1934 *Present :* **Macdonell C.J. and Drieberg J.**

THE CEYLON TURF CLUB *v.* THE COLOMBO MUNICIPAL COUNCIL.

144—D. C. Colombo, 36,953.

Assessment—Premises of Ceylon Turf Club—Basis of assessment—Value of premises to a hypothetical tenant as a racecourse—Revenue or profit basis—Objection to assessment—Sufficiency—Ordinance No. 6 of 1910, s. 117 (2).

Where the plaintiff, the Ceylon Turf Club, lodged a written objection to an assessment under section 117 (4) of the Municipal Councils Ordinance, viz., that the annual value was excessive and should be a specified lower amount,—

***Held,* the objection was sufficient to comply with the requirements of sections 117 and 124 of the Ordinance.**

The annual value of the premises of the Ceylon Turf Club should be determined on the basis that the property to be rated is a racecourse as a going concern and on what a hypothetical tenant would pay as rent for the property, intending to use it as a racecourse.

Anything necessary for the repair, maintenance, and upkeep of the racecourse it would be the landlord's duty to provide as part of its equipment and would be part of the property to be rated.

The property would have to be rated on the revenue or profits basis.

The plaintiff Club would have to be considered as itself a possible tenant of its own enterprise in estimating what rent a tenant would pay.

In computing the rent, allowance must be made for rates and taxes due by the tenant, interest on capital required by him, and the profits which he may expect to realize on the undertaking.

THE plaintiffs, as trustees of the Ceylon Turf Club, instituted this action against the defendant, the Municipal Council, Colombo, praying that the annual value of the Club's premises be reduced from Rs. 364,000 to Rs. 295,000. Under the Municipal Councils Ordinance the defendant caused the premises of the Club to be assessed for the year 1929 at an annual value of Rs. 370,000 and gave notice of the assessment to plaintiffs on February 7, 1929. The plaintiffs on March 4, 1929, furnished to the defendant a statement in writing of their grounds of objection, viz., that the assessment was excessive and that the annual value should be Rs. 265,500. The Chairman of the Council held an inquiry under section 117 (6) of the Ordinance and as a result reduced the annual value to Rs. 364,000.

The learned District Judge dismissed the action on a preliminary objection that the plaintiffs had not furnished adequate grounds of objection under section 117 of the Ordinance. He also held that the valuation was not excessive and that the action should be dismissed on that ground too.

H. V. Perera (with him *J. R. V. Ferdinands*).—The District Judge was wrong in dismissing the action on the preliminary point that the action was not maintainable as the plaintiff had not lodged a sufficient "written objection to the assessment". The Club did not merely object

simpliciter; the Club stated the ground of its objection, to wit, "on the ground of its being excessive and not in accordance with the actual annual value thereof"; that is a sufficient specific ground susceptible of one meaning only. The District Judge has confused "grounds for objections" and "reasons for the grounds of objection"; to say that the assessment is "excessive" is "a ground of objection"; if the objection proceeded to add that the rental of the premises was only so many rupees then he would be giving a reason, a fact to support his "ground of objection".

Both parties are agreed that the tenement in question is to be rated on the revenue or profits basis and the problem then is to try to ascertain the rent which a hypothetical tenant would pay, having regard to the definition of the term "annual value" in the Ordinance. The respondent seeks to maintain that the tenement to be rated is the racecourse as a going concern intended to be used as a racecourse and contend on the authority of *Kirby's Case*[1] that all "necessary adjuncts" to the business of rating must be taken into account as increasing the rateable value of the tenement.

Kirby's Case (*supra*) is a peculiar case and has a very limited application; it cannot and does not lay down any general principle of rating law because, if it did, then it must follow that as furniture is a necessary adjunct to a residential house, the furniture should be taken into account on ascertaining the rateable value of the house; we know that this is not the case. It is not cited or referred to in any of the new editions of the recognized text-books, *e.g., Ryde on Rating* and *Karstam on Rating,* and *Ryde* in his 5th Edition devotes many pages to examining and criticising the *dicta* in the case.

The words "maintenance and upkeep" in the Ordinance do not contemplate or include, as the respondent would appear to contend, daily running expenditure of the racecourse, *e.g.*, rolling of the course. Having regard to the evidence in the case, it would be absurd to expect the hypothetical landlord of the racecourse to come on to the premises day by day to keep the tract in condition, *i.e.*, watered, rolled mowed, &c., any more so than it would be for the landlord of a dwelling house to have to give the normal daily attention to the garden, the tennis court, &c. All running expenses are tenant's expenditure and should not be sought to be allocated to the landlord as "maintenance or upkeep". Could it be suggested that polishing the floor, polishing the brass door, and window fittings, &c., in a house fall on the landlord?

The whole of the expenditure incurred on the Nuwara Eliya course should be deducted because it is necessary to continue and have the Nuwara Eliya course if the profits earned on the Colombo course are to be maintained. The tenant must be prepared to make a loss on the Nuwara Eliya course and the rent he will be prepared to pay for the Colombo course must be influenced by the amount of money he will have to expend on the Nuwara Eliya course and the loss he will make there. The fact that the Nuwara Eliya course is separately rated is beside the point; the only question is whether it will enter into the question of the amount a hypothetical tenant will be willing to offer for the Colombo racecourse.

[1] *(1906) A. C. 43.*

A. E. Keuneman **(with him *F. C. W. van Geyzel*), for defendant, respondent.—It was not contended for the defendant Council in the Court below nor is it now contended that the action was not maintainable for want of a sufficient "written objection to the assessment" and we do not seek to support the judgment on that ground.**

Annual value, as contemplated by Ordinance No. 6 of 1910, places on the hypothetical landlord the burden of the cost of "repairs, maintenance, and unkeep of the premises" in a state to command the rent, and the period of the hyothetical tenancy is a year with a reasonable expectation of a renewal. It follows, then, that on the landlord must fall the expenses necessary to keep the "premises" throughout the year in the condition in which it was let. The "premises" in the present case is the Colombo racecourse fully equipped as a going concern intended to be used as such and containing everything which makes it more fit for the purpose for which it is let—*"rebus sic stantibus"*, *The Queen v. Fletton*[1]—and if in the course of its normal user repairs, maintenance, and upkeep become necessary their cost must be borne by the landlord.

It is admitted that in rating the Colombo racecourse the correct method to employ is the "revenue" or "profits" method—*Regina v. Verrall*[2] *Crawford v. Municipal Council of Colombo*[3]. According to this method annual value is assessed in relation to nett assessable profits and to arrive at these a deduction from gross income must be made for expenditure which legitimately falls on the tenant. No expenditure incurred by him for repairs, maintenance, and upkeep can be deducted for that is precisely expenditure which the Ordinance says shall be born by the landlord, and it matters not at all that in actual practice a landlord would not do it or that the plaintiff would not take the tenancy under such conditions. It is a principal of rating law that even the owner or the actual occupier must be regarded as a hypothetical tenant willing to take the premises under the conditions of the statutory defintion—*Regina v. School Board of London*[4], *London County Council v. Erith*[5]. In the present case the plaintiffs' claim is largely based on including in the allowable expenditure items which are, statutorily, a landlord's charge, *e.g.*, repairing the track after racing or gallops, rolling, and cutting the turf.

The definition of annual value in the Ordinance is substantially the same as that in section 4 of The Valuation of Property (Metropolis) Act, 1869[6], and in section 1 of the Parochial Assessment Act, 1836, and the effect of the English cases on assessments under those Acts is that everything on the premises which makes them more suitable for the purposes for which they are let enhances the rateable value and has to be repaired and maintained by the landlord—*The Tyne Boiler Works Case*[7], *Kirby v. Hunslet Union Assessment Committee*[8]—and it is submitted that where a local Ordinance is substantially the same as an English Act our Courts will follow the decisions of the Court of Appeal in England interpreting the English Act—*Trimble v. Hill*[9]. The fact that Kirby's case is not referred to in new editions of text-books on Rating is due to changes introduced by the Rating and Valuation Act. of 1925.

[1] *(1861) 3 E. and E. 450 at 465.*
[2] *(1875) 1 Q. B. D. 9.*
[3] *14 N. L. R. 449.*
[4] *17 Q. B. D. 738.*
[5] *(1893) A. C. 562.*
[6] *32 & 33 Vict. C. 67.*
[7] *(1886) 18 Q. B. D. 81.*
[8] *(1906) A. C. 43.*
[9] *(1879) 5 A. C. 342.*

The Nuwara Eliya course should not be considered at all in assessing the Colombo course although the defendant Council's Assessor has in fact given the plaintiff allowances in respect of it. Assuming, however, that it can be taken into account that can only be on the footing that without it the profits earned in Colombo would be diminished. This is purely a question of fact and on the evidence it is impossible to come to such a conclusion. The plaintiff's claim on account of Nuwara Eliya is largely for capital expenditure which it is unreasonable to suppose would ever be undertaken by a tenant, for a year, of the Colombo course. It is submitted that if the Nuwara Eliya course has to be taken into the reckoning the plaintiff must be treated as taking it on the basis of the tenancy contemplated by the Ordinance and entitled to the appropriate tenant's allowances only and in fact these have already been made by the defendant in the assessment which is the subject of this appeal.

H. V. Perera, in reply.

Cur. adv. vult.

November 5, 1934. MACDONELL C.J.—

The plaintiffs-appellant in this case are the trustees of the Ceylon Turf Club and the defendant-respondent is the Municipal Council of Colombo, acting in its capacity as the rating authority of Colombo under the powers given to it by the Municipal Councils Ordinance, No. 6 of 1910, Part X.

Under that Ordinance the defendant-respondent caused the premises of the Colombo Turf Club to be assessed for the year 1929 at an annual value of Rs. 370,000 and caused notice of that assessment to be served on the plaintiffs-appellant on February 7, 1929. The plaintiffs-appellant on March 4, 1929, that is within the month allowed them by section 117 (4) of the Ordinance, furnished to the defendent-respondent a statement in writing of their grounds of objection to the assessment, to wit, that the assessment was excessive and that the annual value should be Rs. 265,500. Pursuant to this objection, the Chairman of the respondent Council held an inquiry under section 117 (6) at which the plaintiffs-appellants were duly represented, and as a result of the inquiry reduced the annual value to Rs. 364,000. Thereupon the plaintiffs-appellant as trustees of the Turf Club instituted on March 3, 1930, the present action, praying that the annual value of the Club's premises be reduced from Rs. 364,000 to Rs. 295,000. It will be seen that by their prayer the plaintiffs admitted that the annual value should be Rs. 30,000 more than they had at first said that it should be. On or about January 16, 1931, the plaintiffs, at the request of the defendant Council, furnished detailed statements showing how they arrived at the sum of Rs. 295,000. The defendant Council likewise furnished a detailed statement, P 15, showing how it had arrived at the revised assessment of Rs. 364,000.

