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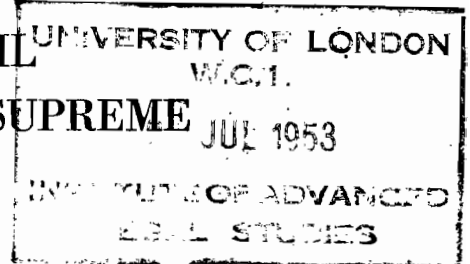
No. ....

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Supreme Court of Ceylon  
No. 88 (Final) of 1950

District Court, Colombo  
No. 71/T. (Special)

IN THE PRIVY COUNCIL  
ON AN APPEAL FROM THE SUPREME  
COURT OF CEYLON



BETWEEN

1. CHARLES WILLIAM MACKIE  
(Junior), and
2. JAMES CRAIB MACKIE, both  
of Colombo, the Executors of the  
Last Will and Testament of  
Charles William Mackie, deceased... *Applicants-Respondents*

AND

THE ATTORNEY-GENERAL of  
Ceylon ..... *Respondent-Appellant*

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RECORD  
OF PROCEEDINGS

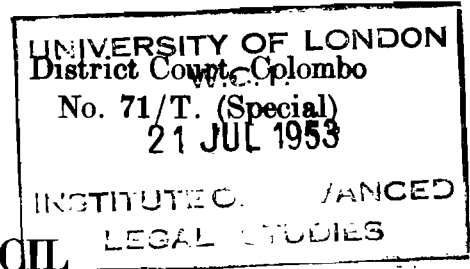
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**INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.**

31439

No.....

Supreme Court of Ceylon  
No. 88 (Final) of 1950



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THE ATTORNEY-GENERAL of  
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RECORD OF PROCEEDINGS

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## INDEX

## PART I

| <i>Serial<br/>No.</i> | <i>Description of Document</i>                                  | <i>Date</i>                 | <i>PAGE</i> |
|-----------------------|---|-----------------------------|-------------|
| 1                     | .. Journal of Entries ..  | .. 15.6.46 to<br>12.1.50    | 1-9         |
| 2                     | .. Petition of the Applicants ..                                | .. 14.6.46 ..               | 10-14       |
| 3                     | .. Preliminary Inquiry ..                                       | .. 25.10.46 and<br>21.11.46 | 15-16       |
| 4                     | .. Order of the District Court <i>re</i> Preliminary Inquiry    | 28.11.46 ..                 | 17-19       |
| 5                     | .. Petition of Appeal of Respondent to Supreme Court            | 6.12.46 ..                  | 20-21       |
| 6                     | .. Judgment of Supreme Court <i>re</i> Preliminary Inquiry      | 15.9.47 ..                  | 22-24       |
| 7                     | .. Decree of Supreme Court <i>re</i> Preliminary Inquiry        | 15.9.47 ..                  | 25          |
| 8                     | .. Answer of the Respondent ..                                  | .. 20.1.48 ..               | 26-27       |
| 9                     | .. Issues framed ..   | .. 19.10.48 ..              | 28-30       |
| 10                    | .. Applicants' Evidence..                                       | .. — ..                     | 31-77       |
| 11                    | .. Respondent's Evidence ..                                     | .. — ..                     | 78-175      |
| 12                    | .. Addresses to Court ..  | .. — ..                     | 176-195     |
| 13                    | .. Judgment of District Court ..                                | .. 31.8.49 ..               | 196-206     |
| 14                    | .. Petition of Appeal of Applicants to Supreme Court            | 9.9.49 ..                   | 207-213     |
| 15                    | .. Judgment of the Supreme Court ..                             | .. 22.5.50 ..               | 214-245     |
| 16                    | .. Decree of the Supreme Court ..                               | .. 22.5.50 ..               | 246         |
| 17                    | .. Application for Conditional Leave to Appeal to Privy Council | 31.5.50 ..                  | 247         |
| 18                    | .. Decree granting Conditional Leave to Appeal to Privy Council | 14.6.50 ..                  | 248         |
| 19                    | .. Application for Final Leave to Appeal to Privy Council       | 19.6.50 ..                  | 249         |
| 20                    | .. Decree granting Final Leave to Appeal to Privy Council       | 29.6.50 ..                  | 250         |



## INDEX

## PART II

## EXHIBITS

## Applicants-Respondents' Documents

| <i>Exhibit<br/>No.</i> | <i>Description of Document</i>  | <i>Date</i> | <i>PAGE</i> |
|------------------------|---|-------------|-------------|
| P1                     | .. Memorandum and Articles of Association of C. W. Mackie & Co., Ltd. | —           | .. 251-288  |
| P2                     | .. F. B. Lander's Valuation of Preference and Management Shares       | —           | .. 363-364  |
| P3                     | .. Balance Sheet at June 30, 1940 ..                                  | —           | .. 349      |
| P4                     | .. Trading Account for Six Months ended June 30, 1940                 | —           | .. 350      |
| P5                     | .. Profit and Loss Account for Six Months ended June 30, 1940         | —           | .. 351      |
| P6                     | .. Statement B Accompanying F. B. Lander's Valuation of Shares        | —           | .. 365      |
| P7                     | .. Statement C Accompanying F. B. Lander's Valuation of Shares        | —           | .. 366-367  |
| P8                     | .. Balance Sheet at December 31, 1939 ..                              | —           | .. 346-347  |
| P9                     | .. Profit and Loss Account for Five Years to December 31, 1940        | —           | .. 348      |
| P10                    | .. Prices of Rubber from 1922 to 1940 ..                              | —           | .. 334      |
| P11                    | .. Letter ..  | 23.5.46     | .. 374-375  |
| P12                    | .. Balance Sheet at December 31, 1936 ..                              | —           | .. 344-345  |
| P13                    | .. Letter ..  | 9.12.44     | .. 372-373  |
| P14                    | .. Letter ..  | 7.11.45     | .. 373      |
| P15                    | .. Letter ..  | 5. 2.46     | .. 373-374  |
| P16                    | .. Student's Notes ..   | —           | .. 289-333  |
| Z                      | .. Judgment in D. C., Colombo, Case No. 72/T. (Special)               | Feb., 1949  | .. 375-393  |

## Respondent-Appellant's Documents

| <i>Exhibit<br/>No.</i> | <i>Description of Document</i>  | <i>Date</i> | <i>PAGE</i> |
|------------------------|---|-------------|-------------|
| R1                     | .. Letter .. ..   | 3.11.43     | 371         |
| R2                     | .. Ford, Rhodes Thornton & Co's Valuation of Preference and Management Shares | —           | 368         |
| R3                     | .. Profit and Loss Account for the Year ended December 31, 1940 ..            | —           | 352-354     |
| R4                     | .. Balance Sheet at December 31, 1940..                                       | —           | 355-356     |
| R5                     | .. Balance Sheet at December 31, 1941..                                       | —           | 357-358     |
| R6                     | .. Trading and Profit and Loss Account for Year ended December 31, 1942       | —           | 359-360     |
| R7                     | .. Balance Sheet at December 31, 1942..                                       | —           | 361-362     |
| R8                     | .. Letter .. ..   | 9.8.43      | 370-371     |
| R9                     | .. Letter .. ..   | 1.12.43     | 372         |
| R10                    | .. Letter .. ..   | 30.3.46     | 374         |
| R11                    | .. Valuation by Satchithananda ..   | —           | 369         |
| R12                    | .. Share List issued by the Colombo Brokers' Association                      | 30.8.39     | 334-337     |
| R13                    | .. Share List issued by the Colombo Brokers' Association                      | 5.9.40      | 337-343     |

**Documents submitted by the Applicants-Respondents to the Supreme Court during  
the Argument of the Appeal**

| <i>Exhibit<br/>No.</i> | <i>Description of Document</i>   | <i>Date</i> | <i>PAGE</i> |
|------------------------|--|-------------|-------------|
| X ..                   | Balance on Profit and Loss Account at end of Financial Years from December 31, 1928, to December 31, 1935, based on P7   | —           | .. 394      |
| AAC 1 ..               | Statement Showing Aggregate and Average Annual Profit/Loss based on P7   | —           | .. 394      |
| AAC 2 ..               | Statement Showing Position if Mackie died on December 31, 1938 ..  | —           | .. 395      |
| AAC 3 ..               | Statement Showing Position if Mackie died on December 31, 1939   | —           | .. 395      |
| AAC 4 ..               | Statement Showing Position if Mackie died on December 31, 1940   | —           | .. 396      |
| AAC 5 ..               | Summary of Valuation of Management Shares for Different Years Capitalized at 15 per cent.  | —           | .. 396      |
| AAC 6 ..               | Comparative Table .. ..  | —           | .. 397      |
| AAC 7 ..               | Statement Showing the Value of Management Shares on Basis of the Average of the Gross Profit During the Periods Five Years Capitalized at 15 per cent. and ignoring the Arrears of Preference Dividend | —           | .. 398      |
| AAC 8 ..               | Statement of Computation in Salvesens Case   | —           | .. 399      |

# PART I

No. 1  
Journal Entries  
15-6-46 to  
12-1-50

## No. 1

### Journal Entries

#### IN THE DISTRICT COURT OF COLOMBO

No. 71/T. (Special)

In the Matter of an Appeal under Section 38 of the Estate Duty Ordinance (Chapter 187) of Legislative Enactments.

(1) CHARLES WILLIAM MACKIE (Junior) of Colombo,  
and another.....*Appellants.*

10 15.6.46. Messrs. Julius & Creasy file proxy from the appellants with petition of appeal and moves for an order under section 38 of Estate Duty Ordinance, No. 1 of 1938, directing notice to issue on respondent.

Issue notice on the Attorney-General with copy of petition of appeal for 18.7.46.

Intld.....

*A. D. J.*

26.6.46. Vide notice issued on Attorney-General.

20 18.7.46. Messrs. Julius & Creasy for appellants.  
Notice served on Attorney-General.

Proxy filed.

Inquiry 25/10.

Intld.....

*A. D. J.*

22.10.46. Mr. J. Wilson for respondent moves to file respondent's list of witnesses. Proctors for appellant's received notice.

File.

30

Intld.....

*A. D. J.*

No. 1  
Journal Entries  
15-6-46 to  
12-1-50  
—contd.

- 23.10.46. Inform proctors that the case will not be heard on 25.10.46 as a part-heard case will be continued on that day and that a fresh date of inquiry will be given on 25.10.46.  
Call case on 25.10.46.  
Intld.....  
A. D. J.
- 23.10.46. Proctors informed accordingly.
- 25.10.46. Messrs. Julius & Creasy for appellants.  
Mr. J. Wilson for respondent. 10  
Case called—vide order to fix a fresh date of inquiry.  
Vide proceedings—call case on 15.11.46 for consideration.  
Intld.....  
A. D. J.
- 28.10.46. Messrs. Julius & Creasy for appellants move to file the appellant's list of witnesses.  
Proctor for respondent received notice.  
File. 20  
Intld.....  
A. D. J.
- 28.10.46. Messrs. Julius & Creasy, proctors for appellants move to file the appellant's list of documents.  
Proctors for respondent received notice.  
File.  
Intld.....  
A. D. J.
- 15.11.46. Messrs. Julius & Creasy for appellants.  
Mr. J. Wilson for respondent. 30  
(Consideration).  
Inquiry postponed for 21/11.  
Intld.....  
A. D. J.

- No. 1  
Journal Entries  
15-6-46 to  
12-1-50  
—contd.
- 21.11.46. Messrs. Julius & Creasy for appellants.  
Mr. J. Wilson for respondent.  
Inquiry.  
Vide proceedings—Order on 28.11.46.  
Intld.....  
A. D. J.
- 28.11.46. Order delivered.  
Crown's statement to be filed on 6.2.47.  
Intld.....  
A.D.J.
- 10 9.12.46. Petition of Appeal of respondent with application  
for typewritten copies filed.  
1. Accept and file.  
2. Issue notice of appeal (19/12).  
Proctor for appellant received notice.  
Intld.....  
A. D. J.
- 20 9.12.46. Vide notice issued on proctor for appellant-  
respondent.  
Intld.....  
A. D. J.
- 19.12.46. Messrs. Julius & Creasy for appellant.  
Notice of appeal issued on respondent.  
No return—absent.  
Re-issue 16/1.  
Intld.....  
A. D. J.
- 30 16.1.47. Notice of appeal served on respondent.  
He is absent.  
Forward appeal.  
Intld.....  
A. D. J.
- 6.2.47. Messrs. Julius & Creasy for Appellant.  
Mr. J. Wilson for respondent.  
Statement to be filed by the Crown vide order of  
28.11.46 not filed.  
Await decision of appeal.  
Intld.....  
A. D. J.

No. 1  
Journal Entries  
15-6-46 to  
12-1-50  
—contd.

- 14.2.47. Messrs. Julius & Creasy for applicants-respondents apply for a paying-in-voucher for Rs. 16 being amount for typewritten copies of record under Civil Appellate Rules.  
Issue paying-in voucher for Rs. 16.  
Intld.....  
A. D. J.
- 18.2.47. Paying-in voucher No. 319 issued.
- 25.2.47. Messrs. Julius and Creasy file Kachcheri receipt for Rs. 16 being fees for typewritten copies. 10  
Note and file.  
Intld.....  
A. D. J.
- 3.10.47. Registrar, Supreme Court, returns record setting aside the order of the District Court dated 28.11.46 and ordering the respondent to file a statement by way of answer.  
1. Enter in the appeal register.  
2. Respondent to file statement by way of answer.  
For 6.11.47. 20  
Intld.....  
A. D. J.
- 6.11.47. Messrs. Julius & Creasy for appellant.  
Mr. J. Wilson for respondent.  
Case called—vide above order—for statement —4/12.  
Intld.....
- 4.12.47. Messrs. Julius & Creasy for appellant.  
Mr. J. Wilson for respondent.  
Case called for statement not ready. 30  
Stand out 22.1.48.  
Intld.....
- 22.1.48. Case called for statement. Filed.  
Inquiry 8th and 9th of June, 1948.  
Intld.....  
A. D. J.

27.5.48. Messrs. Julius & Creasy for appellant moves that this case be fixed for hearing as early a date as is convenient to Court.  
 Proctor for respondent consents.  
 Call 14/6 to fix date.

No. 1  
 Journal Entries  
 15-6-46 to  
 12-1-50  
 —contd.

Intld.....

31.5.48. Trial fixed for 19th and 20th October, 1948.

Intld.....

10

19.10.48. Messrs. Julius & Creasy for applicants.  
 Mr. J. Wilson for respondent.  
 Inquiry.

21.10.48. The Solicitor-General for respondent.  
 Mr. Adv. Kadirgamar for petitioner. Of consent,  
 further hearing fixed for 15th, 16th and 17th December,  
 1948.

Intld.....

*A. D. J.*

20

15.12.48. The Solicitor-General for respondent.  
 Mr. Adv. Kadirgamar for petitioner.  
 Further hearing.  
 Proceedings filed.  
 Further hearing tomorrow.

Intld.....

*A. D. J.*

30

16.12.48. The Solicitor-General for respondent.  
 Mr. Adv. Kadirgamar for petitioner.  
 Further hearing.  
 Proceedings filed.  
 Further hearing tomorrow.

Intld.....

17.12.48. The Solicitor-General for respondent.  
 Mr. Kadirgamar for petitioner.  
 Further hearing adjourned.

Intld.....



No. 1  
Journal Entries  
15-6-46 to  
12-1-50  
—contd.

- 23.12.48. Proceedings dated 17.12.48 is filed.  
Further hearing adjourned for 22nd and 23rd  
February, 1949.  
Cross examination of this witness will be continued  
on the next date.

Intld.....

A. D. J.

- 22.1.49. Messrs. Julius & Creasy, proctors for appellants,  
file list of documents produced by the appellants  
at the trial marked P 1 to P 15.

10

File.

Intld.....

A. D. J.

- 22.2.49. The Solicitor-General for respondent.  
Mr. Kadirgamar for petitioner.  
Further hearing.  
The Additional District Judge who has been hearing  
this case is on sick leave.  
Inquiry is postponed for 24/3 and 25/3.

Intld.....

20

A. D. J.

- 15.3.49. Proctors for appellant move that the Court be pleased  
to take this case off the trial roll on March 24th  
and 25th and re-fix the hearing for three or four  
other clear dates convenient to Court, as they  
anticipate that it will not be possible to conclude  
the cross-examinations of the last Crown witness.  
Proctors for respondent consent.  
Call on 16/3.

Intld.....

30

A. D. J.

- 16.3.49. Mr. Kadirgamar for petitioner instructed.  
The Solicitor-General for respondent.  
Case called to fix other dates.  
Mr. S. S. J. Goonesekara, A. D. J., who is on medical  
leave, will conclude this case. The dates of  
hearing will stand.

Sgd.....

A. D. J.

- 24.3.49. Messrs. Julius & Creasy for applicants.  
Mr. John Wilson for respondent.  
Further inquiry.  
Further proceedings.  
Proceedings filed.

No. 1  
Journal Entries  
15-6-46 to  
12-1-50  
—contd.

Further inquiry re-fixed for 25th, 26th and 27th  
May, 1949. Steps will have to be taken to have  
myself gazetted A. D. J., Colombo, for these dates  
as I may be functioning as D. J., Jaffna, by that  
time.

10

Sgd. S. S. J. G.  
A. D. J.

- 1.4.49. Letter written to S/J. S. C. copy filed.

Intld.....

- 8.4.49. Secretary, Judicial Service Commission, has appointed  
Mr. S. S. J. Goonesekara, A. D. J., from the 25th  
to 27th May, 1949, to hear this case.

File. .

Intld.....

20

A. D. J.

- 25.5.49. Further inquiry.  
Messrs. Julius & Creasy for appellant.  
Mr. John Wilson for respondent.  
Further proceedings.

Intld. S. S. J. G.  
A. D. J.

- 26.5.47. Further hearing continued.  
See proceedings.

Intld. S. S. J. G.  
A. D. J.

30

- 27.5.47. Further hearing continued.  
See proceedings.  
Further hearing fixed for 5th July, 1949. Steps  
will have to be taken to have me gazetted A. D. J.  
for 5th July, 1949.

Intld. S. S. J. G.  
A. D. J.

Letter written to S/J. S. C.

Int'd.....

Inquiry (P. H.)

- 5.7.49. Messrs. Julius & Creasy for appellant.  
Mr. John Wilson for respondent.  
For proceedings vide separate sheet.  
Intld. S. S. J. G.  
A. D. J.
- 31.8.49. Messrs. Julius & Creasy for appellant.  
Mr. John Wilson for respondent.  
Judgment delivered in open Court.  
Intld..... 10  
A. D. J.
- 10.9.49. Messrs. Julius & Creasy tender petition of appeal  
against the judgment and order of this Court  
dated 31.8.49 and move that it be accepted  
and filed.  
They also tender stamps of Rs. 61.50 for certificate  
in appeal, stamps of Rs. 123 for S. C. judgment  
notice of security and application for 3 typewritten  
copies ;  
(a) Accept petition of appeal. 20  
(b) Issue notice of security returnable 16.9.49.  
(c) Issue paying-in voucher for fees for the copies  
to be deposited.  
Intld.....  
A. D. J.
- 13.9.49. Notice of security issued.  
Intld.....
- 14.9.49. Proctors for appellants file notice under section  
756 of the C. P. C. together with an application to  
deposit Rs. 250 as security for respondents' costs 30  
of appeal, duly consented by the respondent and  
move for a deposit note for Rs. 250.  
Issue deposit note.  
Intld.....  
A. D. J.

- No. 1  
Journal Entries  
15-6-46 to  
12-1-50  
—contd.
- 14.9.49. D/N No. A 8453 for Rs. 250 issued.
- 14.9.49. Paying-in voucher for Rs. 75 issued.
- 16.9.49. Messrs. Julius & Creasy for appellants.  
Mr. John Wilson for respondent—absent.  
Notice of tendering security has been received by the respondent.  
Security tendered is accepted. Issue notice of appeal on bond being perfected for 24/10.  
Intld.....
- 10    19.9.49. Messrs. Julius & Creasy tender security bond for Rs. 250 together with Kachcheri receipt and also Kachcheri receipt for Rs. 75 for copies and notice of appeal.  
File.  
Intld.....  
A. D. J.
- 20.9.49. Notice of appeal issued to Western Province.  
Intld.....
- 20    24.10.49. Messrs. Julius & Creasy for appellants.  
Mr. John Wilson for respondent.  
Notice of appeal served on proctor for respondent.  
Absent.  
Forward record in due course to Supreme Court.  
Intld.....
- 8.11.49. Mr. John Wilson for (Attorney-General) respondent applies for two typewritten copies.  
Issue.  
Intld.....  
A. D. J.
- 30    12.1.50. Record sent to S. C.  
Intld.....

No. 2  
Petition of the  
Applicants  
14-6-46

**No. 2**

**Petition of the Applicants**

**IN THE DISTRICT COURT OF COLOMBO**

In the Matter of an Appeal under Section 38 of the Estate Duty Ordinance (Chapter 187) of the Legislative Enactments of Ceylon.

No. 71/T. (Special)

CHARLES WILLIAM MACKIE (Junior) of Colombo, and  
JAMES CRAIB MACKIE, also of Colombo, Executors of  
the Last Will and Testament of Charles William Mackie,  
deceased.....*Appellants.*

10

*Vs.*

THE ATTORNEY-GENERAL of Ceylon.....*Respondent.*

No. 10,328 Testy. D. C. Colombo/  
Estate No. ED/M. 646.

On this 14th day of June, 1946.

The petition of appeal of the appellants above named, appearing by Geoffrey Thomas Hale, Frederick Claude Rowan and Joseph Francis Martyn, carrying on business in partnership in Colombo under the name, style, and firm of Julius & Creasy and their assistants Henric Theodore Perera, Alexander Nerous Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo Alexander Richard Neville de Fonseka and Beram Kaikhushroo Billimoria, Proctors, states as follows:—

20

1. The appellants above named are the executors of the last will and testament of Charles William Mackie, deceased, who died at Aberdeen, Scotland, on the 7th day of September, 1940, leaving property in Ceylon.

2. On the 22nd day of December, 1942, the appellants, as executors of the said last will and testament of Charles William Mackie, deceased, delivered to the Commissioner of Estate Duty, in accordance with section 29, sub-section (1) of the Estate Duty Ordinance, a declaration of property in which the net value of the Ceylon estate was declared at Rs. 827,692 and the estate outside Ceylon at Rs. 1,383,171.

30

3. In the said declaration of property were included inter alia the following items of property as forming part of the Ceylon estate of the deceased:—

- (a) 9,201 Cumulative Preference Shares in C. W. Mackie & Company, Limited, valued by the appellants at Rs. 758,438.43.

(b) 5,000 Management Shares in C. W. Mackie & Company, Limited, valued by the appellants at Rs. 4,925.

No. 2  
Petition of the  
Applicants  
14-6-46  
—contd.

4. A provisional notice of assessment, dated 15th February, 1943, was superseded by an additional notice of assessment dated the 21st April, 1944, in which the Assessor of Estate Duty assessed the net value of the Ceylon estate at Rs. 2,918,141 and accepted the net value of the estate outside Ceylon given by the appellant in the said declaration of property. The estate duty payable was assessed at Rs. 379,358.33, which sum represented thirteen (13%) per cent. of Rs. 2,918,141 being the net value of the Ceylon estate as assessed by the Assessor of Estate Duty.

5. In the additional assessment dated the 21st April, 1944, the Assessor valued the shares referred to in paragraph 3 hereof as follows:—

(a) 9,201 Cumulative Preference Shares in C. W. Mackie & Company, Limited, at Rs. 90 a share—Rs. 828,090.

(b) 5,000 Management Shares in C. W. Mackie & Company, Limited, at Rs. 300 a share—Rs. 1,500,000.

6. The appellants by their notice of objection dated the 19th May, 1944, signed by their proctors Messrs. Julius & Creasy and delivered to the Commissioner of Estate Duty under section 35 (1) of the Estate Duty Ordinance, objected to—

(a) The increased assessment of the said Preference and Management Shares in C. W. Mackie & Company, Limited, and indicated—

(i) that the Cumulative Preference Shares could in view of the provisions of the Memorandum of Association of C. W. Mackie & Company, Limited, only be valued at par plus the proportion of such profits of C. W. Mackie & Company, Limited, available for dividend as the holders of the shares were entitled to receive in respect of Preference Dividend in arrears and that they were prepared to accept a valuation on this basis of Rs. 87,601 per share of Rs. 806,017 as certified by the Auditors of C. W. Mackie & Company, Limited.

(ii) That the Management Shares must be valued in terms of section 20, sub-section (1) of the Estate Duty Ordinance, that is, the market value less depreciation by reason of the death of the deceased, that the value of the Management Shares could only be based upon the net value of the company's assets at the date of death after providing for the value of all the Preference Shares and that they were prepared to accept a valuation on this basis

No. 2  
Petition of the  
Applicants  
14-6-46  
—contd.

of Rs. 40.6188 per Management Share as certified by the Auditors of C. W. Mackie & Company, Limited, less a sum of Rs. 10.6188 per share for depreciation due to the death of the deceased, namely, Rs. 30 per share or Rs. 150,000.

They further indicated that no goodwill value attached to these shares at the date of death.

- (b) To the inclusion of a fixed deposit of Rs. 70,833 in the assets of the Ceylon estate.
- (c) To the inclusion of a fixed deposit of Rs. 85,627 in the assets of the Ceylon estate. 10
- (d) To the exclusion of a sum of Rs. 180,000 as a debt due by the deceased.

7. The Commissioner of Estate Duty by his letter, dated the 20th May, 1946, informed the proctors of the appellants of his determination to maintain the assessment dated the 21st April, 1944, subject to the following amendments:—

- (a) Valuation of Management Shares to be reduced to Rs. 250 per share.
- (b) The fixed deposit of Rs. 70,833 to be excluded. 20
- (c) The fixed deposit of Rs. 85,627 to be excluded.
- (d) The debt of Rs. 180,000 to be allowed as a deduction.
- (e) The shares of Inchley Limited to be valued at Rs. 10.35 per share as agreed.

8. Neither the Commissioner nor the Assessor of Estate Duty has disclosed the basis of their valuation of the said Cumulative Preference Shares and the said Management Shares.

9. The amount of duty in dispute is Rs. 172,769.91 as shown in the statement annexed hereto marked "A". The estate duty on the executors' computation of the Ceylon estate has been paid with interest up to the dates of payment. 30

10. Being dissatisfied with the valuation of the said Cumulative Preference Shares and Management Shares in C. W. Mackie and Company, Limited, in the assessment of the 21st April, 1944, as amended by the determination of the Commissioner of Estate Duty notified by his letter of the 20th May, 1946, the appellants appeal therefrom to this Court on the following among other grounds that may be urged by Counsel on their behalf at the hearing of this appeal:—

- (a) The said assessment is contrary to law and the facts of the case. 40
- (b) The assessment of the market value of the Cumulative Preference Shares and of the Management Shares in C. W. Mackie and Company, Limited, is excessive.

- (c) The Cumulative Preference Shares can in view of the provisions of the Memorandum of Association of the company only be valued at par plus the proportion of such profits of the company available for dividend as the holders of the shares were entitled to receive in respect of Preference Dividends in arrears. On this basis the value of the Preference Shares is Rs. 87·601 per share or Rs. 806,017.
- 10 (d) The Management Shares must be valued in terms of section 20 (1) of the Estate Duty Ordinance, that is, the market value less depreciation by reason of the death of the deceased, and the provisions of sub-section 6 of section 20 as enacted by Ordinance No. 8 of 1941, do not apply to such valuation as they were not in force at the date of death of the deceased.
- (e) The value of the Management Shares can only be based upon the net value of the company's assets at the date of death of the deceased after providing for the value of all the Preference Shares. On this basis the value of the Management Shares is Rs. 40·6188 per share without taking into account any allowance for depreciation due to the death of the deceased.
- 20 (f) No goodwill of any kind attached to the Management Shares at the date of death of the deceased.

Wherefore the appellants pray that this Court be pleased—

- (a) to reduce the valuation placed by the Assessor, and upheld by the Commissioner of Estate Duty upon the said 9,201 Cumulative Preference Shares from Rs. 828,090 to Rs. 806,017 or to such sum as to this Court may seem meet and proper;
- 30 (b) to reduce the valuation of the Assessor, as amended by the Commissioner of Estate Duty, of the said 5,000 Management Shares from Rs. 250 per share to Rs. 30 per share or to such sum as to this Court may seem meet and proper;
- (c) to reduce the estate duty assessed by the said notice of assessment dated 21st April, 1944, by such sum as this Court finds in the premises;
- 40 (d) to make an order for a refund to the appellants of any payment of estate duty in excess of the sum determined by this Court as payable together with interest thereon at 4 per cent. per annum;
- (e) for costs and for such other or further relief as to this Court may seem meet.

(Sgd.) JULIUS & CREASY,  
*Proctors for Appellants.*



No. 2  
Petition of the  
Applicants  
14-6-46  
—contd.

## STATEMENT MARKED "A"

Assessment as per Commissioner's Notice of Determination dated 20th May, 1946

Value of Estate Assets and Liabilities not in dispute

|   |    | ASSETS                       |            |               |
|---|----|------------------------------|------------|---------------|
|   |    | Rs. c.                       | Rs. c.     | Rs. c.        |
| <i>Shares—</i>  |    |                              |            |               |
| 1,175 Colombo Fort Land and Building Co., Ltd.  | .. | 3,231 25                     |            |               |
| 15 Sir H. Dias Coconut Estates, Ltd.  | .. | 487 50                       |            |               |
| 95 seven per cent. Cum Preference Roeberry Tea Co., Ltd.  | .. | 1,187 50                     |            |               |
| 45 Inchley Ltd., at Rs. 10·35   | .. | 465 75                       |            |               |
|   |    |                              | 5,372 00   |               |
| <i>Bank Balances—</i>   |    |                              |            |               |
| The National Bank of India, Ltd.  | .. | 18 19                        |            |               |
| The Mercantile Bank of India, Ltd.  | .. | 240 98                       |            |               |
|   |    |                              | 259 00     |               |
| <i>Other Debts—</i>   |    |                              |            |               |
| Amount due from J. C. Mackie  | .. | 10,000 00                    |            |               |
| Amount due from Commissioner of Income Tax  | .. | 18 80                        |            |               |
|   |    |                              | 10,018 00  |               |
| <i>Property gifted within 3 years of death—</i>   |    |                              |            |               |
| Cash to Inchley Ltd.  | .. | 120,202 45                   |            |               |
| 38,800 Inchley Shares at Rs. 10·35  | .. | 401,580 00                   |            |               |
| Fixed deposit in National Bank of India, Ltd.   | .. | 42,573 40                    |            |               |
|   |    |                              | 564,355 00 |               |
|   |    |                              |            | 580,005 00    |
| <b>LIABILITIES</b>  |    |                              |            |               |
| C. W. Mackie & Co., Ltd.  | .. | 10,853 80                    |            |               |
| Ford, Rhodes, Thornton & Co.  | .. | 146 31                       |            |               |
| Mrs. Kate Mackie  | .. | 180,000 00                   |            |               |
|   |    |                              |            | 191,000 00    |
| Total nett Ceylon estate <i>not</i> in dispute  | .. |                              |            | 389,004 00    |
| <i>Add—</i>   |    |                              |            |               |
| Commissioner's valuation of 9,201 Cumulative Preference Shares in C. W. Mackie & Co., Ltd., at Rs. 90 per share         | .. |                              |            | 828,090 00    |
| 5,000 Management Shares in C. W. Mackie & Co., Ltd., at Rs. 250 per share   | .. |                              |            | 1,250,000 00  |
| Total value of Ceylon estate as assessed by Commissioner of Estate Duty   | .. |                              |            | 2,467,094 00  |
| Value of estate outside Ceylon as agreed  | .. |                              |            | 1,383,171 00  |
| Total estate as assessed by Commissioner  | .. |                              |            | 3,850,265 00  |
| Estate Duty as assessed by Commissioner of Estate Duty on value of Ceylon estate, namely, Rs. 2,467,094 at 13 per cent. | .. |                              |            | 320,722 22    |
|   |    | <i>Executors Computation</i> |            | <i>Rs. c.</i> |
| Total net Ceylon estate <i>not</i> in dispute as per details given above  | .. | 389,004                      |            | 0             |
| <i>Add—</i>   |    |                              |            |               |
| <i>Executors valuation of—</i>  |    |                              |            |               |
| 9,201 Cumulative Preference Shares in C. W. Mackie & Co., Ltd., at Rs. 87·601   | .. | 806,017 00                   |            |               |
| 5,000 Management Shares in C. W. Mackie & Co., Ltd., at Rs. 30  | .. | 150,000 00                   |            |               |
| Total value Ceylon estate as per Executors computation  | .. | 1,345,021 00                 |            |               |
| Value of estate outside Ceylon as agreed  | .. | 1,383,171 00                 |            |               |
| Total estate as per Executors computation   | .. | 2,728,192 00                 |            |               |
| Estate duty as per Executors computation on value of Ceylon estate, namely, Rs. 1,345,021 at 11 per cent.               | .. |                              |            | 147,952 31    |
| Amount of estate duty in dispute  | .. |                              |            | 172,769 91    |

Colombo, 14th June, 1946.

(Sgd.) JULIUS & CREASY,  
Proctors for Appellants.

**Preliminary Inquiry**

District Court, Colombo, 71/T. (Special)

25th October, 1946

MR. ADVOCATE N. NADARAJAH, K.C., with MR. ADVOCATE JAYAWARDENA, instructed by MESSRS. JULIUS & CREASY for appellant.

MR. M. F. S. PULLE, Solicitor-General, with MR. JANSZE, Crown Counsel, instructed by MR. WILSON for the respondent.

10 Mr. Nadarajah states that the chief contest is with regard to the value of certain shares, viz, 9,201 Cumulative Preference Shares in Mackie & Co., and 5,000 Management Shares in the said company. Originally the executor had valued the Cumulative Shares at a smaller sum but subsequently raised it to Rs. 806,017, while the Crown had valued them at Rs. 828,090. The difference in respect of these is very small. The chief contest he says is with regard to 5,000 Management Shares which the Commissioner of Estate Duty has valued at Rs. 1,250,000 while the Executor has valued it at Rs. 150,000.

20 Mr. Nadarajah states that all the statements of his witnesses and the manner in which the executor came by his valuation have been disclosed to the Crown. He does not know on what basis the Crown's valuation is made. He states that originally under the old Ordinance shares had to be valued as at the date of death and the value should be the market value and that after the amendment of Ordinance No. 8 of 1941 certain kinds of shares have to be valued on a different basis which he describes as the balance sheet method of valuation.

30 Mr. Nadarajah states that in order to be able to curtail proceedings and in order that he might know what case he has to meet, the Crown should be directed to file pleadings setting out their objections to the method of valuation adopted by the executor and stating which, in their view, is the correct method of valuation. He also asks that they set out the legal position as to which basis they have adopted. Mr. Nadarajah further states that the Crown's method of valuation has not been disclosed in any letters to them.

Mr. Pulle, Solicitor-General, states that he has had no notice of this application and he desires to consider his position as to whether he should file a statement or not. In view of this I shall fix this matter for consideration for the 15th November, 1946.

40

Sgd. N. Sinnathamby,  
A. D. J.

25th October, 1946.

No. 71/T. (Special)

21st November, 1946

Appearances same as on previous date.

Mr. M. F. S. Pulle for Crown says that he opposes the application. He says that normally where pleadings are preferred against a finding or decision in a civil case no further pleadings are allowed in the court of appeal. He refers to the Estate Duty Ordinance, (Cap. 187), as amended by Ordinance No. 8 of 1941. Mr. Pulle refers to the value put upon the Management Shares by the petitioner and by the Crown and says that the position is analogous to that in a land acquisition case where the Crown puts a certain valuation on the land and the party puts a different valuation on it; details of valuation are not filed. 10

Mr. Pulle states that the valuation of the Management Shares made by the Crown could be justified on the basis that they were shares of a company controlled by not more than 5 persons to which the amending Ordinance applied; and that it could also be justified under section 20, unamended by Ordinance No. 8 of 1941; and his position is that the Management Shares are in respect of a company controlled by not more than 5 persons within the meaning of the amending Ordinance. 20

Mr. Nadarajah asks that the Attorney-General be requested to file a statement of the method or methods adopted by him or his officer in arriving at the figure of Rs. 1,250,000 as the valuation of the Management Shares; and further states that if such a statement is filed it would be possible to meet the case presented by the Crown. Mr. Nadarajah submits that if the statement is filed it will contain all details which are necessary for a valuation under section 2 of Ordinance No. 8 of 1941.

Mr. Nadarajah further states that if he has to open the case he will have to lead evidence on all the points referred to in section 2 (b) to meet the case of the Crown if no further pleadings setting out the basis of the valuation are filed; but if such further pleadings are filed, he would be in a position to omit some of the items and confine his case only to those items which he disputes. He states that the Crown should set out details of the various items which have to be taken into consideration in assessing under section 20 (1) and under the amending Ordinance, such, for instance, as goodwill, depreciation caused by death, &c. 30

Order on the 28th November, 1946.

Sgd. N. Sinnathamby, 40  
A. D. J.

Order of the District Court *re* Preliminary Inquiry

No. 4  
 Order of the  
 District Court  
*re* Preliminary  
 Inquiry  
 28-11-46

No. 71/T. (Special)

F. Act of 1895, rules 1-33

## ORDER

10 This is an appeal under section 38 of the Estate Duty Ordinance against an assessment of the Commissioner of Estate Duty in respect of estate duty payable by the executors of the estate of the late C. W. Mackie. The petitioners have in a very comprehensive petition of appeal set out the basis on which they claim the estate should be assessed. According to the petition of appeal the dispute between the executors and the Commissioner of Estate Duty is in respect of the valuation of 9,201 Cumulative Preference Shares and 5,000 Management Shares in C. W. Mackie & Co., Ltd. The executors have valued the Preference Shares at Rs. 806,017 and the Management Shares at Rs. 150,000 as against the Commissioner of Estate Duty's valuation of Rs. 828,090 and Rs. 1,250,000, respectively. The chief contest is with regard to the valuation of the Management Shares.

20 With regard to the Preference Shares the executors contend that they should be valued at par plus the proportion of such profits available for dividend as the holders of the shares are entitled to receive in respect of arrears.

30 With regard to the Management Shares the executors contend that they should be valued in terms of section 20 (1) of the Estate Duty Ordinance at the market value less depreciation due to the death of the deceased and that the provisions of sub-section 6 and section 20 as amended by Ordinance No. 8 of 1941 do not apply as they were not in force at the date of death of the deceased. The executors have valued the Management Shares upon the net value of the company's assets at the date of death of the deceased after providing for the value of all the Preference Shares. I understood learned Counsel for the executor-appellants to say that this method was adopted because the Management Shares were not shares which were quoted in any recognized list of share transactions and in point of fact there were no sales or offers for sale. The executors further contend that no goodwill of any kind attach to the Management Shares and have made no provision for it in their valuation.

40 The executors in paragraph 5 of the petition of appeal state that the Commissioner of Estate Duty has in his notice of assessment valued the Preference Shares at Rs. 90 a share and the

No. 4  
Order of the  
District Court  
re Preliminary  
Inquiry  
28-11-46  
—contd.

Management Shares at Rs. 300 a share and in paragraph 8 they complained that he has not set out or disclosed to them the basis of his valuation. In their present application the executors move that the Court in terms of section 40 of the Ordinance directs the Crown to file further pleadings setting out their objections, if any, to the method of valuation adopted by the executors and stating which is the correct method of valuation. Learned Counsel for the executor also stated, and this is not denied by the Crown, that the statements of his witnesses with regard to their valuation, &c., have been disclosed to the Crown but neither the Crown nor the Commissioner of Estate Duty has disclosed the method adopted by the latter in arriving at his assessment. 10

When the matter came up for consideration the learned Solicitor-General who appeared for the Crown opposed the application of the petitioner and stated that the valuation of the Commissioner of Estate Duty could be substantiated both on the basis of market value and on the basis of the total assets of the company as defined by section 2 of the amending Ordinance No. 8 of 1941. From this I understood the position of the Crown to be that in assessing the value of the Management Shares, goodwill must be taken into consideration. 20

Section 40 provides that when an appeal is filed against the assessment of the Commissioner of Estate Duty the appeal shall be deemed to be and may be proceeded with as an action between the appellant as petitioner and the Crown as defendant and that the provisions of the Civil Procedure Code shall apply. Normally therefore one would expect the Crown to file or be called upon to file an answer or a statement of objections and the petition of appeal. But section 40 expressly provides that no further pleading shall be filed unless the Court by order otherwise directs. The discretion is left with the Court. The Court must act judicially and in what circumstances will it order further pleadings to be filed 30

In order that the appeal may be proceeded with as an action between the appellant and the Crown it is necessary that the points in dispute between the parties shall be ascertained and if necessary formulated as issues. This was the view held by the Supreme Court in respect of proceedings under the repealed Estate Duty Ordinance, No. 8 of 1919, vide 24 New Law Report at page 235. Section 22, sub-sections 3 and 4 governed the procedure under the old Ordinance No. 8 of 1919. That Ordinance made no provision for any pleadings other than the petition of the appellant. It was perhaps to facilitate the Court in ascertaining the points in dispute between the parties that the new Ordinance provided for further pleading. In my view therefore the Court would order further 40

pleadings to be filed only in cases where such pleadings are necessary to ascertain the points in dispute between the parties.

No. 4  
Order of the  
District Court  
re Preliminary  
Inquiry  
28-11-46  
—contd.

10 The executors in their petition of appeal specifically state that the Commissioner of Estate Duty has not disclosed the basis of his valuation. They are therefore unable to state in this petition the basis on which the Commissioner of Estate Duty proceeded. The only person who can now do so is the Crown. The statement of the learned Solicitor-General though somewhat vague seems to indicate that in respect of the Management Shares at least the contest will be in respect of goodwill. The Commissioner of Estate Duty has assessed the duty payable at a certain sum. I see no reason why the Crown should be reluctant to disclose the basis of that assessment. A disclosure at this stage will facilitate the Court in ascertaining the dispute between the parties and in confining the proceedings to "manageable proportions". It will also assist in the speedy and efficient adjudication of the matters in dispute.

20 The difference between the Commissioner of Estate Duty's valuation and the executors' valuation of the Preference Shares is comparatively small but the difference in the valuation of the Management Shares is so large as to justify the inference that the Commissioner of Estate Duty may have taken into consideration certain facts such as goodwill, which the executors have omitted. It is therefore desirable that the Crown should set out the basis of the Commissioner of Estate Duty's valuation giving details under such heads as goodwill, depreciation, &c., so that the matters in issue may be readily ascertained and the proceedings confined to those matters.

30 I accordingly call upon the Attorney-General to file a statement setting out the basis of the Commissioner of Estate Duty's assessment giving details as indicated in my order. He may at the same time refer to any questions of fact or law raised in the petition of appeal or on which he proposes to rely.

Sgd. N. Sinnathamby,  
A. D. J.

Pronounced in open Court in the presence of Mr. Wilson for the Crown.

Crown's statement to be filed on 6/2.

(Sgd.) V. St. C. SWAN,  
A. D. J.

**Judgment of the Supreme Court *re* Preliminary Inquiry**

S. C. 30/S.

D. C., Colombo, No. 71/T.

*Present* : CANEKERATNE J. and DIAS J.

*Argued on* : 3rd September, 1947.

H. H. BASNAYAKE, K.C. with H. DEHERAGODA  
for Crown-appellant.

F. A. HAYLEY, K.C., with S. J. KADIRGAMAR for  
petitioners-respondents.

*Delivered on* : 15th September, 1947.

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CANEKERATNE J.—

The executors of the last will and testament of C. W. Mackie, deceased, delivered a declaration of property passing on his death to the Commissioner of Estate Duty. An Assessor issued a notice of assessment fixing the net value of the estate in Ceylon at Rs. 2,918,141. The executors, as persons aggrieved by the decision of the Assessor, had a right of appeal to the District Court of Colombo; so they followed the procedure prescribed by the Ordinance. A specific statement of the grounds of appeal was delivered to the Commissioner within 30 days after the date of the notice of assessment. As the Commissioner maintained the decision on one matter, namely, on the valuation placed on the Cumulative Preference Shares Rs. 828,090 as against Rs. 806,017, the valuation of the executors, and did not withdraw his claim in respect of another but varied the decision thereon by reducing the valuation of the Management Shares from Rs. 300 a share to Rs. 250 as against Rs. 30, the valuation of the executors, they within 30 days decided to proceed with their appeal by filing a petition to the District Court. A copy of the petition was served on the Attorney-General, the respondent to the petition. The appellants may only rely on their petition, and at the hearing of the grounds contained in this original statement (petition of appeal—section 39): a Court, however, can give leave to amend the petition (section 41). On July 18, 1946, the respondent's proxy was filed in Court and the petition was set down for hearing on October 25, 1946. When the matter came on for inquiry on this day, Counsel for the executors contended that the respondent should set out his objections to the method of valuation

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the 14th June, 1946, under the provisions of section 38 (1) of the Estate Duty Ordinance (Cap. 187) praying, inter alia, that the valuation placed by the Assessor of Estate Duty on 9,201 Cumulative Preference Shares in C. W. Mackie & Co., Ltd., be reduced from Rs. 828,090 to Rs. 806,017 and that the valuation of the Assessor, as amended by the Commissioner of Estate Duty, of 5,000 Management Shares in the said company be reduced from Rs. 250 per share to Rs. 30 per share.

No. 5  
Petition of  
Appeal of  
Respondent to  
the Supreme  
Court  
6-12-46  
—contd.

2. On the 25th October, 1946, learned Counsel for the respondents  
10 moved that the appellant be directed to file pleadings setting out—

- (a) objections to the method of valuation adopted by the executors in assessing the value of the said shares,
- (b) what, in the view of the appellant, is the correct method of valuation of the said shares, and
- (c) the legal position as to the basis adopted in making the valuation.

3. After hearing the arguments of Counsel on the 21st November, 1946, the learned Additional District Judge of Colombo by his  
20 order dated the 28th November, 1946, directed the appellant to file a statement setting out the basis on which the valuation of the shares was made by the Commissioner of Estate Duty giving details under such heads as goodwill, depreciation, &c. The order further stated that the appellant may at the same time refer to any questions of fact or law raised in the petition of appeal or on which the appellant proposes to reply.

4. Dissatisfied with the said order dated the 28th November, 1946, the appellant appeals to their Lordships' Court on the following among other grounds which may be urged by Counsel at the hearing of the appeal :—

- 30 (a) The said order is contrary to law.
- (b) The learned Judge had no power to direct the appellant to file a statement setting out the matters indicated in the said order.

Wherefore the appellant prays that their Lordships' Court be pleased to set aside the learned Judge's order dated the 28th November, 1946, to order the respondents to pay the appellant the costs of appeal, and to make such other or further order as their Lordships may deem meet.

(Sgd.) JOHN WILSON,  
*Proctor for Appellant.*



**Judgment of the Supreme Court *re* Preliminary Inquiry**

S. C. 30/S.

D. C., Colombo, No. 71/T.

*Present* : CANEKERATNE J. and DIAS J.

*Argued on* : 3rd September, 1947.

H. H. BASNAYAKE, K.C. with H. DEHERAGODA  
 for Crown-appellant.

F. A. HAYLEY, K.C., with S. J. KADIRGAMAR for  
 petitioners-respondents.

*Delivered on* : 15th September, 1947.

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CANEKERATNE J.—

The executors of the last will and testament of C. W. Mackie, deceased, delivered a declaration of property passing on his death to the Commissioner of Estate Duty. An Assessor issued a notice of assessment fixing the net value of the estate in Ceylon at Rs. 2,918,141. The executors, as persons aggrieved by the decision of the Assessor, had a right of appeal to the District Court of Colombo; so they followed the procedure prescribed by the Ordinance. A specific statement of the grounds of appeal was delivered to the Commissioner within 30 days after the date of the notice of assessment. As the Commissioner maintained the decision on one matter, namely, on the valuation placed on the Cumulative Preference Shares Rs. 828,090 as against Rs. 806,017, the valuation of the executors, and did not withdraw his claim in respect of another but varied the decision thereon by reducing the valuation of the Management Shares from Rs. 300 a share to Rs. 250 as against Rs. 30, the valuation of the executors, they within 30 days decided to proceed with their appeal by filing a petition to the District Court. A copy of the petition was served on the Attorney-General, the respondent to the petition. The appellants may only rely on their petition, and at the hearing of the grounds contained in this original statement (petition of appeal—section 39): a Court, however, can give leave to amend the petition (section 41). On July 18, 1946, the respondent's proxy was filed in Court and the petition was set down for hearing on October 25, 1946. When the matter came on for inquiry on this day, Counsel for the executors contended that the respondent should set out his objections to the method of valuation

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adopted by them and state which was the correct method of valuation. The further consideration of this matter was taken up on November 21, 1946. Thereafter the Judge made an order to this effect: "I accordingly call upon the Attorney-General to file a statement setting out the basis of the Commissioner of Estate Duty's assessment giving details under such heads as goodwill, depreciation, &c. He may at the same time refer to any questions of fact or law raised in the petition of appeal or on which he proposes to rely".

No. 6  
Judgment of  
the Supreme  
Court *re*  
Preliminary  
Inquiry  
15-9-47  
—*contd.*

- 10 The petitioners, on June 15, made an application to the Court for relief. Such application may be considered an action under the Code of Civil Procedure (ch. 86, Ceylon Legislative Enactments, section 6). The procedure, however, in a proceeding of this kind differs materially from that which would prevail in an ordinary action in regular procedure under the Code, for there the person against whom the application is made is called upon formally to state his answer to the case alleged against him only after the answer is filed is the matter in issue between the parties. A plaintiff's pleading is his complaint, a defendant's pleading is his answer: a statement filed after the answer, such as a replication is also
- 20 a pleading<sup>1</sup>. No pleadings after answer can be filed except where there is a claim in reconvention or except by order of Court made before the day appointed for the hearing of the action<sup>2</sup>. The whole object of pleadings is to bring the parties to an issue. All necessary particulars are sometimes not embodied in the pleadings: where this has not been properly done Courts in some places have a wide power to order particulars to be given. Particulars then supplement pleadings which would otherwise be too vague and general, and ensure a fair trial by informing the opposite party what case he has to meet. In Ceylon the power to order particulars is not so wide<sup>3</sup>.
- 30 The distinction between particulars and evidence must be steadfastly kept in mind. Particulars, however, are not ordered of the mode in which it may be proposed to prove the case set up in the pleading. From the nature of the case the occasion for particulars arises somewhat less frequently in regard to defences than in regard to claims. Where a defence consists of traverses or denials of allegations in the claim, the occasion for particulars does not arise; but where a defendant pleads affirmatively or sets up facts to be proved in answer to the plaintiff's case, as where he sets up a defence of payment, he may be, and in general is as much under an obligation to
- 40 give particulars as if he were alleging such or similar matters in a plaintiff.

It is necessary to consider section 40 of the Estate Duty Ordinance. Though there may be an action between the executors as plaintiffs and the Attorney-General as defendant all the provisions in the Code relating to pleadings are not applicable. The Attorney-General

No. 6  
Judgment of  
the Supreme  
Court *re*  
Preliminary  
Inquiry  
15-9-47  
—contd.

is under no obligation to file a statement in answer to the petition of the appellants. But a Court is given power to make a special order. If the Court is of opinion that in any particular case it is necessary to have some other pleading before it, it can make an order to that effect. A Court may more readily listen to an application made by the respondent for permission to file a statement than to one made by the petitioner with the object of getting the other party to file a statement for in the latter case the burden is on the petitioner to show that it is necessary in the circumstances of the case that such an order be made. On July 18, the matter would ordinarily be deemed at issue between the parties. There would then only have been the petition filed by the appellants before the Court. The executors when they filed their petition were aware of the valuation placed on the disputed items by the Commissioner. Their position was that these valuations were excessive. They were apparently aware of the grounds on which the Commissioner appears to have proceeded, for they state how the Management Shares should be valued in terms of section 20 (1) of the Ordinance, that the provisions of sub-section 6 of the section 20 are inapplicable and that a goodwill must not be taken into consideration.

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The reason given by the Judge for allowing the application is a mistaken one in that it does not take account of the full facts of the case. The question is not whether it is desirable to get the details so as to confine "the proceedings to manageable proportions" (p. 8 of the record) but whether the Judge had power to order these details to be given. This is an attempt to impose a burden on the respondent which is not warranted by the language of the section. The rule that the Court should not dictate to parties how they should frame their case is one that ought always to be preserved sacred.

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The next question is whether this Court should mould the order of the Judge and limit it to only so much as is well founded. I think it a fair view to make an order to the effect that the respondent should file a statement by way of answer.

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The order of the trial Judge made on November 28, 1946, is set aside: the costs of appeal and of the inquiry will be costs in the cause.

(Sgd.) A. R. H. CANEKERATNE,  
*Puisne Judge.*

DIAS J.

I agree.

(Sgd.) R. F. DIAS,  
*Puisne Judge.*

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<sup>1</sup> Sections 39, 72, 75 of the Code (Ch. 86) Cf. *Emalishamy vs. Kannangara* (1904) 1. Bal. 11—  
plaint and answer referred to as pleadings, Order VI, R. 1 of the Indian Code of Civil Procedure.

<sup>2</sup> Section 79 of the Code (Ch. 86)

<sup>3</sup> Section 49 (d), section 46, a, b,—see 2 C. L. R. 35 ; 2 Bal. N. C. 28.

**Decree of the Supreme Court re Preliminary Inquiry**

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT  
BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND  
THE SEAS KING, DEFENDER OF THE FAITH,  
EMPEROR OF INDIA

IN THE SUPREME COURT OF THE ISLAND  
OF CEYLON

THE ATTORNEY-GENERAL of Ceylon.....*Appellant.*

10 Supreme Court No. 30 of 1947  
(Interlocutory).

*against*

(1) C. W. MACKIE (Junior) of Colombo, and

(2) J. C. MACKIE, Executors of the Last Will and Testament  
of C. W. Mackie, deceased.....*Respondents.*

Action No. 71/T. (Special) District Court of Colombo.

20 This cause coming on for hearing and determination on the 3rd  
and 15th days of September, 1947, and on this day upon an appeal  
preferred by the appellant before the Honourable Mr. A. R. H.  
Canekeratne, K.C., Puisne Justice, and the Honourable Mr. R. F.  
Dias, Puisne Justice of this Court, in the presence of Counsel for the  
appellant and respondents.

It is considered and adjudged that the order entered in this  
action by the District Court of Colombo and dated the 28th day of  
November, 1946, be and the same is hereby set aside.

It is further ordered that the respondent should file a statement  
by way of answer. The costs of appeal and of the inquiry will be  
costs in the cause.

30 Witness the Honourable Sir John Curtois Howard, Kt., K.C.,  
Chief Justice, at Colombo, the 15th day of September in the year  
of our Lord One Thousand Nine Hundred and Forty-seven and of  
Our Reign the Eleventh.

(Sgd.) CLARENCE DE SILVA,  
*Registrar Supreme Court.*

No. 8  
Answer of the  
Respondent  
20-1-48

No. 8

**Answer of the Respondent**

**IN THE DISTRICT COURT OF COLOMBO**

In the Matter of an Appeal under Section 38 of the Estate Duty Ordinance (Cap. 187) of the Legislative Enactments of Ceylon.

- (1) CHARLES WILLIAM MACKIE (Junior) of Colombo, and
- (2) JAMES CRAIB MACKIE, also of Colombo, Executors of the Last Will and Testament of Charles William Mackie, deceased..... *Appellants.* 10

*vs.*

THE ATTORNEY-GENERAL of Ceylon.....*Respondent.*

No. 71/T. (Special) D. C. Colombo.  
No. 10328 Testy/Estate No. ED/M. 646.

On this 20th day of January, 1948.

The answer of the respondent above named appearing by John Wilson, his proctor, states as follows:—

- 1. This respondent admits the averments contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the petition of appeal.
- 2. Further answering this respondent joins issue with the appellants on the submissions set out in sub-paragraphs (a), (b), (c), (e), and (f) of paragraph 10 of the petition of appeal and—
  - (i) specifically denies that no goodwill attached to the Management Shares at the date of the death of the deceased, and
  - (ii) states that the value of the 5,000 Management Shares, as computed in terms of section 20 (1) of the Estate Duty Ordinance, was Rs. 1,250,000, and denies as a matter of law that the provisions of sub-section 6 of section 20, as enacted by No. 8 of 1941, did not apply to the valuation of such shares. 30

Wherefore the respondent prays—

No. 8  
Answer of the  
Respondent  
20-1-48—*contd.*

- (a) that the valuation of Rs. 828,090 placed by the Assessor and upheld by the Commissioner of Estate Duty upon 9,201 Cumulative Preference Shares be affirmed,
- (b) that valuation of the 5,000 Management Shares at Rs. 1,250,000 be upheld,
- (c) that the amount of estate duty assessed by the notice of assessment dated 21st April, 1944, as amended by the letter dated 20th May, 1946, be maintained, and
- 10 (d) for costs and for such other and further relief as this Court may seem meet.

(Sgd.) JOHN WILSON,  
*Proctor for the Respondent.*

**Issues Framed**

71/T. (Special)

19th October, 1948

DR. HAYLEY, K.C., with MR. ADVOCATE KADIRGAMAR,  
instructed by MESSRS. JULIUS & CREASY for the petitioner.

MR. M. F. S. PULLE, K.C., Solicitor-General, with MR. D.  
JANSZE, Crown Counsel, instructed by MR. JOHN WILSON  
for the respondent, the Attorney-General.

Dr. Hayley opens his case.

This inquiry is in respect of estate duty payable by the estate 10  
of C. W. Mackie, who died on 7th September, 1940. The executors  
declared the value of the Ceylon estate at Rs. 827,692. He had a  
foreign estate too, which is immaterial. The estate included two  
assets, which are only the matters in dispute, viz., 9,201  
Cumulative Preference Shares in a limited company called C. W.  
Mackie & Company, Ltd., and 5,000 Management Shares in the  
same company. The nominal value of the Preference Shares was  
Rs. 50 and the nominal value of the Management Shares was Rs. 2  
each. The executors declared the value of these respective holdings.  
They valued the Preference Shares at Rs. 758,438.43 and the 20  
Management Shares at less than par Rs. 4,925. On the 15th  
February, 1943, the Commissioner made an assessment substantially  
in accordance with the figures provided by the executors. The  
facts are fully stated in the petition of appeal.

On the 21st April, 1944, he made a conditional assessment raising  
the Ceylon estate to Rs. 2,918,141, that is to say, appreciating  
the valuation by something over 2 million rupees or three times the  
declared value. Estate duty on that sum at 13 per cent. would come  
to Rs. 379,358.33. For the purpose of this assessment he included  
the 9,201 Cumulative Preference Shares at a figure of Rs. 90 each 30  
making it Rs. 828,090. The Management Shares he valued at  
Rs. 300 each making it Rs. 1,500,000. Notice of objection was  
given and the executors said that they would accept the figure  
of Rs. 87.601 for each Preference Share as against the Rs. 90 at  
which the Commissioner had assessed. In regard to Management  
Shares, they said that they would accept a valuation at Rs. 40.6188  
a share gross instead of the Rs. 300 which the Commissioner had  
suggested, and that from that Rs. 10.6188 should be deducted  
under the Ordinance in view of the fact that the death of the testator  
himself would greatly reduce the value of the Management Shares. 40  
On the 20th May, 1946, the Commissioner in reply to the objection  
waived certain other items of his claim and reduced his assessment

of the Management Shares from Rs. 300 each to Rs. 250 each. The duty in dispute, therefore, apart from interest which has been added, is Rs. 172,769·91.

No. 9  
Issues framed  
19-10-48  
—contd.

The estate has been made to pay that amount in advance. The appeal before the Court is therefore only on these two points of the shares. The amount in dispute with regard to the Preference Shares is small. The substantial dispute is in regard to the 5,000 Management Shares.

Dr. Hayley suggests the following issues :—

- 10 (1) Is the market value of the Preference and Management Shares in the assessment excessive ?
- (2) Should the Preference Shares be valued as stated in paragraph 10 (c) of the petition and if not at what sum ?
- (3) Should the Management Shares be valued as stated in paragraph 10 (e) of the petition and if not at what sum ?
- (4) Did any goodwill attach to the Management Shares at the date of the death of the deceased and if so what figure ?
- 20 (5) Was the value of the Management Shares as computed in terms of section 20 (1) of the Estate Duty Ordinance Rs. 1,250,000 and if not what sum ?

The Solicitor-General submits that the Attorney-General is not prepared to accept the value placed on the Cumulative Preference Shares by the executors for the reason that the difference is very small, so that Issue No. 2 will not be necessary.

Dr. Hayley moves to have it noted at this stage that he wants to reserve the right to call evidence in rebuttal if necessary.

30 C. W. Mackie dealt exclusively in rubber on a highly speculative basis.

(Dr. Hayley marks memorandum of the articles of C. W. Mackie & Co. as P1.)

40 That explains the Management and Preference Shares. Under the Memorandum of the Association—Clause 5, the capital of the company is Rs. 1,000,000 which is divided into 19,800 Cumulative Preference Shares of Rs. 50 each, and 5,000 Management Shares of Rs. 2 each. If the company was wound up, it had to pay the whole of the Preference Shares Rs. 990,000 and any outstanding 8 per cent. Preference Shares Dividends, which had not been paid. Mr. Mackie at the time of his death held the whole of the Management Shares. He was Life Director of the Company. He had power in excess of the Ordinary Directors in arranging the policy of the company. Dr. Hayley refers to section 20 (1) of the Ordinance (Chapter 187). No dividends had been paid for a large number of years. On the Management Shares it had not been paid since 1926 or 1927. On



No. 9  
Issues framed  
19-10-48  
—contd.

the Preference Shares there were 8 or 10 years' arrears as well. It was not because the company had time to make profits but because a rubber merchant buys rubber on the chance of selling it next week or some time later. He has the whole capital outstanding. He may have to hold enormous quantities of rubber on chance. Mr. Mackie continued this business on a successful basis because he was prepared to buy, prepared to sell and was prepared to own an immense quantity of rubber for an immense period. He had built up enough reserve in this business but he could not afford to pay the dividend when the prices went down. Sometimes 10  
5,000 tons of rubber was in stock. When he died in 1940 the future position of the world was unpredictable. It was not known what shares would fetch in the open market. Preference Shares at the time of his death were their original capital value Rs. 990,000 and in addition to that there was Rs. 846,029 dividends unpaid. There was income tax due on that Rs. 101,523. Balance outstanding, dividends after meeting income tax due, would be Rs. 744,506. If one went to the market and wanted to sell these shares, the original value of Rs. 50 plus the share of interest outstanding would be Rs. 87·601. In regard to Management Shares, brokers would have 20  
offered at 98 cents each. Let us look at the assets and see what the company is worth. That is the basis which has been conceded by the appellants. There was no actual balance sheet available after June, 1940. The last balance sheet was dated 30th June, 1940. This will show that the total assets of the company at that date was Rs. 2,286,005·02. Then the amount due to creditors was Rs. 400,186·27. At that date there were Preference Share Dividends arrears from 1930 to 1932 of Rs. 209,988. There were further Preference Share Dividends from 1933 to 1940 Rs. 522,720. 1927 to 1929 the Preference Shareholders waived the dividends. 30  
Added to that there is Preference Shares Capital Rs. 990,000. Total liabilities at that date were Rs. 2,121,994·27. The net difference between assets and liabilities after putting aside the amount of the Preference Shares is Rs. 164,010·75. To that should be added certain further profits to the extent of Rs. 46,982·96 making a figure of 210,993·71. There is a small excess of the brokers' valuation. Rupees 7,899·30 has to be deducted making the ultimate net assets distributed amongst the Management Shares Rs. 203,094·41. That figure has to be divided by the 5,000 shares, i.e., Rs. 40·6188. We claim a reduction on that. At any time 40  
rubber would have had to be sold at a particular loss. From 1922 to 1926 there was a large profit of over 3 million rupees. There were dividends paid on shares. From 1927 to 1940 no dividends were paid on the Management Shares at all and from 1927 to 1932 there was a loss of Rs. 1,804,000. It has been mentioned in the plaint the question of goodwill. The business was of a speculative nature, dealing in a subject like rubber, which had an open market all over the world.

**No. 10**  
**Applicants' Evidence**

No. 10  
Applicants'  
Evidence, F. B.  
Lander,  
Examination

Dr. Hayley calls—

F. B. LANDER. Sworn. 44. Chartered Accountant, Partner, Ford, Rhodes, Thornton & Co.

I am a Chartered Accountant and a member of Messrs. Ford, Rhodes, Thornton & Co. I have been there since 13th April, 1930, and a partner since January, 1940. The firm has a large accounting business.

10 Q. Do you, in the ordinary course of business, deal with a number of commercial companies in Colombo?

A. Yes.

Q. Including those interested in rubber?

A. Yes.

I have experience as an auditor in Colombo and in seeing company books.

Q. Have you from time to time audited and advised as auditor firms and companies interested in rubber?

A. Yes.

20 Q. For this company, Mackie & Co., have Ford, Rhodes, Thornton done work for a long time?

A. Yes. We were auditors of the private firm.

I have auditing connections with the company for a period of possibly over 14 years.

Q. In connection with the winding up of the estate of the late Mr. C. W. Mackie, was your firm consulted for the purpose of making up and obtaining figures for the purpose of estate duty?

A. Valuations were called for the purpose of estate duty.

30 Q. For the purpose of earlier auditing and for the more special purpose of the late Mr. Mackie's estate it has been necessary for you to look and examine books and the balance sheet of the company?

A. Yes, more particularly the balance sheet.

Q. Are you familiar with the figures in the returns?

A. I can identify the figures when I see them. I can speak to the figures when I see them.

Q. Have you also, in the course of your professional work, had experience as to conditions of rubber business in Colombo?

40 A. Yes. Shortly after my arrival in Ceylon depression commenced and for the first 4 or 5 years I have been in Ceylon there was rubber depression. The movements in the price of rubber were well known.

No. 10  
Applicants'  
Evidence, F. B.  
Lander,  
Examination  
—contd.

Q. When the question of the valuation of Mr. Mackie's estate was before the Estate Duty Commissioner, were you asked to make valuations ?

A. Yes.

(Dr. Hayley moves to mark statement dated 18.5.44 made to the Commissioner by this witness as P2. Solicitor-General objects to the marking of this statement. Dr. Hayley refers to section 4 of New Estate Duty Ordinance, No. 8 of 1941.

I allow the document to go in.)

(To Court : I swear to the correctness of that report).

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Q. In making your valuation, had you access to all the necessary Balance Sheets and accounts of the firm ?

A. Yes.

(Dr. Hayley marks Balance Sheet of the company as at 30.6.40—P3.)

Trading Account for the 6 months ending 30.6.40—P4

Profit and Loss Account for the 6 months ending 30.6.40—P5).

Q. In regard to P4 and P5, from where did you obtain those figures ?

A. From the company's books.

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Q. You also sent P6 statement B being the figures up to 6th September, 1940, for the purpose of the valuation of the shares ?

A. Yes.

The method of arriving at the rates between 30.6.40 and 6.9.40 are explained in the earlier document P2. I produce with the same valuation P7 statement marked C which shows profit and loss and information over a period of years. All those figures were taken from the accounts. In this valuation of mine, I have stated that the value of the Management Shares would be the aggregate of Rs. 203,094.41, or Rs. 40,6188. Statement marked B shows the figures with the total assets shown by the Balance Sheet Rs. 2,286,005.02. From that are shown the aggregate of four deductions, creditors Rs 400,186.27 ; 1930-1932 Preference Share Dividend arrears and Preference Share Dividends 1935 to 1940. The reason for this is that the Preference Share Dividend for 1930 to 1932 had been recommended but had not been paid on 6.9.40, whereas the dividends for the six or seven subsequent years had not been recommended for payment. Both are liabilities. One had been recommended, and the other not. The last reduction is the share capital. That produced a valuation of Management Shares as at 30th June of Rs. 164,010.75. Having regard to the Trading Account, substantial profits were in fact being made that a valuation

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as near as possible on the Balance Sheet basis was being made as at 6.9.40. I considered it expedient to increase the figure of the Management Shares from Rs. 164,010.75 to the higher figure which is obtained by including the profit calculated on actual rubber shipments. This produced a figure of Rs. 120,000 approximately, income for the three months, from which was deducted Rs. 50,000 for expenses which left a net profit for the 68 days of Rs. 70,000 or Rs. 1,000 daily.

