been presumably a sum of money paid or an arrangement such as the renewal of a lease to which the lessor has agreed, in order to get the advantage which the bargain gave him. That advantage no doubt may have to be the subject of some such calculation as is given in s. 3, sub-s. 2, of the Act of 1911, to which the Master of the Rolls has referred; there may have to be a calculation by which some allowance has to be made in accordance with that sub-section; but the real question that one has to decide after all is whether you are entitled to include under the words "compensation payable by such lessor," or as coming fairly under that head, that which either in money or in money's worth has been given by the lessor to gain the advantage of possession. I think not.

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INLAND REVENUE COMMISSIONERS v. ANGLESEY (MARQUESS).

Kennedy L.J.

Appeal allowed.

Solicitors: *Solicitor of Inland Revenue; Williams & James.*

J. R. B.

[IN THE COURT OF APPEAL.]

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CARLISLE AND SILLOTH GOLF CLUB *v.* SMITH.

Revenue—Income Tax—Golf Club—Fees received from Visitors—Profit or Gain—Method of Assessment—Income Tax Act, 1842 (5 & 6 *Vict. c.* 35), *Sched. D, Cases* 1 *and* 6.

The appellants, an ordinary members' golf club, acquired land under a lease from a railway company and laid out a golf course and erected a club-house thereon. In addition to the members of the club, who were entitled on payment of an annual subscription to play on the links and to other privileges for the current year, a considerable number of visitors were permitted to use the club premises and to play on the links in accordance with a provision contained in the lease which required the club to allow such visitors to play on payment of certain green fees. The total annual expenditure incurred by the club in maintaining the links in a proper condition for play exceeded the total amount of fees received from visitors:—

Held by the Court of Appeal, affirming the decision of Hamilton J., that the appellants were carrying on an enterprise which was beyond the scope of the ordinary functions of the club, and as to which separate accounts might be kept so as to ascertain whether there were any profits,

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and that any profits derived from the visitors' green fees were therefore taxable under Sched. D of the Income Tax Act, 1842.

The Commissioners for the General Purposes of the Income Tax had 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. Hamilton J. held that the method of arriving at the amount of the taxable profits adopted by the Commissioners was wrong, and that in default of agreement the case must go back to them to ascertain the amount of taxable income received by the club:—

Held, that this decision was right.

Decision of Hamilton J. [1912] 2 K. B. 177, affirmed.

APPEAL from a decision of Hamilton J. (1)

The question raised upon the appeal was whether the appellants, the Carlisle and Silloth Golf Club, were liable to assessment for income tax under Sched. D of the Income Tax Act, 1842, in respect of fees received by them from visitors for the privilege of playing upon the appellants' links and using their club-house.

The question was originally raised upon a case stated under the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 59, by the Commissioners for the General Purposes of the Income Tax Acts for the Division of Allerdale below Derwent in the county of Cumberland. The case is set out in the report in the Court below. (1) Shortly stated the facts were as follows:—

The club was an ordinary bona fide members' golf club formed for the provision and maintenance of golf links at Silloth together with a club-house and other usual conveniences in connection therewith. The land upon which the links were formed and the club-house erected was held by the club under a lease from the North British Railway Company. The lease provided inter alia that the lessees should allow non-members to play golf on the links on payment of certain fees to be fixed from time to time by the lessors. A considerable number of visitors used the club-house and played on the links on payment of the prescribed green fees as provided by the lease.

