the Court are of a contrary opinion the rule must be made absolute.

Rule absolute.

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REX v. EASTON. OULTON, *Ex parte.*

Solicitors for respondent: *Sharpe, Pritchard & Co.*

Solicitors for applicant: *F. Venn & Co., for E. R. Pickmere, Liverpool.*

J. H. W.

CARLISLE AND SILLOTH GOLF CLUB *v.* SMITH.

1912 *Feb.* 20.

Revenue—Income Tax—Club—Fees received from Visitors—Profit or Gain—Method of Assessment—Income Tax Act, 1842 (5 & 6 *Vict. c.* 35), *Sched. D, First and Sixth Cases.*

A club, an ordinary bona fide members' golf club, acquired land under a lease granted by a railway company. In addition to the members of the club, who were entitled on payment of their subscription to play on the links and to other privileges for the current twelve months, each full member might introduce a friend three times a year free of charge. A considerable number of visitors used the club-house and played on the links in accordance with a provision contained in the lease which provided that they should be allowed to play on payment of the green fees of 1*s.* 6*d.* per day, 5*s.* per week, or 10*s.* per month, as the case might be, or such other charges as the lessors might from time to time fix not less than the minimum amounts of 1*s.* 3*d.* per day, 4*s.* per week, or 10*s.* per month. The total annual expenditure incurred in maintaining the links in a condition fit to play golf upon exceeded the total amount of fees received from visitors.

The Commissioners for the General Purposes of the Income Tax Acts decided that the club was liable to assessment in respect of visitors' green fees less such proportion of the annual outlay in maintaining and keeping up the links and club-house as the visitors' contributions bore to the entire annual income of the club or fund available for the maintenance and upkeep:—

Held, that the club was carrying on an enterprise which was beyond the scope of the ordinary functions of the club, and as to which it was possible to keep separate accounts so as to ascertain whether there were any profits, and that any profits derived from the visitors' green fees were therefore taxable under Sched. D of the Income Tax Act, 1842.

Held, further, that the method of arriving at the amount of the taxable profits adopted by the Commissioners was erroneous, and that in default of agreement the case must go back to them to ascertain the amount of taxable income received by the club.

CASE stated under the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 59, by the Commissioners for the General Purposes

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of the Income Tax Acts for the Division of Allerdale below Derwent in the county of Cumberland.

At a meeting of the Commissioners held on November 11, 1909, and adjourned to February 24, 1910, the appellants, the Carlisle and Silloth Golf Club, appealed against assessments of 66*l.* made under Sched. D of the Income Tax Act, 1842, for each of the two years ending April 5, 1909, and April 5, 1910, respectively in respect of profits from visitors based on the appellants' accounts.

The club was formed some years ago and was carried on under a constitution and rules made by its members in general meeting.

The club was not incorporated or registered under the Friendly Societies Acts. It was an ordinary bona fide members' golf club and was formed for the ordinary purposes of such a club, and in particular—

(*a*) For the provision and maintenance of golf links at Silloth for the club, together with a club-house, refreshment rooms, and other usual conveniences in connection therewith.

(*b*) To supply refreshments (including all kinds of alcohol and mineral waters) to members.

The objects for which the club was formed had been duly carried out, the club having acquired land under a lease granted by the North British Railway Company in 1903 to certain members of the club's committee of management as representing the committee, and an agreement in 1908 extending the lease, and in accordance with the provision hereinafter mentioned contained in the lease the club had erected a substantial club-house together with buildings used for locker rooms, ladies' room, professionals' room, lavatories, &c.

The lease contained (inter alia) the following provisions:—

Second. "The lessees shall in accordance with plans to be previously approved of by the lessors erect a new golf club-house in addition to or in substitution for the existing golf club-house and thereafter maintain it in good condition."

. . . . .

Fifth. "The lessees shall appoint the greenkeepers necessary to maintain the links in as good a condition as they are in at

present and during the period of this lease shall maintain and at the expiration of it leave the links in such condition."

. . . . . .

Seventh. "The lessees shall allow non-members to play golf on the said links on payment of one shilling and sixpence per day, five shillings per week or ten shillings per month as the case may be, or on payment of such other charges as the lessors may from time to time fix, not being less than one shilling and threepence per day, four shillings per week or ten shillings per month."

. . . . . .

Ninth. "The lessees shall pay to the lessors a nominal rent of twenty-one shillings per annum on the anniversary of the date hereof."