No. 10  
Applicants'  
Evidence, F. B.  
Lander,  
Examination  
—contd.

10 Rs. 47,000 was added on to the last account and from that was deducted Rs. 7,899.30, book value of investments which were valued by brokers on 6th September, 1940.

Q. In your statement of the valuation, before you came to make the valuation on the Balance Sheet basis you stated that no value other than a nominal value of Rs. 2 could be placed on the Management Shares on a yield basis ?

A. When examining shares for any purpose, the first question to ask is: "What was the last dividend?" Then "When was the last dividend paid by the company." In the case of this company the last dividend was 13 or 14 years ago which, on the face of it, on a 20 yield basis, it was possible for anyone to arrive at a value of the shares.

Q. What do you mean by yield basis ?

A. Yield is the gross per cent. dividend per year declared on a share for that year.

No dividend had been declared in the last 13 years in respect of the 5,000 shares.

Q. What other class of shares existed on examining the Balance Sheet ?

A. Eight per cent. Cumulative Preference Shares existed and the Balance Sheet made a note that the dividends were in arrears.

30 No dividend had been paid or declared on the Cumulative Preference Shares for the last 8 or 9½ years. If these Management Shares had been in the market at Rs. 2 each, the first question to ask would be "What is the position in regard to Preference Shares".

Q. When you stated "no other value than Rs. 2 can be placed on a yield basis", does your opinion differ now at all ?

A. No. On a yield basis Rs. 2 was enough.

Q. So far as the other valuations which were made in 1944 are concerned, have you any reason now to vary ?

A. The valuation was made on the conditions obtaining on the 10 6th September, 1940, when the future was unpredictable. In my opinion it is the same.

In the statement C, P7, there were shown total profits for 11 years and total losses for 8 years and the net difference between the two figures was Rs. 3,548,000. The profits for the first 5 years 1922

No. 10  
Applicants,  
Evidence, F. B.  
Lander,  
Examination  
—contd.

to 1926 were Rs. 3,441,000. Rs. 107,000 represents the aggregate net excess profits over losses for the 14 years 1927 to 1940.

In valuing on the balance sheet basis, first of all we see what the dividend payments have been. If dividends have been paid one makes inquiry and sees in the case of a speculative business when it was paying dividends. Naturally accounts have to be examined for the period. In connection with a business like rubber we have to cover a period sufficiently large to have an idea of what has happened. In the case of a speculative business there would be high profits or high losses. To determine what the economic trade cycle is for rubber it would be necessary to see what was happening over the whole period. It would be necessary to see what the price of rubber has been, between these dates. That is the reason why one sees whether there was anything which would give an indication of a steady earning power. If one found results or showed huge losses or huge profits, one would know what the next year's was going to be. At this point of time it was difficult when Britain was alone against Germany. Conditions became worse after the death of Mr. Mackie. It was the blackest period of the war for England, and Mackie & Co. was owned by English shareholders. It was difficult at that time to find anyone who was willing to invest large sums of money on speculation. 10

In regard to goodwill, the first question is whether Mackie's had a monopoly in rubber. The answer to that is that Mackie's had not got a monopoly in rubber. In 1940 it was open for any person to be a rubber dealer. The next question is whether Mackie's had a monopoly of premises suitable for dealing in rubber. The answer is again "No". Other premises were available which were lying empty. The next point is whether Mackie's had anything, other businesses had not. They had a reputation for good trading but that was common. They had a good name. They had not gone bankrupt. Good name coupled with the making of losses does not produce goodwill. Mackie's certainly had a good name but that had to be combined with other things and with the ability to make profits and not losses. At that time rubber was bought and sold in the open market. During this period, in addition to rubber, coupons were also speculative. Price of coupons as well as the price of rubber was liable to considerable fluctuation. Taking the period 1922 to 1940: 1922 to 1926 boom following post-war slump; 1933 to 1937 saw slight improvement but not absolutely certain; 1938 saw the preparation for war. Rubber was being bought up. 30 40

(Sgd) S. S. J. GOONESEKERE,

A. D. J.

Further hearing tomorrow.

(Sgd.) S. S. J. GOONESEKERE,

A. D. J.

Appearances as before.

F. B. LANDER. Recalled. Sworn.

Examination further by Dr. Hayley.

It is part of my experience and of duties to go into the value of the goodwill in a business. For that purpose I study the general principles for assessing the goodwill. When there is a business, which might have goodwill attached, the past results whether there are profits or losses, are taken into consideration.

10 Q. If the business was one to which goodwill might attach but the profit situation is unsatisfactory, would you say that goodwill in fact attached to that business?

A. No.

In the definition of goodwill a measurement of past profits arises for various purposes. I think, in practice, the method usually adopted is the simplest method. Goodwill is regarded by an accountant as the capitalized value of the super earnings over a "fair commercial yield" for a particular business. "Fair commercial yield" means the results which are obtained  
20 after charging adequate remuneration for the management and for all connected matters, and the yield on the capital employed, which capital is not merely issued capital, but the total assets less liabilities employed at a certain rate of interest. The rate of interest for a fair commercial yield is not the same for every business. The more speculative the business, the higher is the rate of interest for "fair commercial yield." Having arrived at the profits, less the fair commercial yield, the answer is either "super earnings" or "super deficit", and the question arises in the examination of  
30 these figures whether there are abnormalities which have to be included or which can be excluded, and the period of the results, which are examined, depend very largely on whether the business is a steady one or one subject to very considerable fluctuations either way.

Q. Having arrived at what you think the buyer would accept in the nature of a sustained dividend, if records and the circumstances show that the profits could be less than that, would you say that there was a goodwill attached to such a business?

A. I should say, if the results were minus quantities, I doubt very much whether a buyer would proceed to consider the matter.  
40 It would seem that there was something wrong with the policy.

Q. If the records and the circumstances show that there was a super profit what is the method you would adopt?

A. There again, having regard to the nature of the business and the fair commercial return, if the fair commercial return amounts

No. 10  
Applicants'  
Evidence, F. B.  
Lander,  
Examination  
—contd.

to 15 per cent. then the "super profit" would have a higher rate of interest, perhaps even 20 or 25 per cent. Another way of saying it is, you would take so many years purchase of the average "super profit", if any, to estimate goodwill.

Q. Having found that there are some super profits, how would you proceed to estimate ?

A. The answer is, perhaps, 2, 3, 4, 5, 6 or 8 years of the average super profit.

Q. In estimating the time what factors would you consider ?

A. Speculative or otherwise, nature of the business, the question whether the management would remain or would not remain. In other words, whether the management was tied to the company or not. 10

Q. For purpose of your original assessment, have you looked into the history of this firm Mackie & Co. ?

A. I looked into the affairs of the company.

Q. What is your opinion regarding the question whether this is a speculative business or not ?

A. The results show quite clearly that it was a business dealing with a very sensitive produce, rubber, and the results of the company indicated that a highly speculative policy had been adopted. 20

Q. How is that illustrated in the results ?

A. That is from large profits made in certain periods and very large losses in certain other periods.

Q. For the purpose of standing these very large losses when they arose, how was that achieved ?

A. In the first case the company had in 1926 large reserves, about three quarter million.

Q. What happened when the bad period came ?

A. The losses gradually eliminated the reserve. 30

Then the company did not pay its Preference Dividends, and the preference shareholders did not take the rights which would have been open to them.

Q. So that the earned dividends remained in the business to carry the losses ?

A. The dividends would not have been declared, but they were cumulative, and there was the liability to pay the dividends either in the event of the company earning profits or of the company going into liquidation, provided its assets were sufficient.

Meanwhile the cash or the assets is utilized for the purpose of trade. During the period the company was making losses, instead of increasing the bank overdraft the dividends were not paid. 40

Q There were the large Management Shares, what was the dividend policy adopted.....

A. No dividends were declared, and could not be declared because the Preference Dividends were in arrear.

No. 10  
Applicants'  
Evidence, F. B.  
Lander,  
Examination  
—contd.

Q Looking at the balance sheet and the accounts for the period 1927–1932 when there were heavy losses, can you form an opinion what would have happened if this conservative policy of the Directors have not been followed ?

10 A. I would have imagined that the company would have gone into liquidation.

Shown document P7 )

Q. During that period 1927–1932, what was the amount of the losses ?

A. Rs. 1,804,304.

One million rupees was the issued capital, and this is nearly double the issued capital.

Q. Did this company hold at times large stocks of rubber ?

A. Very large stocks.

Q. How long did they hold it for ?

20 A. Probably not less than two months. Sometimes, when it is consignment stock, considerably longer.

The company bought and sold rubber. This was a business of buying and selling ; not buyers in the nature of tea buyers or in the nature of rubber buyers, but merely buyers and sellers on their own account. If Mackie bought 50 tons of rubber that he had purchased against the sale, it was purchased by him and sold on his own account. Rubber merchants' business deals with short and long terms.

30 Q. In some business a merchant gets an offer, price, and says whether he can supply. In this rubber business.....

A. That is a question where over a period we are possibly dealing with quantities of 30, 40 or 50 million lb. of rubber a year, and that is rather too wide a question to answer. But in any year there would be a competition probably for both the sides.

Q. What was the general system ?

A. If the business carried very large stocks, which were not sold forward, the risk of a falling market was that of the business, and the benefit of a rising market was also that of the business.

40 If rubber had been purchased at 30 cents a pound and a large quantity was in stock bought at 30 cents a pound and had not been sold at 31 cents a pound forward and due to any world circumstance, such as rumour of extended production in other countries or a change in policy of consumers, and the world market drops by one cent, then there would be a loss.



No. 10  
Applicants,  
Evidence, F. B.  
Lander,  
Examination  
—contd.

*Q.* Was there to any great extent in this business the possibility of getting orders from New York for a quantity of rubber when the local market.....

*A.* I would say what must have obtained to some extent was the gamble taken by Mackie, a larger gamble than that of his competitors in Ceylon.

*Q.* Can you tell me by looking at the accounts at the date of Mackie's death approximately how much rubber was being held in stock ?

*A.* I do not think I have that figure, but I have got the figure 10  
as at 30.6.40. It was 3,300 000 pounds.

(*To Court :* That was the amount of rubber in stock on that particular day. On the following day it may have been half or twice that. The position with regard to rubber is also dependent on the availability of shipping.)

*Q.* Normally, would that rubber have been paid for by Mackie ?

*A.* Yes.

(*To Court :* At the same date, 30th June, the trade creditors were Rs. 36,000 but the bank overdraft was Rs. 173,000 and payment for rubber is usually made, on delivery or against documents 20  
almost simultaneously.)

*Q.* A buyer of only a few shares in any company, would he be likely to take any notice of the voting rights in the company ?

*A.* For a few shares in a small public company, no.

*Q.* In the case of a buyer of a large block of shares, like the present 5,000 Management Shares, would you expect him to look into his voting rights ?

*A.* Certainly.

*Q.* Now in this company what was the voting right in respect of the Preference and Management Shares ? 30

*A.* One vote per share of Rs. 50 for the Preference Shares, and one vote per Management Share of Rs 2; that is to say, each share, whether Preference or Management, carried one vote.

(Article 83 of the Articles of Association, P1, read.) There were 19,800 Preference Shares and 5,000 Management Shares. The total voting strength was 24,800 out of which the Management Shares carried 5,000, slightly more than 20 per cent.

*Q.* How would the question of the Management Shares voting rights affect the mind of a possible buyer ?

*A.* He would think that position would be very invidious because 40  
he bought with the rights of the profits of the company, or the surplus profits of the company or the residue in liquidation, but he would not have the voting power unless he also bought a very large section of the Preference Shares.

Q. How would it affect him in having the voting power. What would he say to himself?

A. He got the necessary qualifications to be a Director. But the Director's qualification was not confined to Management Shares. A holder of Preference Shares also could be a Director, and the Directors, other than Mr. Mackie, were all preference shareholders, but not management shareholders. The company was also a private company

10 Q. How will it affect him regarding the possibility of getting hold of the assets over the question of voting?

A. I think they would.

A seller of the shares of this particular company was restricted as to the person to whom he sold.

Q. Clause 36 onwards of the Articles of Association (P1) says that holders of shares of the company must restrict their dealings. Would that affect a purchaser?

A. Yes, because a purchaser had to obtain the approval of the private company directors, which might not have been given.

20 Q. At the time Mr. Mackie died, had there been any indication by Government for the imposition of Excess Profits Tax?

A. There were proposals, but they were turned down for reasons which I am not quite sure of.

Q. There have been actual opposition brought forward?

A. I am speaking very largely from memory, yes. If my memory is correct, it was with effect from 31.3.39.

Q. The new taxation was a matter which the buyer would take into account?

30 A. If he had been a foreign buyer and if he had knowledge that similar taxation had been imposed in other countries. As regards Ceylon he would not have known whether the taxation was going to be imposed forward with retrospective effect, or he may well have thought that war-time profits would be subject to some special form of taxation even in Ceylon.

Cross-examined.

40 The firm of Mackie was incorporated in 1922. Prior to the incorporation the business was carried on by old Mr. C. W. Mackie, the deceased, under the name of C. W. Mackie & Co. I am not quite sure for how long previously he had carried on that business. He must have carried on that business either from 1903 or from 1913.

Q. He was actively carrying on the business even after the incorporation until he retired from the business?

A. I do not think Mr. Mackie ever retired from the business. He had appointed himself as Life Director in the Articles of Association

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

and seems to have been able to maintain complete control over the policy of the company substantially during his lifetime unless he sold or divested himself of all shares in the company.

(To Court: I do not know when he left Ceylon. He died in 1940. I think to my personal knowledge, he was not in Ceylon as a resident from 1930 onwards. He visited Ceylon, but he was not resident in Ceylon.)

He did live in Scotland.

Q. Any visit of his to Ceylon was a casual one ?

A. His wife and children were in Ceylon, and he had this company in Ceylon. 10

Q. Two of his sons were large shareholders in the business ?

A. One of his sons was a large shareholder, and the other son was a small shareholder.

Q. As far as you can recollect the period of ten years from 1930 was spent by Mr. Mackie in retirement from active business in Ceylon ?

A. Absence out of the country does not mean that the man divested himself of a very keen and active interest in the business. There have been cables and correspondence, and both of those, I believe, were very extensively used between the company and its Life Director out of Ceylon. 20

Q. The declaration made under the Estate Duty Ordinance for the purpose of this case describes Mr. Mackie's age and occupation as—"64, Retired Merchant" ?

A. "Company Director" would have been equally correct.

Q. He retired from active business ?

A. He ceased to be a trader in his own account in 1922 and he became a Life Director of the Company which he floated. From 1922 he was a Company Director. 30

Mr. Mackie was a merchant on his own account, and at a later date he was a Director of a company which were merchants.

Q. There were serious restrictions under the Articles of Association on the transfer of shares ?

A. Yes. (Articles 39, 44 and 48 read to witness.)

Q. The Life Director could carry on any other business in life, but not the shareholders in the company ?

A. Yes, quite obviously the Memorandum was drawn up on the instructions of Mr. Mackie and for his benefit.

Q. A shareholder who had held office in the company and who had gained experience in the rubber trade would be precluded from starting another business ? 40

A. Yes.

Clause 50 of the Articles is a bit of wishful thinking.

Q. You cannot prevent a person who had ceased to be a member of the company from carrying on the matters mentioned in clause 50 ?

A. The company under its Articles has so stated. In law, if a man did start and did such a thing, the company will bring an action to restrain that person from carrying on that business

(Article 95 read to witness.)

Q. You know, as a matter of fact, that Mr. Mackie had an overwhelming voting strength on the shares he dealt with in the company?

10 A. Until 1931 he had, not afterwards.

Q. Do you know that at the time of his death he had 5,000 Management Shares and 9,201 Preference Shares ?

A. He had 14,201 shares out of 24,800.

Q. He had more than half ?

A. Yes, but he did not have more than three-fourth.

To pass special resolutions you require a three-fourths majority under the Companies Ordinance.

Q. In the case of a private company ?

A. It makes no difference whether it is a private company or not.

20 Q. At the time that these Articles of Association were entered into, the law in Ceylon was not what it is today, it was some other law governed by what was called the old Joint Stock Companies Ordinance. Now it is the Companies Ordinance of 1938 ?

A. (No reply.)

Q. Can you point to any clause in the Articles of this company which says that a three-fourths majority is required to pass a special or extra-ordinary resolution ?

A. Clause 167 of the Articles.

30 Q. The requirement of a three-fourths majority need not apply to ordinary or special resolutions ?

A. (No reply.)

Q. The firm of Mackie's was a very big firm in Colombo doing business of buying and selling rubber ? A. Yes.

Q. Could you tell us what fraction of the Island's exports of rubber went through the hands of Mackie & Co. ?

A. Roughly between 25 to 30 per cent.

Q. That would be a very large business ? A. Yes.

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

Q. For that you require the best of foreign contacts with buyers in foreign lands ?

A. That I do not know, because a rubber dealer does not deal directly with a consumer. He deals with a foreign market, possibly a market in America, in London, or in Russia.

Q. Where there are no direct sales to consumers abroad ?

A. As far as I know, I cannot speak to some 600 million pounds of rubber over 20 years. He may have had contact with buyers in foreign lands, but I cannot say.

My firm had audited the books of this company. A partner of a firm of auditors does not check all the accounts of a particular company. For the purpose of this case I familiarized myself with the nature of the business just to go into the results. That was to find out the reason for the large losses or large profits. 10

Q. You did not in your investigations attempt to find out what sort of regular customers Mackie's had ?

A. It is rather a difficult question, because the dealings in rubber vary largely on bank bills.

(To Court: Q. Did you not come across in the accounts audited by your firm, items to find out whether Mackie's had direct dealings with foreign countries during this long period of years ? 20

A. I cannot remember.)

Q. If you want to ascertain the value of the goodwill of any business concern, is it necessary to know what sort of customers they had ?

A. Not necessarily.

Q. Is it not an advantage to find out what sort of business drive they had in foreign lands ?

A. Mackie had contact with agents of world repute. His agents of world repute will supply rubber to consumers of world repute. 30

Q. Mackie held a unique position in Ceylon as exporters and sellers of rubber ?

A. As far as I know they held an important position, but I would not say that it was unique.

They had a very large store called Annesly Stores at McCallum Road. I saw the store myself. It is a very large store. The first one was built in 1923 or 1924. I do not know who built it.

Q. In your balance sheet (P3) Annesly Stores buildings on leasehold property had cost in 1926-27 Rs. 258,836 ? A. Yes.

Q. In 1926—27 the cost of putting up a building, if you had the ground, was not so prohibitive as today ?

A. I believe the cost of erecting buildings in Ceylon was low before the war.

Q. Putting up a building like that is a very large asset ?

A. The company could either own or rent out a store.

10 In this particular case they owned the store on leasehold property from the Crown.

Q. Annesly Stores has important facilities for transport ; lake and road frontage. They are very ideally situated for transport ?

A. Yes.

Q. It is an advantage to a businessman to have large credit in a place of business like Colombo ? A. Yes.

Q. Could you tell us one or two of the other large shippers of rubber in Ceylon ?

A. Harrison & Crosfield, Vavasseurs, Rubber and Produce Traders.

20 There was a very large buyer in America, " Good Year Orient Co. ".

Q. No Ceylonese company managed any one of those firms ?

A. Not at that time.

According to the balance sheet for 1938-39 the National Bank of India had given a secured overdraft to Mackie's for nearly 1½ million rupees. It is a valuable asset for a businessman to have secured overdrafts to such large extents.

(Dr. Hayley wishes it to be noted that a Crown witness is present in Court and is taking down notes.

30 The Solicitor-General submits that Mr. Sathiyathan is the Crown expert for the purpose of valuing, and that he will be giving evidence as an expert. The Solicitor-General also states that he will be calling Mr. L. G. Gunasekera as a witness, as he is the Assessor. Mr. Gunasekera is in Court.)

Q. You said yesterday that rubber was such a business that any person could start one with anybody else ?

A. Anybody could start in the rubber business.

Q. Any person entering into competition can seriously affect the earning capacity of Mackie's considering the special advantages that Mackie's had ?

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

A. Yes, if the man had unlimited capital. I stated that Mackie's had no special advantages in trade over anybody else.

Rubber is bought at auctions, and if a person with unlimited capital is prepared to spend a lot of money by over-bidding all the other rubber dealers in Ceylon, he could affect their earning capacity.

Q. If the ordinary man wanted to start a rubber business in competition with Mackie's, would he have survived ?

A. He would have had equally a chance of not surviving with any of the other shippers like Harrisons & Crosfield and Vavasseurs.

At the date of Mr. Mackie's death, he was the father of two sons, who were both in the business, and he was also a Life Director and he had shares. Whether he had a stranglehold on the affairs of the company or not will depend on the question whether he imposed his policy over others over a period of years. The Preference Share capital was Rs. 990,000 as against Rs. 10,000 Management Shares. Eight per cent. was the maximum dividend that a Preference Shareholder could get however much the profit was, or however small or less. After paying out 8 per cent. the balance went into the pockets of Mr. Mackie, or into reserves. 10

But whatever happened the preference shareholders would not get more than 8 per cent. The proportion of Preference Shares to Management Shares was very large. Eight per cent. Preference non-Cumulative is one thing, and 8 per cent. Preference Cumulative is quite a different thing. If a company makes a loss and does not declare a Preference Dividend, the 8 per cent. is gone for ever, the preference shareholder never gets it. But if it is cumulative, the company might make losses for ten years and at the end of the ten years the preference shareholder might still get the ten years' dividend. The speculative side of the business is mainly in the Ordinary Shares and not in the Preference Shares. 30

Q. Would you call the action of a man, who puts Rs. 990,000 into this business, that is 99 per cent. of the issued capital of the whole business, expecting to get a cumulative 8 per cent. speculative ?

A. Having regard to the business of the company, that is rubber, I would call it highly speculative.

Q. From an auditor's point of view, it was a bad business ?

A. I find that the movements of rubber over history has been unpredictable. Rubber is very much less stable in the market than tea.

It has always been known of very large fortunes made in rubber and very large fortunes lost in rubber. Rubber is not like tea. It is not an element of human consumption. It is a munition of war, and is used for making tyres. It is affected by fashion too. 40

Q. Would you call investment in rubber plantation company shares, speculative ?

A. I should consider it to be speculative.

Q. What would one of the speculative investors expect to receive from such investment ?

A. What he might expect and what he might get are two different things.

Q. What return would you expect him to get ?

A. It is a difficult question to answer. He might expect to get 10 per cent. on paper, and he might get 2 per cent. or nothing.

Q. Mr. Mackie died on 10th September, 1940, and a valuation was made of the Management Shares for the purpose of the first declaration sent under the Estate Duty Ordinance, and that valuation report was made by your firm ?

A. Yes.

I do not know when that report was made and issued. I looked at that report later for guidance.

Q. That report was based on the position of the accounts nine months prior to the date of death of Mr. Mackie ?

A. The accounts were up to 31st December, 1939, those being the latest accounts then available.

Q. The Management Shares were valued at 98½ cents ?

A. They could have been valued at anything or nothing.

I did not value the Management Shares at 98·5 cents. Someone, who is now dead and who was in our firm, did that. I do not know the basis upon which that valuation was made. I cannot say how the 98·5 cents had been arrived at. I cannot find the figures by which the deceased person arrived at that figure.

Q. What was the value of a Management Share as at the end of December, 1939 ?

A. I should say the value of a Management Share was nothing. Rs. 2 nominal, or nothing, would mean the same thing.

(Letter dated 3rd November, 1943, sent by Messrs. Julius & Creasy is produced marked R1 and the report attached thereto, R2.) (Letter R1 read.)

The land on which the Annesly Stores stood was taken by Mackie's from the Crown on a 99-year lease.

Q. What is stated in your firm's report is the valuation on a break-up basis ?



A. No, that is not correct. Break-up basis means liquidation, and it would mean the bringing in of many other matters, such as, claim for compensation, loss of employment to staff, &c.

Q. Making allowance for everything—is this not called a valuation for the liquidation of the company?

A. That is not a break-up value. It is a value taking in certain items, but not all the items in a balance sheet.

Q. This does not envisage what a willing buyer would pay to a willing seller who wanted to continue this business. It does not come on this basis ?

10

A. The whole point is again whether the 8 per cent. Preference Share dividends were in arrears. The question of what value, if any, would be paid by any person is problematical.

Q. If there was a successor taking over this business as a going concern, whether they be all Mackie's successors, would they be satisfied if they were told, in the event of there being a loss, that the successors would be liable to pay with the Management Shares ?

A. They ought to be satisfied even as a going concern on those figures.

Q. The figures of Rs. 40·618, which you worked out as at 6th September, 1940, was arrived at on the same basis that you arrived at the other figures in R2 ?

20

A. In substance it is the same, but as full deduction has been made for the arrears on Preference Dividends, my answer is "no".

Q. Can you explain how, for a business that had been carried on or so many years, you arrived at this tremendous discrepancy of almost "nil" for Management Shares on 31.12.39, and 40·618 eight months later ?

A. That was due to the changes in the world demand for rubber.

Q. If these world markets began to improve at that rate a share would have gone up to even Rs. 100 ?

30

A. That would have been afterwards.

Q. Were the Management Shares, the basis of this whole company going to be fluctuated most violently because of the increased demand for rubber ?

A. Yes, so long as it lasts.

Q. The basis of this sort of valuation, as in R2 and P6, is intrinsically wrong and highly speculative ?

A. No.

Q. I put it to you that the mode of valuation is principally such that no credit or effect or consideration has been given to the question as to how long this Company will normally do its trading ?

A. ....

Q. I put it to you that the mode of valuation is wrong because you have not taken into account that the business would continue to make profits as in the immediate past ?

A. As to what was there for the future, even that was unpredictable on 6.9.40, because the world war situation was so critical at that date.

10 A speculator would have bought up the business in the hope that Britain would have survived the blitz. The value of a share in the market is what it will fetch at the time. First of all you have to have a buyer. There must be a buyer. You may have many sellers. The market may have been full of sellers, but whether there were any buyers for anything is the question. We are dealing with a rather exceptional case. The company was dealing with an exceptional product at an exceptional moment of time.

Q. During an exceptional time of war, rubber becomes a very necessary and an ordinary product ?

20 A. Yes.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Adjourned for lunch.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

71/T. (Special)

20th October, 1948.

After lunch.

Appearance as before.

F. B. LANDER. Recalled. Sworn.

30 Cross-examined further by Solicitor-General.

Q. You told us this morning that you would make a valuation of the shares on the basis of the business being a going concern ?

A. I do not think I said that.

Q. You remember my putting it to you whether an intending purchaser of Mackie's interest in this company would not take into account possible future profits and your reply was that such consideration would not affect the purchaser ?

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

A. He would be concerned with the future and not with the past. If your question is "would the purchaser form his own idea as to what the future is going to be", what the past has been is the same thing. What his future ideas were going to be would not be known.

Q. In a business of this nature what do you say a prudent buyer of Mackie's Management and Preference Shares ought to consider?

A. As regards Preference Shares, his first concern would be when he was going to get his first Preference Dividend. Would it require additional capital to be introduced into the business to provide working capital sufficient to pay off the arrears of Preference Dividends for which profits were available. 10

Q. Would he take into account the immediate profits of the past?

A. He would probably look at those profits and look for how long these affairs will continue. Will the Government of this country stop this excess rate of profits.

Q. Supposing there was a rising market for rubber, would you take that into account?

A. Yes.

Q. Would he take into account that the profits of 1940 could be for more than 3 or 4 years? 20

A. He would be a brave man if he could take that view.

Q. Would it be wrong to take that view if the market is rising?

A. He would have needed to know precisely what was going to happen in the world which was devastated by war, the length of which could not be guessed by the man in the street. In other words, if a purchaser could have guessed that there was going to be a long war, no Government interference, no form of increased taxation, that he was not going to have competition from others, he might take that view. He would be a brave man. It would possibly be a gamble. 30

Q. Will you admit that although France capitulated in June, 1940, the profits continued to increase up to September, 1940, up to the date of Mackie's death?

A. Yes.

(To Court : In September, 1940, France was out of the war. Russia was not in it. Italy and Germany were against England alone and the Empire. America was not in.)

Q. In spite of the situation in September, 1940, profits continued to increase? 40

A. Profits continued.

Q. What was the total profit for 1940 after making the deductions ?

A. Rs. 681,000 before taxation.

Q. Taxation reserve was Rs. 70,000 ?

A. That was taxation on account of income tax regarded at that time as recovery of tax from Preference Dividends.

Q. After putting that reserve of Rs. 70,000 the profits amounted to Rs. 613,364 ?

10 A. Speaking on the same account there was Rs. 682,000 before taxation.

Q. The only tax reserve contemplated at that time was the taxation then in force ?

A. That was the only taxation then in force.

Q. You did not put by any reserve for possible other taxation like excess profits ?

A. In dealing with the year 1940 I cannot remember.

Q. Can you tell us against what item you will be putting any reserve for Excess Profits Tax ?

A. There was no reserve for Excess Profits Tax.

20 (Solicitor-General marks copy of Profit and Loss Account for 1940 as R3 and Balance Sheet as at 31.12.1940 as R4 and Profit and Loss Account for the year ended 31.12.41 as R5.)

Shown copy of R5.

Q. Have you made any provision for prospective taxation ?

A. There is no specific provision for taxation. Amount added to general reserve is Rs. 150,000.

Q. You did not make a reserve ?

A. We did not make a reserve because taxes did not exist.

30 Q. In that Profit and Loss Account you have the net profit for 1941 Rs. 636,000.43 ?

A. Before taxation that is the amount.

(Solicitor-General marks that Profit and Loss Account for the year ended 31.12.42 as R6 and the Balance Sheet for the same year as R7.)

Q. The profit for the year ended 31.12.42 is Rs. 1,500,448 ?

A. That is without making deductions for reserve and taxation.

Q. Your firm was advising the solicitors to enable them to make their submissions to the Estate Duty Department for the valuation of Mr. Mackie's estate ?

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

A. I do not think we were advising. We gave the solicitors what they asked for and valuations.

(Solicitor-General marks letter of Messrs. Julius & Creasy dated 9.8.43 as R8. R8 is read.)

(To Court : Q. There was actual loss incurred by Mackie & Co. in 1937 and 1935 ?

A. I do not know who wrote the letter. There was a debit balance on the Profit and Loss Account.)

What the letter R8 states is not correct. Ford, Rhodes, Thorntons do not write letters saying about profits and losses. 10

Q. Is it correct to say that as soon as war conditions started in September, 1939, fluctuations started ?

A. The letter was not submitted to me before despatch and I cannot say anything.

Q. Because of the war previous losses would not exist ?

A. I would qualify such a statement by saying that that depended on the developments of the war.

Q. As long as war lasted there would be a demand for rubber ?

A. Yes, so long as shipping existed.

Q. Supposing priority in freight had been conveyed on rubber in September, 1940, for the furtherance of the war ? 20

A. I would expect it to be probable, but that again would depend on the ships available.

Q. Rubber did in fact go ?

A. I am concerned with things at 6th September, 1940, and not beyond.

Q. It is possible that a lawyer not an accountant might read a Profit and Loss Account with the balance brought down showing a debit balance meaning a loss for the year ?

A. There was a debit balance in the Profit and Loss Account of the Company at the end of 1936, 1937, 1938, before providing for the arrears of Preference Dividends. Profit and Loss Account today still shows a loss. 30

(Solicitor-General marks letter of Messrs. Julius & Creasy dated 1.12.43 as R9.)

Q. Do you accept the position that it is possible to value goodwill of the company, whose business is to buy and sell rubber ?

A. I would again qualify myself. If results showed that rubber was sold at a loss it could not be valued for goodwill.

Q. I put it to you that you cannot predict the market by saying that everything will turn out against the company ?

A. I cannot predict for the future good or bad. For a long period of years it was the case.

Q. The prediction has been wrong after Mackie's death ?

A. I am concerned with the period before Mackie's death. (Shown Statement B accompanying P6.)

That is the document from which you got the result of 40·6188 ?

A. Yes.

10 Q. You get Rs. 203,094·41 as what is left over the assets after all liability on Preference Shares and Preference Capital have been discharged ?

A. Yes.

Q. If you were to deduct the par value of the Management Shares you get a balance of about Rs. 193,094 ?

A. Yes.

20 Q. Take your mind back to your nominal value of the shares. Supposing the Management Shares are nominal value, whoever is going to purchase for nominal value along with Mackie's Preference Shares will, I say, get Rs. 193,094 of assets ?

A. (No reply.)

Q. In other words a person who buys the Management Shares on this value will get Rs. 200,000 worth of assets. Would that be correct ?

A. If a person buys shares it does not necessarily mean he gets a dividend on the day he buys shares. He might not get dividends for 1 to 10 years. He might therefore buy the shares at par Rs. 2. If the company is run at a loss for any reason he gets nothing.

30 Q. A person who buys the Management Shares on this value gets an equivalent of Rs. 2,000 ?

A. He has got paper worth.

Q. On paper he has got a profit without a day's business ?

A. But he has not realized it. This is again determining the policy of the company.

Q. The position would be that if he could determine the policy of the company for about 3 years, he might retire without any liability ?

A. In regard to the future the man would see the past facts. He would be rather uncertain of the future.

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

Q. If you look at P7—If you take an average from 1922 itself to 1940 would you admit that you would be taking a fairer view of the prosperity of this business on the whole ?

A. I would say it would include both.

Q. Why did you start from 1927 ?

A. I did not leave the 5 years out. I do not know the history of the company at the time when it was paying high dividends.

Q. I want to know whether in expressing your report at page 2 of P2 it would not be fair to take account of profits during the period prior to 1927 ?

10

A. In 1926 the price of rubber was subject to greater fluctuation than at any other time. Highest price of rubber was Rs. 2 or Rs. 3 a pound. I did not go into the reasons why there was a profit or loss in rubber in 1923 and 1924 but I had another reason for starting the valuation made as at December, 1926. If any one paid that money for the shares at that time he would not have any return on the money for the next 20 years.

Q. In your opinion you thought it correct to ignore the loss profits during 1922-1926.

A. The results have been aggregated to and been taken as a whole. There has never been the opportunity. If it is correct to take a period covering both profits and losses you have to go back sufficiently long to get an average result. It does not give an indication of such a thing as goodwill.

20

Q. We have worked rough figures for the period 1922 to 1940. The annual profit is about Rs. 186,000 and if you allow for the dividends on Preference Shares about Rs. 80,000 a year roughly, you get for a period of 19 years an absolutely steady profit of Rs. 100,000 average per year. Does that not indicate that the business was not a gamble ?

30

A. First few years they paid many massive dividends. Then the company went through an abnormal period and the company having paid dividends could not get back the dividends. If the company had not declared big dividends from 1922 to 1926, the position might have been different. They had to carry on not paying dividends. The capital employed was not the Preference Capital. It was standing on its own feet. Capital of 2 million rupees went down and it was trading on its Preference Capital and with a hidden capital of arrears on Preference Dividends in the end which amounted to 8 to 9 lakhs. It was not exactly the return on the capital that was employed.

40

Q. Would not a person buying Mackie's shares take this as a relevant circumstance? If the information was put before a

person and he did not know very much about the rubber business, that the period of large profits is going to be followed by large losses ?

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—*contd.*

A. He would ask the question " Am I going to get a period of large losses ?" He would realize that he is dealing with an extraordinary case.

Q. He would see before him the figures of a rubber business of buying and selling and roughly Rs. 100,000 profit every year on the 5,000 Management Shares ?

10 A. Many capitalists have gone into liquidation although they showed profit for a period.

Q. I believe you stated that the value of shares would amongst other things depend on the dividend paid ?

A. That is the one first question which any person should consider.

Q. Would it not also depend upon this other circumstance that it would be wrong for a buyer to merely look at the dividend declared without looking at the profits put to the reserve ?

20 A. It is difficult to answer. Many people look at the yield of the shares and not at the Balance Sheet. There were poor dividends not taken account of by the shareholders.

There would be trouble with capital which does not pay dividends if we are dealing with a purchaser who is an outsider.

(Shown P3—Last heading Current Assets—" Stock rubber Rs. 1,749,982·10 ".)

Q. What is that stock of rubber ? Is it at cost or the current market price ?

30 A. That is as valued by officials. I could not tell on what basis. In the case of Mackie's the question of rubber stocks were valued on an average price or on current prices at given dates. In valuing the rubber of this business for taxation purposes data was collected and substituted values were introduced. In one year the stocks were valued on 12 months average cost. As far as I remember stocks were valued at the current buying market rates. I am speaking from memory.

40 Q. On the subject of the rubber business being not a stable business, would a person who is about to invest money in buying shares of a company like this—if he had document P7 before him—be much worried to look at the state of affairs of this firm beyond 4 or 5 years prior to 1940 ?

A. He would ask the questions: " Am I going to base my examination on peace-time conditions or on war-time conditions ?" " If I do not base on war-time conditions, what period prior to war



No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Cross-  
examination  
—contd.

must I examine ?” If the business is speculative, “ must I examine a long period or a very short period ?” The answer would, I think be, “ I must examine as long a period as is open for perusal.”

Q. Where would he stop in examining the past ?

A. He will examine the whole history of the company if he can get it. The view has been expressed that one should study the period between two wars.

Q. In the case of a business which is not speculative you would accept my proposition that if you look into the results of a few years it would be sufficient ?

10

A. The tendency is to go back as far as possible.

Q. If dealing with the year 1946 ?

A. If you deal with 9 years after the war you must deal with 9 years before the war.

F. B. Lander,  
Re-  
examination

Re-examined.

Q. You were asked about Mr. Mackie and his position as Life Director. On Mackie's death do you think the prospects of the company from an outsider's point of view, possible purchaser of the shares would be affected by the death of Mr. Mackie ?

A. I would not personally assess the value of Mr. Mackie to the business one way or the other. I have not attempted to assess the value of the company having Mr. Mackie or losing Mr. Mackie.

20

Q. Mr. Mackie's personal conduct of policy in the company ?

A. A manager would not always agree with Mackie's policy, possibly the adoption of another policy.

Q. In regard to the question of moneys Mr. Mackie had no profits on his shares. A future purchaser would not be willing to do that ?

A. You have to increase the capital and pay the dividends.

Q. You referred to sections 48 and 50 of the Articles which say that no member of the company other than the Life Director can sell shares without the consent of all the members of the company or be interested in any other concern ?

30

A. Yes.

Q. Under sections 48 and 50 of the Articles the purchaser of these 5,000 shares is prevented from owning or being interested in any other rubber business ?

A. Yes, unless they changed the Articles.

Q. What factors should a buyer consider ?

A. Unless the possible purchaser had some interest with the remaining shareholders he would be unlikely to go into business at all. If he went into business he would have to change the Articles.

Q. In regard to the 5,000 shares, from the buyers' point of view, you would have to tell him "you will have to give up other powers you have" under the Articles ?

10 A. I think the first thing he would do would be to see his lawyer before purchasing.

It would reduce the number of buyers, if any, of these shares.

Q. Under section 50—would that also tend to reduce the number of people going to buy these shares ?

A. Yes.

Q. Have you, although not a merchant yourself, in your general knowledge of Colombo business, been acquainted with the way in which rubber business is conducted ?

A. Yes.

20 Q. In Colombo before the war what was the ordinary method of buying and selling rubber ?

A. Buying at auctions.

A very large quantity of rubber was dealt with in that way. As regards scrap a fairly large quantity.

Q. Would the general practice be to ask the estate or go through the broker ?

A. All estates send the rubber to the brokers. They take samples round to dealers and then the rubber is auctioned.

Q. In regard to selling rubber there was an open market in London ?

30 A. I am not quite sure. I am not actually aware, but as far as I am aware there was an open market in London.

In a large business all things are possible.

Q. There were other businesses which had stores by the lake ?

A. Yes, most of them. Rubber Produce & Traders Company which closed down.

Q. Are you aware that they had difficulty in disposing of their stores ?

A. I have heard that.

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Re-  
examination  
—contd.

Q. So long as there is rubber in the market, is there anything to prevent my going and buying rubber at a higher price ?

A. You would yourself become a large rubber dealer.

Q. You were asked in regard to preference shareholding not being speculative. If a possible buyer of any Preference Shares is offered shares for which the firm did not pay dividends for 10 years and if the company has not got assets, would you say by purchasing them he was making a non-speculative transaction ?

A. I should say it was speculative.

Q. P7 shows heavy losses were being made in the years 1927 to 1932. If a buyer bought Preference Shares in 1932 had he a prospect of collecting back Preference Dividends ? 10

A. If the Director of the management decided in 1933 to wind-up the company he would then find he would not get his dividend. If there was a debit balance on the Profit and Loss Account at that time he would have lost the capital.

Q. You were asked about the figure in Report R2—figure of 98·5 cts. roughly of a share at that time. As a matter of fact if that valuation is based on the Balance Sheet of 31.12.39 in the same way you would for 6th September, 1940, what would be the amount distributed to the Management Shares ? 20

A. Nil, taking exactly the same method in arriving at the figures.

Q. Can you show in the Balance Sheet how that worked ?

A. The 98 met Rs. 4,000. The Preference Dividends not taken account of amounted to about Rs. 200,000. If it was taken into account it would not be possible to cover profit and taxation.

(Dr. Hayley marks the Balance Sheet for 31.12.39 as P8.)

Q. Subsequent market by the 6th September, 1940, had appreciated to Rs. 40·618 per share. That would be the result of improved conditions between 1939 and 1940 ? 30

A. Yes.

Q. If the whole Balance Sheet is taken into account some years prior to 1939, would it show a loss ?

A. Balance Sheets would show an amount at debit of Profit and Loss Account even if actual profits have been made on trade because a loss brought forward was not extinguished by the profits of the year. Anyone looking at the series will still see a debit balance over several years although there might be an actual profit for that year.

(Dr. Hayley marks Profits and Loss Accounts for 5 years ended 31.12.40 as P9.) 40

Q. You were asked in regard to P7—Because large dividends were earned from 1922 to 1926—would that very much affect an open market in 1940 September, if there had been nothing paid in the intermediary years?

A. I do not think one would take any notice of them.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

No. 10  
Applicants'  
evidence,  
F. B. Lander,  
Re-  
examination  
—contd.

A. E. WILLIAMS. Sworn. 49. Rubber Dealer. 38, Galle Face Court, Colombo.

A. E. Williams,  
Examination

- 10 I joined the firm of Mackie & Co. in 1919 as an Assistant. I have been with that company after that and I am still working there. I owned shares in the company when the company was incorporated—250 eight per cent. Cumulative Preference Shares and 125 Management Shares. Later I increased the 8 per cent. Cumulative Preference Shares to Rs. 50,000 worth of shares by purchasing shares from the Life Director. Mr. Robertson was the Manager of the company at one time. He went away in 1927 and after that Mr. Caulville and I were appointed Joint Managers of the company. Mr. Caulville left in 1931 and I was appointed in sole charge of the company.
- 20 Mr. C. W. Mackie, Jnr., joined me later.

(The company has been sold since then.)

During the time Mr. Mackie was alive, we took all the directions from him. Even after he returned, we took instructions from him.

Q. Was he an outstanding personality in the rubber world?

A. Yes.

Q. What was his policy in regard to buying and selling rubber?

A. He keeps a very large stock of rubber in hand buying with the market as they came.

- 30 I was instructed to maintain stocks. I had to buy and sell rubber. We always buy rubber whether there was an immediate prospect of selling or not. A large capital was necessary for that purpose. In those lean years of 1927 to 1932 there were considerable losses in the firm. We had to arrange for overdrafts. No dividends were paid; they were held back. When we were not making any money we could not pay any dividends. Mr. Mackie often gave us his personal assistance in the matter of overdrafts from the bank.

- 40 Q. The method of trading of rubber in Colombo in 1940—What was the more usual way for one to buy—buying at auctions or making specific contracts?

No. 10  
Applicants'  
evidence,  
A. E. Williams,  
Examination  
—contd.

A. Rubber was usually bought at auctions and by private sale. The brokers bring the samples round. Rubber goes from London to New York.

(*To Court*: We used to send rubber to Germany, Australia, Holland, Czechoslovakia.)

Q. If you send it to London, to whom do you send ?

A. We send to our agents in London.

Our agents usually send bids. If we had to pay more here for rubber we sent them a counter offer. Sometimes they take, sometimes they don't. At least once a day we get the price from them. When rubber goes to London we send to our dealer and not to factories direct. We are not allowed to do that. 10

(*To Court*: We got dealer agents as well as broker agents in London and other places). We ship the rubber. They sell it. We are not concerned with the actual person to whom it goes. In London exchange brokers and dealers get together and sell the rubber. When I was in charge I was Director. At the time of Mackie's death I was Director.

(*To Court*: At the time of Mackie's death the Directors were C. W. Mackie (Junior), J. C. Mackie and I.) 20

Q. So far as you three were concerned had you to follow Mr. Mackie's instructions ?

A. We had to follow his instructions.

For the purpose of this inquiry I was asked to bring an abstract on the variations of rubber prices from 1922 to 1940.

(Dr. Hayley marks abstract as P.10.)

Q. During these number of years you had large experience in regard to the commercial aspect of rubber ?

A. Yes, as much as anybody in Ceylon.

(*To Court*: I have been in it for 30 years.) 30

Q. Is it possible to predict with any accuracy of the future rubber market ?

A. It is very very difficult. It is not known what is going to happen except on a very few occasions.

Mr. Mackie carried on a very speculative business. If he had 5,000 tons of rubber in stock at any one time and if the price went up by one cent a pound, he would make 1 lakh and Rs. 10,000 and if the price came down by one cent he would lose that amount.

Q: He was actually carrying a risk in regard to the 5,000 tons at that time ?

A. Mr. C. W. Mackie had the guarantee of one of the local banks.

Q. Between 1939 and 1940 are you aware of rubber dealers who were not able to carry on ?

A. One or two firms lost money and closed down. They were forced to close down.

(To Court: Rubber Produce & Traders, Tarrant & Co., and Bandizon & Co., closed down.)

10 The General Rubber Company closed down in Ceylon but not altogether. It was a very big show. This was between 1939 and 1940 during the low price of rubber. I did not buy rubber shares myself.

(To Court: I have no faith in it myself.)

Q. You knew exactly of Mr. Mackie's shares at the time he died ?

A. Yes, more than any other outsider.

Q. Would you have been a buyer of them ?

A. No, at that time there was a war on.

20 (Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Call case tomorrow for dates for further hearing to be given.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

No. 71/T. Special.

15th December, 1948.

Appearances as on the last date.

A. E. WILLIAMS. Recalled. Sworn.

Cross-examined by the Solicitor-General.

30 I have been with Mackie's for about 30 years. From my point of view, it has been a prosperous connection. As Manager of Mackie's I enjoyed certain privileges like leave and so forth. I used to get leave with full pay. It is rather unfortunate that I used to go to England on leave only once in five years.

(To Court: If I was fortunate I would go once in three years on full-pay leave for six months with passage paid.)

No. 10  
Applicants'  
evidence,  
A. E. Williams,  
Examination  
—contd.

A. E. Williams,  
Cross-  
examination

No. 10  
Applicants'  
evidence,  
A. E. Williams,  
Cross-  
examination  
—contd.

Q. You have told us that Mackie's had business connections throughout the world?

A. Yes.

Q. Mackie's rubber was well known in the London market?

A. It was better known in the New York market than in the London market.

There is a standard of rubber known as the "R. M. A.". The R. M. A. standard is found both in England and in New York. "R. M. A." stands for Rubber Manufacturers' Association.

Q. That is the international standard?

10

A. It is usually an international standard for rubber.

Q. There was a standard known as "Mackie standard"?

A. Yes.

I would say that it was a type of rubber known as the Mackie's type in every market in the world.

Q. If anybody wanted to buy a quantity of rubber and if he said it is Mackie's type, you would know what the standard is?

A. Yes.

Mackie type rubber in the market was regarded as the equivalent of the R. M. A. standard.

20

Q. The business of Mackie's had been built up before the incorporation of the company by the deceased, Mr. Mackie?

A. Yes.

(To Court: The incorporated business got the benefit of the good name that Mr. Mackie had built up for himself.)

When I joined Mackie & Co. in 1919 I came to know how Mackie did this business of buying and selling rubber. His plan was to buy in as much rubber as possible and stock. That was when I was there. He would buy in a falling market and try to sell in a rising market. That was the principle on which he carried on the business right up to the time he retired.

30

Q. So that, if that was the course of business, there was no necessity for him to give you any special instructions on the point after he had retired?

A. He gave me specific instructions to maintain the stock and not to depart from that policy.

Q. Could you tell us very roughly what was your daily turnover of sales, sales by Mackie's to outsiders?

A. We used to sell 50 or 60 tons of rubber per day.

The prices, conditions of sale, shipment and the terms of these contracts were fixed up by our management from day to day after Mr. Mackie's retirement.

No. 10  
Applicants'  
evidence,  
A. E. Williams,  
Cross-  
examination  
—contd.

Q. There was nothing very special to consult Mr. Mackie about in the transaction of this daily business in Ceylon?

A. There was no need.

Q. You know as much about the commercial aspect of rubber as much as anybody else?

10 A. Yes.

Q. You have expressed the opinion that it is difficult to forecast what is going to happen to rubber at any time? A. Yes.

Q. You also said that at the time Mr. Mackie died, having regard to the conditions then existing you would not have bought his Management and Preference Shares? A. Yes.

(To Court: That will depend upon the price demanded. If I got them very cheap, I would have bought them for a gamble. "Buy" means a buying at a price.)

20 Q. Do you say that buying of any interest in Mackie's at any time would have been a gamble?

A. It would have been a gamble the whole time.

I know that the company had Rs. 990,000 worth of Preference Shares, and that the interest paid was only 8 per cent. The remaining capital was Rs. 10,000, which was the equivalent of Mr. Mackie's 5,000 Management Shares at Rs. 2 a share.

Q. Do you consider an investment of Rs. 990,000 at 8 per cent. in a business like this a gamble?

A. I had Rs. 50,000 of my own money in Cumulative Preference Shares earning 8 per cent. I consider it speculative.

30 A. At one time it was not worth anything.

Q. Would you consider an investment of Rs. 50,000 on Cumulative Preference Shares at 8 per cent. a gamble?

A. I think it is a gamble, because as far as I can remember we did not get paid any Preference Dividends for four or five years.

Q. If the investment of Rs. 50,000 was to be made as a gamble, you would have expected more than 8 per cent.?

A. As I was in the firm I was allotted these shares, and I had to take them up, otherwise I would have lost my job.



No. 10  
Applicants'  
evidence,  
A. E. Williams,  
Cross-  
examination  
—contd.

Q. There were others who held Preference Shares at 8 per cent. interest ?

A. Yes, they were in the same category as myself.

(The last paragraph of letter R8 sent by Messrs. Julius & Creasy is read out to the witness.)

I agree with the views expressed in the last para. of R8.

Q. Would you say that, having regard to the fact that at the time Mr. Mackie died the war being on, there would be a far less fluctuation of the market price ?

A. As the war was on the price of rubber was going to be high, but the question is whether there were ships to take the rubber away. 10

If there were no ships to take the rubber away then there would be no buyers. If any rubber was taken it was to be used as a munition of war.

(To Court : It was well known that Ceylon had no ships. Those who were winning the war would provide the ships, but at that time I did not know who was going to win the war. Ceylon had no freight of its own, but it was certain that the belligerents who were in a winning way or wanted to win could have found the freight.) 20

Rubber was held up quite a lot for lack of shipping space during the war. Ultimately it went.

A. E. Williams,  
Re-examina-  
tion

Re-examined.

I said that Mr. Mackie used to buy in a falling market and sell in a rising market.

Q. Was it possible always to find out what the falling market was and what the rising market was ?

A. It was very difficult to find out.

We had to keep on selling the whole time and we could not wait for a falling market to buy. We had such large stocks that the rubber had to be turned over. In a falling market we used to sell say 50 or 100 tons of rubber, as the case may be, and try to cover up by buying it at a lesser price. 30

Q. You said that the sale prices were fixed by the management from day to day. How did your management fix the sale prices ?

A. There is a market price for rubber each day, and the management says either buy or sell at that market price.

(To Court : Sometimes we do not buy at all. We keep on selling.)

Mackie's type was our own type of rubber which we used to send to all the countries. We wanted to sell our own type rather than sell the R. M. A. standard. We know our own type, but we do not know the R. M. A. standard. We buy our rubber direct from estates. The estates send down to us No. 1 rubber, and we re-grade it in our stores. That is for our own good name.

No. 10  
Applicants'  
evidence,  
A. E. Williams,  
Re-examination  
—contd.

(*To Court* : We stock the inferior grade as well and we call the inferior grade Mackie's Type No. 8.)

10 Other firms in Ceylon had their own types, conforming to one. It made no difference as to what the type was. We did it for our own protection as regards claims.

*Q.* Has there been a definite variation in the market price of rubber during the last few months ?

*A.* Yes, there has been a very serious drop in the price of rubber during the last few months, even since the last date I gave evidence. It was over 70 cents per lb. for sheet rubber at one time, and it went down to 49½ cents, and it went up to 55 cents yesterday, and it is 53 cents today. Six cents drop per lb. will represent a loss of 6¼ lakhs on 5,000 tons of rubber.

20

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

LESLIE PERCIVAL HAYWARD. Sworn. 54. Merchant and Director of Hayley & Kenny.

L. P. Hayward,  
Examination

I am at present a Director of Messrs. Hayley & Kenny. I have been with them since 1940.

(*To Court* : I have been in Ceylon since 1923.)

30 Before I joined up Hayley & Kenny, I was in the firm of Rubber & Produce Traders, Limited. That was a very large rubber business. The main offices of that firm were in London and New York. Rubber & Produce Traders, Limited, succeeded Wilson Holgate & Company, Limited. I had been with them since 1912. I started in London and came down to Ceylon in 1923. Before I joined Messrs. Hayley & Kenny, I was the Managing Director in Colombo of the Rubber & Produce Traders Limited. Rubber & Produce Traders Limited, was a company incorporated in Ceylon, and it was a Rupee Company. The London company was a Sterling Company. They were Associated Companies. There was another company of the same name in New York associated with these companies.

No. 10  
Applicants'  
evidence,  
L. P. Hayward,  
Examination  
—contd.

Q. May I say that your business life has been connected with rubber ?

A. The whole time, that is, from 1912.

Rubber & Produce Traders Limited, was a very large business. The Ceylon business was a large business. It went into liquidation when the London Office decided to close up the Eastern Office owing to the rumours of war in 1938.

Q. Was it merely due to rumours of war, or had the financial position of the company also to do something with it ?

A. The financial position of the Ceylon company was also taken into account. 10

The Ceylon company had to suffer heavy losses and it was decided in London that it was better to buy rubber in the open market than to maintain Eastern offices.

(To Court: By "buying in the open market" I mean that other shippers in the East or other rubber producers in Eastern countries would make offers and the London Office would buy the rubber for us.)

Rubber & Produce Traders Limited, bought and sold rubber. They dealt in rubber only. I knew Mackie & Company very well. I should say that Mackie & Company's business was almost the same as the business of Rubber & Produce Traders Limited. Dealing in rubber is a very highly-speculative business. 20

Q. In comparison with a product like tea, would you say that rubber is a speculative product ?

A. When compared with tea, rubber is a far more speculative product.

Q. On what main factors would you base your opinion regarding the speculative nature of rubber ?

A. First of all there is an exchange for dealing in rubber in London, New York and Singapore, and in these three places people gamble in the turnover. 30

Q. Are there any other factors which affect the prices of rubber from time to time ?

A. First of all a potential change of Government might affect the price of rubber, rumours of war, over-production, synthetic rubber, a large production of motor cars, all these will affect the price of rubber.

In my experience there was at one time a considerable over-production of rubber. In the early twenties there was an over-production of rubber so much so, that the Stevenson's Scheme had 40

to be introduced to control the production. This control scheme was brought in under another name in the early 'thirties. That was a Government control. In 1910 a pound of rubber was 12 shillings and 10 pence. That is the highest it reached. In the early 'thirties it went down to 1½ pence.

No. 10  
Applicants'  
evidence,  
L. P. Hayward,  
Examination  
—contd.

(To Court: Q. Why do you say that tea is not a speculative product?

A. There is no exchange for tea. There is a certain amount of speculation, but not so much as rubber.)

10 People do not gamble in tea by buying and holding it up. As tea is a food product it makes it steadier. There is always an open market in rubber at a price. I may want to sell at the moment, but I may not be able to get my price.

Q. If a man having the necessary capital says "I wish to become a rubber trader", is there any difficulty in his way in doing so?

A. He will have to have the experience and he will have to have a good name abroad.

20 Granting those two things, there is nothing to stop him from going and buying in the market and also selling. There is nothing to prevent a newcomer into the trade starting a business in rubber if he can hire the services of an experienced manager and if there is the capital simply because there are firms like Mackie & Co. and Rubber & Produce Traders Limited. Personal factors and knowledge of the commodity and capacity to estimate comes in very strongly in a speculative business of this nature. I have had some experience of building up a rubber business in Colombo. I would say that there is no goodwill in a rubber business. I have not heard of a goodwill. As regards a goodwill, I do not think anybody would pay for a goodwill of a firm dealing in rubber. I have not  
30 heard of any payment being made for a goodwill in a rubber business. Some businesses have a goodwill.

Q. How would you differentiate?

A. First there is the personal element and the man who is buying the business would not know whether all the customers are going to support the new management.

I do not think any sensible person will pay a lot of money for the goodwill in a firm dealing with a speculative commodity. During the war period a very large amount of synthetic rubber was made in America and it is still being made.

40 Q. Does that question of synthetic rubber have any bearing upon the possible future of plantation rubber?

A. Quite a lot.

No. 10  
Applicants'  
evidence,  
L. P. Hayward,  
Examination  
—contd.

All the rubber that is dealt with in Ceylon is plantation rubber. Synthetic and plantation rubber are used now for different purposes. There has been a very large progress in the synthetic process during the last ten years.

Q. Does the dealer in plantation rubber visualize the possibility of synthetic rubber being made to equal plantation rubber in quality?

A. That is our biggest bogey.

If the manufacturers can equalize the synthetic rubber with plantation rubber and at a competitive price, it will be a nasty knock for the plantation product. Synthetic rubber is mostly made in America. There is a certain amount of it made in Russia too, but we do not know how much. There is only a very little synthetic rubber made in England. America is the largest market for plantation rubber too. This year America is expected to consume about a million tons of rubber, and out of this about 25 to 30 per cent. is expected to be synthetic rubber. 10

I came back to Ceylon in 1940.

Q. Can you say what the state of the rubber business in Ceylon was in 1940? 20

A. The rubber business was very erratic at that time in Ceylon.

Q. From the point of view of a person who wants to sell a large block of shares in a company which deals in buying and selling rubber, do you think it was a good point of time to find a buyer?

A. I think it would have been difficult to find a buyer at that time.

You got to have large stocks to be able to trade in a commodity like rubber, and those stocks must be financed somehow or other, either with capital or with overdrafts. A big sum is not required by way of capital to be spent on fixtures, &c. One can have his own store or lease one. I think in 1940 it would have been difficult to obtain storage accommodation in Colombo. When the rubber & Produce Traders Limited, went into liquidation, I could not sell our store. It was freehold property. I think I had let it to the Navy at that time. That was a temporary war measure. Rubber & Produce Traders Limited, went into liquidation in 1938. Apart from the Naval occupation this store would have been available after the company went into liquidation. I think it was sometime in 1940 during my absence that the Navy took over the store. I joined Hayley & Kenny in 1940. During 1942 the Government stepped into the rubber market. The Rubber Commissioner in Ceylon was appointed the sole buying agent for the United Kingdom Ministry of Supply, and no rubber could be sold privately to anybody else. We all had to sell our rubber to him. For the time 30 40

being it produced a stabilizing effect on the trade. There was no risk at all then. This system ended in 1946. After that the market resumed its old trading conditions to a certain extent, with the exception that the Ceylon Government was doing a little rubber business on its own.

No. 10  
Applicants'  
evidence,  
L. P. Hayward,  
Examination  
—contd.

Q. In August, 1940, when you came back did you form any fixed ideas as to what the future market for rubber was going to be?

A. In August, 1940, when I was coming back to Ceylon I was rather optimistic about the market for rubber, because rubber would  
10 have been required as a munition of war.

Q. At that time was it possible to take a long view of the matter?

A. To take a long view of the matter, one would have had to take an estimate of the duration of the war. No one was prepared to undertake that.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Adjourned for lunch.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

20 71/T. (Special)

15th December, 1946.

After lunch.

L. P. HAYWARD. Recalled. Sworn.

Cross-examined by Solicitor-General.

L. P. Hayward,  
Cross-  
examination

Q. This synthetic rubber has been a sort of bogey for about 20 years?

A. I do not think it is 20 years. It is about 15 years.

Q. Up to now cost of manufacture of synthetic rubber has been much in excess of the cost of manufacture of plantation rubber?

A. At the present time it is about par.

30 Q. For quite some time it was excessive?

A. Yes.

(To Court: In 1940 the cost of production of synthetic rubber was higher than the cost of production of plantation rubber.)

Q. When did the cost of manufacture of synthetic rubber become equal to the cost of manufacture of plantation rubber?

No. 10  
Applicants'  
evidence,  
L. P. Hayward,  
Cross-  
examination  
—contd.

A. Synthetic rubber has been more or less in line with the market price of plantation rubber for the last 2 or 3 years.

(To Court: Because it was subsidized by the American Government. I do not think there is a subsidy now.)

Q. The subsidy was granted to the manufacture of synthetic rubber in America till what year?

A. I cannot say. That has been kept very secret.

Q. Is it not the fact that the American purchasers of rubber must buy a quota of synthetic rubber according to the laws of the United States? In fact the importation of natural rubber into America indicates that synthetic rubber cannot even now compete with plantation rubber? 10

A. That is because the factories have been put on a care and maintenance basis. Under the agreement certain amount of plantation rubber has got to be bought by America.

Q. In spite of past subsidy and advantages offered the present position is that synthetic rubber cannot compete on equal terms with natural rubber?

A. If they were given a free hand.

Q. Can you give any explanation for the production of synthetic rubber on an unrestricted scale in U. S.? 20

A. That is because of the agreement between U. S. A. Government and the British Government. That is purely governmental. We know nothing about their agreements.

Q. Can you speak to that agreement as a fact?

A. All we know is that America agreed at Geneva to buy so much of crude rubber and to use only a percentage of synthetic rubber according to its requirements.

Q. Rubber estates have been replanted with budded rubber?

A. Only a certain per cent. 30

Q. The cost of planting budded rubber is on the high side?

A. Yes.

Q. Certainly more expensive than planting natural rubber?

A. It is much more expensive than planting seedlings.

The idea of planting budded rubber is to reduce cost of production by planting high yielding trees.

Q. The production of natural rubber would be a proposition?

A. On present figures it should be able to stand on its legs.

(To Court : Q. Do you know that America is opening up new rubber lands in new countries ?

A. There is a lot of secrecy about it. The results of experiments of planting rubber in the Amazon Valley are rather poor.)

Q. The uses to which synthetic rubber could be put are limited ?

A. Synthetic rubber mixed with a certain proportion of natural rubber can be used mainly for tyres. Synthetic rubber cannot be used in fine rubber goods.

Q. All advantages are on the side of natural rubber ?

10 A. No. If the cost of production of plantation rubber goes up very high, synthetic rubber may be a bogey.

Q. If the cost of plantation rubber can be kept at an economic level then it would always stand its ground ?

A. It depends on the world price of rubber.

(To Court : Some people sold at 10 to 15 cents and made a profit.)

I had known Mr. Mackie 20 years ago, when he was Director of C. W. Mackie & Co. As far as I know, he was a very keen businessman. He and his assistants had brought up the company to a high level of efficiency.

20 Q. You are aware that Mackie's did about 30 per cent. of all rubber exports from Ceylon ?

A. I do not think it was so high as that. I should place it between 20 and 25 per cent.

Q. Anyhow you had no occasion to study their figures ?

A. Only the figures we got from the Customs Manifests and we see what competition there is from other firms.

30 Q. We have before us statements of profits made from time to time by C. W. Mackie & Co. They had profits for 5 years running from 1922. In all those years there was a profit of roughly 3½ million rupees on a capital of one million rupees. In 1927, 1928, 1929, 1930, 1931 and 1932 they made losses, rather heavy losses in 1931 and 1932. All losses for the 6 years were about 1¼ million. In 1933 there was a profit of 4½ lakhs and in 1934 a profit of 2½ lakhs. In 1935 loss ¼ million, 1936 profit of Rs. 97,000, 1937, loss Rs. 40,000, 1938 profit 1½ lakhs, 1939 Rs. 787,000 profit, and in 1940 for three-quarters of the year a profit of ½ million rupees. There were larger profits in the subsequent years. Having regard to these figures what opinion can you express on the state of business of Mackie's in September, 1940 ? Would there have been prospects of maintaining those figures ?



No. 10  
Applicants'  
evidence,  
L. P. Hayward,  
Cross-  
examination  
—contd.

Q. On paper it looks bright, but in the last three months they could have lost all the profits if they had taken a wrong view of the market.

Q. The fact that they have made  $\frac{1}{2}$  million in nine months ?

A. In my own case if I got that I would gamble a bit more with something in hand.

Q. In trying to make a bit more you are not likely to sacrifice all the profits ?

A. It is a large sum to lose.

Q. When you came here in August, 1940, you thought the rubber trade was on the optimistic side ? 10

A. Outlook was optimistic because there was a war. That was after the fall of France.

Q. Could the profits be maintained for a period of years ?

A. I would not say so. The war was in progress and we could not take a long view. On a short view it was optimistic, i.e., for the next two or three months.

Q. You would expect rubber to maintain a good price ?

A. It should.

Q. In regard to the 5 lakhs' profit is it possible to take a long view? 20

A. If the market was steadily going up and you were selling short you would lose.

Q. I put it to you that the figures of profits and losses from 1933 to 1940 would indicate that the company had taken a shrewd view of things ?

A. Doing steady business on the right side of the market.

Q. Having regard to the long experience in this business ?

A. It is very difficult to hit the market right every time.

• The Rubber Produce & Traders Ltd., had only one Eastern branch in Ceylon. They went into voluntary liquidation. For some time their rubber stores were vacant. Later it was rented out. 30

L. P. Hayward,  
Re-  
examination

Re-examined.

If a prospective buyer was told that Mackie's had not paid dividends on Preference Shares for 9 years and no dividends on the Management Shares had been paid for 14 years, the prospective buyer would think twice before putting his hand into it. In 1939 and 1940 because of the war the market was fairly steady. There was a demand for rubber as a war material. At the death of Mr. Mackie,

a prospective buyer of his interest in the firm would like to know what the state of business was for a considerable number of years and also whether overseas buyers would have stuck to the firm after Mackie's death. He would want to know the profits over a number of years.

No. 10  
Applicants'  
evidence,  
L. P. Hayward,  
Re-  
examination  
—contd.

Q. On the capital of one million rupees the business had made Rs. 107,000 profit during 1927 to 1940 ?

A. It is not a very attractive proposition.

10 Q. If that was so would it affect your judgment very much that they had made profits from 1922 to 1926 ?

A. If you want to sell a business all recent happenings have to be taken into account more than what happened in the dim past.

It is a fact that synthetic rubber is used for some definite purpose.

Q. If the scientists made synthetic rubber exactly as the plantation rubber is there any reason to import ?

A. The question is "Have they got enough raw material to make sufficient synthetic".

(*To Court* : Several tons of raw material are necessary to make one ton of synthetic because it is made of material like petrol.)

20 Q. What factors indicate a rise in cost of plantation rubber ?

A. There are indications at present that there is a rise in cost of plantation rubber, e.g., labour.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

THOMAS CUMING. Sworn. 55. Broker. E. John Thompson White & Co., Ltd.

T. Cuming,  
Examination

This is a firm which until recently was E. John & Co.

(*To Court* : It was an old standing firm of produce brokers.)