Plaint was filed on March 3, 1930, and answer on July 28, 1930. The case was tried in 1931, on February 13 and 14 and on March 10 and 11, and in 1932 on July 27 and 28 on August 31 and September 1. No reason appears from the record why these intermissions were necessary and they cannot have helped the persons concerned in the task of keeping fresh in their minds the complicated details of this case. Judgment was delivered on March 6, 1933, and the present appeal filed on March 16, 1933.

In that judgment the learned District Judge dismissed plaintiff's action on a preliminary objection that the plaintiffs had not, as they should have done under section 117, furnished adequate grounds of objection to the assessment, and that as section 124 (2) prevents a plaintiff from adducing "evidence of any ground of objection which is not stated in his written objection to the Chairman", there was not, and could not be, any proper ground of objection before the Court which must dismiss the action accordingly. It is true, that the District Judge did thereafter in his judgment examine in detail the respective contentions of the parties and that he concluded that the defendant's valuation had not been excessive and that consequently plaintiff's action could be dismissed on that ground also, but it was on the preliminary objection that he did actually dismiss the action.

It is necessary then to examine the preliminary objection under which the action was dismissed. The defendant's task was to discover the annual value of the premises to be rated. "Annual value" is defined in section 3 of the Ordinance No. 6 of 1910, as follows:—

> "'Annual value' means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for any house, building, land, or tenement if the tenant undertook to pay all public rates and taxes, and if the landlord undertook to bear the cost of repairs, maintenance, and upkeep, if any, necessary to maintain the house, building, land, or tenement in a state to command that rent. Provided that in the computation and assessment of annual value no allowance or reduction shall be made for any period of non-tenancy whatsoever."

The defendants calculated the annual value and then furnished to the plaintiffs the form of notice of assessment in schedule E to the Ordinance, stating that the "annual value as assessed" was Rs. 370,000, thus giving precisely the information and notice required by law, no more no less. By section 117 (4) of the Ordinance "written objections to the assessment" may be lodged within one month of date of service of the notice, and within that time the plaintiffs did, as has been stated, lodge a written objection to the assessment in the following terms:—"They object to the assessment on the ground of its being excessive and not in accordance with the actual annual value thereof. The actual value of the said premises is Rs. 265,500". The Ordinance confines an objector in any action that he may take under section 124 against his assessment to the grounds of objection which he has lodged under section 117 (4), for, as has been stated, section 124 (2) does not allow him to adduce evidence of any ground of objection which is not stated in his written objection to the Chairman. The judgment before us holds that the grounds of objection which were lodged under section 117 (4) were insufficient, and at an earlier stage of the case, namely, on March 10, 1931, the learned District Judge had already given his opinion "that the ground of objection is insufficient and the details should have been furnished in time, and that the vague objection that the assessment is excessive is irregular and that this action is therefore not in order", and he expressed the same opinion in the judgment itself of March 6, 1933. I think, with all deference, that this opinion was wrong.

Section 117 of the Ordinance provides for notice of assessment to be served on the occupier in the form in schedule E, for written objections to be filed within one month of such assessment, for inquiry on such objections by the Chairman and for his giving decision on those objections and section 124 gives to any person aggrieved by the Chairman's decision the right to institute action objecting to such decision by the Chairman, to be brought in the District Court if the annual value of the premises exceeds Rs. 300, and in that action the occupier is confined, as has been stated, to the objections which he lodged in writing with the Chairman.

What is an "assessment"? It is a tax, called a rate, on the annual value of "all houses and buildings of any description and of all lands and tenements whatsoever within the town", section 115 (1). It is necessary then to discover what is meant by "annual value", and this term is defined in section 3, quoted above. Put shortly, the annual value is the annual rent which a tenant could reasonably be expected to pay if he undertook to pay rates and taxes, and the landlord undertook to pay for repairs, maintenance, and upkeep. Consequently, when the written objection to an assessment is that the annual value is excessive and should be a specified lower amount, that objection is susceptible, *semble*, of one meaning and that a precise meaning; the annual value is greater by so much than the rent which a tenant liable to rates and taxes but absolved from the liability to repairs, might reasonably be expected to pay. If then an objection that an assessment is excessive and that it should be so much less is susceptible of a precise meaning, and of one meaning only, as it certainly seems to be, for it can be excessive only in relation to one thing, annual value, a matter defined by section 3 of the Ordinance, then an objection that the assessment is excessive and should be a specified lower amount, seems to be suffieient *modo et forma*. It contains a ground of objection and not merely the fact that the person raising it objects, it is precise in meaning and therefore tending to raise a definite issue, and if so, it can hardly be vague or insufficient.

We can test its sufficiency by supposing other possible objections. For instance, an occupier might object under section 121 (1) that his premises were untenantable and untenanted by reason of alterations, or untenanted for reasons other than those in sub-section (1) and might ask for partial remission accordingly, but then an objection "excessive by so much" would be inapt to raise such points. Objections under section 121 are not that the annual value on which assessment has been made is excessive but that for a portion of the year there has been from one cause or another, no annual value at all. *A fortiori*, an objection that the person assessed was not liable at all could not be raised under the ground of the assessment being excessive. Such denial of liability might be because the premises were beyond the Municipal limits or that they were exempt under the first proviso to section 115, or that before the assessment fell due the objector had ceased to be occupier of the premises assessed. "Excessive by so much" laid as ground of objection seems to have a single precise meaning. It contains impliedly an admission of being occupier and therefore of liability to pay some rates, but of liability to pay a named amount less than the amount of the assessment, because that assessment is greater than the annual rent the premises could

reasonably be expected to fetch. The ground of objection may be brief and concisely expressed but it has as precise and unambiguous a meaning as had under the old system of pleading in England such as a plea as "not guilty"; each has a clear and unmistakable meaning, each would tend to raise a definite issue, consequently I cannot see that the ground of objection raised in this case should be rejected.

The judgment appealed from says that the plaintiffs could have obtained from the defendant Council details as to how it arrived at the original assessment of Rs. 370,000 and says "as a matter of practice I believe the details are regularly supplied". But there is nothing in the law to require the Municipal Council to supply these details and, while it was doing so, the month allowed to the objector under section 117 (4) would be running on, and the suggestion that the objector should ask for details before lodging his ground of objections would, it seems to me, be a needles complication.

If these considerations are correct, then the preliminary point raised by the learned trial Judge—it was not raised by defendants, was indeed disclaimed by them—and held by him against the plaintiffs, must be decided the other way, and it must be declared that the ground of objection lodged by the plaintiffs, namely, that the assessment was excessive and should have been Rs. 265,500 was sufficient to comply with sections 117 and 124. With all due deference the mistake in this ruling is to regard grounds for objections, and reasons for those grounds of objection, as synonymous terms. If a sufficient "ground of objection" has been assigned, and I think it has, then the plaintiffs were not required also to state reasons on which that ground was to be supported. The ground assigned was that the assessment was excessive by a named figure, and the reasons they would have adduced would be particulars in support of a general averment.

In argument the plaintiffs cited to us the Union Assessment Committee Act, 1862, section 18. That section allows a person rated to object to a valuation list on the ground of "unfairness" or "incorrectness" and in *Gateshead Union v. Redheugh Colliery*[1] it was held that the notice of objection is sufficient if it "specifies as the ground of objection all or any of the grounds referred to in section 18 of the Act of 1862, such as unfairness or incorrectness in the valuation of a specified hereditament or omission . . . . and it is not necessary that the objector should in his notice inform the Committee of the reasons upon which he bases his objection or the arguments upon which he proposes to support it". There the objector was following the words of a Statute, whereas Ordinance No. 6 of 1910 has no corresponding clause specifying what are grounds of objection, but the principle would seem to be the same. All that the assessing authority under the Ordinance gives, or is required to give, to the rate-paying occupier is the sum at which he is assessed but not any indications as to how that sum is arrived at. Then, all that the objector can say is that the sum assessed is excessive and should be a named smaller figure.

[1] *(1925) A. C. 305.*

On the above view it is unnecessary to determine the effect of section 124 (2) or to say whether its provisions that "the plaintiff shall not be allowed to adduce evidence of any ground of objection which is not stated in his written objection to the Chairman", is merely a matter of procedure, something which the other side can waive, or whether it goes to the jurisdiction and so disables the Court from entertaining any grounds other than those stated in the written objection to the Chairman. It seems to me that the plaintiffs here have complied with section 117 in stating a ground of objection and, as they stated to the District Court the same ground as that which they stated to the Chairman, they have complied with section 124 also.

It should be understood that this objection was not raised by the defendants at any time. They were content both below and on appeal with the grounds of objection that the plaintiffs had lodged, and the point that those grounds were insufficient was raised by the Court below *proprio motu*. But as the point was raised and as the case below was formally decided on that point, the defendant now seeks a ruling thereon.

In actual fact no embarrassment to either side seems likely to arise from grounds of objection such as those here. When the objector argues his grounds of objection before the Chairman under section 117, he will obviously have to adduce his reasons for saying that the assessment is excessive by so much, for the onus is on him to prove that conclusion. This clearly was done at the Chairman's inquiry under section 117 in the present case, as appears from the summary of plaintiffs' contention given in D 3. Then the Municipality will reply to those arguments, again as appears from D 3 to have been done at the inquiry in the present case, and will adduce its reasons for putting the assessment at a certain figure and not less. The Chairman, then, having the reasons and arguments for both sides before him, will give his decision under section 117 (7). This is how, following out section 117, the matter will in practice be determined, even on a concise ground of objection such as in the present case, and it is difficult to see how it will cause embarrassment to either side.

For the foregoing reasons, that portion of the judgment below declaring that the plaintiffs' action must be dismissed because they had not stated sufficient grounds of objection as required by section 117, must be set aside. It will remain therefore to determine the plaintiffs' appeal on the merits.