The committee responsible for the management of the club consisted of ex officio members and nine ordinary members to be elected at the annual general meeting by ballot.

The receipts in each year of the club consisted of—

(*a*) The subscriptions of members.

(*b*) Locker rents from members.

(*c*) Profits on the sales of the supplies of refreshments, alcohol and mineral waters appearing in the club's income account under the head of "Steward's Account."

(*d*) Green fees (being the receipts from visitors) appearing in the club's income account under the head of "Visitors' Tickets."

In addition to the members of the club, who were entitled on payment of their subscription to play on the links and to other privileges for the current twelve months, each full member might introduce a friend three times a year free of charge. A considerable number of visitors used the club-house and played on the links in accordance with the provision contained in the lease which provided that they should be allowed to play on payment of the green fees of 1*s.* 6*d.* per day, 5*s.* per week, or 10*s.* per month, as the case might be, or such other charges as the lessors might from time to time fix, not being less than the minimum amounts of 1*s.* 3*d.* per day, 4*s.* per week, or 10*s.* per month.

The fees during the years 1908 and 1909 were increased to

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2*s.* per day, 7*s.* 6*d.* per week, or 15*s.* per month, and the total amount received from visitors for the year 1905 was 177*l.* 4*s.*; 1906, 192*l.* 13*s.* 6*d.*; 1907, 204*l.* 11*s.*; and for the year 1908, 228*l.* 19*s.* 6*d.* The expenses necessarily incurred in each year in maintaining the club exceeded the amounts received from green fees from visitors. The expenditure incurred in maintaining the golf course alone (as distinct from the club-house and premises) was—

	£	*s.*	*d.*
For the year 1905 - - - -	256	2	7
„ „ 1906 - - - -	270	2	3
„ „ 1907 - - - -	269	15	3
„ „ 1908 - - - -	301	8	6

The contentions on behalf of the club were as follows:—

(*a*) That the club being an ordinary bona fide members' golf club and not an association carrying on the business of letting out golf links for profit was not liable to be assessed at all and, there being no evidence of the club trading or carrying on any business whatever, should not be assessed.

(*b*) That in any case there were no profits assessable as the total annual expenditure incurred in maintaining the links in a condition fit to play golf upon exceeded the total amount of fees received from visitors.

The respondent, a surveyor of taxes, contended (inter alia) that the club was in receipt of annual profits or gains which if not within case 1 of Sched. D clearly came within case 6 (1), which imposed liability on all "annual profits or gains" not falling under any of the foregoing rules and not charged by virtue of any other schedule.

It was not sought to assess any surplus arising from members' subscriptions. The visitors were not members of the club—they had no vote for the committee, were not admitted to the club

(1) Income Tax Act, 1842, Sched. D: "First Case—Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade, not contained in any other schedule of this Act."

"Sixth Case—The duty to be charged in respect of any annual profits or gains not falling under any of the foregoing rules, and not charged by virtue of any of the other schedules contained in this Act."

competitions, and were not elected in the same way as ordinary members—and it was contended that there was liability to assessment in respect of the proportionate part of the yearly surplus that arose from visitors' green fees, and *New York Life Insurance Co.* v. *Styles* (1) was cited. The assessment was calculated by taking from the total visitors' fees for the year such proportion of the total of all expenses applicable both to members and visitors as the visitors' fees bore to the total annual income of the club. It was further contended that the whole of the expenses could not be set against the visitors' fees because a large part of the cost of upkeep was due to members and would be incurred whether there were visitors or not.

The Commissioners decided that the club was liable to assessment in respect of visitors' green fees less such portion of the annual outlay in maintaining and keeping up the links and clubhouse as the visitors' contributions bore to the entire annual income of the club or fund available for the maintenance and upkeep, and reduced the assessments for the years ending April 5, 1909, and April 5, 1910, to 64*l.* and 59*l.* respectively.

The club (by its treasurer and a member of the committee) appealed.

Ryde, K.C., and *A. M. Latter*, for the appellants. The club makes no taxable profit. The receipts from the members' subscriptions do not alone cover the club expenses, nor do those from the visitors alone. It is suggested by the Commissioners that by combining the two classes of receipts a profit can be shewn. The club is conducted as an ordinary club for amusement without any question of profit as between the club and the lessors.