30 I have been there from 1927. Before that I was working in Messrs. Carson & Co., Ltd. I joined them in 1919 having been in a brokers' office in London. They were brokers handling tea and rubber. They were Carson & Co., Ltd., at that time. It was a company which had a large business of various categories. They had estate agencies for rubber and tea. As a broker since I joined John & Co., I am necessarily familiar with all matters concerning rubber. In Colombo rubber was sold by auction. Now it is sold privately except for sole crepe.

Q. When you buy at auctions the brokers' firms used to conduct the auctions ?

A. Yes.

E. John & Co. is a long standing firm in Ceylon. It started about 1870. They had large brokers business in Colombo for many years. All brokers take turns at the auctions. Selling of rubber by auction and private sales brings one into contact with rubber dealers like Mackie & Co. We sell our rubber to them.

Q. In the course of business you are familiar with course of trade of firms of that nature ?

10

A. Yes.

I used to be in charge of the Rubber Department when at Carson & Co., though their business of rubber was not so much as of Mackie & Co.

(To Court : Carson's are agents for Good Year Company.)

So far as I know the business of firms of this nature is to take a view of the market and buy and sell according to the view he takes. In my days you can hardly buy and sell rubber on the same day. In a firm like Mackie & Co., in my experience, risk is involved in the business. Very much risk is involved.

20

Q. Can you mention why you say so ?

A. Because one must be certain of taking the right view.

It depends upon the connections abroad and your knowledge. You may be a lucky man ; you may not. Some people are and some not. On the whole it is a very speculative business. It is like races. It is not a business that I would like to undertake.

At normal times the prices fluctuated. The essence of a good dealer is to be able to hold large stocks. If he had finances he would stand it and he would take a bigger view and a bigger view is more likely not to lose.

30

Tea was more stable. It was conducted on a different basis altogether. There is no similarity between the tea business and the rubber business. E. John & Co., deal in shares. I am familiar with the Colombo Share Market.

Q. If you were asked to value shares in a business such as Mackie & Co., Ltd., what material would you ask for ?

A. I would see the Balance Sheet and see what properties they own and who the Directors were.

I would probably want the Balance Sheets for about 10 years.

Q. On a capital approximately of one million rupees made up of 990,000 Preference Shares and 5,000 Management Shares of Rs. 2 each, if the company had not paid any Preference Dividends for 9 years nor dividends on the Management Shares for 14 years could you give an idea at what you could sell the Management Shares in the Colombo Market in 1940?

No. 10  
Applicants'  
evidence,  
T. Cuming,  
Examination  
—contd.

A. I do not think they could be sold at all.

Q. In a business of that kind if a person were putting his money in what profit would a man expect in your experience?

10 A. About 25 or 30 per cent.

Brokers will not underwrite a business unless they are pretty sure that they can get the capital subscribed.

We charge a commission for underwriting.

Q. In September, 1940, do you think your firm would have been willing to make any underwriting proposition for these shares of Mackie?

A. No.

Q. Any particular reasons for saying so?

A. Because at that time the risk was far too great.

20 It was due to the nature of the shares and the 1940 conditions. In 1940 there was a war on. It was difficult to foresee things. People wanted to keep their money in their banks.

Q. In regard to ordinary company shares in 1940, can you give some idea of the rubber share market then?

A. It was very, very low. There would be a few stray buyers here and there.

Q. 5,000 Management Shares were par value Rs. 2. If you were asked to value those shares, what would be the value of the market at that time?

30 A. I do not think Management Shares would be worth more than the normal value of Rs. 2.

Cross-examined by Solicitor-General.

I know the Quarterly Share List issued by the Colombo Brokers' Association. In September, 1940, there may have been a few rubber transactions. There were sellers but no buyers.

T. Cuming,  
Cross-  
examination

Q. Lansdowne's were sold at Rs. 60 in September, 1940?

A. There has not been any considerable business in rubber shares. There was business in buying rubber shares in 1940 but not considerable business. There were the feeling that Government was going

No. 10  
Applicants'  
evidence,  
T. Cuming,  
Cross-  
examination  
—contd.

to take over the buying of rubber, and as a result there was a certain amount of business.

*Q.* Will you accept these figures for September collected from the Share List—

- (1) Foster Rubber Co., Ltd., Rs. 10 at Rs. 12? *A.* Yes.
- (2) Kalutara's Rs. 10 at Rs. 12? *A.* Yes.
- (3) Udabage's Rs. 20 at Rs. 26? *A.* Yes.

I am not an Accountant. I have been supervising the selling of rubber. I have put through transactions of shares. I have had experience of valuing shares in companies, for probate. From the Share List we give a valuation of the shares. We look at the Share List. 10

*Q.* If the price of shares was not quoted?

*A.* It is not easy to value if the shares have not been quoted for years.

*(To Court:* It is very difficult in the case of a private firm like Mackie's.)

*Q.* You said that Carson's were in the rubber trade though to a small extent?

*A.* Yes. Carson's have been in the rubber trade from 1919. They were not carrying on the same sort of business. 20

They are not dealers of rubber but merely agents for Good Year's. They handle as agents for Good Year's.

*Q.* If you were asked to advise a person who wants to buy the shares you would like to see the Balance Sheets for how many years?

*A.* It depends on the business.

*Q.* In a business of this kind?

*A.* About 10 years.

*Q.* If you find a Balance Sheet disclosing a profit of Rs. 670,000 in 1940 on a share capital of one million rupees? 30

*A.* Sixty-seven per cent. on a particular year is nothing for a rubber trader.

*Q.* If in the previous year there was a profit of 8 lakhs?

*A.* It all depends on the nature of the business. It was very easy to make money. I would not be surprised at those profits.

Q. What do you think of any person who would enter this business of Mackie's with 990,000 eight per cent. Cumulative Shares? Do you think he considers Mackie's a stable business and not a speculative business?

No. 10  
Applicants'  
evidence,  
T. Cuming,  
Cross-  
examination  
—contd.

A. Mr. Mackie was a man of exceptional qualities. He had great confidence in himself as a dealer and he had good business connections but I do not think many people would have bought those shares off him except his sons.

They had to.

10 Q. Could you assign any reason why they only should buy the business?

A. It is difficult to sell.

Q. If the sons were prepared to hand over to some person willing to pay a just price, could he make a bargain?

A. That is a matter of opinion.

Q. Having regard to the trend of profits in 1939 and 1940 would not a person who succeeds to the entirety of Mackie's interest in C. W. Mackie & Co. be making a splendid bargain?

20 A. I personally do not think so, because the assets as built up by C. W. Mackie were entirely due to his personal ability and any purchaser would not likely have the same results if he should take over the business, as a business of this sort is rather like that of brokers in that it depends largely on the flair of the particular dealer's mind.

E. John & Co. have existed since 1870 or so although individual members have come and gone. We have had our ups and downs. Last year we amalgamated with some other firm.

Q. Are you aware that old Mackie left Ceylon in 1930?

A. I know it personally.

30 Q. You know that the profits were earned in Ceylon when he was not personally in Ceylon?

A. I think his instructions from home were very much carried out.

Q. Do you say, having regard to the conditions that existed in 1940, war was on and there was some fluctuations in rubber price in 1940, that it could not have been anticipated that the profits of 1940 could have been kept up?

A. It depends on the view one takes. The war was on and I do not think anybody was certain about anything.

No. 10  
Applicants'  
evidence,  
T. Cuming,  
Cross-  
examination  
—contd.

The business made good profits in the years 1941 and 1942 because the Government stepped in. The dealers dealt with Government. I have not read the Articles of Association of Mackie's.

Q. If the firm places restrictions on the shares what would be the indication?

A. It was a family concern.

(To Court: Mackie's shares did not get into any Share List).

They wanted to control the policy of the firm.

T. Cuming,  
Re-examina-  
tion

Re-examined.

Mr. Mackie's (Snr's) connection with the firm might have had a considerable effect for its good on the quality of the business. They all knew him. Perhaps they knew his sons also. The death of Mr. Mackie (Snr.) would have an adverse effect on the value of the shares. 10

Shown R4—Would the profits be a factor which would encourage you to bargain?

A. No.

Q. Dividends on the 8 per cent. Cumulative Preference Shares have not been paid for the period 1st January, 1933, to 31st December, 1940. Would that rather not set off the year's profit? 20

A. Yes.

From the point of view of a buyer of the shares, if he examined the Balance Sheets for 10 years and they showed debit Profit and Loss Account he would want to go further back.

Where the shares have not been in the market for some time it is difficult to value them but we do value by looking at the market prices of shares of similar companies and by examining the accounts. That is in the case of plantation companies.

In the case of some of the best plantation companies and private companies, their shares never come into the market. In the case of shares that have not been quoted we put down a less value than it will fetch to be on the safe side. In a business which did not deal with speculative business it would be more than the normal value. 30

Q. Is there much analogy between plantation shares and shares in a company like Mackie's?

A. There is no analogy whatsoever. One is destructible and the other is indestructible.

From 1937 to 1940 there was a drop in the figures of shares. It was very low. There was about 25 to 30 per cent. drop on the average.

Q. What were the conditions in 1940 ?

A. At the time the war position was very bad and everybody did not know what was going to happen. Therefore, the market for anything was uncertain. Anyone buying would be rather careful.

10 There were no shares of business of this kind put into the market. I had no occasion to sell shares of private companies.

(Sgd.) S. S. J. GOONESKERE,  
A. D. J.

Dr. Hayley closes the case for the executors, reading in evidence P1 to P11. P11 is a letter written to the Commissioner on 23rd May, 1946, by Messrs. Julius & Creasy.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Further hearing tomorrow.

20

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.



**No. 11****Respondent's Evidence**

No. 71/T. (Special)

16th December, 1948.

Appearances as yesterday.

The Solicitor-General submits that under the Estate Duty Ordinance this matter comes up before Court by way of an appeal from the valuation made by the Commissioner of Estate Duty, and under section 40 of the Estate Duty Ordinance (Chapter 187) the position is that upon the filing of the petition of appeal and the service of a copy thereof on the Attorney-General, the appellant is considered as the plaintiff and the Crown as the defendant. The statute envisages a certain procedure outside the Court where an assessment is made, and when the appellant comes to Court and is given the status of a plaintiff, and the Attorney-General is given the status of a defendant, the ordinary rule of law is for the plaintiff to prove his case by showing that the valuation of the Crown is wrong. The burden will rest on the plaintiff to prove his case. 10

The second point is: The evidence led for the appellant, taken as a whole, would be this; that having regard to all the events that took place, the valuation of the Management Shares as at September, 1940, was nothing or nominal. Then, of course, we have the affirmative evidence of Mr. Lander and the document P6. The assets of the company are shown as Rs. 2,286,005. From that should be deducted figures under four heads: first, creditors and provision for taxation Rs. 400,186, arrears of dividends on Preference Shares from 1930 to 1932 Rs. 209,088. Dividends from 1933 to the end of June, 1940, Rs. 522,720. We deducted further Preference Share capital of Rs. 990,000, and we got the figure Rs. 164,010. Then we worked out certain other figures and we arrived at the figure of Rs. 203,094, which we divided by 5,000 and got the figure 40.6188. That is on a break-up basis. These are the two matters now which have really come out on the evidence, namely, that the shares as at September, 1940, had only a nominal value. The alternative is then 40.6188, namely, at that date you pay out all your liabilities, then see what is left and divide by 5,000. The submission on that would be, in so far as it relates to our suggestion for Court's consideration, that either method is wrong to say that the shares had absolutely nothing more than a nominal value in September, 1940, or to go up on the basis of either of the methods is erroneous, and if the Court accepts the suggestion of the Crown that either method is wrong, then the appellants have not established their appeal. Therefore, for the Court to decide, there is no other mode of valuation of these Management Shares. Evidence will be led by the Crown to show how the data is applied. 20 30 40

As the Court is aware, there are two stages in this appeal: first was a valuation made by Assessor dated 12th April, 1944, stated in

paragraph 5 of the petition of appeal, where the assessment was on the basis of Rs. 300 a share. An appeal was taken from that to the Commissioner of Estate Duty properly under the Estate Duty Ordinance, and the assessment was reduced from Rs. 300 a share to Rs. 250 a share. Incidentally, I should like to state, that at the time the appeal was taken to the Commissioner of Estate Duty there were other matters on which they appealed to the Commissioner and, barring the value of the Management Shares, the executors succeeded on some other issues which were substantial and they also

10 succeeded partially on the question of the value of the Management Shares. The valuation of a Management Share at Rs. 300 was made by Mr. Gunasekera, and this is the basis upon which he went: What Mr. Gunasekera did was to take the profits and losses from the beginning of 1936 up to the end of September, 1940. These were the figures that he took on the profits side: There were profits in 1936, a loss in 1937, and profits again in 1938, 1939 and 1940. For 1936 there was a profit of Rs. 97,391, for 1938 there was a profit of Rs. 149,485, for 1939 there was a profit of Rs. 787,640, and  $\frac{2}{3}$ rds of the entire profits for 1940 amounting to Rs. 454,532. The total

20 profits for 1940 was Rs. 681,798. When the profits for these four years were added you get a total of Rs. 1,489,048. From this was deducted the loss in 1937 of Rs. 42,003. When you deduct that you get a net profit for 4 $\frac{2}{3}$ rd years of Rs. 1,447,045. Then the average profits on that basis per year works out at Rs. 310,080. If we are going to make any assessment of the Management Shares, you will have to deduct from that Rs. 79,200, being the dividends on the Preference Shares. Then if you deduct one from the other, you get Rs. 230,880. Then, in order to value the Management Shares, this profit of Rs. 230,880, the average, was capitalized at 15 per cent.

30 That is to say, we multiply 230,880 by 100/15, and you get the figure Rs. 1,539,200, or in round figures Rs. 1,500,000. If you were to divide that by 5,000 you get Rs. 300 for each share. That was how the Assessor arrived at the figure Rs. 300 for a share. Various other matters were taken into account, but they are matters of evidence. Fifteen per cent. will be a legitimate figure for capitalization.

This figure was reduced by the Commissioner of Estate Duty to Rs. 250 a share. There is no recorded reason for doing that, but it was probably because the rate of capitalization was considered to

40 be too low. It was reduced to Rs. 250 and given as a round figure. Then there was this appeal. They said that these figures had to be rounded up, and it was finally reduced to Rs. 250.

In addition to the Assessor, the Crown would be calling Mr. Satchithananda, who is a Chartered Accountant. He has given us help regarding this matter.

(Solicitor-General submits that he has got figures worked out, and these figures will be spoken to on oath by the Chartered Accountant,

No. 11  
Respondent's  
Evidence

Mr. Satchithananda. He tenders one of these abstracts to Court and hands over a copy to Dr. Hayley also. Dr. Hayley objects and states that this is irrelevant as the witness, who is a Chartered Accountant, will have to speak to these figures.

Solicitor-General says that he will be calling this witness and that he is producing these figures at this stage only to facilitate his submissions to Court, and that if the Accountant is not called these documents will be ruled out.)

*Order—*

I over-rule the objection and find that this document can be produced at this stage provided the person who is responsible for these figures is called to swear to the correctness of these figures. 10

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Solicitor-General submits that he will mark these documents later on.

Solicitor-General calls—

L. G. Guna-  
sekera,  
Examination

L. G. GUNASEKERA. Affirmed. Assistant Commissioner of Income Tax and Estate Duty.

I am a Barrister-at-law and an Advocate of the Supreme Court. I was called to the Bar in Ceylon in 1930. I joined Government Service in 1932. I joined the Income Tax Department. Early in 1933 the department took over estate duty cases also. I have experience as an Assessor on the estate duty side for eleven years. In the performance of my duties as Assessor I had to make assessments of shares of companies. 20

*Q.* Can you give us a rough number of assessments you made of company shares?

*A.* A few hundred assessments only of shares in private companies during the eleven years. 30

I made assessments of shares of public companies as well. I have made thousands of assessments of shares of public companies. It is a very simple matter to make assessments of shares in public companies. You go by rule of thumb. For the purpose of assessing shares of private companies, I have not got the assistance of figures of a stock market.

*Q.* How do you generally attend to such type of assessments?

*A.* I consider the Balance Sheet and the Profit and Loss Account of the company and apply the accepted principles of valuation and arrive at my figures. 40

Q. What is the basic principle that you apply?

A. I arrive at an estimate of the average maintainable profits of the business and from that I deduct any sum payable by the company on shares having dividend rights in priority to those I am valuing. I then consider what would be a reasonable return to expect from a business of that nature and capitalize it on that basis.

No. 11  
Respondent's  
evidence,  
L. G. Guna-  
sekera,  
Examination  
—contd.

(To Court : Q. You also lay by a reasonable amount for reserve?

A. Generally speaking, yes.)

10 Q. Do you merely work out the profit or do you take into account the position of a particular company in the world of business?

A. I consider the position of the particular company that I am assessing in the world of business also.

I also consider whether any profits of the past would be made in the future.

Q. In regard to shares in private companies, sometimes the shares are in different categories?

A. Yes.

(To Court: I have never come across Management Shares in public companies.

20 -Q. Do you find these Management Shares in private companies in other countries?

A. I think so.)

Q. Do you take into consideration in regard to the business the necessity for putting by reserves for anticipated losses? A. Yes.

In this case I made the valuation of Rs. 300 per Management Share.

Q. That is to say, in your capacity as Assessor, you made an assessment under the Estate Duty Ordinance of the Management Shares at Rs. 300 per share?

30 A. Yes.

Q. For your data, how many years' profits or losses did you take into consideration?

A. I considered  $4\frac{2}{3}$  years of the past profits and losses as sufficient for the purpose of arriving at a correct assessment of the value of Management Shares in this particular case.

I took into consideration  $4\frac{2}{3}$  years because I was valuing the shares as at September, 1940. Out of the year 1940 I took the period up to the time of the death of the deceased, and four earlier years into the computation. In 1936 there was a profit of Rs. 97,391.

No. 11  
Respondent's  
evidence,  
L. G. Guna-  
sekera,  
Examination  
—contd.

In 1938 there was a profit of Rs. 149,485. In 1939 there was a profit of Rs. 787,640. In 1940 there was a profit of Rs. 681,798, and two-thirds of this is equal to Rs. 454,532. The total profits amounted to Rs. 1,489,048. Out of this the losses in 1937, namely, Rs. 42,003, should be deducted. The net profits would then amount to Rs. 1,447,045 for the 4 $\frac{2}{3}$  years. The average profits per year would work out to Rs. 310,080. Out of this deduct the Preference Dividends, namely, Rs. 79,200. The profits then available for distribution would be Rs. 230,990.

Q. What did you do with that figure? 10

A. I took the expected return from the business of 15 per cent. and capitalized it on that basis, that is,  $230,880 \times 100/15 = 1,539,200$ , and I rounded up that figure at 1 $\frac{1}{2}$  million and divided it by 5,000 and arrived at the value of each of the Management Shares at Rs. 300.

Q. In September, 1940, a person who wanted to buy all those Management Shares would have considered it a business proposition to pay 1 $\frac{1}{2}$  million rupees for them? A. Yes.

Q. Can you apply a rough check and say that that is a reasonable figure to adopt? 20

A. If I was taking a practical view, I would consider that if the profits were maintained at figures similar to 1939 and 1940, say for two years, a purchaser of the Management Shares at 1 $\frac{1}{2}$  million rupees would have got his capital back in two years, and if the same rate of profits was maintained for three years, he would have made a profit of  $\frac{3}{4}$  million rupees.

Q. According to R5 the profits for the year 1941 were Rs. 636,043? A. Yes.

Q. According to R6 the profits for the year 1942 up to the end, was Rs. 1,500,498? A. Yes. 30

The profits would have been much more for the next two years according to the actual trading figures.

Q. You regarded Mackie's as a business-house exporting large quantities of rubber?

A. Yes, they had almost a partial monopoly of the export of rubber.

I did not think that there would have been a fall in the price of rubber in 1940.

(To Court: Q. Was there a 50 per cent. chance of that happening? 40

A. I did not think so. The market was good.)

Q. According to your figures, at least from 1938 to 1940, the profits were on an upward trend?

A. The profits from 1938 to 1940 showed a sharp upward trend.

Q. Did you not apply the principle of weightage for the working of your figures?

A. I did not apply the principle of weightage because I did not deduct from these figures any tax payable. I also did not allow a sum that should be withheld from distribution to maintain reserves as I thought the two items would be counter-balanced so that my  
10 expected yield of 15 per cent. was actually free of tax.

I also knew that this company had a number of fixed assets.

Q. Did you take into account any rise in the value of their fixed assets over and above the Balance Sheet amounts?

A. I did not take into account the material rise of the company's fixed assets over the Balance Sheet amounts.

There was an appeal from my assessment, and on appeal the Commissioner of Estate Duty reduced the assessment from Rs. 300 to Rs. 250 for each Management Share. He has not recorded the reason for that, but the probable reason is that a person  
20 who ventures out into a business like this expected a larger return than 15 per cent. According to his valuation the return is about 16 to 17 per cent.

(To Court: These are all profits free of any tax.)

I had before me the Memorandum and Articles of Association of the company at the time I made this valuation.

Q. Did it strike you at any time that the holders of the Preference Shares or the Management Shares would be glad to be rid of those shares?

A. No.

30 (At this stage Dr. Hayley asks for permission to cross-examine this witness generally today, and to have him recalled tomorrow to have him cross-examined regarding the technical matters mentioned by him in his evidence-in-chief after he has had a chance of speaking to Mr. Lander of the firm of Messrs. Ford, Rhodes, Thornton & Co., Accountants.

The Solicitor-General has no objection. This will be allowed.)

Cross-examination.

Q. Do you understand what you are required to do under the Ordinance? Yes.

40 Q. What does the Ordinance require to be taxed?

A. To arrive at the market value of the shares in question.

No. 11  
Respondent's  
evidence,  
L. G. Guna-  
sekera,  
Examination  
—contd.

L. G. Guna-  
sekera, Cross-  
examination

No. 11  
Respondent's  
evidence,  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

I agree that we are attempting to find out what the shares would fetch in the open market. The normal basis of valuation is to look at three to five years. In this case I took the maximum. I do not agree that these figures are all artificial rubbish. The last five years profits will be the most important profits. A buyer would concentrate on the last five years' profits, because that is most likely to represent what would happen in the future. I was sitting in Court yesterday while the witnesses gave evidence. I have been present in Court everyday. I heard the evidence of Mr. Hayward and Mr. Cuming. I heard what they said about what was going to happen to the rubber market. 10

Q. Did you ask your Counsel to cross-examine those witnesses on any of those matters?

A. I believe Counsel for the Crown did cross-examine those witnesses on those matters.

Counsel is conducting the case, and there is no necessity for me to ask him to cross-examine a witness on any particular point. I agree that Mr. Hayward has an intimate knowledge of the rubber market. I agree that he has a knowledge of the rubber market much more than myself. I agree that Mr. Cuming is a very experienced broker. He may be more experienced than I in buying and selling shares of companies, but he cannot be more experienced than I of valuing shares of private companies. Mr. Cuming has got greater experience than I regarding the class of shares that they sell. I still say that Mr. Cuming has got a greater experience than I regarding the value of shares of that type of companies that they handle. 20

Q. Suppose it was possible to ask every man individually in Ceylon what he would pay for this whole block of 5,000 Management Shares, and every man said that he would give not more than Rs. 2 each, do you still say that the market value of each share was over Rs. 300? 30

A. Yes, if there was a buyer from abroad.

Q. Supposing it were possible to ask every man in the world whether he would buy these shares, and if every man said that he would pay not more than Rs. 2 per share, do you still say that the market value of each share was over Rs. 300?

A. No.

It is not impossible that somebody from outside would come and buy up Mackie's Management Shares if they were available. It is not very likely that somebody from outside Ceylon might come and buy these shares. 40

Q. You will agree that, if every man in Ceylon said he would not pay more than Rs. 2 per share, the market value of a share will not be Rs. 300? A. Yes.

Q. I put it to you that if men like Mr. Hayward and Mr. Cuming tell us in their opinion that nobody in Ceylon would pay more than the nominal value of the shares, do you still say that your artificial system of valuation is correct?

No. 11  
Respondent's  
evidence,  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

A. I would not agree with them. My system of valuation would still be the better system, because I think there would be buyers at the valuation I put on them.

10 Q. Your experience of business is entirely confined to sitting in the office. You never bought and sold shares yourself as a broker or in any other capacity?

A. Yes, I have not been buying and selling shares.

Q. Have you ever owned part of a rubber dealer's business or any similar business? A. No.

Q. Have you ever had any practical knowledge of business at all? A. No.

If a man was rash enough to look at the profits further than I did, he would find that for a certain period there were losses.

(Shown P7.)

Q. You started from 1936? A. Yes.

20 Q. In 1935 there was a loss of Rs. 281,000?

A. Yes.

Q. In 1934 and 1933 there were profits of about Rs. 700,000?

A. Yes.

Q. From 1927 to 1932 there were continuous losses every year amounting to Rs. 1,800,000? A. Yes.

Q. You will find from the figures in P7 that from 1933 to 1940 the total profits amount to Rs. 2,233,650? A. Yes.

Q. Do you accept the addition of these figures from 1933 to 1940 and the losses as shown there as Rs. 2,126,901? A. Yes.

30 Q. Taking one from the other, the total profits would have been Rs. 106,749 over 14 years; that is to say, the average profit for a year would be Rs. 7,624. A. Yes.

If the buyer started looking into accounts from 1927 to 1940 only and took no account of the fact that there were very high profits from 1936 to 1940, he would think that the shares were not worth very much.

Q. Is there any reason why he should not ignore previous profits just as much as you have ignored previous losses?

40 A. I could also make an assessment by taking the profits and the losses for the whole period of 18 years during which this company has been in existence.



No. 11  
Respondent's  
evidence,  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

I did not work it out, but it would be possible to do so if I take the profits of the company from 1922 to 1940 and from the average return to be expected I would consider that the risk in the business is already reflected in the actual profits, so that I would take as an expected return a smaller figure, 7 or 8 per cent.

Q. If your buyer had looked at profits, I take it, he would have had to look into the Balance Sheets?

A. Yes.

Q. Do you think he will be justified if he had looked at the Balance Sheet of 1936? A. Yes.

10

Q. A hypothetical broker is not expected to say to the hypothetical buyer "you must not look at this document and you must not look at that document?"

A. Yes.

Q. In the Balance Sheet P12 of 31.12.36 he could have seen that there was a debit in the Profit and Loss Account of Rs. 254,623.32, and he would also see a statement by the Auditors that the dividends on Preference Shares have not been paid for 1930, 1931, 1932, 1933, 1934, 1935 and 1936? A. Yes.

Q. The total value of the unpaid dividends on Preference Shares will come to over Rs. 500,000? A. Yes.

20

Q. The total liability would be about 7½ lakhs as at the end of December, 1936? A. Yes.

I do not contend that a buyer would ignore that.

Q. Do you agree that a buyer of these shares at your valuation will know that he will not get a dividend?

A. Not at 1940.

Q. R4 is the Balance Sheet for December, 1940. In December, 1940, it is shown that the amount of credit in the Profit and Loss Account was still subject to payment of Preference Dividends unpaid from 1st January, 1933, to 31st December, 1940. Do you think he would take that into account?

30

A. I think there were sufficient funds at credit in the Profit and Loss Account to pay all these unpaid Preference Dividends.

Q. The Preference Dividends amounted to Rs. 79,600 a year from 1.1.33 to 31.12.40?

A. There was sufficient to pay arrears of dividends and there was one lakh left over and a Rs. 150,000 Reserve.

Q. Did you talk to other Directors about this case?

A. It is not a practical proposition to interview Directors of companies when we have got to value thousands of cases.

We have not got the time and the staff to interview Directors of companies in each case. We always see the solicitors if they want an interview with us.

No. 11  
Respondent's  
evidence,  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

Q. Can you imagine a better way of finding out the share position of a company without talking to the Directors about it?

A. A discussion with the auditors would do. If the auditors wanted we would have interviewed them.

10 Q. This is an unusual sort of company? A. Yes.

Q. Do you agree that a business of this nature, as Mr. Hayward told us, is a highly speculative one?

A. I would say that all commerce is speculative, perhaps this business was more so than some others.

Q. Do you agree that this is a highly speculative business?

A. It depends on what is meant by "highly speculative."

Q. Do you agree that this is a most speculative business?

A. Business in cotton will be as speculative a business as rubber.

20 I cannot mention any firm in Ceylon which deals in cotton. But I know that speculation in the cotton market in Bombay will be as speculative as speculation in rubber. There is no cotton business in Ceylon. I cannot think of a business in Ceylon that is more speculative than Mackie's.

Q. On that basis do you not think that the buying policy of the company was necessarily a matter which a purchaser of these shares would want to know?

A. Yes.

Q. Was there anybody who could tell him better than a Director?

A. No.

30 Q. If justice had to be done between the State and the person who had to pay this money, would you not think that it would have been necessary to see somebody from the company?

A. I do not think it would have been necessary.

(Witness is referred to letter dated 23rd May, 1946, P11, from the solicitors of the executors.)

I was not dealing with the file at that time. I was transferred from that department in 1943.

(Shown P13, letter dated 9th December, 1944, from Messrs. Julius & Creasy to the Commissioner of Estate Duty.)

No. 11  
Respondent's  
evidence,  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

I got the original of letter dated 9th December, 1944 (P13). In relation to this letter there is a minute in the file that an interview could be arranged after the documents referred to in the letter were received. No reply was sent to P13.

Q. After this case was filed there was an application made by the executors to have particulars of your valuation? A. Yes.

Q. Did you instruct Counsel to object to that application?

A. After the case was instituted, Counsel conducted the case and I had nothing to do.

We were not asked by Counsel to give any particulars. I cannot remember whether I was consulted by Counsel before he objected to giving the particulars. As it is not provided for in the Ordinance, we did not want to give the particulars asked for. We were always ready to discuss it at an interview. 10

Q. Did you not think it essential, if the basis of your valuation was correct, that the executors should have the figures in order to examine them?

A. It was not the practice in the office. .

I heard Mr. Lander giving evidence, and also saw a copy of his evidence. 20

Q. Mr. Lander took the value of the shares as at the date of death of Mr. Mackie? A. Yes.

An alternative method of finding out the value of the shares as at the date of death of Mr. Mackie will be not by looking at the assets only. A prospective buyer might like to look at the assets.

Q. On the basis of the assets of the company and the payment of Preference Dividends, Mr. Lander made a valuation of the 5,000 Management Shares at 40.168? A. Yes.

I accept the accuracy of these figures.

Q. This method of yours of restricting the buyer to the last five years' profits is wrong. Do you accept Mr. Lander's alternative method as being correct? 30

A. If my method of valuation is wrong, I do not accept his method, because his method has not borne out the earning capacity of the business, and it has also not taken into account the powers and the rights of the Management Shares.

My method is supposed to produce the value of the earning capacity of the Management Shares. If the prospective buyer does not accept my calculation of the value of the Management Shares by taking five years past accounts, he can take 10, 15, 20, or more years into consideration and arrive at a value for Management 40

Shares, but I do not think that the method adopted by Mr. Lander in arriving at the value of the Management Shares is correct. I do not think that Mr. Lander's is the correct way of valuing.

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

*Q.* If a buyer from his own knowledge of rubber, was quite satisfied that Mackie's would produce nothing but losses in the future because of rubber prospects, would he be likely to buy the shares on an estimated basis?

*A.* If the buyer had definite information that there would be losses only in the future, he would not buy them for anything. He  
10 would not pay even the Rs. 2 per share.

In such a case he would see, if he wanted to buy what assets there were in the firm, what he would get on a liquidation, that is, on a break-up basis. In such a case the value of each Management Share would be less than Mr. Lander's value, because he had not taken into account the question of liquidation. I say a buyer should look at the assets and modify his price accordingly.

*Q.* How have you modified the price in respect of the assets?

*A.* I satisfied myself that the entire capital is more than covered by the tangible assets of the company, so that there is security for  
20 the capital invested.

*Q.* Out of the assets do you agree that the buyer would get only Rs. 40 a share?

*A.* If the company went into liquidation at that time, yes.

*Q.* When buying an ordinary business like a rubber or tea estate, a purchaser of shares would find out how much an acre would be capitalized at? *A.* Yes.

*Q.* If you take the value of tea shares in the market the price that a buyer would pay for a particular share is largely influenced by the capitalized value of the estate?

30 *A.* Yes, it is largely influenced.

*Q.* If your buyer bought at Rs. 300 a share, he would now know that he would be buying only Rs. 40 worth of assets?

*A.* Yes, at the moment.

*Q.* So that, he would be paying Rs. 250 extra? *A.* Yes.

*Q.* What for?

*A.* For the power of earning profits through the company.

*Q.* How does he get that power?

*A.* He buys that power through the Management Shares.

*Q.* What would he get?

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

A. He is buying the right to get the profits out of the business.

Q. Why can't he do his own business with that money?

A. I think it will be a more profitable proposition for him to buy these shares than starting a fresh business with his money.

If he started a fresh business, it would take quite a lot of time to build up a suitable organization. He would give Rs. 250 for a share for that purpose.

Q. Would he have any control over the company himself?

A. Presumably, yes. He will have control because he will be a Director. 10

He will be a Director because he owns shares.

Q. How?

A. He can be elected a Director.

I cannot find anything in the Articles of Association which says that he had the right to be elected a Director. There is nothing in the Articles even to enable him to be employed in the company.

(Witness referred to Article 83 of the Articles P1.)

Q. Do you agree that according to that Article every preference shareholder and every management shareholder had one vote for each share? A. Yes. 20

(Interpretation of Article 2 read out to witness.)

Q. As there were only 5,000 Management Shares and roughly 19,000 Preference Shares, do you agree that the holder of the Management Shares had no control over the company?

A. I agree.

Q. Do you agree that the day after the man purchased these Management Shares for a million and a half, the company might have been wound up by the Preference Shareholders?

A. It is quite possible, but not likely.

Q. Why do you say it is not likely? 30

A. There is no reason why they should wind-up a good business.

Q. Supposing Mr. C. W. Mackie (Jnr.) did not want to carry on this business, there is nothing to prevent the preference shareholders from winding up the business? Yes.

Q. Several rubber firms had wound-up their business in 1938?

A. I believe the witnesses mentioned only one firm that wound up, and that was in 1938.

Q. 1940 was the first year since 1927 that the preference shareholders would have got back their money if the company was wound-up?

A. I do not think that it would have been a sensible thing to have done so, because there were further profits to be made.

Q. Would you consider it a good investment if you had your money in 8 per cent. Preference Shares not paying any dividends for 13 years? A. No.

10 If all the preference shareholders made up their mind, the company could have been wound-up.

Q. Did you add to the value of this company or take off from its value on that account?

A. No.

Because it was possible for the purchaser of the Management Shares to purchase Preference Shares as well and keep the company going.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

20 I have got to be at Angoda in the afternoon. Further hearing tomorrow. Cross-examination of this witness to be continued.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

No. 71/T. (Special).

17th December, 1948.

Appearances as before.

Errors in previous day's proceedings corrected.

Mr. Satchithananda leaves Court as Dr. Hayley prefers him not to hear the evidence given by Mr. Gunasekera today.

L. G. GUNASEKERA. Recalled. Affirmed. Cross-examined further by Dr. Hayley.

30 I cannot find a copy of letter P14 in my file. I was not dealing with the file at that time, but there is an office minute here. As far as I can see from the file the position was that the Assessor who was dealing with this case at the time had many matters to go into—there were other points of appeal—and he was making investigations himself. The Assessor was making investigations himself before placing the matter before the Commissioner. At that stage another letter came from Messrs. Julius & Creasy saying that Mr. Hale and somebody else were leaving the Island and they wanted an early decision in appeal and a decision was  
40 given.

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

(Mr. Hayley reads letter dated 5.2.46 marked P15.) I do not see that any action has been taken on that letter. At about that stage the letter asking for an early decision came and probably the Assessor acted on it.

I read the Articles of Association carefully.

Q. Did you study the Article about transfer of Management Shares?

A. At that time, yes.

I studied the Articles dealing with the transfer of shares.

Q. Can you tell me now, without looking at it, what provision there was regarding compulsory transfer of shares? 10

A. As far as I can remember the shares should be offered to members of the company and if they were not taken they were to be sold outside; that is roughly speaking.

I cannot now remember the Article regarding compulsory transfer of shares.

Q. I take it that all these figures of yours assume that the buyer would keep the shares, would be able to keep the shares if he wanted to?

A. Yes. 20

I agree that the shares could have been taken away from him the next day if he was not willing to spend a large sum of money.

Q. If the articles contained a provision that the other members of the company can take his shares away compulsorily, you will agree that he will not spend anything like the sum you suggest?

A. Yes.

(Article 46 put to the witness.)

Rs. 990,000 was Preference Shares and 10,000 Management Shares. 19,800 Preference Shares of Rs. 50 each.

Q. You agree that under the Articles the holders of 19,800 of the Preference Shares at the time could turn out any member who held the Management Shares alone if they did not like them? 30

A. Yes.

Q. Will you also agree that they could take them away not at the price he demanded but at the price at which the auditor chose to fix for them?

A. Yes.

That is under Articles 38 and 41.

Q. Articles 41 gives the person who is going to buy them the option of refusing the price which the holder asks and says that the auditor must fix the price?

A. Yes.

The auditors were Messrs. Ford, Rhodes, Thornton. Mr. Lander is a member of the firm.

Q. It would follow, would it not, that if Mr. Lander valued them, or as he has done in this case, at Rs. 40.168 per share, the person who bought them would be compelled to transfer?

10 A. Yes.

Q. In the face of that do you still say that a person would be likely to pay Rs. 300 a share?

A. He will take care to see that he has more than 1/10th of the capital in his hands.

Q. How can he take care to see that he has more than 1/10th when he is buying only 5,000 Management Shares?

A. He would also buy some Preference Shares.

My value presupposes that a particular buyer must buy other shares as well.

20 Q. Why did you not tell us that when you gave your value before?

A. I was not asked.

Q. But you came here to value the shares as an expert; if that was a material matter was it not your business to tell us?

A. I can only answer questions I am asked. I have said this yesterday also.

Q. If he could not buy sufficient Preference Shares to substantiate your system, it will be useless buying the shares at 300?

A. I agree.

30 If the prospective purchaser could not buy the Preference Shares it is useless his buying the Management Shares.

Q. The Preference Shares on your basis were a very much more valuable holding than those speculative Management Shares?

A. I do not agree; I do not say that Preference Shares are more attractive holding than the Management Shares.

I am aware that a person buying any shares in the company was *ipso facto* prevented from doing any other business in rubber in



No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

Ceylon. I am also aware that if he did, the Company could just put a pen through his shares and cancel them.

(Witness is referred to Articles 48 and 49 of the company). I cannot remember what business this company was authorized to carry on.

Q. Practically any kind of conceivable business that you can think of?

A. Yes.

Q. You still say that taking that into account you think a person will buy some or all of these Management Shares at Rs. 300? 10

A. Yes.

Q. That a person would tie himself down not to hold shares in anything else in Ceylon?

A. Yes.

I solemnly really think so. I did not think that a person interested in such a big rubber business as Mackie's would trouble about other business. I did not add any percentage for capitalization. I am not a professional accountant.

Q. Who taught you this idea of value of 5 years' profits? 20

A. From text books and by discussions with other accountants in the course of my business as an assessor.

By profits I meant profits earned by the business. By profits earned by the business for a year I mean the net profits.

Q. Suppose at the beginning of 1936 this company was in debt 5 million, no assets, but by fortunate trading it actually made a trading profit of Rs. 50,000 for that year. What would you say was the profit for that year?

A. Rs. 50,000.

If there was a loss it will be carried forward. 30

Q. You actually take that as your basic figure on which the person was to base his buying estimate?

A. Yes.

Q. And similarly for the next year?

A. Yes, if there was a profit.

Q. So that in 5 years you will take Rs. 250,000 as the profit on which to work?

A. Yes.

(*To Court:* Of course, this is presupposing that the debt of 5 million was allowed to carry on; if the creditor will allow the business to proceed.)

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

*Q.* So that at the end of those 5 years, according to you, the prospective buyer would gladly see that his company made Rs. 250,000 profit?

*A.* I will take it into account.

*Q.* While it will still show a debt of Rs. 4,750,000?

*A.* That will be taken into account when capitalizing the profit.

10 *At the end of 5 years there will be Rs. 250,000 profit and the debt of 5 million will be reduced by Rs. 250,000 so that the debt will be only Rs. 4,750,000. The buyer is going to buy on the expectation of the profit of Rs. 50,000 a year continuing. I agree that the company could not pay those profits to the shareholders as well as towards the debt of 5 million.*

*Q.* Therefore in that case your prospective buyer would, if the business continued with the same possibilities, have to wait 200 odd years before he could possibly get any dividend?

*A.* Yes.

20 *Q.* Is not your example a fantastic one because in the first year that you took as your profit year, 1936, are you aware that the Balance Sheet showed a loss?

*A.* Yes.

*Q.* In addition to the arrears of preference dividends?

*A.* Yes.

*Q.* Do you really suggest that that is the sort of profit that you can reasonably take for this artificial valuation of shares?

*A.* Yes.

30 *I say it is not a fantastic proposition because if you take the Balance Sheet for the year 1940 the capital is secured. I considered that in arriving at my valuation.*

*Q.* What is the basis of this profit value of yours? Is it not that the man expects to get money?

*A.* Yes.

*He expects to continue to get money year by year. That is the basis of the whole thing.*

*Q.* If the man cannot get any money in return for each of those years, does not the whole of your system fall to pieces?

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

A. If he cannot get a profit for the next 5 years his calculation has gone wrong.

Q. I put it to you that this system of the textbooks is only meant to apply to companies or business which are paying regular profits?

A. That would be if earning profits does not mean paying dividends.

You may have a company which earns profits but does not pay dividends; the shares will still have value. It is the Directors' discretion to pay out profits by way of dividends.

10

Q. Is not the whole of this textbook system based on concerns or companies which are expected to pay out the profit to the man who is buying?

A. Or to keep the profits.

Q. What good to him of it if the company is going to keep it forever?

A. It will accrue to the value of his shares; he will be entitled to the profits at some time.

Q. I put it to you seriously that you have made a blunder in reading your textbooks and that this system is only meant to apply to businesses which are not speculative and only to businesses which are paying some sum each year to the buyers of shares?

20

A. No.

Q. Can you produce any book to support your suggestion that this applies to a business which in fact never pays any profits?

A. This applies to all businesses. If the business is of a speculative nature you make certain adjustments.

I refer you to Accounting by Croper Morris and Pison. I have the book in Court. I do not know whether I can just now find a passage in it to justify applying this system to a business which has in fact not paid any profits out for 14 years.

30

Mr. Mackie died in September, 1940. The last available Balance Sheet at that time to any person would be the Balance Sheet at December, 1939.

(Shown P8.) The Profit and Loss Account shows the figure Rs. 642,172.98. There is a note to the effect that Preference Shares have not been paid from 1.1.30 to 31.12.39. Rs. 792,000 is owing for Preference Dividends. On the Balance Sheet as it stood there was a debit of Rs. 149,827.02 and arrears of Preference Dividend. There is also an overdraft of Rs. 1,485,471.25, Rs. 3,442 was all the balance cash in hand. They had some rubber stocks valued Rs. 743,280 and a number of debtors to the firm Rs. 2,269,679.

40

There is nothing for reserve of any kind except a sum of Rs. 3,400. There is no reserve for taxation; no reserve of any kind. This is not a healthy Balance Sheet as at the end of 1939.

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

I heard the evidence that it was only Mr. Mackie's personal guarantee that managed to retain this overdraft. The purchaser could have got the overdraft himself if there were assets of the business. The purchaser would not assume that the bank would want it repaid. It is not very likely that the bank will recall that overdraft. I have no experience of banking. I have no  
10 experience of the sort of negotiations which a merchant has with a bank manager before he gets an overdraft of this kind.

(*To Court:* The total assets of the company amount to Rs. 3,373,000 and the overdraft was one million rupees.)

Q. Do you know what sort of ratio a bank asks for overdrafts against stocks of rubber?

A. It is difficult to say because it depends on the borrower; it would depend on the personal factor of the borrower.

The bank may not lend any money on overdrafts on rubber stocks if they have no faith in the person borrowing. They might not  
20 lend at all except for the personality of the borrower on rubber stocks. On a sound proposition like freehold land the bank will lend up to any amount.

I saw the Balance Sheet, the Profit and Loss Account and the Articles of Mackie's; nothing else. By looking at the Balance Sheet and the Profit and Loss Account I satisfied myself that there was going to be a profit for the next 6 years—may be very large profits for 2 years and small profits for the rest. I took the average profit for 6 years. (Shown P7.) If Mr. Mackie had died in 1926 an exactly similar position would have arisen. I would have looked  
30 at the last 5 years' profits. They would have shown a profit of 3 million odd.

Q. You, of course, know nothing about rubber, as to the likelihood of its going up?

A. Yes.

Q. If he died in December, 1926, on that amount of profit you would have valued the shares still higher than you do now?

A. Probably, unless there was some known fact to alter my valuation.

On the relative figures it might have been Rs. 400 or Rs. 500  
40 a share.

Q. After a person had bought it he could have received nothing at all for at least up to 1940 and from 1926 to 1932 he would have lost all of the capital and the company would have been wound-up if it had not been for Mr. Mackie's personal guarantee?

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

A. Yes. It happens even in buying rubber lands. Those who bought at Rs. 1,500 an acre in 1945 probably find it is not worth Rs. 200 today.

Q. These Management Shares as they are called, from their position in the Articles, are really equivalent to ordinary shares; they have the same position in a company as ordinary shares and Preference Shares?

A. Yes.

The Management Shares in a company like this are in the same relationship to the Preference Shares as Ordinary Shares in a public company are in relation to Preference Shares. They were probably called Management Shares because Mackie intended to keep them himself but the result is the same in many respects as Ordinary Shares. 10

Q. There were 5,000 Ordinary Shares against 19,800 Preference Shares; that is a very unusual distribution for a public company?

A. Yes, but I believe I have seen something like it before.

I know that declaration of dividends depends entirely on the Board of Directors under Article 134. All shares had equal voting power. It was entirely within the power of these preference shareholders never to pay anything on the Management Shares. 20

Q. Are you aware that even if a person bought the whole of Mr. Mackie's holdings both Preference and Ordinary Shares he still couldn't in any way alter the position in the company?

A. I believe he held the majority of the votes.

Q. But he cannot alter the Articles without three-fourths of the votes and Mr. Mackie only held 14,000 out of 24,000 shares?

A. Yes.

Q. I know that shortly after Mr. Mackie died there was an amendment in the Ordinance specially made for the valuing of the shares like those of this company—Ordinance No. 8 of 1941? 30

A. Yes.

Q. Although this does not apply, do you agree that this is exactly the system which Mr. Lander applied at arriving at the value of the shares?

A. Yes.

Q. Referring to the three-fourths of the voting rights to get an absolute majority in the company, the purchaser would have to buy 7,400 of the Preference Shares?

A. Yes.

Q. Those Preference Shares, according to the accepted valuation, would be Rs. 676,000; he had to buy at least 7,000 more to get a plain majority; to get control of the company he would have had to buy nearly 12,000 of the Preference Shares?

A. Yes.

To get the 7,400 shares at the price now existing he will have to pay about Rs. 650,000 in addition to the price he has to pay for the Management Shares. He will have to pay  $1\frac{1}{2}$  million for the Management Shares and  $\frac{5}{8}$ ths of a million for the others totalling  
10  $2\frac{1}{8}$ ths million for the lot. That is to get an ordinary majority.

For the first year 1936 I took the figure Rs. 93,967. I took 15 per cent. as being the appropriate rate of conversion because I took 4 to 5 per cent. as a return that a person would expect and I added 10 per cent. for risk. I took into consideration also the fact that I had taken 5 years' profits to get the average and I had not given weightage because the company had begun to earn profits.

I have not seen the papers but I have heard the Lyon's case discussed. I am not in the Estate Duty Department now. I was transferred to the Income Tax branch about 3 or 4 years ago.

20 Q. In the Lyon's case Heath & Co. were purchasers on commission basis, buying and selling tea, and they had considerable profits for about 25 years or more and there the rate your department suggested was  $14\frac{1}{2}$  per cent.; there was no risk and the company made regular large profits for 25 years or more; they took  $6\frac{1}{2}$  per cent. as the basis and added 8 per cent. for the risk; do you not think that if that was a sound basis in this case you should have given 30 per cent?

A. On the bare facts as mentioned by Counsel that is too high a rate, but I do not know anything personally about that case.

30 I agree that the Commissioner of Estate Duty goes on some basis.

Q. On the basis of  $14\frac{1}{2}$  per cent. a business like Heath's, ought not this speculative business of Mackie's be at least 30 per cent.?

A. I would agree that it is subject to discussion that the rate adopted depends on other factors as well.

Q. How can you estimate rate except on risk?

A. If you take in the case of Mackie's 20 years' average profit as your guide the risk would have already manifested itself in those profits, and I would take it at a very low rate.

40 If I took the last years only I would take it high. I stated that if I had taken 20 years I would have reduced the rate to about 8 per cent. because the risk is already reflected in the profit. So I could not give allowance for it. I have reduced the risk in this case to 8 per cent. I think this is what the purchaser would do.

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Cross-  
examination  
—contd.

*Q.* If in the case of Heath & Co. you went back more than 25 years and the rate was  $14\frac{1}{2}$ , did you not consider that in this case it ought to have been about 30 or 35?

*A.* I do not know the method adopted in the Heath & Co. valuation.

*Q.* If a firm like Heath & Co. which paid solid return to its partners in the business with no risks for 20 or 25 years was capitalized at 14 per cent., do you not think that this sort of business ought to be 30 or 35?

*A.* I would agree that it ought to be higher if Heath's was so high. 10

*Q.* Your basis of 16 per cent. results in an anticipation of these last 5 years' profits continuing or about 6 years? *A.* Yes.

*Q.* Do you appreciate the fact that the two large profits of 1939 and 1940 was the result of a great demand of rubber during the war? *A.* Yes.

*Q.* If you take them away there had been very little profit for a very long time? *A.* Yes.

*Q.* Does it not follow that to assume a continuation of those profits for another 5 or 6 years requires also an assumption that the war will continue for 5 or 6 years? *A.* No. 20

*Q.* Why? *A.* Because I did not assume that those two last years profits will continue for 6 years. I assumed average profits.

I took those profits into consideration in arriving at the average profits.

*Q.* If that profit had dropped at once to Rs. 129,000 in 1938 then there would have not been anything like that average?

*A.* There would have been a loss.

*Q.* You are speculating on the continuation of the war for 5 or 6 years? 30

*A.* On the demand for rubber.

That demand arose only after the war.

*Q.* Then your system does suppose that the war will go on for 5 or 6 years?

*A.* Not necessarily, may be 2 years.

*Q.* It assumes that either the war is going on for another 5 or 6 years or that some unknown factor will create a similar demand?

*A.* No.

I said it would assume that the war will go on probably 2 or 3 years or some other factor will create a similar demand. 40

Q. My question was right except that you reduced it to 2 or 3 years? A. Yes.

Q. Did you take into consideration the probability of heavy taxation during the war?

A. I took taxation as it existed.

I did not take into consideration the probability of higher taxation in the future. I am aware that a Bill to introduce Excess Profits Taxation was introduced in November, 1939. That Bill was rejected.

10 Q. If Excess Profits Duty particularly retrospectively, were in operation at the time, the valuation of shares would have gone down?

A. The amount of profits would depend on the rate of the excess profits tax.

Q. (Shown P7). If you take the whole profit of the company from 1922 to 1940, less losses, the total profit shows an average of Rs. 186,742, per year?

A. Yes.

20 From this has to be deducted a year Rs. 79,200 for Preference Dividend leaving a net average annual profit of Rs. 107,452. Taking 25 per cent. as an appropriate amount that would bring the net value of each share to Rs. 86 each. Taking the same figures to 15 per cent. the value of each share would be Rs. 143.50.

If I took 20 years' profits I would capitalize it at an expected return of 8 per cent. I would not have taken 15 per cent. I would have taken 8 per cent. because the risk is already provided for.

Q. What does it mean?

30 A. That the risk in the business has reflected itself in the actual result of the trading for 20 years.

Not because the company has existed for 20 years without being wound-up.

Q. What is the actual meaning of it?

A. That the actual trading results have given this figure and that is what can be expected for a period of 20 or 30 years in the future. It does not mean that there was no risk if it existed for 20 or 30 years. It is not on the life insurance principle that the longer a man lives the chances of his dying soon are less.

40 At 8 per cent. the same figures come to slightly less than 1½ million. Yesterday I referred to some Balance Sheets of Mackie & Co. after the death of Mr. Mackie. Those would prove that my forecast was correct.



No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera.  
Cross-  
examination  
—contd.

Q. What has that to do with it. Do you know that you had to value at the actual date of death?

A. Yes.

The buyer will not know anything about the Balance Sheet at the actual date of death. I did not see the Balance Sheets after 1940 when I made my valuation of these shares. I cannot remember when I got those Balance Sheets into my hand. So far as I recall it was after this appeal was filed; after I made my estimate. I am not so sure that these Balance Sheets were sent to the Income Tax Department. I could not have the Balance Sheets except from the Income Tax Department. I do not have the Income Tax file here. 10

Normally speaking the 1942 Balance Sheet would be sent to our office in 1944 or 1945. There is a minute in my file that the Income Tax file was looked at on 5th October, 1943. I do not know what was in that file at that time. I looked at the 1940 Balance Sheet.

L. G. Guna-  
sekera,  
Re-examina-  
tion

Re-examination.

My final assessment was made on 21st April, 1944. The date of appeal in this case was 9th May, 1944. I called for a list of witnesses and documents relied on for the appeal on 29th May, 1944. I was sent a list of witnesses and documents on 16th August, 1944. I thereafter called for copies of documents and the evidence of the witnesses on 31st August, 1944. I got P13 on 9th December, 1944, from the proctors (witness reads the letter). There was a promise of further documents in this letter. Thereafter there were three further communications from the proctors promising to send the documents and evidence—one on 8th February, 1945, another on 14th May, and a third on 3rd August, 1945. By letter dated 7th November, 1945, I received P14 purporting to send some documents; the documents were received on the 9th November, 1945, with the letter. The documents came to me after one year and two months. Then I received the letter P15 asking for an interview on 15th February, 1946. The documents received were voluminous. I got another letter from the proctors on 30th March, 1946, which I produce marked R10 referring to their letter of November last. In response to that request steps were taken to give an early decision. The decision was given on 20th May, 1946. 20 30

P11 is dated 23rd May, 1946, three days after the final determination by the Commissioner under the provisions of the Estate Duty Ordinance; the letter was received three days after the statutory determination had been made. If any further documents had been sent prior to 20th May, 1946, they would also have been considered before the final determination was made by the Commissioner. 40

Proctors and agents generally come to the office for interview after making appointments by telephone. I have never refused to speak to them. Quite a number of agents come to our office without appointment and ask for interviews and I always accommodate them.

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Re-  
examination  
—contd.

(Shown section 6 (a) of Ordinance No. 8 of 1948.) Under this section the Commissioner, it says, may, &c.; he is not bound to.

10 In the assessment of the total assets of the company, according to the amended section, among other things, a valuation must be placed on the goodwill. In the case of Mr. Lander's valuation at 40.618 on the face of those figures there was no valuation on goodwill. May be that he took up the position that there was no goodwill.

In regard to Excess Profits Duty the Ordinance governing that matter is No. 38 of 1941 which came into force on 5th December, 1941. Earlier in 1940 there was an Excess Profits Duty Bill introduced and at its second reading that was thrown out.

20 I have made assessment of shares of private companies by the hundreds during my term of office as Assessor. At no time was there an appeal to Court, except one; there were a few appeals to the Commissioner. The matter that went to Court was Millers. I valued the shares at Rs. 12. The Commissioner reduced it to Rs. 10. The appeal was withdrawn because the shares were sold at Rs. 17 not long afterwards. Recently I had to value the shares of Mackwoods; that was a private company with Preference and Ordinary Shares with restriction of alienation. I valued the ordinary shares of that company on a profits basis. I believe the accountant's valuation was Rs. 153; I raised it to some Rs. 230 and they accepted it; I am speaking from memory. Ordinary share par value was Rs. 50.

30 As a matter of policy in doing my income tax work or estate duty work I do not want to come to Court unless I am forced to come.

I have seen the Balance Sheets of 1936, 1937, &c., to show that the previous losses were carried forward. Although there were actual trading profits those profits were covered by the previous losses.

40 At the time I had to make the valuation of the estate, after 1940, I was satisfied from my study of the figures that there was sufficient money to pay off arrears of Preference Dividends. In making my valuation I was concerned with the making of possible profits in the future.

Q. If you take the value of these shares in the market the price that a buyer would pay for a share is largely influenced by the capitalized value of the estate?

A. I would look at it also but I would be concerned with the dividend-yielding capacity.

As a matter of fact if a share is under-capitalized it will get high dividends and if that same share is over-capitalized you will get lower dividends; but that is not the basis of the valuation.

(To Mr. Hayley with permission of Court.)

I said that I had valued shares in private companies on hundreds of occasions. There are not many private companies in Ceylon. I have to value for stamp duty on share transfers and for estate duty. There is much trouble on account of stamp duty on share transfers also. Stamp duty is *ad valorem*; there is no trouble with public companies. 10

Q. How many private companies' shares have you valued for estate duty purposes?

A. On about 30 occasions roughly.

Speaking from memory that would be, I think, about 10 companies. I had to value the shares of Kahatagaha Mines Co., Bogala Mines, Miller's, Mackwood's and another company in which Mr. Leaf was interested. In the Kahatagaha Co. there was a transfer of shares. For estate duty I had no occasion to value the shares of Kahatagaha Mines. The stamps on the transfer of shares in this company involved a very large sum of money. I cannot remember how much. I remember it was a very large sum. May be about Rs. 15,000 or Rs. 20,000; I cannot remember. As far as I remember that was the occasion when Mrs. Kotalawala transferred her shares to her son. They agreed to my figure. I valued these shares much higher than the face value of the transfer. A transfer can be registered and the stamp duty paid later if they disagreed with us. You can stamp a document on what you think is correct and later ask for the Commissioner's opinion and then it is endorsed. 20 30

Bogala Mines was also for stamp duty. The last occasion was when I had to value a large block of Miller's shares when Mrs. Miller died; that is when it was a private company. That was about 1942 or so. I do not exactly remember the date. I deal with thousands of files; I cannot possibly give dates. I do not think Miller's made profits throughout. There was a large number of years when losses were registered; that is as far as I can remember. My assessment was contested.

In the case of Mackwood's the transfer of shares was, I think, on the death of Mr. Mackwood. That was about the same time. I think I valued Mackwood's after this present case. Mackwood's I think have both Preference and Ordinary Shares. Mackwood's was a limited company at that time; it was a limited company for 40

a long time. A number of previous valuations were quoted to me. We had a big difference of opinion. I do not think their price was fixed. There was a contest over my valuation. The valuations were practically agreed upon. The price of shares sold afterwards has nothing to do with the case.

No. 11  
Respondent's  
evidence  
L. G. Guna-  
sekera,  
Re-  
examination  
—contd.

Re-examination.

In the case of Mackwood's, Messrs. Ford, Rhodes, Thornton represented them in their discussion with me.

Adjourned for lunch.

10

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

No. 71/T. (Special).

17th December, 1948.

After lunch.

K. SATCHITHANANDA. Affirmed. 35. Chartered  
Accountant, Colombo.

K. Satchitha-  
nanda,  
Examination

20 I obtained my qualification as Chartered Accountant in December, 1936. I went through a course of studies in England. I was admitted a Member of the Institute of Chartered Accountants in December, 1938. Having obtained the qualification of Chartered Accountant I came to Ceylon in 1939. Then I joined Government Service. I was in Government Service till March, 1945, as the Chief Accountant of the Department of Commerce and Industries. I held a staff appointment. I resigned from Government Service in 1945 as I wanted to set up myself in private business. I found a business of my own. I am the senior partner of the firm of Accountants who go by the name of Satchithananda, Schokman & de Silva. My two partners are also Chartered Accountants. Besides my two partners, there are thirty other members in the clerical staff of my firm. My office is in Australia Buildings, Fort, Colombo.

30 As Chartered Accountants we do the auditing of limited liability companies, estate duty matters and all company matters; such as floating companies, attending to company management and so forth. We are one set of auditors to the Bank of Ceylon. We are also partial auditors for the Colonial Motors, Boustead's, Tucker's, some estate companies, and also for the Ceylon Theatres.

Q. What is the nature of any company work that you have been doing?

40 A. We have been drafting Memoranda and Articles of Association for companies, we do registration of companies, and also advice various people in company matters.

I am a liquidator. I have been liquidating some companies. In the course of my professional business I had occasions to value shares of private companies. We have done valuations for those people

No. 11  
Respondent's  
evidence  
K.  
Satchitha-  
nanda,  
Examination  
—contd.

who wanted to buy up shares in private companies as going concerns. We have audited the accounts of companies owning tea estates. We have not audited any limited liability companies owning rubber estates, but we have done so in the case of limited liability companies owning tea estates. Apart from companies, I have audited accounts of partnerships dealing in rubber. We have done valuations only for buyers.

*Q.* You were asked in this case by the Estate Duty Office to make a valuation for the purpose of this case? *A.* Yes.

*Q.* What was it that you were asked to do? 10

*A.* I was asked to give a value of the market price of the Management Shares as at the date of Mr. Mackie's death.

I know that Mr. Mackie died in September, 1940.

*Q.* What was the material put before you for the purpose of making that valuation?

*A.* I obtained the audited Balance Sheets for the years 1936 to 1940, and I was also given a statement of the profits and losses made by the company right from the inception of the company up to 1940.

*Q.* That last document you referred to, was it this document P7? 20

*A.* Yes.

It is a statement showing the profits and losses from the inception of the company. I also asked for a copy of the Memorandum and Articles of Association and I got them. I asked for them, because I wanted to check up some of the Articles of Association.

*Q.* Having obtained that material did you get sufficient data for making a valuation of the Management Shares of Mackie's at the date of Mr. Mackie's death?

*A.* I felt that was enough. 30

*Q.* How did you proceed to make the valuation?

*A.* I got the net profits of the company for five years till the end of August, 1940.

I took the date of death of Mr. Mackie as the end of August, 1940.

*Q.* What were those five years?

*A.* I took one-third of the net loss for 1935, full profit for 1936, full loss for 1937, profits for 1938 and 1939 and two-thirds of the profit for 1940. That made up the five years.

I took these figures from the Profit and Loss Account. I tabulated those figures. I adopted the weightage method. I produce the Statement of Account marked R11, showing the figures that I 40

took into account. Then I weighted the profits and losses. This is how I did it: For 1935 one-third of 281,901 comes to Rs. 93,967 loss, minus two-third of the profits made for 1936. For 1935-36 we have started from 1st September to 31st August. From Rs. 93,967 I deducted two-thirds of the profits for 1936, that is two-thirds of Rs. 97,391. That comes to Rs. 29,039. In other words, 93,967 minus two-thirds of 97,391 gives us 29,039 loss. For 1936-37 I took one-third of the profits of 1936 and two-thirds of the loss for 1937. That leaves a profit of Rs. 5,337. Similarly,

10 I got the figures for 1937-38, 1938-39 and 1939-40. In the Statement R11 I have multiplied these figures from 1 to 5. Having taken five years' profits and losses I weighted the profits, that is, giving greater weightage to the profits or losses of the years as they became nearer and nearer the required date at which we had to find out the value with greater weightage for the last years, because that will better reflect the true position of what is going to happen during the next few years.

No. 11  
Respondent's  
evidence  
K.  
Satchitha-  
nanda,  
Examination  
—contd.

Q. These figures show an ascending scale of profits from 1936-1937? A. Yes.

20 Q. Is this principle of weightage a recognized system in accountancy?

A. It is advocated in some of the recent textbooks dealing with valuation of goodwill of companies, &c.

Q. What is the real purpose in looking at these profits and losses at all if you are going to value a quantity like a share at the end of a period?

A. We must know what the man who is going to buy these shares would pay for them, which would be indicated by taking into consideration the profits of the past.

30 (To Court: The nearer past will be a surer indication than the remote past.)

Q. At the date of your valuation Rs. 270 was what a hypothetical buyer would pay for a share as at the date of death of the deceased? A. Yes.

Q. If a buyer wants to buy these shares and if he had the required money to put into it, what is the first consideration that would actuate him in buying these shares?

A. What return he can get for his money.

40 Q. His first consideration would be whether his capital would be safe?

A. If there was any risk of his capital being lost he would not put his money.

No. 11  
Respondent's  
evidence  
K.  
Satchitha-  
nanda,  
Examination  
—contd.

*Q.* Would he be satisfied if after putting the capital he gets his capital back?

*A.* I do not think anybody will buy these shares if there is only a chance of saving his capital.

A person investing on shares would hope for a certain return.

*(To Court: Q.* In how many years could a man putting his money into this business expect to get his capital back?

*A.* In this case I took five years' profits and capitalized it at 15 per cent. I took that into consideration.

Rs. 990,000, value of the Preference Shares, was getting only 8 per cent. I thought as the preference shareholders were getting only 8 per cent. the maximum that the management shareholders could expect would be 15 per cent.) 10

Having weighted the figures, I got the average for one year, which comes to Rs. 313,300. This figure, namely, Rs. 313,300, represents the available profits of the company for dividends to be paid both to the preference and management shareholders, and also for reserves.

*Q.* In order to find the return from the Management Shares did you think it necessary to make a deduction from the figure of Rs. 313,300? 20

*A.* First I had to deduct the 8 per cent. Cumulative Preference Dividend which had to go to the preference shareholder which would have taken off Rs. 67,320 a year. Eight per cent. is the nett amount payable to the preference shareholders after deducting income tax at the source.

*(To Court : Q.* Why did you do that?

*A.* I did that because the profits of the company were taken by me after deducting the tax.)

I have taken five years' profits into consideration in this case. I put Rs. 30,000 a year for reserve. During this period of five years the company had built up a reserve of Rs. 150,000 as the Balance Sheet for 1940 showed a profit of Rs. 500,000. So I allowed the same reserve for 1940 also. The total that should be deducted from the weightage of the average profits would then be Rs. 97,320. After this is done, there would be a balance of Rs. 215,980 left. Then I capitalized this figure at 16 per cent., and arrived at the value of each Management Share at Rs. 270. 30

The entire capital of this company was Rs. 1,000,000 consisting of Preference and Management Shares. The total capital of the Preference Shares was Rs. 990,000 and the capital of the Manage- 40

ment Shares was Rs. 10,000. If Rs. 990,000 was getting a dividend of 8 per cent., I think 16 per cent. is a very fair percentage of profits for the Management Shares. That is my opinion. If the preference shareholders lost their money, they would have lost Rs. 990,000, while the man who held these Management Shares would have lost only Rs. 10,000. All of them were in the same business. According to this process I arrived at the value of a Management Share at Rs. 270. I think it is quite a fair figure.

No. 11  
Respondent's  
evidence  
K.  
Satchitha-  
nanda,  
Examination  
—*contd.*

10 *Q.* What is the return on what one calls a "gilt-edged security"?

*A.* Three to 3½ per cent. is the return on a gilt-edged investment.

*(To Court :* That is now, before that it was 2 per cent.)

*Q.* Except for investments in Ceylon Government Loans have you got any others which can be called gilt-edged investment?

*A.* Not that I know of.

*(To Court:* Shares in banks cannot be called gilt-edged securities.)

In this case there is a return of 13 per cent. over and above the gilt-edged investment return.

20 *Q.* The sort of business which Mackie's did was described as a highly speculative business; buying rubber in a falling market and selling in a rising market. Is that correct?

*A.* Compared to the other products in Ceylon, say tea, the rubber business can be said to be a speculative business, because the risk is greater.

30 There is an element of speculation in all business. It is possible to buy a good business and make losses by bad management. If a good business is bought and if the management is good, and the circumstances also remain unchanged, I do not see why a loss should be made.

*Q.* Would the capacity to continue earning profits as before depend upon the good name and the good management of the company?

*A.* The good name of a company goes a long way towards making of profits; management too.

*Q.* Would the chances of making profits depend on the business connections the company had?



