

## APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice, and  
Mr. Justice Kemp.

1918

February 27.

ABDULLABHOY LALJI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v.  
THE EXECUTIVE COMMITTEE, ADEN SETTLEMENT, (ORIGINAL  
DEFENDANTS), RESPONDENTS.\*

*Assessment—Rateable value—Salt works—Method of assessment—Assessing authority to consider what an hypothetical tenant would pay—Premises to be valued for rateable purposes “rebus, sic stantibus”—Valuation for assessment based upon a method applied to salt pans in a different country at different times—Method of valuation wrong and illegal—Aden Act (II of 1864), section 8.*

The principles on which property is assessed to the rates are, first, that in assessing any particular property the assessing authority must consider what a tenant from year to year with a reasonable prospect of the continuation of his lease would give for the premises and in considering this, the assessing authority must regard the then occupier as a likely tenant; secondly, that the premises must be valued for rateable purposes “*rebus sic stantibus*,” i.e., as they exist at the date of the valuation.

*The Queen v. School Board for London* <sup>(1)</sup>; *London County Council v. Church Wardens, &c., of Parish of Erith and Assessment Committee of Dartford Union* <sup>(2)</sup>; *Great Central Railway v. Banbury Union* <sup>(3)</sup>; *Davies v. Seisdon Union* <sup>(4)</sup>; *The Queen v. Fletton* <sup>(5)</sup> referred to.

In 1909, the plaintiffs obtained from Government a lease of certain lands at Aden for the purpose of constructing salt works thereon at the annual rental of Rs. 7,000 for the land and a royalty of 8 annas per ton of salt exported. They erected a factory for crushing salt on the land and the works first commenced to yield salt in 1911. The defendants were the assessing authority for the Aden Settlement. For the years 1909 and 1910 the defendants had, under the powers conferred upon them by Government notifications, assessed the plaintiffs in the annual rent of Rs. 7,000 payable by them under the lease. In the year 1911, the defendants adopted a different basis of assessment. They assessed the plaintiffs on the basis of half the produce of

\* Civil Reference No. 7 of 1917.

(1) (1886) 17 Q. B. D. 738.

(3) [1909] A. C. 78.

(2) [1893] A. C. 562.

(4) [1908] A. C. 315.

(5) (1861) 3 E. & E. 450 at p. 465.

works less 10 per cent. landlord's deductions. In support of this method of assessment the defendants relied upon a method of valuation considered to have been in vogue for salt pans in Bombay in the year 1883 and upon a decision which they had obtained in their favour from the Resident's Court at Aden in 1909 in respect of other salt works at Aden to which the alleged Bombay method of assessment was applied. A question being raised whether the mode of assessment adopted by the defendants in the year 1911 was wrong and illegal :

*Held*, that the mode of assessment was wrong and illegal as the defendants made no attempt to value the particular salt works in question or to say whether the method they applied was such as to result in the assessment that the hypothetical tenant of these premises would pay for them.

CIVIL Reference under section 8 of the Aden Act II of 1864, made by the Political Resident at Aden in Appeal No. 2 of 1917.

Suit for a declaration that a certain method of assessment was illegal and unauthorized.

On January 25, 1909, the plaintiffs trading in the name and style of Abdullabhoy and Joomabhoy Lalji at Aden and other places, took a lease for 30 years of certain lands in the Sheikh Othman District of Aden from the Secretary of State for India in Council. The lease conferred on the plaintiffs, the right to make, cultivate and manufacture salt on the said lands and provided for the payment of Rs. 7,000 every year by the plaintiffs to the Secretary of State for India in Council by way of rent for the demised lands and for payment of a royalty of 8 annas per ton of salt exported by the plaintiffs. The plaintiffs erected a factory for crushing salt on the land and their works first commenced to yield salt in the official year 1911-12.

The defendants, the Executive Committee of Aden, were the assessing authority for the Aden Settlement under two Notifications Nos. 1618 and 1619, dated 26th March 1909, levying certain taxes and laying down rules for the assessment and collection of those taxes. The notifications were issued by the Political Resident with

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

1918.

ABDULLA  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

the previous sanction of Government and in exercise of powers conferred upon him by the Settlement Regulation VII of 1900. The Notifications provided that the property tax was to be assessed at 6 per cent. on the rateable value of the property taxed, and a general sanitary tax was to be assessed at 3 per cent. on such rateable value. The said taxes were to be levied at only half the aforementioned rates in the village of Sheikh Othman. The material rules of the Notification No. 1618 ran as follows :—

“ 1. When a rate on buildings or lands or both is imposed, the Executive Committee shall cause an assessment list of all buildings or lands or buildings and lands as the case may be in the settlement district to be prepared containing :—

- (a) The name of the street or division in which the property is situated ;
- (b) The designation of the property, either by name or by number, sufficient for identification ;
- (c) The name of the owner and occupier, if known ;
- (d) The annual letting value or other valuation on which the property is assessed ; and
- (e) The amount of the tax assessed thereon.