The total amount received from visitors' fees for the year 1905 was 177*l.* 4*s.*; 1906, 192*l.* 13*s.* 6*d.*; 1907, 204*l.* 11*s.*; and 1908, 228*l.* 19*s.* 6*d.* The necessary expenses incurred in each year in

(1) [1912] 2 K. B. 177.

maintaining the club exceeded the amounts received in green fees from visitors. The expenditure upon the golf course alone (as distinct from the club-house and premises) was for the year 1905, 256*l.* 2*s.* 7*d.*; 1906, 270*l.* 2*s.* 3*d.*; 1907, 269*l.* 15*s.* 3*d.*; and 1908, 301*l.* 8*s.* 6*d.*

Assessments of 66*l.* were made upon the club 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. Upon an appeal from these assessments 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 club-house as the visitors' contributions bore to the entire annual income of the club or fund available for the maintenance and upkeep. An appeal from this decision was dismissed by Hamilton J., who held that the club was carrying on an enterprise 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 taxable under case 1 or case 6 of Sched. D of the Income Tax Act, 1842. He held, further, that the method of arriving at the amount of the taxable profits adopted by the Commissioners was erroneous, and that the case must go back to them to ascertain the amount of taxable income received by the club. Against this decision the club appealed.

Ryde, K.C., and *A. M. Latter*, for the appellants. First this club is not an association which is liable to assessment to income tax at all. It is not an undertaking carried on for the purpose of profit or gain.

Secondly, it is not shewn upon the case that there are any profits which are taxable. A club of this kind is not an entity in law, but only an association of the members who cannot make a profit out of themselves. Sect. 40 alone provides for the assessment oj such an institution. The club is not engaged 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,

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1842, nor does the club make any annual profits or gains within the meaning of the sixth case of the same schedule. As to the nature of a members' club, see *In re St. James's Club* (1) and *Wise* v. *Perpetual Trustee Co.* (2) Apart from these visitors it could not be said that the mere fact of there being a surplus on the working of the club shewed there were taxable profits. The decision in *New York Life Insurance Co.* v. *Styles* (3) does not apply to the present case. That was a case of mutual insurance and business done with strangers was quite separate. Here no profit can be shewn on the business done with non-members, unless the business of the members is brought into account. The club do not either collectively or individually make any profit, because the expenses of maintenance and upkeep of the course exceed the amount received from the visitors. If an account be taken, and on one side of it is put the expense of upkeep, and on the other the visitors' fees, there would be a deficit, and the only way to balance the account would be to include the value to the members of the right to play golf on the course. That is not taxable.

What is taxable is something which is money or can readily be turned into money: *Tennant* v. *Smith.* (4)

[BUCKLEY L.J. Suppose a householder takes a paying guest?]

The question is whether there can be a severance of this part of the club's enterprise from the remainder: *Grove* v. *Young Men's Christian Association* (5), where *Religious Tract and Book Society of Scotland* v. *Forbes* (6) was followed. Hamilton J. wrongly thought that there could be a severance. That could only be made by bringing in the value to the members of the right to play golf. Moreover upon the facts of the case there are no profits from the visitors. The assessment should be discharged without sending back the case to the Commissioners.

Sir Rufus Isaacs, *A.-G.*, and *W. Finlay*, for the respondent. It is said that it is impossible for this club to make a gain or profit from the receipt of visitors' fees. Having regard to the terms of the lease the club, in consideration of allowing visitors

(1) (1852) 2 D. M. & G. 383.
(2) [1903] A. C. 139.
(3) (1889) 14 App. Cas. 381.
(4) [1892] A. C. 150, 156.
(5) (1903) 4 Tax Cases, 613.
(6) (1896) 3 Tax Cases, 415.

to play on the links, are receiving money, and assuming that there is a surplus of receipts over expenses, that is a taxable profit. The application of the money so received is irrelevant.

Tennant v. *Smith* (1) was a different case, for there no money was paid. Here the question is whether the club as an association has received money from non-members and given something for it, and whether there is a profit on the transaction. Suppose a club having premises on the route of a procession lets seats to non-members for the purpose of viewing the procession, the money so received would be taxable. Or again, gate money received by a county cricket club and used for the upkeep of the club would equally be taxable. The sixth case of Sched. D is very wide and sweeps in everything not in the nature of trade or business—the words are "any annual profits or gains not falling under any of the foregoing rules." Other cases might be cited, but authorities are not of much assistance upon the point: *Dillon* v. *Corporation of Haverfordwest* (2); *New York Life Insurance Co.* v. *Styles* (3); *In re Glasgow Corporation Waterworks* (4); *Glasgow Corporation Water Commissioners* v. *Miller* (5); *In re Surrey County Cricket Club.* (6)

[KENNEDY L.J. referred to [1901] 2 K. B. p. 409.]

