scotland* v. *Edinburgh Assessor*, March 12, 1890, 17 R. 839, 27 S.L.R. 611, and March 10, 1891, 18 R. 936, 28 S.L.R. 619. Further, stables were not a necessary adjunct of a hotel, and could not therefore be regarded as a "pertinent" in the sense of the Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. cap. 91), section 42—*Barony Parochial Board*, June 20, 1882, 10 R. 39, 19 S.L.R. 728. Counsel also referred to *Irvine* v. *Aberdeen Assessor*, March 17, 1897, 24 R. 741, 34 S.L.R. 622.

Argued for the Assessor—The whole premises were occupied as one subject, and one business was carried on in them, viz., that of a hotel, with the necessary adjunct of a stable. They ought therefore, following *M'Jannet*, *supra*, to be entered together in the roll. The stables might fairly be regarded as a pertinent of the hotel. There was really no physical separation

between them, because the yard which intervened was itself part of the subject entered.

At advising—

LORD JOHNSTON—The separate valuation of hotel stables is a matter which hitherto has been of little or no material interest to the hotel-keeper. It is still of no interest to the proprietor, but has become of considerable interest to the occupant, whether proprietor or tenant, owing to the incidence of the new licence duty under the Finance Act 1910. It is now the interest of the occupant to have the hotel stables valued separately from the hotel, and this the appellant, who is proprietor and occupant, seeks to effect.

But while it is proper to ascertain that there is an interest, I do not think that this consideration can in way affect our judgment. That must proceed upon the Lands Valuation Acts alone, whatever the consequences. If these are inequitable or oppressive the remedy therefor must be found by other means. In this I am only following the Court in the *Bank of Scotland* case, 17 R. 839 and 18 R. 936.

What the land and heritage to be valued under the Lands Valuation Acts is depends, I think, on circumstances. Here the question is, Is it the hotel and hotel stables regarded as one subject, or is it the hotel and the hotel stables regarded as two separate and independent subjects? The relation of the hotel and the stables the one to the other may vary in different cases. I am only concerned with the circumstances of the present case, which are that the hotel and its stables are one property and are contiguous, the stables being "situated immediately behind and adjacent to the hotel." The hotel opens into the High Street of Grantown so far as customers are concerned, and to the same effect the stable yard opens on to Spey Avenue, which is a side street at right angles to the High Street. "There is no internal communication between the hotel and the stables," but there is "access from the back door of the hotel to the stable yard." The precise meaning of the description in the case is made quite definite by the plan which has been produced at our request. Accordingly I proceed on the footing that two back doors of the hotel are in the stable yard, and that entrance to the hotel, for those who have right so to approach, whether they be tradesmen or servants of the hotel, is from the Spey Avenue entrance, through the stable yard to one of these back doors of the hotel, and that there is free ingress and egress between the hotel and the stable yard for those employed about either. I was prepared to assume that customers using the stables, though they might sometimes use the back doors of the hotel, would be committing an impropriety in doing so. But having regard to the proximity of one of these doors to the public bar, I am somewhat doubtful of this. One of the back doors has too much the appearance of a regular access to the bar.

If the view of the facts which the case and the plans convey to me is correct, the relation of hotel and stable is much the same as that of many, probably most, hotels and their stables in country towns.

In this state of matters I cannot regard this hotel and stables as anything but one "land and heritage" in the sense of the Act, the hotel being the main subject or "building" and the stables the "pertinent" thereof—Valuation of Lands Act 1854, section 42.

Though the buildings are not internally connected, and though the stables are capable of being let separately, yet if they are so let, there must be a right of access reserved through them to the back door of the hotel, and not only that, but to the garden and bleaching-green beyond. But I do not think that I am called upon to speculate on what might be. I must regard the subjects as they are in their present occupation. They are not like a bank agent's house and the bank offices—the one appropriated to the domestic life of the agent and his family, and the other to the business of the bank. They are both used for the business of the proprietor, and their use is so inextricably connected that there cannot be said to be one separate business of the hotel and another of the stables. Though a person from the town may hire a conveyance, or a neighbouring farmer put up his gig, without either entering the hotel, yet they are both customers of the same business, and do not really differ from the visitor to the hotel who hires his conveyance from the hotel, though it comes from the stable, or the customer who puts up at the stable and gets his refreshment at the hotel. When the nature of the use is considered, the fact that there is no internal communication between the hotel and the stable is immaterial. One can hardly figure how there should be any such internal communication, or how there should fail to be such outer communication, equivalent in the circumstances to internal, unless as sometimes happens the hotel and stable are not contiguous. There is here communication, external indeed to the building, but internal to the premises, and requiring no recourse to the street, which, when the user is considered, is the equivalent of internal communication in other circumstances.