The club cannot be said to be engaged in any trade or manufacture or in any adventure or concern in the nature of trade within the meaning of the first case in Sched. D of the Income Tax Act, 1842. It exists solely for pleasure. By the admission of visitors a species of temporary partnership is established, as the whole concern becomes one common venture. The members of the golf club desire to obtain their golf as cheaply as possible, and they have therefore arranged with the North British Railway

(1) (1889) 14 App. Cas. 381.

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Company that they should be at liberty to admit visitors. Nor does the club make any annual profits or gains within the meaning of the sixth case of Sched. D of the Income Tax Act, 1842. An analogous case is that of two persons who engage a cab but do not share the expense of hiring it equally. Each person reduces his expense by joining the other, but neither makes a profit or gain. At the end of each year there is a deficit on the golf links so far as the visitors' subscriptions are concerned, and that deficit has to be made good by the members' subscriptions. No doubt, if the golf course could be regarded as a separate undertaking and the visitors' subscriptions resulted in a profit which was applied to the relief of the club expenses, that profit might be taxable income. The decision in *New York Life Insurance Co.* v. *Styles* (1) has no application. In that case it was admitted that the income derived by the company from transactions with persons not members was taxable. The only point decided was that the income derived from mutual insurances between members only was not liable to income tax. An aggregate of individual losses cannot result in a corporate gain. In the present case no profit can be shewn on the business done with non-members unless the proceeds of the business done with the members is brought into account. In *Grove* v. *Young Men's Christian Association* (2) the restaurant carried on by the association was making a profit. The association—viewed as an association—would have been poorer if they had not carried on the restaurant. In the present case if the club discontinued the golf course it would be richer. Suppose a person grows potatoes in his garden and by selling the surplus over his own requirements reduces his expenses, he would not make a taxable income. He has only reduced his loss. A social club does not trade nor is it carried on for profit. If the visitors were made members the case for the Crown would be unarguable.

Further, if there is any taxable gain, the method by which the Commissioners have arrived at the amount of it cannot be supported. The expenses attributable to the visitors cannot be ascertained by deducting, as the Commissioners have done, from the total expenses of the upkeep of the links a sum ascertained by

(1) 14 App. Cas. 381. (2) (1903) 4 Tax Cases, 613.

the proportion the receipts from the visitors bear to the total fund available for the upkeep of the links. There is no relation between the amounts. The subscriptions from members could be raised without altering the visitors' fees, and if that were done sufficiently it would make the fraction of the total expenses to be deducted from the visitors' fees so small that the visitors' fees would appear to be nearly all profit. The Commissioners have taken into consideration the expenditure of members upon members. [*Wise* v. *Perpetual Trustee Co.* (1) and *In re St. James's Club* (2) were also referred to.]

Sir Rufus D. Isaacs, A.-G., and *W. Finlay*, for the respondent. The question is whether the club carries on as regards the non-members the business of the proprietors of a golf course. If the club for consideration gives a licence to non-members or lets to them the right to come on to the golf course it makes a contract which enures for the benefit of the club. It carries on the business of a golf club proprietor. The fact that the obligation to carry on the business is imposed by the lessors makes no difference. The only question is whether a profit results to the club. The facts in the present case are closely analogous to those in *Grove* v. *Young Men's Christian Association.* (3) The fact that that which the club lets to the non-members is the surplus beyond its own requirements is not inconsistent with its carrying on a business. The club would have to keep the golf course in order even though it did not admit non-members, and the amount the non-members pay is therefore to a great extent profit to the club, as the expense of keeping the course in order is not greatly increased by their presence. It is true that the method by which the respondent has arrived at the expenses which he has allocated to the non-members is not scientific, but it is the most favourable mode to the appellants. In a case like the present the only practical method that can be applied of arriving at the proportion of expenses to be allocated to the non-members is a rough approximation. The same method is adopted with regard to gate money received from strangers by cricket or football clubs. The amount at which the gate money ought to be taxed is arrived at

(1) [1903] A. C. 139. (2) (1852) 2 D. M. & G. 383.
(3) 4 Tax Cases, 613.