No. 11  
Respondent's  
evidence  
K.  
Satchitha-  
nanda,  
Examination  
—contd.

A. If there are well-established business connections the profits come automatically.

Q. Suppose a person wanted to invest a million rupees and start an entirely new rubber business of buying and selling rubber, could you have done so successfully?

A. He cannot start a business overnight like that. He will want first-class storage accommodation, he must have the transport facilities, a well-experienced staff and business connections most of all. He must have business experience too.

Q. For the purpose of this case I take it that Mackie's enjoyed advantages which a new competitor in the market would not have at all? 10

A. Mackie's had a first class store at McCallum Road, they had world business connections and an experienced staff. It was very difficult for anybody else to compete with them.

I have heard that they were large exporters of rubber.

Q. The Balance Sheet revealed that in their books they had large bank overdrafts mentioned? A. Yes.

I cannot say how much they had got on bank overdrafts. That indicated that they were able to command large credits from the banks. Credit facilities is one of the most important factors for a business. 20

(To Court: Q. Are bank managers fools to give such credit?

A. No, banks will not give credit on overdrafts unless they were satisfied that the business was a sound one and unless they are satisfied that their money is safe.)

(Shown Share List issued by the Colombo Brokers' Association dated 30th August, 1939, marked R12.)

Q. That shows share transactions of rubber companies?

A. Yes. 30

Q. According to R12, were there buyers for rubber shares generally?

A. In R12 under the rubber list there are only two buyers; buyers at that figure, but there are a good number of sellers.

(Shown R13, list issued by the Colombo Brokers' Association on 5th September, 1940.)

There are a good number of buyers for rubber shares according to this list. Except in the case of companies in Malaya, there are buyers and sellers for shares in Ceylon companies, but there are very few transactions shown. The fact that people are not prepared to part with their shares is a healthy sign. 40

Cross-examined.

Q. So the only material you had for the purpose of your valuation was the Balance Sheets for five years and the Profit and Loss Accounts?

No. 11  
Respondent's  
evidence  
K.  
Satchitha-  
nanda,  
Cross-  
examination

A. I got the audited accounts and Balance Sheets and the statement of profits and loss from the inception of the company. I had also the Memorandum and Articles of Association.

10 If I was doing any other valuations I would have asked for the same documents. It would have been impossible for me to do the valuations of 50 companies like this within a fortnight.

Q. This thing you could have done in just half an hour?

A. No, I had to go through every item carefully. It took me two to three days.

First I had to study the Balance Sheet carefully.

Q. A Balance Sheet like this is a most elementary one and you could have done it in half an hour's time?

A. It took me two days to study it carefully and prepare my figures.

20 Q. Can you imagine any simpler Balance Sheet; one that starts with share capital, sundry creditors, bank overdrawn, suspense, reserve against fluctuations, and that is all. Most elementary A. B. C. balance sheet?

A. I took two days to study the Balance Sheet carefully and prepare my figures.

We do not entrust this type of work to our clerks.

Q. If you had 25 similar companies and told your clerk: find the profit for five years in each case, weight them from 1 to 5 and divide by 15, any clerk would have done it in half an hour?

30 A. I myself studied the Balance Sheet carefully and prepared the figures.

Q. If you had told your clerk: take each of the companies and find the profit for the last five years, multiply from 1 to 5 and divide by 15, any clerk can do it in about an hour?

A. I do not agree.

Q. Two hours the most?

A. No.

Q. Can you tell me from the 1939 Balance Sheet what the profit is in the Profit and Loss Account?

A. Rs. 787,000.

No. 11  
Respondent's  
evidence  
K.  
Satchitha-  
nanda,  
Cross-  
examination  
—contd.

Q. You did it in just one minute here?

A. I studied it earlier and that is how I managed to do it so quickly here.

Q. Can you suggest how long a clerk would have taken to find that figure for the first time?

A. An experienced clerk might take about half an hour.

(Shown Balance Sheet dated 31st December, 1933, and Profit and Loss Account.)

Q. What is the profit made by the company for that year?

A. The net profit made by the company is Rs. 443,000. 10

Q. For the purpose of your valuation you took documents like that and not the company's books? A. Yes.

Q. Whenever you give your clerk instructions he carries them out? A. Yes.

When I ask him to make an extract he makes it. If I ask my clerk to find the profit from the Balance Sheet and Profit and Loss Account he might be able to do it in about an hour. Just entering up the profits for five years might take him about 5½ hours.

Q. This idea of what you call the weightage method, is this the only time you have done it? 20

A. No, I have done that before.

This valuation was done by me and not by my clerks. If I explained this method to my clerk he might have understood it or he might have not. My clerk will not take long to multiply these figures by five.

Q. So then, assuming that you had decided to make an estimate of five years' profits, your clerk could easily draw this up in an hour or two?

A. If I gave him definite instructions and the statements of profits and losses and told him what to take out, he could produce 30 it in an hour or two.

Q. If he had to do 20 companies in the same way, he would have been able to do them in a couple of days. Then you could just say what percentage you were to take? A. Yes.

(Shown R11.)

Q. If your clerk brought R11 to you, except for the figures appearing in the last three inches, then you would have had to decide the rate. How long would that take you?

A. That would not take more than an hour.

Q. At the date of your valuation, what did you really know about this company?

A. When I came to value the shares of Mackie & Company, I knew that they were one of the biggest exporters of rubber in Ceylon and I also knew that they had large stores, they had very good business connections outside Ceylon, and they had good transport facilities.

10 That is about all. I did not want to see any of the partners of the firm in this connection. I do not think the partners of the firm were in Ceylon at the time I made this valuation. I did not know that Mr. William and Mr. Mackie (Jnr.) were in Ceylon last year. I never met Mr. Mackie (Snr.) I do not know anything about him.

Q. From the evidence you heard, do you know that Mr. Mackie (Snr.) was a particularly outstanding figure, who was the owner of the company, and it was he who practically made the whole company?

A. I did not know.

Q. Similarly if you made valuations of 20 other businesses you would not have known about their partners either?

20 A. It depends.

If they had asked me to do the work for them I would have asked them to come and see me. But in this case it was not the company who asked me to make this valuation. Normally I would not have seen the partners of the 20 companies if I had not been asked by them to make the valuations.

I have heard that Mackie's had an experienced staff.

Q. Did you ask any businessman how much he would give for these shares?

A. Yes.

30 Q. Whom did you ask?

A. I asked people dealing in shares.

Q. Did anybody make an offer?

A. No.

I did not ask anybody how much he would give for these shares.

Q. Then why did you say "yes" when I asked you just a minute ago whether you asked any businessman how much he would give for these shares?

A. I heard it as "did you discuss it with any businessman".

40 Q. Do you read the English Law Reports in regard to these cases? A. Yes.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

Q. Did you suggest to the estate duty people what a business-  
man in Colombo would have thought about it? A. No.

Q. In the result, if you were doing valuations of 20 companies  
you would have done the same way?

A. Yes, if they were all companies like this.

Q. What is this system that you call weightage?

A. Weightage is a system whereby you give greater weight to  
the profits of the later years.

Q. What is the idea?

A. The idea is that the later years will give a truer picture of 10  
what the company is going to be like than the earlier years.

We want a picture of the future and not of the past. This  
weightage system is given in textbooks.

Q. What is the textbook you referred to?

(Witness refers to Seed on Goodwill as a Business Asset at page  
119.)

Q. The book clearly says that this system is sometimes used?

A. When the profits and losses of a concern are not steady, that  
is, when they are not making even profits all along, the weightage  
method is adopted. 20

(Witness reads passages from page 119 of Seed on Goodwill as  
a Business Asset.)

(To Court : Q. Is this the only book that you have come across  
which speaks of weightage?

A. There is another book. Even Leake on Goodwill speaks of  
the same method.

I cannot spot the passage in Leake at the moment. I can bring  
some more books the next time.)

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J. 30

It is 4 p.m. now.

Further hearing adjourned for 22nd and 23rd February, 1949.

Cross-examination of this witness will be continued on the next  
date.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

24th March, 1949.

No. 71/T (Special).

MR. ADVOCATE KADIRGAMAR instructed by MESSRS. JULIUS & CREASY for the appellants.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

Mr. JOHN WILSON for the Crown.

Mr. Kadirgamar submits that an earlier application had been made to Court for the further inquiry into this matter to be fixed for three other dates as it could not be finished in two days, today and tomorrow, as evidence in rebuttal will also have to be called, and it is not possible to get the evidence of Mr. F. B. Lander who was to be recalled today.

He also submits that his clients did not get ready for the inquiry for today and tomorrow as they anticipated that I would not return from sick leave to proceed further with the inquiry today and tomorrow.

Mr. Wilson has no objection to another set of dates being given for the further inquiry into this matter.

Mr. Wilson submits that the 25th, 26th and 27th of May will suit the Attorney-General who will appear on behalf of the Crown.

I refix the further inquiry into this matter for the 25th, 26th and 27th May, 1949.

Steps will have to be taken to have myself gazetted A. D. J., Colombo, for these dates as I may be functioning as District Judge, Jaffna, by that time.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

No. 71/T (Special).

25th May, 1949.

MR. ADVOCATE KADIRGAMAR instructed by MESSRS. JULIUS & CREASY for the petitioner.

THE ATTORNEY-GENERAL in person. Mr. D. JANSZE, CROWN COUNSEL, also appears as Junior. Mr. JOHN WILSON instructs the Attorney-General.

K. SATCHITHANANDA. Recalled. Affirmed.

Cross-examined further by Mr. Kadirgamar.

Q. You told us on the last occasion that the Commissioner of Estate Duty wanted you to value these shares?

A. Yes.

Q. You knew what you had to do?

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

A. I was asked to find out the market value of the shares at Mackie's death.

Q. You know it was for the purpose of estate duty?

A. Yes.

Q. Do I understand you to say that it is your firm opinion that a share is worth Rs. 270?

A. Yes.

Q. When you say that a certain share is worth Rs. 270 I take it there are no mental reservations with regard to that?

A. Yes.

10

Q. And also I take it that that figure of Rs. 270 is not qualified?

A. Yes.

Q. In your opinion a share is worth Rs. 270, nothing more and nothing less?

A. Yes.

Q. This document R11 that you have produced, you have not signed?

A. I have not signed it.

Q. I take it that you are prepared to sign it?

A. Yes.

20

Q. As a Chartered Accountant and a qualified Auditor you swear to its accuracy?

A. Yes.

Q. You told us that you returned to the Island in January, 1939?

A. Yes.

Q. As you returned to Ceylon you went into Government Service?

A. Somewhere about six months after I went into Government Service. About the end of the year 1939 I entered Government Service.

30

Q. For a period of one year you practised as a Chartered Accountant?

A. Yes.

After a year's practice I joined Government Service because my parents wanted me to do so and not because I thought it was the best. I entered the Department of Commerce and Industries and

was there till March, 1945. I was in that department right along and my work there was to look after the accounts of the Government industrial factories. The industrial factories of the Government were run on commercial lines. That is why I was taken on.

No. 11  
Respondent's  
evidence,  
K. Satchitha  
nanda,  
Cross-  
examination  
—contd.

Q. Did you acquire any practical experience or acquaintance with business and commerce outside Government Service?

A. No.

Q. There is no question of your gathering any kind of acquaintance with shares and valuation of shares at that time?

10 A. Yes.

The Commissioner of Estate Duty asked me to value these shares. I cannot say when. I must refer to my diary and say. It must have been clearly after March, 1945. I formed my business in April, 1945.

20 The Commissioner of Estate Duty asked me to value these shares in October, 1946, after I had been established for about 18 months. I was asked to do so by telephone. Mr. Wickremasinghe spoke to me on the telephone and asked me whether I could see him in regard to this matter. I saw him only once for the purpose of seeing whether I could do the job. When I saw him I told him that I was willing to undertake the valuation after he placed the facts before me. He told me what the valuation was. He did not give me the figure. After agreeing to do the job I telephoned and told him I would like to have 5 years' Balance Sheets. I cannot say whether it was sent or I went and got it. I go there practically every day on tax work.

Q. Whether you went for it or you sent for it you got the 5 years' Balance Sheets?

A. Yes.

30 Q. You asked for these 5 years' Balance Sheets?

A. I also asked for the Profit and Loss Accounts of the undertaking for the last 5 years. I was told that they had a statement of the profits and losses from 1922. I referred to the Articles and Memorandum of Association also. I was given that. These were given at various stages.

Q. Which of these did you get first?

A. It is difficult to say which of these I got first. I got the Articles and Memorandum of Association subsequently.

Q. Anything else?

40 A. I did not get anything else.

Q. You had no personal knowledge at that time of the nature or type of business Mackie's were doing?



No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda.  
Cross-  
examination  
—contd.

A. I had no contact with Mackie's but I know what they were doing.

Q. You did not know Mr. Mackie or any of his sons?

A. I did not know them as I mentioned earlier.

Q. You knew that Mackie's were rubber dealers?

A. Yes.

Q. Apart from that you did not know how they did business?

A. I knew they were one of the biggest exporters of rubber and also that they had one of the biggest stores in the Island.

Q. Did you know whether those stores existed at the time of Mackie's death. 10

A. I did not know.

Q. You assumed that those stores were in existence during Mr. Mackie's lifetime?

A. Yes.

Q. You knew that one of the most spectacular fires in Colombo took place in Mackie's stores in 1943?

A. I cannot remember that. If there was a fire in 1943 the stores may have been repaired and rebuilt by 1946.

Q. You must have known that the last audited Balance Sheet of that company prior to Mackie's death was at 31st December, 1939? A. Yes. 20

Q. Was a copy of that Balance Sheet given to you.

A. Yes.

Q. Did you know that in October, 1946, the Assessor had made a valuation of the shares?

A. I knew they had made a valuation and I knew that the Commissioner of Income Tax had made a valuation.

Q. You knew that Mr. L. G. Gunasekera had made that valuation? 30

A. I did not find out the parties. I only knew the department had made a valuation and the case was as a result of that.

Q. You knew that someone in the department had made a valuation?

A. Yes.

Q. You knew also that an appeal had been preferred to the Commissioner?

A. Yes. Because the matter had come to Courts it must have been after that.

Q. You knew that the matter had come to Court?

A. It was after that that I was retained.

Q. You knew that Mr. Gunasekera had valued the shares at Rs. 300?

A. I did not want to ask the valuation because I did not want to be prejudiced by them.

10 Q. You knew that this matter was in Court and you saw a copy of the petition of appeal.

A. I think so.

Q. In that petition of appeal there are set out Mr. Gunasekera's valuation and the Commissioner's valuation?

A. I knew that the Assessor's valuation was at Rs. 300. I did not know Mr. Gunasekera had anything to do with it.

Q. You knew that the Commissioner had reduced it to Rs. 300?

A. Yes.

Q. You also knew that the executors had a valuation by Mr. F. B. Lander?

20 A. Yes.

Q. And you knew that Mr. Lander had valued at 40.168?

A. Yes.

Q. You had also seen Mr. Lander's valuation?

A. No. I was not interested in it.

Q. Did you know that Mr. Lander had submitted some documents to the Commissioner or the Assessor?

A. At that time, no. Now I know it.

Q. When did you inform the Commissioner of Estate Duty that in your opinion the shares were worth Rs. 270?

30 A. It was before the end of October, 1946.

Q. Did you submit your report in writing?

A. I submitted them in typed sheets.

Q. That is, copies of R11, unsigned and uncertified?

A. Yes, because I was going to give evidence in Court.

No. 11  
Respondent's  
evidence.  
K. Satchitha-  
nanda,  
Cross-  
examination  
—*contd.*

Q. You did not write a report to the Commissioner explaining the documents?

A. I gave the documents.

Q. In the absence of an explanation from you this document would not have been very clear to the Commissioner?

A. No.

Q. Did you at any time explain to the Commissioner?

A. Up to date I have not discussed the matter with the Commissioner.

Q. With any other officer of the department?

10

A. I discussed the matter with Mr. Wickremasinghe.

Q. That is for the purpose of the trial?

A. Yes.

When I gave Mr. Wickremasinghe the document I gave him the method of valuation.

Q. Are you called upon by the department to make valuations?

A. This was the first time.

Q. Since then you were asked to make valuations in regard to Mr. G. L. Lyon's estate?

A. Yes.

20

Q. That is all?

A. Yes.

Q. You have never audited the accounts of any rubber companies?

A. I have.

Q. Since when?

A. After we started practice we have.

Q. By the time you had prepared R11 how many audits had you done?

A. Less than half a dozen.

30

Q. You have not audited the accounts of any rubber dealers?

A. No.

Q. You have not as a matter of fact since then audited the accounts of any rubber dealers?

A. Yes.

I have audited the accounts of partnerships that export rubber. I have done about four. One of these is a limited liability company. The others are partnerships.

Q. They are people who are engaged in buying rubber on orders placed on them by consumers abroad?

A. Yes.

Q. All of them?

A. Yes.

Q. In other words they are people who do not invest their own capital or risk their own capital in their business. Capital is provided for them by consumers abroad?

A. Yes.

10 Q. They are people who secure a commission in the business?

A. Yes.

Q. They are people who do not risk anything in the market?

A. Yes.

Q. Did you know in October, 1946, Mackie & Co. were people who bought rubber on their own account.

A. Yes.

Q. You do not know in what quantity they bought?

A. I knew that they traded in large quantities but the actual quantities I did not know.

20 Q. When Mr. L. P. Hayward gave evidence, you were in court?

A. I do not think I was in court all the time.

Q. What about Mr. Cuming?

A. I was present only when Mr. Lander gave evidence.

Q. You will agree that Mr. Hayward is a gentleman with a very intimate knowledge of rubber business in Ceylon?

A. I do not know that.

Q. You never heard of Mr. Hayward?

A. No.

30 Q. What about Mr. Cuming. You never heard that he was a broker?

A. No.

Q. You do not know that Mr. Cuming was a partner of E. John Thomson White & Co.?

A. We have no dealings with them.

Q. You will agree that that firm handles a very large business in Ceylon?

A. I have heard so.

Q. Did you hear of Mr. A. E. Williams of Mackie's?

A. I did not hear of him in 1946.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. In October, 1946, you do not know who was conducting the business at the time of Mr. Mackie's death?

A. Not at the time of Mr. Mackie's death. In 1946 the business had changed hands and before I accepted the case I had a discussion with the present owners. I think I spoke to Mr. Terence de Soysa who is there now.

Q. He does not own the company?

A. No.

Q. You know that the Mackie & Company of 1946 was an entirely re-constituted company?

10

A. Yes.

Q. You did not know in October, 1946, that Mr. Williams was still at Mackie's?

A. Yes, I did not know.

Q. You know now that he was the chief executive in 1946?

A. I was told so.

Q. You knew Mr. de Soysa in 1946?

A. Yes.

Q. He had just come into the rubber business?

A. Yes.

20

Q. Hardly a few months?

A. Yes.

Q. Did you know that profits in a rubber merchant's business of the type of Mackie's are to be made entirely on the fluctuations in the prices of rubber?

A. Yes.

Q. Was that prominent in your mind?

A. Yes.

Q. You also know that fluctuations in the price of rubber make what are known as recurrent slumps and booms?

30

A. Yes.

Q. Did you at any time call for a statement of prices of rubber for any period in Ceylon?

A. No.

Q. So that you did not know between what limits the prices of rubber fluctuated in 1942?

A. Yes, I did not know.

Q. Nor between 1940 and 1942?

A. No, I did not know.

Q. You have seen the document P10 in this case?

40

A. I have never seen it before.

Q. For the first time you are seeing the highest and lowest and average prices of rubber from 1922 to 1940.

A. Yes.

Q. Do you agree that there is a very steep fluctuation in the price of rubber year by year?

A. Yes.

Q. As a matter of fact steeper than your preconceived notion of the fluctuation in prices?

A. I do not say that.

10 Q. The fluctuations were steeper than your preconceived notions?

A. I am unable to say that. I know there were longer fluctuations.

Q. You are familiar with the Estate Duty Ordinance?

A. Fairly.

Q. Can you tell me from memory what section in the Ordinance deals with the valuation of property?

A. I cannot say anything from memory.

20 Q. In 1940 the Estate Duty Ordinance required the valuation of property with regard to the open market?

A. Yes.

Q. At the time you made your valuation in October, 1946, did you know that the Estate Duty Ordinance had been amended?

A. Yes.

Q. Can you say when it was amended?

A. A couple of years before that. I cannot say the exact date.

Q. The amendment I am referring to is the amendment with regard to the valuation of shares?

A. I am not aware when it was amended.

30 Q. In 1946 too you were not aware of the nature of the amendment?

A. Yes. I was not aware.

Q. The amendment is to be found in Ordinance No. 8 of 1941?

A. Yes.

Q. Section 20 of the Estate Duty Ordinance has been amended by the addition of a sub-section?

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

A. I do not know it.

Q. You had not familiarized yourself with the contents of the amending Ordinance, No. 8 of 1941?

A. No.

Q. Then you were seeking to apply section 20 of the Estate Duty Ordinance? That is the section which says you must ascertain the market value?

A. Yes.

Q. You were trying to ascertain the market value?

A. Yes.

Q. Do you know that at the time of your conversation with Mr. Wickremesinghe the Crown was contending that these shares ought to be valued in accordance with the provisions of Ordinance No. 8 of 1941?

A. No. I was asked to give a fair value.

Q. You were not told to make any valuation in accordance with the provisions of Ordinance No. 8 of 1941?

A. I was not asked to make a valuation in accordance with the provisions of any Ordinance.

Q. In view of your ignorance of the provisions of the amending Ordinance No. 8 of 1941, you are unable to say whether that Ordinance prescribes a basis of valuation which is known as the total assets basis?

A. My valuation is what a buyer will pay for shares.

(Question repeated.)

A. I am unable to say that.

Q. You will admit that rubber is a very sensitive product as far as prices are concerned?

A. It is not a stable one as far as prices are concerned. I do not know what is meant by sensitive.

Q. You will agree with me that it is less stable than any other produce with which you are familiar?

A. Of the Ceylon products it is.

Q. What are the other products with which you are familiar?

A. Tea. And cocoa only recently.

Q. How recently?

A. For the last one year I have been familiarizing myself with the prices.

10

20

30

Q. You know nothing of coconut ?

A. I know coconut prices too.

Q. Rubber is a munition of war ?

A. Yes.

Q. Rubber is a product which is bought up heavily when there is a prospect of war ?

A. Yes.

Q. If rubber is bought up heavily there will naturally be an increase in the selling price of rubber ?

10 A. When the demand is greater prices rise.

Q. So that a rubber dealer will be selling rubber at much higher prices than usual when there is a prospect of war ?

A. Yes.

Q. The price of rubber will go up not merely when there are hostilities but when there is preparation for war ?

A. Yes.

Q. You will admit that war was in the air in 1938 ?

A. Yes.

Q. In 1937 ?

20 A. I could not tell that.

Q. Germany was not known to be arming ?

A. In 1938 it was obvious.

Q. In 1937 ?

A. It was not so obvious as 1938.

Q. You were a professional student in England in 1938 and you would as such acquaint yourself with current affairs. In your opinion were there any preparations for war in 1937 ?

A. In 1938.

30 Q. You will agree that in 1937 war preparations had been intensified ?

A. I did not have that feeling then.

Q. Up till the outbreak of hostilities in 1939 ?

A. Yes.

Q. So that a rubber dealer's business will boom in war time ?

A. Yes.



No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. That will be reflected by increased profits?

A. Yes.

Q. You will agree that Mackie's must have made considerable profits as a result of war preparations in 1938 and 1939?

A. Yes.

Q. So that as far as Mackie's business and the profits are concerned it is fair to describe the 1938 and 1939 profits as war profits?

A. Not completely as war profits. But the greater profits were because of the preparations for war.

Q. You will agree that in the year 1940 the profits were war profits? 10

A. Yes.

Q. War broke out in 1939?

A. Yes.

Q. So that a large proportion of the profits of 1939 can be described as war profits?

A. The latter part of 1939 and 1940.

Q. The Munich crisis had taken place when?

A. October or November, 1938.

Q. During the Munich crisis war preparations were being intensified in England and Europe? 20

A. Yes.

Q. Then Czechoslovakia was invaded in March, 1939?

A. Yes.

Q. War preparations were intensified still more in England and all over Europe?

A. Yes.

Q. The intensification of war preparations is reflected in the greater sale of rubber and especially in Mackie's as far as Ceylon is concerned? 30

A. Yes.

Q. In your document R11 you demonstrate as the weighted average principle?

A. Yes.

Q. You will agree that as far as the valuation of shares are concerned there are many methods or modes of valuation?

A. There are.

Q. This weighted average principle is just another method or mode?

A. Yes.

Q. You will also agree with me that the various methods or modes of valuation of shares are likely to produce different results?

A. Yes.

Q. In fact you will agree that if the same set of figures are subjected to treatment according to the different methods of valuation the results would be different?

10 A. Yes.

Q. Did you know the basis of valuation of the Assessor?

A. No. I did not want to ask it.

Q. Were you asked to apply any particular method?

A. No.

Q. Why then did you select the weighted method?

A. Because that is the only method which gives greater weight to the profits of the latter years. Because the profits of the latter years will give a truer record of what the future profits are going to be like.

20 Q. Having studied the documents you had decided that it was necessary to give greater weightage to the profits of the latter years?

A. Yes.

Q. You had made that decision having read the Balance Sheets?

A. Balance Sheets and the profits and losses right throughout.

Q. By profits of the latter years what years do you refer to?

A. When we are asked the value at a certain date the profits of the nearer year will give a truer picture.

30 Q. Which of the years do you describe as the latter years?

A. The last five years I took and the latest will be the fifth year.

Q. Would you describe 1935 as one of the latter years?

A. No.

Q. Would you describe 1936 as one of the latter years?

A. That is the second year.

Q. 1938, 1939 and 1940 are the latter three years?

A. Yes.

Q. You studied P7—the Statement of Profit and Loss?

40 A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. You know that it had been prepared by Mr. Lander?

A. I did not know that. There was nothing in it to show that.

Q. Why did you decide on studying P7 that greater weight should be given to the profits of the years 1937 to 1940?

A. When the profits are not even the better method would be the weightage method. That is according to the authorities I have read. I have read Leake on Commercial Goodwill and Seed on Goodwill.

Q. Goodwill is a Business Asset?

A. Yes.

10

Q. Did you really think that the weightage principle will tell you that in future the business will proceed on the lines it did in the past?

A. When we value a share at a certain date we take it that conditions will not change in the future. We must assume that the conditions at the time of valuing will remain the same.

Q. A paramount point in your basis of valuation is that conditions as at September, 1940, will remain unchanged?

A. Yes.

Q. What were the conditions in September, 1940?

20

A. The war would go on for at least five years and the company would enjoy the same facilities for export as they had on the day of the valuation?

Q. That is all?

A. Yes. Facilities for export as well as the administration staff, &c.

Q. You assumed that the war would go on for five years?

A. The world war was going on at that time.

Q. There was no world war?

A. It was as good as a world war. At that time Britain was fighting against Germany and France.

30

Q. In September, 1940, France was on the war on which side?

A. The war was going on, I cannot say on which side.

Q. In the month of September, 1940, who was in the war?

A. Britain on one side. Germany was there and France was also there.

Q. What about Italy?

A. I cannot remember.

Q. You say France was in the war against whom?

A. I believe on Britain's side. That is my impression now.

Q. That is a mistake you made in 1946. You might have been under that impression?

A. Yes.

Q. You stand corrected now?

A. Yes.

10 Q. You have heard of the Battle of Britain?

A. Yes.

Q. The Battle of Britain was on in September, 1940?

A. Yes.

Q. The Battle of Britain was not over till the end of September, 1940?

A. Yes.

Q. And about 6th September, 1940, the whole world was watching the Royal Air Force and its attempt to stave off the tremendous German attack on Britain?

20 A. Yes.

Q. You know that in September, 1940, the Germans were making terrific attempts to get at Britain?

A. Yes.

Q. You knew that the Royal Air Force was smaller in number than the German Force?

A. Yes.

Q. Every one was in doubt whether the Royal Air Force would withstand the German Air Force?

A. Yes.

30 Q. It was a most critical time?

A. Yes.

Q. Germany was on top?

A. Yes.

Q. America was not in the war?

A. Not in the war.

No. 11.  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

Q. Russia was not in the war in September, 1946?

A. Yes.

Q. Did you assume that that war would last five years?

A. America was there always ready. That is why I thought the war would go on for five years.

Q. How did you know that America was ready?

A. It was obvious world knowledge.

Q. In point of fact America came into the war in December, 1941?

A. Yes.

10

Q. That was after aggression by Japan?

A. Yes.

Q. Did you know the rate of British shipping losses?

A. They were very heavy.

Q. You admit that there was hardly any other shipping available to take rubber from Ceylon to any other country?

A. Shipping space was very difficult to obtain.

Q. Did you know that if the Battle of Britain had been lost and the Royal Air Force had been beaten that an invasion of Britain by Germany was likely?

20

A. It was likely.

Q. So that there was every prospect of the Germans invading Britain before America came into the war?

A. There was a possibility.

Q. Did you then really think that that state of affairs would continue for five years?

A. The German invasion of Britain would not have stopped the war.

Q. But German invasion would immediately have prevented any Englishman from buying any shares in Mackie's with English capital?

30

A. Why restrict it to Englishmen. There were Canadians, Australians and Americans to buy them.

Q. You will admit that if Britain had lost the Battle of Britain, it would have been impossible for any Englishman to buy with English capital shares in Mackie's?

A. I do not admit that. There were Englishmen in the East already who had vested interests and capital in the East who could have invested in Mackie's shares. The Englishmen who knew the trade even if Britain was invaded would have bought shares in Mackie's.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

Q. Where would there have been a buyer for exported rubber?

A. America would have required rubber. Russia would have required rubber.

Q. How was the rubber to have been taken there?

10 A. America would have furnished transport for the rubber.

Q. You will admit that Russia has not got a carrying fleet?

A. Russia has no carrying fleet. I do not think they had. But America had.

Q. You knew that in spite of American vessels shipping space was very difficult?

A. Yes.

Q. If Britain was invaded the shipping space would have been still more difficult?

A. But America would have gone all out. It was a world war.

20 Q. In September, 1940, the East was free of war?

A. Yes.

Q. As a matter of fact the carrying fleet of Japan never entered into your calculations?

A. All the nations of the world entered into my calculations.

Q. Do you know what the carrying fleet of the whole world was?

A. No.

Q. Do you know how many countries had carrying fleets?

A. America and Japan. Russia had a negligible fleet. Japan entered the war in December, 1941.

30 It is admitted that France entered the war in September, 1939, with Britain. France went out of the war in June, 1940. Pearl Harbour was in December, 1941. France signed the Armistice with Germany in June, 1940. Munich was in September, 1939. The invasion of Czechoslovakia was in March, 1939. In early 1938 there was the invasion of Austria. Japan entered the war on December 7, 1941. Russia entered the war in June, 1941. America actually entered the war on December 7, 1941, after Pearl

No. 11  
Respondent's  
evidence,  
K. Satohitha-  
nanda,  
Cross-  
examination  
—contd.

Harbour which was on 7th December, 1941. Battle of Britain on during the whole of September, 1940. Italy joined in the war at the end of May, 1940, and went out of it in 1943).

Q. You stated in the course of your examination-in-chief that we must know what a man who is going to buy these shares would pay for them?

A. Yes.

Q. Is it your contention that profits of the past will give you an indication of the future profits?

A. The profits of the past are the only indication of the profits of the future. 10

Q. You do not say that because there have been profits in the past there will be profits in the future?

A. That is the only thing by which we can measure the future, I say so as a man who values.

Q. You will put yourself in the position of buyer?

A. Yes.

Q. You do not consider yourself as some kind of detached third person?

A. I am a detached third person who values the value of these shares for a person who wants to buy. 20

Q. So that you do not put yourself in the position of a buyer?

A. Yes, I don't.

Q. Do you assure me that the consideration which might have weighed in the mind of a prospective buyer did not weigh in your mind when you came to value these shares as at 6th September, 1940?

A. When I valued the shares I took into consideration what a prospective buyer will pay to a prospective seller for these shares.

Q. You are not asked to take into consideration what a buyer would pay? 30

A. Market value means what the buyer pays to the seller.

Q. A buyer before he decides on a price considers various matters?

A. Yes.

Q. Would you have taken into consideration the same factors?

A. In valuing the shares we take into consideration everything.

Q. So that your answer to my question is " Yes ".

A. Yes. Not only a prospective buyer but a prospective prudent buyer.

Q. You would not be concerned with what is in the mind of a gambling buyer?

A. I also would not take into consideration what will occur in the mind of a gambling buyer.

Q. You will admit that a prudent buyer will be concerned about profits in the future?

10 A. Yes.

Q. A prudent buyer will not take it for granted that there will be profits in the future because there were profits in the past?

A. He will take it for granted conditions remaining the same.

Q. Surely a prudent buyer would call for a Statement of Profits and Losses in the nature of P7.

A. That is from 1922.

Q. Supposing Mackie died in 1926 this company had been making profits from 1922 to 1926. It had been making Rs. 3,441,359 profits.

20 A. Yes.

Q. Total profits for those five years?

A. Yes.

Q. According to you a prudent purchaser would have assumed that profits would ensue in the following period?

A. Yes.

Q. Supposing a prudent purchaser bought these shares in 1926 he would have found from 1927 to 1932 that he would have lost all his capital?

A. He would have lost.

30 Q. From 1933 to 1940 the history of this company shows six years' profits and two years' losses.

A. Yes.

Q. Take the prudent purchaser at September, 1940. This prudent purchaser will see a run of profit from 1922 to 1926. He will see a run of loss from 1927 to 1932?

A. Yes.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
further  
Cross-  
examination  
—contd.



No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

Q. He will imagine to himself that the period 1922 to 1926 is a profit cycle and 1927 to 1932 is a slump cycle?

A. Yes.

Q. Don't you think that a prudent buyer will tell himself that this is a shaky business?

A. No. Seeing the profits and losses from the time the company was formed.

Q. Would not this prudent buyer tell himself that this is an erratic period?

A. He cannot be a prudent buyer if he does not calculate what return he can expect on his money. 10

Q. This prudent buyer would in all probability be advised by somebody who knew something about the rubber market?

A. Or he would have got the advice of experts.

Q. And the experts who would be advising him would be experts in rubber business?

A. Yes.

Q. They would be familiar with the prices of rubber?

A. Yes.

Q. Those experts will also tell this prudent buyer that a fluctuation of one cent on the price of a pound of rubber would involve him in a loss or gain of Rs. 10,000 on a million pounds of rubber. 20

A. Yes. Loss or gain.

Q. If this prudent buyer was a man who had no experience of rubber business or the rubber market it is essential for him to have experts to advise him?

A. Yes.

Q. A fluctuation in the price of rubber would be one of the most important points in the mind of a prudent buyer?

A. Yes. 30

Q. P7 would make it clear to any prospective purchaser that profit and loss cycles are an inevitable outcome in this business from the fluctuation in prices of rubber?

A. Yes, and also it would have made it clear that during the period 1922 to 1940 the concern had made a net profit of Rs. 3,548,088. The original capital was Rs. 1,000,000.

Q. That is money available which would have gone into the pockets of the owners of the shares?

A. If they wanted to declare it as dividends.

- Q. Otherwise?
- A. They would have invested it in the business.
- Q. Out of this Rs. 3,000,000 taxation has to be met?
- A. From 1932 onwards.
- Q. A reserve will have to be created?
- A. Yes.
- Q. Preference Dividends will have to be paid?
- A. Yes.
- Q. Dividends on the Management Shares will have to be paid?
- 10 A. Yes.
- Q. The general working expense of the company will have to be met?
- A. The profit was after allowing all those.
- Q. Do you mean that the profit of Rs. 3,000,000 would have been a fact which would impress him most?
- A. Yes. Although there are trade cycles if the investor wanted to invest his money for sometime he would have seen there would be money in it.
- 20 Q. If he had been advised by experts do you think that this Rs. 3,000,000 shown would have impressed experts too?
- A. That depends on the experts.
- Q. You are unable to say how experts would view this figure of Rs. 3,000,000 profits shown?
- A. Because I am not an expert on rubber, I cannot say how experts on rubber would react. Experts might react definitely.
- Q. But when you said that a prudent buyer will be impressed you were expressing yourself as a layman?
- A. Yes.
- 30 Q. Now, if your weightage principle is applied at the end of 1922 to 1926 cycle the result would be false when compared with the actual position?
- A. Yes.
- Q. If that weightage average principle is applied at the end of 1932 it would be equally false?
- A. I won't say false. The value arrived would not be the same.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

Q. From the years 1940 back to the year 1922 can you select any five consecutive years which would be true when compared with the actual history of the profits of the company?

A. I cannot.

Q. What you imply is that you can pick out five years which are not consecutive and show a result which will tally with the actual profits of the company?

A. I could not understand the question.

(Question repeated.)

A. I cannot choose any five consecutive years the result of which would be reflected in the next year's profits. 10

Q. You have stated that if there is a good business and if the management is good and the circumstances remain unchanged there would be no loss?

A. Yes.

Q. You still hold that view?

A. The situation remaining unchanged there would be no loss.

Q. You will agree that there are a number of businesses which can be described as businesses which do normal trade?

A. Yes. 20

Q. What would you describe as normal trade?

A. Buying and selling goods.

Q. What do you mean by buying and selling?.....

Q. Buying and selling goods the prices of which do not fluctuate very much?

A. Yes.

Q. Or importing goods and selling them in circumstances where there is not much difference in the import prices and the selling prices?

A. Yes. 30

Q. That is what you mean by buying and selling?

A. Yes.

Q. You know that there is a type of business which is called "Dealing forward".

A. Yes.

Q. What is a forward sale?

A. That is putting through a sale even before you actually buy the goods.

Q. Or he sells goods which he actually does not own?

A. Yes.

Q. That is to say, in the first instance, where he sells goods which he had not yet bought he sells at a price which he fixes?

A. Yes.

Q. After fixing the selling price and having committed himself he has got to buy these identical goods at a price less than the price at which he fixed himself?

A. Yes.

10 Q. That is not normal?

A. No. I would not call it abnormal trade. It is a different line of trade altogether.

Q. But it is not normal?

A. No.

Q. Compared to normal trade this kind of business is risky?

A. It is riskier.

Q. Is it very risky?

A. It is a very risky business.

Q. Do you agree it is a very risky business?

20 A. It would be risky depending on the goods sold.

Q. And if the goods sold is rubber?

A. It would be very risky.

Q. Do you hold out your weightage principle as being a fool-proof method of valuation?

A. I do not think any method is fool-proof.

Q. You agree your method is not fool-proof?

A. In my opinion it is the best method I could have adopted in the circumstances.

Q. Your method is not fool-proof?

30 A. No method is fool-proof?

Q. No method is the surest test in all the circumstances?

A. I do not think.

Q. Do you consider yourself an expert?

A. I do not offer myself an expert.

Q. Do you offer yourself today in this Court as an expert?

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination.  
—contd.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

A. If people call me in as an expert, I do the work. But I do not call myself an expert.

Q. Your weightage average principle—does it make any allowance for the contingency of loss?

A. In the number of years I have taken into consideration there were some years where there were losses.

Q. That is the years?

A. 1935 and 1937.

Q. Your figure 270 reflects the contingency of losses?

A. Yes. 10

Q. You also assume the prospects of profits in the future on the scale of 1938, 1939 and 1940 profits?

A. Yes.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Adjourned for lunch.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

No. 71/T. (Special).

25th May, 1949.

Resumed after lunch. 20

K. SATCHITHANANDA. Recalled. Affirmed.

Cross-examined further by Mr. Kadirgamar.

Q. Your principle you explained, was like this: You took the profits for the various years 1935-1940 from the Balance Sheets that you had?

A. Yes.

Q. Have you adjusted these profits by taking for the year 1935-36 one-third of 1935 and two-third of 1936?

A. Yes.

Q. The following year 1936-37 you took one-third of 1936 and two-third of 1937? 30

A. Yes.

Q. And so on down the line?

A. Yes.

Q. Why do you take one-third of one year and two-third of another year?

A. Because Mr. Mackie died in September, 1939, that is at the end of two-third of one year. That is after two-thirds of that year were over.

K. Not because any textbook has suggested that you should take one-third of one year and two-third of another year?

A. No.

Q. Why do you then multiply the result by 1, 2, 3, 4, and 5?

A. The fifth year carries greater weightage. I gave greater weightage to the last year.

Q. When you set out work on R11, you were out to give the greatest weightage to the year 1940?

A. Yes, to the year next to Mr. Mackie's death.

10 Q. In a descending scale of weightage you were weighting the year 1939?

A. Yes.

Q. Your system gives the years 1939, 1938, 1937, 1936 and 1935 weightage in a descending scale?

A. Yes.

Q. You refer to textbooks which recommended the weightage method?

A. Yes.

20 Q. Does any textbook tell you how the weightage should be done; by what figures to multiply and what figures to divide?

A. No.

30 The notes given to the final year Chartered Accountants which are based on textbooks, work out examples and show how the weightage method is to be worked. I have these notes, Messrs. Foulks, Lynch & Company, Limited, are the tutors to the Institute of Chartered Accountants and they are recognized experts. They have written a number of textbooks. These books are published by the company. They are tutors. It is not recognized by the Department of Education. It is an institute engaged in coaching students for examinations. The members of that company publish. They are known as the tutorial staff of the Institute. They are recognized by the Institute of Chartered Accountants to lecture to the students. The governing body of the Institute of Chartered Accountants is a Council of the Institute of Chartered Accountants. That is not the teaching body.

Q. What is the recognized teaching institute for Chartered Accountants?

40 A. There is no teaching institute as such. They have to work in a firm of Chartered Accountants and serve their period of training and sit for the examination.

A course of lectures is optional and is arranged by the Society of Accountants. I was taught by examples.

Q. What are the examples that were given to you as a student?

A. One of those examples gives the profits of A and B companies. The profits of the A company increased year by year. The profits were Rs. 42,000 for the first year, Rs. 45,000 for the second

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

year, and Rs. 48,000 for the third year. The profits of the B company decreased year by year. The reverse order can be taken; Rs. 48,000 for the first year, Rs. 45,000 for the second year, and Rs. 42,000 for the third year. Under the weightage principle, giving greater weightage to the later years, the average profits of the A company will be Rs. 46,000. The profits of the B company will be much less than this.

Q. That illustration was given to you of two companies, one with the ascending scale and the other having the descending scale of profits? 10

A. Yes.

Q. The weightage principle was applied where the amalgamation of two companies were concerned?

A. No. The two examples were given to be compared and to see which was better and to see how it works.

Q. In the illustration you were not told that one company is dealing with a speculative trade?

A. No.

Q. It only shows how weightage applies?

A. Yes. 20

Q. The illustration is only to show the principle of weightage and how it is to be worked?

A. The illustration does not show that, but the textbooks show it well.

The textbooks are Leake, Seed and Adamson.

Q. You could have weighted the Mackie figures by multiplying 1935-36  $\times$  1 and 1936-37  $\times$  2, and you could have multiplied in the reverse order?

A. No. I could not multiply that way because I did not adopt the reverse order in this firm because the profits were improving. 30

Q. You were out to achieve a result which will emphasize the profits of 1939-40?

A. I was weighting to give greater effect of weightage for 1939-40.

Q. Seed is one of your authorities on weightage?

A. Yes.

Q. The entirety of Seed's work is a discussion of goodwill in business?

A. Yes.

In my evidence I have referred to page 119 of Seed. 40

(Passage at page 119 read to witness.) That is correct.

That is the only preference in Seed to the weightage method.

(The witness is referred to page 101 of Seed which commences with the chapter "The Method of Valuing Goodwill".)

In the succeeding pages Seed discusses one of the methods of valuing goodwill. He discusses in detail. From pages 101 to 119 Seed discusses one of the methods of valuing goodwill. I ascertained the profits, fixed a determined rate and then capitalized making an allowance for various other factors. From that result is deducted the value of tangible assets.

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda.  
Cross-  
examination  
—contd.

Q. What is left over?

A. The balance is the value of the goodwill.

10 Q. Seed also refers to an alternative method of valuing goodwill?

A. It is not an alternative method. It is a method of arriving at the average profits. After that we take the percentage and then capitalize.

Q. Why does Seed say the weightage method is sometimes used?

A. In recent years to arrive at the value of the assets of a company we concentrate on the profit and loss of the company.

Q. You say now that your weighted average principle merely enables you to ascertain future maintainable profits?

20 A. Yes. I use the weightage method to arrive at the average profits. After that I capitalize it.

I capitalized it at 16 per cent. and got the capitalized value of the profits.

Q. The capitalized value of the profits is not what you expect this company to maintain?

A. I got the average profits, from that I deducted the amount due to the preference shareholders. Then I put a small amount to the reserve. The balance amount is for the management shareholders. Then I capitalized that.

30 Q. After you weighted, you arrived at a certain figure?

A. Yes.

Then I capitalized it at 16 per cent. I weighted my figures and arrived at Rs. 4,000,000 odd. I divided it by 16 and arrived at the result. That is the weighted average.

Q. Is that not the profit that the company expected to get annually?

A. Yes.

That is the future maintainable profit.

40 Q. Your principle, the weightage method, does not reflect the tangible assets?

A. No.



No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination  
—contd.

The tangible assets of the company have been ignored completely. This figure of Rs. 270 is the value of a Management Share, and it does not include anything for the tangible assets of the company.

*Q.* You will admit that Mr. Lander's method set out in P5 gives us the value of the tangible assets of the company?

*A.* Yes.

*Q.* If a buyer buys a Management Share for Rs. 270 what does he buy?

*A.* When he buys a Management Share he will expect a return on the share he buys and a return on the money he invests. When he buys a share he gets a scrip. That scrip entitles him to certain shares in the company. 10

*Q.* What is a share in a company?

*A.* A share in the company whatever value it has.

If the share capital of a company is Rs. 20,000 divided into 2,000 shares of Rs. 10 each, each one share represents Rs. 10 of the assets of the company.

*Q.* This Rs. 270, according to you, represents Rs. 270 of the assets of the company? 20

*A.* No.

The nominal value will be only Rs. 2.

*Q.* Out of this Rs. 270, does any amount of it represent the assets of the company?

*A.* No.

*Q.* In your definition of a share you said that when a man buys a Rs. 10 share in a company for Rs. 10, then he is buying Rs. 10 worth of assets of the company?

*A.* He does not buy Rs. 10 worth of assets. He buys a share in the company. 30

*Q.* You are unable to define a share?

*A.* No. When you buy a share in a company you do not become entitled to a share of the assets of the company.

*Q.* Will you define, as briefly as possible, what your conception of a share is in a limited liability company?

*A.* A share in a limited liability company is what a man is entitled to for what he has contributed to the company.

If a shareholder has contributed Rs. 10, he is entitled to Rs. 10 on the capital of the company and the return on the Rs. 10.

*Q.* Do you agree that Rs. 270 represents any part of the capital of the company? 40

*A.* Yes.

The buyer will get a return on the money he has invested.

I called for and examined the Memorandum and Articles of Association of the company. I called for them because I wanted to check them up. I wanted to see what the different rights were that were conferred on the different kinds of shares. I found that preference shareholders were entitled to 8 per cent. dividends, and in regard to Management Shares, the persons appointed to the Board should be holders of Management Shares. As far as my recollection goes, I examined these Articles in 1946. My examination of the Articles was not for the purpose of this case. No special rights are conferred on the holders of Management Shares. I accept that. Each shareholder, whether Preference or Management, had one vote. I only wanted to get an idea of the Articles. I wanted to make sure whether there were any special restrictions with regard to the purchasing of shares. If there were any special restrictions with regard to the transfer of Management Shares, I might have allowed for it in my valuation. I cannot remember whether I found anything in the Articles of Association with regard to these Management Shares.

(Shown P1.)

20 Q. Do you know that a holder of these entire 5,000 Management Shares was liable to have these shares compulsorily taken away from him?

A. I do not know that.

I read the Articles for the purpose of my valuation.

(Witness is referred to Article 46.)

Article 46 says if 9/10 of the holders of the capital of the company so desired they could have compulsorily acquired the Management Shares.

30 Q. Have you seen any Article like this in any other company?

A. No.

Q. This is a very unusual Article?

A. Yes.

Q. You agree that there was a danger to a buyer of the 5,000 Management Shares of these shares being taken away from him compulsorily?

A. Yes.

I made no allowance for that.

(Witness is referred to Articles 38 and 41.)

40 These Articles deal with the transfer of shares. If a man buys these 5,000 Management Shares, he can get himself registered as a shareholder of the company provided the Directors agree. Thereafter if he wants to sell the 5,000 Management Shares, he must offer them to the other members of the company, and if the prospective buyer and the company are unable to reach an agree-

No. 11  
Respondent's  
evidence,  
K. Satchitha-  
nanda,  
Cross-  
examination.  
—contd.

ment with regard to the value to be placed on the shares, the value placed by the auditors must be accepted. We have that Article in almost all private companies. The auditors at that time were Ford, Rhodes, Thornton & Co. They are still the auditors.

(Shown Articles 83 and 133.)

Q. The entire Board of Directors may be composed of preference shareholders?

A. Yes.

Q. If the preference shareholders decide not to pay dividends, their decision is final?

10

A. Yes.

Q. So that a person buying the 5,000 Management Shares at your figures will not get a dividend?

A. A person may buy the 5,000 Management Shares and still not get a dividend, if the preference shareholders decide not to declare a dividend.

That person would have to buy Preference Shares also. That is a matter to which a buyer would give very serious consideration.

Q. Did you make any allowance for that?

A. No, because he would have thought of buying Preference Shares also. 20

Mr. Mackie had 9,201 Preference Shares in the company. You cannot buy Management Shares in the open market. The buyer of Management Shares will buy these shares at Rs. 270, only if he is able to buy Preference Shares.

Q. How much of Preference Shares must he buy to have a controlling vote?

A. He must have a total of 12,401 shares at least.

Mackie had 9,201 Preference Shares. A prospective buyer would have had to buy more than 7,400 Preference Shares. The only Preference Shares available were Mackie's shares. That is not a qualification, it is a condition. The purchase of these 7,000 odd Preference Shares is a condition on the value which I placed on Management Shares. My valuation was not based on any mental reservations. I valued without any consideration for conditions. 30

Q. So that a likely buyer of Management Shares should also be on the lookout for a large number of Preference Shares?

A. Yes.

Q. The purchaser will then go for the Preference Shares or pay more for the Preference Shares at the expense of the Management Shares? 40

A. He will go for both, but I cannot say whether he would pay more for Preference Shares.

Q. Can you say how much money the prospective purchaser would have to put in for 5,000 Management Shares and for 7,200 Preference Shares?

A. I have not worked out the market value of Preference Shares. (The witness is given the value of a Preference Share, namely, Rs. 87.60.)

Q. How much will a buyer of Management Shares have to pay for 7,200 Preference Shares?

A. Rs. 600,000.

10 He will also have to pay Rs. 1,349,875 for Management Shares. To make the 5,000 Management Shares worth while in his hands, he will have to put out almost 20 lakhs of rupees.

I did not work out the value of the tangible assets of this company. I will accept Mr. Lander's valuation of Rs. 203,000, at the time of Mr. Mackie's death.

(Witness referred to Article 54 of the Articles.)

This is the first time I read this Article.

Q. According to that Article, if a buyer of these 5,000 Management Shares, say on 6th September, died shortly afterwards, the Board of Directors can call upon his executors or administrators to transfer these shares to a person selected by the Board and at a valuation to be fixed by the auditors?

A. Yes.

Q. If a man bought these 5,000 Management Shares at your figure and paid Rs. 1,349,875, and at the same time paid 6 lakhs for the Preference Shares and died shortly afterwards, his estate would get only Rs. 40 per Management Share, according to Mr. Lander's valuation?

A. Yes.

30 I did not take that into account, and I made no allowance for it. I never had a copy of Leake. I never went through Leake. I went through Seed and Adamson. I referred to Leake occasionally.

I have the Balance Sheet of 1936.

Q. Any person looking at the 1936 Balance Sheet, would he be interested to know what happened prior to the date of the Balance Sheet?

A. Yes.

40 The 1936 Balance Sheet discloses a liability in respect of Preference Dividends amounting to some 5 lakhs and a debit on Profit and Loss Account of  $2\frac{1}{2}$  lakhs. In September, 1940, there was income tax to be paid. Any buyer of Management Shares was subject to the payment of income tax. The tax liability would have influenced the mind of the buyer. If I was buying, one of the considerations would have been the incidence of taxation. The

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

income tax rates prevailing in respect of resident individuals in 1940 were  $7\frac{1}{2}$  per cent. on the first 6,000, 15 per cent. on the next 20,000, and 22 per cent. on the remaining amount.

*Q.* The effect of paying the money that you suggested was a fair value for Mackie's Management Shares would be, a buyer would thereafter have to pay income tax at the rate of  $22\frac{1}{2}$  per cent. on the distributed income of these shares?

*A.* On the dividends to be received.

*Q.* So that the buyer would be left with  $77\frac{1}{2}$  per cent. of the expected income? 10

*A.* These profits are arrived at after the payment of tax.  
(Shown P7 and R11.)

*Q.* P7, prepared by Mr. Lander, shows for the year 1935, a loss of Rs. 281,901? *A.* Yes.

*Q.* You have adopted that figure for the purpose of your valuation?

*A.* I have taken one-third of that.

For the year 1936 in P7 there is a profit of Rs. 97,392. I have shown that against 1936 in R11.

*Q.* That figure of yours Rs. 97,392 is what? 20

*A.* There was no tax payable on that figure. A loss was brought forward from the previous year. Section 13 entitles one to carry forward losses. In 1937 in P7 there is a loss of Rs. 40,690. I have taken that figure as a loss for 1937 in R11. For 1938 in P7 there is a profit of Rs. 149,846. In 1938 I showed in R11 the profits as Rs. 131,186.

*Q.* What is the difference?

*A.* Tax; no, loss.

*Q.* How much is the difference?

*A.* Rs. 18,660. 30

*Q.* Please explain the difference?

*A.* The difference of Rs. 18,660, I think, is income tax at 15 per cent. on Rs. 149,846. That is income tax on the balance after allowing for a loss brought forward for the year 1937.

*Q.* What is it now?

*A.* I think it is tax.

*Q.* What is the percentage of tax in 1938?

*A.* Twelve per cent.

Q. Apply 12 per cent. to the figure in 1938?

A. It comes to about 17,981.

Q. You have allowed in your figures a difference of Rs. 18,660. How do you account for that?

A. I am unable to account for that.

Q. Why did you apply 12 per cent. tax on the profits for 1938?

A. It must have been the rate in force.

Q. There was a loss in 1935 of Rs. 281,907. Rs. 281,907 less Rs. 97,392, leaves a balance of Rs. 184,515?

10 A. That is correct.

That amount of Rs. 184,515 loss can be carried to the years 1937 and 1938. In the year 1937 there was a loss of Rs. 40,690. So that, according to the Income Tax Ordinance, the total loss that could be carried forward is Rs. 225,205, and that could be carried forward as against 1938 profits and against the 1939 profits. Rs. 184,515 can be carried forward to the year 1938, so that no tax would be due in respect of 1938.

Q. Your figure of 12 per cent. tax on 1938 profits is wrong?

20 A. My figures shown in R11 are wrong. My figures in regard to the profits on 1938 should be more.

Q. You will admit that your figure for 1939 is also wrong?

A. Yes.

Q. You will agree that the figure that you have shown for 1939, namely, Rs. 669,070 is wrong?

A. Yes.

My figures are wrong.

Q. On the basis of net figures and on the footing of a carry forward of losses as permitted by the Income Tax Ordinance, your figures should have been as follows:—

30 1935—Loss one-third of 281,901? A. Yes.

1938—the proper figure should be Rs. 149,846? A. Yes.

1939—the proper figure should be Rs. 675,548? A. Yes.

Q. That correction will result in increasing the value of the shares. A. Yes.

Q. You will permit me to use the expression “corrected figures”? A. Yes.

Q. On these corrected figures, the value of a share would be well over Rs. 270? A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. Why did you deduct income tax?

A. In valuing any shares you must make provision for income tax out of the profits.

Q. What is shown in P7 is gross profits?

A. Yes, gross in the sense of profit without deduction of tax. Income tax is not an expense necessary for earning an income. Income tax is payable out of the income.

Q. You will agree that income tax is really the Crown's share of profits? A. Yes.

Q. What justification have you got for deducting income tax? 10

A. It is commercial practice.

Q. Do you say that is the law to deduct income tax when you compute the profits of a company?

A. It is law in arriving at the value of shares. It is not the law that income tax should be deducted in arriving at the profits of a company. Nor is it commercial practice to deduct income tax in arriving at the profits of a company.

Q. It is neither the law nor the commercial practice to deduct income tax when arriving at the profits of a trading company. Then why did you take off income tax from these figures? 20

A. I was valuing the shares of a company. In arriving at the value of the shares you must make provision for income tax and reserve, and instead of deducting it below, I have deducted it above. I have adjusted the profits by taking off tax.

Q. Why did you deduct when adjusting the profits?

A. I had to adjust for valuation purposes. I must adjust it there.

It is not possible to adjust it later.

Q. Do you say that it is not possible for you to adjust it afterwards? 30

A. It is possible.

Q. Would a buyer of Management Shares in 1940 be interested in the rate of income tax paid prior to the purchase?

A. No, not prior. He would be interested in the rate of tax which he would have to pay in the future.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Further hearing on 26. 5. 49.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J. 40

No. 71/T. (Special).

26th May, 1949.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Appearances as on yesterday.

K. SATCHITHANANDA. Recalled. Affirmed.

Cross-examined further by Mr. Kadirgamar.

Q. Have you since yesterday checked up the various discrepancies that I brought to your notice? A. Yes.

Q. Do you agree with me now that I was right and that your figures are wrong?

10 A. No. I say my figures are right. I have given the actual gross profits made; income tax charged by the department and the profits after tax was paid.

Q. Will you give the exact details as to how you got Rs. 131,186 as the profit figure for 1938?

A. The total profits for 1938 is Rs. 149,845. I got that figure Rs. 149,845 from P7. The tax charged by the Income Tax Department is Rs. 18,659. Profits after deducting tax is Rs. 131,186.

Q. You do not know on what amount of profits that tax was charged by the department? A. No.

20 Q. So you do not know whether there was a carry forward of loss into the year 1938? A. No.

Q. You will admit then that in R11 your profit figures are not profit figures ascertained by you? A. No.

Q. In the year 1935 there was a loss of Rs. 281,901? A. Yes.

Q. You agree with me, in view of the provisions of the Income Tax Ordinance, that result can be carried forward into the year 1936.

A. Yes.

Q. And it can be carried forward from 1936 to 1937? A. Yes.

Q. In 1937 there was a loss of Rs. 47,690? A. Yes.

30 Q. You will agree with me that in view of those losses, no tax is payable by this company for the year 1938? A. Yes.

Q. If no tax is payable for 1938, then the profit figure is Rs. 149,845? A. Yes.

Q. You will agree that the figure that you got of Rs. 131,186 as the figure for 1938 from Mr. Wickremasinghe is wrong? A. Yes.



No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. Surely as an Accountant of experience it would have struck you immediately that this figure of Rs. 149,845 is the proper figure for 1938? A. Yes.

Q. It did not strike you?

A. Not that it did not strike me; if the proper adjustments were made the profit that should be taken into account might have been more. I accepted the department's figure, which was less, and adopted it.

Q. You did not do so with the intention of giving any benefit to the executor? A. No. 10

Q. You say now that there might be a benefit? A. Yes.

Q. You will agree with me that the figure of profit taken by the Income Tax Department is not the figure of profit from a commercial point of view? A. Yes.

Q. So that you will agree with me now that really looking at this matter very strictly the figure that should have been used by you for 1938 is Rs. 149,845? A. Yes.

Q. Did you not make a check of your own to find out whether Mr. Wickremasinghe's figures were correct?

A. I checked the figures of Mr. Wickremasinghe. I found that they were wrong, but I accepted his figures and worked out R11. 20

Q. When you ended yesterday you told us that a prospective buyer would be interested in the rate of tax which he would have to pay in the future? A. Yes.

Q. Such a prudent purchaser will anticipate future taxation? A. Yes.

Q. In September, 1940, he will assume that there was a likelihood of an increase of income tax in the future years? A. Yes.

Q. By September, 1940, the question of Excess Profits Duty had been in the air? A. Yes. 30

Q. All business people knew of it? A. Yes.

Q. As a matter of fact a Bill for the levy of Excess Profits Duty had been introduced in the State Council of Ceylon in November, 1939? A. Yes.

Q. That Bill was thrown out in January, 1940? A. Yes.

Q. When that Bill was thrown out all businessmen expected the introduction of Excess Profits Duty at some stage or other?

A. Yes.

Q. They knew that it was coming? A. Yes.

Q. So that, a likely buyer would have known that he would have to pay Excess Profits Duty? A. Yes.

Q. So that he would make an allowance for that? A. Yes.

Q. Did you make any allowance on that account?

A. I made no allowance because the taxation would have been on the profits which would have been in excess of the pre-war years.

Q. Your calculation showed you that the 1940 profits were ascending?

10 A. Yes.

I expected the profits to increase in years to come.

Q. Any profits that increased after 1940 will be payable after 1940? A. Yes.

Q. Why did you not take that into account?

A. Excess Profits Duty would have been taxed on any excess profits over the standard profit.

I took eight months of 1940 into account, I made no allowance for Excess Profits Duty.

20 Q. You are not aware of a single Canadian, Australian or American doing rubber business in Ceylon? A. No.

Q. You are not aware of a single Canadian, Australian or American doing rubber business in India? A. No.

Q. Or anywhere in the East? A. No.

Q. You are not intimate with any Englishman in Ceylon doing rubber business? A. No.

Q. Nor in 1944? A. Yes.

Q. You do not know any Englishman doing rubber business in the East?

A. I have not much dealings with Englishmen.

30 Q. You did not ascertain from any Englishman, Canadian, Australian or American whether he would buy Mackie's shares in Ceylon in 1940? A. No.

Q. Yesterday I put to you Articles 38, 41, 46, 54, 83 and 134 of the Articles of Association of Mackie & Company? A. Yes.

Q. It was only yesterday that you realized for the first time the significance of these Articles? A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. So that in October, 1946, it is quite likely that either you did not read these Articles or you did not appreciate them?

A. I did not go into them in detail because they did not affect my valuation.

Q. You admit now the likelihood of a prospective purchaser or prudent buyer being scared away from purchasing Mackie's shares, both Management and Preference, as a result of these Articles?

A. If he had over one-tenth holdings in the company, he would not be scared away.

Q. He would have had to buy 13,800 Preference Shares? 10

A. Yes.

Q. You admit that no man would buy these Management Shares, unless he was able to buy 7,400 Preference Shares? A. Yes.

Q. So that it is not a simple question of a buyer getting one-tenth of the shares of Mackie?

A. If he gets one-tenth of the shares he would not be scared away.

If you get one Preference Share over the Management Shares he would not be scared away.

Q. If he only buys 5,000 Management Shares he would be in a very insecure position? A. Yes. 20

Q. You will admit, that, according to the best accounting practice, allowances on the value of Mackie's shares should have been made in relation to the nature of these Articles?

A. No, I valued the shares as a going concern.

Q. You valued as a going concern without any reference to the difficulties or dangers that might exist? A. Yes.

Q. You deliberately ignored the effect of these Articles? A. Yes.

Q. You know that Mr. C. W. Mackie was the founder of this company? A. Yes. 30

Q. You know that he spent the best part of his life working in this company? A. Yes.

Q. You accept the position that he can be described as the brains in the Company?

A. I cannot say that, because I do not know.

Q. You knew that Mr. Mackie was controlling this company by personal direction from Scotland?

A. I do not know.

Q. Somebody should have been controlling this Company in September, 1940? A. Yes.

Q. You never bothered to inquire who it was?

A. No, it was not necessary.

Q. You never bothered to inquire in whose hands was the executive management of this company in 1940? A. No.

Q. You did not bother to inquire whether that executive management in September, 1940, would be likely to continue in the company if this prospective prudent buyer of yours buys the 5,000 Management Shares. A. No.

Q. Yesterday you referred to the Students' Note that you studied when you were in England? A. Yes.

Q. That Note was issued by H. Foulk, Lunch & Co., Ltd.? A. Yes.

Q. Do you still tell me that that Note has nothing to do with the amalgamation and reconstruction of companies?

A. That note deals with amalgamation, reconstruction, valuation of goodwill and everything.

(The Note is produced marked P16.)

20 (The witness is referred to page 6 of the Note.)

(The witness is referred to the various factors in the Note.)

Q. You refer to the weightage principle referred to at pages 10 and 11 of the Note?

A. It is not here. The Note is revised year by year.

(Page 10 of Note P16 shown to witness.)

Paragraph 18 is headed "trend of profits".

(The witness is referred to the Note below.)

Q. You did not think that Mackie's history of profits shown in P7 is quite different to the illustration given in the Note?

30 A. As I stated yesterday, I used these Notes to see as to how weightage is to be applied.

Q. You are also advised in these Notes to bear in mind the trade cycles in estimating the profits? A. Yes.

Q. You still insist on saying that everything in this Note is not concerned entirely with amalgamations and reconstructions? A. No.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda.  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. Will you agree that the only two books referred to in this Note are Cutworth and Leake? A. Yes.

(Shown R11, the profits shown for the year 1940.) (Shown P7.)

Q. What are the profits shown in P7 as the profits for 1940?

A. Rs. 501,878.

Q. What is the figure shown in R11?

A. Rs. 426,596.

Q. What does that figure represent?

A. Two-third of Rs. 501,878.

I made a mistake, two-third of Rs. 501,878 less tax. That gives 10  
Rs. 426,596.

Q. What is the amount of tax?

A. Rs. 75,282.

Rs. 501,878 less tax deducted, viz., Rs. 75,282 gives Rs. 426,596.

Q. Tax at what rate?

A. That was the amount of tax given to me as having been actually paid. I cannot give the rate.

Q. You are not sure of this figure Rs. 426,596?

A. That is the figure arrived at after deducting the tax charged.

Q. Arrived at by whom? 20

A. By the department.

Q. That is the figure the department gave you?

A. They gave me the actual figures, the tax charged, and I deducted that from Rs. 501,878.

Q. You told us that you were calculating the year from 31st August to 1st September the following year?

A. I took two-third of 1940, and I went back.

1940 would be from 1st September, 1939, to 31st August, 1940.

(Shown P5.)

P5 is the Profit and Loss Account for the six months ended 30th 30  
June, 1940.

Q. You find the September balance carried down is Rs. 431,665.46? A. Yes.

Q. You take no responsibility for the correctness or otherwise of the figure Rs. 426,596?

A. I got the figure, tax charged, from the department and I deducted it from the profits shown.

The tax charged figure given was Rs. 75,282.

Q. That amount is exactly 15 per cent. of Rs. 501,878?

A. Yes.

Q. So that that figure of Rs. 75,282 could not be the actual tax charge? A. Yes.

Q. That figure which Mr. Wickremasinghe of the Income Tax Department gave you as tax charge, you now find is not the actual tax charge?

A. Yes.

10 I cannot explain why he gave me that figure except for the reason that it is 15 per cent. of Rs. 501,878.

Q. You told me yesterday that you took the Balance Sheets and you prepared the figures in R11, which is not correct?

A. All the figures were not prepared by me. I got the tax charge figures from the department.

Q. If Mr. Wickremasinghe gave you wrong figures, then necessarily R11 and the result in it must go wrong? A. Yes.

Q. You admit now that the tax charge figure, viz., Rs. 75,282 for the year 1940 is a wrong figure? A. Yes.

20 Q. Do you know how this figure of Rs. 501,878 was arrived at in P7.

A. I got the information this way: I got a note here that the profit for the year 1940 was Rs. 613,264, two-third of which is this.

Q. How did you get that figure?

A. I asked for and got the whole year's profits.

I asked for the profit shown in the Balance Sheet as at 31st December, 1940. I got the figure from that Balance Sheet.

Q. You will admit that a prudent purchaser of Mackie's shares as at 6th September, 1940, could not have had the figures in the Balance Sheet as at 31st December, 1940? A. Yes.