Ryde, K.C., in reply. This club is an association of gentlemen who by receiving fees from visitors reduce the expense to themselves of playing golf. That does not raise a case for taxation under the Income Tax Acts. A reduction of expenses does not constitute income.

Cur. adv. vult.

May 2. COZENS-HARDY M.R. The appellants are an unincorporated association of ladies and gentlemen for the provision and maintenance of golf links, with a club-house and other conveniences. The members pay subscriptions and are entitled to play on the links. There is no question of the division of profits. The club was not formed for that purpose. In so far as subscriptions received from members are concerned, it is conceded that

(1) [1892] A. C. 150, 156.
(2) [1891] 1 Q. B. 575.
(3) 14 App. Cas. 381.
(4) (1875) 1 Tax Cases, 28.
(5) (1886) 2 Tax Cases, 131.
(6) [1901] 2 K. B. 400.

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the club are not assessable to income tax. But in addition to members, there are a considerable number of visitors who play on the links and use the club-house on payment of certain "green fees." As between the club and their lessors, the club are bound to admit visitors. The annual sum received for "green fees" from visitors is from 200*l.* to 300*l.* The cost of maintaining the golf course exceeds this amount; and it also exceeds the annual sum received from members for subscriptions. If there were no fees from visitors the subscriptions of members would have to be increased.

In these circumstances it is contended, and Hamilton J. has decided, that, in so far as the club invite and receive "green fees" from visitors, the club are liable to be assessed in respect of the annual "profits or gains" within case 1 or case 6. It is urged that this is something severable from the ordinary and proper business of a golf club. On the other hand, it is contended that no such severance is possible, and, further, that there can be no profits or gains, for the total cost of maintaining the golf course exceeds the amount of the visitors' fees.

It seems to me that there is a real difference between moneys received from members and applied for the benefit of members and moneys received by the club from strangers. I cannot draw any distinction between gate moneys, which might be, and I believe sometimes are, received by a golf club, and green moneys. In each case the club would be assessable. Whether there have been any profits or gains is a matter of fact; and the answer will depend upon the mode in which the expenses of maintenance and other outgoings ought to be attributed to the visitors. This is really a question of fact for the Commissioners, and not for this Court. Hamilton J. held, and I agree, that the particular rule adopted by the Commissioners was wrong, and he referred it back to the Commissioners, in default of agreement, to ascertain the profits. In my opinion his decision was right, for the reasons assigned by him. The appeal must be dismissed with costs.

BUCKLEY L.J. I agree as well in the reasoning as in the conclusions of the judgment pronounced by Hamilton J. His decision, was, I think, quite right. I should think it unnecessary

to add anything, but out of respect to some of the arguments urged before us I will add the following. If it were necessary (which it is not) to decide whether the club were carrying on "an adventure or concern in the nature of trade," I am of opinion that they were. To determine this question it is not the character of the person who carries on but the character of the concern which is carried on that has to be regarded. If a landowner laid down upon his land a golf course and charged fees for admission and user—if, that is to say, the links were a proprietary golf links carried on with a view to profit—there can be no question but that the proprietor would be assessable. The adventure of maintaining golf links and charging for the use of them is an "adventure or concern in the nature of trade." If other conditions therefore are satisfied the club are, I think, assessable under the first rule of Sched. D. But as I have already said, it is, I think, unnecessary to determine whether that is so or not, for if it were not a "concern in the nature of trade," yet, other things being satisfied, the club would be assessable under the sixth rule.