The parties went to trial on the single issue "what was the annual value of the premises in question for the year 1929?" To answer this question they considered in detail the expenditure and receipt of the three previous years 1926, 1927, 1928, taking, as was admitted to be a fair method, the average of those three years. The issue propounded involves two things, the principles which should be applied so as to discover how the annual value of the plaintiffs' undertaking should be arrived at, and the amount which the application of those principles would arrive at.

The plaintiffs, the Ceylon Turf Club, are lessees from the Crown at the annual rental of Rs. 203 of a large space of ground in Colombo which they have completely equipped for racing and where they hold races on some

26 days in the year. The Club is stated to have a membership of some 750 and is an institution of high standing in the racing world. It is affiliated to the Jockey Club in England, to the Royal Calcutta Turf Club, and to other turf clubs of high standing. The members elect a committee of 15 which has the control of the whole of the Club property. This committee is unpaid. The Club also appoints stewards, 5 to 7 in number, unpaid likewise, who manage and are responsible for the racing itself, including the control over the stands and enclosure, the granting of licences to jockeys, trainers, and officials, the determination of disputes arising with regard to racing, and the exercise of disciplinary powers—for instance, that of finding jockeys and warning people off the course. In addition to these unpaid stewards there is a stipendiary-steward who is paid and devotes all his time to duties connected with the Club. There are likewise, we are told, a paid handicapper and a paid starter. The Club has a secretary who is a paid and devotes all his time to the Club and who under the committee is practically the manager. The Club makes, or did make during the three years prior to 1929, large profits and does not pay or profess to pay any dividend to its members. It devotes those profits to the encouragement of racing, in Colombo by holding race meets on some 26 days in the year, by giving valuable prizes to be raced for, by importing horses from time to time, and by the like activities for the promotion of racing. It also gives donations to other race Clubs, those of Kandy, Radella, and Kelani Valley, and particularly Nuwara Eliya. The evidence is that in the years in question races were occassionally held on the Kandy, Radella, and Kelani Valley courses and that there were two race meets every year at Nuwara Eliya. The evidence is that all these race meets at a distance from Colombo showed a loss and that without support from the Turf Club out of the money which it makes in Colombo these other clubs could not be carried on. The Ceylon Turf Club therefor gives contributions, in the case of Nuwara Eliya very considerable ones, for their support. But it is also claimed that the support of the Nuwara Eliya Club is essential to the earning by plaintiffs of the profits that they earn in Colombo itself. In the hot months of the early part of the year, there is no racing in Colombo itself and the track is thereby allowed to recover. The Nuwara Eliya course provides a sanatorium for horses who would, we are told, lose condition completely if they were continuously kept in the hotter climate at sea level. The races at Nuwara Eliya are claimed to be an encouragement to up-country owners to continue to keep and race horses, and it was put to us as an essential part of the plaintiffs' case that for all the Nuwara Eliya racing showed a continuous loss, it was none the less necessary to support that course and the races there, because otherwise the Turf Club would lose support from a section of its members and would in the end actually lose some of the profit that it now makes in Colombo if it ceased to spend money on racing at Nuwara Eliya and on the course there. The conclusions which plaintiffs asked us to draw from this argument are discussed later.

This being how the Turf Club is constituted and managed, the next thing is to consider the law under which a rent is imposed. As our Statute sivery close in its wording to two English Statutes, it will be as well to

set out the relevant portions of these. The Parochial Assessment Act, 1836, section 1, is as follows:—

"No rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation, rent charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent".

This is the section which until the recent Rating Act of 1925 governed the whole of England with regard to rating, except London. London was provided for by The Valuation (Metropolis) Act, 1869, the definition clause of which, section 4, contains the following:—"The term 'gross value' means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation, rent charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent": (*Ryde, p. 914*). It will be seen that the wording of these two enactments is very similar to that of Ceylon on the matter of annual value. It has always been taken that the phrase in the Act of 1836, section 1, "free of all usual tenant's rates and taxes" assumes that the tenant pays these. It will be seen that the English Acts speak of "repairs, insurance, and other expenses, if any, necessary" to maintain the premises in a state to command the rent, whereas our Ordinance speaks of the "repairs, maintenance and upkeep, if any, necessary" for the same purpose; both deal with the same idea and probably the difference between them is only verbal. The two English Statutes quoted, and the Ceylon Ordinance, propound the same three separate factors—the rates and taxes, the rent that may reasonably be expected, and the repairs and maintenance. The English Acts contemplate a net value arrived at by deducting from the rent that may reasonably be expected the cost of the repairs and maintenance. The Ceylon Ordinance does not contemplate such a reduction; the Ceylon tenant in offering a rent has to assume that his repairs and maintenance are provided by the landlord and so can offer a higher rent than the tenant under the English Acts. Putting this in the concrete; if in each jurisdiction the rate were 20 per cent.—4 shillings in the pound, 20 cents in the rupee—of the annual value (called annual value in Ceylon, nett annual value in England), the Ceylon tenant would pay more rates than a tenant under the English Statutes, or putting it the other way round, to get the same sum as rates in each jurisdiction it would be sufficient to fix in Ceylon a lower percentage payable on the annual value as rates. But making allowance for this fact, that the English Statutes contemplate a substraction sum to arrive at the assessed value while the Ceylon Ordinance does not, the English decisions can be applied in a rating case with us for the respective Statutes deal with the same three factors—rates and taxes, the rent that may reasonably be

expected, and the cost of repairs and maintenance—and require that each of those three factors should be considered and estimated. In actual fact, English decisions have been relied on and followed by our Courts in cases on rating, see *Ismail v. Colombo Municipal Council*[1].

The Ordinance No. 6 of 1910 speaks of "house, building, land, or tenement". The English Statutes use the phrase "hereditament". It was argued to us that the thing to be rated in England the hereditament, was something wider than the things to be rated with us, but this seems to me very doubtful. It is clear that the draftsman of our Ordinance had the English Statutes before him and as they contained the word hereditament, a term of art unknown to our law, I think we may assume that he was endeavouring to find suitable words as the equivalent of that term. He specifies house, building, land, and then seems in his effort to make rateable everything that in England would be rateable under the term hereditament, to have used the word "tenement" to make up any deficiency that there might be. *Goodeve's Law of Real Property, p. 10,* says: "The word tenement in its strict legal significance is something which may be holden, that is, be the subject of tenure, but popularly it is often applied to designating houses or other buildings. Thus a house is commonly described in a deed as 'all that messuage or tenement'". With us the word tenement is in common use to mean "house or other building" though it may never have received precise definition. I cannot but conclude that the draftsman was trying to make the definition of rateable property with us as wide as the definition is under the English section. But it was argued that movables—chattels as they are called in English law—cannot be rateable since the word "tenement" is not wide enough to comprise them. It must be noticed, though, that there is in England what we have not got, an Act, that of 1840 (*3 & 4 Vic. C. 89*) expressly exempting chattels from being rated. Notoriously they have been rated in England and that in spite of the fact that English Acts only deal with hereditaments, a term which has never been held to include chattels. If then, in spite of the Act of 1840, the rating of chattels has come to be in England, though the thing to be rated is called a hereditament, it would be difficult to argue that with us movables cannot be rated, where the thing to be rated is the undefined yet easily intelligible. "tenement".

A rate, be it noted, is not strictly something imposed on property but on a person as occupier of that property. Here the occupier is the plaintiff, the Turf Club, and the property to be rated is the racecourse as it stands, a phrase to be discussed later. The problem then in a rating case is to find the annual rent which a tenant might reasonably be expected to pay taking one year with another, if he paid the rates and taxes and if the landlord paid the costs of repairs, maintenance, and upkeep, sufficient to maintain the property to be rated in a state to command that rent, *i.e.*, the rent for that purpose for which the property is let.

The tenant taking at a rent the property to be rated may be an actual tenant in which case the rent he actually pays is evidence, though not conclusive evidence of the rent he may reasonably be expected to pay. But the property to be rated here has no actual tenant paying such a rent

[1] *33 N. L. R. 187.*

—for that paid by the plaintiffs, the Turf Club, is purely nominal—consequently the tenant to be sought for is a hypothetical tenant, a phrase consecrated by usage and convenience, and this hypothetical tenant would occupy the property only for the sake of the profits he could make out of it. There are two bases on which a property may be rated; the contractor's basis where you take a percentage of the value of the land and the same of the buildings erected upon it, and the revenue or profits basis, but the latter is the one that must be applied when rating a racecourse (*Regina v. Verrall*[1]), that is, to ascertain the rent the hypothetical tenant of a racecourse would pay you must take into account the profits which that property can make. This basis has been adopted here without question from either side. In ascertaining what profit can be made you must find out what profits have been made recently. The assessment here is for the year 1929 and the defendants' assessor took an average of profits for the three preceding years—1926, 1927, 1928—which was considered by both parties to be a fair method. The owner or occupier himself must be considered as a hypothetical tenant (*Regina v. School Board for London*[2]), and to this principle later cases have given the widest possible meaning, thus the actual owner or occupier may be legally debarred, say by statute or the terms of a trust deed, from letting the proprety at all, yet none the less he must be considered a possible tenant (*London County Council v. Erith*[3]). In actual fact, the possible tenants here are pretty much narrowed down to a syndicate of racing men which, if the Turf Club property was offered at a rent, might come into existence to take it at a rent for the profit it would expect to make, and the plaintiffs, the Turf Club itself. In either case it would be necessary to ask what is the profit such syndicate or the Turf Club could make to enable us to discover the rent which the hypothetical tenant would pay. The fact that the Turf Club does not profess to make profits is immaterial. The conditions of the problem are to find the rent a tenant might reasonably be expected to pay, and to discover that rent it is necessary to try and discover what profits he can make. The law requires us to consider the plaintiffs, the Turf Club, as a possible tenant, obliged to pay not as now a nominal rent, but an economic rent, and that rent can best be ascertained by ascertaining what profits it could make; the fact that it does not now attempt to make profits is immaterial to the problem before us.