30 Q. This figure Rs. 613,264 shown in the Balance Sheet of 31st December, 1940, is net or gross?

A. Gross.

Q. That is without making any provision for taxation?

A. Yes.

(Shown R4.) (Shown the Profit and Loss Account for the year.)

Q. You find that the income tax payable is Rs. 70,000.

A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—*contd.*

Q. Thereafter you find in the Balance Sheet carried down Rs. 613,364? A. Yes.

Q. So that figure is net? A. Yes.

Q. So that you have taken the net figure, which is a figure after deducting of tax, and you have netted it again by deducting income tax? A. Yes.

Q. That is a further deduction of tax? A. Yes.

Q. That is a further error? A. Yes.

Q. Further error means that the figure in 1940 in R11 is given wrong? A. Yes.

10

Q. If the figure for 1940 is wrong, the result of Rs. 270 is also wrong? A. Yes?

Q. Who gave you this Balance Sheet as at 31st December, 1940?

A. Mr. Wickremasinghe.

Whenever I wanted any figures, papers, tax charge figures, Balance Sheets, &c., I went to Mr. Wickremasinghe.

Q. So that for the purposes of your valuation you have been using and referring and employing many more documents than the Balance Sheets from 1935 to 1940?

A. Not many more, but some documents.

20

Q. The year that you were reckoning was from 1st September, 1939, to the end of August, 1940? A. Yes.

(Shown P5, Profit and Loss Account for the six months ended 30th June, 1940.)

Q. We see the item " Balance carried down Rs. 431,665 " gross? A. Yes.

(Shown P6.)

Q. Is this the first time you saw P6? A. Yes.

This is a statement prepared by Mr. Lander of the valuation of shares at 6th September, 1940.

30

Q. P5 is the Profit and Loss Account for the six months ended 30th June, 1940? A. Yes.

Q. In P6 Mr. Lander has been estimating the net profit for this business for a period of 68 days. Can you say that? A. Yes.

Q. These 68 days is the period from 1st July, 1940, to 6th September, 1940? A. Yes.

Q. That is up to the date of Mackie's death? A. Yes.

Q. The reason for that is that the Balance Sheet has been prepared later in 1944 for the period ending 30th June, 1940?  
A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda.  
Cross-  
examination  
—contd.

Q. It was necessary for Mr. Lander to get the figures from 1st July up to the date of Mackie's death? A. Yes.

Q. Mr. Lander has given the net profit for the 68 days as Rs. 70,213? A. Yes.

Q. Will you add Rs. 431,665 shown in P5 and Rs. 70,213 shown in P6?

10 A. The total is Rs. 501,878.

Q. That is the figure in P7? A. Yes.

Q. That is how P7 has been arrived at? A. Yes.

Q. Up to date you did not know that? A. No.

Q. At the time of your valuation did you check up this figure Rs. 501,878? A. No.

Q. The estimate of Mr. Lander for the 68 days is Rs. 70,213?  
A. Yes.

Q. Roughly something over Rs. 1,000 a day? A. Yes.

20 Q. You and Mr. Wickremasinghe had been working on the basis of 12 months?

A. Yes, I did so and not Mr. Wickremasinghe.

I took three months of the previous year 1939 and two-third of 1940.

Q. Rs. 501,878 represents the profits for 8 months and 6 days?  
A. Yes.

Q. You were entitled and Mr. Wickremasinghe was entitled to take the figures for 8 months? A. Yes.

Q. By taking 6 days extra, you have taken in approximately Rs. 6,000 too much? A. Yes.

30 Q. So that this Rs. 6,000 will have to come out of the figure which you have taken in R11? A. Yes.

Q. Then the result will be something other than Rs. 270?

A. Yes, there will be a difference of Rs. 2 or Rs. 3.

Q. It will be far in excess of Rs. 270? A. Yes.

Q. You will admit that that is another error in R11?

A. I have taken 6 days too many.

(Shown R11.)



No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. The adjusted figure for 1939-40 is Rs. 507,420, according to you? A. Yes.

Q. How did you get that?

A. Rs. 426,596 plus one-third of Rs. 669,070.

Q. One-third of Rs. 669,070 comes to Rs. 223,023? A. Yes,

Q. You add them and you get Rs. 649,619? A. Yes.

Q. So that according to the figure you gave, the adjusted figure for 1939-40 should be Rs. 649,619? A. Yes.

A. I have taken two-thirds of two-thirds of the figure for 1940 and added that to one-third of the figure for 1939.

10

Q. That is a mistake? A. Yes.

Q. It is a serious mistake?

A. Yes, it reduces the profits by Rs. 200,000.

Q. It is a serious error for the reason that the last year's profits, 1939-40, are weighted by 5? A. Yes.

Q. Your error then becomes emphasized by 5? A. Yes.

(To Court: Q. If you did not make all these errors you would have valued these shares higher?

A. Yes, at about Rs. 350 and not Rs. 270.)

Q. If you did not make this mistake the value of a share would have been Rs. 334 and not Rs. 270? A. Yes.

20

Q. You are not in a position to say that on R11 the value of a share is Rs. 270 but it ought to have been somewhere near about Rs. 330. A. Yes.

Q. You will drop the figure of Rs. 270 for a Management Share?

A. Yes, that is wrong.

Q. You started by saying that it is your view that a prudent purchaser would pay Rs. 270 for a Management Share? A. Yes.

Q. It is no longer your opinion that a prudent purchaser would pay Rs. 270 per share, but he should pay a little more? A. Yes.

30

Q. Basing your opinion on R11, can you say that he would pay more than Rs. 270?

A. Yes, he will have to go on the figures. He should pay at least Rs. 270.

Q. You will admit that you do not offer your opinion to this Court for consideration?

A. I admit that I have made a mistake, but I do offer my opinion as regards the value to this Court for consideration.

(Shown R11.)

Q. After having arrived at your weighted average of Rs. 313,300 you deducted Preference Shares Dividend of Rs. 67,320 net and you deduct Rs. 30,000 for reserve? A. Yes.

10 Q. You admit that a proper reserve should be made in a valuation? A. Yes.

Q. You have stated in your evidence in examination-in-chief as follows: " I put Rs. 30,000 a year for reserve. During this period of five years the company had built up a reserve of Rs. 150,000 as the Balance Sheet for 1940 showed a profit of Rs. 500,000. So I allowed the same reserve for 1940 also ".  
A. Yes.

Q. That is your position with regard to the reserve? A. Yes.

(Shown Balance Sheet for the year ending 31st December, 1939, P8.)

20 Q. There is no reserve shown in the Balance Sheet as at 31st December, 1939? A. Yes.

Q. So that up to the end of 1939 this company has made no reserve? A. Yes.

Q. You discovered a reserve shown in the Balance Sheet as at 31st December, 1940, after the date of Mr. Mackie's death?

A. Yes.

Q. Then you were not correct in saying that this reserve of Rs. 150,000 had been built up in five years?

30 A. For a five-year period they had built up a reserve of over Rs. 150,000, and having taken into account five years' profits I have allowed Rs. 30,000 for reserve.

Q. The reserve has been built up in a single year? A. Yes.

Q. This was a company, which in your opinion was going to produce 30 to 40 lakhs of rupees? A. Yes.

Q. In your view this company according to you was going to make a profit year by year of at least Rs. 313,000? A. Yes.

Q. As a matter of fact, it is much more than Rs. 313,000, on the correction of R11? A. Yes.

Q. That profit was expected for  $6\frac{2}{3}$  years? A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. Why then only Rs. 30,000 was set apart for reserve by you?

A. That is a provision made by me on the basis that they had put by a reserve of Rs. 150,000 at the end of five years.

Q. But for the first time in five years?

A. Yes.

The General Reserve is utilized for various purposes and not for contingencies alone.

Q. Could they have built up a reserve in any of the previous years. They had no funds? A. No.

Q. To build up an appreciable reserve they would have had to put by for reserve Rs. 150,000 year by year? A. Yes. 10

Q. Until 1939 there was a debit on profit and loss? A. Yes.

Q. And the amount to that credit in the year 1939 was more than absorbed by the Preference Dividends? A. Yes.

Q. In Ceylon, lending money on mortgages is a popular form of investment? A. Yes.

Q. Lending money on promissory notes is also a very widely used form of investment?

A. Yes, for small sums.

Q. The current rate of interest on promissory notes is about 12 per cent. ? 20

A. I have seen promissory notes at 6 to 8 per cent. interest. It all depends on the borrower.

The mortgage rate is about 6 per cent.

Q. Do you know anything about the yield of company shares in Ceylon as at 1940?

A. Not very much, not at 1940.

Q. You gave evidence in the Estate Duty Appeal of the estate of Mr. G. L. Lyons? A. Yes.

Q. You gave evidence as Crown expert? A. Yes. 30

Q. The number of that case was 72/T. (Special)? A. Yes.

Q. And you gave evidence in that case on 9.11.48 before Mr. Sinnethamby? A. Yes.

Q. This deceased, Mr. G. L. Lyons, was a partner in a firm called Heath & Co.? A. Yes.

Q. They were carrying on a tea buying business in Ceylon? A. Yes.

Q. This G. L. Lyons died in February, 1943? A. Yes.

Q. And the question which arose there was the valuation of his shares in the partnership business as at the date of his death? A. Yes.

10 Q. In your evidence you said that a tea buying business is entirely different from that of a rubber dealer's business? A. Yes.

Q. In that case it was accepted by all concerned that a tea buyer's business is done primarily on commission? A. Yes.

Q. In other words a tea buyer buys for the account of a particular client as an agent, and he is paid a commission? A. Yes.

Q. The position is quite different in the case of a rubber dealer? A. I took that view in that case.

I expressed the opinion that there was no risk in a tea buyer's business as compared to a rubber dealer's business.

20 Q. Also you admitted that rubber was a far more speculative commodity than tea? A. Yes.

Q. And that it is dealt with in forward purchase and sale? A. Yes.

Q. And that a tea buyer does not do those things? A. Yes.

Q. In regard to the fluctuations of the market, you admitted that the fluctuation in the price of tea did not affect a tea buyer's business. The result of fluctuation was borne by his buyer?

A. Yes.

Q. You admitted there that where a rubber dealer's business was concerned, the fluctuation affects the dealer himself? A. Yes.

30 Q. You dealt with the average annual profits of Heath & Co.? A. Yes.

Q. In that case you capitalized the profits at 14 per cent. and this is how you did it: You took 6 per cent. as the normal return that one might expect on a mortgage or similar security. You considered another 6 per cent. would be sufficient as the risk allowance, but in point of fact you allowed 8 per cent. for risk? A. Yes.

Q. And you allowed 14 per cent? A. Yes.

40 Q. In this case if you took 6 per cent. as the normal return, that is, in Heath & Co.'s case, why did you take 3½ per cent. as the normal return in this case?

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

A. I did not say it is the normal return.

Q. Why did you take  $3\frac{1}{2}$  per cent. as the normal return in this case?

A. Three to  $3\frac{1}{2}$  per cent. is gilt-edged security return.

I said gilt-edged security return is only 3 to  $3\frac{1}{2}$  per cent.

(Evidence given by witness in Heath & Co.'s case at page 113 read to him.)

Q. How did you work out 16 per cent. in this case?

A. In this case I argued in this way: If Rs. 990,000 could be risked at 8 per cent. return annually, then 16 per cent. return would be more than enough for Rs. 10,000. 10

Q. You applied in this case the outlook of the preference shareholder?

A. Yes.

In this case I purely went on the interest received by the preference shareholders who have risked Rs. 990,000. I allowed 16 per cent. I applied my own mind to it. It is my argument.

Q. You did not apply your mind to the current rate on the return of money?

A. I did not. 20

Q. You did not allow or make allowance for the risk in the rubber business?

A. I allowed 8 per cent. for the risk for Rs. 10,000.

I considered the investment of Rs. 10,000 on Management Shares.

Q. A prudent buyer on your original valuation would have risked Rs. 1,349,000 on account of Management Shares?

A. But he would have made all the profits.

Q. His risk was not in Rs. 10,000. He was risking Rs. 1,349,000? A. Yes.

Q. Would you not now agree that this prudent buyer ought to have allowed a higher percentage for risk? 30

A. No.

In 1946 I valued basing on the 1940 risk. It was not so risky in 1940.

Q. Tea was allowed 8 per cent. risk in 1943, although there was no risk in the business? A. Yes.

Q. If a business is risky, such a business is entitled to a risk return? A. Yes.

Q. And you will agree, the more the risk the greater the risk rate that a business is entitled to? A. Yes. 40

Q. And you will agree that the riskiest business in Ceylon, may it be Mackie & Co's rubber business or any other business, is entitled to the highest possible rate? A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. And this highest possible rate is a rate which will be over and above the rate for normal return on money? A. Yes.

Q. And the normal rate of return for money in this Mackie's case is 8 per cent.?

A. The construction of the company was such that 8 per cent. normal return was sufficient.

10 Q. What in your opinion is the normal rate return on money in Ceylon in 1940?

A. The return was very low. I cannot remember the rate now. It ought to have been between 4 to 6 per cent.

Q. You will agree here that when tea is allowed 14 per cent. risk rate, rubber must be allowed much more? A. Yes.

Q. A rubber business must be allowed between 30 to 40 per cent.

A. I do not go so high. I would allow between 20 to 25 per cent.

Q. As a matter of fact, in Lyons' Estate Case the District Judge himself fixed a much higher rate?

20 A. He fixed 1 per cent. more than my figure.

Q. In Mr. Lyons' case, how many years' profits did you consider?

A. Seven years.

Q. What were the 7 years?

A. 1936-1942.

Q. Lyons died in February, 1943, and you considered the figures up to 1942? A. Yes.

Q. But you excluded a certain part of the profits for the year 1942?

A. Yes.

30 I brought down the 1942 profits to the 1941 level, because extraordinary high profits were made in 1942 owing to the war.

Q. It is a principle of valuing that war profits must be excluded?

A. Yes.

Q. You will agree that it is a principle that all abnormal profits should be excluded? A. Yes.

Q. And in Lyons' case you addressed your mind to it and you excluded the war profits in 1942? A. Yes.

Q. Why not in this case too?

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

A. I did not exclude the war profits of 1940 even in Lyons' case.

Q. In this case did you make any allowance for the profits of 1940, 1939 and 1938. You already admitted that all these were war profits?

A. Yes, I made no allowance.

Q. Some allowance should have been made in this case for war profits in 1938, 1939 and 1940?

A. In Lyons' case also I addressed my mind only to the war profits of 1942, and I allowed the profits for 1940 and 1941 to remain as they were.

10

Q. It is on that principle that war profits and abnormal profits should be excluded? A. Yes.

Q. The same principle should be applied in Mackie's case?

A. Yes.

Q. You should have excluded the 1939 and 1940 profits, or some allowance should have been made?

A. It is very difficult to disallow war profits of 1938, 1939 and 1940.

Q. We are entitled to expect you to make some allowance in respect of Mackie's profits for 1939 and 1940?

20

A. If it was a boom period, I should not have made any allowance.

Q. You took the view that only the 1942 profits should be excluded, but the Judge in that case excluded the 1939, 1940 and 1941 figures, and he took on his own the 1936, 1937 and 1938 profits?

A. Yes.

That case has gone up in appeal. He excluded the 1939, 1940 and 1941 profits, because they were war profits, and he accepted the principle that war profits should be excluded. (Shown P7).

Q. If you took the years 1934 to 1938 only, and excluded all war years 1939, 1940 and 1941 and applied your weighted average principle, the value of a Management Share on these figures would have been nil? A. Yes.

30

Q. If you took the years 1933 to 1937 on your weighted average principle, the value of a Management Share will be nil? A. Yes.

Q. There is another method, the straight average method? A. Yes.

Q. For 1933 to 1937 on a straight average, capitalized at 16 per cent. the value of a Management Share would be Rs. 33.73?

A. Yes.

40

Q. And if you take 1934 to 1938 on a straight average the value of a Management Share would be nil, because of the losses and dividends on the Preference Shares could not be paid? A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

Q. They would not have been able to pay out the entire amount?  
A. Yes.

Q. If you take three years, 1936, 1937 and 1938 profits and without making any reserves, on a straight average the value of a Management Share would be Rs. 2, and on a weighted average Rs. 12.38? A. Yes.

10 Q. You agree that another cardinal principle of valuing is you must make provision and full allowance for Directors' fees, Directors' remuneration, staff employment and so on? A. Yes.

Q. Would you accept it yourself? A. Yes.

(Shown Balance Sheet for the year ending 31st December, 1939, P8.)

Q. There is nothing shown there as Directors' fees? A. Yes.

Q. Is that a Balance Sheet made leaving out the expenses?

A. All the expenses have been allowed for, but there is no mention about Directors' fees.

20 I cannot say whether the item "Salaries Rs. 46,000" includes the Directors' fees.

(To Court: Q. Is it the practice to make these Balance Sheets without showing the Directors' fees?

A. The Directors' fees should be shown separately.

The working Directors salaries need not be shown separately.

Q. In the previous year's Balance Sheet did they show the Directors' fees?

A. They did not charge fees).

30 Q. You will accept the position that the Directors did not want and did not receive any allowances? A. Yes.

Q. You will agree that an incoming purchaser will expect the Directors of the company to receive allowances?

A. He may.

Q. You did not take that into account? A. No.

Q. A prudent purchaser would take that into account?



No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Cross-  
examination  
—contd.

A. Not in the case of a limited liability company because all charges have been made year by year.

Q. You did not satisfy yourself that there was a staff or the prospect of the staff continuing in the employment of this company after Mackie's death?

A. As a going concern, I assumed that they would continue.

Q. Have you seen the Auditors' Report and the Balance Sheets for the various years?

A. I saw the certificates, not the Auditors' Reports.

Q. Had you called for the Auditors' Reports, you would have had additional information with regard to the company and its affairs, and the way it conducted its business? 10

A. I might have.

Q. You will agree that a prudent purchaser will certainly look into forward purchases and forward sales of rubber?

A. He would, in order to see how the company was carrying on the business.

Q. If the commitments are very considerable, he might decline to buy the shares?

A. Everything depends on the price of rubber. 20

Q. A purchaser would also have to satisfy himself with regard to the coupon position.

(To Court: There were rubber coupons in 1940.)

Re-examined.

K.  
Satchitha-  
nanda,  
Re-examination

Q. You are aware that there were two valuations made by the appellants of the Management Shares for this case, one at Rs. 40 by Mr. Lander as at 6th September, 1940?

A. I was present in Court that day, but I cannot remember the date. I heard something to that effect.

Q. You were listening to Mr. Lander's evidence as regards how he made the valuation of the Management Shares. A. Yes. 30

Q. According to that evidence, upon what basis did he reach the value of a Management Share?

A. He has gone on a break-up value of the business.

Q. What you understood was the break-up basis of Mackie & Co.? A. Yes.

Q. What is that break-up basis?

A. He has taken the value of the assets, allowed for the liabilities, allowed for the preference shareholders, take the balance and appropriate for the Management Shares.

Q. Do you say as an expert that that is a proper way of valuing a Management Share, or any interest in a business as a going concern?

A. Not as a going concern.

Q. In your opinion, is the break-up basis the proper basis?

10 A. In my opinion the business should be valued as a going concern.

Q. Therefore, is there emphasis to be placed on the mere value of the assets or on the income that the assets would earn?

A. I would value on the profits, as I have done.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Adjourned for lunch.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

20 After lunch.

K. SATCHITHANANDA. Recalled. Affirmed.

Re-examined further by Attorney-General.

Before the adjournment I stated as my opinion that it is more accurate to value these shares by taking more into account profits that a business would earn in the future than by merely looking at the value of the assets of the business. That is my opinion.

I know the publication called "Valuation of Company Shares of Businesses" by A. V. Adamson. (Attorney-General reads extracts from pages 37, 41, 42, 48, 93 and 94 of the 1948 1st edition of  
30 "Valuation of Company Shares of Businesses".)

Q. Do you subscribe generally to the opinions expressed therein that, generally speaking, it is safer to value the shares of a business as a going concern upon its income-earning capacity than taking into consideration the value of its assets?

A. That is the basis on which I have worked. I have gone on the profits basis.

(Shown P7.)

Q. Take the profits of 1922. Work out for yourself the profits for 1922; they are Rs. 371,000. Dividend on Management Shares

No. 11  
Respondent's  
evidence  
K.  
Satchitha-  
nanda  
Re-examination  
—contd.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Re-examination  
—contd.

(on the face of P7) is Rs. 250,000; Preference Share Dividend Rs. 66,397. When you add up those two dividends you get Rs. 316,397. This figure deducted from the profits of 1922 give you Rs. 54,650. What does that represent?

A. That is the balance available after paying Management Share Dividends and Preference Share Dividends that is carried forward.

Rs. 371,000 is profit. If it is profit brought from the Trading Account it will not appear in the assets and liabilities. Rs. 371,000 is the net profit for the year; that is the trading result of the year. 10

Q. Assuming that Rs. 371,047 is the net amount to the credit of profit and loss of the previous year, what would this amount of Rs. 54,650 represent?

A. That is the trading result of the year; it represents the profit of the year.

(Shown P7.)

Q. Having regard to the various statements of profit and loss in this document, can you state whether from year to year the calculation of value of the Management Shares on a break-up basis would show wide divergences? 20

A. I must look at the Balance Sheet also.

(Shown Balance Sheet as at December, 1939.)

Q. Would you make a short calculation of those figures on a break-up basis and tell us what the value of the Management Shares would be on a break-up basis?

A. Just about Rs. 50 after providing for arrears of dividends. That is a calculation of Management Shares on a break-up basis.

Q. Management Shares at the death of Mackie were valued at 40.168, on an assets basis. Would you say that there is upon that basis of calculation a very wide discrepancy in the values of Management Shares as at 31st December and 6th September, 1948? 30

A. There is a big divergence.

Q. Look at the profits earned in the years 1938 to 1940 in P7. Is there anything in those figures of profits to indicate that the Management Shares would have suffered such wide fluctuations?

A. Oh! yes.

According to the profits there is bound to be wide divergence of valuation. If you take the Balance Sheet valuation of each year based on these profits there is bound to be a big divergence.

Q. On the assets basis there is a valuation as at 31st December, 1939 of .98? A. Yes. 40

Q. The Management Shares within a period of nine months, if that basis is correct, shoot up to 40.68. Is there anything in the way that the business was conducted for such a shooting up of value?

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Re-  
examination  
—contd.

A. On this there is nothing to show whether there was any specific reason for the divergence.

(R8 read out to the witness.)

Q. Tell us what is your view of the opinion expressed here. I want to put to you this statement that owing to the war there has been far less fluctuation in the market price of rubber and for this reason it is reasonable to expect that companies would not have to face the heavy losses sustained in the previous year due to fluctuation of prices of rubber. When you made the assessment on the previous profit standards (that is previous to 1940) did you go upon the basis that profits would be maintained at a fair level or did you think there would be such violent fluctuation as to make the previous profits unlikely?

A. I went on the basis that future profits would be maintained at the weighted average I have given in my document R11.

Q. I valued the shares of the business as a going concern.

Q. You see from P7 an ascending scale of profits from 1922 to 1926, taking more or less the average? A. Yes.

Q. Are those war years? A. No.

Q. Then you have a cycle of losses from 1927 to 1932? A. Yes.

Q. In 1933 there is a profit of Rs. 443,000. Is that a war year? A. No.

1934 is not a war year.

Q. In examining these figures can you say that the war was the sole contributory factor in the earning of large profits?

A. No.

I think in this business you get boom and slump periods.

Q. When a boom period starts are the profits maintained for a number of years as in that period 1922 to 1926?

A. I cannot say that definitely.

If there is a good period of 3 to 7 years it is followed by a bad period. Then there is the cycle.

(Shown R11.)

Q. Dr. Hayley in cross-examination asked you whether it was not work that a clerk can do in half an hour's time. You remember the question? A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Re-  
examination  
—contd.

*Q.* In making a valuation of this kind are there other factors besides the mere arithmetic of figures?

*A.* I do not understand the question.

*Q.* In this case you are asked to value the Management Shares of Mackie & Co. after the death of Mr. Mackie. I want to know whether you give your mind to the nature of the business and various other factors?

*A.* Although I have taken the profits naturally I must examine the Balance Sheet to see whether the assets are there and not wasted away. I gave all those matters consideration. 10

*Q.* Would you blindly adopt a method of weightage? *A.* No.

*Q.* Or blindly pick and choose profits as you like? *A.* No.

*Q.* To begin with you stated in cross-examination today that these figures in R1 were adjusted in this way: that you deducted from the profits of any particular year certain income tax paid. Did you at the time you deducted income tax try to find out whether the proper amount of income tax was charged by the income tax authorities?

*A.* No.

I asked for the taxes charged and I did not examine them further. 20

*Q.* Could you say as a matter of law how losses ought to be carried over from one year to another in assessing the income tax of a company?

*A.* I believe they are allowed to carry forward losses for 3 years.

*Q.* Are you competent to express an opinion?

*A.* I do not know. I am a Chartered Accountant.

*Q.* You took one-third of the year 1935 and took over two-thirds of the following year to make up your year? *A.* Yes.

*Q.* I think my learned friend asked you this question as to whether in one year in making allowance for 6 days you had included an extra sum of about Rs. 6,000? *A.* Yes. 30

*Q.* Can you say that that was a sum actually included for a period of 6 days?

A. I cannot say exactly what sum. It worked out at an average of Rs. 1,000 per day.

Q. Why should 6 days come out from the end rather than from the beginning?

A. Because I had started working from 31st August, 1940, backwards. That is the reason.

Q. Your figures assumed that Mr. Mackie died on the 31st August than on the 6th September? A. Yes.

10 Q. You were questioned very closely in regard to the income tax deduction for the year 1940? A. Yes.

Q. There was a profit of Rs. 431,665 as shown in the Balance Sheet as at 30th June, 1940, P5?

A. I remember that figure.

Q. There is a document (P5) in which Mr. Lander himself had worked out the income for 68 days from the end of June to the date of Mr. Mackie's death at Rs. 70,213. You were asked, I believe, where you got that figure from? A. Yes.

Q. That makes up the total of Rs. 501,878? A. Yes.

(Shown P5.)

20 Q. That sum of Rs. 501,878 is the sum which you get without deductions of income tax? A. Yes.

Q. P5 shows the profits up to the end of June, 1940? A. Yes.

Q. When you add the figures you get the income of a part of the trading year?

A. Yes, from 1st January to 6th September, 1940.

Q. In deducting the income tax for the purpose of preparing R11 at what rate did you deduct income tax?

A. At the rate in force at the time.

30 I am not sure whether it was 15 per cent. In this case I accepted the figure given as correct.

Q. The figure of Rs. 426,596 in R11 was therefore obtained by you by deducting from the sum earlier mentioned the sums due by way of income tax? A. Yes.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Re-  
examination  
—contd.

Q. Was there any sort of double deduction of income tax?

A. Not according to the returns that I have in front of me now.

Q. There was only one deduction of income tax that you remember Rs. 426,000? A. Yes.

Q. You admit the error you made with regard to your taking two-third of Rs. 426,000 and in taking two-thirds twice over?

A. Yes. I admit having taken two-third of two-third instead of taking two-third of unity.

Q. You see that the profits for 1940 amounted to some 6 lakhs, 10 very nearly 7 lakhs? A. Yes.

Q. If the profits of 1940 were to be the sole basis of the valuation of the shares then the suggestion would be that 7 lakhs profit would be repeated in each of the following years?

A. That is the only basis.

Q. Does your weighted average proceed on the basis that the climax of profits in 1940 would be maintained for a few years to come or whether there would be fluctuations in the profits comparative to the profits prior to 1940?

A. I have worked on the basis that the weighted average would 20 be maintained in the future.

In my weighted average there was even room for losses.

Q. Was your basis of calculation this: that even the profits after 1940 would be fluctuating to the disadvantage of Mackie's?

A. If the profit from 1941 to 1943 was the same as in 1940 undoubtedly the value of the shares would be much more.

Q. This question was put to you whether you made an assessment of the company's shares on a basis of war profits?

A. I have taken so many years and gone on them.

Q. Can you tell the Court whether you qualify the statement 30 you made or whether you deny or admit it?

A. I do not say that all the profits were war profits.

Q. You admitted in cross-examination that you made an assessment on the basis that the war would go on for a few years?

A. Yes.

Q. Would that mean that the best of war profits of 1940 would be maintained in the years to come?

A. No. I was questioned about the rate of capitalizing shares. I have taken 16 per cent.

Q. I think you told my learned friend that for such a business you capitalize at between 20 to 25 cents? A Yes.

Q. Is that the basis of capitalization of any and sundry rubber businesses taken or would you apply the same basis of capitalization for a business of Mackie's standing?

10 A. I did not apply it in this case at all.

Q. Why?

A. The financial structure of the company was different. By financial structure I mean the capital of the company which was Rs. 1 million made of Management Shares and 10,000 Preference Shares.

Q. In giving the capitalization value and percentage would you use the same figure for a business in a small way as a business in a large way?

20 A. For established businesses very much less than other businesses. The rate of capitalization is much less in a well established business. I mean rubber businesses which are under discussion now. That is a principle that I would apply to any business in rubber.

Q. Suppose you take an average of profit and losses spread over a large number of years, in that case would you fix a lower rate of capitalization or a higher rate?

A. A lower rate.

Q. Why?

30 A. Because the risk, if any, would be reflected in the profit and loss of the various years.

Q. Did you bear these factors in mind when you worked out this valuation?

A. I did work independent valuations to check my figures. If I took the profit from 1922 to 1940 I checked up on them.

I was questioned about the evidence I gave in D. C. Colombo 72/T. In that case I had to value the goodwill of the partnership.

Q. Upon the death of Mr. Lyons you were asked to compute, on the data given to you, what was the goodwill that Mr. Lyons had given the business? A. Yes.



No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Re-  
examination  
—contd.

Q. In other words you were asked to value the goodwill of Heath & Co.? A. Yes.

Lyons died in February, 1943. By February, 1943, Excess Profits Duty was in existence for 2 years.

Q. Therefore when you started computing the profits you left out what you called the abnormal profits of the war years in that case?

(Mr. Kadirgamar objects to the question.)

Q. You admitted in cross-examination that you left out the profits of the war years. Why? 10

A. One of the reasons was that I did not take taxation into account, if I remember aright. I have not seen that evidence, since.

Q. You remember the case in which the Crown had to support a valuation of Heath & Co.'s goodwill?

A. Yes.

I brought down the Crown's valuation of Heath & Co.'s goodwill from Rs. 825,000 to Rs. 540,000.

Q. In this particular case you admitted that you did not take the possibility of the buyer paying Excess Profits Duty in Mackie's case? A. Yes. 20

Q. According to your view was there any reason why any person should think that when a Bill was rejected by Parliament it should become law at some future date?

A. No specific reason. It was well known that a Bill introduced for Excess Profits Duty was turned down.

Q. Before the Excess Profits Duty Ordinance was ultimately passed would anybody know what was going to be the standard years of profit?

A. I cannot say whether, at that time, anybody knew.

I did not say yesterday that on 6th September, 1940, the only tangible assets of the company were the sum of Rs. 203,000 odd. If I made the admission that the net tangible assets as at 6th September, 1940, was that figure it was by mistake, I cannot remember having done so. 30

I do not remember being asked whether a man would pay Rs. 2 million in order to get Rs. 203,000.

Rs. 270 per Management Share is a figure reached by a process of calculation. Every company has assets. All the assets of companies are represented by paid-up capital and other things.

No. 11  
Respondent's  
evidence  
K.  
Satchithananda,  
Re-  
examination  
—contd.

Q. The value of each share, would that represent any part of the assets of the firm?

A. Value of paid-up capital.

Q. Suppose in a company you have got only a paid-up capital of Rs. 1 million. Say the nominal value of each share is Rs. 10. Suppose the value of the share goes up to Rs. 30. Then you say a share of the company is worth Rs. 30. What is that a reflection of?

A. That you are entitled to a better return from the company.

Q. In regard to the totality of the assets of the company what would that enhancement represent?

A. Anything over the paid-up value of the shares would not be an increase in the value of the assets of the company. It only indicates an increase in the profit-earning capacity of the company.

(Shown R11.)

I have the figure Rs. 1,349,875.

Q. From that you were able to produce the sum of Rs. 270. What does Rs. 1,349,875 represent?

A. That is in my opinion the worth of all the Management Shares on the date of valuing the shares.

Q. Suppose all those were taken over by me the following day. What would I get?

A. You would have the right to the dividends paid by the company.

Q. Suppose there were no Preference Shares. Only Management Shares?

A. If there were only Management Shares in the company you would be entitled to the control and the assets of the company, if there were no Preference Shares.

(Sgd.) S. S. J. GOONESEKERE,  
D. J.

Attorney-General closes his case reading in evidence R1 to R13.  
Further hearing tomorrow at 10.30 a.m.

(Sgd.) S. S. J. GOONESEKERE,  
D. J.

## No. 12

## Addresses To Court

No. 71/T. (Special).

27th May, 1950.

Appearances as yesterday.

THE ATTORNEY-GENERAL addresses Court.

(The pages referred to in the course of the Addresses to Court are the pages as numbered in the original typewritten record.)

He submits that this matter comes up before Court by way of an appeal under the Estate Duty Ordinance (Cap. 187). Before it came up by way of an appeal there were two assessments made in the departments under statutory powers. The first assessment was made by the Assessor who assessed the Management Shares at Rs. 300 per share. There was thereafter a statutory appeal to the Commissioner of Estate Duty whose functions are of a quasi-judicial character. It was competent for him to call for evidence and it was competent for the appellants to have placed evidence before him. Although the Commissioner of Estate Duty did not deliver a formal order he reduced the assessment from 300 to 250 for Management Shares. 10

That matter is brought up now under further statutory provisions by way of an appeal and the appellant is under section 40 of the Estate Duty Ordinance in the position of a plaintiff and the Attorney-General is the defendant. 20

It is clear and it is undisputed that the burden rests on the appellant to prove that the valuation made by the Commissioner of Estate Duty is wrong.

An examination of the petition of appeal shows that the appellant's contention is that the Management Share was worth only Rs. 30 after making deduction by reason of the fact that Mackie's services were no longer available to the firm.

If they succeed in satisfying the Court upon the quantum of evidence the appeal succeeds in the sense that they have encountered satisfactorily the assessment made by the Commissioner of Estate Duty. The appellant will have to satisfy the Court upon the evidence. The burden will be on the appellant to show that if Rs. 30 is not the proper valuation to be placed on the Management Shares it is some other figure which they say can be established on the evidence. 30

The Court should remember that from the beginning there was a contest not merely in regard to the Management Shares but also in regard to the Preference Shares. The margin was great in the matter of Management Shares and small in regard to the Preference Shares. 40

He had really to assess it as a going concern of not merely Management Shares but also the Preference Shares. What is the value to be placed on the Management Shares. The fuller issues will be

what is the value of the Preference Shares and the Management Shares. In approaching this question of ascertaining the value we should not be going on the correct lines if we assume that people would not act in a reasonable manner. A man, for example, a willing seller would act in a reasonable way in order best to serve his interests and also a willing buyer would act in a reasonable way.

No. 12  
Addresses to  
Court  
—*contd.*

A good many of some of the hypothetical questions seem to suggest that the ordinary businessman is acting stupidly. A heavy burden is placed on him to fix notionally what cannot be ascertained  
10 mathematically.

Suppose a man were to negotiate the sale of a house. Naturally he would like to get the best possible price for the house. The buyer will pay a price commensurate with the use to which he can put the house. If a man were to sell a house reserving to himself exclusive use of the bath and lavatory that would be a very unreasonable way of acting. The man who buys that would not be getting an economic value for the house nor would a purchaser pay anything more than a nominal value.

Another analogy. Take the case of a second-hand Chevrolet car.  
20 If a man were to sell it he is not going to detach the headlights and the tyres. It will have to be sold as one unit. The buyer will also ask who are the makers and how old is the car. How is it on the steep gradient, &c. He will also ask how many years of life there is in it. You may break up a motor car and get a good price but it would be worthless buying it at any price if the engine is out of order. The vehicle must be capable of being used to the daily benefit of the person buying it.

If Mackie was alive and wanted to dispose of these 5,000 Management Shares and the Preference Shares and acted reasonably he would not get 5,000 individuals to buy the Management Shares and  
30 9,000 people to buy the Preference Shares. A man who has got an asset of that character will put it to the best bargaining use. What is the best possible price he would get. He would have to sell it in a way which will be most attractive to the buyer. A way in which the buyer will get the most out of these shares. This gives him only 5,000 votes and he will be in a minority. If Mr. Mackie tries to sell the 5,000 Management Shares only he will get a very poor price. If he wanted to get the best price for the Management Shares he would also sell those shares along with the Preference Shares.

40 (Refers to the Articles of Association.)

If you had one-tenth of the voting power there was no question of expropriation.

Mackie was a Life Director and when he died he ceased to be so. If the question is asked whether you will be out-voted the answer is "No". A person who owns 5,000 Management Shares and 7,000 Preference Shares can have voting control in the company. There is

nothing in the Articles which really would militate against the block of shares belonging to Mackie which would be bought by the hypothetical purchaser.

The crucial question to decide in this case is what is the value of the shares. We are not called upon to value a goodwill of a company, although goodwill would be a relevant consideration in a matter of this kind. What is the capacity of a company to earn super profits.

Mr. Lander's evidence on that point is clear. Goodwill is defined. The shares have to be valued. What is called a "rubber business"? There are many kinds of rubber businesses in this country. He emphasises the point. People like Mr. Hayward and Mr. Cuming are not qualified to make an assessment of shares in companies. It is really the work of persons who can undertake that job after having studied the scientific aspects of the valuation. Hayward does not take us beyond an expression of opinion. In the case of Cuming who has come as a partner in a firm of brokers—he has undoubtedly spoken of share transactions. He cannot speak with authority with regard to the valuation of shares in a company whose activities are comparable with the business done by Mackie & Company. The evidence of these people does not help when it comes to the valuation of the shares of a company governed by an intricate set of Articles and a company with a long history. The constitution governing the company had not been studied critically by either Hayward or Cuming. 10 20

Mackie's is an old business. It started in about 1910. It was the sole business of Mr. C. W. Mackie. The company was incorporated in 1922 into a company in which Mackie held a very commanding position. There is no denying the fact that all the others in Mackie's held very minor positions when compared to Mr. Mackie. After incorporation in 1922 Mr. Mackie left Ceylon in 1930. After he left them he might have made occasional visits to the country. He did not take an active part in the business. It has been said that in his retirement he took an active part in the management of the business. Nothing to show the type of interest he took. There are no documents to throw some light on the control Mackie exercised. 30

There was a big estate duty case. In that case one of the points urged was that a retired Chettiar in South India was taking a lot of interest in the firm although he had cut himself off from the firm. A lot of letters were produced. In this case evidence is not sufficient. The evidence of Hayward, Cuming and Williams is not sufficient to show that Mackie took an active part in the business. The Court cannot accept that Mackie was governing the company from 1930 to 1940. In the declaration of estate duty that was produced Mackie was described as a retired merchant. That document negatives his alleged contact with the business. 40

Document R6 or P7 shows that when Mackie left in 1930 the company was at the peak of its losses. The highest loss was in 1930. That was followed by two years of large losses. Mr. Mackie at a time when this company was in existence for about 20 years did not get alarmed at these losses and did not stampede and did not get the Articles altered. He did not apply to Court to have the share capital reduced. It is competent for any party to apply to Court to have the onerous shareholders paid off. The fact remains that Mackie had departed from the business at the very peak of the losses and he thought that it was quite safe to leave the business in the hands of others who were doing at that time the day to day work of the company. It shows the tremendous amount of trust on the man on the spot that a man should retire at the time of the peak of losses. Upon the broad question of the part that Mr. Mackie played after 1930 the Court would note that submission.

Mackie's are large exporters. They had 30 per cent. of the rubber exporting of Ceylon. After the fall of Singapore and the Dutch East Indies, Ceylon was the mainstay of providing the Allies with the munitions of war. There is an infinite gulf between the rubber dealer in the Pettah and Mackie's. One must not accept the statement of Hayward about goodwill. People who make such large turnovers also acquire large exports.

The volume of the business will give the necessary cautions, pointers, indications, &c. Mackie's had world wide transactions. Mackie's was a special rubber business. There were daily cables passing between London and Colombo with regard to the prices of rubber, &c.

Williams admitted in cross-examination that if rubber came up to Mackie's standard that was as good as rubber coming up to the Rubber Manufacturers' Association. To talk of rubber being a speculative business as spoken of by Hayward and Cuming is wrong. It is not disputed that rubber as a commodity is less staple than a commodity like tea. But that is nothing unusual because it is almost reduced to a law that there is a cycle of booms and depressions. It is now part and parcel of the rubber notions.

How would the ordinary man react if he buys shares at the trough of a depression. Take the average man who has not the advice of experts. It is really the speculator who would buy even a rubber plantation at that time. When there is a slump rubber lands also have tendency to slump. When rubber is very high rubber lands also get enhanced in value. Just as at the commencement of a depression or in the trough of a depression prices would slack, I say it is commonsense that in the commencement of a boom or peak of a boom prices would go up. If one places shares at the bottom of a rising gradient why should not the Court give full effect to what an ordinary person would do assuming that he is acting in a sort of reasonable way. We are not asking the Court to put

the value of Rs. 250 on Management Shares merely because of Annesley Stores or the place that Mackie's held in the world of business. That is merely ancillary.

Up to 1940 there is absolutely no evidence of any internal shake up of this company. Sometimes companies pass through difficult times. We have no evidence of any large and unusual borrowing of moneys to crop up the business. They were backed up by the banks during the times of losses on the security of the rubber stocks.

When rubber was slumping Mackie's were sufficiently strong. There is no evidence of any anxious moments. Nothing was mentioned about Mackie's. They were set up like the rock of Gibraltar. 10

The charmed circle that formed the company knew that the business was not shaky. Mackie was confident enough to leave Ceylon thinking that everything was perfectly all right.

No necessity to get experts. Experts will have to be tested just as much as anybody else. In all matters we find that however dignified utterances may be it is always safe not to go anywhere near it. These matters should be looked at from a broad angle making allowances for infirmities, &c. These gentlemen cannot be ignorant because they are experts. But they are like other witnesses. They must give proper and convincing reasons. It would be dangerous to act on their *ipse dixit*. 20

We have a valuation of .98 cents for Management Shares—R2 In December, 1939, there was no Battle of Britain. Then we have a valuation as at 6th September, 1940—40.168 a Management Share. At that time the Battle of Britain was raging. If the value of the shares in December, 1939, was .98 then at the time of the Battle of Britain the value of a Management Share would be .00098. 30

(Cites Dymond on Death Duties, 10th Edition 1946—page 117.)

If a person on the 6th September was to buy from Mackie the whole of the 5,000 Management Shares and the Preference Shares unless he was a lunatic he would sell both together. If you break up you may not get something that is worth.

Lander's version might have been too advantageous to the person paying estate duty. Here it is advantageous to the Crown. The best price in the open market is not obtained by separating the two.

If we are not taking into account the profit-earning capacity, of what earthly use is there in a purchaser succeeding to those assets. 40

Take the Associated Newspapers. Valuing the printing press separately and the building separately. That is unreasonable.

Comments made are in the nature of an analysis of Lander's evidence without assistance from anybody else. What is the evidence worth on this point. Mr. Satchithananda has given a valuation which proceeds basically on the principle that while the quality of assets is not ignored yet one puts an accent on the profit-earning capacity.

No. 12  
Addressee to  
Court  
—contd.

(Cites Adamson on "The Value of Company Share Businesses" at pages 37, 41, 42, 43 and 93.)

10 The basis of the assessment followed by Satchithananda is sound. The Crown has applied the right principle. If their principle is wrong reliance cannot be placed on the figures reached by them unless they abandoned the principle enunciated by them. They must also at the same time say that the principle adopted by us is wrong. The Crown has all along made it clear that the shares were assessed on the profit-earning capacity.

20 When Mackie retired in 1930—was it the intrinsic nature of the business that brought such of the profits between 1933 and 1939 or could anybody say that it was due to Mr. Mackie's personal association with the actual conduct of the business that brought the profits of that cycle.

There is evidence in this case of how this business was done. Williams' evidence is that the basic principle was set down by Mr. Mackie.

Having a large store they buy large quantities of rubber at the lowest possible price. Then they wait for a moment when they can enter into the best possible contract.

If people try to form themselves into a syndicate against Mackie's they would crash. It is not possible to outbid Mackie's.

30 Annesley Stores at McCallum Road. Hayward's evidence was that in 1940 it was no easy business to get stores. The syndicate who wanted to outbid Mackie would not have stores, the world market, &c. They could not get credit facilities from the banks. It is idle to suggest that the business was nothing much and that it was a speculative business.

40 A darker picture of the Battle of Britain was painted. How did the Battle of Britain affect the prices of rubber in Ceylon. The prices of rubber lands did not slump. It is common ground that with the rise in the price of rubber and the greater demand for rubber, lands grown with rubber passed from one hand to another at enhanced prices.

If England had been conquered there was the rest of the world to deal with. It is well known that America was very much a belligerent long before she became a belligerent according to the rules of international law.

Hayward's evidence—He says he was rather optimistic about rubber in 1940.



Problem of transport of rubber during the war. One has got to look at it from a commonsense point of view. People who are fighting a war would like to have munitions given preference. No endeavour made in this case to show that difficulties in freight acted like a clog on the actual export of rubber. Freight was monopolized to take food and munitions of war.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

Adjourned for lunch.

(Sgd.) S. S. J. GOONESEKERE, 10  
A. D. J.

No. 71/T: (Special).

27th May, 1949.

Resumed after lunch.

THE ATTORNEY-GENERAL continues his address.

In support of the evidence of Mr. L. G. Gunasekera and Mr. Satchithananda, he refers to document R8. In the last paragraph Julius & Creasy's were apparently requested by the auditors to make this statement. So far as the Management Shares are concerned, it is difficult to fix a value in terms of section 20 (1). The auditors say no value at all could be placed on the shares. But it would not be possible to say that no one will buy such shares at the time because, owing to the war, there were far less fluctuations in the world market price of rubber, and it was reasonable to expect the company will not be able to face the heavy losses due to fluctuations in the prices of rubber. 20

The position taken up by the Crown in this case is that in regard to the cycle of war profits, in 1938 there would not be fluctuation losses, and that supports the position taken up by the Crown that profits could be maintained for such a period of years after the death of Mr. Mackie. After the death of Mr. Mackie the profits will be maintained for such a period of years so as to give a substantial value to the Management Shares at the time of his death. 30

It is true that Mr. L. G. Gunasekera, the Assessor who originally valued the shares at Rs. 300 being a Barrister-at-law and an Advocate of the Supreme Court and Assessor of Estate Duty, did not have to dabble like Mr. Hayward, in the rubber business, or had any occasion to negotiate sales of stocks and shares like Mr. Cuming. That is freely admitted. But on one point Mr. Gunasekera was placed in a position of advantage over Mr. Cuming; that is, Mr. Cuming was broker for the sale of shares, but Mr. Gunasekera was Assessor for many purposes. He had to assess shares which are not quoted. He has given evidence and told us upon what basis he made the valuation. He expected the basic position, which the 40

Crown says ought to be accepted by Court, that these profits would be maintained. He took the profits of 4 $\frac{2}{3}$ rd years prior to the death of Mr. Mackie. He struck at the average profits. From that he deducted the dividend payable to preference shareholders and capitalized it at 15 per cent., and arrived at the figure of Rs. 300 per share. Dr. Hayley thought it fit to characterize it as artificial rubbish, but one has got to calculate when one has got to work at figures, and of course one does not blindly work at figures. Mr. Gunasekera had before him the whole history of this estate, the whole history of Mackie & Co., and all the documents. If one has got to reach a figure by an actuarial method, one cannot describe such figures as rubbish. It was not as if Mr. Gunasekera was unaware of the losses from 1927 to 1932. It was not as if Mr. Gunasekera had the experience of valuing big shares of a company like Miller's. He was undoubtedly asked whether he did not make any allowance for tax. He did not make an allowance for tax for the simple reason that he took the bare figures for profits without any sort of weightage. In other words, his mode of assessment really caught up one year of losses, when apparently the process of this calculation excluded any year of loss upon any reasonable estimate of the length of the war and the demand there would be for rubber during the post-war years. During the period of the war, rubber would be an important munition of war. So that, if Mr. Gunasekera did not exclude tax, one has got also to remember that he did not provide for weightage.

According to this mode of calculation, the buyer would succeed immediately to about Rs. 190,000 of surplus balance. So that even valuing the Management Shares at par, you get roughly about Rs. 190,000, which he capitalized at 15 per cent. On this point he makes the observation that in England the tenants carry on business in tenanted houses, and when they are required to leave the premises, they are entitled in law either to stay on by right, or they go out at once on the landlord paying compensation for the inherent goodwill of the house. The law seems to think that if a tenant carried on the business and he is asked to go away, then the rental value of the premises has gone up. He cites 1928 (2 All England Reports, page 450 at page 453).

When we come to determining what ought to be the rate of capitalization and what are the factors one may take into account, no person in the world can be mathematically accurate. There is bound to be plus and minus differences between two people. The question we have to ask is, when a person of experience places his opinion on a certain matter, whether you can demonstrate and say he is wrong. Neither lawyers nor Courts can work miracles. The figures have got to be ascertained. In these matters of valuation, of capitalization, and so forth, there is a measure of guess work involved, which apparently is the privilege of these experts.

It has been said that for a rubber business we got to give a larger percentage for capitalization. It would not be correct to say that in respect of every rubber business in Colombo. The contention is perfectly right that one would have to put a heavy rate of interest when you want to capitalize the value of the assets of a risky business. One has got to see whether, as in the case of a business which is sound today but will not be so tomorrow you put a heavy rate of interest for the purpose of capitalization, you are going to do it only by rule of thumb to a long established business. On this point the evidence is that the preference shareholders were to get nothing more than 8 per cent. And what is more, if their complaints are to be taken seriously, they would be content to have this money lying idle without dividends being paid. The interest at 8 per cent. Preference Shares is not for a period of years, one can imagine, on the original capital invested in the Company, but on the interest one would lose by investing the money. It is a question of controversy as to the rate at which you are going to capitalize. Experts may honestly differ. It is not possible to demonstrate mathematically, so to speak, what exactly is the proper rate of interest. Mr. Gunasekera, for instance, has shown a lower rate of interest, because he thought he had not applied weightage. The question was also put to Mr. Gunasekera as to how he sought to justify the figures, how he fixed such a rate of interest for such a precarious business as Mackie's at 15 per cent. He has given his reply. What is wrong about it? What is there open to criticism? What is there rubbishy about it? If the figures that were computed were falsified by any event that took place afterwards, that does not reflect against the person who made the valuation. Can anybody guarantee when buying a thing that its value would not go down a few days later. You may buy a house and find that it is haunted and would not get any tenants. These are all things that may happen. You cannot make allowances for all that. Money is paid as representing the true value of a thing. Any unfortunate circumstance does not reduce that value. They cannot argue or point to any figure and say that the calculation has been falsified. We say that they have not a weapon to strike us with. The profits have been valued in R5 and R6. They do not furnish material with which to controvert our position.

We come to the evidence of Mr. Satchithananda. The Crown has called its own expert singularly to assist the Court. As Mr. Hayley suggested, it is not the duty of the revenue departments of the country to just extract money from people. In these matters of dispute with the Crown, the Crown should come to Court to place such evidence before Court and to invite the Court to do justice to the subject, because it is also the interest of the Crown to see that the subject does not suffer injustice. Mr. Satchithananda, it would not be disputed, has been trying to assist the Court in this matter. He is a Chartered Accountant, who is carrying on a business of

Accountants and Auditors. He has told us, and that is not disputed, that he has been making assessments and valuations at various times for rubber businesses and so forth. I am not sure whether the evidence of Mr. Lander is equally explicit on that point, as to the nature of the businesses that he has assessed. There is this one significant fact that he had made a valuation for estate duty and he valued Mr. Lyon's goodwill there at Rs. 585,000. We went to Court and we had to call some person to substantiate the position, and we consulted that gentleman. The record of that case shows  
 10 that the first thing I said was that we were restricting our claim to Rs. 275,000.

No. 12  
 Addresses to  
 Court  
 —contd.

The second point is the basis of his valuation. When two experts are contradicting each other in regard to the principle they adopted, no doubt the Court is entitled to make a choice and accept such principle that appeals to the Court as true. The Court will also take into account some other factors which would tilt the balance more in favour of one than the other. Mr. Satchithananda has made a valuation on a sound foundation, namely, looked to the profits, and tried to find out the profits of the future having regard  
 20 to the past. That is point No. 1. That is even supported by Mr. Hayward

We know of the cycles of booms and depressions. Counsel for the appellant asked the question: Was that valuation basically a wrong mode of valuation? I say not. Was it a valuation to bolster up the Crown's position? No such accusation should be made.

There is this principle of weightage. Is that wrong? There can be a descending order and ascending order of profits. You take the average, and that average may convey no meaning. There are the prospects for the next year. The weightage principle commends  
 30 itself to one's common sense. Does Mr. Satchithananda's valuation suffer because of his adopting any of these two principles? We need not then go much into these figures.

The third point is capitalization. He has capitalized at 16 per cent. He has given this answer: "I find that preference shareholders have been giving their money at 8 per cent. Therefore I doubled it." He made an admission to this effect. In a rubber business particularly Mackie's, he said he capitalized the profits between 20 and 25 per cent. If capitalized at 20 per cent, I wonder  
 40 whether it may not be within your own rights to vary the capitalization. It is not wrong to adopt any foreign rate of capitalization, whether of Mr. Lander or of Mr. Satchithananda, because really these are the two people whose evidence can be considered on the point.

Mr. Gunasekera's greater capitalization has got to be considered in the context. He has not adopted the weightage method.

The question is, what is the rate of capitalization that should be adopted? Is 16 per cent. too low? If so, why is it low? If it is low, it should be raised. If it is raised, where should it stop?

R11. He submits that at the commencement of his address he has stated that the nature of the burden that lies on them is that if they do not prove that a Management Share is worth Rs. 40, then they have failed in the first step of their appeal. The next point is if they were to demonstrate from the evidence taken as a whole that Rs. 270 is too high a figure, it is to them to submit that it is not Rs. 40 but it is somewhere between Rs. 40 and Rs. 270 or Rs. 250. We have been told certain things about R11. Mr. Satchithananda has stated definitely in his evidence that he got these figures for each of these years after deduction of certain tax. This document has been before the appellants for some time, and if they thought that all these figures have been inflated, it was for them to produce some kind of document to show that they have been inflated. But for that, the figure of Rs. 270 would have been high. Take for example the mistake made with regard to taking  $\frac{2}{3}$ rd of  $\frac{3}{4}$ rd of the year 1940. If Rs. 270 was too high and brought down, there would be some validity in that argument. He is not prepared to concede that in working out the arithmetic of certain figures you apply certain principles and then you made an arithmetical error, and if you made an error you are not an expert. It does not affect the principle. A schoolboy good at arithmetic should be given credit if he had applied the correct principles and reached the wrong result because in some place by multiplying by 2 he multiplied wrong. The  $\frac{2}{3}$ rd of  $\frac{3}{4}$ rd is confessedly an arithmetical error. It has only resulted in the figure Rs. 270 being too low. Decrying this as an error, the correct figure would be Rs. 328. Mr. Gunasekera's own valuation was Rs. 300 for a share. It is not understood how Mr. Gunasekera's valuation could be left out, because he has answered every question put to him in cross-examination. His evidence carries a great deal of conviction. He is quite qualified in law and had done a number of such valuations.

There is the question of a reserve of Rs. 30,000. Mr. Satchithananda has gone upon the basis that there should be a reserve of Rs. 30,000, because in the year 1940 in the Balance Sheet at the end of 1940 there was a profit of Rs. 150,000. There have been no reserves in the previous five years. Rs. 150,000 reserve has been built up within five years. There is not a tittle of evidence to show that the reserve is a normal reserve of Rs. 150,000 that one would put in year by year.

Counsel for the appellants had been trying to picture a most depressing business in the case of Mackie. He cites 1937 Appeal Cases 26—valuation of shares for estate duty purposes. The judgment is delivered by the highest tribunal in the House of Lords. This is the leading case on this point.

How much will shares fetch in the open market? Dr. Hayley asked the question, supposing these shares were hawked about in Ceylon, who will buy and so forth. The Balance Sheet was referred to and it was suggested that there will be a lot of people who will be scared away. The point emphasized is, even if there is only one man in this world to whom it will be profitable to pay a good price for an article, the price that he would pay would be the proper value that should be taken for the purpose of valuation.

No. 12  
Addresses to  
Court  
—contd.

10 He cites Privy Council Cases, 1939, Appeal Cases 302. It has a relevancy to this case.

When you have to ascertain the market value of a thing, even if there is only one person to whom that property has got a value, the value to that person would be the market value of that article. Therefore, if any person outside the range of Mackie's family and friends would not have thought it a profitable investment to buy those Management Shares, then the value to any member of the family would be the market value.

Estate Duty Ordinance (Chapter 187), section 20 (1). The amending Ordinance is No. 8 of 1941. Sub-section 6 has been added.

20 There may be circumstances in which you cannot make a proper valuation of the shares of a company on a profit earning basis. Take for instance a private company of three shareholders who between themselves pay large amounts as Directors' remuneration. On that basis the profits available for distribution will be shown to be comparatively small. If you try to capitalize those profits you will make a wrong value as to the assets. One would expect that before one could capitalize and find the true value of the assets, the remuneration that should be paid to those in the business should be a reasonable remuneration.

30 Adamson gives one of the exceptions. He cites Dymond, page 121.

Articles of Association. We must proceed on the basis that people are going to act reasonably. If somebody goes for the 5,000 Management Shares, then the others would all collaborate and work together for their mutual benefit. One must not think that they would put obstacles in the way of the company functioning as a going concern.

MR. KADIRGAMAR addresses Court.

40 This is a case which must be settled on the evidence, and which can be settled on the evidence. The learned Attorney-General submitted that we have failed to prove our case, or that, if we have failed to prove that the value of a Management Share is Rs. 40, the Court must hold that there must be some kind of value which must be attached to Management Shares because Mackie's is a going concern. The Court should consider this matter from the point of

view of the issues that have been framed and the evidence led. The appellants came into Court to prove or to satisfy the Court with evidence that Rs. 30 was a fair figure for a single Management Share of this company. The appellant has done that by calling, what can be described as affirmative and representative evidence. What should be specially taken note of by Court is, that the appellants have placed before Court the evidence of an Accountant of standing and experience. That Accountant is the Auditor of this company.

The appellant also has brought before Court a man who has had 30 years' experience of rubber and of this company. The appellants have also placed before Court the evidence of Mr. A. E. Williams, who was an Assistant in Mackie & Co., and of Mr. Hayward, a Rubber Merchant, whose entire business life has been in rubber from 1912. The appellants brought before Court a leading broker in Colombo, whose experience as a broker and a rubber dealer counts over 30 years. That evidence is representative, because it is drawn from all cross sections of the business community and from all the cross sections of the trading community, and their evidence is of very great importance in this matter.

The appellants have sought to prove that a Management Share is worth Rs. 40, and that a fair value for the purpose of duty is Rs. 40, and for that purpose the appellants called Mr. Lander, who explained his basis of valuation. Vide page 4 of the proceedings where Dr. Hayley's opening submissions are recorded, pages 6 to 9 which is the relevant portion of Mr. Lander's evidence and to the documents that he produced P2 to P7.

Mr. Lander gave affirmative evidence. The only attempt made to cross-examine Mr. Lander, with the object, perhaps, of demonstrating to Court that his method of valuation is an unacceptable method is to be found at pages 25, 26 and 27 of his evidence. The only suggestion was that his basis is the break-up basis. When it was put to him that his basis was not the proper basis, that was for a very mysterious purpose. He said it was not a break-up basis. The matter was not pursued. It was the intention of learned Attorney-General to suggest that Mr. Lander's basis was a break-up basis, and Mr. Satchithananda was called to prove that the break-up basis was an unsatisfactory basis. Mr. Lander gave certain replies. Mr. Satchithananda and his evidence must both be reduced to a cypher. He and his evidence is of no value, and could not be of any concern in this case.

He cites section 20, chapter 187, of the Estate Duty Ordinance. There is a proviso with which we are concerned. Our basis is that Rs. 40 is the value of a Management Share, and that as a result of Mr. Mackie's death there would be a depreciation of Rs. 10 in the value. That is the price which it would fetch if sold in the open market.

The Estate Duty Ordinance has been amended by an amending Ordinance, No. 8 of 1941. Section 20 has been amended and a new sub-section has been added.

No. 12  
Addresses to  
Court  
—contd.

Mr. Lander was asked whether his was a break-up basis, and he said " No ". If it was a break-up basis, then liquidation expenses, claims for compensation, &c., has to be paid. This is a valuation on a total assets basis. Mr. Gunasekera at page 97 of the proceedings admitted that the system which Mr. Lander applied at arriving at the value of the shares was according to Ordinance No. 8 of 1941. The significance of that is, when the appellants filed the petition, their case was that the shares should be valued at Rs. 40 a share, and that Ordinance No. 8 of 1941 did not apply. Crown filed answer stating that these shares should be valued according to Ordinance No. 8 of 1941. Paragraph 10 (d) of petition. Mackie died in September. This Ordinance No. 8 of 1941, came into effect after that date. It has no retrospective effect. Answer para. 2. Mr. Gunasekera has conceded that there can be no quarrel with the appellants on that ground.

Mr. Lander's evidence is affirmative evidence. It was tested in cross-examination. The only test was that it was on a break-up basis. The only person on whom the Crown relied to carry further this break-up basis, was Mr. Satchithananda. Mr. Satchithananda is not to be counted in whittling down or belittling the evidence of Mr. Lander.

The appellants called Mr. Williams. Mr. Williams in his evidence has given the Court impressions of Mackie's business from the inside. He has told the Court how the business was carried on, the nature of the business, and he ended up by saying that he had no faith in rubber although he was employed there, and he himself would not buy. Mr. Williams as an employee of the firm was entitled to enjoy all the privileges.

By saying that he would not buy, he meant that he would not risk the capital. At the time Mr. Williams gave evidence in this Court, he was no longer an employee of the company.

Mr. Satchithananda has told us that it was a reconstituted reconstructed company. Mr. Williams' evidence shows his reactions to the business at the time Mr. Mackie was alive.

With regard to Mr. Hayward. From 1912 he has been in the rubber business in this country and elsewhere. He has told us that rubber is speculative, that rubber is risky, and that a rubber dealer's business has no goodwill. That is affirmative evidence.

Mr. Cuming, apart from the rest of his evidence with regard to Mackie's business, gave certain evidence which is a vital feature which the Court should take notice of. He said that he will not underwrite the shares of this company at any price. He represents the biggest firm of brokers in Ceylon.



When we come to value these shares from the point of view of a prudent buyer in the open market, there are a number of factors that must be considered. Those are the factors that a straightforward prudent buyer will consider. The first aspect on which the appellants led evidence is that at the date of Mackie's death the future position of world was unpredictable. Mr. Lander gave evidence on that point—vide page 19. This was the blackest period of the war for England, and Mackie & Co. was owned by English shareholders. It was difficult at that time to find anyone who was willing to invest large sums of money on speculation. At page 27 of his evidence he has stated that this was an exceptional moment of time. At page 30 he has stated that ' he would be a brave man if he could take into account that the profits of 1940 could be for more than 3 or 4 years.' He also stated that if a purchaser could have guessed that there was going to be a long war, no Government interference, no form of increased taxation, that he was not going to have competition from others, he would be a brave man. In 1949 we are making more of a fuss of the Battle of Britain than in 1940. Now that the war years have passed, it is not so difficult a task to take ourselves back to 1940 when this Battle of Britain was going on. Nobody knew just what was going to happen. It is no use now, long after the event, for the learned Attorney-General to characterize it as an over-statement in 1949 of the position that existed in 1940.

The Attorney-General never cross-examined Mr. Lander and suggest to him that the position was not critical in 1940.

Williams' evidence at page 48. Hayward's evidence at pages 55 and 59 says " It was impossible to estimate the duration of the war ".

Cuming at pages 63, 66 and 67 refer to the 1940 conditions. He said it was impossible to predict the duration or what the outcome of the war was going to be.

Mr. Satchithananda's evidence at pages 135, 136 and 137. We have Satchithananda's own account of his recollections of that period. There has been no comment made on the affirmative evidence that has been led of the unpredictable conditions and the conditions in 1940, and the witnesses were not cross-examined on those points.

The learned Attorney-General attempted, with some measure of grace, to side step the evidence in the case.

In this same connection, arising out of the 1940 world conditions, Mr. Lander says in his evidence at page 30 that he would be a brave man who can assume that profits will continue for three or four years from September, 1940. Mr. Lander in his evidence at page 10

says that it was difficult at that time to find anyone who was willing to invest large sums of money on speculation. His evidence at pages 27 and 29 is also important.

No. 12  
Addresses to  
Court  
—contd.

There is the evidence of Mr. Hayward at page 54. He says no one in September, 1940, would have bought these Management Shares. We have Williams' evidence at page 43. All that is affirmative evidence.

The witnesses were available for cross-examination. No suggestion has been made that their evidence could not be accepted.

- 10 The next point to be considered, which will be considered by a prudent buyer, would be the nature and type of business done by Mackie's. Lander's evidence at pages 12 and 13. He says he looked into the history and affairs of Mackie & Co., and he expressed the view that it was a business dealing with a very sensitive product, rubber, and that the result of the company indicated that a highly speculative policy had been adopted. Neither Mr. Gunasekera nor Mr. Satchithananda could claim to have that degree of familiarity with Mackie's accounts and affairs of the company as Lander. When Mr. Lander was cross-examined at page 20, he said that
- 20 25 to 30 per cent. of the Island's exports of rubber went through the hands of Mackie & Co. That is one estimate we have of the business that Mackie's did. This point is important.

- It was the Crown's position, they assumed and they went on the footing that Mackie was a large exporter of rubber and that he was dealing with foreign consumers; the suggestion being that because of the reputation Mackie's had, foreign consumers were in reach of him, and therefore he made large profits. That is the fundamental mistake that Mr. Gunasekera and Satchithananda made, that profits today means profits tomorrow. Both Mr. Gunasekera and
- 30 Mr. Satchithananda have misunderstood or misconceived the nature of Mackie's business. At page 75 Mr. Gunasekera says: Mackie's had almost a partial monopoly of the export of rubber. This is the essential misconception on the part of the two Crown witnesses. Then he was cross-examined.

Mr. Lander's evidence at pages 20 and 21. He says that Mackie's business is a highly speculative one.

- Williams' evidence at pages 41, 42 and 43. He says it is impossible to predict the future rubber market, and that Mackie's carried on a very speculative business. He says he has been in the rubber
- 40 business for 30 years. At page 47 of his evidence he says that he would have bought the Management and Preference Shares of Mackie & Co. only for a gamble, if he could have bought the shares very cheap. This evidence was not contradicted in cross-examination. Mr. Williams said that he knew more about Mackie's

shares than anybody else. The Attorney-General never suggested to him that he was gassing himself too much.

These witnesses were brought here to state their views and to give their opinions.

Mr. Lander's evidence at pages 6, 9, 14 and 15. He has spoken about the risk of a falling market. Then he was cross-examined by the learned Attorney-General. Vide page 24 of his evidence. He stood by what he said.

On this same aspect, Williams at pages 42, 43, 38, 46, 48 and 49. He produced P10. Mr. Satchithananda admitted that he had seen this document for the first time in Court. Williams on these pages tells us something about the system. At page 49 he stated " There has been a very serious drop in the price of rubber during the last few months, even since the last date I gave evidence ". 10

On the same point, Mr. Satchithananda's evidence at pages 131 and 174. He has confirmed everything that Lander and Williams had said.

Hayward's evidence at pages 51 and 52 on this same point. He says that dealing with rubber is speculative, and he has given us a list of risks. At pages 51 and 52 he gives his opinion. 20

If all these witnesses say that it is a risky business, then risk is an element which ought to have been considered by the Assessors when they came to fix the return.

At pages 82 and 94, Mr. Gunasekera has admitted all that these witnesses has stated. At page 94, Mr. Gunasekera says that if a business is of a speculative nature, then adjustments must be made.