5. In every case in which every property has for the first time been entered in the assessment list or in which the entered rateable value of any property has been increased, the Executive Committee shall as soon as conveniently may be, give a special written notice to the owner or occupier of the said property specifying the nature of such entry and informing him that any complaint against the same will be received in their office at any time within 15 days from the service of the special notice.

6. Every complaint against the amount of any rateable value entered in the assessment list must be made by a written application to the Executive Committee on or before the day or the latest day affixed in the public or special notice aforesaid stating the grounds on which the value is disputed.

11. Appeals against any rateable value shall be heard, and determined by the Judge of the Court of the Resident, but no such appeal shall be heard by the said Judge unless it is brought within 15 days from the date on which a complaint previously made to the Executive Committee as aforesaid has been disposed of.

12. After appeals, if any, as aforesaid are decided and their results noted in the assessment list, all rateable values so entered in the list shall be final, subject to such action as may be necessary under rules 17 and 18 following.

17. (1) The Executive Committee may at any time alter the said list by inserting the name of any person, whose name ought to have been inserted, or by inserting any property which ought to have been inserted, or by altering the valuation of or assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, after giving notice to any person interested in the alteration of a time not less than one month from the date of service of such notice at which the alteration is to be made.

(2) Every objection made by any persons interested in any such alteration, before the time fixed in the notice and in the manner provided by rules 6 and 7, shall be dealt with in all respects as if it were an application under the said rules.

(3) Every alteration made under this rule shall subject to the result of an appeal under rule 11 have the same effect as if it had been made on the earliest day in the current official year in which the circumstances justifying the alteration existed.

18. (1) It shall not be necessary to prepare a new assessment list every year, subject to the condition that every part of the assessment list shall be completely revised not less than once in every four years, the Executive Committee may adopt the valuation and assessment contained in the list for any year, with such alteration as may be deemed necessary, for the year immediately following.

(2) But the provisions of Rules 4, 5, 6, 7, 8, 9, 10 and 17 shall be applicable every year as if a new assessment list had been completed at the commencement of the official year.

In the years 1909 and 1910, the defendants in exercise of the powers conferred upon them by the Notifications fixed the rateable value of the lease-hold lands of the plaintiffs at Rs. 7,000, that being the amount payable by the plaintiffs as the annual rent of the lands. The taxes assessed on the said rateable value amounted to Rs. 283-8-0.

In the year 1911, when the plaintiffs' salt-works commenced to produce salt, the defendants abandoned the old method of assessing taxes and adopted a different

. 1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

basis of assessment. They fixed the assessment value at Rs. 2,795 being half of the value of the salt exported by the plaintiffs during the year less 10 per cent. landlord's deductions. The taxes so levied came to Rs. 125-12-0. The plaintiffs having inquired of the rates authorising the levy of assessment, the Chairman of the Executive Committee of Aden by his letter, dated June 21, 1911, informed as follows :—

"I have the honour to state that the criterion for assessing the letting rates of salt-works is half the produce of the pans less 10 per cent. land-lord's deductions. This mode of assessment is based on the accompanying copy of principle of assessing salt pans. This principle was approved by the appellate Court of the Resident on 22nd October 1909 in the appeal case of *the Manager, Aden Salt Works v. The Executive Officer, Aden Settlement.*"

The accompanying copy mentioned in the above letter was a copy of the legal opinion obtained from counsel by the Municipal Commissioner, Bombay, in 1881 and which ran as follows :—

"What the Municipality are entitled to do is to ascertain what a salt pan might reasonably be expected to let for, to deduct ten per cent. from such letting value, and to charge on the remaining 90 per cent. of the letting value. As salt pans are not, it appears, usually let at a fixed sum per annum, the probable rental cannot well be ascertained in the same manner as the probable rental of a house or building; but the usual mode of letting salt pans, under which the owner receives half the produce, affords the true criterion for ascertaining the reasonable letting rate, namely, half the probable or, if it can be ascertained, half the actual produce of the pan."

The plaintiffs, thereupon, by their letter of June 26, 1911, replied as under :—

"With reference to the assessment of our salt-works notice of which has been received by us under your letter No. A. s. 442, dated 14th June 1911, we have the honour to lodge our complaint with regard to it as required by the rules embodied in Government Notification No. 1618, dated the 26th March 1909, on the ground that the assessment hitherto levied is the proper one and the measures adopted at present for the levying of assessment is not maintainable.