It was argued to us that there were practical difficulties in the way of regarding the Turf Club as a hypothetical tenant. The present trustees in whom the Turf Club property is vested are ready to take certain responsibilities because having practically no rent to pay they are safe from loss, but (it was argued) it is not so certain that they would undertake that responsibility if they had to pay an economic rent and earn profits wherewith to pay it. It was also argued that there might be difficulties, though it was not stated what difficulties, in the Turf Club becoming a limited liability company with a view to being the tenant of its own enterprise. Now the decided cases are perfectly clear that the actual occupier is to be considered a hypothetical tenant even though he may

[1] *(1875) 1 Q. B. D. 9.*

[2] *17 Q. B. D. 738.*

[3] *(1893) A. C. 562.*

legally be prohibited from becoming a tenant. If you look at the actual facts of the case, namely, a very profitable undertaking which is in the nature of a monopoly, for confessedly Colombo would not support more than one racecourse, it is pretty certain that if the enterprise of the Turf Club were offered at an economic rent the Turf Club itself would be the first to come forward as a possible tenant. Any practical difficulties there might be in adapting the constitution of the Club to the changed conditions would have very small weight in determining the Club to come forward as a tenant. Decided cases require you to consider the Turf Club as a possible tenant and the circumstances of the matter enable you to say that the Turf Club would be a tenant, and in all probability a willing tenant, of its present enterprise if it had to pay an economic rent for the same.

We can now take the problem a stage further. The hypothetical tenant having to pay rates and taxes would deduct them from the rent he offers, and as the landlord has to pay the cost of repairs and maintenance the tenant will add that sum to the rent that he offers. He will not offer such a rent as will leave him to profit; *per* Wood Renton J. in *Crawford v. Municipal Council of Colombo*[1]—"I do not believe for a moment that any voluntary association even would set on foot such an undertaking as a Turf Club without having regard to the amount of profits that can be made by it". Then it must be decided what profit he should be allowed to expect and to make this he must be supposed to have the capital wherewith to pay working expenses, otherwise he could not earn the profit expected. The arithmetical equation to be arrived at will allow him as one of its factors a certain sum as capital and this must be deducted to arrive at the rent he might reasonably be expected to pay. The tenant then has to be allowed deductions under two heads, one for rates and taxes and the other for the capital allowed him. Naturally then the larger these deductions the less the rent he will reasonably be expected to pay, and so the less his annual value and the less the rate he will have to pay thereon. Conversely, the larger the amount that can rightly be brought under the heading of repairs and maintenance, the more the tenant must add to the rent he may reasonably be expected to pay, and therefore the greater the annual value at which he will be assessed and the rate payable thereon. Consequently the contest will be, the tenant trying to increase the amount he can deduct, in other words to increase the amount of capital allowed him, and the rating authority trying to increase the amount to be allocated to maintenance and repairs which being borne by the landlord must be added to the rent a tenant can reasonably be expected to pay. It was round these points that the present appeal was mainly contested, the plaintiffs urging that certain increases should be allowed the hypothetical tenant for his capital and, as part of that contention, that the amount allocated to repairs and maintenance should be diminished by certain matters claimed by them as necessarily tenant's expenses, that is, to be provided for by the capital found by him the tenant, and the defendants urging that these diminutions of the amount allocated to repairs and maintenance should not be made. In the concrete, it was a claim by plaintiffs that the hypothetical tenant should be supposed to

[1] *14 N. L. R. at 451.*

provide certain matters—adjuncts and activities—now in fact provided by the Turf Club at its Colombo racecourse, and that he should be allowed to charge himself with a large portion—in the argument in appeal the whole—of the expenses of a kindred enterprise, the Nuwara Eliya racecourse. To give details: the plaintiffs argued that the hypothetical tenant would have to pay for, and should therefore be allowed, such items as the upkeep of the Colombo course and the capital cost of the Nuwara Eliya course, whereby the rent such hypothetical tenant might reasonably be expected to pay would be diminished *pro tanto*. This leads to two questions which must be considered and determined before coming to the details of the case before us, namely, what exactly would be let to the hypothetical tenant at Colombo and what exactly are the facts and the law, as affecting the plaintiffs in regard to the Nuwara Eliya racecourse.

First then, we must ask what exactly would be let to a hypothetical tenant of the Colombo racecourse, and the answer would seem to be, the enterprise of the Turf Club at Colombo as it stands as a means of carrying on racing—as a going concern, in fact. The principle seems to be contained in the words of Denman C.J. in *Regina v. Everist*,[1] "Nothing can be more unreasonable than to rate land occupied in one mode as if it were occupied in another"; or as Lord Buckmaster said in *Poplar Assessment Committee v. Roberts*[2], "Although the tenant is imaginary, the conditions in which his rent is to be determined cannot be imaginary. They are the actual conditions affecting the hereditament at the time when the valuation is made". This is a racecourse for carrying on racing. *Per* Lord Esher M.R. in *Dodds v. South Shields*[3]—"The case of a racecourse is an exceptional case, and therefore it is necessary to inquire what the tenant of a racecourse, intending to use it as a racecourse, could afford to give, in order to find out what he would be likely to give . . . . ", in other words, what profits he can make; and see *Regina v. Verrall* (*supra*), 'Intending to use is as a racecourse'; how in fact do the plaintiffs, the Turf Club, use their tenement in Colombo? They use it as a racecourse. That means that they do not supply to persons who race horses, or to the public which watches and speculates on those horses, a bare piece of ground, or that piece of ground with certain defined tracks thereon, or that piece of ground and its tracks with certain buildings and enclosures for the use of those horses and the public, but something beyond this, an enterprise completely equipped for the business of racing from the point of view of racing owners and of the public. If this be so, then that enterprise will not be completely equipped if the plaintiffs having made defined tracks for horses to run on yet fail to keep them in order, for this will entail danger to the horses running whereby their owners will not run them, or if having provided stands from which the public can view the races they yet fail to provide seats on those stands for the comfort of the public whereby the members of the public coming to view the races will come in smaller numbers. The plaintiffs do provide in actual fact an enterprise fully equipped for racing, using those words in their widest sense, and it would cease to be so equipped if they did not so maintain it. The plaintiffs' witness Mr. Eastman says the same in his evidence, though,

[1] *10 Q. B. 178.*

[2] *(1922) 2 A. C. 93.*

[3] *(1895) 2 Q. B. at 136.*

of course, his admissions will not be conclusive against the plaintiffs unless they agree with the law on the matter:—"The racecourse would be in the nature of a monopoly and in assessing a racecourse I would take into consideration everything that was necessary for the business of racing. Similarly a hypothetical tenant would also take into consideration everything that was necessary for the business of racing. I would also assess the business of the Turf Club as I actually found it on January 1, 1929. I would have to consider it as it was then actually occupied and used. One of the first essentials for the business of racing is a course. It should be a properly laid out course, including a properly prepared track or tracks; likewise there should be ditches or drains and whatever is necessary for proper drainage . . . It would be necessary for the purpose of the business of racing that the grandstands should be fully equipped with furniture, giving sufficient accommodation for the public. It would be necessary for the business of racing that the machinery to do with the question of betting has to be supplied. There should be properly equipped paddocks and other buildings which are necessary for racing purposes. The hypothetical tenant would not only look at the buildings, but would look at the grounds including the course. If the racecourse was fully equipped with chattels of the furniture type, he would pay a higher rent for the premises. But it would be necessary for the business of racing that those things must be there". Then the property to be rated is a racecourse as a going concern and this is what the hypothetical landlord would provide, as also the repairs, maintenance, and upkeep necessary to maintain the property in a state to command the rent a tenant might reasonably be expected to pay for this property "intending to use it as a racecourse".

It was argued to us very strongly, particularly at the commencement of this appeal, that certain of the things now owned and used by the Turf Club are chattels merely which the tenant would have to purchase or hire himself, and that consequently allowance should be made to him for these. As to this argument generally—it will be discussed in detail later—I would point out that the defendants have made a very considerable allowance to the tenant under this head, but testing the question by principle, you would repeat that a hypothetical tenant implies a hypothetical landlord anxious to get the best rent he can, and would ask further whether that hypothetical landlord would not get a better rent by offering the racecourse as it stands, chattels and all, than by offering the racecourse minus certain indispensable chattels which the tenant would therefore have to supply. Now a good many of these chattels as I have called them, things detached from the soil, seem to be of such a nature that if the hypothetical landlord did not include them in the something which he was letting to the hypothetical tenant he would be unlikely to get a tenant of or a purchaser for them elsewhere. They are expensive things and some of them so adapted to the racecourse that they would have little use apart from it. Then surely a hypothetical lanlord in his own interest would include these things, chattels though they be, in what he was offering at a rent to the hypothetical tenant. As has been

said, there has been give and take in the defendant's estimate and allowance, the whole or a percentage, has been made to the tenant. But it certainly would seem to be in the landlord's own interest to offer to the tenant at a rent everything that is actually now used on the racecourse to fit it for the purpose of racing. If these considerations are correct, one is then perhaps strengthened in one's conclusion that the property to be assessed is the racecourse as a going concern, intended to be used as a racecourse.

If this is so, namely that what is here to be rated is a fully equipped racecourse as a going concern, then it will perhaps be unnecessary to determine the precise authority in the present case of *Kirby v. Hunslet Union Assessment Committee*[1] and the cases leading up to it. These cases were in the main, though not wholly as will be shown, cases where the rateable value was determinable on the contractor's principle and not on the revenue or profits principle applicable to the present case. They were mainly concerned with the question, what machinery on the rateable premises was to be taken into account as contributing to the value of those premises and so increasing the rates on them, and the latest of them (*Kirby's Case, supra*) decided (in effect) that all machinery on the premises must be taken into account as increasing the value of the premises and so the rates on them, whether the machinery were actually supplied by the landlord or by the tenant. Since the determination of that case in 1906 the Rating and Valuation Act, 1925, has been passed in England, section 24 (10) of which is as follows:—

> " (10) Nothing in this section shall affect the law or practice with regard to the valuation of hereditaments the value of which is ascertained by reference to the accounts, receipts or profits of an undertaking carried on therein, or be taken to extend the class of property which is under the law and practice as in force at the commencement of this Act deemed to be provided by the occupier and to form part of his capital."