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by allocating some portion of the club expenses to the gate money, and thus the amount which is the balance of profit is roughly arrived at. The test as to whether a concern is carrying on a business is whether it is receiving money and giving something for it. The sixth case of Sched. D of the Income Tax Act, 1842, includes carrying on a business in a very wide sense. It does not depend upon the question whether the business is detachable from the concern itself. Suppose a club in Pall Mall were to let seats to the public to view a procession, i.e., to non-members. The money the club so obtained would be taxable. So long as the club confined the letting of the seats to members and their friends there would be nothing outside the business of the club. But the moment the club extended its operations to non-members it would be carrying on business with them and profits made by means of that business would be taxable: *Dillon* v. *Corporation of Haverfordwest.* (1) It is true that there is a difficulty in arriving at the exact amount of that taxable profit, but it can be arrived at roughly, and the taxpayer cannot complain if the amount so arrived at is not greater than the exact amount would be, and he suffers no injustice.

Ryde, K.C., in reply. There is no obligation on the club to keep the golf course in order apart from the covenants in the lease. If the principle upon which the profits have been assessed is erroneous, the assessment ought to be quashed: *Assets Co., Ld.* v. *Forbes.* (2) The minimum amount of the fees to be charged to non-members is stated in the lease in order to protect the club, for it would be to the interest of the landlords the North British Railway Company to reduce the fees as much as possible in order to attract as travellers over their railway as many non-members as possible, while power is given to the railway company to fix the fees above a certain amount in order to protect the railway company by preventing the club raising them too high and thus diminishing the number of passengers. *Dillon* v. *Corporation of Haverfordwest* (1) is distinguishable. In that case there was an antecedent liability on the corporation to light the streets. In the present case there is no contractual liability on the club to play golf.

(1) [1891] 1 Q. B. 575. (2) (1897) 3 Tax Cases, 542.

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HAMILTON J. In this case the Carlisle and Silloth Golf Club appeals from a decision of the Commissioners of Income Tax that the club was liable to be assessed in respect of visitors' green fees, the net amount of the assessment being arrived at in a particular way.

The golf club was formed some time ago and is a bona fide club of the ordinary character formed especially for the purposes of recreation and objects incidental thereto. It is not incorporated, but is simply an association of gentlemen who have become members of the club. The golf club course is laid out on some links which are held under a lease from the North British Railway Company, and by the terms of that lease the consideration from the lessees to the lessors consists in the main of covenants to be performed as distinguished from the payment of a substantial rent. The rent is a nominal rent of a guinea a year, but there are covenants to lay out and maintain a golf course and covenants, which have apparently been performed at considerable expense, to erect a pavilion or clubhouse. There is further an obligation to appoint greenkeepers in order to maintain the links in as good a condition as they are in at present, and during the period of the lease an obligation to maintain the links, and at the expiration to leave them in such good condition. There is further this important obligation in clause 7: "The lessees shall allow non-members to play golf on the said links on payment of one shilling and sixpence per day, five shillings per week or ten shillings per month as the case may be, or on payment of such other charges as the lessors may from time to time fix, not being less than one shilling and threepence per day, four shillings per week or ten shillings per month."

There is nothing in the lease or in the agreement which extended the term of the lease to entitle the lessees to object to any particular class of the public if it is willing to pay the fees in question and to conduct itself properly upon the golf course. We therefore start with the consideration that the necessity imposed upon the members of the club of allowing non-members to enjoy the advantages it offers is imposed upon the club by its lessors for reasons which are obvious and reasonable in

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themselves and which are sufficient for the purposes of both sides. The club thinks it worth while to admit strangers and to take the lease on these terms, and the lessors think it to their advantage to make this stipulation.

Enough visitors avail themselves of this privilege to produce a substantial sum of money per annum payable to the golf club. The figures are set out in the case. They reached in 1908 a maximum of 228*l.* 19*s.* 6*d.* By his assessment the surveyor of taxes claimed to assess the golf club as upon its annual profits or gains either within case 1 or within case 6 of Sched. D in the Income Tax Act, 1842.

The first question is whether in the circumstances the club carries on any concern or business in respect of which it receives remuneration that is assessable. Whether there are any profits or gains derived from that business is another matter, but can it be said to carry on something which can be called a business for the special purposes of income tax duty? I think on the whole I must decide that it does. The position is, that in order to acquire the links upon which to obtain its recreation, the club submits to admit strangers upon payment by them, and to maintain the golf course so that strangers can play upon it. It is quite true that these are obligations to the railway company and not to the strangers themselves. It is quite true that there is no reference to strangers in the covenant to maintain, but at the same time as a condition of having their golf course the club has not only to admit strangers, but to keep the course in a condition which will make it worth while for strangers to seek to be admitted.