The letting value of our salt-works is fixed by Government at Rs. 7,000 per annum and the opinion of your counsel, \* \* \* applies to those salt pans which are not let at a fixed annual sum.

The case of *the Manager of the Aden Salt Works* does not apply to our case inasmuch as the Aden Salt Works is not let at a fixed sum per annum, whereas our ground has a fixed letting value."

The plaintiffs subsequently paid the assessment amount of Rs. 125-12-0 under protest and also appealed against the taxation; but the Political Resident at Aden confirmed the same.

In the two following years, that is, 1912 and 1913, the plaintiffs were assessed at Rs. 2,204-3-8 and Rs. 4,497-4-9, respectively, on the same principle of valuation, and in order to arrive at these figures the defendants took the value of the salt crushed and uncrushed per ton F. O. B. Aden at Rs. 5-8-0 and Rs. 5 respectively. The plaintiffs appealed against assessments to the Political Resident at Aden but were unsuccessful.

Aggrieved by this, the plaintiffs filed a suit against the Executive Committee of Aden in the Court of the Resident at Aden for a declaration that the new method of assessment adopted by the defendants in assessing taxes for the years 1911, 1912 and 1913 was wrong, illegal and unauthorised and that the correct method of assessing the taxes was to take the fixed rental of Rs. 7,000 or at most such sum and the royalty payable by the plaintiffs. They also prayed to recover back Rs. 6,012-8-9 the amount of the taxes recovered in excess.

The defendants contended that the new method of assessment adopted by them was neither wrong in principle, nor oppressive, nor was the principle illegal or unauthorised; that a rental fixed for a term of 30 years for the bare land leased to the plaintiffs could not be the basis of fixing the rateable value of the property whether with or without the royalties payable by the plaintiffs. They further pleaded that the decision of the Political Resident in the matter of rating appeals was final under Rules 11 and 12 of Notification No. 1618;

1918.

ABDULLA  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

1918.

ABDULLA  
BHOY  
LALJI

THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

that the plaintiffs had no cause of action; and that the Court had no jurisdiction to entertain or try the suit.

The Court of the Resident at Aden at first held that it had no jurisdiction to entertain the suit but on a reference to the High Court the suit was remanded for trial on the merits. The High Court's judgment is reported in *Abdullahbai Lalljee v. The Executive Committee, Aden*<sup>(1)</sup>.

On remand the following issues were framed by the Assistant Resident and Judge, Court of the Resident, Aden:—

“1. Whether the mode of assessment adopted by the defendants in assessing taxes for the years 1911-12, 1912-13 and 1913-14 is not wrong and illegal.

2. What is the rent which a hypothetical tenant would have paid for the plaintiffs' salt works in the said years.

3. Whether the defendants ought not to have taken the rent and royalty payable by the plaintiffs under the lease, dated 25th January 1909, as the rateable value of the plaintiffs' works.

4. Whether the mode of assessment adopted by the defendants is the basis in use in Aden on which tenants of salt-works similar to plaintiffs' salt-works calculate the rent they are willing to pay for the same.

5. Whether the said mode is the basis in use in Bombay in calculating what a tenant would pay as rent for salt-works similar to plaintiffs' salt-works.

6. Whether salt pans are not let at a fixed sum per annum in Bombay Presidency.

7. Whether in any event the defendants ought not to have based their assessment on the value of uncrushed salt at the salt-works instead of on the value of salt F. O. B.

8. Whether the defendants did not act illegally and on a wrong principle in adopting for the plaintiffs' salt-works in Aden a mode of assessment alleged to have been adopted in Bombay in 1883 in respect of salt pans worked without machinery and paying no rent or royalty.

9. Whether plaintiffs are not entitled to refund of the amount of assessment illegally levied.”

The Assistant Resident dismissed the plaintiffs' suit holding that the method of assessment adopted by the defendants was neither illegal nor oppressive, though

<sup>(1)</sup> (1916) 40 Bom, 446.

unusual and somewhat arbitrary. On several issues he found as follows :—

" My decision on issue No. 1 is that the yearly rental of Rs. 7,000 payable by the plaintiffs cannot reasonably constitute the correct basis of assessment, for the character of the land has been entirely changed since its acquisition by plaintiffs and it has been developed from what was waste ground into profit bearing premises.

And while I regard the mode of assessment adopted by defendant as unusual and somewhat arbitrary, I do not consider that it is illegal, and I may say that it is not oppressive so long as the rate per ton is calculated at the salt pans. I may further add that it is not oppressive inasmuch as plaintiffs have not given a full account of their profits and losses according to their books which indeed they are not obliged to do and in consequence the defendants have devised an easy rule of thumb for arriving at a rateable valuation.