This section then only affects property the value of which for rating is determined, not by reference to accounts, receipts and profits but on the other principle, that is the contractor's principle. Then, in terms the section would not apply to a case such as the present. The section deals then with properties rateable otherwise than on the profits basis and as to them determines, in its other sub-sections, that the machinery on them shall be taken into account for the purposes of rating on a principle entirely different to that adopted in *Kirby's Case* and in the cases leading up to it; in fact as to machinery on property rateable otherwise than on the profits basis, it gets rid of *Kirby's Case* altogether. The Statute does not of course affect us, and is of importance only because of its bearing on *Kirby's Case*. It was argued to us that this section 24 (10) might be taken as indicating that *Kirby's Case* was not good law at the time that section was enacted, but that it and not *Kirby's Case* contained the correct law on the matter. But this cannot be admitted; the Statute is not declaratory of the law but claims to be an alteration of it; it describes itself as " an Act . . . . to amend the law with respect to the valuation of machinery and certain other classes of property ". Argument for the plaintiffs proceeded further however:—' *Kirby's Case* and those

[1] *(1906) A. C. 43.*

leading up to it did not profess to be of universal application in rating questions, for they were confined to properties rated on the contractor's principle. Then they never could have applied to such a case as the present which is to be determined on the profits principle. Assuming *Kirby's Case* to be as good law now as it may have been prior to the Act of 1925 and so to be considered and followed by this Court in accordance with the principle of *Trimble v. Hill* [1], where the Privy Council said that where there is a decision of a Court of Appeal in England on a like enactment to that in force in the particular Colony the Colonial Courts should also govern themselves by it, still as it applies exclusively to rating cases determined on a principle other than that on which admittedly this case must be determined, it will be of no application to this case. In its own ambit *Kirby's Case* may have been good law in England up to the Act of 1925, but that ambit is not that of the present case but distinct from it'.

This argument as to the restricted ambit of *Kirby's Case* and those leading up to it, is not altogether consonant with the facts, for those cases do not exclude the profits principle. The first of them all, *Rex v. St. Nicholas, Gloucester* [2], was a case where the rent was fixed by looking at the profits made. Another of these cases (*Rex. v. Liverpool Exchange* [3]) was a case in which the profits basis was held not to be applicable to the particular facts, but there is nothing in the judgment suggesting that the case being one determinable on the contractor's basis therefore the profits basis could not be argued. In *Regina v. Southampton Dock Co.* [4], another of the cases leading up to *Kirby's Case*, again the profits basis was argued for. In that case the Company to be rated wished to deduct from the profits which it made by a certain steam tug, the expenses of maintaining that steam tug, and it was held that it was entitled to do so. We remind ourselves that this is the point upon which the English Statutes differ from our own. The person to be rated under them can deduct the cost of repairs from the gross annual value, and it is the difference only upon which he is rated. But as I understand that case, the Court certainly considered the profits made as an element to be considered in arriving at the rate. It seems, therefore, that *Kirby's Case* and the cases leading up to it were not restricted wholly to the contractor's principle. It may well be that the later cases of the series, particularly *Regina v. Lee* [5], the *Tyne Boiler Works Case* [6], and *Kirby's Case* itself, were cases determined purely on the contractor's principle, but it is difficult to discover in that series of cases anything which, prior to the Act of 1925, would have prevented the principle therein laid down, namely, that whatever is used on the premises by the occupier may be taken into account in rating those premises, from being applicable to a rating case determined on the profits basis. Those cases seem then to be of a wider application than was contended for on behalf of the plaintiffs.

Perhaps, however, it is not necessary to pronounce on this argument, for the question, what is the property to be rated here, can be answered independently of it; *Verall's Case (supra)*, *Dodd's Case* [7]. But if it is necessary

[1] *5 A. C. 342.*
[2] *1 T. R. 723 n.*
[3] *1 A. & E. 465, 110 E. R. 1235.*
[4] *14 Q. B. 587; 117 E. R. 227.*
[5] *1 L. R. Q. B. 241.*
[6] *(1886) 16 Q. B. D. 81.*
[7] *(1895) 2 Q. B. 138.*

to distinguish the cases culminating in *Kirby's Case* from the present, you would point out that they deal with pieces of machinery, and the question asked in them was, does this or that piece of machinery though not a part of the freehold or attached to it, yet make the premises more fit for the manufacturing purposes for which they are used. The question before us may be similar in some respects yet seems really to be another and a different question; is this adjunct, or this furniture, or this activity, necessary to a fully equipped racecourse "intended to be used as a racecourse" without which it would not be a fully equipped racecourse? The question asked in *Kirby's Case* and in most of the cases leading up to it seems to have been one as to accessories—separable accidents, if you will —did they make the premises let more fit for their ostensible purpose? Here the question goes not to accessories but to the substance of the thing, something wanting which it would not be that thing, namely, a racecourse fully equipped "intended to be used as a racecourse". If you can show that a particular furniture, or adjunct, or activity is something in separable from the thing being rated, a racecourse fully equipped intended to be used as a racecourse, then that furniture, adjunct, or activity is something which must be repaired, maintained, and kept up to enable the property to obtain the rent the hypothetical tenant would give for it as such property. Authority—*Verrall's Case, Dodd's Case* (*supra*)—seems to say this, and common sense exercising itself on the facts of the matter seems to say the same. But if it is something that must be repaired, maintained, or kept up, then the expenditure therefor is something that falls on the landlord and cannot be allowed to the tenant, by the very words of the Ordinance.

If then the property to be rated in 1929 was the racecourse at Colombo in its then—admittedly complete—state of equipment "intended to be used as a racecourse", then whatever would be necessary to repair, maintain, or keep up its then state of equipment would be the landlord's duty, and it will only remain to ascertain what were those things, adjuncts, or activities, which were necessary for that purpose. The details of that question will be discussed later, it is sufficient for the moment to state the question itself.

It will now be convenient to discuss the other large question of principle argued to us, namely, that of the Nuwara Eliya racecourse and of the allowance which should be made to the plaintiffs in respect thereof. It will be remembered that this is a claim by the plaintiffs to charge themselves with, and so be allowed, a portion of the costs of that racecourse, or—as put on appeal—with the whole of that cost. Here it must be pointed out that the claim to be allowed, the Nuwara Eliya capital expenditure, was not raised in evidence below—the documents to be discussed later, P 4 to P 11, on which plaintiffs largely relied do not mention it—or *semble* in argument, for it is not dealt with in the judgment, but without deciding whether it is really permissible for the plaintiffs now to make the claim, I will deal with it since a full and acute arguments was addressed to us upon it.

It was not made very clear to us what are the exact legal relations of the plaintiffs, the Turf Club, and the Nuwara Eliya racecourse. But it

seems that the latter is a separate legal entity since it is spoken of as the "Nuwara Eliya Club", whereas the plaintiffs are called the Turf Club of Ceylon. The plaintiffs support this Nuwara Eliya Club with money, and argue that without such support the Nuwara Eliya Club could not be carried on since the expenditure on it always greatly exceeds its income, that it loses money in fact. Mr. Eastman, a witness for the plaintiffs, says it is necessary for the hypothetical tenant of Colombo to conduct the various races at Nuwara Eliya at least once a year and therefore it is a legitimate expense for him to meet; "I do not think the hypothetical tenant would cut Nuwara Eliya out because I consider it is advisable for him to have a meeting at Nuwara Eliya". Mr. Corbett, a former Secretary of the Turf Club, says: "We support the Nuwara Eliya Club . . . . It is done because it is absolutely necessary to close down our racecourse for two or three months every year after a heavy season that it may recover, and horses must go somewhere and it is a very good change for the horses to go to a good climate for a few months. Most of our horses are thoroughbreds and they need a change or they suffer from a disease which is known as non-sweating which renders them unfit to race . . . . It is not because we have too much money that we give these donations, it is excellent for racing to have these out-station meetings. It is a great encouragement to up-country owners; we do it for the business of horse-racing and we think it is an incentive to up-country owners to keep horses. To have good racing we must have horse owners and an additional reason is that Nuwara Eliya and Kandy are places which serve as a sanatorium too for horses . . . .We keep accounts in our books for Nuwara Eliya, separate accounts. If we were running it as a commercial undertaking we would not give that up because it is a great benefit to the Club although it is a loss of money. The racing depends on a large number of horses; without Nuwara Eliya we would have fewer horses and less entries here, therefore we gain more by keeping Nuwara Eliya than by closing it. Our losses on Nuwara Eliya are not very large when we consider the profits we make in Colombo. I would not admit that it is kept on from a sentimental point of view. We must have racing there or owners would not be able to send their horses there". This last sentence does not seem very cogent, for Nuwara Eliya could be used as a sanatorium for horses, you would think, without it being necessary to hold races there. This witness, Mr. Corbett, seems to say that in the years prior to 1929 there might be three to five days racing each year at Nuwara Eliya.

Now the defendants' assessor has in fact allowed the plaintiffs certain items of their Nuwara Eliya expenditure which will be discussed in detail in due place. For the moment it is best to deal with the general argument for the plaintiffs on their claim to deduct the Nuwara Eliya expenditure as a whole. The Nuwara Eliya Club is, it seems, a separate entity from the plaintiffs, but it is they who pay the money and consequently the master word lies with them what shall be spent on Nuwara Eliya and how many days racing shall be held there. The argument for the plaintiff was put to us thus:—'If you could allocate some definite portion of the profits made by the Turf Club at Colombo to the influence of the Nuwara Eliya course, then the correct method would be to deduct

the profits attributable to Nuwara Eliya and only take into account the profits earnable at Colombo without Nuwara Eliya. We admit that it is not possible to allocate to Nuwara Eliya any definite amount in money of the Colombo profits, we cannot show the exact echo in the Colombo profits of the Nuwara Eliya expenditure, still if those Colombo profits are influenced by the Nuwara Eliya course then the hypothetical tenant would say, I will take on the Nuwara Eliya course although I lose money by it so as to make sure of my Colombo profits, and he would reduce his Colombo rent by the amount of his Nuwara Eliya losses. Such a reduction is sanctioned by what is known as the "parochial principle" in assessing railway systems in England. The proportion of income received at Colombo due to the course at Nuwara Eliya may be uncertain but there is a necessary connection between them and there is evidence that the Colombo course is dependent for some of its profits on Nuwara Eliya, particularly the fact that although Nuwara Eliya by itself makes no profit, still the Turf Club keeps it up and has races there, which fact can only be explained by the Nuwara Eliya course being a factor affecting the earnings of Colombo. Unless the gain at Colombo from keeping up Nuwara Eliya were greater than the loss on Nuwara Eliya, the Turf Club would not keep Nuwara Eliya on, as however it does. Then it will follow that in the assessment you must allow the expenditure upon Nuwara Eliya, not merely the running expenses but the capital expenditure also, and you must reduce the rent that the tenant will pay accordingly'.