Confining my judgment to the circumstances and the user as I find them from the present papers and plan, and reserving my opinion in case the question may again be presented under different circumstances, I can come to no other conclusion than that the determination of the valuation committee in the case is right.

LORD SALVESEN—The appellant is proprietor and occupier of the Strathspey Hotel and stables; and the question is whether these premises must be valued as a *unum quid* or whether the appellant is entitled to have them separately valued. Prior to the passing of the Finance Act 1909 it was probably immaterial to him how they were valued, but since then he may have an interest to have them valued

separately, and the question is whether he is entitled to have this done. We have the material before us for making a separate valuation, for the assessor says that the stables would in his opinion be fully valued at £16, and that £100 would be a moderate valuation for the hotel. For the purposes of this case the appellant is willing that the subjects should be valued at these figures.

The material facts are fully set forth in the case. The hotel is situated in the High Street of Grantown-on-Spey. The stables are erected on part of the same feu, but entered from Spey Avenue. They are immediately behind and adjacent to the hotel, and there is access from the back door of the hotel to the stable yard. It is specially stated in the case that the stables being structurally separate could be separately let.

These being the facts, it appears to me that the matter is concluded by authority. In the case of the *Bank of Scotland* (18 R. 936) it was held that the premises of the bank, which included under one roof the banking offices and the dwelling-house of a bank official, which had no internal communication with the bank offices, ought to be separately valued. Lord Kyllachy said —"The test, I think, here is whether the houses in question are capable, not merely physically, but, all conditions being considered, of being separately let and having a separate rent or value attached to them." On the facts in the present case this test is completely satisfied. It does not appear to me to be of the smallest consequence that the appellant works his hiring business to some extent along with his hotel business. Even if he hired horses and carriages exclusively to hotel visitors the test laid down by Lord Kyllachy would be equally satisfied. In the case there before the Court the bank was the occupier of both the dwelling-house and the offices, the dwelling-house being occupied by one of their officials for bank purposes. Here, on the other hand, the only connection between the hiring business carried on in the stables and the hotel is that the 'bus which the hotel sends to meet passengers at certain stations and the horses which draw it are accommodated in the stable premises. This 'bus, while it conveys the customers and guests to and from the hotel, also conveys passengers who do not go to the hotel. There is no necessity for the appellant conducting the hiring business himself, for he could equally well make arrangements with a tenant by means of which he could get the same advantage.

Great stress was laid on the statement in the case that there is access from the back door of the hotel to the stable yard. That appears to me wholly immaterial in view of the decision in the case I have referred to, and also in the case of the same parties in 17 R. to which it was a sequel. If there is an internal communication between two parts of premises occupied by the same owner, it has been held that they fall to be valued as a *unum quid*, but that is mainly because in their actual condition they are not capable of being separately let. In the earlier case of the *Bank of Scotland* Lord Trayner dealt with the case of stables attached to a town house—"The stables of a gentleman in town are as much a convenience or accessory to his town residence as they are in the case of a country residence. They are not, however, valued along with the town residence, although situated in the adjoining street or mews. They are not so connected—as they were in the case of a country mansion or residence—as to make it impossible or difficult to let them separately." These words are entirely applicable to the circumstances disclosed here. On principle I consider the opinions from which I have quoted to be absolutely sound, and the rule established is capable of very easy application. It would be absurd to make a distinction between stables situated close to a hotel and stables at some little distance from the hotel but connected by telephone, and equally so to force a hotel-keeper, in order to escape undue taxation, to sublet his stables. For these reasons I am very clearly of opinion that the valuation committee were wrong; and that the value of the stables should be separately entered in the valuation roll.

LORD CULLEN—I concur with your Lordship in the Chair.

Stabling is a common adjunct of a country hotel. In the present case the hotel, the stabling, and the garden ground behind the stabling form one continuous property. There is communication between the different parts, and, in particular, between the hotel and the stabling. The subjects are thus suited for occupation as one holding, and they are in point of fact so occupied by the proprietor for the purposes of his hotel business. In these circumstances it appears to me they should be entered in the valuation roll as a *unum quid*.

The Court upheld the determination of the valuation committee.

Counsel for the Appellant—Chree—Keith. Agent—James Purves, S.S.C.

Counsel for the Assessor — Hon. W. Watson. Agent—Charles George, S.S.C.

Thursday, December 14.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen.)

HAGGART *v.* LEITH ASSESSOR.

Valuation Cases—Value—Public-House—Principle of Valuation—Business Turnover—Percentage of Gross Drawings.

As the result of an agreement between the assessor and a representative of the licensed traders of a burgh, with a view to securing uniformity in the valuation of public-houses in the burgh which were in the occupation of the