Such then being my decision there will be no object in discussing issues Nos. 2 and 3. As to issue No. 4 it may be said that the Aden Salt Works of the Italian Company have been similarly assessed. As regards the issues Nos. 5 and 6 I have already stated that I consider the present method of assessment peculiar to Aden. As to issue No. 7, I consider that defendants ought to base their assessment on the prices of the salt both crushed and uncrushed at the salt-works. As regards issue No. 8, defendants' procedure I consider unusual, but I am not prepared to say that it is *ultra vires*; and lastly as to issue No. 9, plaintiffs would not be entitled to a refund of the assessment levied for the years in question, but it is within discretion of the Settlement Committee to give a permanent rate per ton instead of a figure which might fluctuate from year to year and have the appearance of a tax upon income."

On appeal by the plaintiffs, the Political Resident at Aden agreeing with the conclusions arrived at by the Assistant Resident, dismissed the appeal but submitted, under section 8 of the Aden Act (II, of 1864), the following questions for determination by the High Court at Bombay :—

1. Whether the findings of the lower Court on issues Nos. 1 and 8 were not erroneous ?
2. Whether the learned Judge ought not to have found on issue No. 3 in favour of the plaintiffs ?
3. Whether the learned Judge's findings on issues Nos. 4, 5, 6 and 7 are not incomplete and wrong and whether he ought not to have found on those issues in favour of the plaintiffs ?

1918.

ABDULLA-  
BHOY,  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

4. Whether the learned Judge was not wrong in dismissing the plaintiffs' suit, and

5. Whether the learned Judge ought not to have granted the declaration prayed for in prayer B of the plaint and made the order prayed for in prayer C of the plaint ?

The reference was heard by Batchelor, Acting C. J., and Kemp J.

*Inverarity* with *Kanga* and *Mulla*, instructed by *Edgelow Gulabchand Wadia and Company*, for the appellants :—The Assistant Judge at Aden found the merits of the case in our favour when he held that the mode of assessment was unusual and arbitrary. He ought to have held that it was also illegal. The Bombay cases show that a civil Court can interfere if it finds that the mode of assessment was illegal ; see *Municipality of Wai v. Krishnaji Gangadhar*<sup>(1)</sup> ; *Morar v. Borsad Town Municipality*<sup>(2)</sup> ; *Kasandas v. Ankleshvar Municipality*<sup>(3)</sup> and *Secretary of State for India v. Major Hughes*<sup>(4)</sup>. The Executive Committee at Aden ought to have considered what a hypothetical tenant with reasonable expectation of a continuation of the tenancy would be prepared to give for the premises from year to year. This is a question of fact and ought to be decided on legally admissible evidence. There are certain recognized rules and principles which a rating authority must follow in order to arrive at the figure which such a hypothetical tenant would be prepared to pay. If the right method is followed, it would not matter if the figure is not absolutely correct. What the Committee have done is to follow an opinion given by counsel in Bombay in 1881 regarding the assessment of salt pans in Bombay. The opinion is irrelevant, and has not even been followed correctly. The conditions in Bombay are different from those at Aden.

(1) (1898) 23 Bom. 446

(2) (1900) 24 Bom, 607

(3) (1901) 26 Bom. 294.

(4) (1913) 38 Bom. 293,

The case of *Mersey Docks and Harbour Board v. Birkenhead Assessment Committee*<sup>(1)</sup>, relied on by the respondents, is really in our favour: see also *Great Central Railway v. Banbury Union*<sup>(2)</sup> and *Metropolitan Water Board v. Chertsey Assessment Committee*<sup>(3)</sup>. In this case the annul rent and the royalty should be considered as the rateable value of the salt pans. The rent was fixed by public competition and royalty is part of the rent: see *The Attorney-General of Ontario v. Mercer*<sup>(4)</sup>.

*Strangman*, Advocate-General, with *B. G. Wadia*, instructed by *Little & Co.*, for the respondents:—The Executive Committee at Aden did consider the question of what a hypothetical tenant would pay for the premises from year to year. Even assuming that they gave a wrong answer to the question, it does not follow that they did not consider the question. The Assistant Judge at Aden in his judgment says that they did consider that question. The Committee have not acted illegally. The assessment may be arbitrary, but a novel set of circumstances had to be met in a novel and unusual manner. The test is, have they in arriving at the rateable value of the salt pans included something which by law ought not to be included or excluded something which ought to have been included. That is the test as laid down in *Mersey Docks and Harbour Board v. Birkenhead Assessment Committee*<sup>(1)</sup>. The Committee have taken the volume of business done by the appellants into consideration, and the volume of business is an element for consideration: see *Cartwright v. Sculcoates Union*<sup>(5)</sup>. All that this Court can do is to say whether the mode of assessment which has been followed is or is not illegal. It cannot lay down that any particular mode or formula ought to be followed.