Mr. Satchithananda at page 141 states that a fluctuation in the price of rubber would be one of the most important points in the mind of a prudent buyer. At page 144 he admits that Mackie's trading in rubber was not normal trading, and that it is a very risky business. 30

Mackie's rubber is not normal trading. Mr. Gunasekera and Mr. Satchithananda thought that the expression " normal trading " can be applied to Mackie's business. They cannot do that. They did not know what Mackie's business was when they came to value it.

(Sgd.) S. S. J. GOONESEKERE,  
A. D. J.

It is 4 p.m. now. Further hearing on 5th July, 1949.

(Sgd.) S. S. J. GOONESEKERE, 40  
A. D. J.

No. 71/T. (Special).

5th July, 1949.

No. 12  
Addresses to  
Court  
—contd.

ADVOCATE MR. DOUGLAS JANSZE, Crown Counsel, instructed by MR. JOHN WILSON for the respondent.

ADVOCATE MR. KADIRGAMAR, instructed by MESSRS. JULIUS & CREASY for the appellant.

MR. KADIRGAMAR continues his address.

10 The contest is not confined to the sum of money referred to in the application. Whatever you hold to be the value of the Management Shares will be accepted in England also. Including the sum of money which is set out in the petition a further sum of about £35,000 are at stake both here and in England.

*Market Price and Market Value.* Cites (1918) 2 K.B. p. 735 at 739 and 740—Ellerman *vs.* Inland Revenue Commissioners.

(1924) Indian Law Reports 48 Bombay, page 190 at 195 to 196.

Hailsham vol. 13 page 271.

20 The particular period of time September 6, 1940, when the Battle of Britain was going on was a fact which would have weighed very considerably in the mind of any prudent purchaser. The fact that the Battle of Britain was going on is a factor that cannot be over-emphasized. Every intelligent man in this country was following the course of the Battle of Britain as carefully as it was followed in Britain because the fates and fortunes of the people in this country depended as much as the fate and fortunes of the people in England—more so of those who had capital interests. You will hold the Battle of Britain and the uncertainty of all is one over-riding feature which governs the question of the value of these shares. Mr. Satchithananda confirms the entire position that I submit to you, viz., that the Battle of Britain was at a very critical stage and its importance in the valuation of shares cannot be over-emphasized.

30 He refers to pages 135 and 136 of the evidence. He refers to speeches made by Churchill at that time “ Into Battle ” at page 270.

He refers to the evidence of Mr. Williams at pages 42 and 43.

Also to evidence at pages 38, 48, 46 and 49 in regard to the nature and type of business. Confirmed by Mr. Satchithananda at pages 131 and 174.

Mr. Hayward’s evidence at pages 50 and 52 in regard to the speculative aspect of Mackie’s business.

Mr. Cuming’s evidence at pages 61, 72.

Mr. Gunasekera’s evidence at pages 82 and 94.

40 Mr. Satchithananda’s evidence at pages 141 and 144 relating to rubber business is not normal trade and so it was risky business in Ceylon.

Both Gunasekera and Satchithananda as to the basis of their valuation. It is the essential basis to value that Mackie's is a business house which exports a large quantity of rubber.

He refers to evidence at pages 75, 113-124 and 129.

With regard to the attitude of the prudent buyer evidence of Hayward at page 60.

Mr. Cuming's evidence at page 65. No dividends on Preference Shares for 9 years and no dividends on Management Shares for 14 years.

The case presented by the Crown both Mr. Gunasekera and Mr. Satchithananda adopting, respectively, a straight average method of calculation and the weighted average calculation have proceeded on erroneous lines working backwards for 1940, 1939, 1938 and 1937. Those were war years and abnormal years. Those war years should be excluded when any calculation is made to ascertain the value of shares. 10

*War Profits.*—All war profits must be strictly excluded from any method used for the valuation of shares. That is both the law and principle of valuation that extraordinary or abnormal or war profits must be excluded. 20

Cites judgment of Mr. Sinnetamby in D. C. Colombo 72/Trust (Special), pages 17 and 18.

In that case Mr. Satchithananda himself conceded that principle and in his valuation of the goodwill of the business of Heath & Co. excluded the profits of the years 1941 and 1942 on the ground that they were war years. Mr. Sinnetamby applied the principle strictly and on his own accord excluded the profits for the years 1939 to 1942 on the ground that they were war profits.

Cites Seed pages 118 and 110.

In this case too all the evidence is that the profits for the years 1938, 1939 and 1940 are war profits. 30

See Lander's evidence at page 10.

See William's evidence at page 42.

Hayward's evidence at pages 60 and 61.

Gunasekera's evidence at pages 75, 77, 79 and 99 where he admits that 1939 and 1940 were war profits, also his evidence at pages 75 and 77. At page 79 he admits that if buyer ignores war profits he will not think much of these shares.

Satchithananda's evidence at pages 131-133, 177, 178 and 179 are most important. These pages are the most important pages in the whole record. 40

He clearly and categorically admits the principles of law and valuation that war profits, abnormal profits, and extraordinary profits must be excluded in valuation. On this evidence both Mr. Gunasekera's and his own methods must be rejected. The Crown case stands condemned out of the mouths of the Crown witnesses.

Page 179 of Mr. Satchithananda's evidence is most important. He admits if war years are excluded, then on his method the value of a share on the figures for 1934-38 and 1933-37 will be nil and on Mr. Gunasekera's method for 1933-37 it would be Rs. 33.73 and for 1934-38 nil and 1936-38 Rs. 2.

No. 12  
Addresses to  
Court  
—contd.

No goodwill can be said to attach to these shares. Appellants have led all the evidence necessary.

He cites (1912) 1 K. B. 539 at 558, Attorney-General *vs.* Borden.

Cites Seed 4, 5, 8, 9 and 97.

10 Leake on " Commercial Goodwill " at pages 18, 19, 23 and 24, 30-32 and 37.

(1883) 25 Chancery Division 472 at 479, Cooper *vs.* Metropolitan Board of Works.

Refers to page 2 of the proceedings and issue 4.

Lander at page 42, Hayward pages 52, 53 and 54.

Mr. Gunasekera pages 76 and 98.

Mr. Sathchithananda pages 108, 124, 115, 116, 166, 168, 160, 161, 123, 125, 110, 122, 153, 154 and 144, 176.

20 Evidence in regard to war profits 130-132 and 170-179, 133, 134, 146, 148, 145, 140, 142, 145, 129, 130, 152, 164, 161 and 162.

R11—pages 122, 156-158, 159, 167, 168 and 170.

Cuming 65, 66.

Satchithananda 118.

Mr. Kadirgamar produces the judgment in Lyon case marked Z. Order will be delivered on 31st August, 1949.

(Sgd.) S. S. J. GÓONESEKERE,  
A. D. J.

## Judgment of the District Court

No. 71/T. (Special).

31st August, 1949.

This is an appeal preferred by the executors of the estate of one C. W. Mackie who died in Scotland on the 7th September, 1940, against an assessment made by the Commissioner of Estate Duty in respect of the estate. The deceased Mackie at the time of his death held, amongst other assets in Ceylon, 9,201 Cumulative Preference Shares and 5,000 Management Shares in the firm of C. W. Mackie & Co., Ltd. The Cumulative Preference Shares at the time of the constitution of the limited liability company were valued nominally at Rs. 50 per share and the Management Shares were valued at Rs. 2 per share. The Assessor first valued the Cumulative Preference Shares at Rs. 90 each and Management Shares at Rs. 300 each. The original valuation of the Management Shares by the executors was at the rate of 98½ cents per share and the Cumulative Preference Shares were valued by them at Rs. 82.43 each (vide R2). Later the executors agreed to have the value of the Management Shares increased from 98½ cents to Rs. 40.6188 each, but deducting from the value of each share Rs. 10.6188 owing to the death of the Life Director Mackie. So that the net value of each Management Share by the executors as increased by them at the time an appeal was preferred by them to the Commissioner of Estate Duty against the valuation placed on the estate by the Assessor was Rs. 30. The executors also at this period agreed to accept the value of each Cumulative Preference Share at Rs. 87.601. On appeal to the Commissioner of Estate Duty, he, on 20.5.46, reduced the valuation of each Management Share from Rs. 300 to Rs. 250. As against this decision of the Commissioner of Estate Duty the present appeal was taken to this Court by the executors under provisions of the Estate Duty Ordinance. So that at the time this appeal was preferred to this Court the questions to be decided were (a) what is the value of each Management Share? Should it be Rs. 250 each as found by the Commissioner or Rs. 30 each as stated by the executors, and (b) what is the value of each Cumulative Preference Share? Should it be Rs. 90 as found by the Commissioner or Rs. 87.601 as stated by the executors.

At the hearing before me the Solicitor-General who appeared on behalf of the Attorney-General stated that he was prepared to accept the value placed on the Cumulative Preference Shares by the executors for the reason that the difference in the valuation was very small and this was agreed to. So that it was not necessary to decide issue No. 2 as suggested by Dr. Hayley and the main question for determination was the value of the Management Shares.

- The firm of C. W. Mackie & Co., Ltd., was constituted about the year 1922 with a capital of Rs. 1,000,000 divided into 19,800 Cumulative Preference Shares of Rs. 50 each carrying interest at 8 per cent. per annum which absorbed an amount of Rs. 990,000 out of the capital and 5,000 Management Shares at Rs. 2 each absorbing the balance Rs. 10,000 of the capital. The main business of this limited liability company was buying and selling rubber, and the deceased C. W. Mackie was its Life Director who held at the time of his death out of the total amount of 24,800, both Cumulative
- 10 Preference and Management Shares no less than 14,201 shares. No one else except the deceased Mackie held any Management Shares in the company. He appears to have acquired 1,000 Management Shares held by one N. J. G. Robertson who was at one time another Director of the company and another 375 Management Shares held by others at the rate of Rs. 224.67 per share at the end of the year 1926. The reason given by the executors as regards the alleged depreciation in value of these Management Shares at the time of the death of the deceased in September, 1940, from
- 20 Rs. 224.67 per share to 98½ cents per share is stated to have been the very gloomy outlook the rubber trade had at the time owing to the uncertainty of affairs due to the world war that was raging at the time. The explanation given by the executors as regards the increase in the valuation of the Management Shares from 98½ cents to Rs. 40.6188 was that their earlier valuation of 98½ cents was arrived at by examining the Balance Sheet of the company as furnished by the Auditors at the end of 1939 when the outlook of the rubber trade was not so good as at the time of the death of the deceased a little more than 8 months later when the company's profits had begun to show an upward trend.
- 30 The Statement B furnished by the Auditors, marked P6, shows how the Auditors of the company arrived at their valuation of the Management Shares at Rs. 40.6188 each. This same Statement shows how the Auditors arrived at their valuation of the Cumulative Preference Shares at Rs. 87.601, but owing to the settlement arrived at between the parties we need not trouble ourselves any further with the valuations of these Cumulative Preference Shares as found by the contending parties.
- 40 The deceased C. W. Mackie appears to have been carrying on the business of buying and selling rubber long before the formation of the limited liability company referred to and he appears to have acquired a great deal of experience in this branch of business. The company had one of the best stores for storing their rubber and had acquired a very good name for the quality of the rubber that they exported from Ceylon so much so that the "Mackie standard" of rubber was regarded almost universally as equivalent to the R. M. A. (Rubber Manufacturers' Association) standard. They appear to have handled about 25 per cent. of the exports of



No. 13  
Judgment of  
the District  
Court  
31-8-49  
—contd.

rubber from Ceylon and there can be no doubt that at the time that the deceased Mackie retired from Ceylon and went to live in Scotland the goodwill of the firm was as high as that of any other firm in the East which handled rubber. The deceased Mackie must have had unbounded confidence in his Assistants because he retired from Ceylon in 1930 at a time when the company was not making any profit but losing.

An examination of the document P7 shows that the company made profits on its trading from the time of its formation in 1922 up to the end of 1926 and in one year, 1925, its profit was more than one and half times its capital. From 1927 owing to the decrease in the price of rubber the company appears to have suffered loss up to the end of 1932 and in the year 1930 when the deceased Mackie retired to Scotland the company suffered the heaviest loss which amounted to nearly three-fourths of its capital. Again, the company made profits, though not largely, in the years 1933 and 1934. There was a loss in 1935 though not a large one. In the year 1936 there was a small profit of slightly less than Rs. 100,000. In the year 1937 there was a small loss of Rs. 40,000 odd and from 1938 the company had again begun to come across good times and its profits began increasing from Rs. 149,000 in 1938 to Rs. 787,000 in 1939 and Rs. 501,000 in 1940.

The affairs of the company which was strictly a private one appears to have been handled very carefully and cleverly by its Life Director when he was in Ceylon, and, during some years when the company suffered heavy losses, the shareholders whose number appears to have been very limited waived their Preference Share Dividends and in other years when the outlook was not too bright the dividends were not drawn by these shareholders, but allowed to accumulate so that the company did not have to pay interest on as large bank overdrafts as they would have otherwise had to face.

It would be interesting at this stage to find out what proportion of the original capital was drawn by the Management Shareholders during the years when the profits of the company were large. For 1922 and 1923 the Management Share Dividends amounted to half the issued capital. In 1924 it amounted to one-fifth of the issued capital. In the year 1925 the Management Share Dividends drawn was equivalent to half the issued capital and in 1926 this dividend had increased to three-fourth of the issued capital. This is the year when the deceased Mackie acquired the few outstanding Management Shares which were then held by Robertson and others. There can be no doubt that if there was a goodwill attached to this business the benefit of such goodwill went mainly to the management shareholder or shareholders and the contention on behalf of the appellants is that at the time of the death of Mackie the holder of the entirety of the Management Shares there was no goodwill attached to these Management

Shares which in one year had absorbed a profit equivalent to three-fourth of the issued capital.

No. 13  
Judgment of  
the District  
Court  
31-8-49  
—contd.

The executors contend that the value of these Management Shares will have to be confined to the amount that would have been left over at the death of Mackie to be drawn after the payment of the accumulated dividends and the original capital of the preference shareholders. It is on this footing that the Auditors have prepared their valuation of the Management Shares and arrived at the figure Rs. 40.6188 as being the value of each Management Share.

10 The evidence led on behalf of the appellants is that at the time of the death of the deceased the future of the world was so very uncertain when the Battle of Britain was raging and England was almost alone fighting powerful enemies and, although rubber was one of the munitions of war and one that was required very badly by the belligerents, the shipping position was so very bad that it was not certain whether it would have been possible to have the rubber taken across from Ceylon to the countries which converted it into the necessary munitions of war. It is because of these reasons that it is contended on behalf of the appellants that the method of valuation to be applied in valuing these Management  
20 Shares should be what is called the "break-up" method of valuation.

It is admitted on all sides that the policy adopted by this company was to have as much stocks of rubber in hand as possible. So that the profits when there is a rising market and the losses when there is a slump in the market for rubber are both on the high side. The company had all the necessary facilities for this purpose. They had one of the largest stores in Ceylon. They had a very good name for their rubber. There appears to have been no trouble whatever regarding bank overdrafts. The staff  
30 was very experienced and there can be no doubt that when the deceased retired to Scotland in 1930 when the company was making losses he knew that the future of the company was in safe hands and there was nothing to be afraid of. He must have realized more than anybody else that trade in rubber goes on in cycles and that when the time came for the world to demand more rubber the affairs of the company would again look up and the Balance Sheets would again begin to show profits. There is always a goodwill attached to a company like this whether the Chief Director or the Managing Director or the Life Director was present in person  
40 at its Head Office or not, and in a company like the one in question where the policy is well settled the death of a Director will not tend much to reduce the value of its goodwill, if there is any.

As I stated earlier, Mackie had retired to Scotland in 1930 and for 10 years, the affairs of the company had been managed by his Assistants who were left in immediate charge of the office

at Colombo. They must have known their business because they too have been earning very good profits in the absence of Mackie when there was a chance of doing so, and the affairs of the company have been going on as well during his absence as when Mackie was in Ceylon. I do not believe that Mackie's death under such circumstances could have reduced the value of the Management Shares of this company by more than 25 per cent. as contended by the appellants. He is described as a retired merchant and I do not think that from his seat of retirement in Aberdeen in Scotland he could have exercised very much control over the affairs of the company here.

It was contended on behalf of the appellants that although Ordinance No. 8 of 1941 which appended a new sub-section to section 20 of the Estate Duty Ordinance came into operation some time after the death of the deceased this sub-section furnished a very good indication of the method that ought to be adopted by Courts in the valuation of shares of private companies like the one in question by adopting what the appellants called the "total assets basis". Even after the commencement of this Ordinance no Court is bound to value shares in private companies which are not quoted in official share lists on this basis, but there can be no doubt that the method advocated in this sub-section would be the best and safest method to adopt in arriving at a valuation of shares in certain private companies. This method will have to be adopted in a case where the proprietor of a private company dies and there is no likelihood of there being a continuity of the business owing to the withdrawal of the deceased proprietor's expert knowledge of the particular trade that was being pursued by the company or if there is any other inherent difficulty in the carrying on of a business after the death of a shareholder who held an important position in the management of the company.

Would the death of the deceased ten years after he left Ceylon leaving the affairs of the company in the hands of a trained staff leave the company in question here in such a predicament as to make it appear to the other shareholders and Directors of the company that there was no useful purpose in their continuing on with the business and that the best thing they could do was to go into liquidation. Nobody who had any hand in the management of the company at the time of the death of the deceased appears to have thought of winding up the company owing to the death of the deceased. It went on making profits and, as far as I can see one of the largest profits ever made by this company, according to the Balance Sheets filed, was in the year 1942 when a total profit, without making allowances for taxation, of Rs. 1,500,448 was made. Out of this profit the amount payable as dividends on the Cumulative Preference Shares would have absorbed Rs. 79,200 leaving an amount of Rs. 1,421,240 for payment of taxes and dividends on the 5,000 Management Shares. Even if Rs. 421,240 or an amount somewhat

above that was paid as taxes there would have been very nearly Rs. 1,000,000 to be appropriated by the management shareholders as profits of this particular year. The company was not wound up on the death of its Life Director because it was quite evident to the other Directors that large profits were to be made in the near future and their expectations were realized and the company went on functioning till it was reconstituted or sold several years after the death of the deceased.

10 The witness Williams who was in charge of the business during the ten years' absence of the Life Director in Scotland stated in evidence, " We used to sell 50 or 60 tons of rubber a day. The prices, conditions of sale, shipments and the terms of the contract were fixed up by our management from day to day after Mr. Mackie's retirement. There was no need to consult Mr. Mackie regarding transactions of the daily business in Ceylon. I know as much about the commercial aspect of rubber as anybody else in Ceylon ". As regards shipping during time of war he said  
20 " Ceylon had no freight of its own, but it was certain that the belligerents who were in a winning way or wanted to win the war would have found the freight ". He was questioned whether any rubber was held up for lack of shipping space during the war and his reply was " Ultimately it went ". This witness also stated what the policy of the business was: that it was one of stocking large quantities of rubber and turning it over and that the accounts showed that when the market was rising there were good profits. At the time of Mackie's death prices were rising and every one knew that these high prices would keep up for the duration of the war, but the question was shipping space.

30 Another witness who was called on behalf of the appellants was the witness Hayward and he admitted that when he was coming back to Ceylon from England in August, 1940, he was optimistic about the market for rubber as it is a munition of war but he could not say as to how long the war would last.

40 Another witness, Cuming, stated that the essence of good business is to be able to hold large stocks. If a businessman had finances he would stand fluctuations of prices and he would take a bigger view and a bigger view is more likely not to lose. This witness in spite of his evidence stated that as a broker he was of opinion that the Management Shares held by the deceased Mackie could not have been sold at the time of his death and that he personally did not think that a person who bought up the deceased's interests in the company would be making a splendid bargain because the assets built up by Mackie were entirely due to his personal ability and any purchaser was not likely to have the same results if he should take over the business as a business of this sort is rather like that of brokers in that it depends largely on the flair of the particular dealer's mind. I do not agree with this witness that the death

No. 13  
 Judgment of  
 the District  
 Court  
 31-8-49  
 —contd.

of Mackie would have created such a void in the affairs of the company as this witness tried to make out.

The witness Lander, also called on behalf of the appellants, took an unduly pessimistic view of matters as they stood at the time of the death of the deceased. If the evidence of this witness is to be accepted, there was not a ray of hope for England to win the war in September, 1940, but the witness Hayward appears to have had a different opinion at least as regards the future of rubber when he was coming back from England in August, 1940.

There can be no doubt that by the death of Mackie his personal qualities were lost to the business, but however eminent his position may have been in the rubber world when he was an active partner and Director of the company when he was in Ceylon, there can be no doubt that, after his retirement to Scotland in 1930, his position deteriorated more and more and at the time of his death he must have been regarded in the rubber world more as a back number than anything else. I find that the death of the Life Director Mackie did not create such a panic in the mind of investors as to make them fight shy of buying the Management Shares held by the deceased Mackie if the capital was available and if the whole block of Management as well as Cumulative Preference Shares held by the deceased could be sold. 10 20

A large amount of evidence was elicited from the different witnesses by Counsel for the appellants to show that the position of an investor who acquired even the entire block of Management Shares held by the deceased Mackie would not have been an enviable one in the management of the affairs of the company and his capital would not have been safe. No sane man would have contented himself with buying even the entire block of Management Shares of the company unless he could buy a sufficient number of Cumulative Preference Shares too in order to secure to himself a controlling vote in the management of the affairs of the company. No doubt, a large amount of money would have been necessary for such an investor to secure his position in the management of the company, but such large capitalists do exist, though not in large numbers, and there is no reason why, if one investor could not find the entire capital to acquire the entire holdings of Mackie in the company a number of investors could not join for the purpose. 30

The entire company has since been sold as a going concern and there is no evidence that any difficulty was experienced in putting through this sale for want of capitalist investors in Ceylon. 40

The witness Lander stated in evidence regarding the prospects for rubber shortly before the death of Mackie: "It was difficult at this point of time when Britain was alone against Germany to make a forecast of what the future was going to be. Conditions became worse after the death of Mackie. It was the blackest period of the war for England and Mackie & Company was owned by English

shareholders. It was difficult at that time to find anyone who was willing to invest large sums of money on speculations"; in spite of this evidence this witness increased the valuation as placed on the Management Shares at 98½ cents each as at the end of December, 1939, to Rs. 40.6188 on the date of the death of Mackie eight months later. In regard to goodwill this witness stated, "The first question is whether Mackie's had a monopoly in rubber. The answer to that is that Mackie's had not got a monopoly in rubber. In 1940 it was open for any person to be a rubber dealer. The next question is whether Mackie's had a monopoly of premises suitable for dealing in rubber. The answer is again 'No'. Other premises were available which were lying empty. The next point is whether Mackie's had anything other businesses had not. They had a reputation for good trading, but that was common. They had a good name. They had not gone bankrupt. Good name coupled with the making of losses does not produce goodwill. Mackie's certainly had a good name, but that had to be combined with other things and with the ability to make profits and not losses. At that time rubber was bought and sold in the open market. During this period, in addition to rubber, coupons were also speculative. Price of coupons as well as the price of rubber was liable to considerable fluctuations. Taking the period 1922 to 1940: 1922 to 1926 boom following post-war slump; 1933 to 1937 saw slight improvement but not absolutely certain; 1938 saw preparation for war. Rubber was being bought up". I do not agree with the evidence of this witness regarding monopolies in rubber. Mackie's had all the facilities and the good name for handling as much of the rubber that goes out of Ceylon as it is possible for one single company to handle efficiently.

Two documents that would throw a great deal of light in ascertaining the state of mind of the investing public at about the time of the death of Mackie as regards the future of rubber are the share lists R12 and R13 produced by the respondent. Out of all the rubber companies quoted in the share list R12 issued on 30th August, 1939, there are buyers only for one local rubber company, the Labugama Rubber Company, Ltd., where there seems to have been an inquiry from a buyer who was prepared to buy a small number of shares in this company of which the par value per share was Rs. 10 at Re. 1 per share. The only other purely rubber company for which there were inquiries by buyers was the Periyar Rubber Company, Ltd. (This company does not own estates in Ceylon as far as I am aware.) Here too there appears to have been a buyer who was prepared to buy a small number of shares quoted at Rs. 10 par at Rs. 3.50. The large number of sellers for rubber shares in this list also shows that at the time of the issue of this share list investors were nervous as regards the future of rubber. The share list R13 was issued one year later on 5th September, 1940, two days before the death of Mackie. According to this document

No. 13  
 Judgment of  
 the District  
 Court  
 31-8-49  
 —contd.

there are investors who are prepared to buy shares in almost all the rubber companies quoted in this list and there have been a few transactions too. I am of opinion that these two share lists afford a very much better indication of what the investing public thought of the chances of England winning the war and of what the future of rubber was going to be than the evidence of Lander. There appears to have been a complete reversal in the minds of the investing public regarding the chances of England winning the war and the future of rubber during the twelve months, 1st September, 1939 to the 5th September, 1940. On the face of these two documents I cannot attach much importance to the evidence of Lander regarding the future prospects of rubber at the time of Mackie's death. 10

I have not overlooked the fact that it is very easy to prophesy after the event, and, after having examined the Balance Sheets of this company as furnished after the death of its Life Director and more particularly after the profit made by the company in the year 1942, it is easy for anyone to say that the Management Shares ought to have been valued very much higher than the executors chose to place on them as at the time of the death of Mackie. The most carefully planned schemes of financiers at times miscarry owing to unforeseen circumstances and the only thing that one could do in assessing the value of shares like the ones in question now is to reduce the chances of error as much as possible. 20

Lander appears to have arrived at his valuation of the Management Shares by examining the Balance Sheets and, as no dividends on the Cumulative Preference Shares had been paid for several years, he valued these shares low, but it is a well established principle in valuing the goodwill of companies that although the historical background of a company may be useful to test its stability and ability to withstand adverse trading balances it is mainly the future prospects of a company that have to be considered in ascertaining the value of its goodwill. 30

If there is a goodwill attached to a company there must be a method by which its value could be ascertained beforehand though it must be admitted that no such method could be altogether fool-proof.

The witness Lander defined goodwill as the capitalized value of the super earnings over a fair commercial yield for a particular business. If he meant by this definition, as I have no doubt he did, that the goodwill of a company is the capitalized value of the profits that are likely to be made in a certain business over and above a fair return on the money invested by its shareholders I agree with him. As far as I have been able to gather from the extracts quoted to me from the works of different authors my own conception of goodwill is that it is a combination of the good name of a business plus its capacity to make super profits. By good name I mean the good reputation that a company may have acquired 40

during a course of years for fair, straightforward and honest dealing as well as the advantage of certain rights that a particular company may have by virtue of monopolies regarding trading rights, &c. The fact that there is a loss in one year or several years at a stretch owing to some ascertainable reason will not destroy its goodwill altogether, if the reason for the company sustaining the losses can be eliminated or will be eliminated in the future due to change of circumstances.

No. 13  
Judgment of  
the District  
Court  
31-8-49  
—contd.

- 10 In ascertaining what a fair yield that an investor in a company like the one in question which was concerned in buying and selling rubber would expect on his money one has got to take into consideration the speculative nature of the commodity dealt in and I agree that an investor who puts his money into a business like that of Mackie & Company, Limited, would expect a larger return on his money than another investor who would put his money into a less speculative business like the one of buying and selling tea on forward contracts. Another factor that has got to be taken into account in ascertaining the goodwill of a company like the one in question is the time at which profits (or losses) are made.
- 20 The rate of profits made by a company which handles a munition of war like rubber during time of war will have to be watered down quite a lot in ascertaining the value of its goodwill because no war is going to last for ever and the period of duration of any war is highly problematical.

- 30 Mr. Gunasekera who first assessed the value of these Management Shares on behalf of the Crown set down the expected return on the money invested in a rubber business like the one in question at 15 per cent. per annum. He stated that the method adopted by the executors in valuing these shares would be correct only on a "break-up" basis. It did not take into account the potential earning capacity of the Management Shares if the business was carried on. I agree with this witness although I am inclined to think that the 15 per cent. per annum return that Mr. Gunasekera thought an investor in a rubber business would be satisfied with is slightly on the low side. This witness gave convincing reasons to support his statements and I am satisfied that he was very fair in the methods adopted by him in arriving at a valuation of the shares in question. He is a Barrister-at-law and an Advocate of the Supreme Court and has had a fair amount of experience
- 40 in valuing shares in private companies. The other witness who was called on behalf of the Crown was Accountant Satchithananda. He valued each of the Management Shares at Rs. 270 and the method adopted by him in arriving at this valuation has been explained by him at length in his evidence. Some method has got to be adopted in order to ascertain beforehand the value of shares like the ones in question which are not quoted in official share lists and I agree with this witness that the "weighted average" principle that he



No. 13  
Judgment of  
the District  
Court  
31.8.49.  
—contd.

adopted and which is recommended in some of the textbooks cited is the method that should be adopted for want of a surer method. He arrived at the figure of Rs. 270 per Management Share by working on this "weighted average" principle, but he admitted that he made a mistake in his calculation and if this mistake is eliminated he would have valued each of these Management Shares higher. (See his evidence under cross-examination and re-examination on this point.) This witness also stated that if he did not make this mistake in his calculation he would have arrived at the figure of Rs. 328 as the value of each Management Share held by the deceased instead of Rs. 270. Mr. Gunasekera's valuation was at Rs. 300 per Management Share. There is very little difference between these two valuations arrived at independently by two different persons adopting two different methods. The Commissioner of Estate Duty reduced the valuation of each Management Share from Rs. 300 to Rs. 250. As the expected return on the money as set down by Mr. Gunasekera was slightly on the low side, I am of opinion that Rs. 250 per Management Share, the value that the Crown was prepared to accept, was very fair. 10

I answer the issues suggested by Dr. Hayley in the following manner:— 20

1. No.
2. Does not arise for reasons stated by me earlier.
3. No.
4. Yes, Rs. 250.
5. Yes. The value of the Management Shares is Rs. 1,250,000.

The appellants will pay the respondent the costs of the inquiry before me.

(Sgd.) S. S. J. GOONESEKERE,  
*Additional District Judge.* 30

Judgment delivered in open Court.

(Sgd.) L. W. DE SILVA,  
*Additional District Judge.*

**Petition of Appeal of the Applicants to the Supreme Court**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the Matter of an Appeal under Section 38 of the Estate Duty Ordinance (Chapter 187) of the Legislative Enactments of Ceylon

1. CHARLES WILLIAM MACKIE (Junior), and
2. JAMES CRAIB MACKIE, both of Colombo, the  
Executors of the Last Will and Testament of Charles  
William Mackie, deceased ..... *Appellants.*

10

*vs.*THE ATTORNEY-GENERAL of Ceylon ..... *Respondent.*

D. C. Colombo No. 71/T. (Special)

S. C. No. 88 (Final) of 1950

*To:*

THE HONOURABLE THE CHIEF JUSTICE AND THE JUDGES OF THE  
HONOURABLE THE SUPREME COURT OF THE ISLAND  
OF CEYLON

On this 9th day of September, 1949.

20

The petition of appeal of the appellants above named appearing by Geoffrey Thomas Hale, Frederick Claude Rowan, Joseph Francis Martyn and Henric Theodore Perera carrying on business in partnership in Colombo under the name, style, and firm of Julius & Creasy and their Assistants Alexander Nereus Wiratunga, John Peter Edmund Gregory, James Arelupar Naidoo, Alexander Richard Neville de Fonseka, Behram Kaikhushroo Billimoria, Lena Charlotte Fernando, Mohamed Shereeff Mohamed Shabdeen and Rex Herbert Sebastian Philipps, Proctors, states as follows:—

30

1. The appellants above named are the executors of the last will and testament of Charles William Mackie, deceased, who died at Aberdeen, Scotland, on the 7th day of September, 1940, leaving property in Ceylon.

2. On the 22nd day of December, 1942, the appellants, as executors of the said last will and testament of Charles William Mackie, deceased, delivered to the Commissioner of Estate Duty, in accordance with section 29, sub-section (1) of the Estate Duty Ordinance, a declaration of property in which the net value of the Ceylon estate was declared at Rs. 827,692 and the estate outside Ceylon at Rs. 1,383,171.

No. 14  
Petition of  
Appeal of the  
Applicants to  
the Supreme  
Court  
9-9-49  
—contd.

3. In the said declaration of property were included *inter alia* the following items of property as forming part of the Ceylon estate of the deceased:—

- (a) 9,201 Cumulative Preference Shares in C. W. Mackie & Company, Limited, valued by the appellants at Rs. 758,438.43.
- (b) 5,000 Management Shares in C. W. Mackie & Company, Limited, valued by the appellant at Rs. 4,925.

4. A provisional Notice of Assessment dated 15th February, 1943, was superseded by an Additional Notice of Assessment dated the 21st April, 1944, in which the Assessor of Estate Duty assessed the net value of the Ceylon estate at Rs. 2,918,141 and accepted the net value of the estate outside Ceylon given by the appellants in the said declaration of property. The estate duty payable was assessed at Rs. 379,358.33, which sum represented thirteen (13%) per cent. of Rs. 2,918,141 being the net value of the Ceylon estate as assessed by the Assessor of Estate Duty. 10

5. In the additional assessment dated the 21st April, 1944, the Assessor valued the shares referred to in paragraph 3 hereof as follows:— 20

|   | Rs.       |
|---|-----------|
| (a) 9,201 Cumulative Preference Shares in C. W. Mackie & Company, Limited, at Rs. 90 a share .. | 828,090   |
| (b) 5,000 Management Shares in C. W. Mackie & Company, Limited, at Rs. 300 a share ...          | 1,500,000 |

6. The appellants by their notices of objection dated the 19th May, 1944, signed by their Proctors Messrs. Julius & Creasy and delivered to the Commissioner of Estate Duty under section 35 (1) of the Estate Duty Ordinance, objected to the increased assessment of the said Preference and Management Shares in C. W. Mackie & Company, Limited, for the reasons stated therein and set out in paragraph 6 of the petition to the District Court of Colombo, namely, on the grounds— 30

(i) that the said Cumulative Preference Shares could in view of the provisions of the Memorandum of Association of C. W. Mackie & Company, Limited, only be valued at par plus the proportion of such profits of C. W. Mackie and Company, Limited, available for dividend as the holders of the shares were entitled to receive in respect of Preference Dividend arrears and that they were prepared to accept a valuation on this basis of Rs. 87,601 per share or Rs. 806,017 as certified by the Auditors of C. W. Mackie and Company, Limited; 40

(ii) that the said Management Shares must be valued in terms of section 20, sub-section (1) of the Estate Duty Ordinance that is

the market value less depreciation by reason of the death of the deceased, that the value of the said Management Shares could only be based upon the net value of the company's assets at the date of death after providing for the value of all the Preference Shares and that they were prepared to accept a valuation on this basis of Rs. 40.6188 per Management Share as certified by the Auditors of C. W. Mackie & Company, Limited, less a sum of Rs. 10.6188 per share for depreciation due to the death of the deceased, namely, Rs. 30 per share or Rs. 150,000. They further indicated that no goodwill value attached to these shares at the date of death.

10 7. The Commissioner of Estate Duty by his letter dated the 20th May, 1946, informed the Proctors of the appellants of his determination to maintain the assessment dated the 21st April, 1944, subject to the following amendment, *inter alia*, that the valuation of the said Management Shares was to be reduced to Rs. 250 per share from Rs. 300 per share.

8. Neither the Commissioner nor the Assessor of Estate Duty had ever disclosed the basis of their valuation of the said Cumulative Preference Shares and the said Management Shares.

20 9. The amount of duty in dispute therefore was Rs. 172,769.91 as shown in the statement annexed to the petition filed in the District Court of Colombo marked "A". The estate duty on the Ceylon estate had been paid with interest up to the dates of payment.

10. Being dissatisfied with the valuation of the said Cumulative Preference Shares and Management Shares in C. W. Mackie & Company, Limited, in the assessment of the 21st April, 1944, as amended by the determination of the Commissioner of Estate Duty notified by his letter of the 20th May, 1946, the appellants appealed therefrom to the District Court of Colombo on the grounds stated

30 fully in paragraph 10 of the petition of appeal to the District Court of Colombo.

11. The respondent filed answer and *inter alia*—

(i) denied that no goodwill attached to the Management Shares at the date of the death of the deceased; and

(ii) stated that the value of the 5,000 Management Shares as computed in terms of section 20 (1) of the Estate Duty Ordinance was Rs. 1,250,000 and denied as a matter of law that the provisions of sub-section 6 of section 20 as enacted by Ordinance No. 8 of 1941 did not apply to the valuation of such shares.

40

12. The matter ultimately went to trial before the learned Additional District Judge of Colombo on the 19th and 20th of October, 1948, 15th, 16th and 17th December, 1948 (the Court being unable to proceed with the adjourned hearing on the 22nd and 23rd February, 1949), 25th, 26th and 27th of May, 1949, and 5th July, 1949.

No. 14  
Petition of  
Appeal of the  
Applicants to  
the Supreme  
Court  
9-9-49  
—contd.

13. The issues framed by the Court were as follows:—

- (i) is the market value of the Preference and Management Shares in the assessment excessive;
- (ii) should the Preference Shares be valued as stated in paragraph 10 (c) of the petition and if not at what sum;
- (iii) should the Management Shares be valued as stated in paragraph 10 (e) of the petition and if not at what sum;
- (iv) did any goodwill attach to the Management Shares at the date of the death of the deceased and if so what figure;
- (v) was the value of the Management Shares as computed in terms of section 20 (1) of the Estate Duty Ordinance, Rs. 1,250,000. 10

14. The learned Solicitor-General appearing for the Attorney-General submitted that the Attorney-General was prepared to accept the value placed on the said Cumulative Preference Shares by the executors and accordingly the trial was restricted to the value to be placed on the Management Shares and issue (ii) and issue (i) so far as it related to the said Preference Shares became unnecessary.

15. Evidence both oral and documentary was led on behalf of the appellants and upon the appellants closing their case the respondent for the first time disclosed the basis of valuation adopted by the Assessor and Commissioner of Estate Duty in assessing and determining the value of the said Management Shares. The respondent thereafter led evidence and the learned Additional District Judge of Colombo delivered his judgment or order on the 31st day of August, 1949, and answered all the said issues in favour of the respondent and held that the value of the Management Shares was Rs. 1,250,000 and allowed the respondent the costs of the inquiry. 20 30

16. Being aggrieved by the said order or judgment of the learned Additional District Judge of Colombo the appellants beg to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel on their behalf at the hearing of this appeal:—

(a) that the said order or judgment is contrary to law and to the facts of the case and to the evidence submitted and placed before the Court;

(b) the learned Judge erred in not accepting the valuation submitted by the appellants. The said valuation was according to law and was not shown by the respondent to be wrong or unacceptable. The respondent's witnesses admitted that the said valuation was in accordance with the Ordinance and its requirements. In all the circumstances of the case it should have been accepted; 40

(c) the learned Judge erred in not accepting or acting on the evidence given by the appellants' witnesses of the nature and type of the business done by C. W. Mackie & Company, Limited, and the nature of the rubber market. The respondent did not deny or refute this evidence or attempt so to do and such evidence ought to have been accepted completely;

10 (d) the learned Judge erred in not applying the principles of law and practice relating to the factors to be considered and allowed for in valuing the said Management Shares, and he erred in failing to apply the principles applicable to estimating the price which the said Management Shares would fetch if sold in the open market at the time of the death of the deceased;

20 (e) it was categorically stated by all the witnesses called by the appellants and by both the witnesses called by the respondent that the profits of C. W. Mackie & Company, Limited, for the years 1938, 1939 and 1940 were war profits, and that according to the law and practice of valuation and in all the circumstances of this case these profits should have been excluded when determining the value of these shares, and that if the profits for these years were excluded the value of these shares did not exceed the value placed on them by the appellants. The learned Judge has completely ignored this evidence, and has failed to apply the facts or principles of which evidence was given. In view of the evidence referred to it cannot be held that the said Management Shares were worth Rs. 250 each;

30 (f) all the witnesses called by the appellants proved that there was no element of goodwill in or attaching to the said Management Shares or to the business of C. W. Mackie & Company, Limited. The evidence of these witnesses was not refuted, and no evidence to the contrary was given by the respondent's witnesses. It is submitted that in the circumstances of this case it was sufficiently proved that no goodwill attached to the shares in question, and that the learned Judge could not hold in law that there was any goodwill. The learned Judge, further, has failed to appreciate or apply the principles of law relating to the existence and valuation of goodwill;

40 (g) the valuation of the Assessor L. G. Gunasekera ought not to have been accepted. It was not in accordance with the Ordinance, it was contrary to law and the principles of valuation, it did not exclude the profits of the war years, it failed to make allowance for factors for which allowance ought to have been made and it provided for too low a percentage rate of return or capitalization;

(h) the valuation of the respondent's witness K. Satchithananda ought not to have been accepted by the learned Judge.

His valuation was demonstrated to be erroneous in fact and in principle and it was contrary to law and to the facts of the case

No. 14  
 Petition of  
 Appeal of the  
 Applicants to  
 the Supreme  
 Court  
 9-9-49  
 —contd.

and allowed on his own admission too low a percentage rate of return or capitalization. The basis of his valuation, his mode of calculation and the figures employed by him for the purposes of his calculation were shown to be wrong. He had failed, contrary to the law and practice of valuation, to exclude the profits of the war years but instead by the weighted average method employed by him he exaggerated the profits of the war years to arrive at his valuation;

(i) the said witness for the respondent (K. Satchithananda) did not make any allowance whatsoever for any of the factors or matters for which allowance ought to have been made in the valuation of these shares, and it was demonstrated that he did not possess the experience, knowledge or competence necessary to value shares of this nature nor was he possessed of all the information relating to the nature, type and method of business of the company and to the conditions prevailing in the rubber market without which it is impossible to value these shares. In all the circumstances it is submitted that the valuation made by this witness and his evidence in support of it ought to have been rejected and the learned Judge should not have acted on the same; 10

(j) the learned Judge considered the Balance Sheet and Profit and Loss Account of the company (R6 and R7) for the year 1942, which would not have been available to a prudent purchaser of these shares as at the date of the death of the late C. W. Mackie. The learned Judge permitted his mind to be influenced by these figures and in particular by the figure of gross profit disclosed by R6 which figure was incorrectly taken by the learned Judge and so stated in his judgment at Rs. 495,000 in excess of that shown in R6. The learned Judge failed to apply the principles of law relating to the ascertainment of the market value of these shares as at the date of the death of the deceased as a prudent purchaser would have done; 20 30

(k) the learned Judge erred in not acting upon the evidence of the witnesses called by the appellants with regard to the bearing and effect of the provisions contained in the Articles of Association of the said company upon the price which a prudent purchaser would pay for the said shares. It cannot be assumed that a prospective prudent purchaser of the said Management Shares would also buy a large number of Cumulative Preference Shares in the said company in order to secure to himself a controlling vote in the management of the affairs of the said company and the valuations of the respondent did not proceed on any such assumption. The assumption on which the learned Judge proceeded cannot be justified in view of the evidence and in these circumstances it is submitted that the said Management Shares cannot be valued at Rs. 1,250,000; 40

(l) the learned Judge erred in considering the share lists marked R12 and R13 produced by the respondent and he ought not to have permitted himself to be influenced by the same or to draw therefrom,

as he did, inferences unsupported by evidence. The share lists referred to shares in plantation companies which own rubber estates and which are not dealers in rubber as a commodity;

No. 14  
Petition of  
Appellants to  
the Supreme  
Court  
9-9-49  
—contd.

10 (m) the learned Judge failed to appreciate or accept and act upon the evidence in regard to the world conditions prevailing as at the date of the death of the deceased, and the position of Great Britain in the war at the said time and the effect thereof on an intending purchaser of the said Management Shares particularly have regard to the nature of the business of C. W. Mackie & Company, Limited. The evidence was overwhelming and was not contradicted by the witnesses called for the respondent. In view of the said evidence it could not be held or said that the said Management Shares would have been purchased in the open market at that time for Rs. 1,250,000;

(n) in all the circumstances of the case it is submitted that the valuation made by F. B. Lander called on behalf of the appellants supported by the other witnesses ought to have been accepted. The learned Judge has failed to understand the basis of this valuation;

20 (o) the learned Judge erred in rejecting the evidence to the effect that the value of the said shares had been depreciated by reason of the death of the deceased and in fixing the price he failed to take such depreciation into account. The said evidence was very clear and was not contradicted or refuted in any way by the witnesses called by the respondent.

17. In the premises pleaded herein the appellants state that the said Management Shares should be valued at Rs. 30 per share and that the assessment of the said shares by the Commissioner of Estate Duty be rejected.

Wherefore the appellants pray that Your Lordships be pleased—

- 30 (a) to set aside and reject the judgment and order of the learned Additional District Judge of Colombo,  
(b) to fix the value of the said Management Shares in C. W. Mackie & Company, Limited, at Rs. 30 per share,  
(c) for costs of all proceedings including these proceedings in Your Lordships' Court, and  
(d) for such other and further relief as to Your Lordships' Court seem meet.

(Sgd.) JULIUS & CREASY,  
*Proctors for Appellants.*



## Judgment of the Supreme Court

S. C. No. 88-M.

D. C. (F) Colombo No. 71.

*Present:* JAYETILEKE C.J. and GRATIAEN J.*Counsel:* H. V. PERERA, K.C., with S. J. KADIRGAMAR  
for the executors-appellants.R. R. CROSSETT-THAMBIAH, K.C., Solicitor-  
General, with D. JANSZE, Crown Counsel, for the  
Crown respondent.*Argued on:* 7th, 15th, 16th, 17th, 20th, 21st, 22nd, 23rd, 24th, 10  
28th, 29th, 30th, 31st March, 3rd, 4th, 5th April, 1950.*Decided on:* 22nd May, 1950.

JAYETILEKE C.J.—

This is an appeal by the appellants, who are the executors of the last will and testament of C. W. Mackie, deceased, against an order made by the Additional District Judge of Colombo on an appeal preferred by them to the District Court under section 34 of the Estate Duty Ordinance, Chapter 187, confirming the valuation made by the Commissioner for purposes of estate duty of 5,000 Management Shares held by the deceased in C. W. Mackie & Co., 20  
Ltd.

C. W. Mackie died at Aberdeen, Scotland, on September 7, 1940, leaving property in Ceylon which included two assets, namely, 9,201 Cumulative Preference Shares, and 5,000 Management Shares in C. W. Mackie & Co., Ltd.

On December 22, 1942, the appellants delivered to the Commissioner of Estate Duty a declaration of property under section 29 (1) of the Ordinance in which they valued the 9,201 Cumulative Preference Shares at Rs. 758,438.43, and the 5,000 Management Shares at Rs. 4,925 on the figures appearing in the Balance Sheet as at December 31, 1939 (P8) adopting the method of valuation known as the "tangible assets" method. They valued the Cumulative Preference Shares at Rs. 82.43 per share and the Management Shares at 98½ cents per share. 30

On February 15, 1943, the Assessor made a provisional assessment in accordance with the figures furnished by the executors and on April 21, 1944, he made an additional assessment under section 33 (1) of the Ordinance in which he assessed the 9,201 Cumulative Preference Shares at Rs. 828,090 and the 5,000 Management Shares at Rs. 1,500,000 which works out to Rs. 90 and Rs. 300 per share respectively. 40

The appellants delivered to the Commissioner of Estate Duty a written notice of objections dated May 19, 1944, by which they objected to the increased assessment on the following grounds:—

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

- 10 (1) That the Cumulative Preference Shares could only be valued at par plus the proportion of such profits available for dividend as the holders of the shares were entitled to receive in respect of preference dividends in arrears. On this basis they were prepared to accept a valuation of Rs. 87,601 per share of Rs. 806,017 as certified by the auditors of the company.
- (2) That the Management Shares could only be valued on the net value of the company's assets at the date of death of the deceased after providing for the value of all the Preference Shares. On this basis they were prepared to accept a valuation of Rs. 203,094 at Rs. 40.6188 per share as certified by the auditors less Rs. 10.6188 for depreciation under the proviso to section 20 (1) of the Ordinance by reason of the death of the deceased.

20 The appellants raised the figures given by them in their declaration of property to Rs. 806,017 and Rs. 203,094 as a certain sum had accrued as profits between January 1, 1940 and September 6, 1940.

On May 20, 1946, the Commissioner of Estate Duty notified to the appellants his determination to maintain the assessment dated April 21, 1944, subject to a reduction of the valuation of the Management Shares to Rs. 250 per share. The reason for the reduction is not known.

30 The appellants appealed to the District Court of Colombo against the Commissioner's assessment. Section 40 of the Ordinance says that upon the filing of the petition of appeal and the service of a copy thereof on the Attorney-General, the appeal shall be deemed to be and may be proceeded with as an action between the appellant as plaintiff and the Crown as defendant.

At the trial the following issues were framed:—

- 40 (1) Is the market value of the Preference and Management Shares in the assessment excessive?
- (2) Should the Preference Shares be valued as stated in paragraph 10 (c) of the petition and if not at what sum?
- (3) Should the Management Shares be valued as stated in paragraph 10 (c) of the petition and if not at what sum?
- (4) Did any goodwill attach to the Management Shares at the date of the death of the deceased and if so what figure?
- (5) Was the Management Shares as computed in terms of section 20 (1) of the Estate Duty Ordinance Rs. 1,250,000 and if not what sum?

After the issues were framed the learned Attorney-General accepted the value placed on the Cumulative Preference Shares by

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

the executors as the difference was very small and the trial proceeded on issues, 1, 3, 4 and 5. After trial the learned Additional District Judge answered the issues as follows:—

(1) No.

(3) No.

(4) Yes, Rs. 250.

(5) Yes. The value of the Management Shares is Rs. 1,250,000, and dismissed the action with costs.

The present appeal is against that judgment.

At the argument before us the claim for depreciation by reason of the death of C. W. Mackie was not pressed. 10

The appellant's valuation of the shares is based on the "tangible assets" value whilst that of the Commissioner is based on the "profits" value.

Two questions arise for decision on this appeal—

(1) whether on the facts of this case the "tangible assets" basis is the appropriate basis of valuation of the shares,

(2) if it is not, whether the valuation according to the "profits" basis is excessive.

The answer to these questions does not depend upon the credibility of the witnesses, which I may say was not questioned at the argument before us. Counsel for the appellants pointed out that the judgment of the learned Additional District Judge is not helpful as he has failed to appreciate the evidence. For instance he failed to appreciate why Mr. Lander raised his valuation of the Management Shares from 98½ cents each to Rs. 40.6188 each. 20

Mr. Lander, a Chartered Accountant of considerable experience, valued the shares for the appellants. His valuation is as follows:—

|   | Rs.       | c.   | Rs.       | c. |
|---|-----------|------|-----------|----|
| Total assets  | 2,286,005 | 02   |           |    |
| Due to creditors  |           |      | 400,186   | 27 |
| Preference Shares   |           |      | 209,988   | 00 |
| Dividend arrears 1930-32                                  |           |      |           |    |
| Preference Share dividends 1933-1940                      |           |      | 522,720   | 00 |
| Preference Share Capital                                  |           |      | 900,000   | 00 |
|   | 2,286,005 | 02   | 2,121,994 | 27 |
| Balance   | 104,010   | 75   |           |    |
| Add profits from 1. 1. 40 up to 6. 1. 40                  | 46,982    | 96   |           |    |
|   | 210,992   | 71   |           |    |
| Book value of investments in excess of brokers' valuation | 7,899     | 30   |           |    |
|   | 203,094   | 41   |           |    |
| Divide by 5000  | 40        | 6188 |           |    |

Mr. Gunasekera, the Assistant Commissioner of Estate Duty, and Mr. Satchithananda, a Chartered Accountant, valued the shares for the Commissioner.

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

Mr. Gunasekera's valuation is as follows:—

|                                   |    |    | <i>Rs.</i> | <i>c.</i> | <i>Rs.</i> | <i>c.</i> |
|-----------------------------------|----|----|------------|-----------|------------|-----------|
| 1936 Profit                       | .. | .. | 97,391     | 0         |            |           |
| 1937 Loss                         | .. | .. |            |           | 42,003     | 0         |
| 1938 Profit                       | .. | .. | 149,485    | 0         |            |           |
| 1939 Profit                       | .. | .. | 787,640    | 0         |            |           |
| 1940 (1. 1. 40-6. 8. 40) Profit   | .. | .. | 454,532    | 0         |            |           |
|                                   |    |    | <hr/>      |           |            |           |
| Total profit                      | .. | .. | 1,489,048  | 0         | 42,003     | 0         |
|                                   |    |    | <hr/>      |           |            |           |
|                                   |    |    | 42,003     | 0         |            |           |
|                                   |    |    | <hr/>      |           |            |           |
|                                   |    |    | 1,447,045  | 0         |            |           |
| Average profit per year           | .. | .. | 310,080    | 0         |            |           |
| Deduct Preference Share dividends | .. | .. | 79,200     | 0         |            |           |
|                                   |    |    | <hr/>      |           |            |           |
|                                   |    |    | 230,880    | 0         |            |           |
| Capitalize at 15 per cent.        | .. | .. | 1,539,200  | 0         |            |           |
| Divide by 5,000                   | .. | .. | 307.84     | per share |            |           |

Mr. Satchithananda's valuation is based on the "weightage method". He took the net profits for five years up to the end of 1940 and weighted the profits and losses by multiplying the figures from 1 to 5.

His valuation is as follows:—

|                               |    |               | <i>Rs.</i> | <i>c.</i> | <i>Rs.</i> | <i>c.</i> |
|-------------------------------|----|---------------|------------|-----------|------------|-----------|
| 1. 9. 35-31. 8. 46            | .. | ..            | 29,039     | 0         |            |           |
| 1. 9. 36-31. 8. 37            | .. | ..            |            |           | 5,337      | 0         |
| 1. 9. 37-31. 8. 38            | .. | ..            |            |           | 73,894     | 0         |
| 1. 9. 39-31. 8. 39            | .. | ..            |            |           | 489,775    | 0         |
| 1. 9. 39-31. 8. 40            | .. | ..            |            |           | 507,420    | 0         |
| When weighted                 |    |               | 29,039     | 0         |            |           |
|                               |    | 29,039 × 1    |            |           |            |           |
|                               |    | 5,337.0 × 2   |            |           | 10,674     | 0         |
|                               |    | 73,894.0 × 3  |            |           | 221,682    | 0         |
|                               |    | 489,775.0 × 4 |            |           | 1,959,100  | 0         |
|                               |    | 507,420.0 × 5 |            |           | 2,537,100  | 0         |
|                               |    |               | <hr/>      |           |            |           |
|                               |    |               | 29,039     | 0         | 4,728,556  | 0         |
|                               |    |               |            |           | 29,039     | 0         |
|                               |    |               | <hr/>      |           |            |           |
|                               |    |               |            |           | 4,699,517  | 0         |
| Weighted average              |    |               |            |           |            |           |
| 4,699,517.0                   | .. | ..            |            |           | 313,300    | 0         |
|                               |    |               | <hr/>      |           |            |           |
| 15                            |    |               |            |           |            |           |
| Less Preference Dividends     | .. | ..            | 67,300     | 0         |            |           |
| Reserve                       | .. | ..            | 30,000     | 0         | 97,300     | 0         |
|                               |    |               | <hr/>      |           |            |           |
|                               |    |               |            |           | 215,980    | 0         |
| Average yield at 16 per cent. |    |               |            |           |            |           |
| 215,980 × 100                 | .. | ..            |            |           | 1,349,875  | 0         |
|                               |    |               | <hr/>      |           |            |           |
| 16                            |    |               |            |           |            |           |
| Value of share                | .. | ..            |            |           | 270        | 0         |

Mr. Gunasekera's and Mr. Satchithananda's valuation are based on the assumption that the profits would be maintained for at least five years.

Mr. Lander, Mr. Gunasekera and Mr. Satchithananda valued the shares on the footing that the business was a going concern.

In *Abraham v. Federal Commissioner of Taxation*<sup>1</sup> the report of which is not available to us but a note of which appears in *Adamson*,<sup>2</sup> it was held that the final assessment of the value of the shares must be made principally on the basis of the income yield but where owing to exceptional circumstances the valuation on this basis presents enormous difficulties it is legitimate to rely more than usual on the assets value. 10

In *Findlay's Trustees v. Commissioners of Inland Revenue*<sup>3</sup> Lord Fleming said:—

“ I do not doubt that when one is seeking to ascertain the profits which will probably be earned by a business in the future it is quite usual to do so by taking an average of the profits actually earned for the three preceding years. This probably operates quite equitably when one is dealing with a well-established business which has normal ups and downs but has no violent fluctuations in either direction.” 20

Mr. Lander gave as his reason for adopting the “ tangible assets ” method that the business carried on by the company was a highly speculative business and therefore it was not possible to predict that the profits earned in the years preceding the death of the deceased would be maintained in the future. Mr. Gunasekera and Mr. Satchithananda agreed with Mr. Lander that the business was a very speculative one but they thought that as the war was on the profits would be maintained in the future. Mr. Gunasekera said “ I cannot think of a more speculative business than Mackie's.” 30  
 Mr. Satchithananda said “ A rubber business can be said to be a speculative business because the risk is greater. It is a very risky business ”.

Section 20 (1) of the Ordinance which is identical with section 7 (5) of the Finance Act, 1894, provides that the value of any property shall be estimated to be the price which, in the opinion of the Assessor, such property would fetch if sold in the open market at the time of the death of deceased. Section 20 (1) was amended by Ordinance No. 8 of 1941 as follows:— 40

“ (6) (a) Where the property to be valued consists of shares (not being Preference Shares) in any company which by its Articles restricts the right to transfer its shares or

<sup>1</sup> 70 C. L. R. 23.

<sup>2</sup> *The Valuation of Company Shares and Businesses.*

<sup>3</sup> 22 A. T. C. 437.

10 which is a company controlled by not more than five persons, and the Commissioner is satisfied that the shares have not, within the period of twelve months immediately preceding the death of the deceased, been quoted in the official list of a recognized stock exchange in the United Kingdom or in a list of a like nature issued in Ceylon by any association of brokers approved by the Financial Secretary for the purposes of this sub-section, the Commissioner may direct that the principal value of such shares for the purposes of this Ordinance shall not be ascertained in the manner provided by sub-section (1), but shall be ascertained by reference to the value of the total assets of the company ”.

The amending Ordinance does not apply to this case because it came into operation after the death of the deceased but it shows that the “ tangible assets ” method is an appropriate method to be adopted in the valuation of shares which are subject to restrictions. In *Ellesmere v. Inland Revenue Commissioners*<sup>1</sup> Sankey J, said:—

20 “ What is meant by the words ‘ the price which it would fetch if sold in the open market ’ in section 7 (5) of the Finance Act, 1894, is the best possible price that is obtainable, and what that is is largely, if not entirely, a question of fact. ”

The price which the willing vendor could reasonably expect to obtain and a willing purchaser could reasonably expect to have to pay for the shares in question is the measure of the value under the section. In order to estimate the price that a prudent purchaser might reasonably be expected to pay for the shares it is necessary to examine the nature and history of the business, the risks involved and the extent to which the restrictions in the Articles might be expected to depreciate the value of the shares.

30 C. W. Mackie & Co., Ltd. was a private company incorporated in Ceylon in the year 1922 *inter alia* to take over and carry on the business carried on by the deceased as a dealer in rubber. It had a paid-up capital of Rs. 1,000,000 divided into 19,800 eight per cent. Cumulative Preference Shares of Rs. 50 each and 5,000 Management Shares of Rs. 2 each. Clause 5 of the Memorandum of Association provides that the management shareholders are entitled to all profits and other monies of the company available for dividend which the Directors determine to distribute after making provision for reserve and depreciation and after paying the Cumulative Preferential dividends and the Directors’ fees. By Articles 91 and 94 of the Articles of Association the deceased was appointed a Life Director and was given full control of the business of the company and the power to arrange the policy of the company. It appears

<sup>1</sup> (1918) 2 K.B. at 740.

from P2 that up to the year 1926 the deceased held 3,625 out of the 5,000 Management Shares and that in that year he purchased the remaining 1,375 shares. The right to transfer shares in the company was restricted by the Articles of Association.

*Article 38* provides that any person proposing to transfer any share shall give notice in writing to the company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value and shall constitute the company his agent for the sale of the share so fixed, or, at the option of the purchaser, at the face value to be fixed by the auditors in accordance with the Articles. 10

*Article 39* provides that the shares specified in the transfer notice shall be offered by the company in the first place to the Life Director, and, if they are not taken up by him within 90 days, shall be offered by the company to any person selected by the Life Director whom he may deem it desirable in the interests of the company to admit to membership. Subject as aforesaid the share shall be offered by the company to the other members.

*Article 41* provides that in case any difference arises between the proposing transferor and the purchasing member as to the fair value of a share the auditors shall on the application of either party, certify in writing the sum which, in their opinion, is the fair value and such sum shall be deemed to be the fair value and in so certifying the auditors shall be considered as acting as experts and not as arbitrators. 20

*Article 43* provides that the proposing transferor shall be at liberty to sell or transfer the shares to any person and at any price if the company fails to find a member willing to purchase the shares. But *Article 45* provides that the Directors may refuse to register any transfer of shares where they are not of the opinion that it is desirable to admit the proposed transferee to membership. 30

There are certain Articles which relate to the compulsory acquisition of shares, and which prevent a shareholder from owning or being interested in any other business in rubber to which reference should be made. I refer in particular to Articles 46, 47, 48, 49, 50, 53 and 54.

*Article 45* provides that the holders for the time being of 9/10ths of the issued capital may at any time serve the company with a requisition to enforce the transfer of any particular shares not held by the requisitionists whereupon the company shall forthwith give notice to the holder of such shares notice of such requisition; and unless within 14 days afterwards the holder shall give to the company a transfer notice in respect of his shares in accordance with Article 38 he shall be deemed at the expiration of that period to have certainly given such notice and to have specified therein the amount of capital paid up on the shares as the sum he fixes as the fair value. 40

*Article 49* provides that in the event of the death of an ordinary Director the Life Director and the surviving ordinary Directors for the time being may at any time within four years thereafter serve the company with a requisition to enforce the transfer to them in proportion to the existing shares held by them respectively of any shares standing in the name of any ordinary Director and the provisions of Article 46 as to giving notice and other relevant provisions of that Article shall apply to every such requisition.

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

10 *Article 48* provides that no member of the company other than the Life Director shall, without the consent of all the members for the time of the company, or the Life Director, be interested as a shareholder, Director, Partner, Manager or otherwise in any concern carrying on any business in competition with the company or any interests opposed to those of the company and if it be proved to the satisfaction of the shareholders that any member has committed a breach of this Article they may serve him with a notice in writing requiring him to retire from or otherwise determine his interest in such concern and stating that in the event of  
20 non-compliance with such requisition within 28 days his shares shall be liable to forfeiture and unless within 28 days after the service of such notice it shall be proved to the satisfaction of the Directors that the requisition has not been complied with the whole of or any of the shares of such member may be forfeited by resolution of the Directors to that extent.

30 *Article 49* provides that a member of the company other than the Life Director shall not, without the company's consent or the consent of the Life Director, either solely or jointly with, or as Director, Manager or Agent of or for, any other company or person or persons directly or indirectly carry on or be engaged or concerned or interested as a shareholder or otherwise in any business which the company is authorised to carry on and the Directors may by resolution forfeit without prejudice to the provisions of Article 30 the shares of any member who acts in contravention of this provision. Article 30 provides that a member whose shares have been forfeited shall be liable to pay to the company all calls made as payable and not paid on such shares at time of forfeiture and interest thereon up to the date of payment without any deduction or allowance for the value of the shares at the time of forfeiture.

40 *Article 50* provides that a person who ceases to be a member of the company shall not without the company's consent or the consent of the Life Director at any time within five years from the date he ceases to be a member, either solely or jointly with, or as Director, Manager or Agent of or for any other company or person or persons directly or indirectly, carry on or be engaged or concerned or interested in the business of a Merchant, Produce Broker or Commission Agent in the Island of Ceylon or permit or suffer his



name to be used or employed in, carry on or in connection with any such business.

*Article 54* provides that the Directors may call on the executors or administrators of a deceased member (other than the Life Director) to transfer the shares of the deceased to some person to be selected by such executors or administrators and approved by the Life Director or (if the Life Director be dead) by the ordinary Directors and if the executors or administrators do not comply forthwith with such call they shall be deemed to have served the company with a transfer notice under *Article 38* and to have specified therein a sum equal to the amount paid upon the shares as the fair value and the provisions of that and the subsequent *Articles* shall take effect. 10

In the case of *Commissioners of Inland Revenue and others v. Crossman*<sup>1</sup> where there were restrictions similar to those contained in *Articles 38* and *41*, the House of Lords held that the value of the shares for the purpose of duty must be estimated at the price which they would fetch if sold in the open market on the terms that the purchaser should be entitled to be put on the company's register as the holder of the shares and should hold them subject to the provisions of the *Articles of Association* including those relating to the alienation and transfer of shares in the company. 20

In the course of his judgment Viscount Hailsham, L. C., said:

“ I think full justice is done to the meaning of the subsection if the property to be valued is determined by the earlier sections and section 7 is treated as being merely a statutory direction as to the method by which the value is to be ascertained. In order to comply with that statutory direction it is necessary to make the assumptions which the statute directs. This is not to ignore the limitations attached to the share. In the present case a share in such a company as this, with an unrestricted right of transfer would probably be worth twice as much as the £355, which is fixed by Findlay J.” 30

The shares must therefore be valued on the basis that in spite of the *Articles of Association* the notional purchaser would be entitled to be put on the company's register in respect of them, and if, by reason of the restrictions, the shares have depreciated in value, such fact should be taken into consideration.

The business of the company was to buy and sell rubber on its own account on a very large scale. It was carried on by the deceased himself from 1922 up to 1931 when he retired and settled down in England leaving Mr. Williams in charge. The deceased, however, kept in touch with the business and controlled its policy right up to his death. The company had a very large store which cost nearly Rs. 300,000 to build in 1926. Between 25 per cent. to 30 per cent. of the Island's exports of rubber passed through the 40

<sup>1</sup> (1936) 1 A.E.R. 762.

hands of the company. The manner in which the business was carried on was described by Mr. Williams. He said:

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

10 “ Mackie kept a large stock of rubber in hand. He bought whether there was an immediate prospect of selling or not. His plan was to buy as much rubber as possible and stock. He used to buy 50 or 60 tons of rubber a day. He would buy in a falling market and try to sell in a rising market. It was very difficult to find out what a falling market was and what a rising market was. We could not wait for a falling market to buy.  
20 We had such large stocks that the rubber had to be turned over. In a falling market we had to sell 50 or 60 tons and try to cover up buying it at a lower price. If we had 5,000 tons of rubber in stock at any one time and if the price went up by one cent a pound we would make Rs. 110,000 and if the price went down by one cent we would lose that amount. We used to send rubber to Germany, Australia, Holland, Czechoslovakia and London. We had dealer agents and broker agents in London and other places. We ship the rubber and they sell it. They send bids. If we pay more here we send a counter-offer. Sometimes they take, sometimes they don't.”

As I said before Mr. Lander said that the business was a speculative one and the experts called by the Crown admitted it. It may be useful for me to state in detail what the witnesses called by the appellants said on the point.

Mr. Lander said:

30 “ The results show quite clearly that it was a business with a very sensitive produce—rubber, and they indicate that a highly speculative policy had been indicated. There were large profits made in certain periods and very large losses in certain other periods. In 1926 there were large reserves about  $\frac{3}{4}$  million rupees. The losses gradually eliminated that reserve. In 1932 the company was insolvent. The movements of rubber over history have been unpredictable. Large fortunes have been made in rubber and large fortunes have been lost in rubber. Rumours of extended production in other countries, changes in policy of consumer and also availability of shipping affect the price. At any time it would have been a gamble to buy any interest in the company. ”

Mr. Williams said:

40 “ I have a large experience in the commercial aspect of rubber. It is very difficult to predict with any accuracy the future rubber market. It is not known what is going to happen except on a very few occasions. Mr. Mackie carried on a very speculative business. Buying of any interest in Mackie's at any time would have been a gamble.”