The next point which has to be noticed is that the strangers are to pay green fees for the benefits that they enjoy. They are admitted to the club-house as well as to play upon the course, and that seems to me to be a feature outside the ordinary scope of that which this club is found to be, namely, an ordinary bona fide members' club. It is no doubt part of the functions and activities of the members of the club to entertain strangers, but not to entertain strangers who pay their own expenses; the strangers are the guests of the club or are introduced by and are the guests of members of the club. It is therefore quite a

special feature in the course pursued by this club that it should have a class of visitors entitled as of right to the enjoyment of most of its advantages upon payment made by them to the club although they are not members and although they may come from classes of the public from which it is not the object of the club to recruit its membership. The advantage of the arrangement to the club is obvious. The club is enabled to come to terms with the landlords for the acquisition of a desirable site which they otherwise would not be minded to let to the club, and there is the incidental advantage that a revenue accrues which is relatively not inconsiderable and is applied for the purposes of the club towards its general expenditure.

In my judgment this constitutes the carrying on of an enterprise which is in itself outside the scope of the ordinary functions of the club and distinct from its ordinary objects and activities. The amount of green fees to be paid by visitors is fixed by the lessors from time to time, subject no doubt to a minimum which is a protection, so far as it goes, to the lessees, but there is no direct relation between the green fees mentioned in the lease and the cost price actually ascertained of the entertainment that the visitors receive. The minimum may be fixed by some reference to what is supposed to be the sum that it costs the club to admit these visitors, but the fees actually charged are in excess of it and are presumably fixed by reference to considerations which affect the lessors, and not merely considerations that affect the burden which is imposed upon the lessees. In my judgment, therefore, the club has, for considerations sufficient in its own view, annexed to its ordinary enterprise of a golf club systematic services to strangers for the purpose of obtaining, among other advantages, the revenue that those strangers provide. It is not a case where, owing to relations of membership or family bonds, persons club together and reduce the common expenditure on some common object by contributions which they fix roughly with some reference to the cost. It is not a case in which the members as an aggregate (for they are not incorporated) dispose of their surplus because they have no necessity to consume it, but it is a case in which this aggregate of gentlemen, who may for practical purposes be treated as one person, have

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annexed to their club for the purposes of recreation an enterprise which is separate from it and which results in pecuniary receipts to themselves.

That, however, is not conclusive, because in ordinary circumstances before it could fairly be said that something is being carried on which could be called a business and which would be assessable in respect of its profits or gains (I do not use "business" in any technical sense) it would be necessary to find that something is being done as to which it is possible to keep separate accounts so as to ascertain whether there are profits or gains or not; and further it would be necessary to ascertain that there are profits and gains in fact. As to the amount of the profits and gains very cogent criticisms upon the mode in which the quantum of the assessment has been arrived at have been addressed to me on behalf of the appellants, and I have been invited to draw the conclusion that nothing is carried on which is severable from the general business or enterprise of the club, and that this entertainment of strangers in return for green fees is a separate matter merely in appearance and not in reality. To a large extent I agree with the criticisms on the mode of converting the gross revenue derived from visitors' tickets into a net profit or gain derived from the entertainment of visitors, and I think that there has been no proper comparison of the cost of earning the green fees with the green fees themselves and no proper dissection of the general overhead charges of the club for the purpose of attributing to the earning of the green fees the proportion of the club's outlay which in fact goes to the earning of that remuneration. Instead of that, a rule—I do not call it a principle—has been adopted which is expressed in these words: "less such portion of the annual outlay in maintaining and keeping up the links and club-house as the" visitors' contributions bear "to the entire annual income of the club or fund available for the maintenance and upkeep." That in the circumstances is a very natural method for a surveyor to adopt and to submit to a taxpayer for the purpose of seeing whether he will contest, discuss, or accept it, but it is in truth an evasion of the problem rather than an attempt to grapple with it. There is no necessary connection and little or no real relation between the gross fund

available for the maintenance and upkeep of the club and the mode in which that fund is made up by contributions under varying circumstances and conditions from varying classes of persons.

These considerations are not, however, at all conclusive as to the first question, whether there is a separate business or concern carried on by the club, although they do bear upon the question whether the club makes any profits or gains. If it were worth while to incur the expense, it would be possible, by taking the experience of the working of this or similar clubs over a period of years and by examining the number of persons of each class using the club and the links and the times of the year at which they do so and the numbers at particular times in which they congregate together, to ascertain with real arithmetical accuracy what proportion of the club's gross expenditure upon house and grounds is truly attributable to the user by the visitors in respect of which the green fees are receivable. It is not impossible upon the accounts to sever this part of the club's enterprise from the remainder, but it is difficult and probably unreasonably expensive. I, however, think that it could be accomplished. That part of the club's enterprise is capable of being isolated and defined, and that which is prima facie, having regard to the lease and the constitution of the club, a separate enterprise is also capable of being defined, as a separate enterprise.