C. A. V.

<sup>(1)</sup> [1901] A. C. 175.

<sup>(3)</sup> [1916] 1 A. C. 337.

<sup>(2)</sup> [1909] A. C. 78.

<sup>(4)</sup> (1883) 8 App. Cas. 767 at p. 777.

<sup>(5)</sup> [1900] A. C. 150.

1918.

ABDULLA  
HOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

KEMP, J. :—This is a reference from the Resident at Aden in an appeal in Suit No. 113 of 1914 filed in the Court of the Resident requesting the opinion of the High Court under Section 8 of the Aden Act II of 1864 on certain questions relating to an assessment to property and sanitary tax prayed by the plaintiffs in the suit to be set aside.

It appears that in 1909 the firm of Abdullabhoj and Joomabhoy Lalji, whom I shall hereafter call the plaintiffs, obtained from Government a lease of certain lands in the Sheikh Othman District of Aden for the purpose of constructing salt-works thereon at an annual rent of Rs. 7,000 for the land and a royalty of eight annas per ton of salt exported. The plaintiffs proceeded to erect a factory for crushing salt on the land. The works first commenced to yield salt in the official year 1911-12.

The defendants are the assessing authority for the Aden Settlement under two Notifications dated 26th March 1909 levying certain taxes and laying down rules for the assessment and collection of these taxes. The Notifications were issued by the Political Resident with the previous sanction of Government and in exercise of powers conferred upon him by the Settlement Regulation VII of 1900.

For the years before 1911-12 the defendants had, under the powers conferred upon them under the Notifications, assessed the plaintiffs in the annual rent of Rs. 7,000 payable by them under the lease. In the year 1911-12, however, when the works commenced to produce salt, the Executive Committee adopted a different basis of assessment. They assessed the plaintiffs on the basis of half the produce of the works less ten per cent. landlord's deductions. In order to arrive at this figure they took the value of the salt crushed and

uncrushed per ton F. O. B. Aden at Rs. 5-8 and Rs. 5 respectively.

Apparently the Committee were induced to adopt this method of assessment upon a consideration of what they understood was the method of valuation for salt-pans in Bombay supported by counsel's opinion so far back as 1881 as to the propriety of such a method of assessment in regard to salt-pans in Bombay on that date. They had also obtained a decision in their favour from the Resident's Court in 1909 in respect of certain other salt-works at Aden known as the Aden or Italian salt-works. It is to be noted that the Italian works had disputed this method of assessment. Fortified by this authority the defendants applied the same method of assessment to the plaintiffs' salt-works.

The plaintiffs appealed against the assessment for the year 1911-12 to the Court of the Resident but the judgment of that Court was against them.

The plaintiffs were assessed on the same method for the years 1912-13 and 1913-14. Feeling aggrieved by this the plaintiffs have filed the present suit No. 113 of 1914 in the Court of the Resident at Aden against the assessment. The Aden Court considered it had no jurisdiction to entertain the suit but on a reference to the High Court the suit was remanded for trial on the merits. The High Court's judgment is reported in *Abdullahai Lalljee v. The Executive Committee, Aden.*<sup>(1)</sup>

It appears from the judgment of the Assistant Resident that he now considers the method of assessment unusual. He does not consider it legally objectionable although the method adopted did not follow any regular rules of rating. He also considers it "somewhat arbitrary" and says that the hypothetical tenant principle "would have been more accurate for the

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT

<sup>(1)</sup> (1916) 40 Bora. 446.

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

reason that by that principle the premises would have been rated, whereas by the present method all those considerations go by the board and plaintiffs are being assessed on the net output of each preceding year."

The plaintiffs appealed to the Resident who disposed of the appeal in much the same terms but made his judgment contingent on the opinion of the High Court on the questions which are now before us for consideration. They are:—

1. Whether the findings of the lower Court on issues 1 and 8 were not erroneous?

(Issue 1). Whether the mode of assessment adopted by the defendants in assessing taxes for the years 1911-12, 1912-13 and 1913-14 is not wrong and illegal?

(Issue 8). Whether the defendants did not act illegally and on a wrong principle in adopting for the plaintiffs' salt-works in Aden a mode of assessment alleged to have been adopted in Bombay in 1883 in respect of salt-pans worked without machinery and paying no rent or royalty?

