Present: Hutchinson C.J. and Wood Renton J.

Nov. 2, 1910

CRAWFORD *et al. v.* MUNICIPAL COUNCIL OF COLOMBO.

243—*D. C. Colombo,* 29,252.

Havelock racecourse—Annual value—Assessment—Principles on which the assessment should be made—Municipal Councils Ordinance, 1887, s. 133.

To assess the annual value of the Havelock racecourse it is not enough to take the difference between the receipts and expenditure of the Turf Club; a deduction should be made for the interest of the Club's capital and for its profits.

HUTCHINSON C.J.—It is unreasonable to suppose that any tenant, including the Club as a possible tenant, would be content to carry on the business for the sole benefit of the landlord, and to hand over to the landlord the whole of the receipts, deducting only the necessary expenses. It seems to me to be clearly right to deduct from the gross profits—that is, from the difference between the receipts and the expenditure of the Club—a sum for the profits which the tenant would expect to make, and for interest on the capital which he would require to carry on the business.

Donations to outstation race meets and the expenses of the Turf Club Ball must be included among the working expenses of the Club.

Sums earned by the Club on lotteries should be included among the items of income.

THE facts appear from the judgment.

Sampayo, K.C., for the Municipal Council, appellants.

Van Langenberg, Acting S.-G. (with him *Morgan de Saram*), for the respondents.

Cur. adv. vult.

November 2, 1910. HUTCHINSON C.J.—

The trustees of the Ceylon Turf Club brought this action for the reduction of the assessment of the Havelock racecourse, of which they are the owners, for the year 1909 by the Municipal Council of Colombo. It was assessed at Rs. 12,161, and they claimed that it should be reduced to Rs. 10,560. The District Court has ordered it to be so reduced, and the Council appeals against the order.

The assessment must by section 133 of the Municipal Councils Ordinance, No. 7 of 1887, be of the "annual value"; and by section 3 "annual value" means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay

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if he undertook to pay all public rates and taxes, and if the landlord undertook to bear the cost of repairs, maintenance, and upkeep. The question to be decided was, therefore, what rent could the owner, if he were not the same person as the Club, expect to get from a tenant, taking into account the Club as one of the possible tenants ? In considering this the District Judge said that he doubted, on examining the accounts, whether the racecourse could be conducted with profit (that is as a racecourse) by any one undertaking it as a purely commercial business. He then found that the gross yearly receipts for the three years ending in September, 1907, were Rs. 61,901. The Council said that to this should be added Rs. 2,759 earned by the Club on lotteries ; and this is clearly right, unless the addition of that sum would raise the assessment to a sum beyond that at which the Council fixed it. That makes the gross receipts Rs. 64,660. The Council contend that the property should be assessed at the full amount of the difference between that income and the expenditure of the Club. Before considering this I will dispose of one or two minor matters.

The Club exists for the purpose of encouraging horse racing in Ceylon. In its expenses it includes (1) donations which it makes to outstation race meets, which the Judge computes to be on an average Rs. 1,565 a year ; and (2) expenses of the Turf Club Ball given during the August meet in Colombo Rs. 1,379. The Council objected to these items, but the learned Judge allowed them, and I think quite rightly. If the Club were carrying on the business for the purpose of making a profit, it would doubtless make the same expenditure for the purpose of obtaining the support of the public. There are some small items amounting to Rs. 1,748 which the Judge has also allowed, rightly in my opinion, and one of Rs. 285 for manure and gravel, which he has not allowed, but which it seems to me might properly have been allowed.

We then come to the most important point, whether the rent which might be expected is the total difference between the receipts and expenditure, or whether a deduction should be made for tenant's capital and tenant's profits. It is unreasonable to suppose that any tenant, including the Club as a possible tenant, would be content to carry on the business for the sole benefit of the landlord, and to hand over to the landlord the whole of the receipts, deducting only the necessary expenses. It seems to me to be clearly right to deduct from the gross profits—that is, from the difference between the receipts and the expenditure of the Club—a sum for the profits which the tenant would expect to make and for interest on the capital which he would require to carry on the business. And I think that the sum which the District Judge has deducted on that account is reasonable ; he has estimated the capital required at Rs. 34,000, and he allowed 17½ per cent. on that, viz., 5 per cent. for interest on the capital, 10 per cent. for profits, and 2½ per cent.

for risks and casualties. If, then, the gross receipts are put at Rs. 64,660, and we deduct from that sum the expenses (including insurance), and the taxes, and the interest on capital, and the profits, the result is a sum less than Rs. 10,560.

I would therefore dismiss the appeal with costs.

WOOD RENTON J.—

In this case the plaintiffs-respondents, who are the trustees of the Ceylon Turf Club, sued the defendants-appellants, the Municipal Council of Colombo, for a reduction of the assessment for 1909 of the annual value of the Havelock racecourse from Rs. 12,161 to Rs. 10,560. The learned District Judge gave judgment in favour of the respondents as prayed for with costs, and the Municipal Council appealed.

The main points argued in support of the appeal were these. (1) That the District Judge was wrong in treating the Ceylon Turf Club as a commercial undertaking, whose trade profits have to be taken account of before assessable value is arrived at ; (2) that the amounts derived by the Turf Club from sweeps should have been included as an item of income ; and (3) that the figure, namely, Rs. 34,000, at which the District Judge has fixed the necessary capital of the Turf Club for the purpose of ascertaining the amount to be deducted as interest on capital, is excessive.

No authority, either English or local, bearing directly on the question of the assessment of a racecourse, conducted, as is the Havelock racecourse, under the auspices of a purely voluntary association, was cited to us. In the absence of any such authority I am of opinion that the learned Distict Judge was right in treating the undertaking here in question as a commercial one. In all cases of this character we have to consider the point of view of the hypothetical tenant. 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 the profits that can be made by it. The present case was argued before us on the basis that there is no division of the profits derived from the operations of the Turf Club among its members. But that, to my mind, is quite immaterial. Even if the profits were not divided among the members, they would be devoted to the furtherance of the objects of the Club itself ; to the improvement for example, of the grounds, to attracting the importation or breeding of better horses, and to anything and everything that would tend to secure to the Club a good position among kindred societies. If a voluntary association were confronted with the alternative of either not starting a racecourse at all, or handing over to the landlord all the profits that could be made by running it, it would, in my opinion, leave the enterprise alone.

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Although the point as to the exclusion of the sweeps does not affect the actual decision of the present case, we are pressed by Mr. de Sampayo, the appellant's counsel, to give our ruling upon it as a matter of principle. I think that the sweeps were clearly an item of income, and should have been so treated by the District Judge, in spite of the fact that they were not included in the original assessment, provided, always, of course, that the effect of the inclusion was not to raise that assessment above its original amount. The learned District Judge has arrived at his estimate of the necessary working capital of the Club by taking into account all the expenditure necessary to earn the profits of the August races, which he computes at Rs. 24,132·89, and, in the next place, the working expenses from January to July, which he estimates at over Rs. 10,000. These figures are arrived at from an examination of balance sheets. I do not think that the principle of assessment on which the Judge has proceeded is unfair or unsound, or that his estimate can, on the materials before us, be said to be excessive.

As the points were mentioned, although not very strongly argued by Mr. de Sampayo, I would add that, in my opinion, the Judge was right in including the donations made to outstation race meets and the loss on the Turf Club Ball as tenant's working expenses. These items are really connected with the successful working of the racecourse itself.

On these grounds I dismiss the appeal with costs.

Appeal dismissed.