On this argument my brother Drieberg pointed out that this was taking the case into the realm of conjecture, and, as I understood, this was not dissented from by learned Counsel. The argument then proceeded to discuss what expenses at Nuwara Eliya should be included in diminution of the rent that the Colombo tenant would pay, and it was urged that the hypothetical tenant need only be postulated as far as Colombo was concerned. If that hypothetical tenant decided to take on Nuwara Eliya, he would put on the expenditure side all the expenses actually incurred by him. It would be wrong to postulate a similar hypothetical tenant of Nuwara Eliya, and we must suppose an actual occupier of Nuwara Eliya who would have to pay the expenses actually incurred by the plaintiffs for Nuwara Eliya.

This argument admittedly involved using the word "tenant" in two different senses, a hypothetical tenant for the Colombo course, an actual tenant for the Nuwara Eliya one, but learned Counsel did not shrink from this conclusion.

On this argument no case in point was cited to us. It was urged that the plaintiffs should be allowed their Nuwara Eliya expenditure on the principle of the "parochial principle" in the rating of a railway company. But the first observation to make is that this parochial principle is applied to parts of an enterprise which is one legal entity owned by one legal *persona*, the railway company to be rated. In the rare cases where the bit of line in question is the property of more railway companies than one, still it has no legal existence or *persona* of its own. But here the legal *Personae* seem to be two, the plaintiffs the Turf Club, and the Nuwara Eliya Club, and though the former may control the latter the two are not

identical. For all that appears to the contrary the Nuwara Eliya Club might file its petition of insolvency without any legal effect on the Turf Club, or it might sell or offer to sell its enterprise to a third person without the Turf Club having any legal right to interfere. The case therefore of the plaintiffs with regard to the Nuwara Eliya Club and that of a railway with regard to a branch line or link line are dissimilar on an essential point.

It is well to know what the parochial principle means and it is summarized as follows by Lord Cave L.C. in *Kingston Union v. Metropolitan Water Board*[1]:—"Rating surveyors . . . . began to assess waterworks and other like concerns, such as railways, canals, gasworks, &c., upon the basis of the profits earned by the whole undertaking. From the gross receipts of the undertakers for the preceding year they deducted working expenses, an allowance for tenant's profits, and the cost of repairs and other statutable deductions, and treated the balance remaining (which would presumably represent the rent which a tenant would be willing to pay for the undertaking) as the rateable value of the entire concern. It was then necessary to distribute this rateable value among the various parishes into which the undertaking extended, and this was effected by dividing the hereditaments in each parish into indirectly productive assets (such as intakes, filter-beds, reservoirs, pumping stations and carrying or pumping mains) and directly productive assets (such as the service pipes which actually carried the water to the consumers), and by allowing to the parish a percentage on the structural (or contractor's) value of property of the former class contained in the parish, and a proportion of the remainder based on the water revenue arising there. Thus, a series of assessments was reached which, while giving to each individual parish a fair proportion, based upon the hereditaments which it contained and the revenue which it produced, of the total rateable value, did not in the aggregate exceed the rental which the undertakers or any other possible tenants might be expected to pay for the whole undertaking in any year". How the parochial principle applies in practice can be seen in *Regina v. West Middlesex Waterworks*[2], the judgment in which has uniformily been followed and is cited with approval in the House of Lords case just quoted. Wightman J. says as follows in *1 E. & E. at p. 723*, and we can adapt his words to the present case:—"Supposing, then, the apparatus to be apportioned to several tenants according to the parts in several parishes, the tenants of the parts directly earning net profits in a parish"—in this case the Turf Club in Colombo—"would be rated by that parish for all the profits earned therein"—that is in Colombo—"this being the parochial principle of apportionment which has been unanimously upheld hitherto in respect of all canals, railways, water companies, gas companies and bridges. But the tenants of parts directly earning no profit"—in this case the Nuwar Eliya Club—"would not be liable to be rated in respect of any rent in the ordinary sense, which is, profit remaining after all deductions have been taken from the receipts. But, as these parts of the apparatus, directly earning nothing, but indirectly conducing to such earnings elsewhere, are assumed

[1] *(1926) A. C. at p. 339.*

[2] *1 E. & E. 716; 120 E. R. 1078.*

to continue in operation, the company, to whose interest such continued operation is essential"—the Turf Club in Colombo—"must be assumed to pay adequate remuneration to a contractor for land and fixed capital vested therein, together with the labour and skill requisite for the effective continuance of such operation; and this contractor with the company would stand in the relation of occupying tenant to the parish, and the part within the parish would be the rateable subject"—in this case the course at Nuwara Eliya—"and the local rateable value would be such sum as would pay the rent of the land and the profit on fixed capital therein". Noting that the words "profit on fixed capital therein", should really be "interest on fixed capital therein", you can apply this rule to the present case. The Colombo part of the enterprise—if the enterprise were really one and owned by one legal *persona*—would be assessed on the rent its tenant could offer, which rent would be determined by the profits it makes in Colombo, and the Nuwara Eliya part of the enterprise would be assessed "at such sum as would pay the rent of the land and the interest on fixed capital therein". But if the argument of plaintiffs' Counsel is correct, the principle ought to be different and "the tenant of the part directly earning a net profit in the parish would be rated" not "for all profits earned therein", but for a portion of them only, with the corollary surely that the tenant of the part earning no profit, would be rated for the other portion of the profit earned by the part that did earn it—provided only, of course, that the occupier of the "apparatus" as Wightman J. calls it, is not "rated beyond the rateable value of the whole apparatus taken together". No rating case that I can discover suggests any such method, namely, that when the part of an enterprise or apparatus in parish A makes a profit while the part of it in parish B makes none, then the rates to be charged it in parish A must be reduced while the rates charged it in parish B must be increased by the amount of that reduction. I repeat, I can find no rating case suggesting any such principle, and none was cited to us in argument.

It certainly looks as if the plaintiffs were asking us to accept the converse of the "contributory" principle disapproved by the House of Lords in the *Great Central Railway v. Banbury Union*[1] and in *Great Western Failway v. Kensington*[2]. The contributive principle in the case of a railway seems to be this. A part, branch line or loop line, earns no profits itself, but shows a loss. None the less it "contributes" to the profits of other sections of the railway, and if so is to be rated at a higher amount; its valuation must be increased because, though it makes no profits itself, it contributes to profits made elsewhere. The present argument asks us to affirm the converse of this and to say that as the Nuwara Eliya course "contributes" to the profit made by the Colombo course, some of that profit must be deducted from the Colombo assessment so that the annual value of the Colombo course, and the rates it pays, may be lessened *pro tanto*. If the contributory Principle is unsound, its converse would seem to be unsound also. Besides, what is to be done with the profit made at Colombo, yet "contributed" by Nuwara Eliya, and to be deducted from the annual value of Colombo accordingly?

[1] (1909) *A. C. 78.*

[2] (1916) *1 A. C. 23.*

The truth is that this argument for the plaintiffs lacks the necessary legal basis, namely, that there must be the same ownership of the two enterprises, Colombo and Nuwara Eliya. If there is one and the same owner of two or more enterprises, or rather of one enterprise with several branches, then the rating of it can be treated as a whole, so much to be added here, so much to be deducted there, and a right result can be arrived at, namely, that each part of the enterprise in each rating area shall be assessed to that area in the correct amount but so that the separate amounts so assessed shall not, when added together, exceed the correct assessment of the whole enterprise taken as a whole. Apart even from the lack of the necessary legal basis, namely, identity of ownership, we have not in the present case the power to give effect to this argument for the plaintiffs. If some of the profit made at Colombo were deducted from its annual value as having been made or contributed by Nuwara Eliya, the amount so reduced should be added to the annual value at Nuwara Eliya. But we are not trying the assessment of Nuwara Eliya, it is not before us, so the part deducted would not, and could not, go to help the Nuwara Eliya rates, it would be a gift pure and simple to the plaintiff Club. This practically is what the argument for the plaintiffs asks of this Court.

It has been said that no case is discoverable which supports this contention of the plaintiffs, and my own impression is that the argument put forward is not sound in law. But I prefer not to decide it on a legal ground since I think that this claim to have the annual value of the Colombo course reduced by the portion of its profits contributed by Nuwara Eliya can be better decided on the facts.

.. ..

[His Lordship after discussing the facts proceeds :—]

The contention then of the plaintiffs that they should be allowed the whole of the Nuwara Eliya losses is not sustainable on the evidence.

To recapitulate—two important matters can now be considered as established : one a question of principle, that the thing to be rated is the Colombo racecourse as it stands, and the other a question of detail, but the most important detail in the case, that the plaintiffs cannot be allowed the Nuwara Eliya capital expenditure.

The next matter to be determined is the amount to be allowed as tenant's capital and the profit earnable by him thereon. The problem is this. No hypothetical tenant would pay such a rent as would leave him no profit. An estimate is necessary then of the profit to be allowed as earnable by him, but to earn this profit he must have capital in hand when he starts his tenancy so as to meet current expenses including rent and taxes as these fall due, for there will have to be expenditure by him before the earnings come in that will constitute his profit. The defendant's assessor allowed for the profit to be earned, 10 per cent. for dividends, 6 per cent. for interest on capital, and 4 per cent. for contingencies, in all 20 per cent. It was suggested for the plaintiffs that 25 per cent. should

be allowed but the evidence is that 17½ per cent. is what is allowed pretty uniformily in England—it was the per centage allowed, seemingly without objection, in *Crawford v. Municipal Council of Colombo*[1]—and that 20 per cent. was allowed in the case of the Rangoon Turf Club. A list was put in of local companies paying in the year 1929, 25 per cent. and more, but in the absence of a statement that their shares were purchaseable in that year at par and no more, the list was not very helpful. It was argued that the business of racing would be uncertain and speculative to the hypothetical tenant but it was not shown in what way it would be more uncertain than other businesses. Clearly it would be more certain than the business of racing in England which is liable to fog, snow and frost as well as rain, and the evidence of the plaintiffs' witnesses is that in regard to racing in Ceylon the weather can practically be left out of account. That racing was not speculative or uncertain in the year of assessment 1929 is shown by the profits made in the three previous years —indeed as Mr. Orr the defendants' assessor said, "even a child knows that racing pays". The figure of 20 per cent. allowed for profit seems a reasonable one and no special circumstances were proved requiring it to be increased.