The remaining question is whether the club in fact makes any profits or gains. It is said that the green fees alone would not nearly keep up the course and the club-house which the visitors enjoy, nor would the members' subscriptions without the visitors' green fees keep up the course and the club-house; that in either of those aspects the club would every year have a heavy deficit. By combining the two there is a less deficit, though there is still a deficit, because the difference between the receipts and expenditure has to be made good by members' subscriptions. It is perhaps an overstatement to speak of a deficit in these circumstances, because presumably the members obtain their quid pro quo for their subscriptions, but no doubt it is true that the receipts from the coffee room for refreshments or from the lockers or the visitors' tickets and other sources would not be nearly sufficient to maintain the club in the condition in which

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it is maintained, but that is not sufficient to shew that the Commissioners should have treated this undertaking as one in which no profits or gains were earned. There is little doubt that the inference is more one of fact from admitted circumstances than one of law. There is none that this club exists for the members and not for business purposes, and that it was formed and is maintained in order that the members might have a suitable course and pavilion for the purpose of their recreation. The visitors' part of the entertainment is a subordinate and an additional department which the club is required to institute and carry on by the terms of its lease, and from which by the terms of its lease it extracts a substantial and, it is to be hoped, a satisfactory return. But it is impossible to say on these facts alone and without further investigation that there is no profit or gain merely because it is apparent upon the figures that if there were no members and all were visitors the visitors would have to play upon the ground in its unprepared condition and dispense with the club-house altogether. In fact there is a club, a club-house, and a golf course laid out upon the links, and the visitors obtain the advantage of playing upon it upon specific terms not at all directly connected with the cost price of their entertainment. I am therefore unable to hold upon the facts before me that the Commissioners were wrong in assuming that there was some profit or gain made.

The remaining question is whether the Commissioners were right in their decision with regard to the assessment. I do not propose to go into any question involving mere facts and figures in that connection, but the Commissioners have stated that the method which they applied was to deduct from the visitors' green fees "such portion of the annual outlay in maintaining and keeping up the links and club-house as" the visitors' contributions bear "to the entire annual income of the club or fund available for the maintenance and upkeep." It is sufficiently apparent that the Commissioners have resorted to that so-called principle because of the difficulty of reducing the gross green fees to a net amount in anything like the exact manner of accountancy, and I cannot draw the conclusion that they have investigated figures and facts and have found that

the true profit is, by a coincidence, the amount that would be ascertained by the application of this somewhat irrelevant rule of three sum. I must take the Commissioners as meaning that in the circumstances, in default of a better rule, this is the right one to apply. It seems to me to be an arbitrary method having no necessary application to the facts, and therefore one which in my judgment it is not right to apply.

It was contended on behalf of the surveyor of taxes that it is unnecessary to dissent from the Commissioners' decision because so far as the amount goes it is as favourable to the subject as it can be whatever method is adopted; and it was suggested that possibly the gross amount of the green fees would be the sum in respect of which the assessment should be made, because there is no finding that the whole of the items on the debit side would not have been incurred in respect of the members even if there had been no visitors. I need not decide that question because it is not before me; but I should hesitate long before I accepted the argument. It appears to me that the assessable profits must be the real profits—the net profits—and that the amount of those profits can only be arrived at by ascertaining whether there is not, as one certainly would expect there would be, something to come off the gross before arriving at the net sum. The appellants say that if the appeal is not allowed in toto the case ought to go back to the Commissioners to ascertain what the net and true profits or gains may be, and I think I ought to give the appellants this opportunity, expressing, however, a hope that when the difficulty and the nicety of this calculation comes to be compared with the monetary advantage that is likely to accrue from it, the parties may either agree to accept the present illogical rule or some other rule more satisfactory if not more logical.

Appeal dismissed. In default of agreement case remitted to the Commissioners to ascertain the amount of taxable income received by appellants.

Solicitors for appellants: *James & James, for Clutterbuck, Trevenen & Steele, Carlisle.*

Solicitor for respondent: *Solicitor of Inland Revenue.*

J. E. A.