2. Whether the learned Judge ought not to have found on issue 3 in favour of the plaintiffs?

(Issue 3). Whether the defendants ought not to have taken the rent and royalty payable by the plaintiffs under the lease, dated 25th January 1909, as the rateable value of the plaintiffs' works?

3. Whether the learned Judge's findings on issues 4, 5, 6 and 7 are not incomplete and wrong and whether he ought not to have found on those issues in favour of the plaintiffs?

(Issue 4). Whether the mode of assessment adopted by the defendants is the basis in use in Aden on which tenants of salt-works similar to plaintiffs' salt-works calculate the rent they are willing to pay for the same?

(Issue 5). Whether the said mode is the basis in use in Bombay in calculating what a tenant would pay as rent for salt works ?

(Issue 6). Whether salt-pans are not let at a fixed sum per annum in Bombay Presidency ?

(Issue 7). Whether in any event the defendants ought not to have based their assessment on the value of uncrushed salt at the salt-works instead of on the value of salt F. O. B. ?

4. Whether the learned Judge was not wrong in dismissing the plaintiffs' suit ? And

5. Whether the learned Judge ought not to have granted the declaration prayed for in prayer B of the plaint and made the order prayed for in prayer C of the plaint ?

Now what is it that the Executive Committee have to consider in deciding the assessment of these particular salt-works ? The Notification of the Government of Bombay No. 1618 in the General Department, dated 26th March 1909, directs the preparation of an assessment list of all buildings or lands or buildings and lands in the Settlement District when a rate on buildings or lands or both is imposed. This list is to contain, *inter alia*, the annual letting value or other valuation on which the property is assessed. The question, therefore, is, how is this valuation to be arrived at ? I think the principles on which property is assessed to the rates are so well-known as scarcely to require reiteration. First amongst them is the principle that in assessing any particular property the assessing authority must consider what a tenant from year to year with a reasonable prospect of the continuation of his lease would give for the premises. In considering this, the assessing authority must regard the then occupier

1918.

ABDULLA-  
BHOY  
LALJI

THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

as a likely tenant (*The Queen v. School Board for London*<sup>(1)</sup>; *London County Council v. Churchwardens, &c., of Parish of Erith and Assessment Committee of Dartford Union*<sup>(2)</sup>). I do not mean by this that the highest rent that can be *extorted* from the occupier, i.e., that he would pay rather than be turned out, is to be regarded as the rent which the hypothetical tenant from year to year would pay (*Great Central Railway v. Banbury Union*<sup>(3)</sup>, per Lord Loreburn L. C. and Lord Dunedin); but that the assessment is to be fixed on the highest rent that such a hypothetical tenant might *reasonably* be supposed to be willing to give (*Davies v. Seisdon Union*<sup>(4)</sup>, per Lord Collins).

Another cardinal principle is that the premises must be valued for rateable purposes *rebus sic stantibus*, i.e., as they exist at the date of the valuation (*The Queen v. Fletton*<sup>(5)</sup>, per Cockburn C. J. at p. 465).

In a case in which the question was whether certain machinery on the premises should be disregarded in the assessment the Earl of Halsbury described the overseer on the premises. This is what he said (*Kirby v. Hunslet Assessment Committee*<sup>(6)</sup>):—"The overseer has a comparatively simple problem to solve, although it is difficult enough sometimes; he sees the place being conducted as a brewery, or an iron foundry, or what not; he looks at the premises, he looks at the furniture which is necessary for carrying on the business as a brewery or foundry; he does not in his own mind analyze, and to my mind he ought not to analyze, what would be likely to be the initial arrangements between the intended brewer and the owner of the freehold, to see who should provide this or that engine, or what not, but he looks at the premises as they are, as they

(1) (1886) 17 Q. B. D. 738.

(2) [1893] A. C. 562.

(3) [1909] A. C. 78.

(4) [1908] A. C. 315.

(5) (1861) 3 E & E 450 at p. 465.

(6) [1906] A. C. 43 at p. 48.

are being occupied, and as they are being used, and he says to himself, 'well, looking at the whole of the place, such and such is the rent which would probably be paid by a tenant from year to year for such an establishment as this. And in that he does not and ought not to strip the whole of the place of everything but the four walls which contain the whole system of manufacture therein contained, and simply value either the ground upon which the building is placed, or the four walls and roof which are the containing elements of all the manufacture that goes on in it.' I have given the passage in full not only because it illustrates the valuation *rebus sic stantibus* but also in the hope that it may be of some assistance to the Executive Committee when they next assess these premises in suit.