What then was the capital that should be allowed to the hypothetical tenant to earn this 20 per cent? The evidence was that for the first 7 months of the year the Turf Club is paying out a good deal and receiving little, since its main profits come from the August race meeting. Although there is no racing at all at Colombo for the first four months of the year and only minor race meetings up to the end of July, still the course has to be kept up and general expenses have to be met including rates payable every three months, with a month's grace for payment, and the hypothetical tenant would have to pay a monthly rent as well. Profit on a large scale would therefore only begin to be made in August. Therefor for the first seven months of the year the tenant must be prepared to see his capital going out with not enough coming in to replace what does go out. The assessor, therefore, knowing from the accounts the average assessable profits for the three years prior to 1929, took an average of the annual allowable expenditure—what expenditure would be allowable will be discussed later—over the last three years, and allowed two-thirds of that, *i.e.*, eight months out of twelve, for the tenant's working expenses and two-thirds of the rent payable—a simple equation problem enables this unknown figure to be arrived at—and 20 per cent. of this eight months' rent being the rates for two-thirds of the year, the total of the three items being tenant's capital. Profits must be allowed the tenant, namely, 20 per cent. of his capital so arrived at, and would be subtracted from the average assessable profit, the remainder representing rent and rates. Substract from that remainder the right percentage, 16 2/3rds, and you will have the amount of rate payable, the remainder being the annual value which the Ordinance requires the defendants to assess as the sum on which the rate is payable.

No objection was taken to this method, the dispute being as to the amounts that should be allowed as tenant's expenditure and tenant's

[1] *14 N. L. R. 449.*

capital. We are for the moment discussing the latter. The plaintiffs claimed that the tenant would have to purchase or hire certain furniture and plant and would require capital for this byond that allowed him by the defendants' assessor. But this claim overlooked the fact that what the tenant would be taking at a rent would be a fully equipped race-course intended to be used as a racecourse, and this being so, much of the furniture and plant, allowance for which was claimed, would be supplied him as part of the equipment of the racecourse, though the defendants' assessor conceded and allowed him certain other furniture and plant details of which can best be discussed later. For the most part the controversy on tenant's capital was as to the amount of cash the tenant would have to have in hand for the first seven and a half months. It was urged that he would require a considerable amount of money to finance the totalizator, the machine that takes in the betting money and pays out those who have won from the same, and that it was impossible to pay out from the totalizator the same day money which had been paid into it. Attention was also drawn to the custom of cashing member's cheques to enable them to bet—in fine, the hypothetical tenant would require always to have at least a lakh in hand, which lakh must be allowed him over and above his capital required to meet working expenses, rent and rates. This, and the scheme of tenant's capital generally, put up by the plaintiffs, overlooked the facts that even in the barren first seven months of the year when it is mainly outgoings, still there would be incomings as well, subscriptions which have to be paid before a member can have the benefit of the Club and which on the evidence are mainly paid by the end of January, and the monsoon races which bring each of them a profit. Also, the plaintiffs' case failed to prove that the hypothetical tenant would always have to have his lakh in hand—indeed the facts seem to be that it would be sufficient if he had it in hand for a few days before and after each race day. When after a race day he banked his takings from the totalizator, the over-draft or accommodation he would have required to finance the totalizator for that race day would automatically disappear. It was impossible then to hold on the facts that the hypothetical tenant would always need this extra lakh in hand, all he would need would be the use of it for a few days from time to time. Nor was it proved that money paid into the totalizator would be unavailable, any of it, for paying out of it the same day, for the witnesses speak with an uncertain voice as to this. It is not proved then that the defendant's estimate of tenant's capital was wrong in omitting this extra, the lakh to be always in hand.

The other differences of opinion as to tenant's capital were mainly with regard to the expenditure to be allowed him; what things he would have to provide, what he would have to pay out. These differences have in the end grouped themselves under a few headings. Introductory to their discussion something must be said as to how they were brought out in evidence. The document P 15 produced by defendant's assessor at the request of the plaintiffs on February 19, 1930, showed how he arrived at the annual value, Rs. 364,000. Mr. Eastman, the first witness for the plaintiffs, produced in the box certain documents, P 4 to P 11

(hereinafter referred to as P 4), which were not a counter-estimate of annual value to that contained in P 15 but a criticism of some of the figures in P 15 and a statement of what he claimed they should have been. This was not a very fortunate method. The defendant's P 15 was wrong, and wrong in the plaintiff's favour, on one important item, the interest, Rs. 19,800, on certain debentures issued by the plaintiffs in 1923. That interest was clearly landlord's expenditure and not tenant's, and P 15 was, as was afterwards admitted by both sides, mistaken in conceding it to the tenant, and P 4 if it claimed to be of weight, should have been candid enough to point this out and deduct the item Rs. 19,800 from what it claimed that the plaintiffs should be allowed. Reported rating cases seem to show that it is usual for the party rated to produce an estimate of his own, made according to the principle which he claims should be applied but otherwise debiting himself correctly. The failure of P 4 to debit the plaintiffs with this debenture interest went far to deprive it of weight.

When the defendant's assessor, Mr. Orr, went into the box, he produced documents D 5 to D 9 (hereinafter referred to as D 5) which were a revised estimate and which showed, that making certain allowances to the plaintiffs in accordance with the figures in P 4 which allowances had not been made in P 15, and withdrawing certain items, the debenture interest among them, mistakenly conceded to the plaintiffs in P 15, the annual value would come out not at Rs. 364,000 at which plaintiffs' property had been assessed, but at Rs. 386,000. The defendant's assessor was not claiming to increase the annual value by this Rs. 22,000 or at all; he could not do so. He was only, as I understand him, claiming to show that he could have brought out a larger annual value from the beginning. To this the plaintiffs, as I understand them, reply, "if you claim that your estimate should have been as in D 5, then we claim the whole of the expenditure at Nuwara Eliya in diminution of the profits we could earn, and so of the rent we could reasonably be expected to pay". Whether this is permissible may be doubted as has been said. If in reply to the academic contention of D 5 that the annual value might have been Rs. 386,000, the plaintiffs raise the contention, equally academic, that they might have claimed all the capital expenditure on Nuwara Eliya, then the two arguments meet on the same basis, that of hypothesis. But in claiming to be allowed the Nuwara Eliya expenditure they shift that basis. It may be, however, that I have misapprehended the purpose for which D 5 was produced and that this was to enable the defendants to argue that if certain figures in their estimate of Rs. 364,000 were wrong whereby the estimate of Rs. 364,000 would have to be reduced, still they could support that estimate by the revised figures of D 5; "provided I can prove that the estimate ought not to be below Rs. 364,000, then I have proved my case and it does not matter by what particular figures I arrive at the Rs. 364,000". If that is so, and if the defendant does put forward D 5 as a substantive alternative to its original P 15, then certainly the plaintiffs might claim that they were entitled to be allowed the capital expenditure on Nuwara Eliya as a substantive alternative to the case that they originally propounded in P 4. On this assumption the

Nuwara Eliya capital expenditure has been dealt with at length earlier in this judgment and the opinion has been expressed that it cannot be allowed.

. . . . . .

[His Lordship after dealing with the allowable item of expenditure proceeds as follows:—]

Having discussed the more particular disputed items affecting both the Colombo racecourse and that of Nuwara Eliya, we can now come to the more general headings that are in dispute. The first of these is, "General expenses less taxes". On this the defendants' original estimate P 15 allowed Rs. 81,385.21 and plaintiffs in their P 4 accepted this, but in D 5 the defendants reduced it to Rs. 79,821.18, deducting legal expenses Rs. 481.71 and insurance Rs. 1,082.28. Insurance as being a safeguard to the buildings and other equipment of the racecourse is in the nature of maintenance, and so landlord's expenditure. The legal expenses are said to have been incurred in connection with the re-aligning of the course which would be a matter for the landlord.

The next general item in dispute is, "Debenture interest", Rs. 19,800. This was allowed by the defendants in P 15 and the allowance was accepted by the plaintiffs in P 4 without comment. As to this the defendants' assessor says, "these debentures are for the purpose of making new buildings and that would be owner's expenditure . . . . If the owner had to provide occasionally for new buildings he would have to pay the interest and not the tenant . . . . Originally I allowed it (*i.e.*, the debenture interest) as I did not know what the debenture interest was for". In argument to this Court learned Counsel for the plaintiffs expressly abandoned any claim to include this debenture interest in tenant's expenditure, since beyond question it is landlord's expenditure and the inclusion of this item in P 4 goes far to deprive that document of weight, as has been said before.

The next item is, "Depreciation of plant", Rs. 2,525. This item was put forward by plaintiffs in P 4 and as to this Mr. Orr says, "the question again arises as to what they meant by plant. The majority of the items would be depreciation to grandstand and buildings and therefore I disallowed that. It is not really an expenditure but a reserve put by for depreciation". This evidence does not perhaps conclude the matter in view of the discussion to us by Mr. Keuneman of P 5, one of the plaintiffs' documents put in along with P 4. This document P 5 is called a list of furniture and plant. Mr. Keuneman went through the list, admitting that certain of the articles mentioned would have to be supplied by the tenant and if so, would be tenant's expenditure, for instance "paper for the totalizator", Rs. 231, "lawn mowers", Rs. 369, "motor lawn mower", Rs. 2,181, "trailer pump", Rs. 7,656, "motor roller", Rs. 7,934, and "motor lorry", Rs. 2,867. The total of these articles of plant which Mr. Keuneman very candidly admitted were tenants' expenditure comes, on addition, to Rs. 22,162. On this the plaintiffs in P 5 claim depreciation at 7½ per cent. which would be Rs. 1,662. If I understood the argument for the defendants correctly, it was an admission that this Rs. 1,662 for depreciation should be allowed to the plaintiffs.

The next item is, "Depreciation of furniture", Rs. 784, to be found in the same document P 5. Mr. Orr claims that the eight months working expenses which he has allowed covers depreciation. The question depends on whether the particular furniture is part of the equipment of a racecourse intended to be used as a racecourse. Some furniture, for instance, garden seats, it was conceded, would be tenant's expenditure, but pretty certainly not the whole, so that this item Rs. 784 would have to be considerably reduced, it is not easy to say to what extent. In any case the item is a small one.

It will be observed that the Rs. 1,662 which would be the allowance for depreciation on the "plant" in P 5 conceded to the tenant's expenditure, is just 50 per cent. of the whole amount claimed by plaintiffs in P 5 for depreciation, *i.e.*, Rs. 2,525 and Rs. 784 or Rs. 3,309 in all.