Further, the question is not whether the members of the club are making profit but whether the fraternity or society chargeable under s. 40 of the Act of 1842 are making profit by the concern in question. The appellants laid great stress upon the fact that the expenses in each year exceed the amount received from green fees from visitors. That fact seems to me irrelevant upon the question whether the club are assessable. If relevant at all it is upon the question whether upon the balance of profits and gains there is anything upon which an assessment can be made. The club, that is to say an association of persons paying subscriptions, invites or is by contract with the railway company obliged to admit third parties to play upon the links upon the terms of paying certain sums. The association receives these moneys. A person, said Lord Macnaghten in *Tennant* v. *Smith* (1), is chargeable for income tax not on what saves his pocket but on what goes into his pocket. These words are satisfied. The association puts into its pocket the sums received from visitors. The result no doubt is to save the pocket of the subscribing

(1) [1892] A. C. 164.

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members, but that is not the question. The club is here putting into its pocket money received not from its members but from outsiders. A man cannot make a profit or a loss out of himself, and that was the ground of decision in *New York Life Insurance Co.* v. *Styles*. (1) The present case resembles not that case but *Last* v. *London Assurance Corporation*. (2) We have not to decide what sum, if any, by way of expenditure ought to be debited against the receipts from visitors in ascertaining the balance of profits or gains. For the determination of this case it is only necessary to say that the club as an association (like the proprietary owner of a golf links) is receiving payments from third parties and that the balance of profits or gains after debiting against those receipts such sum as may be proper by way of expenditure is a profit going into the pocket of the club in respect of which it is assessable. The fact that in the pocket of the club it saves the pocket of the members by reducing in their favour the current expenditure which otherwise they would have to bear is not a material circumstance for the purpose of ascertaining whether the club as a society has made a profit or not. The appeal, I think, fails and should be dismissed with costs.

KENNEDY L.J. In my opinion the judgment of the Court below was right, and this appeal should be dismissed.

The Carlisle and Silloth Golf Club is not in a position to assert that its receipts from visitors, not being members of the club, cannot constitute annual "profits and gains" in respect of which income tax is assessable. It has entered into an agreement with the North British Railway Company, the lessor of the club ground, under which the club is bound to allow visitors, who are not members of the club, to use the club-house and play on the club's links, upon payment of fees, for the day or the week or the month, as the case may be, on a scale which, subject to a minimum, may be fixed from time to time by the lessors. The club retains no right of discrimination ; the use of its club-house and ground is open to any one who presents himself and is willing to pay the prescribed fee. It is not, therefore, the common case of a golf club which admits to the use of its

(1) 14 App. Cas. 381. (2) (1885) 10 App. Cas. 438.

accommodation players who are introduced by a member or are approved by the club committee, and who, upon such introduction or approval and upon payment according to the rules of the club, are admitted to the privileges of members, according to the rules of the club, for some specified period. It is not necessary to decide the point, but in such a case I am inclined to think the person to whom such privileges are accorded might fairly be regarded as becoming, for the time, members of the club, subscribing to its funds. But upon the facts appearing in the case, it appears to me that this club is really carrying on the business of supplying to the public for reward a recreation ground fitted for the enjoyment of the game of golf, and that the receipts derived from this business are in the nature of profits and gains in respect of which it is liable to assessment for income tax. Whether, when the account is properly taken, there is any profit balance, and what the proper method of assessment is, this Court has not to decide on the appeal before us. The learned judge in the Court below has not approved of the principle of assessment upon which the taxing authority has proceeded, and he has remitted the case to the Commissioners to ascertain the proper apportionment of the total expenses of the club on common items which should fall upon the members and visitors respectively. I entirely concur with him in this view. I concur with him also in holding at the same time that the question of the liability of the club to assessment to income tax in respect of their receipts from visitors should be answered in favour of the Crown.

This appeal, therefore, must be dismissed with costs.

Appeal dismissed.

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

Solicitor for respondent: *Solicitor of Inland Revenue.*

G. A. S.