Mr. Hayward, the Managing Director of the Rubber and Produce Traders' Ltd. which carried on a business similar to that of Mackie & Co., Ltd., up to 1938 when it was closed down owing to heavy losses, said:

“ Dealing in rubber is a highly speculative business. There is an exchange for dealing in rubber in London, New York and Singapore and in these three places people gamble in the turnover. Change of Government, over-production, rumours of war, synthetic rubber, large production of motor cars all affect the price of rubber. The company made half a million rupees in nine months in 1940. All that could have been lost in three months if it took a wrong view of the market.” 10

Mr. Cuming, a partner in E. John & Co., a firm of produce brokers, said:

“ In a company like Mackie & Co., Ltd., very much risk in the business is involved because one must be certain of taking the right view. It is a speculative business like the races. At normal times the prices fluctuated.”

The fluctuations in the price of rubber between 1922 and 1940 are to be seen in P10 and the profits and losses of the company and the dividends paid in P7. P7 shows that between 1922 and 1926 there were profits amounting to Rs. 3,441,359, between 1927 and 1932 there were losses amounting to Rs. 1,804,304, and between 1933 and 1940 there were profits amounting to Rs. 1,911,233. It also shows that dividends were paid on the Preference and Management Shares in 1926 and a sum of approximately Rs. 750,000 was carried to the general reserve, that the Preference Share dividends for 1927 and 1928 were waived, no dividends were paid on the Preference Shares from 1930 to 1940 and for the first time between 1927 and 1940 the assets exceeded the liabilities in 1940. It is clear from the figures in P7 that any five years is not comparable with the next five years and cannot be taken as a reasonable anticipation of the next five years. The fluctuations in the profits and losses have been so violent that there is no normality in the history of the company disclosed in the Balance Sheet P7. One cannot, of course, expect normality in a business which is not carried on on business principles but is in the nature of a gamble. Yet Mr. Gunasekera said: 20 30

“ If Mackie died in 1926 I would probably have valued the shares still higher than I have done now unless there was some known factor. After a person had bought them he would have received nothing up to 1940. From 1926 up to 1932 he would have lost all his capital and the company would have been wound up.” 40

It was argued that the losses during that period were due to the world depression. The depression commenced in the latter part of 1829 but there were losses in 1927 and 1928. There are no materials

before us which lend the slightest support to that contention. P10 shows that from 1929 to 1932 the price of rubber dropped steadily and the probability is that the losses were due to the company speculating heavily in a falling market. The passage quoted above from Mr. Gunasekera's evidence demonstrates how fallacious his method of valuation is when it is applied to a speculative business. With regard to the future prospects of rubber he said that as the market in 1940 was good there was no prospect in the fall in the price of rubber in the next six years. This seems to be pure speculation on his part. It is true that rubber was a munition of war but what guarantee was there that there would be no fluctuations in the price of rubber and that the war would go on for six years. Mr. Hayward who, according to Mr. Gunasekera, had an intimate knowledge of the rubber market and knew much more about the rubber market than he did, said that, though the company had made half a million rupees in the first nine months of 1940, it could have lost all that in the next three months if it took a wrong view of the market. It must be remembered that the deceased died at a time when the war had reached a very critical stage for England. France was out of the war and England and the Empire were alone against Germany and Italy. The Battle of Britain had begun and everyone was in doubt whether the Royal Air Force would be able to withstand the tremendous attack by the German Air Force which was superior in strength. It is with the price which a hypothetical purchaser must reasonably expect to have to pay for the shares at this critical period with which we are now concerned. A prospective purchaser may be an investor or a speculator. In normal times an investor would probably not have been interested in these shares because no dividends had been paid for 14 years. A speculator may have been interested in them but could the seller have reasonably expected him to pay anything more than the "tangible assets" value for them? I think not. Could the seller have reasonably expected him to pay even that at a critical period like 1940 when there was the possibility of all human affairs being dislocated? I think not. Mr. Williams and Mr. Cuming gave useful evidence on this point. Mr. Williams said that on the death of the deceased if he got the shares very cheap he would have bought them as a gamble. Mr. Cuming said that in 1940 his firm would not have been willing to make any underwriting proposition for these shares because the risk was too great owing to the nature of the shares and the war conditions. It was difficult to foresee things and people were anxious to keep their money in their hands.

The learned Additional District Judge says in his judgment that Mr. Hayward was optimistic about the future of rubber when he was coming back from England in August, 1940. If the learned Judge intended to say that Mr. Hayward was optimistic about the future of rubber for a long period it is a clear misdirection because Mr. Hayward explained in his cross-examination that what he meant

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

was as the war was in progress he could not take a long view. On a short view he was optimistic, that is, for the next three or four months.

For the reasons given by me I am of opinion that Mr. Lander's method is the more appropriate method to be adopted for the valuation of the shares. That is the method contemplated in the amending Ordinance No. 8 of 1941 for the valuation of shares of this nature and that was the method which was adopted in 1926 when the deceased acquired the outstanding shares which belonged to Mr. Robertson and others. The figure paid by the deceased represented only the value of the "tangible assets" remaining for each share. Nothing was added on account of goodwill, presumably because in a speculative business there can be no goodwill. *Leake*<sup>1</sup> says:

"There seems to be no doubt about the truth of the proposition that before it is possible to justify value being put upon the goodwill of any undertaking it must be shown that the expected future annual profits exceed the normal annual wage or hire of the capital invested having regard to the nature of the risk."

In a speculative business one cannot expect profits but can only hope for profits.

There remains the question whether Mr. Gunasekera's valuation is excessive. It was mainly on Mr. Gunasekera's valuation that the Crown relied.

Mr. Perera argued that the rate of conversion adopted by Mr. Gunasekera was too low and that Mr. Gunasekera should have made provision for reserves and income tax and an allowance for depreciation in view of the restrictions.

There is a conflict of evidence between Mr. Gunasekera and Mr. Satchithananda as to what the risk rate should be in a speculative produce like rubber. Mr. Gunasekera said that he took 10 per cent. as the risk rate in adopting 15 per cent. as the appropriate rate of conversion, but Mr. Satchithananda said that he would allow 20 to 25 per cent. for risk. Mr. Satchithananda's evidence is supported by the evidence of Mr. Cuming, who said that, in a business of this kind, a person would expect 25 to 30 per cent. as profits. There is the further fact that, when the shares held by one Mr. G. L. Lyon in Heath & Co., were valued in 1943 for purpose of estate duty, the rate of conversion adopted was 14 per cent. though there was no risk in the business at all. Heath & Co. carried on business as exporters of tea and, occasionally rubber, on a commission basis. Mr. Gunasekera said that, if the rate of conversion adopted in the valuation of those shares was 14 per cent. he

<sup>1</sup> *On Goodwill.*

would agree that the rate adopted by him in this case should be higher.

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

If the risk rate is taken as 20 per cent. and the rate of conversion as 25 per cent. in the present case which, in my opinion, is by no means excessive, Mr. Gunasekera's valuation of the shares will be reduced to Rs. 190 per share.

An examination of Mr. Gunasekera's valuation, which I have set forth fully above, shows that he has made no provision for reserves and income tax and no allowance for depreciation  
10 Mr. Gunasekera said that he generally allows a reasonable amount for reserves, but he made no allowance in the present case for the reason given in the following passage in his evidence:—

“ I did not apply the principle of weightage because I did not deduct from these figures any tax payable. I also did not allow a sum that should be withheld from distribution to maintain reserves as I thought that the two items would be counterbalanced. ”

Mr. Gunasekera did not demonstrate how the two items were counterbalanced. I find it extremely difficult to understand what  
20 he intended to convey in the passage quoted above, and I have no alternative but to ignore his evidence on the point. Mr. Satchithananda said that in valuing shares provision must be made out of the profits for reserves and income tax. P7 shows that a sum of Rs. 750,000 which works out to Rs. 150,000 a year was carried to the general reserve in 1926. If that had not been done the company would, in all probability, have been wound up before 1932, and the necessity to decide the problems we are confronted with would not have arisen. Again, P9 shows that, in the year 1940, when the company became solvent after a period of about ten years, a further  
30 sum of Rs. 150,000 was carried into the general reserve. It seems to me that Rs. 150,000 is not too large a sum to be put into the reserve annually having regard to the highly speculative nature of the business carried on by the company. If that sum is deducted out of the average profits Mr. Gunasekera's valuation would be reduced to approximately Rs. 80 a share. If income tax at 15 per cent. the rate current at the date of death of the deceased is also deducted the net balance available for the Management Shares would be Rs. 45,248 which when capitalized at 25 per cent. would result in reducing Mr. Gunasekera's valuation to Rs. 36 a share.

40 *Adamson*<sup>1</sup> says that restrictions on the alienation of shares, either by vesting in the Directors a general power to refuse to register a transferee whom they consider would be an undesirable member, or by specific requirements as to the consideration payable to an intending seller, or as to the method of offering the shares for sale, or by giving them or the auditors the power to fix a fair value to

<sup>1</sup> *The Valuation of Company Shares and Businesses.*

be paid to the sellers, and similar restrictions detract from the value of the shares for certain purposes, unless a controlling interest is being dealt with, namely, a holding of more than 75 per cent. of the total issued shares, which would place the purchaser in a position to use his voting power to remove the restrictions. He says further that such restrictions limit the market, and make the shares unattractive to many investors and to banks for security purposes. Even if all the Preference Shares belonging to the deceased were sold along with the Management Shares the purchaser would have had only 14,000 out of 24,000 shares, which would not have given him a controlling interest in the company. The extent to which restrictions, similar to those contained in some of the Articles referred to above, depress the value of the shares can be gathered from the passage in the judgment of the Lord Chancellor quoted above and from the following observations of Lord Fleming in the *Trustees of J. T. Salvesen v. Commissioners of Inland Revenue*<sup>1</sup>:—

“ I may say at once that I regard these restrictions as depreciating their value very considerably.....All the witnesses were agreed that the restrictions would depreciate the value of the shares but the only witness who put a money value on the restriction was Mr. Robertson-Durham who said that, in his opinion, it might make a difference as much as 8s. 4d. on his value of £1-6-8 and, in my opinion, this figure is by no means excessive. ”

Mr. Lander did not get an opportunity of putting a money value on the restrictions because the Crown did not disclose Mr. Gunasekera's method of valuation either in the pleadings or in his cross-examination. This is indeed a matter to be regretted. On the materials before me I can only say that the value of the shares is depressed by the restrictions I have referred to.

Mr. Satchithananda's method of valuation is, as I have said before, also based on the maintainability of future profits, and for the reasons given by me is inapplicable to a speculative business. But it seems to me that there are other reasons for rejecting it. For instance, according to P16, which Mr. Satchithananda referred to as the Students' Note issued to him by H. Foulk, Lynch & Co., Ltd., when he was a student, there must be a trend of profits to apply the “ weightage method.” An examination of P7 shows that there was no trend of profits from August 1, 1935, up to July 31, 1940. There is also the fact that Mr. Satchithananda admitted in his evidence that in valuing shares all abnormal and all war profits must be excluded and that he failed to exclude the abnormal and war profits made in the years 1938, 1939 and 1940. He admitted further that if the profits made in the war years 1939, 1940 and 1941 were excluded the weighted average would be nil.

<sup>1</sup> 9 A.T.C. 43.

I would accordingly uphold Mr. Lander's valuation of the 5,000 Management Shares held by the deceased. On the basis of this valuation it is agreed that the appellants are entitled to a refund of Rs. 166,929.57. I would set aside the order made by the learned Additional District Judge and enter judgment in favour of the appellants for the sum of Rs. 166,929.57 with interest as prayed for in para. (d) of the prayer of their petition of appeal dated June 14, 1946. The appellants will be entitled to costs here and in the Court below.

No. 15  
Judgment of  
the Supreme  
Court  
22.5.50  
—contd.

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(Sgd.) E. G. P. JAYETILEKE,  
*Chief Justice.*

GRATIAEN J.—

This appeal relates to the valuation for purposes of estate duty of 5,000 "Management Shares" held by the deceased C. W. Mackie in the firm of C. W. Mackie & Company, Limited, at the time of his death. A separate dispute regarding the value of 9,201 Cumulative Preference Shares belonging to the deceased in the same company was settled in the course of the proceedings in the Court below.

- 20 C. W. Mackie died in Scotland on 7th September, 1940, and was at that date possessed of a considerable estate in Ceylon and abroad. The company in which he held the "Management Shares" with which this appeal is concerned was a private company incorporated in Ceylon in 1922. He was the Life Director and as such he had a controlling interest in the company's affairs under the Articles of Association. The paid-up capital was Rs. 1,000,000 divided into 19,800 Cumulative 8 per cent. Preference Shares of the par value of Rs. 50 each (of which the deceased held 9,201) and 5,000 "Management" or ordinary shares of the par value of Rs. 2 each
- 30 (of which he had held the entirety since 31st December, 1926). The preference shareholders had a prior right to be paid their dividends at the rate prescribed for them, but had no further right to participate in the profits of the company. Any profits left over were available for payment as dividends to the management shareholders—but only to an extent which the Directors might recommend; in the event of liquidation, all undistributed profits were to be paid to them after repayment of the capital and arrears of dividends due to the preference shareholders. I shall refer later to the restriction imposed by the Articles of Association on the transfer of a
- 40 shareholder's interests in the company.

On 22nd December, 1940, the executors of the deceased's estate furnished the Commissioner with a declaration in which, for purposes of estate duty, they valued each of the "Management Shares"



at 98½ cents. This valuation was based (by reference to the figures in the last audited Balance Sheet of the company available before Mackie's death, i.e., for the year ending 31st December, 1939) on a computation of the net assets remaining for each "Management Share" after making provision for taxation and for the liability to preference shareholders in respect of capital and arrears of dividends. The valuation was accepted by the Assessor in his provisional assessment dated 15th February, 1943. On 21st April, 1944, however, he made an additional assessment whereby among other items, he increased the estimated value of each "Management Share" to Rs. 300 on a basis of computation which was not disclosed to the executors until December, 1948, when he gave evidence in the Court below. They appealed from this additional assessment to the Commissioner on 19th May, 1944, but stated that they were now willing to accept a valuation of Rs. 40.6188 per "Management Share". The learned District Judge has wrongly assumed that this higher figure involved a serious inconsistency on their part. In actual fact, the same principle of valuation—i.e., "the balance sheet method"—was again adopted, but the higher figure of Rs. 40.6188 was arrived at by reason of an increase in the amount of the undistributed profits earned since January, 1940, as shown in the later Balance Sheet for the year ending 31st December, 1940—proportionate adjustments having been made in those figures so as to ascertain the approximate position of the company as at 6th September, 1940.

On 20th May, 1946, the Commissioner's determination on the appeal (at which there was no formal *inter partes* hearing) was communicated to the appellants, and, apart from items with which we are not now concerned, the Assessor's estimate of the value of each "Management Share" was reduced to Rs. 250. No reasons for the Commissioner's determination were then or at any later date notified to the appellants; nor were they made available during the proceedings before the learned District Judge or in this Court; the record of the evidence and of Counsel's observations indicates that even the Assessor and the (then) Solicitor-General who presented the case for the Crown in the lower Court seem to have been left to speculate as to the process by which the learned Commissioner had computed the value of the shares. Repeated attempts of the executors' lawyers, both before and at the commencement of the litigation which followed to seek enlightenment as to the case which their clients were required to meet were either resisted or ignored. Full advantage was taken of the defective machinery of the Estate Duty Ordinance (Chapter 187) and of our Code of Civil Procedure for refusing to disclose information which, if available, would have helped to shorten the proceedings which followed. In the result, the executors, on whom lay the burden of disproving the correctness of the Commissioner's computation at the hearing of the appeal which they preferred in June, 1946, to the District

Court of Colombo under section 34 of the Ordinance, entered upon a most unusual task. Indeed, the method of computation ultimately relied on by the Crown (whether it was the same as that adopted by the Commissioner is still a closely guarded secret) was not even specifically put in cross-examination to the appellants' expert witnesses for their criticism. I cannot commend this technique of litigation.

10 It is hoped that early steps will be taken to modernize the procedure regulating appeals between the Crown and its subjects in estate duty cases. Proceedings of this kind cannot be conducted satisfactorily unless the substantial points of contest are clarified at the earliest possible stage. In the present action, the precise nature of the controversy, namely, the proper basis of valuing the deceased's shares—did not clearly emerge until after the case for the executors had been closed. In this country the Crown, as a litigant, still enjoys many immunities and privileges which have been swept away by the provisions of the Crown Proceedings Act, 1947, in England. So long as these and other immunities and privileges continue to exist, officers of the Crown should, for reasons of  
20 fairness and in the interests of justice, respect the long-established and honourable convention "not to throw any difficulty in the way of any proceeding for the purpose of bringing matters before a Court of Justice where any real point of difficulty that requires judicial decision has occurred ..... unless there be some plain over-ruling principle of public interest concerned which cannot be disregarded". (Vide the English decisions approved by Lord Chancellor Simon in "*Duncan v. Cammel Laird and Company*"<sup>1</sup>) There should be no confusion in this connection between the claims of the *public interest* (to which the rights of every private litigant  
30 must of course give priority) and the desire for *financial gain* to the public revenue.

After a protracted trial in the Court below the learned District Judge upheld the Commissioner's assessment, and valued the 5,000 "Management Shares" belonging to the deceased at the time of his death at Rs. 250 each. The present appeal is from his judgment. The ground on which I differ from the learned Judge sufficiently appear in the reasons which follow. The relevant facts are not in dispute, and no questions as to the credibility of witnesses  
40 arises for consideration; the main question for decision relates to the principle of valuation which is most appropriate to the present case.

The value of the shares must be estimated to be the price which they would have fetched "if sold in the open market at the time of the death of the deceased". The language of section 10 (1) of the Estate Duty Ordinance (Chapter 187) corresponds to that of section 7 (5) of the Finance Act, 1894, of England. Admittedly

<sup>1</sup> (1942) A.C. 624.

the restriction imposed by the Articles of Association upon the free transfer of shares in C. W. Mackie & Company, Ltd., would have prevented such a sale in the open market from taking place. It is nevertheless necessary to value the shares at the relevant date by reference to the price which they would have fetched at a notional sale to a hypothetical purchaser " on the terms that the purchaser should be entitled to be registered and to be regarded as the holder of the shares, and should hold them subject to the provisions of the Articles of Association including those relating to the alienation and transfer of shares in the company ". " Commissioners of Inland Revenue v. Crossman " <sup>1</sup>. This principle of valuation which was laid down by the majority of the distinguished Judges who decided *Crossman's* case is, I should imagine, seldom easy to apply in a particular case. As Lord Fleming pointed out in " *Salveson's Trustee v. Commissioners of Inland Revenue* " <sup>2</sup> " the estimation of the value of shares by a highly artificial standard which is never applied in the ordinary share market must be a matter of opinion and does not admit of precise scientific or mathematical calculation ". It was no doubt for this reason that the Legislature decided, shortly after Mackie's death, to prescribe a statutory basis of computation in such cases. *The Estate Duty Amendment Ordinance, No. 8 of 1941*, sanctions a method of valuation—i.e., by assessing the value of the deceased shareholder's interest in the company's assets (including goodwill, if any)—which is analogous to that laid down for similar cases in the Finance Act, 1930, and the later Finance Act, 1940, of England. 10

It is now common ground that the provisions of the amending Ordinance do not operate in the present case. Apart from the question whether the Ordinance may be regarded as having retroactive effect, the Legislature has, for some reason which is obscure, departed from the English model by leaving it entirely to the Commissioner to decide whether these provisions should operate or not in any particular case. There is no evidence that the Commissioner has so decided in regard to Mackie's shares, although the evasive averment in paragraph 4 of the answer filed on behalf of the Attorney-General seems to indicate that the revenue authorities were at one stage undecided as to which alternative position should be adopted in this connection with best advantage to the Crown. 30

As far as I can judge, the " balance sheet method " is, in some cases, a method which a Court of Law may legitimately adopt when the application of other recognized methods for assessing the " market value " of shares presents great difficulty. In other words, whenever the provisions of the amending Ordinance do strictly apply, the method of valuation thereby prescribed is of course imperative; where the Ordinance does not apply, the method is nevertheless permissible if in all the circumstances of the case it 40

<sup>1</sup> (1937) A.C. 26.

<sup>2</sup> (1930) 9 Annotated Tax Cases 43.

is found to be the most appropriate method of estimating "market value" for purposes of estate duty. The value of a business is on this basis arrived at by adding the value of its goodwill, if any, to the value of its tangible assets. If no goodwill, in the commercial sense, exists, the value of the business cannot exceed, although it may sometimes be less than, that of its tangible assets. Similarly, the value of a "share" in such a business is arrived at by reference to its proper proportion of the sum so computed, regard being had to the rights and benefits attaching to such "share" under the Articles of Association.

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

Various matters must be taken into account in order to assess the "market value" of the "Management Shares" held by Mackie at the time of his death. Of the many decisions which were cited to us, I have found the judgment of Lord Fleming in *Salveson's case* <sup>(1)</sup> specially instructive in the present context. "The problem can only be dealt with" he says "by considering all the relevant factors as known at the date of the deceased's death, in order to determine what a prudent investor, who knew those facts, might be expected to be willing to pay for the shares." I propose to adopt this method of approach in the present case. Having first discussed what appear to me to be the factors for consideration by a prudent purchaser invited to make an offer for the shares, I shall then proceed to apply the method of valuation which seems most appropriate to the case.

In my opinion the chief factors for consideration, *as they existed and were known at the time of Mackie's death*, were (1) the nature of the business of the company, (2) the history of the company from its inception up to 6th September, 1940, (3) the future prospects of the business generally, and of the company in particular, (4) the state of the investment market at the relevant date, and (5) the extent, if any, to which the restrictions contained in the Articles of Association might be expected to depreciate the value of the shares. I shall deal with these questions in the order in which I have set them down.

(1) *The Nature of the Business*: C. W. Mackie & Company, Ltd., had since its incorporation in 1922 been engaged in the business of rubber dealers, regularly purchasing in the open market and taking delivery of large stocks of rubber with a view to their sale and export in due course. Prices in the rubber market have throughout history been notoriously sensitive, and the company, when dealing in this commodity, had invariably adopted an extremely speculative policy. Mackie and his co-Directors did not undertake the safer functions of an agency business purchasing rubber for outside principals on a commission basis; their policy was to make purchases on their own account in the hope, but not the certainty, of selling the rubber at some later date at a higher

<sup>1</sup> (1930) 9 *Annotated Tax Cases* 43.

figure; when their predictions as to the future of the market proved correct, the company earned very considerable profits; but when their predictions proved wrong, the company had no option but ultimately to sell its stocks at the lower market price and would in consequence sustain correspondingly heavy losses; the risk of a falling market or the benefit of a rising market was on each occasion voluntarily undertaken by the company. It was possible of course to tide over brief periods of adverse price fluctuations by holding its stocks, but this policy could not be carried out indefinitely. Mr. Williams, who had been a Director of the company and its Manager for over twenty years, stated that it was not possible to predict the future market of rubber except on very rare occasions; indeed, it is this unpredictability in the movements of the market which has tempted so many speculators to deal with this commodity in the world markets in the same manner as Mackie & Company, Ltd., had done since 1922. The element of chance is of the essence of such a business. The witnesses Williams, Hayward, Cuming and Lander spoke with authority regarding the nature of the business, and the witnesses called by the Crown did not seriously dispute their evidence on this point. Mr. Gunasekera, for instance, has had the benefit of long experience as an Assessor in estate duty cases, and he admitted that he "could not think of a business which was more speculative than that of this particular company", while Mr. Satchithananda, who is a qualified accountant, described the business as "very risky". The actual trading results of the company year by year since 1922 themselves provide the most compelling evidence on the point.

(2) *The History of the Company*: The audited annual Balance Sheets and Profit and Loss Accounts from 1922 to 1939 would have been available to an intending purchaser, who must be assumed to be "a person of reasonable prudence anxious to ascertain the relevant facts before making a bid for the shares". "*Findlay's Trustees v. Commissioners of Inland Revenue*".<sup>1</sup> He would have found in those documents that during the years 1922 to 1926 the company had, in consequence of very favourable fluctuations in the price of rubber, made enormous trading profits amounting in the aggregate to Rs. 3,441,359. Out of this sum, the preference shareholders regularly received their annual 8 per cent. dividends and dividends amounting to as much as Rs. 1,950,000 had been declared and distributed on the "Management Shares". If the story had ended there, one might well have imagined that Mackie and those associated with him had succeeded in discovering some secret which had eluded and has continued to elude so many speculators in the rubber market. Mackie and the other Directors, however, made a more cautious assessment of their ability to predict the unpredictable. Out of the company's undistributed past profits, they

<sup>1</sup> (1938) 22 Annotated Tax Cases 436.

- placed Rs. 747,901 to general and sundry reserves, and carried forward the balance sum of Rs. 356,913 to the trading account for 1927. It was indeed fortunate that at least this precaution had been taken. Within the next six years the company, in consequence of consistently unfavourable fluctuations in the price of rubber, sustained an aggregate loss of Rs. 1,804,304—so that the company, by trading on its issued capital as well as its hidden capital of unpaid preference dividends, reserves and undistributed profits of an earlier period, was now virtually insolvent. The same speculative policy was however persisted in after 1932 with the help of overdraft facilities which Mackie, largely by his personal influence, was able to arrange. The years 1933 and 1934 showed favourable trading results. Then followed 1935 with a loss of Rs. 281,907. A slight profit was made in 1936 followed by a comparatively small loss in 1937. In 1938 the profits earned amounted to Rs. 149,846. The year 1939, which was the last year for which the audited Balance Sheet would have been available to an intending purchaser, showed a welcome gross profit of Rs. 787,641. Nevertheless, the position as at 31st December, 1939, was still “ far from healthy ”, as the Assessor admitted. A sum of Rs. 793,000 was due to the preference shareholders who had not been paid their dividends since 1927. The overdraft with the bank stood at Rs. 1,485,471.25, and in spite of an extremely favourable year of business there was still a net trading deficit of Rs. 150,828 after allowing for taxation and for the accumulated arrears of preference dividends (ignoring two years for which payment had been waived). One cannot think that any prudent businessman would have been greatly attracted by a proposal that he should invest a very large sum of money, inadequately secured by tangible assets, in a business over which he would have no control, and whose fortunes had in the past been subject to such violent fluctuations. Even if the substantial profits earned up to the date of Mackie’s death in 1940 (owing to the market prices having continued *for the time being* to show an upward trend under early war conditions) had been ascertained, I do not see how an optimistic view for all time could be considered justifiable. For how long and to what extent this upward trend would continue it was impossible to say. It has been proved that the trading profits during the second half of 1940 had appreciably declined in comparison with those of the earlier six months.
- 40 During the period 1st January, 1927, to 6th September, 1940, dividends had not been paid on either Preference Shares or on “ Management Shares ”; and the net trading loss sustained (after allowing for taxation) amounted to Rs. 107,614. Even if there was a reasonable prospect of history repeating itself and producing in the near future substantial profits comparable to those of 1922 to 1926, it had to be borne in mind that income tax had come into force in Ceylon since 1931 and that, as Mr. Satchithananda admitted, business circles had become apprehensive (justifiably, as things

turned out) of the early additional imposition of an Excess Profits Duty. Besides, the history of the company had made it clear that in favourable years it was prudent to build up sufficient reserves to meet the reverses of unfavourable periods which, in a business of this nature, could not be eliminated in spite of the admitted advantages of skilful management. No doubt the war years 1939 and 1940 had, *up to date*, induced a rising market favourable to the speculator. But for how long those conditions would last, no man could sensibly predict. It is relevant in this connection to consider the view which Mackie's fellow Directors in Ceylon had themselves taken of the company's prospects two days before he died. In spite of a marked improvement in trading results since 1939, they recommended to him that, for the time being, only a small proportion of the arrears of preference dividends which had accumulated since 1927 should be paid out. This cautious attitude stands in sharp contrast to the reckless optimism with which, in the submission of the Crown, a hypothetical purchaser would have bid Rs. 1,250,000 for an investment backed at the relevant date by tangible assets worth only Rs. 203,094.41. 10

(3) *The Future Prospects of the Business* : I can find nothing in the evidence to justify the assumption that, taking a long view of the company's future trading, the risks and hazards of speculation had now been eliminated, and that a prudent investor could confidently predict that the fortunes of C. W. Mackie & Company, Ltd., would no longer, as in the past, be subject to violent fluctuation. On the evidence, my view is that it still was, as it had always been, unsafe to form a conclusion in either direction. The Assessor claimed that there was good reason to anticipate that the market would continue to rise for about two years after 6th September, 1940, after which smaller profits would again be earned. (He does not tell us why the possibility of losses in future trading should be excluded.) I do not know whether the view which he expressed was actually held by him at the relevant date; it seems more probable that when he gave evidence at the trial he was fortified by "wisdom after the event" or by what the learned Solicitor, quoting an Australian decision, referred to as "hind-sight". In prophesying the future of rubber prices, one man's guess is, I should imagine, no better than another's. At any rate, a Court of Law, when called upon to make assessments for estate duty purposes, cannot justifiably assume that a prudent investor would take a view as to the future which is not supported by reliable evidence of facts which were known at the time. The events which happened after 6th September, 1940, cannot be regarded as relevant *unless they were reasonably predictable on that date*. I have examined the Assessor's evidence with care, and I am not at all satisfied that any cautious person, reviewing the past and attempting to gauge the future at the time of Mackie's death, would have been willing to make a firm offer for the shares on the assumption that within the 20 30 40



next six years he would receive back an aggregate sum equivalent to Rs. 1,250,000 in the form of annual dividends. The opinion of an expert is of special assistance only when he gives convincing reasons for his faith. In this respect the evidence of the Crown witnesses seems to me to have failed the test. It must not be forgotten that in the past even Mackie's predictions, in spite of all his accumulated experience of the rubber market, had proved completely wrong throughout the six-year period 1927 to 1932. That knowledge would, I think, have satisfied an investor that it is unsafe to attempt a forecast of the prospects of a rubber dealer's business without entering the realms of pure conjecture.

(4) *The Investment Market in September, 1940* : The notional sale of Mackie's shares in the open market would have taken place during a critical period in world history. France had capitulated before Hitler's invading armies; Europe was over-run; the Battle of Britain had commenced, and its issue was still in doubt. The evidence in the case proves that these events had produced a marked reaction on the mood of investors in Ceylon. As far as this particular company's activities were concerned, the general uncertainty of world conditions had been superimposed on the special hazards inherent in speculative trading. Mr. Lander stated that it was difficult at that time to find anyone willing to risk large sums of money on speculative investments. Mr. Cuming, who is a senior broker in Colombo, supported this statement. People preferred to keep their money in the banks, he said, and he doubted if Mackie's shares would in fact have been purchased at all if they could have been offered for sale in the open market. Mr. Cuming asserted that "no broker would have made an underwriting proposition for the sale of Mackie's shares; at that time the risk was too great". These witnesses were not expressing mere opinions on this aspect of the case: they were stating uncontradicted facts. Mr. Williams was asked if he would have been willing to buy the "Management shares" himself. "I would buy them *if I got them cheap for a gamble*" he replied. A prudent investor, I do not doubt, would have taken into consideration the views of persons conversant with conditions in the rubber market and the investment market before making a bid. The Assessor did not dispute this evidence. He suggested, however, that some buyer from abroad might have been interested in purchasing the shares, though he admitted that such an eventuality was "not very likely". Mr. Satchithananda similarly thought that American or Canadian buyers might perhaps be attracted. I think that these vague suggestions carry the notion of a hypothetical purchaser much too far from reality. It is not clear how, at a notional sale, a bidder from abroad, could have been induced to offer very much more than local bidders were prepared to offer. The conclusion at which I have arrived is that under the existing conditions it would have been an extremely difficult matter to find a buyer for Mackie's shares for a figure in excess of such



security as was afforded by the proportionate interest at the time in the available tangible assets. There is evidence that at least one comparable business, discouraged by trading losses and diffident as to the future, had closed down in 1939, and that its proprietors had failed at that time even to find a buyer for their rubber store. No suggestion has been made that its "goodwill", if offered for sale, would have fetched any sum at all.

Had any speculator confidently predicted a rising market for the period immediately following September, 1940, he would surely have preferred, through a reputable broker, to make purchases and sales of rubber in the open market during that period on his own account, and to personally control the destinies and the duration of his investments rather than tie up his capital in a business managed by persons whom he could not control. An advantage which existed in the established business of C. W. Mackie & Company, Ltd., would presumably have been rendered unnecessary by the allegedly universal "knowledge" that prices were certain to rise, and would in any event be counter-balanced by the restrictive covenants imposed by the Articles of Association. I shall now deal with that aspect of the matter.

(5) *The Articles of Association:* The special attraction of an investment in the shares of a public company is that a shareholder (or, on his death, his legal representative) has under normal conditions little difficulty in selling his holding in the open market whenever he desires to do so. The hypothetical purchaser of Mackie's shares and his heirs would have been placed in a very difficult position in this respect. *Articles 38 to 43* lay down stringent restrictions on the sale and transfer of shares. If a member of the company were willing to take over the shares of a member who desired to sell out, the price payable would be a sum which *the company's auditors, and not the transferor* regarded as their "fair value" at the time. If no member of the company were willing to take them over, the owner could not sell them except to a third party whom the Directors would agree to admit to membership (*Article 45*), and in any event, that third party would himself be discouraged by the same restrictions after securing his registration as a new shareholder.

On the death of a shareholder, his executor could be compelled to transfer the shares to a member of the company at a price fixed as their "fair value" by the auditors. (*Articles 54 and 38.*) It was argued for the Crown that a purchaser could circumvent this provision by floating a private company, in which he would hold the major interest, to purchase the shares. No doubt this would be possible, but the depreciatory effect of *Article 54* on market value is self-evident.

A purchaser of the 5,000 "Management Shares" belonging to Mackie would further realize that, as the holder of less than 1/10

of the issued capital of the company, his interests were liable to be compulsorily acquired by the majority holders *at the Auditors' valuation (Articles 46 and 38)*. When this difficulty was pointed to the Crown witnesses in cross-examination, they were forced to admit that it was very unlikely that any person would buy the holding of the "Management Shares" unless he could protect himself by purchasing at the same time a sufficient number of Preference Shares from Mackie's estate so as to remove this handicap. This, I imagine, would have greatly damped the enthusiasm and reduced the number of bidders interested in purchasing the "Management Shares". In valuing a deceased person's property for purposes of estate duty, it is of course legitimate to consider the possible advantage of pooling all or some of his assets in the hope of fetching a higher figure than would be realized by a sale of each asset separately. "*Ellesmere v. Inland Revenue Commissioners*".<sup>1</sup> There must be good reason to anticipate, however, that a sale of the properties in this fashion would in fact have proved more advantageous to the seller as well as to the buyer. In the present case, the Assessor and the Commissioner had in the first instance fixed the value of the "Management Shares" on the basis that they would be sold as a separate holding. Having regard to the state of the investment market in September, 1940, I doubt if it would have been desirable to confine the bidding for the "Management Shares" to persons who possessed sufficient capital to purchase Mackie's Preference Shares as well for their agreed value of Rs. 806,017. On the contrary, it might well have been more prudent to offer the "Management Shares" in even smaller blocks so as to attract more bidders willing to risk small sums in such a speculative investment. My own impression is that the belated suggestion of pooling these two groups of Mackie's assets for the purpose of a notional sale was not present in the Assessor's mind until he was confronted at the trial with the implications of Article 46. Mr. Satchithananda obviously did not originally contemplate a pooling of the shares. His valuation report does not refer to the Preference Shares at all in this connection and his evidence indicates that he had not taken the trouble to study the Company's Articles of Association closely before he entered the witness-box.

Further discouraging features in the Articles of Association were the restrictions which prevented a shareholder from holding interests in any other business which the Company was carrying on or was even authorized to carry on (*Articles 48 and 49*).

(6) *The Basis of Valuation*: It is now necessary to consider which method of estimating the "market value" of shares in this particular private company is, in the light of the unusual circumstances to which I have referred, the most appropriate. By the very

<sup>1</sup> (1918) 2 K.B. 435.

nature of things, no questions in the public share market for investments in the same or in a comparable business are available to guide us. There is, however, a record of a private transaction which took place at the end of the trading year 1926 whereby Mackie had himself purchased 1.375 "Management Shares" from a retiring member of the company, Mr. N. J. R. Robertson, and from certain others. These transactions took place *as between willing sellers and a willing buyer* at a time in the company's history when the trading results for five consecutive years had been exceptionally favourable, and when the "goodwill", *if any*, of the business could not, on any reasonable hypothesis, have been computed at a lower figure than in September, 1940. The company's Balance Sheet then showed substantial reserves which were available to meet losses in future trading; and the introduction of income tax was not in contemplation at that time. In spite of these advantages, the basis of valuation agreed upon by the parties to the transaction in 1926—namely, "the balance sheet valuation"—was precisely the same as that on which the appellants have relied in the present case. Mackie voluntarily paid, and his sellers voluntarily accepted a figure representing only the value at the relevant date of the tangible assets remaining for each "Management Share" in the Balance Sheet of the company as a going concern, *no additional allowance whatsoever being made for goodwill*. This strongly indicates to my mind that the persons best acquainted with the risks attendant on the company's activities realized that "goodwill" (measured in terms of the "*value of the capacity to earn super-profits*") is non-existent in a speculative business whose profits or losses depend so largely on unpredictable market fluctuations. This same element of uncertainty which existed in 1926 had not been eliminated in September, 1940.

Mr. Lander's opinion is that for a business of this kind "the balance sheet method of valuation" is the most appropriate. He has since 1930 been a member of the firm of Messrs. Ford, Rhodes & Thornton, who are the company's auditors. His professional qualifications and the honesty of his views were not challenged at the trial, and I think that his opinion is entitled to considerable weight. Certainly, the implications of Article 38 would have led a prospective purchaser to hesitate before he made a higher offer than the figure at which the company's auditors valued the shares at the relevant date.

The company's business was no doubt a well-established business conducted by a reputable management; nevertheless, it was essentially the business of a gambler or a speculator (call it what you will). If it were possible to place a market value on the company's "goodwill"—which, for purposes of valuation, represents "the benefit and advantage of the good name, reputation and connection of a business" ("*Commissioner of Inland Revenue v. Muller*")

<sup>1</sup> (1901) A.C. 216.

- the value of Mackie's interests in the tangible assets should undoubtedly, as was done in *Findlay's case*<sup>1</sup> be correspondingly increased. Where, however, there is no "goodwill" capable of assessment except by guess-work, it follows that (even if no deductions be allowed for the depreciatory effect of the restrictions contained in the Articles of Association) no prudent investor could reasonably be expected to offer more for a "Management Share" than the value of its present interest in the tangible assets. *This sum represents the full amount which he would be prepared to stake*
- 10 *in the hazardous enterprise of speculating on the future price of rubber.* I cannot agree that this method of valuation is applicable only when there is an immediate prospect of liquidation. The figure arrived at does admittedly reflect the amount which would be available for distribution (less a proportionate share of liquidation expenses) in that eventuality. Nevertheless, the sum so calculated may, in an appropriate case, where no commercial "goodwill" exists as a separate asset, properly be regarded as the maximum value at the relevant date of the shareholder's interest in the business of the company "as a going concern".
- 20 Mr. Crown Counsel Jansze, who very ably argued a part of the case for the Crown, suggested that some additional allowance should be made for the fact that the purchaser of a "Management Share" would enjoy the additional advantage of gambling with the capital contributed by the preference shareholders. His argument would have much force if it could be demonstrated that such an advantage would attract to a management shareholder a reasonably predictable assurance of higher dividend returns on his investment. In that event, the measure of this advantage could logically be assessed
- 30 *in terms of "goodwill"* by reference to the super-profits which the "Management Shares" would be expected to earn by way of dividends. In the present case, however, the business of C. W. Mackie & Company, Ltd., is such as to leave its future prospects very largely, if not entirely, to chance, and for this reason I fail to see how the "advantage" to which Mr. Jansze refers can be assessed on any scientific basis. An issue was specifically raised at the trial as to whether any "goodwill" attached to the "Management Shares", and, if so, what value should be placed on it. The Crown chose not to lead any evidence as to how "goodwill", if it existed in this business, should be valued as a separate asset.
- 40 I understood the learned Solicitor-General to argue that in a company constituted like C. W. Mackie & Company, Ltd., "goodwill" attaching to a "Management Share" cannot be separately assessed. I am not satisfied that this is so except for the difficulty of recognizing that it does exist at all. To my mind, if "goodwill", measured in terms of "the capacity to earn super-profits", had in fact been established, it would have been a comparatively

<sup>1</sup> (1938) 22 *Annotated Tax Cases* 436.

simple matter to assess its value separately in accordance with recognized accounting principles. In the firm of C. W. Mackie & Company, the "goodwill", if it existed, of the business would have attached *exclusively* to the "management shareholders" to whom alone the maintainable "super-profits" must be ultimately paid. This presupposes that one could have reasonably predicted a higher investment return on the "tangible assets value" of a "Management Share" as at 6th September, 1940 (i.e., Rs. 40.6188), than a prudent investor would normally expect to receive at the "risk-rate" appropriate to a rubber dealer's business (say, 25 per cent. per annum). In that event the value of the goodwill could be computed by capitalizing these anticipated annual "super-profits" at the appropriate risk-rate. This sum, added to the value of the shareholder's interest in the tangible assets, would—subject to such allowance as was considered necessary for depreciation owing to the restrictions in the Articles of Association—represent the total value of each share for estate duty purposes.

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I am satisfied that the "balance sheet method" of valuing shares in a highly speculative business, whose past history lacks evidence of any *steady* earning-power, is the most appropriate method to adopt because it is not possible to arrive at a logical assessment of the future maintainable profits from which dividends could be paid to the shareholder as a return for his investment. No evidence was led at the trial, and no authorities were referred to us in this Court, to induce me to take a different view.

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The learned Solicitor-General asked for a ruling that the only acceptable method of estimating the market value of shares in any business is to capitalize (at the "risk-rate" appropriate to the business) the estimated annual average of future maintainable profits which would be available to the shareholders concerned. I do not see how this principle of valuation can legitimately be extended beyond the limit of its logic. No doubt the method is preferable when it is possible, *by reference to past history and present knowledge*, to predict future maintainable profits under normal conditions. But the principle seems to me to break down when it is sought to be applied to a business where the element of incalculable risk which is inherent in its trading activities cannot be eliminated. As I read the judgment in *Salveson's case*<sup>1</sup> the method was not adopted by Lord Fleming in valuing shares, in a company engaged in a speculative whaling business, and he later pointed out in *Findlay's case*<sup>2</sup> that to take the average profits of the last few years for this purpose would only "operate quite equitably where one is dealing with a well-established business *which has normal ups and downs, but has no violent fluctuations in either direction*". I therefore reject for the present case the method of valuation adopted by the Assessor who seems to have valued the shares "by the application

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<sup>1</sup> (1930) 9 Annotated Tax Cases 43.

<sup>2</sup> (1938) 22 Annotated Tax Cases 436.

of what is at last merely a rule of thumb". I do not propose to deal specifically with Mr. Satchithananda's valuation. Wherever his valuation did not substantially agree with that of the Assessor it was specially unconvincing. I have already expressed my opinion that in a business of this kind it is not possible to estimate future maintainable profits. *A fortiori*, the "weighted average" principle relied on by Mr. Satchithananda cannot be seriously considered. It is, I think, significant that at no stage of the company's trading history would a valuation based on the formulæ  
 10 advocated by either of these witnesses have, in the light of subsequent events, been found to be justified. This only proves, in my opinion, that the profits or losses of any particular period of time cannot in this business be regarded as a reliable guide to the prospects of a later period.

I have now disposed of the main point of contest between the parties to the appeal. As the assessment made by the Assessor (and approved by the learned District Judge) was very fully discussed before us, however, I think it proper to state that, even if  
 20 I had found myself able to accept his method of valuation, I should have held that the ultimate figure arrived at by him was greatly excessive. Taking into account the past history of the company, I think that to take the average of only the past 4  $\frac{2}{3}$ rd years' profits, ignoring altogether the earlier periods when heavy losses were incurred, attributes to a hypothetical purchaser a spirit of reckless optimism. Moreover, the Assessor has wrongly assumed in his calculations that, after the payment of preference dividends out of anticipated profits, the entire balance would be paid out to the purchaser of the "Management Share". I do not see how  
 30 such an improvident policy on the part of the Directors could reasonably have been expected by a prudent investor. Admittedly, a deduction had to be made for income tax payable by the company on its trading profits, and the unit rate for taxation applicable at the relevant date was 15 per cent. Besides, it would have been a rash and foolish purchaser indeed who would not have realized that a prudent management, with knowledge of what had happened in the past, was certain to build up adequate reserves during profitable years to meet the losses of unsuccessful periods of trading. I have already pointed out that during the first five successful years of the company's activities, the Directors took the sensible precaution  
 40 of accumulating reserves at the rate of approximately Rs. 150,000 a year. In 1940, when funds were available for the first time since 1927, a similar sum was placed to reserve. If the Balance Sheets for 1941 and 1942 are relevant at all, they only serve to show that the Directors acted precisely as one would have expected them to act in successful years of trading. At the end of 1941 the amount standing to general reserve was increased to Rs. 300,000. In 1942, when the company was fortunate in earning very large profits in consequence of having temporarily undertaken new and safer

functions as buying agents for the Ceylon Government on a commission basis (a position not anticipated in September, 1940), the reserves were increased to Rs. 700,000 out of undistributed profits; and *for the first time since 1926* a dividend of only Rs. 50,000 was declared on the "Management Shares". This figure represents only a 25 per cent. return on the "tangible assets" value of the shares in September, 1940, and is very considerably less than the *annual* dividends optimistically foreshadowed by the Assessor for his hypothetical purchaser. Moreover, it was reasonable to expect that the Directors, being preference shareholders, who now at last enjoyed a controlling interest in the business since the date of Mackie's death, would build up adequate reserves from the profits of a good year so as to ensure for themselves the regular payment of their own dividends in spite of any trading losses which might be sustained in future years. Even if the Assessor's anticipated future maintainable profits of the business could be accepted as reliable, the market value of the shares must be substantially reduced if the proper allowances be made for taxation and reserves. I regret to say that I was not convinced by the explanation that he did not make these necessary deductions because, in his belief, they would have been counter-balanced by an increased figure for future maintainable profits on the "weighted average" principle (which principle he does not claim to have used in any of his previous assessments as an Estate Duty officer). No Court can reasonably be invited by a valuer to accept a bald assertion that one material but undisclosed figure in a sum in simple arithmetic will probably counter-balance another figure which is also undisclosed. Finally, I cannot accept the view that a prudent purchaser investing his money in such a speculative business would have been content with a return of only 15 per cent. Mr. Satchithananda conceded in cross-examination that a rate of 20 per cent. to 25 per cent. would be more reasonable. I find that the Crown expert in *Salveson's case*<sup>1</sup> took the view that for an investment in the whaling industry (which certainly had not proved less speculative than the business of this company) an expected return of 40 per cent. was not unreasonable. Moreover, in *Salveson's case*<sup>1</sup>, the financial position of the company at the date of valuation was such that sufficient reserves had already been accumulated to ensure the payment of dividends for the next five years even if no profits were earned during that period, still leaving an ample margin to meet trading losses as large as those which had ever been experienced in the past. In my opinion the market value of Mackie's shares on the basis of the Assessor's method, after making the necessary adjustments for taxation and sufficient reserves, and after applying a higher "risk-rate", would not have been appreciably higher than Rs. 40.6188 per share. If in addition, the depreciating effect of the restrictive clauses contained in

<sup>1</sup> (1930) 9 Annotated Tax Cases 43.

the Articles of Association be taken into account, this figure is certainly not too low. In *Crossman's case*<sup>1</sup> Lord Hailsham expressed the opinion that the value of the shares under consideration by him, if not subject to rigid restrictions, would probably have been twice as high as the figure which he finally approved. In *Salveson's case*<sup>2</sup> Lord Fleming considered a depreciation by approximately  $33\frac{1}{3}$  per cent. to be fair and reasonable.

No. 15  
Judgment of  
the Supreme  
Court  
22-5-50  
—contd.

10 The appellants did not press their earlier contention that the figure of Rs. 40.6188 per share should, in terms of the proviso to section 20 (1) of the Ordinance, be further reduced by reason of Mackie's death. Nor did they claim depreciation on account of the restrictions contained in the Articles of Association. I would therefore hold that the "market value" of each of the deceased's 5,000 "Management Shares" should be fixed for estate duty purposes at Rs. 40.6188, which admittedly represents the proportionate interest of each share in the tangible assets of the company as at 6th September, 1940. My view is that no sum falls to be added to this sum on account of "goodwill" which in my judgment and  
20 incapable of assessment as an asset of the business.

Since preparing this judgment I have had the opportunity of reading the judgment of My Lord the Chief Justice. I respectfully agree with him that the appeal should be allowed and that judgment for the appellant should be entered, with costs, as indicated by him.

(Sgd.) E. F. N. GRATIAEN,  
*Puisne Justice.*

<sup>1</sup> (1937) A.C. 26.

<sup>2</sup> (1930) 9 Annotated Tax Cases 43.



**Decree of the Supreme Court**

**GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS  
KING, DEFENDER OF THE FAITH**

D. C. (Final) 88/1950.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

- 1. CHARLES WILLIAM MACKIE (Junior) and
- 2. JAMES CRAIB MACKIE, both of Colombo, the Executors of the Last Will and Testament of Charles William Mackie, deceased. .... *Appellants.* 10

*against*

THE ATTORNEY-GENERAL of Ceylon ..... *Respondent.*

Action No. 71/T. (Special) District Court of Colombo.

This cause coming on for hearing and determination on the 7, 15, 16, 17, 20, 21, 22, 23, 24, 28, 29, 30, 31st March, and 3, 4, 5th April, and 22nd May, 1950, and on this day, upon an appeal preferred by the appellants before the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, and the Hon. Mr. E. F. N. Gratiaen, K.C., Puisne Justice, of this Court, in the presence of Counsel for the appellants and respondent: 20

It is considered and adjudged that the order entered in this action by the Additional District Judge be and the same is hereby set aside.

It is ordered that judgment be entered in favour of the appellants for the sum of Rs. 166,929.57 with interest as prayed for in para (d) of the prayer of their petition of appeal dated June 14, 1946.

The appellants will be entitled to costs here and in the Court below. 30

Witness the Hon. Mr. R. F. Dias, LL.D., Senior Puisne Justice, at Colombo, the 25th day of May, in the year of our Lord One thousand Nine hundred and Fifty, and of Our Reign the Fourteenth.

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, Supreme Court.*

**Application for Conditional Leave to Appeal to the  
Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S. C. No. 88M (Final)                      D. C. Colombo No. 71 (T) Special

THE ATTORNEY-GENERAL of Ceylon ..... *Appellant.*

*and*

- 1. CHARLES WILLIAM MACKIE (Junior), presently of  
" Sylha ", Nuwara Eliya, and
- 10 2. JAMES CRAIB MACKIE of Scotland, Executors of the Last  
Will and Testament of Charles William Mackie,  
deceased. .... *Respondents.*

On this 31st day of May, 1950.

*To:*

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER  
JUSTICES OF THE SUPREME COURT AFORESAID

The petition of the above-named appellant appearing by John  
Wilson, his Proctor, states as follows:—

- 20 1. That feeling aggrieved by the judgment and decree of this  
Honourable Court pronounced in this case on the 22nd day of May,  
1950, the above-named appellant is desirous of appealing therefrom  
to His Majesty the King in Council.
- 2. That the said judgment is a final judgment and the matter  
in dispute on the appeal is upwards of the value of rupees five  
thousand (Rs. 5,000).

Wherefore the appellant prays for conditional leave to appeal  
against the said judgment of this Court dated the 22nd day of May,  
1950, to His Majesty the King in Council.

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(Sgd.) JOHN WILSON,  
*Proctor for Appellant.*

No. 18  
Decree granting  
Conditional  
Leave to  
Appeal to the  
Privy Council  
14-6-50

No. 18

**Decree granting Conditional Leave to Appeal to the Privy Council**

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS  
KING, DEFENDER OF THE FAITH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE ATTORNEY-GENERAL of Ceylon ..... *Appellant.*

*against*

- 1. CHARLES WILLIAM MACKIE (Junior) and
- 2. JAMES CRAIB MACKIE ..... *Respondents.* 10

Action No. 71 (S. C. No. 88 Final)

District Court of Colombo.

In the matter of an application by the appellant above named for conditional leave to appeal to His Majesty the King in Council against the Decree of this Court dated 22nd May, 1950.

This matter coming on for hearing and determination on the 14th day of June, 1950, before the Hon. Mr. R. F. Dias, LL.D., Senior Puisne Justice, and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice, of this Court, in the presence of Counsel for the applicant:

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date— 20

Deposit in terms of the provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar of the Supreme Court a sum of Rs. 300 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar. 30

Witness the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 19th day of June, in the year of our Lord One thousand Nine hundred and Fifty, and of Our Reign the Fourteenth.

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, Supreme Court.*

**Application for Final Leave to Appeal to the Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S. C. No. 88M (Final)                      D. C. Colombo No. 71 (T) Special

THE ATTORNEY-GENERAL of Ceylon ..... *Appellant.*

*and*

- 1. CHARLES WILLIAM MACKIE (Junior) presently of  
" Sylha ", Nuwara Eliya, and
- 10 2. JAMES CRAIB MACKIE of Scotland, Executors of the Last  
Will and Testament of Charles William Mackie,  
deceased ..... *Respondents.*

*To:*

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER  
JUSTICES OF THE SUPREME COURT AFORESAID

On this 19th day of June, 1950.

The petition of the appellant above named appearing by John Wilson, his Proctor, showeth as follows:—

1. That the appellant on the 14th day of June, 1950, obtained conditional leave from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 22nd May, 1950.

2. That in granting conditional leave to appeal, this Court made order that the provisions of rule 3 (a) of the rules in the schedule to the Appeals (Privy Council) Ordinance (Cap. 85) as regards the giving of security are not applicable to the appellant, and in the said order no conditions were imposed under rule 3 (b) of the said rules.

3. That the appellant has on the 19th day of June, 1950, deposited the sum of Rs. 300 in respect of the amounts and fees as required by paragraph 8 (a) of the Appellate Procedure (Privy Council) Order, 1921, made under section 4 (1) of the Appeals (Privy Council) Ordinance (Cap. 85).

Wherefore the appellant prays that he be granted final leave to appeal against the said judgment of this Court dated 22nd May, 1950, to His Majesty the King in Council.

(Sgd.) JOHN WILSON,  
*Proctor for Appellant.*

No. 20  
Decree granting  
Final Leave to  
Appeal to the  
Privy Council  
29-6-50

No. 20

**Decree granting Final Leave to Appeal to the Privy Council**

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,  
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS  
KING, DEFENDER OF THE FAITH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Action No. 71 (S. C. No. 88)  
District Court, Colombo.

THE ATTORNEY-GENERAL of Ceylon ..... *Appellant.*

*Against*

10

1. CHARLES WILLIAM MACKIE, and 2. JAMES  
CRAIB MACKIE ..... *Respondents.*

In the matter of an application by the Attorney-General for final leave to appeal to His Majesty the King in Council against the Decree of this Court dated 22nd May, 1950.

This matter coming on for hearing and determination on the 29th day of June, 1950, before the Hon. Mr. R. F. Dias, LL.D., Senior Puisne Justice, and the Hon. Mr. V. L. St. Clair Swan, Puisne Justice of this Court, in the presence of Counsel for the applicant.

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The applicant having complied with the conditions imposed upon him by the Order of this Court dated 14th June, 1950, granting conditional leave to appeal.

It is considered and adjudged that the application for final leave to appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Mr. E. G. P. Jayetileke, K.C., Chief Justice, at Colombo, the 3rd day of July, in the year of our Lord One thousand Nine hundred and Fifty, and of Our Reign the Fourteenth.

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, Supreme Court.*

30

## PART II

## EXHIBITS

## P1

**Memorandum and Articles of Association of  
C. W. Mackie & Company, Limited**

Exhibits

P 1  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)

MEMORANDUM OF ASSOCIATION OF C. W. MACKIE  
& COMPANY, LIMITED

1. The name of the Company is C. W. MACKIE & COMPANY, LIMITED.
- 10 2. The registered office of the Company will be situate in Colombo.
3. The objects for which the Company is established are—
  - (a) To acquire and carry on as a going concern the business of Merchants and Commission Agents carried on by CHARLES WILLIAM MACKIE under the name and style of C. W. Mackie & Company at Colombo, Ceylon, and all or any part of the assets and goodwill of that business, and with a view thereto, to enter into and carry out with such modifications as may be agreed upon, either before or after execution, the agreement referred to in Article 4 of the Company's Articles of Association.
  - 20 (b) To carry on the business of planters, cultivators, sellers, and dealers in tea, cacao, rubber, cocoanut, and other tropical crops, and to manufacture, dispose of, sell, and deal in products of tea, cacao, rubber, cocoanut and other tropical crops.
  - (c) To act as directors, secretaries, consignees, and commercial agents of any company or companies carrying on business or owning property or estates of any kind in Ceylon or elsewhere in the East, or to undertake any or all of these duties concurrently.
  - 30 (d) To act as agents for the investment, loan, payment, transmission, and collection of money, and for the purchase, sale, and improvement, development, and management of property, including business concerns and undertakings, and generally to transact all kinds of agency business, whether in respect of agricultural, commercial, or financial matters.
  - 40 (e) To seek for and secure openings for the employment of capital in Ceylon, and elsewhere in the East, and with a view thereto to prospect, inquire, examine, explore, and test, and to despatch and employ expeditions, commissioners, experts, and other agents.

## Exhibits

P 1  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)

- (f) To purchase, take on lease, or otherwise acquire and deal in immovable property and movable property of all kinds, and any interests therein, including reversions, mortgages, charges, annuities, patents, licences, policies, book debts, investments, and claims of every kind.
- (g) To carry on business as financiers, and to act as financial advisers, and to facilitate and encourage the creation, issue, or conversion of debentures, debenture stock, bonds, obligations, shares, stocks and securities, and to act as trustees in connection with any such securities, and to take part in the conversions of business concerns and undertakings. 10
- (h) To acquire the goodwill, property, and assets, and to assume the liabilities of any other company, partnership or person carrying on business which this Company is authorized to carry on, and undertake the winding up of any such company or partnership.
- (i) To manufacture, buy, sell, repair, alter, improve, manipulate, treat, and deal in all kinds of goods, wares, and merchandise, plant, machinery, apparatus, appliances, tools, utensils, products, materials, substances, articles, and things necessary or useful in carrying on any of the above businesses, or operations, or usually dealt in by persons or companies engaged therein. 20
- (j) To make, build, construct, provide, maintain, improve, carry on, use, and work, in any parts of the world, roads, ways, railways, tramways, telegraphs, telephones, electric light, canals, reservoirs, waterworks, wells, aqueducts, watercourses, furnaces, gasworks, piers, wharves, docks, saw and other mills, hydraulic works, factories, warehouses, boats, and other works and buildings which may be deemed expedient for the purposes of the Company, and to contribute to the cost of making, building, constructing, providing, carrying on, using, and working same. 30
- (k) To apply for or acquire by purchase or otherwise for the business of the Company in any parts of the world any factories, buildings, mills, plant, engines, machinery, patents, patent rights, secret processes, or other things, British, Colonial or foreign licences, concessions, and the like conferring any exclusive or non-exclusive or limited right to use any secret or other information as to any invention which may seem capable of being used for any of the purposes of the Company, or the acquisition of which may seem calculated, directly or indirectly, to benefit the Company, and to use, exercise, develop or grant licences in respect of, or otherwise turn to account 40

the property, rights, or information so acquired, and to make, assist, or subsidize experiments, researches, investigations, expeditions, or voyages of discovery that may appear to be likely to benefit the Company.

Exhibits  
P 1  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)

- 10 (l) To carry on any other business or businesses whatsoever and wheresoever which may in the opinion of the Board of the Company be conveniently carried on in connection with any business which the Company is authorized to carry on or calculated directly or indirectly to enhance the value of or render profitable any of the Company's properties or rights, and to transact any or every description of agency, commission, commercial, manufacturing, mercantile, and financial business.
- 20 (m) To promote any other company or companies for the purpose of acquiring or undertaking all or any of the property, assets, and liabilities of this Company, or of advancing, directly or indirectly, the objects or interests thereof and to take and otherwise acquire and hold shares in any such company or companies, and to guarantee the payment of any debentures or other securities issued by any such company or companies.
- (n) To purchase, subscribe for, underwrite, take, or otherwise acquire and hold, sell, mortgage and deal in shares, stock, options, bonds, debentures, debenture stock, or obligations in any other company or corporation, or of any Government or State.
- 30 (o) To amalgamate with, or enter into partnership, or into any arrangement for sharing profits, union of interests, joint adventure, reciprocal concession, or co-operation with any person or company carrying on or about to carry on any business, occupation or enterprise which this Company is authorized to enter into, undertake, or carry on, or any business or transaction capable of being conducted so as directly or indirectly to benefit this Company, and to take or otherwise acquire and hold shares or securities in any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with the same.
- 40 (p) To sell, let on lease, exchange, or dispose of all or any part of the undertaking, property, assets and rights of the Company for such consideration as the Company may think fit, and in particular for shares, debentures, or securities of any other company having objects altogether or in part similar to those of this Company.
- (q) To distribute any of the properties of the Company, whether upon a distribution of assets or a division of profits among the members, in specie or otherwise.



Exhibits  
 P 1  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)

- (r) To draw, make, accept, endorse, execute, and issue promissory notes, bills of exchange, charter parties, bills of lading, warrants, debentures, and other negotiable or transferable instruments.
- (s) To lend, invest, and deal with moneys of the Company not immediately required in such manner as may from time to time be determined.
- (t) To receive money and securities on deposit at interest or otherwise.
- (u) To borrow or raise or secure the payment of money in such manner as the Company shall think fit, and in particular by mortgage or charge and/or by the issue of debentures, debenture stock, or other securities, with or without a mortgage or charge, upon all or any of the Company's property or assets (either present or future), including its uncalled capital, and to purchase, redeem, and pay off any such securities, and to issue any such securities for such consideration or purpose as may be thought fit. 10
- (v) To guarantee the payment or performance of any debts, contracts, or obligations, and to accept property on trust, and to act as trustee and executor, administrator, liquidator, receiver, attorney, or director either gratuitously or otherwise. 20
- (w) To pay all expenses incident to the formation or promotion of this or any other company, and to remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in, or debentures or other securities of, the Company, or in or about the promotion, formation, or business of the Company, or of any other company promoted wholly or in part by this Company. 30
- (x) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts, and conveniences calculated to benefit any of the employees or ex-employees of the Company, or its predecessors in business, or the dependents or connections of such persons, and to grant pensions and allowances and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general, or useful object. 40
- (y) To sell, exchange, improve, manage, develop, lease, mortgage, charge, dispose of, turn to account, or otherwise deal with all or any part of the property, assets, and rights of the Company.

Exhibits  
 P 1  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)

- 10 (z) To procure the Company to be registered or incorporated in the United Kingdom, any British Colony, Protectorate or Dependency, or in any Foreign State, and to enter into any arrangements with any governments or authorities, supreme, provincial, municipal, local, or otherwise, that may seem conducive to the Company's objects, or any of them, and to obtain from any such government or authority any rights, privileges, and concessions which the Company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
- (aa) To do all or any of the above things as are incidental to, or connected with, any of the above objects, or conducive to the attainment thereof, or otherwise likely in any respect to be advantageous to the Company, and in case of doubt as to what shall be so incidental, connected, conducive, or advantageous as aforesaid, the decision of an Extraordinary General Meeting shall be conclusive.

20 And it is hereby declared that the word "company" in this clause, except where used in reference to this Company, shall be deemed to include any partnership or other body of persons, whether incorporated or not incorporated and whether domiciled in the Island of Ceylon or elsewhere; and, further, that the objects specified in each paragraph in this clause shall, except where otherwise expressed in such paragraph, be in nowise limited or restricted by reference to, or inference from, any other paragraph or the name of the Company.

4. The liability of the shareholders is limited.

30 5. The Original Capital of the Company is Rupees one million (Rs. 1,000,000) divided into 19,800 Cumulative Preference Shares of Rs. 50 each entitled to the preferential payment of dividend and return of capital mentioned in the Articles of Association registered herewith and 5,000 Management Shares of Rs. 2 each and each of such Management Shares is to confer on the holders thereof rateably and in proportion to the number of such shares held by them respectively, the right following, that is to say—

40 (1) The right to all profits or other moneys of the Company available for dividend which it shall from time to time be determined to distribute and which shall remain in each year after making such provision as the Directors shall think fit for reserve or depreciation and after paying or providing for the payment out of such profits or other moneys (a) of the remuneration payable to the Directors for that year under the Articles of Association

## Exhibits

P 1  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)

of the Company for the time being, (b) of a Cumulative preferential dividend at the rate of eight per cent. per annum on the capital paid up on such of the said preference shares as shall have been issued, and (c) of a dividend for such year at such rate as may be attached to any further shares whether in the original or increased capital hereafter issued.

- (2) The right to the surplus assets which in a winding up of the Company shall remain after paying off the whole of the Company's paid up capital and any arrears of preference dividend. 10

The rights, privileges and advantages attaching to the Original Capital shall only be varied, altered or modified in the manner and subject to the conditions mentioned and contained in the Articles of Association registered herewith and the rights conferred on CHARLES WILLIAM MACKIE by Articles 92 to 95 of the said Articles of Association shall not be varied, modified or altered in any manner without the consent in writing of the said CHARLES WILLIAM MACKIE.

We the several persons whose names and addresses are hereunto subscribed, are desirous of being formed into a Company in pursuance of its Memorandum of Association, and we respectively agree to take the number of shares in the Capital of the Company set opposite to our respective names. 20

| Names and address of subscribers | No. of shares taken by each. |             |    |
|----------------------------------|------------------------------|-------------|----|
|                                  | Preference.                  | Management. |    |
| C. W. Mackie, Colombo ...        | One                          | —           |    |
| C. A. Mackie, Colombo ...        | One                          | —           |    |
| E. H. Lawrence, Colombo ...      | One                          | —           |    |
| M. J. Harding, Colombo ...       | One                          | —           | 30 |
| F. N. Sudlow, Colombo ...        | One                          | —           |    |
| M. Caldwell, Colombo ...         | One                          | —           |    |
| A. E. Williams, Colombo ...      | One                          | —           |    |
| <br>                             | <hr/>                        |             |    |
| Total number of shares taken ... | Seven                        |             |    |
|                                  | <hr/>                        |             |    |

Witness to the above signatures at Colombo, this seventh day of January, 1922.

W. A. S. DE VOS,  
*Proctor, Supreme Court.*

ARTICLES OF ASSOCIATION OF C. W. MACKIE  
& COMPANY, LIMITED

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)

It is agreed as follows:—

1. The Regulations contained in Table C. in the Schedule annexed to "The Joint Stock Companies' Ordinance, 1861," shall not apply to this Company, which shall be governed by the Regulations contained in these Articles, but subject to repeal, addition or alteration by special resolution.

INTERPRETATION

10 2. In these presents the words standing in the first column of the Table next hereinafter contained shall bear the meanings set opposite to them respectively in the second column thereof, if not inconsistent with the subject or context—

|    | <i>Words</i>             | <i>Meanings</i>   |
|----|--------------------------|---|
|    | The Company              | ... "C. W. Mackie and Company, Limited," incorporated by or under the Memorandum of Association to which these Articles are attached.   |
| 20 | The Ordinance            | ... "The Joint Stock Companies' Ordinances 1861 to 1909" and every other Ordinance for the time being in force concerning joint stock companies and affecting the Company.  |
|    | Special Resolution       | ... The meaning assigned thereto by the Ordinance.  |
|    | Extraordinary Resolution | ... A resolution passed at a separate general meeting by three-fourths in value of such shareholders of the class or group affected for the time being entitled to vote as may be present at any such meeting of which notice specifying an intention to propose such resolution has been duly given. |
| 30 | These Presents           | ... These Articles of Association and the regulations of the Company from time to time in force.  |
|    | Office                   | ... The Registered Office for the time being of the Company.  |
|    | Register                 | ... The Register of Members to be kept pursuant to section 19 of The Joint Stock Companies' Ordinance 1861.   |
| 40 | Board                    | ... The Directors for the time being of the Company.  |
|    | Seal                     | ... The Common Seal of the Company.   |
|    | Original Capital         | ... The Capital specified in the Memorandum of Association of the Company.  |
|    | Month                    | ... Calendar month.   |
|    | Auditors                 | ... The Auditors for the time being of the Company.   |

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

“ Present personally ” or “ Present in person ” shall, wherever used in these presents (except in Articles 67 and 73 hereof), be deemed to include the meaning “ present by attorney under the provisions of Article 90 hereof ”.