Bearing these principles in mind the problem presents a simple question of fact but where confusion is likely to ensue is in considering what evidence should be regarded in applying one or other of the various recognized methods of valuation—called by Lord Watson in *North and South Western Junction Railway Co. v. Assessment Committee, of the Brentford Union*<sup>(1)</sup> “formulæ” for valuation. So long as the assessing Court applies one of the recognized modes of valuation and in doing so does not take into consideration evidence which it should not take into consideration and does not exclude evidence which it should take into consideration it is left to that Court to select its particular “formula” and it is no objection to the valuation to say that it should have adopted some other “formula” (*Mersey Docks and Harbour Board v. Birkenhead Assessment Committee*<sup>(2)</sup>, per Earl of Halsbury; *London United Tramways v. Brentford Union*<sup>(3)</sup>, per Cozens-Hardy M. R.).

<sup>(1)</sup> (1883) 13 App. Cas. 592.

<sup>(2)</sup> [1901] A. C. 175 at p. 180.

<sup>(3)</sup> (1907) 96 L. T. 528: 2 Konstam's Rating Appeals 410, C. A.

1918.

ABDULLA  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

These cases appropriately lay down the limits within which an Appeal Court will revise the decision of the assessing Court—in England, in general, Quarter Sessions; in Bombay, the Chief Judge of the Small Cause Court.

When, therefore, we are asked by the Referring Court to state whether in our opinion the plaintiffs' premises have been rightly assessed we have to turn to the judgment of the assessing Court to see whether it has correctly applied the principles above enunciated.

I am of opinion that the judgment of the assessing Court shows clearly that it has not considered what the hypothetical tenant would pay for *these* premises. No doubt the Court had that question before it—indeed it was the subject matter of the inquiry—but the judgment shows that what the Court did was to adopt for the plaintiffs' salt-works a method of valuation, which was not even one of the recognized methods of valuation, which it understood had been applied to salt-pans in Bombay and which it had itself applied in spite of protest to one other salt-works at Aden. Because the Court considered this method had been applied to such cases of assessment of salt-pans as were within its knowledge it assumed that it must *ipso facto* be applied to the plaintiffs' salt-works which were different in character and situation as well as in date of construction to the works to which the method had been applied. The Court, therefore, made no attempt to value these particular salt-works or to say whether the method it applied was such as to result in the assessment that the hypothetical tenant of these premises would pay for them.

One has only to turn to the judgment of the assessing Court and the judgment on the Reference to see that the principle underlying both decisions was not what

the hypothetical tenant would pay but that the assessment was not oppressive. The judgments comment on the fact that in the opinion of the Courts the assessment "although unusual and somewhat arbitrary," "peculiar to Aden" "novel," was nevertheless not "illegal" or "oppressive." Then there is the admission in the judgment of the assessing Court that the effect of the adoption of this mode of assessment was that the premises were not really rated at all. Clearly, the Courts have lost sight of the real principle—was the rateable valuation such as a tenant from year to year with a reasonable prospect of the continuation of his lease would have paid for the premises?

Even the defendants' own architect, Mr. Mirams, testified that the assessment was not such as a hypothetical tenant would pay for these premises and I confess I am somewhat surprised at the hardihood of the defendants who venture to support the valuation in the face of the opinion of their own expert.

There are, however, other objections to the assessment. It appears to have been based on a method of valuation considered to have been in vogue for salt-pans in Bombay in 1883. Opinion of counsel in the year 1881 was invoked in support of this and a reference made to what appears to be a very doubtful fact, viz., that this was the method adopted by the rating Court in Bombay—the Chief Judge of the Small Cause Court. No instances of any assessment on any such basis by that authority have been adduced and if, as appears, such considerations as I have just alluded to influenced the Aden Court in coming to the conclusion it did then obviously here was a clear instance of evidence being admitted which should not have been admitted which would warrant the Appeal Court in requiring the assessing Court to revise its decision. But it appears, further, that not only were the salt-pans in

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

the year 1883; not worked by machinery but they did not pay any rent or royalty. Indeed, Mr. Inverarity for the plaintiff points out that the method adopted was not even in vogue for the Bombay salt-pans in that year.

There is the further objection that the method adopted is no real method of valuation at all and is objectionable on that ground. No doubt the volume of business done by the works may be a factor for consideration. So may the rent and royalty reserved by the lease, the actual yearly receipts with the usual deductions, the value of the land and the factory and any other buildings on the premises. Any or all of these are factors which would assist the Court in determining the mode of assessment to be applied to these works but it is no recognized method of assessment to take the output of the works at so much a ton and assess the plaintiffs at half that figure less landlord's deductions.

I am unaware of the existence of any such arbitrary method, nor, as I have shown, do the judgments of the Aden Courts show that the result obtained by a valuation on this basis was what our hypothetical tenant would have given for the premises.