The next item is, "Stewards". For these Rs. 42,000 was allowed in P 15 and is still allowed in D 5. This figure is arrived at by allowing for seven paid stewards at Rs. 500 a month, reckoning the year at twelve months although in actual fact racing is carried on only for about eight or nine months. In P 4 the plaintiffs claimed to double this sum and asked to be allowed Rs. 84,000, that is to say, stewards at Rs. 1,000 a month. The actual position is, as has been said, that there is a stipendiary steward and five to seven honorary stewards unpaid. The argument for the plaintiffs, as I understand it, is that if the enterprise of the Turf Club were taken over by a hypothetical tenant to be run with a view to a profit, it would be impossible to obtain the same admittedly high type of man as is at present obtainable as a steward and that it would be necessary to pay your stewards. Mr. Eastman says, "I do not know whether they would work for a commercial concern. I do not think the right type of man would be associated with this racecourse in Colombo if it were run purely as a business enterprise . . . . You could get men but you could not get the right men. I think they, *i.e.*, the right men, would be associated with a commercial concern if they were paid an adequate salary". Mr. Corbett says, "the stewards are as a rule wealthy men and men of standing. I should say very much of standing. I would not admit that they are men who would not need a salary. They are not so wealthy that they would not be pleased if something were paid to them". Mr. Orr on the other hand maintains that men who are keen enough on racing to take on the position of steward would do so whether they were paid or not. He made the allowance Rs. 42,000, not because he thought that the item ought really to be allowed, but because of the decision of the Burmese Courts allowing a similar item to the Rangoon Turf Club. It is not very easy to understand the argument for the plaintiffs, since to say that men of the standing and integrity required would take up the post of steward of the Turf Club run as a commercial concern if they were paid a high salary, but not if they were paid a small one, does not seem very convincing. At the present moment the Turf Club with its high reputation can get men of the necessary position who carry the entire confidence of the public. These men are willing to take on the duty with all the responsibility involved and they are willing to do it for nothing. Why necessarily would they demand pay if the Turf Club were run as a

commercial concern? It might be argued the other way, that it would now be all the more necessary to give the public confidence in such a concern, and that nothing would be better adapted to establish that confidence than to have a body of stewards of high standing, unpaid. The matter is taken so much into the realm of conjecture that it is certainly difficult to say that the plaintiffs have made out their case for doubling the (you would say) quite liberal amount of Rs. 42,000 a year allowed by the defendants in their original P 15 and in their revised D 5. Perhaps the matter is concluded by the evidence of Mr. Corbett, the plaintiffs' Secretary, where he says, "in England there are many race-courses owned by limited companies and run for a profit. In those cases they have had no difficulty in obtaining the services of honorary unpaid stewards. If racecourses are run for private profit or not, they get honorary unpaid stewards but I cannot be positive, that is my impression".

The last item is, "Tenant's services", for which the plaintiffs in their P 4 claim Rs. 24,000. The defendants' P 15 and D 5 allow them nothing on this head. The present position is this. There is an unpaid committee of the Turf Club and the evidence seems unanimous that if the enterprise were in the hands of a hypothetical tenant he would have no committee at all; a committee would only hamper him in making the 20 per cent. profit that is allowed him. There is also at present a paid secretary at Rs. 2,250 a month. It was argued for the plaintiffs that the hypothetical tenant would keep on this secretary but do a great deal of work himself and would be entitled to pay for his services. He would credit himself with so much as a salary for those services and have to be allowed it as tenants' expenditure. He would be his own paid manager in fact. On the other hand there is evidence that the present paid secretary is practically the manager of the Club. Mr. Corbett says, "I as secretary manage the Club under the control of the committee", and he hints that he would have an easier time if he managed the Club without that committee. But that surely is what the hypothetical tenant would do. He would have no committee and by being his own manager would save himself the salary, Rs. 27,000, of a highly paid secretary. It is in evidence that at present the stipendiary steward does the work of assistant secretary and receives Rs. 250 a month for the work as such, extra to his pay as stipendiary steward. It is interesting to notice that this Rs. 250 a month or Rs. 3,000 a year, is exactly the difference between what Mr. Corbett was getting as secretary in 1928-29, namely, Rs. 27,000, and the item claimed on P 4 for tenant's services Rs. 24,000. The position certainly seems to be that the hypothetical tenant would be his own manager, in other words, that he would save himself the Rs. 27,000 or thereby, which at present the Turf Club pays a secretary and is allowed for. If a certain amount extra were allowed him additional to the salary of the assistant secretary, this would really be all that a hypothetical tenant could fairly claim to be allowed additional to the salaries bill which the Turf Club in actual fact now pays. The evidence does not, however, give any figures on which this extra amount could be arrived at.

It is now possible to summarize the position disclosed by the three estimates—defendants' P 15; plaintiffs' P 4, and defendants' revision D 5. You are again faced with the difficulty, what exactly do the parties admit to be the powers of the Court with regard to these documents? The defendants cannot increase their original estimate of Rs. 364,000. That is conceded and the defendants have not attempted to do so. If the plaintiffs argue that the defendants by the very fact of putting in D 5 admit their original estimate of Rs. 364,000 to have been wrong wherever corrected by D 5 and that the original estimate of Rs. 364,000 should be reduced *pro tanto*, whereby they would claim that this appeal should be determined in their favour—with costs I suppose to follow the event—there would be a very obvious answer, that if you look at D 5 for one purpose, namely, to reduce the original estimate, you must look at it in its entirety and find out whether it does really reduce the original estimate. It will be seen later that it does not. If, however, the plaintiffs' claim is that their estimate P 4 must be accepted in its entirety as confuting defendants' original estimate P 15, the answer is that it does not seem on an analysis of the claims in P 4—they have been discussed in detail above—that the plaintiffs have made good the position that they took up in P 4. A large number of the items which they claim have been shown by evidence and argument which you feel compelled to accept, to be landlord's expenditure and not tenant's expenditure at all, and if that is so, P 4, quite apart from the question of debenture interests, cannot claim to be established. The items of its claim have been discussed in detail and it is unnecessary to repeat that discussion. As, however, all three documents were argued before us without, as I understand, serious objection on either side, it will certainly be useful to show how far the defendant's original P 15 had been modified by their revised estimate D 5. To do this it will be necessary to add together first the items which the defendants omitted in their original estimate P 15 but which they now admit must be credited to the tenant, and then to add together the items which they originally on P 15 allowed to the tenant but now claim should not be allowed. The difference between these two totals will be some guide as to whether the annual value as estimated, namely, Rs. 364,000 was reasonable or the reverse. Now the items which were omitted from P 15 but which the defendants by D 5 admit should have been allowed to the plaintiffs, are three in number—"Upkeep of course", including "Upkeep of buildings", Rs. 5,475; "Upkeep of buildings" at Nuwara Eliya, Rs. 511.95, "Upkeep of course, &c.", at Nuwara Eliya, Rs. 1,720.62, making a total of Rs. 7,707.57. The amounts which the defendants by P 15 originally allowed the plaintiffs but which now by D 5 they say they were mistaken in allowing and therefore deduct, are as follows:—Fences and hedges, Rs. 3,250.32 (*i.e.*, they had cut out 80 per cent. of what they originally allowed on P 15), hire of fans, Rs. 1,740.64, totalizator maintenance, Rs. 3,006.84 (*i.e.*, what was originally allowed by P 15 has been reduced by that amount), upkeep of course at Nuwara Eliya, Rs. 899.82 (*i.e.*, cutting out insurance from what they orginally allowed on P 15), hedges, fences, &c., at Nuwara Eliya, Rs. 1,093.87 (*i.e.*, they

have cut out 80 per cent. of what they originally allowed on P 15), general expenses, Rs. 1,564.03 (*i.e.*, legal expenses deducted). These six items added together come to Rs. 11,555.52. This total represents amounts which the defendants originally allowed to the plaintiffs but which they claim on a proper application of the law should not have been allowed. If the Rs. 7,707.57 which the defendants now admit should have been allowed in the first instance, is deducted from this total, Rs. 11,555.52, there will be a difference against the plaintiffs of Rs. 3,847.95, or in other words the defendants could, had they been so minded, have added that amount to the original estimate of Rs. 364.000. It will be observed that these figures have not included the debenture figures Rs. 19,800 which confessedly should never have been allowed to the tenant, and the nett result, if the defendants' arguments and figures are correct, is that the assessed annual value of Rs. 364,000 was some Rs. 22,000 less than it could have been. Even if something further be allowed to the tenant on the two items which are left doubtful, namely, depreciation of plant and furniture and something for tenant's services or rather for an extra clerk to assist him in his work as manager, still it seems perfectly clear that the assessed annual value of Rs. 364,000 cannot be called excessive but seems rather to have erred on the other side and to have let the plaintiffs off too lightly.

This judgment has perforce been lengthy both from the number of points in dispute and from the many details involved. Its conclusions may thus be summarized. The grounds of objection to the assessment assigned by the plaintiffs were sufficient under section 117 and section 124 of the Ordinance, and the order dismissing the action because those grounds were insufficient must be set aside. The subject to be rated was the enterprise of the plaintiffs, the racecourse at Colombo as it stood, as a going concern, intended to be used as a racecourse. Anything necessary for the repair, maintenance, or upkeep of that enterprise would be part of the equipment of that racecourse intended to be used as such, and so would be part of the subject to be rated, and this whatever be the exact ambit of *Kirby's Case* and the cases leading up to it. That subject would have to be rated on the revenue or profits basis. The plaintiff Club would have to be considered as itself a possible tenant of its own enterprise in estimating what rent a tenant would pay therefore. The allowances to be made the tenant would not include the capital expenditure on the Nuwara Eliya course, certainly on the facts, probably as a question of law also. The profit which the defendants allowed the tenant on the capital he would need was 20 per cent. and this allowance was not shown to us to be wrong. The defendants had used a correct method in arriving at the annual value of the subject to be rated and so of the rates thereon, and the amount they had allowed the tenant as capital was not shown to us to be insufficient. Nor was it shown to us that there had been any error as to the amount allowed by them for tenant's expenses. The assessment of Rs. 364,000 could not be proved to be excessive but was if anything rather less than what might have been imposed. The appeal of the plaintiff Club therfore fails.

The action below was actually dismissed because the Court held the grounds of objection to be insufficient but the reversal of this conclusion cannot have any effects on costs, since the defendants never contended either below or to this Court that the grounds of objection were insufficient.

The appeal must be dismissed with costs.

DRIEBERG J.—I agree.

Appeal dismissed.