In the Court of Common Pleas of Lackawanna County, No. 499, September Term, 1904.

ADJUDICATION.

In Re: Appeal of Hillside Coal & Iron Company from Assessment, First Ward, Mayfield.

Where it is shown to the Court that an assessment is below the real value of a property, but a further reduction is asked for because other properties in the same city are assessed at a still lower valuation, and it further appearing that the average valuation throughout the county is at a higher rate, the Court will refuse to disturb the assessment.

Messrs. Willard, Warren & Knapp for appellant.

Mr. C. C. Donovan, County Solicitor, for appellee.

Opinion by Newcomb, A. L. J., December 19, 1904.

The item objected to in this case is "Glenwood Breaker, outbuildings, trestle and machinery, $25,000.00."

It is shown by the owners that the intrinsic value of this property is nearly $80,000.00, so that the complaint is not that it has been overvalued in itself, but that the assessment is unequal as compared with that of other improvements in its vicinity. In support of this claim the estimated value of twelve dwelling houses near the breaker has been shown by the testimony of a builder together with the assessed valuation of each. These are manifestly of very modest character and proportions. In value according to the witness they range from $700.00 to $1,300.00, aggregating $11,400.00, and the aggregate assessed valuation is $2,280.00, or just one-fifth the supposed actual value. This, it is argued, evinces an intention on part of the commissioners to assess all buildings at that proportion of their value, and that the appellant is entitled to have its assessment reduced accordingly. We think this argument is more specious than sound. In the first place the range of comparison being confined to a dozen buildings in a village containing several hundred, might be very misleading although if the assessment complained of were a dwelling house it might be more persuasive. But we are not prepared to say that the standard of comparison is legitimate for the purpose of ascertaining whether the assessment of a breaker is unequal or not uniform with other property of the same class. It may

be that in the case of these twelve houses, the estimate of the assessor was lower than it ought to have been, and it would follow that they were assessed too low. It would seem that the same thing happened with his estimate of the breaker, if, as has been either shown or assumed generally in the appeals of this year, the attempt was to assess all real estate and improvements at half its actual value, because at that rate the breaker would have been assessed at about $40,000. We feel warranted in holding from what has been developed in the hearings that the assessors were instructed to assess at the full value and so return their blotters, whereupon the assessments were entered at half their valuation returned: Regardless of such instruction this was the assessors' duty under their oath as prescribed by statute. Act May 15, 1841, P. L. 349, sec. 4; Act July 27, 1842, P. L. 445, sec. 9. The presumption is that the assessors did their duty and that throughout the county this result was accomplished.

If we hold that the appellant is correct in saying its assessment is unequal because its breaker is assessed at nearly a third of its value while the twelve dwelling houses average only one-fifth, what are we to do with the rest of the county which is presumed to be assessed at one-half? To be right, according to the evidence, both the houses and the breaker should be raised. But that we cannot do. How would it tend to equalize the assessment within the meaning of the constitution and the Act of 1889 if we should say that the rate on these few houses should become the standard for the assessment of this breaker? Would that not tend to aggravate such inequalities as are bound to creep into every triennial assessment? Instead of having a uniform rate throughout the county, there might be a dozen different rates based upon local discrepancies in themselves comparatively unimportant. Such practice would in effect make every borough, township and city a separate taxing district for county purposes. This is opposed to both principle and authority. The Act of April 19, 1889, P. L. 37, requires the court upon appeal to make such order or decree as may seem just and equitable having due regard to the valuation and assessment of other real estate in the county. Under this Act the assessed valuation of particular properties does not furnish a proper basis of assessment for all other properties; but like should be compared with like wherever that is pos-

sible. Ferguson vs Lycoming, 8 C. C. 667; Hebertson's Appeal, 2 D. R. 794. And the comparison is to be made with the generality of property of the same class, and not with a single assessment or a few assessments which may be egregiously low and out of proportion with the generality of assessments. Pringle's Appeal, 6 Kulp, 525.

In principle the case before us is precisely analagous to White et al. vs. Venango, where the appellants admitted their assessments to be below the real value of the properties, but contended for a reduction because other properties in the city of Franklin were assessed at a still lower valuation, it being shown that the average valuation throughout the county was at a higher rate. The Court refused to disturb the assessment. White vs. Venango, 10 D. R. 482.

It is ordered and adjudged that this appeal be dismissed at the cost of the appellants.