Under the circumstances, I am of opinion, that the assessment is wrong and should be quashed and the Executive Committee should consider what a tenant from year to year with a reasonable prospect of the continuation of his lease would give for these particular premises and that is the way in which I would answer question I.

As we have no particulars of the plaintiff's salt-works it is impossible for us to say what rent a hypothetical tenant would pay for them. We must, therefore, decline to answer the other questions referred to us but we must not be taken as implying that because we

have answered question I in the way we have, therefore the defendants are compelled to assess the premises on the basis of the rent and royalty reserved by the lease. That is a point which depends on the answer to the question—what would the hypothetical tenant pay for these premises *rebus sic stantibus*?

The question of the refund of any excess paid over and above the proper assessment is one which will have to be answered by the Aden Court when it determines the proper assessment of these premises.

We accordingly return the case for disposal in accordance with this opinion. Costs, costs in the suit.

BATCHELOR, Acting C. J. :—I am of the same opinion.

The question for our decision is as to the legality of the assessment fixed upon the plaintiff's premises by the rating authority, the Executive Committee of Aden.

Now the question, what rate shall be levied upon any particular premises, is a question of fact, which must be answered by the rating authority. With their decision on this question, as a question of fact, we should ordinarily have no power, and certainly no inclination, to interfere. But their decision becomes open to revision, as on a point of law where instead of doing what the law has directed them to do, they "have thought proper either to include something which by law ought not to be included, or to exclude something which ought to have been included". This citation is from a passage in the speech of the Earl of Halsbury L. C. in *Mersey Docks and Harbour Board v. Birkenhead Assessment Committee*<sup>(1)</sup>, an authority which I would commend to the attention of the Aden Committee as containing, if I may be permitted to say so, the clearest possible exposition of the whole law on this topic.

1918.

ABDULLA-  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

<sup>(1)</sup> [1901] A. C. 175 at p. 180.

1918.

ABDULLA-  
BHOY  
LALJI  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.

Thus the question which we have to answer is whether the Aden Committee, in imposing this rate, have included any consideration which by law they should have excluded, or have excluded a consideration which by law they should have included. On the facts on the record I cannot doubt that the question must be answered against the Committee. To quote again from the same judgment of the Lord Chancellor's, "the thing to be done is to answer a plain question of fact, namely, what is the rent which a tenant might reasonably be expected to give for the premises?" the tenant being of course supposed to have some reasonable assurance of the continuance of his lease. But I must hold on the facts that the Aden Committee never proposed to themselves this question at all, but only proposed to themselves and answered a totally different question, namely, upon what basis do we find that other salt-works have been assessed at other times and in another place? In answer to this question they found, or thought they found—it matters not which—that in 1883 certain salt-works in Bombay were rated according to an arbitrary arithmetical formula and, without more, they forthwith applied this formula to these salt-works as existing in Aden in 1912-13. That clearly is not a method of rating the Aden premises, *rebus sic stantibus*, that is to say, rating these particular premises in the condition in which they stood at that particular time. And by the mechanical application of this abstract formula without more, it is, I think, plain that the Committee excluded from consideration a whole series of matters which they ought to have considered, namely, all those matters which arise for consideration on the putting of the true question, what would a hypothetical tenant pay for the premises as they then stood? In these circumstances, it seems to me, that we have no option but to set aside

the rate as illegal, for the Committee have not considered the matters which by law they were bound to consider.

We cannot do more than that. We cannot find a legal rate for the Committee, for the duty of doing that is cast upon the Committee. It is for them, not for us, to answer the question of fact as to the rent which a tenant might be reasonably expected to pay, and it is open to them to select any one of the several recognised methods of valuation. "I am not aware," says the Earl of Halsbury, speaking of another rating committee, "of any rule of law or any statute which has limited them as to the mode in which they shall arrive at the value." But the thing valued must be these particular premises as at the material time, and all lawful, and no unlawful, considerations must be weighed.

On these grounds I agree that the assessment now in question must be set aside, and it must be left to the rating authority to fix a new rate in accordance with law.

Under section 13 of the Aden Act, costs of this reference will be costs in the suit. The plaintiffs do not press for any present refund of any sum paid in excess, and it is clear that we are not now in a position to make any such order, seeing that we do not yet know what a legal assessment would be.

Copies of these judgments will be forwarded to the Resident, who under section 12 of the Aden Act will dispose of the case conformably to this decision.

*Answer accordingly.*

J. G. R.

1918.

ABDULLA  
BHOY  
LALJI  
v.  
THE  
EXECUTIVE  
COMMITTEE,  
ADEN  
SETTLEMENT.