“ In writing ” and “ written ” include printing, lithography and other modes of representing or reproducing words in a visible form.

Dividend includes bonus.

Words importing the singular number only shall include the plural number and *vice versa*.

Words importing the masculine gender only shall include the feminine gender and, 10

Words importing persons shall include corporations.

3. Subject to the preceding Article, any words defined in the Ordinance shall, if not inconsistent with the subject or context, bear the same meaning in these presents.

PRELIMINARY AGREEMENT

4. The Company shall forthwith enter into and carry into effect, with or without modification, an agreement with Charles William Mackie in terms of the draft, a copy whereof has, for the purpose of identification, been endorsed with the signature of WILLIAM ARNOLD SPILDEWIND DE VOS, a Proctor of the Supreme Court and the Board shall forthwith carry the same into effect with full power, nevertheless, from time to time to agree to any modification of the terms thereof either before or after the execution thereof. The basis on which the Company is established is that the Company shall carry the said agreement into effect subject to such modifications if any as aforesaid and accordingly no objection shall be made to the said agreement by the Company or by any member, creditor or liquidator thereof upon the ground that any vendors, agents or other persons interested therein are to be first Directors of the Company, or as vendors, agents, or otherwise stand in a Fiduciary position towards the Company, or that there is in the circumstances no independent Board of the Company and any Directors of the Company who are interested therein shall be respectively entitled to retain and dispose of for their own use all benefits (if any) accruing to them directly or indirectly under or by virtue of the said agreement or of any other agreements in connection therewith and the said agreement when executed with or without modification shall not be liable to be set aside on any such grounds as aforesaid, or upon any ground in anywise connected therewith, and every member of the Company present and future shall be deemed to have full notice of the contents of the said agreement and to sanction the same and agree to be bound thereby or by any such modification thereof as aforesaid and to join the Company on the basis aforesaid. 20 30 40

## BUSINESS

5. The business of the Company may, subject to the provisions of the Ordinance, be commenced as soon as the Board thinks fit.

6. Subject as aforesaid, any branch or kind of business which by the Memorandum of Association of the Company, or by these presents, is either expressly or by implication authorized to be undertaken by the Company may be undertaken by the Board at such time or times as they shall think fit, and further suffered by them to be in abeyance, whether such branch or kind of business may have been actually commenced or not, so long as the Board may deem it expedient not to commence or proceed with such branch or kind of business.

7. The Board shall not employ the funds of the Company or any part thereof in the purchase of or in loans upon the security of the shares of the Company.

## SHARES

8. The Original Capital of the Company shall be divided into 19,800 Preferential Shares of Rs. 50 each and 5,000 Management Shares of Rs. 2 each and the said Preference Shares shall confer the right to a fixed Cumulative Preferential Dividend at the rate of 8 per cent. per annum on the capital for the time being paid up or credited as paid up thereon and the right in a winding up to payment of capital and arrears of dividend whether declared or undeclared at the commencement of the winding up in priority to the Management Shares, but shall not confer any further right to participate in profits or assets.

9. The shares taken by the subscribers to the Memorandum of Association and those to be allotted pursuant to the agreement referred to in Article 4 hereof shall be duly issued by the Directors. No further shares shall be issued without the authority of the Company in General Meeting. Subject to any direction to the contrary which may be given by the meeting which authorizes the issue of further shares the further shares to be issued shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting the time within which the offer, if not accepted, will be deemed to be declined and after the expiration of such time or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered the Directors may allot or otherwise dispose of the same to such persons and upon such terms as they think fit.

10. If by the conditions of allotment of any share the whole or part of the amount or issue price thereof shall be payable by instalments every such instalment shall, when due, be paid to the Company by the person who for the time being shall be the registered holder of the share.

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

## Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

11. If two or more persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividends, bonuses, or other moneys payable in respect of such share.

12. The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and the Company shall not be bound to recognize any trust or any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share or (except only as by these presents otherwise expressly provided or as ordered by a Court of competent jurisdiction) any other right in respect of any share, except an absolute right to the entirety thereof in the registered holder. 10

## CERTIFICATES

13. Every member shall be entitled to one Certificate under the Seal of the Company specifying the number and denoting numbers of the shares held by him and the amount paid up thereon, provided that in the case of shares registered in the names of two or more persons the Company shall not be bound to issue more than one certificate to all the joint holders, and delivery of such certificate to any one of them shall be sufficient delivery to all. A member requiring more than one certificate in respect of his shares shall pay one rupee or such smaller sum as the Board shall determine for each additional certificate beyond one, together with any stamp duty that may be payable, but this provision shall not apply in the case of the Life Director. 20

14. If any certificate shall be worn out, destroyed or lost, it may be renewed on such evidence being produced as the Board shall require, and in case of wearing out on delivery up of the old certificate, and in case of destruction or loss on execution of such indemnity (if any) and in either case on payment of such sum not exceeding one rupee for each certificate, together with the amount of any costs and expenses which the Company have incurred in connection with the matter; and generally upon such terms as the Board may from time to time require. 30

## ALTERATION OF RIGHTS

15. All or any of the rights, privileges, or advantages of the members, or of any class or group of members, may be affected, altered, modified, commuted, abrogated or dealt with by agreement between the Company and any person purporting to contract on behalf of the members or class or group affected, provided such agreement is ratified in writing by the holders of at least three-fourths in nominal value of the issued shares of the members or of the class or group affected, or is confirmed by an Extraordinary Resolution but not otherwise. To any General Meeting of the members or of a class or group thereof at which any such Extraordinary Resolution is submitted for confirmation all the provisions 40

of these presents shall, *mutatis mutandis*, apply but so that the necessary quorum shall be members, or members of the class or group affected, holding or representing by proxy or attorney one half of the capital paid or credited as paid on the issued shares of the members or of the members of the class or group affected, but this Article is not to derogate from any power the Company would have had if this Article were omitted.

Exhibits  
—  
P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

#### CALLS ON SHARES

10 16. The Board may from time to time make such calls upon the members as the Board may think fit in respect of the amounts unpaid on the shares held by the members respectively, and not by the conditions of allotment made payable at fixed times. Provided that fourteen days notice at least is given of each call, and that no call shall exceed one-fourth of the nominal amount of the share in respect of which it is made, or be payable within two months from the date of the previous call. Any call may be made payable either in one sum or by instalments, and each member upon whom a call is made shall be liable to pay the amount of the call to the person and at the time or times and place appointed by the Board.

20 17. A call shall be deemed to have been made at the time when the resolution of the Board authorizing such call was passed.

18. Joint holders of a share shall be jointly and severally liable for the payment of all calls or other moneys in respect thereof.

30 19. Any sum or premium which by the terms of allotment of a share is made payable upon allotment or at any fixed date, and any instalment of a call or premium shall, for all purposes of these presents, be deemed to be a call duly made and payable on the date fixed for payment, and in case of non-payment the provisions of these presents as to payment of interest and expenses, forfeiture and the like, and all other the relevant provisions of these presents shall apply as if such sum, premium or instalment were a call duly made and notified as hereby provided.

40 20. If any member shall fail to pay on or before the day appointed for payment thereof any call to which he may have become liable, he shall pay interest on the amount in arrear from the day appointed for payment thereof to the time of actual payment, at such rate, not exceeding 10 per cent. per annum, as the Board may from time to time fix, and in case no other rate be prescribed then at the rate of 10 per cent. per annum, provided however, that the Board may remit the whole or any part of such interest.

21. No member shall be entitled to receive any dividend or to be present or vote at any meeting or upon a poll, or to exercise any privilege as a member until all calls or other sums due by him to the Company, whether alone or jointly with any other person, together with interest and expenses (if any) shall have been paid.



Exhibits  
 P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

22 The Board may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called up thereon, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate not exceeding 10 per cent. as the member paying such sum in advance and the Board shall agree upon, but any amount so for the time being paid in advance of calls shall not be included or taken into account in ascertaining the amount of the dividend payable upon the share in respect of which such advance has been made. 10

#### FORFEITURE AND LIEN

23. If any member fail to pay the whole or any part of any call on or before the day appointed for the payment thereof, the Board may at any time thereafter, during such time as the call or any part thereof, or any interest which shall have accrued thereon, remains unpaid, serve a notice on him requiring him to pay such call or interest as the case may be or such part thereof respectively as remains unpaid, together with interest on the unpaid call at such rate, not exceeding 10 per cent. per annum, as they think fit, from the date when the call became payable, and any expenses that may have accrued by reason of such non-payment. 20

24. The notice shall name a day, not being less than 14 days from the date of the notice, on or before which the call and interest, or such part as aforesaid, and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place at which payment is to be made, and shall state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited. 30

25. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all unpaid dividends, interim dividends and interest due and to become due thereon and any moneys paid up in advance of calls.

26. Where any person, entitled to a share by transmission, and not having elected according to these presents either to be registered himself as the holder thereof, or to have his nominee (approved as provided in Article 54 hereof) registered, fails so to elect, for twelve months after being thereunto required by notice from the Board, such share may, at any time after the expiration of that period, be forfeited by a resolution of the Board to that effect. 40

27. When any share has been forfeited in accordance with these presents, notice of the forfeiture shall forthwith be given to the holder of the share, or the person entitled to the share by transmission, as the case may be, and an entry of such notice having been given and of the forfeiture with the date thereof, shall forthwith be made in the register opposite the share; but the provisions of this Article are directory only, and no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.

10 28. Notwithstanding any such forfeiture as aforesaid, the Board may, at any time before the forfeited share has been otherwise disposed of, permit the share so forfeited to be redeemed upon the terms of payment of all calls and interest due upon and expenses incurred in respect of the share, and upon such further terms (if any) as they shall think fit.

29. Every share which shall be forfeited shall thereupon become the property of the Company, and may be either cancelled or sold, or re-allotted or otherwise disposed of by the Board, either to the person who was before forfeiture the holder thereof, or entitled  
20 thereto, or to any other person upon such terms and in such manner as the Board shall think fit.

30. A member or person entitled as aforesaid, whose shares have been forfeited, shall notwithstanding, be liable to pay to the Company all calls made or payable and not paid on such shares at the time of forfeiture, and interest thereon to the date of payment, and all expenses in the same manner in all respects as if the shares had not been forfeited, and to satisfy all (if any) the claims and demands which the Company might have enforced in respect of the shares at the time of forfeiture, without any deduction or allowance  
30 for the value of the shares at the time of forfeiture.

31. The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share, and all other rights and liabilities incidental to the share as between the member or person entitled as aforesaid whose share is forfeited and the Company, except only such of those rights and liabilities as are by these presents expressly saved, or as are by the Ordinance given or imposed in the case of past members.

40 32. A statutory declaration in writing that the declarant is a Director of the Company, and that a share has been duly forfeited in pursuance of these presents, and stating the time when it was forfeited, shall, as against all persons claiming to be entitled to the share adversely to the forfeiture thereof, be conclusive evidence of the facts therein stated, and such declaration, together with a certificate of proprietorship of the share delivered to a purchaser or allottee thereof, shall constitute a good title to the share, and the new holder thereof shall be discharged from all calls made and other moneys payable prior to such purchase or allotment.

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

## Exhibits

P 1  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

33. Upon any sale after forfeiture or for enforcing a lien in purported exercise of the powers herein given, the Board may cause the purchaser's name to be entered in the Register in respect of the share sold, and the purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase money, and after his name has been entered in the Register in respect of such shares, the validity of the sale shall not be impeached by any person, and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

34. The Company shall have a first and paramount lien upon all the shares (other than fully paid up shares) registered in the name of each member (whether solely or jointly with others) and upon the proceeds of sale thereof, for his debts, liabilities and engagements, solely or jointly with any other person, to or with the Company, whether the period for payment, fulfilment or discharge thereof shall have actually arrived or not, and no equitable interest in any share shall be created except upon the footing and condition that Article 12 hereof is to have full effect, and such lien shall extend to all dividends from time to time declared in respect of such shares and to all moneys paid in advance of calls thereon. Unless otherwise agreed, the registration of a transfer of shares shall operate as a waiver of the Company's lien, if any, on such shares. 10

35. For the purpose of enforcing such lien the Board may sell the shares subject thereto in such manner as they think fit, but no sale shall be made until such time as the moneys are presently payable, and notice in writing stating the amount due, and giving notice of intention to sell in default shall have been served on such member or the person (if any) entitled by transmission to the shares and default shall have been made for seven clear days after such notice. The net proceeds of any such sale shall be applied in or towards satisfaction of the debts, liabilities and engagements aforesaid, and the residue (if any) shall be paid to the member or the person (if any) entitled by transmission to the shares. 30

## TRANSFER OF SHARES

36. Shares in the Company may be transferred by transfer in the usual common form. The Instrument of Transfer shall be signed by both the transferor and transferee, and shall contain the name, address, and occupation of the transferee, and the transferor shall be deemed to remain the holder of the shares until the name of the transferee is entered in the Register in respect thereof. 40

37. Every Instrument of Transfer shall be left at the Office or such other place as the Board may prescribe, with the certificate of every share to be thereby transferred and such other evidence as the Board may reasonably require to prove the title of the transferor or his right to transfer the shares, and the Instrument of Transfer and

certificate shall remain in the custody of the Board, but shall be at all reasonable times produced at the request and expense of the transferor or transferee, and their respective representatives or any of them. A new certificate shall be delivered to the transferee after the transfer is completed and registered on his application for the same, and when necessary a balance certificate shall be delivered to the transferor. A fee not exceeding One Rupee may be charged for each transfer.

Exhibits  
P 1  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

- 10 38. The person proposing to transfer any share (hereinafter called " the Proposing Transferor ") shall give notice in writing (hereinafter called " the Transfer Notice ") to the Company that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value and shall constitute the Company his agent for the sale of the share at the price so fixed, or, at the option of the purchaser, at the fair value to be fixed by the Auditors in accordance with these Articles. The Transfer Notice may include several shares, and in such case shall operate as if it were a separate notice in respect of each. The Transfer Notice shall not be revocable except with the sanction of the Directors.
- 20 39. The Company in General Meeting may make and from time to time vary rules as to the mode in which any share specified in any Transfer Notice given to the Company as aforesaid shall be offered to the members, and as to their rights in regard to the purchase thereof, and in particular may give any member or class of members a preferential right to purchase the same. Until otherwise determined by Extraordinary Resolution of the Company the shares specified in the Transfer Notice given to the Company as aforesaid shall be offered by the Company in the first place to the Life Director hereinafter named. Any shares not taken up by the Life Director
- 30 within 90 days shall be offered by the Company to any person selected by the Life Director whom he may deem it desirable in the interests of the Company to admit to membership. Subject as aforesaid the shares shall be offered by the Company to the members other than the Proposing Transferor, as nearly as may be in proportion to the existing shares held by them respectively. The offer whether to a person selected as aforesaid or to a member, shall in each case limit the time (not exceeding 90 days) within which the same, if not accepted, will be deemed to be declined and may notify to the members that any member who desires an allotment of shares in excess of his proportion
- 40 should in his reply state how many excess shares he desires to have; and if all the members do not claim their proportions the unclaimed shares shall be used for satisfying the claims in excess. If any shares shall not be capable, without fractions, of being offered to the members in proportion to their existing holdings, the same shall be offered to the members or some of them, in such proportions or in such manner as may be determined by lot to be drawn under the direction of the Directors.

Exhibits

P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

40. If the Company shall within the time limited as aforesaid or within 180 days after being served with the Transfer Notice find a member or person selected as aforesaid willing to purchase the share (hereinafter called " the Purchasing Member ") and shall give notice thereof to the Proposing Transferor, he shall be bound upon payment of the fair value to transfer the share to the Purchasing Member.

41. In case any difference arises between the Proposing Transferor and the Purchasing Member as to the fair value of a share, the Auditors shall, on the application of either party, certify in writing the sum which, in their opinion, is the fair value, and such sum shall be deemed to be the fair value, and in so certifying the Auditors shall be considered as acting as experts and not as arbitrators. 10

42. If in any case the Proposing Transferor, after having become bound as aforesaid, makes default in transferring the share, the Company may receive the purchase-money, and shall thereupon cause the name of the Purchasing Member to be entered in the Register as the holder of the share, and shall hold the purchase-money in trust for the Proposing Transferor. The receipt of the Company for the purchase-money shall be a good discharge to the Purchasing Member, and after his name has been entered in the Register in purported exercise of the aforesaid power, the validity of the proceedings shall not be questioned by any person. 20

43. If the Company shall not, within the time limited as aforesaid or within 180 days after being served with the Transfer Notice, find a member willing to purchase the shares, and give notice in manner aforesaid, the Proposing Transferor shall at any time within 90 days afterwards be at liberty to sell and transfer the shares (or those not placed) to any person and at any price. 30

44. Any share may be transferred by the Life Director to any person, and on the death of the Life Director any of his shares may be transferred by his Executors or Administrators to any child, or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, or widow of such deceased Director or the trustee or trustees under his will (to whom such deceased Director may have specifically bequeathed the same), and shares standing in the name of the trustees of the will of the deceased Life Director may be transferred upon any change of trustees to the trustees for the time being of such will. 40

44A. Any member may transfer any share to the Life Director.

45. The Directors may refuse to register any transfer of shares: (a) where the Company has a lien on the shares, or (b) where the Directors are not of an opinion that it is desirable to admit the proposed transferee to membership. But paragraph (b) of this Article shall not apply where the proposed transferee is already a member, nor to a transfer made pursuant to Articles 44 and 44A hereof.

46. The holders for the time being of nine-tenths of the issued capital may at any time serve the Company with a requisition to enforce the transfer of any particular shares not held by the requisitionists. The Company shall forthwith give to the holder of such shares notice in writing of the requisition (with a copy of this Article subjoined), and unless within fourteen days afterwards the holder shall give to the Company a Transfer Notice in respect of his shares in accordance with Article 38 hereof, he shall be deemed at the expiration of that period to have actually given such notice, and to have specified therein the amount of Capital paid up on the shares as the sum he fixes as the fair value. For the purposes of this Article any person entitled under Article 53 or otherwise to transfer shall be deemed the holder of such share.

47. In the event of the death of an Ordinary Director the Life Director and the surviving Ordinary Directors for the time being may at any time within four years thereafter serve the Company with a requisition to enforce the transfer to them in proportion to the existing shares held by them respectively of any shares standing in the name of such deceased Ordinary Director and the provisions of Article 46 as to giving notice and other relevant provisions of that Article shall apply to every such requisition, save that 90 days shall be substituted for 14 days and that the Purchasing Member or Members may at his or their option postpone completion of the purchase as to one-half of the shares for any period not exceeding two years from the date when the Transfer Notice shall be deemed to have been given as aforesaid, in which case all dividends payable in respect of that half of the shares down to the date of actual completion of the purchase shall belong to and be retained by the vendor.

48. No member of the Company other than the Life Director shall, without the consent in writing of all the members for the time being of the Company or the Life Director, be interested as a Shareholder, Director, Partner, Manager or otherwise in any concern carrying on any business in competition with the Company, or having interests opposed to those of the Company, and if it shall be proved to the satisfaction of the Directors that any member has committed a breach of this Article, they may serve him with a notice in writing requiring him to retire from or otherwise determine his interest in such concern, and stating that in the event of non-compliance with such requisition within 28 days his shares shall be liable to forfeiture, and unless within 28 days after the service of such notice it shall be proved to the satisfaction of the Directors that the requisition has not been complied with the whole or any of the shares of such member may be forfeited by resolution of the Directors to that effect.

49. A member of the Company other than the Life Director shall not, without the Company's consent or the consent of the Life Director, either solely or jointly with, or as Director, Manager or Agent of or for, any other Company or person or persons directly

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

## Exhibits

P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

or indirectly carry on or be engaged or concerned or interested as a shareholder or otherwise in any business which the Company is authorized to carry on, and the Directors may by resolution forfeit without prejudice to the provisions of Article 30 the shares of any member who acts in contravention of this provision.

50. A person who ceases to be a member of the Company shall not without the Company's consent or the consent of the Life Director at any time within five years, to be computed from the time when he so ceases to be a member, either solely or jointly with, or as Director, Manager or Agent of or for any other company or person or persons directly or indirectly, carry on or be engaged or concerned or interested in the business of a Merchant, Produce Broker or Commission Agent in the Island of Ceylon or permit or suffer his name to be used or employed in, carry on or in connection with any such business. 10

51. The Company shall provide a Register of Transfers, which shall be kept by the Secretary under the Control of the Board, and in which shall be entered the particulars of every transfer or transmission of every share.

52. The Register may be closed during such time as the Board think fit, not exceeding in the whole 21 days in any one year. 20

## TRANSMISSION OF SHARES

53. In the case of the death of a member, the survivors or survivor, where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole holder, shall be the only persons recognized by the Company as having any title to his shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

54. The Directors may call on the executors or administrators of a deceased member (other than the Life Director) to transfer the shares of the deceased to some person to be selected by such executors or administrators and approved by the Life Director or (if the Life Director be dead) by the Ordinary Directors and if the executors or administrators do not comply forthwith with such call they shall be deemed to have served the Company with a Transfer Notice under Article 38 and to have specified therein a sum equal to the amount paid upon the shares as the fair value, and the provisions of that and the subsequent Articles shall take effect. 30

55. A person entitled to a share in consequence of the death or bankruptcy of a member shall not be entitled to receive notice of or to attend or vote at meetings of the Company, or to receive payment of any dividends, or to exercise any of the rights and privileges of a member, unless and until he shall have been registered as the holder of the shares. 40

## ALTERATION OF CAPITAL

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated).  
—contd.

56. The Company, by resolution in General Meeting, may from time to time increase its capital by the creation of new shares to such an extent, and of such nominal amounts as may by such resolution be determined.

57. The new shares shall, subject to the provisions of Article 15 hereof and to the rights attached to any class of shares by the Memorandum of Association of the Company, be issued upon such terms and conditions, with such rights and privileges annexed thereto, as the Company, or in default the Board, shall determine and in particular such shares may be issued with a preferential or qualified right to dividends, and in the distribution of the assets of the Company and with a special or without any right of voting.

58. The Company or the Board may, before the issue of any new shares, determine that the same or any of them shall be offered in the first instance, and either at par or at a premium, to all the then members or any class or group thereof in proportion to the amount of capital held by them, or make any other provisions as to the issue and allotment of the new shares, but in default of any such determination, or so far as the same shall not extend, the new shares may be dealt with as if they formed part of the Original Preference Capital, and shall be subject to the provisions herein contained with reference to the payment of calls and instalments, transfer and transmission, forfeiture, lien and otherwise.

59. The Company may from time to time by Special Resolution reduce its Capital, by paying off capital or cancelling capital which has been lost or is unrepresented by available assets, or reducing the liability on the shares, or otherwise, as may seem expedient, and capital may be paid off upon the footing that it may be called up again or otherwise, and paid-up capital may be paid off or cancelled as aforesaid without reducing the nominal amount of the shares by the like amount to the intent that the unpaid and callable capital shall be increased by the like amount, and the Company may also by Special Resolution subdivide, or by Ordinary Resolution consolidate, its shares or any of them.

60. Anything done in pursuance of the last preceding Article shall be done in manner provided by the Ordinance so far as they shall be applicable, and so far as they shall not be applicable in accordance with the terms of the resolution authorizing the same and so far as such resolution shall not be applicable in such manner as the Board may deem most expedient.

61. The Special Resolution whereby any share is subdivided may determine that, as between the holders of the shares resulting from such subdivision, one or more of such shares shall have some preference or special advantage as regards dividend, capital, voting or otherwise over or as compared with the others or other.



## Exhibits

P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

## GENERAL MEETINGS

62. The First General Meeting of the Company shall be held at such time (not being more than twelve months after the registration of the Company) and at such place as the Board may determine. Subsequent General Meetings shall be held once in every year at such time and place as the Board may determine.

63. The above-mentioned General Meetings shall be called Ordinary General Meetings, all other meetings of the Company shall be called Extraordinary General Meetings.

64. All General Meetings subsequent to the first General Meeting shall be held at such time and place as may be fixed by General Meeting; or in default as the Board may determine. Any General Meeting convened by the Board, unless the time thereof shall have been fixed by General Meeting, or unless such General Meeting be convened in pursuance of such requisition as is hereinafter mentioned, may be postponed by the Board by notice in writing, and the meeting shall, subject to any further postponement or adjournment, be held at the postponed date for the purpose of transacting the business covered by the original notice. 10

65. The Board may, whenever they think fit, and shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the Company, upon which all calls or other sums then due have been paid, forthwith proceed to convene an Extraordinary General Meeting. 20

66. The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the Office, and may consist of several documents in like form, each signed by one or more of the requisitionists.

67. If the Board do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meetings so convened shall not be held after three months from the date of such deposit. Provided always that the quorum for passing a resolution at any meeting so convened shall not be or be deemed sufficient unless the Life Director shall be present in person at any such meeting or meetings. Nevertheless the Life Director shall be at liberty, by notice in writing to the Company signed by him to, declare that he waives the benefit of the above provision, and such notice shall be effectual accordingly. 30

68. If at any such meeting a resolution requiring confirmation at another meeting is passed, the Board shall forthwith convene a further Extraordinary General Meeting for the purpose of considering the resolution; and, if thought fit, of confirming it as a Special Resolution; and, if the Board do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting. 40

69. Any meeting convened by requisitionists as aforesaid shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the Board.

Exhibits  
P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

#### NOTICE OF MEETINGS

70. Seven days notice, specifying the time and place of meeting, and specifying also in the case of any special business the general nature of the business to be transacted thereat, shall be given by the Secretary, or other officer of the Company, or any other person appointed by the Board to do so, to such members as are entitled to receive notices from the Company, provided that with the consent in writing of all the members a meeting may be convened by a shorter notice and in any manner they think fit. Where it is proposed to pass a Special Resolution the two meetings may be convened by one and the same notice, and it is to be no objection to such notice that it only convenes the second meeting contingently on the resolution being passed by the requisite majority at the first meeting.

71. The accidental omission to give notice of any meeting to, or the non-receipt of such notice by any member, shall not invalidate any resolution passed at any such meeting.

#### PROCEEDINGS AT GENERAL MEETINGS

72. The ordinary business of the Annual General Meeting shall be to receive and consider the profit and loss account (if any), the balance sheet of the Company, the reports of the Board and Auditors, to elect Directors, Auditors and other officers in the place of those retiring, to fix the remuneration of the Directors and Auditors, to sanction or declare dividends, and to transact any business which under these presents ought to be transacted at an Ordinary General Meeting. All other business shall be deemed special and shall be subject to notice as is hereinbefore provided.

73. Subject to the provisions of Article 67 so far as the same is applicable two members present in person, and entitled to vote thereat, shall be a quorum for a General Meeting; and no business shall be transacted at any General Meeting unless the requisite quorum be present at the commencement of the business.

74. If within one half of an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by or upon the requisition of members as hereinbefore provided shall be dissolved. If otherwise convened, it shall stand adjourned to the same day in the next week, at the same time and place, and no notice of such adjournment need be given.

75. The Chairman of the Board, if any, shall preside as Chairman at every meeting of the Company; but if there be no such Chairman, or if he be not present within ten minutes after the

**Exhibits**

P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

time appointed for holding the meeting or shall decline to take, or shall retire from the chair, the members present in person and entitled to vote shall choose one of the Directors, and failing a Director one of their own number to be Chairman at such meeting.

76. The Chairman presiding at any meeting with the consent of the meeting may, and if directed by the meeting shall, adjourn such meeting from time to time and from place to place as the meeting shall determine. It shall not be necessary to give notice to the members of any adjourned meeting.

77. At any adjourned General Meeting the members present in person or by proxy shall have power to decide upon all matters that could lawfully have been disposed of at the meeting from which the adjournment took place; but no business shall be transacted at any adjourned meeting other than the business not disposed of at the meeting from which the adjournment took place. 10

78. Every question submitted to a General Meeting shall be determined in the first instance by a show of hands of the members present in person, but a poll may be demanded in writing by the Chairman or any member present in person or by proxy and entitled to vote. Unless a poll is duly demanded in accordance with these presents a declaration by the Chairman that a resolution has been carried or lost or has or has not been carried by any particular majority, and an entry to that effect in the minutes of proceedings of the Company shall be conclusive evidence of the fact, without proof of the number, proportion, or validity of the votes recorded in favour of or against such resolution. 20

79. If a poll is demanded, it shall be taken either at once or after an adjournment, and generally in such manner and at such time and place as the Chairman presiding at the meeting at which a poll shall have been demanded shall direct, and the result of such poll shall be deemed the resolution of the meeting. The demand for a poll may be withdrawn. 30

80. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

81. If a poll shall be duly demanded upon the election of a Chairman or on any question of adjournment, it shall be taken at once.

82. In case of an equality of votes, either on a show of hands or at a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, as the case may be, shall have a second or casting vote. 40

#### VOTES OF MEMBERS

83. On a show of hands every member present in person shall have one vote, and upon a poll every member present in person or by proxy shall have one vote for every Preference Share and one

vote for every Management Share held by him. Where a corporation being a member is present by a duly authorized representative who is not a member, such representative shall be entitled to exercise the same powers on behalf of such corporation as if he were an individual member of the Company.

Exhibits  
—  
P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

84. Where there are joint registered holders of any share, any one of such persons may vote at any meeting, either personally or by proxy in respect of such share as if he were solely entitled thereto; and if more than one of such joint holders be present at any meeting personally or by proxy, that one of the said persons so present in person or by proxy whose name stands first in the register in respect of such share shall alone be entitled to vote in respect thereof.

85. Any member being lunatic, idiot, or of unsound mind, may vote by his judicial factor *curator bonis*, or other legal guardian. Any one of such persons may vote either personally or by proxy.

86. Upon a poll votes may be given either personally or by proxy, but no person shall be appointed a proxy except a member entitled to vote at the General Meeting for which the proxy is given provided that the Life Director may appoint a person who is not a member as proxy.

87. Every instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorized in writing under the hand of the appointor or of his attorney; or if such appointor is a corporation, under the common seal, or under the hand of some officer duly authorized in writing in that behalf.

88. The instrument appointing a proxy, with the letter or power of attorney (if any) under which it is signed, shall be deposited at the office at least forty-eight hours before the time appointed for holding the meeting or adjourned meeting, as the case may be, at which the person named in such instrument proposes to vote, otherwise the person so named shall not be entitled to vote in respect thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

89. Every instrument of proxy, whether for a Special Meeting or otherwise shall, as nearly as circumstances will admit, be in the form or to the effect following:—

I of being a member of  
C. W. Mackie and Company, Limited, hereby appoint  
of or failing  
40 him of as my proxy  
to vote for me and on my behalf, and if  
necessary to demand a poll at the Ordinary  
(or Extraordinary, as the case may be) General  
Meeting of the Company to be held on the  
day of and at any adjournment thereof.

As witness my hand this day of

## Exhibits

P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

90. Any member whose address on the Register shall not be in the Island of Ceylon shall be entitled to appoint by power of attorney some person, whether a member or not, having an address within the said Island to act as his attorney for the purposes of receiving notices of General Meetings, and attending General Meetings, and voting thereat and upon such power of attorney being deposited with the Secretary of the Company, together with a notice from the attorney, giving his address in the said Island, an entry thereof shall be made in the Register, and all notices of meetings held during the continuance of such power of attorney shall be served upon the attorney thereby appointed as if such attorney were a member of the Company and the registered owner of the shares, and all notices except where otherwise herein expressly provided, shall be deemed duly served if served upon such attorney in accordance with these presents, and the attorney shall be entitled to attend any General Meeting of the Company held during the continuance of his appointment, and to vote thereat in respect of the shares of the member appointing him, such vote to be exercised either personally or by proxy appointed by the attorney in accordance with these presents. Every such power shall remain in full force, notwithstanding the death of, or its revocation by other means, by the grantor, unless and until express notice in writing of such death or revocation shall have been given to the Company. 10

## DIRECTORS

91. Until otherwise determined by a General Meeting, the number of Directors shall not be less than two nor more than seven.

92. The said Charles William Mackie (who is herein referred to as the Life Director) and George Gill, Alexander Emslie Williams and Morrison Caldwell (who and any other Directors hereafter appointed are herein referred to as "the Ordinary Directors") shall be the first Directors of the Company. 30

93. The said Charles William Mackie shall be entitled to hold office as Life Director so long as he holds shares of the Company of any class of the nominal value of Rupees Seventy-five thousand (Rs. 75,000).

94. The following provisions shall have effect:—

- (1) The Life Director while he holds office shall have full control of the business of the Company and authority to exercise all the powers, authorities and directions by these Articles expressed to be vested in the Directors generally, including the power of signing resolutions under Article 126 hereof and all the other Directors, 40

if any, of the Company shall be under his control and shall be bound to conform to and carry out his directions in regard to the Company's business.

10 (2) The Life Director while he holds office may, from time to time and at any time, appoint any other persons to be Ordinary Directors of the Company and may define, limit and restrict the powers of the Ordinary Directors and determine their remuneration and duties and may at any time remove any Ordinary Director however appointed and may at any time convene a General Meeting of the Company. Every such appointment or removal must be in writing under the hand of the person making the same.

20 (3) In the event of an Ordinary Director being removed under the powers of clause (2) of this Article (in this clause referred to as the "outgoing Director"), the Life Director may at any time within ninety days of such removal serve on the outgoing Director a notice in writing requiring him to sell to the Life Director all the Preference Shares held by the outgoing Director at par and all Management Shares held by him at a value to be fixed by the Company's Auditors who shall, in arriving at such value, at their discretion deduct a percentage representing par value of capital and on payment by the Life Director of the purchase money for the said shares the outgoing Director shall be bound to transfer the said shares to the Life Director accordingly. In the event of the outgoing Director making default in transferring the said shares the Company may receive the purchase money and shall thereupon cause the name of the Life Director to be entered in the register as the holder of such shares and shall hold the purchase money in trust for the outgoing Director. The receipt of the Company for the purchase money shall be a good discharge to the Life Director and after his name shall have been entered in the register in purported exercise of the foregoing power the validity or regularity of the proceedings shall not be questioned by any person.

30  
40 (4) The Life Director may at any time appoint any person, whether a member of the Company or not, to exercise all or any of the powers by these Articles conferred on the Life Director and may from time to time remove the person so appointed. Any such appointment or removal must be in writing under the hand of the Life Director.

95. So long as the said Charles William Mackie shall be Life Director of the Company no other Director or Directors of the Company shall be appointed without his consent.

Exhibits

—  
P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

## Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

96. In case the said Charles William Mackie shall cease to hold shares of the Company of any class of the nominal value of Rs. 75,000 he shall thereupon be deemed to be elected to office as an Ordinary Director.

97. When the said Charles William Mackie shall cease to be Life Director then and from thenceforth the Ordinary Directors shall have power from time to time to appoint any other persons to be Directors but so that the total number of Directors shall not at any time exceed the maximum fixed as above.

98. The qualification of a Director (other than Life Director) shall be the holding in his own right alone of shares in the Company of any class to a nominal value of Rupees Ten thousand (Rs. 10,000). 10

99. The remuneration of the Life Director shall be such sum as subject to any agreement the Company may determine. The remuneration of the other members of the Board subject to the provisions of Article 94 may be fixed from time to time by the Company in General Meeting. The Directors shall be paid all travelling and hotel expenses to which they shall be put in connection with the Company's business.

100. Each of the Ordinary Directors shall, unless otherwise determined by the Life Director, devote the whole of his time and attention to the business of the Company, but the said Charles William Mackie shall not be bound to devote more time and attention to the Company than he may think fit. 20

101. After the said Charles William Mackie shall have ceased to hold office as Life Director any casual vacancy occurring among the Directors may be filled up by the Company in General Meeting, but any person so chosen shall retain his office so long only as the vacating Director would have retained the same if no vacancy had occurred. The continuing Directors may act notwithstanding any vacancy in their body, but so that if the number falls below the minimum above fixed the remaining Director (unless he be the Life Director) shall not commit the Company to any new business, so long as the number is below the minimum. 30

102. The office of a Director shall be vacated—

(a) If he, without the sanction of a General Meeting, accepts or holds any other office under the Company except that of Managing Director, Managing Secretary, Manager or Trustee.

(b) If he becomes bankrupt, or suspends payment, or compounds with his creditors. 40

(c) If he engages on his own account in speculative transactions in produce, stocks or shares without the previous consent of all the other Directors.

- (d) If he absents himself from the meetings of the Company for a period exceeding three months at any one time without the consent of the Life Director.
- (e) If he be found lunatic, or becomes of unsound mind.
- (f) If he be called upon by all the other Directors to resign his office.
- (g) If by notice in writing to the Company he resigns his office.

Exhibits  
 P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

10 Provided that sub-clauses (a), (b), (c), (d), (e) and (f) of this Article shall not apply to the Life Director and sub-clause (e) shall apply only to the Life Director so long as he shall be incapacitated by lunacy or unsoundness of mind and on his ceasing to be so incapacitated he shall *ipso facto* be restored to his office of Life Director. Until an entry of the vacating of office by a Director under one of the sections of this Article shall be entered in the Minutes of the Board of Directors his acts as Director shall be effectual.

20 103. A Director or intending Director shall not be disqualified by his office from entering into a contract or arrangement with the Company, either as vendor, purchaser, manager, agent, broker or otherwise, and no such contract or arrangement or any contract or arrangement entered into by or on behalf of the Company with any person, firm or company of or in which any Director shall be in any way interested, shall be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realized by any such contract or arrangement by reason of such Director holding the office of Director, or of the fiduciary relation thereby established. Any Director so contracting or being so interested as aforesaid shall disclose at the Board Meeting at which the contract or arrangement is determined upon the nature of his interest, if his interest then exists, or in any other case at the first Board Meeting after the acquisition of his interest, and a Director shall not as a Director vote in respect of any contract or arrangement in which he is so interested as aforesaid, and if he do so vote his vote shall not be counted, but this prohibition shall not apply to the Agreement referred to in Article 4 of these presents, or to any other agreements in connection therewith or to any modification thereof, or to any matters arising thereout, or to any contract by or on behalf of the Company to give to the Directors or any of them security by way of indemnity or of security for advances or to a settlement or set-off or cross claims, and it may at any time or times be suspended or relaxed by a General Meeting.

40 A general notice that a Director is a member of any specified firm or Company, and is to be regarded as interested in any transaction with such firm or Company, shall be sufficient disclosure under this Article, and after such general notice it shall not be necessary to give any special notice relating to any particular transaction with such firm or Company as aforesaid.



## Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

## POWERS OF THE BOARD

104. Subject to the provisions hereinbefore contained as to the Life Director and subject to any agreement to the contrary, the business of the Company shall be managed by the Board, who may exercise all such powers of the Company, and do on behalf of the Company all such acts as are within the scope of the Memorandum and Articles of Association of the Company, and as are not by the Ordinances or by these presents required to be exercised or done by the Company in General Meeting, subject nevertheless to any regulations of these presents, to the provisions of the Ordinances and to such regulations, being not inconsistent with the said regulations as may be prescribed by the Company in General Meeting, but no regulations made by the Company in General Meeting shall invalidate any prior act of the Board which would have been valid if such regulation had not been made. 10

## LOCAL MANAGEMENT

105. The Board may from time to time provide for the management of the affairs of the Company in Ceylon or abroad in such manner as they shall think fit, and the provisions contained in the six next following Articles shall be without prejudice to the general powers conferred by this Article. 20

106. The Board from time to time may establish any local boards or agencies for managing any of the affairs of the Company in Ceylon or abroad, and may appoint any person to be a member of such local boards or any managers or agents and may fix their remuneration.

107. The Board may appoint any one of their number, or any other person, to be Chairman of any local board, and may lay down such rules and regulations as they may think fit for the conduct of the business of any local board, and may revoke, annul, or vary any such appointment, rules or regulations. 30

108. The Board from time to time and at any time, may delegate to any Managing Director, Local Board, Manager or Agent, any of the powers, authorities and discretions for the time being vested in the Board with regard to the conduct of the business of the Company (other than the power to make calls, and to mortgage the Company's assets), with powers to sub-delegate and may authorize the members for the time being of any such local board, or any of them to fill up any vacancies therein and to act notwithstanding vacancies.

109. Any such appointment or delegation as aforesaid may be made on such terms and subject to such conditions as the Board may think fit, and the Board may at any time remove any person so appointed and may by letter, telegram or cablegram annul or vary any such delegation, but no person dealing in good faith and without notice of such annulment or variation shall be affected thereby. 40

110. The Board may from time to time, and at any time, by power of attorney under the seal appoint any person or persons to be the attorney or attorneys of the Company for such purpose and with such powers, authorities and discretions, and for such period and subject to such conditions as the Board may from time to time think fit, and any such appointment may (if the Board think fit) be made in favour of any of the Directors or of the members or any one or more of the members of any local board established as aforesaid, or in favour of any company or of the members, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board and any such powers of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys as the Board think fit. Any such attorneys as aforesaid may be authorized by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

Exhibits  
 P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

#### BORROWING

111. The Board may at any time borrow or raise for the purpose of the Company from the Directors, members or other persons, or any bank, firm or company, such sums of money and at such rates of interest as the Board may think proper, and may secure the repayment of such moneys by mortgage or charge or by debentures, or debenture stock, perpetual or otherwise, forming a charge upon the whole or any part of the property, assets and undertaking of the Company, both present and future, including its uncalled capital for the time being, in such manner, and upon such terms and conditions and with such security as the Board shall determine, but so that the amount at any one time owing in respect of money's so raised, borrowed or secured, shall not, without the previous sanction in writing of the Life Director, exceed the sum of Rupees Three hundred thousand (Rs. 300,000) and shall not without the sanction of a General Meeting exceed the nominal amount of the capital. Nevertheless no lender or other person dealing with the Company shall be concerned to see or enquire whether this limit is observed.

#### ROTATION OF DIRECTORS

112. At the First Ordinary General Meeting and in each subsequent General Meeting one Director, not being the Life Director, shall retire from office, but this provision shall be subject to any agreement to the contrary binding upon the Company. A retiring Director shall retain office until the dissolution or adjournment of the meeting at which his successor is elected.

113. Subject to the provisions herein contained with respect to the Life Director, the Director to retire in every year shall be

## Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

the Director who has been longest in office since their last election. As between Directors of equal seniority, the Director to retire shall (unless such Directors of equal seniority agree amongst themselves) be selected from among them by lot.

114. A retiring Director shall be eligible for re-election.

115. The Company may at the meeting at which any Director retires in manner aforesaid fill up the vacated office of each Director by electing a person thereto. And if at any such meeting the place of a retiring Director is not filled up, the retiring Director shall be deemed to have been re-elected, unless a resolution reducing the number of Directors is passed at the same meeting. 10

116. No person not being a Director retiring at the meeting shall, unless recommended by the Board for election, be eligible for the office of a Director at any General Meeting.

117. With the consent of the Life Director, the Company may from time to time in General Meeting increase or reduce the number of Directors, and may alter their qualification and may also determine in what rotation such increased or reduced number shall go out of office.

118. After the said Charles William Mackie shall have ceased to hold office as Life Director the Company by an Extraordinary Resolution may remove any Director, before the expiration of his period of office, and may by Ordinary Resolution appoint another person to be a Director in his stead. The person so appointed shall retain his office so long only as the Director in whose place he is appointed would have held the same if he had not been removed. 20

#### MANAGING DIRECTOR

119. Subject to any agreement to the contrary and to the consent of the Life Director the Board may from time to time appoint one or more of their number to be a Managing Director or Managing Directors of the Company, either for a fixed term or without any limitation as to his or their period of office, and may with the consent of the Life Director, from time to time remove any Managing Director and appoint another in his place. 30

120. A Managing Director, while he continues to hold that office, shall not be subject to the provisions of these presents as to retirement by rotation and shall not be taken into account in determining the rotation of retirement of Directors, but he shall (subject to the provisions of any contract between him and the Company) be subject to the same provisions as to resignation and removal as the other Directors of the Company and if he cease to hold the office of Director from any cause he shall *ipso facto* and immediately cease to be a Managing Director. 40

121. Subject to any agreement, the remuneration of a Managing Director shall from time to time be fixed by the Board, and may be by way of salary or commission, or participation in the profits, or by any or all of these modes, and shall, if so determined by the Board, be in addition to his share of any remuneration payable to the Board or to the Managing Director as one of the Board.

Exhibits  
P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

122. A Managing Director may perform such duties, and exercise all such powers, authorities and discretions as are exercisable by the Board (other than the power to make calls and to mortgage the assets of the Company) on such terms and conditions and with such restrictions (if any) as the Board from time to time may direct.

#### PROCEEDINGS OF THE BOARD

123. The Board may meet together for the despatch of business at such place and adjourn and otherwise regulate their meetings as they may think fit. The presence of the Life Director or the person appointed by him under Article 94, clause (4), shall be necessary to form a quorum and the Life Director or such person shall himself form a quorum subject as aforesaid two Directors shall form a quorum. A Director may at any time, and the Secretary upon request of a Director shall convene a meeting of the Board. Questions arising at any meeting shall be decided by a majority of votes, and the Life Director shall be entitled to as many votes as there are Directors of the Company and one more. In case of an equality of votes, the Chairman shall have an additional or casting vote in addition to his vote or votes as a Director.

124. The said Charles William Mackie shall be Chairman of the Board so long as he remains a Director and is willing to act. Subject as aforesaid the Board may appoint a Chairman and Deputy Chairman of their meetings and determine the period for which they are respectively to retain office.

125. Any question which may arise at any meeting of the Board shall be decided by the votes of the Directors present and the said Charles William Mackie shall be at liberty, so long as he shall be a Director, by writing under his hand, to authorize any other member of the Board to vote for him at any meeting or meetings of the Board and such authority may be general or may be limited to any one or more meetings or to any specific question or questions and must, if required, be produced at any meeting at which the holder of the authority proposes to vote. Nothing in this Article contained shall be deemed to limit the powers of the Life Director under Article 94, clause (4) or of any person appointed by him under the said clause.

126. A resolution in writing signed by the Life Director or all the Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted.

## Exhibits

Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

127. The Board may delegate any of their powers to Committees consisting of such member or members of their body as they think fit. Any Committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the Board.

128. The meetings and proceedings of any such Committee consisting of two or more members shall be governed by the provisions herein contained for the regulating of meetings and proceedings of the Board so far as the same are applicable thereto and not superseded by any regulations made by the Board under the last preceding clause. 10

129. All acts done at any meeting of the Board, or of a Committee of the Board, or by any person acting as a Director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or Committee or person acting as aforesaid, or that they, he, or any of them were or was disqualified, be valid as if every such person had been duly appointed and was qualified to be a Director.

130. If any Director being willing shall be called upon to perform extra services, or to make any special exertions in going or residing abroad or otherwise, for any of the purposes of the Company, and shall do so, the Company may remunerate such Director, either by a fixed sum or by a percentage of profits, or otherwise, as may be determined by the Board and such remuneration may be either in addition to or in substitution for his share in the remuneration above provided. 20

## THE SEAL

131. The Board shall provide for the safe custody of the seal, which shall only be used pursuant to a resolution passed at a meeting of the Board, or a Committee of the Board authorized to use the seal, and in the presence of the Life Director, or in the presence of one at least of the Ordinary Directors who shall sign every instrument to which the seal is affixed, and every such instrument shall be countersigned by the Secretary or some other person appointed by the Board. 30

## DIVIDENDS

132. Subject as aforesaid, and to the rights of holders of shares issued upon special conditions, and to any arrangement that may be made by the Company to the contrary, and subject as to shares not fully paid up to any special arrangement made as regards money paid in advance of calls, the profit of the Company shall be divisible among the members in proportion to the capital paid up or credited as paid on the shares held by them respectively. 40

10 133. The Company in General Meeting may declare a dividend to be paid to the members according to their rights and interests in the profits, and may fix the time for payment. Provided always that if shares shall have been issued during the course of a financial year the holder thereof shall, subject to any arrangement made by the Board to the contrary, only be entitled to have paid to him in respect of dividends on such shares a proportionate part of the dividends in such financial year calculated on the proportionate part of the year from the date on which such shares are allotted, treating such dividends as earned rateably over the whole year.

20 134. No dividend shall be payable out of the Capital of the Company, and the declaration of the Board as to the amount available for dividend, shall be conclusive. Provision for any loss realized or estimated or apprehended may, if and when thought fit, be spread over such period of time and by such instalments as the Board may think fit, but so that no such provision shall be necessary in the case of loss of fixed capital or save where the Board shall think necessary of circulating capital. No dividend shall exceed the amount recommended from time to time by the Board, but the Company in General Meeting may declare a smaller dividend.

135. Separate accounts may, if the Board shall think fit, be kept as to the capital and revenue of the Company as to the whole or any part of its business, and if any adjustment of items between capital and income is required the decision of the Board shall be absolute. In any such case the surplus shown by the revenue account may be distributed as dividend without regard to the position of the capital account.

30 136. The Board may from time to time, without calling any General Meeting, pay to the members on account of the next forthcoming dividend such interim dividend as in their judgment the position of the Company justifies.

40 137. Any General Meeting declaring a dividend may direct payment of such dividend wholly or in part by the distribution of specific assets, and in particular of paid-up shares, debentures or debenture stock of the Company or paid-up shares, debentures or debenture stock of any other company, or in any one or more of such ways and the Board shall give effect to such resolution, and where any difficulty arises in regard to the distribution they may settle the same as they think expedient, and in particular may issue fractional certificates and may fix the value for distribution of such specific assets or any part thereof, and may determine that such cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees upon such trusts for the persons entitled to the dividend as may seem expedient to the Board.

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

## Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

138. The receipt of the person appearing by the Register to be holder of any shares shall be sufficient discharge to the Company for any dividend or other money payable in respect of such shares; and where several persons are the joint holders of a share the receipt of one of them shall be a good discharge to the Company for any dividend or other moneys payable thereon.

139. No dividend shall bear interest against the Company.

140. Notice of any dividend that may have been declared shall be given to the members, or sent by post or otherwise to their registered places of address. 10

141. A transfer of shares shall not pass the right to any dividend declared thereon before the registration of the transfer.

142. The Board may retain the dividends payable upon shares in respect of which any person is under the Articles relating to the transmission of shares entitled to become a member or which any person under those Articles is entitled to transfer, until such person shall become a member in respect thereof or shall duly transfer the same.

143. Unless otherwise directed any dividend may be paid by cheque or warrant sent through the post to the registered address of the member entitled, or in the case of joint holders to that one whose name stands first on the Register in respect of the joint holding, and every cheque or warrant so sent shall be made payable to the order of the person to whom it is sent, and the payment of any such cheque or warrant shall operate as a good discharge to the Company in respect of the dividend represented thereby, notwithstanding that it may subsequently appear that the same has been stolen or that the indorsement thereon has been forged. 20

144. All dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. 30

## ACCOUNTS

145. The Board shall cause true accounts to be kept of all the transactions, assets and liabilities of the Company.

146. The books of account shall be kept at the office, or at such other place or places as the Board shall think fit, and no member, other than a Director or Auditor or any other officer, clerk, accountant, or other person whose duty requires and entitles him to do so, shall be entitled to inspect the books, documents or writings of the Company, except as provided by the Ordinances or authorized by the Board, or by a resolution of the Company in General Meeting. 40

147. A balance sheet shall be made out and laid before the Company at its Annual General Meeting in each year, and such balance sheet shall contain a general summary of the assets and liabilities of the Company. The balance sheet shall be accompanied by a report of the Board as to the state and condition of the Company, as to the

amount (if any) which they recommended to be paid by way of dividend or bonus to the members, and the amount (if any) which they propose to carry to reserve. The report and balance sheet shall be signed on behalf of the Board by at least two of the Directors of the Company, or, if there is only one Director for the time being, by that Director, and shall be countersigned by the Manager or Secretary.

148. A copy of the Directors' report and balance sheet shall, during at least seven days previous to the General Meeting, lie at the office for inspection by the members.

Exhibits  
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P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

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#### AUDIT

149. The Company shall, at each General Meeting, appoint an Auditor or Auditors to hold office until the next Annual General Meeting.

150. If an appointment of Auditors is not made at an Annual General Meeting the Board may appoint an Auditor of the Company for the current year, and fix the remuneration to be paid to him by the Company for his services.

151. A Director or officer of the Company shall not be capable of being appointed Auditor of the Company.

20

152. A person, other than a retiring Auditor, or a person recommended by the Board, shall not be capable of being appointed Auditor at an Annual General Meeting unless notice of an intention to nominate that person to the office of Auditor has been given by a member of the Company not less than fourteen days before the Annual General Meeting, and the Board shall send a copy of any such notice to the retiring Auditor, and shall give notice thereof to the members not less than seven days before the Annual General Meeting. Provided that if after a notice of the intention to nominate an Auditor has been so given, and an Annual General Meeting is called for a date fourteen days or less after that notice has been given, the notice, though not given within the time required by this Article, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the Company may, instead of being sent or given within the time required by this Article, be sent or given at the same time as the notice of the Annual General Meeting.

30

153. Messrs. Ford, Rhodes, Thornton & Co. of Colombo, shall be the first Auditors of the Company, and they shall hold office until the first Annual General Meeting, unless previously removed by a resolution of the members in General Meeting, in which case the members at such meeting may appoint Auditors.

40

154. The Board may fill any casual vacancy in the office of Auditor, but while any such vacancy continues the surviving or continuing Auditor or Auditors (if any) may act.



Exhibits

P 1.  
 Memorandum  
 and Articles of  
 Association of  
 C. W. Mackie  
 & Co., Ltd.  
 (undated)  
 —contd.

155. The remuneration of the Auditors shall be fixed by the Company in General Meeting, except that the remuneration of any Auditors appointed before the First Ordinary General Meeting or to fill up any casual vacancy may be fixed by the Board.

156. Every Auditor shall have a right of access at all times to the books and accounts and vouchers of the Company, and as regards books, accounts and vouchers, ordinarily kept abroad, shall be entitled to rely upon copies thereof or extracts therefrom, certified by the Company's representatives abroad, and shall be entitled to require from the Board and the office of the Company such information and explanation as may be necessary for the performance of the duties of the Auditors, and the Auditors shall make a report to the members on the accounts examined by them, and on every balance sheet laid before the Company in General Meeting during their tenure of office. 10

157. Every account of the Board when audited and approved by a General Meeting shall be conclusive except as regards any error discovered therein within three months next after the approval thereof. Whenever any such error is discovered within that period the account shall forthwith be corrected, and thenceforth shall be conclusive. 20

158. Any Auditor shall, on quitting office, be eligible for re-election.

#### NOTICES

159. A notice may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered address, as appearing in the Register.

160. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the Register, and notice so given shall be sufficient notice to all the holders of such share. 30

161. Any member described in the Register by an address not in Ceylon, who shall from time to time give the Company an address of himself or his attorney in Ceylon at which notices may be served upon him, shall be entitled to have notices served upon him at such address, but save as aforesaid, and save in the case of the Life Director or his alternate, and save as provided by these presents, no member other than a member described in the Register by an address in Ceylon shall be entitled to receive any notice from the Company. 40

162. Any notice required to be given by the Company to the members or any of them, and not expressly provided for by these presents, shall be sufficiently given by advertisement in the *Ceylon Government Gazette*.

163. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same is put into a post office situated in Colombo and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into such post office.

164. Where a given number of days' notice or notice extending over any other period is required to be given the day of service shall, unless it is otherwise provided, be counted in such number of days or other period.

10 165. Any notice or document delivered or sent by post to, or left at, the registered address of any member shall, notwithstanding such member be then deceased and whether or not the Company have notice of his decease, be deemed to have been duly served on his heirs, executors and administrators.

20 166. Every person who, by operation of law, transfer, transmission, or other means whatsoever, shall become entitled to any share, shall be bound by every notice in respect of such share which previously to his name and address being entered in the Register as the registered holder of such share shall have been duly given to the person from whom he derives the title to such share.

#### WINDING UP

167. (1) If the Company shall be wound up, whether voluntarily or otherwise, the Liquidator may, with the sanction of an Extraordinary Resolution, divide among the contributories in specie any part of the assets of the Company, and may with the like sanction vest any part of the assets of the Company in Trustees upon such terms for the benefit of the contributories as the Liquidator with the like sanction shall think fit.

30 (2) If thought expedient, any such division may be otherwise than in accordance with the legal rights of the contributories (except where unalterably fixed by the Memorandum of Association), and in particular any class may be given preferential or special rights, or may be excluded altogether or in part, but in default of any such provision the assets shall, subject to the rights of the holders of shares issued with special rights or privileges or on special conditions, be distributed rateably according to the amount paid or credited as paid up on the shares; but in case any division otherwise than in accordance with the legal rights of the contributories shall be determined on, any contributory who would be pre-  
40 judiced thereby shall have a right to dissent and ancillary rights as if such determination were a Special Resolution.

(3) In case any of the shares to be divided as aforesaid involve a liability to calls or otherwise, any person entitled under such division to any of the said shares may within ten days after the passing of the Extraordinary Resolution, by notice in writing, direct the Liquidator to sell his proportion and pay him the net proceeds, and the Liquidator shall, if practicable, act accordingly.

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
---contd.

Exhibits

P 1.  
Memorandum  
and Articles of  
Association of  
C. W. Mackie  
& Co., Ltd.  
(undated)  
—contd.

## INDEMNITY

168. The Directors, Managing Director, Managers, Agents, Auditors, Secretary and other officers or servants for the time being of the Company, and the trustees (if any) for the time being acting in relation to any of the affairs of the Company, and every of them, and every of their heirs, executors, and administrators, shall be indemnified and secured harmless out of the assets and profits of the Company from and against all actions, costs, charges, losses, damages, and expenses which they or any of them, their or any of their heirs, executors or administrators shall or may incur or sustain by or by reason of any contract entered into or any act done, concurred in, or omitted in or about the execution of their duty or supposed duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own wilful act, neglect or default respectively, and none of them shall be answerable for the acts, receipts, neglect or defaults of the other or others of them, or for joining in any receipt for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for any bankers, brokers, or other persons into whose hands any money of the Company may come, or for any defect of the title of the Company to any property purchased, or for insufficiency or deficiency of or defect of title of the Company to any security upon which any moneys of or belonging to the Company shall be placed out or invested, and for any loss, misfortune or damage resulting from any such cause as aforesaid, or which may happen in the execution of their respective offices or trusts, or in relation thereto, except the same shall happen by or through their own wilful neglect or default respectively.

In witness whereof the subscribers to the Memorandum of Association have hereunto set and subscribed their names, at Colombo, this seventh day of January, one thousand nine hundred and twenty-two.

C. W. MACKIE.  
C. A. MACKIE.  
E. H. LAWRENCE.  
M. J. HARDING.  
F. N. SUDLOW.  
M. CALDWELL.  
A. E. WILLIAMS.

Witness to the above signatures, at Colombo, this seventh day of January, 1922.

W. A. S. DE VOS,  
*Proctor, Supreme Court.*

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**GENERAL FINANCIAL KNOWLEDGE**

10

**AMALGAMATIONS AND RECONSTRUCTIONS**

*Although no particular text-book is recommended to be read in conjunction with this Study Paper, which is self-contained, the student should take every opportunity of reading such Press articles and other literature as appear from time to time on the subjects dealt with herein. The following suggestions for additional reading are made:—*

*Methods of Amalgamation and the Valuation of Businesses*  
(A. E. Cutforth).

*Commercial Goodwill* (P. O. Leake).

20

**METHODS OF AMALGAMATION**

1. The term "*Amalgamation*" in its business sense means the merger of two or more businesses or undertakings, or of interests in business or undertakings.

Mergers may be either *Partial* or *Complete*.

A *Partial Merger* may consist of an arrangement for pooling sales or orders, or for the sharing of net profits. Such mergers, however, tend to be temporary rather than permanent.

30 A *Complete Amalgamation* usually entails the absorption of one or more businesses either by an existing company, or by a new company formed specially for the purpose; or it may be effected by a holding company scheme.

Where two or more concerns which occupy different stages in the chain of production and distribution, e.g., the supplier of raw material, the manufacturer, the wholesaler and the retailer of a commodity, amalgamate their interests the merger is said to be a *Vertical* one.

A *Horizontal* merger is one between concerns carrying on the same kind of business, e.g., the amalgamation of a number of retail stores.

40 2. **Objects and Advantages of Amalgamations—**

(a) *Economy in capital.* Capital can be raised more easily and economically by large combines than by small concerns. The most suitable factories can be retained and redundant factories closed

down. Plant and materials can often be acquired on more favourable terms when bought in large quantities, and more expensive (but more efficient) plant can be afforded.

(b) *Economy in production.* Centralized buying and diminished competition in the demand for materials tend to reduce prices. The services of the most skilful and experienced buyers may be retained. Greater security is obtained over supplies of materials by a concern which is large enough to organize supplies and control the market.

Production on a large scale reduces overhead expenses.

(c) *Economy in selling and distribution expenses.* Collective advertising enables total expenditure on advertising to be reduced, or the same total expenditure to be made more effective. 10

Competition between branches may be avoided by the closing down of redundant depots. Economy may also be achieved in sales organization and delivery expenses, by the maintenance of depots or warehouses to supply local areas.

(d) *Economy in administration expenses and greater stability in administration.* Secretarial and administrative work may be centralized at the head office so that one staff will do the work formerly performed by several. 20

(e) *The maintenance of selling prices.* The partial elimination of competition renders price-cutting unnecessary. Prices can be stabilized. Wide markets for the products of the combine can be established.

(f) *Greater stability by reason of geographical decentralization.* Local strikes or breakdowns can be more effectively countered by a large and widespread combine than by a solitary unit.

(g) *The pooling of resources and brain power and improved facilities for research.* A large combine is able to command the services of the most efficient buyers, salesmen, and administrators, and of inventors, chemists, &c., whose researches may enable production to be cheapened, improved, and extended. 30

(h) *Improved facilities for disposing of proprietors' interests.* There is usually a ready market for shares and debentures in a large public company, whereas an interest in a small business may not be capable of ready realization.

### 3. Objections to Amalgamations—

(a) *The possible exploitation of the public.* This objection can only be sustained where a combine is able to obtain a monopoly and misuses its power to force up prices or withhold supplies, and so create an artificial shortage. 40

(b) *Businesses may be merged which do not lend themselves profitably to such treatment,* with the result that expense and inconvenience are incurred without commensurate results, and shareholders' capital may be lost.

(c) *The loss of the personal element*, whether between employer and employee, or proprietors and customers, may result in less efficient service.

(d) *Loss of established goodwill*. This can be avoided, however, by retaining the old names, e.g., as names of branches or subsidiary companies, or as part of the name of the combine.

10 (e) *Centralization of management may lead to inadequate control of distant branches, lack of uniformity in administration, policy, and methods*. In the case of concerns with a large directorate, executive committees must be appointed to ensure that this objection is overcome.

The former owners or managers of the several businesses may be disinclined to submit to the control of the Board, and to accept what they may consider to be subordinate positions.

(f) *Amalgamations are sometimes promoted for the benefit of financial agents* and to extract money from the public, rather than for the benefit of the businesses concerned.

20 (g) *The danger of over-capitalization*. Existing businesses are frequently sold to a combine at prices based on the results of the most successful years. Excessive prices may thus be paid for goodwill, and plant and other fixed assets which were acquired at high prices during boom periods may be taken over by the combine on the basis of their book values, which may be wholly excessive in relation to the current and prospective earning capacity of the assets.

#### COMPLETE AMALGAMATIONS

4. **The selection for the most suitable form of merger.**—A “complete” amalgamation may be effected by one or other of the following methods:—

30 (a) *The sale of all existing undertakings to a newly-formed company*. This method entails the winding-up of all the amalgamating companies, whose shareholders are paid out in cash, or in shares or other interests in the new company.

(b) *The absorption by one of the existing companies of the undertakings of the others*. Under this method only the companies whose undertakings are purchased are wound up, their members receiving in exchange for their holdings either a cash payment or shares or other interests in the purchasing company.

40 (c) *A holding company scheme*, whereby either—

(i) one of the existing companies acquires a controlling interest in the other companies; or

(ii) an entirely new company is formed to purchase a controlling interest in all the existing companies.

In either case the present shareholders would usually receive shares in the holding company in exchange for their existing shareholdings.

Exhibits

P 16

Students' Notes

(undated)

—contd.

In determining which of the above methods is the most expedient to employ consideration must be given (*inter alia*) to the following factors:—

(1) *The capital structure of the existing companies.* If, for example, any considerable proportion of the capital of any of the companies consists of preference shares or long-term debentures on which a lower rate of interest or dividend than the current market rate is being paid, it would obviously be undesirable to wind up those companies, as this would entail a loss to the combine of the benefit of the lower rate of interest at present enjoyed. 10

Conversely, if a rate of interest in excess of the current market rate is being paid on the preference shares or debentures of any of the existing companies, and the holders are not entitled to a premium in the event of liquidation, these companies should be wound up, and their undertakings purchased, either by a new company, or by one of the other existing companies.

(2) *The effect upon the taxation liability of the combine.* Since the winding up of a company causes it to be assessed to income tax as a discontinued business, this procedure would have the effect of increasing the current assessment where the trend of profits is upward, or of reducing it if the profits are falling. Moreover, if a business is transferred to another company the right to carry forward any unabsorbed losses will cease. 20

(3) *Considerations of Policy.* It may be desirable, either for the purpose of preserving secrecy as to the merger, or so that the names, goodwill, or establishments of the existing concerns may be maintained, to retain the separate entity of one or more of the companies, in which event a holding company scheme would probably be preferable. 30

**5.—Relief from Stamp Duty.**—In complete Amalgamations and Holding Company schemes it is possible to obtain the benefit of the relief given by Section 55, *Finance Act, 1927* (as amended by Section 31, *Finance Act, 1928*, and Section 41, *Finance Act, 1930*), in respect of the stamp duty on—

- (a) fresh nominal share capital; and
- (b) transfers of undertakings or shares and assignments of debts. 40

The consideration for the acquisition (except such part thereof as consists in the transfer to or discharge by the transferee company of liabilities of the existing company) must consist as to not less

than 90 per cent. thereof, in the *issue of shares* in the transferee company to the holders of shares in the existing company. The expression "issue of shares" is satisfied only by *actual registration* of the holders of the shares of the old company in the register of members of the new company. Thus, where letters of allotment are issued to the registered holders of shares in the old company, accompanied by letters of renunciation, which are utilized to the extent of more than 10 per cent. of the shares forming the purchase consideration in favour of other persons, the "issue" requirements are not fulfilled (*Oswald Tillotson v. C.I.R.—1933*).

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

On the other hand, it is not essential that shares of the new company shall be issued to the members of the old company in the same proportions in which they hold the shares of the old company. Relief will be given if 90 per cent. of the shares in the transferee company are allotted to the registered holders of shares in the old company, notwithstanding that some members may, by arrangement, receive more and others less than the number of shares to which they are entitled.

The provisions of Section 55 are more rigorous in connection with holding company mergers than with "complete" amalgamations. To obtain relief in the case of a holding company merger "not less than 90 per cent. of the issued share capital of any existing company" must be acquired. The relief given by Section 55 is disallowed if the transferee company ceases, within two years, "otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so acquired."

In the case of a "complete" amalgamation, references to the undertaking of a particular existing company include references to a *part* of the undertaking of an existing company (Section 55 (8)).

Incidentally, it will be remembered that, under Section 155, *Companies Act, 1929*, where a "holding company" scheme has been approved by the holders of not less than 90 per cent. of the shares affected within four months of the offer, the transferee company may compel the dissentients to transfer their shares, unless the Court orders otherwise.

**6. Procedure to Carry Out the Merger.**—If an existing company absorbs the other undertakings, the purchase consideration will be in the form of cash (paid out of the liquid resources of the absorbing company or out of the proceeds of a new issue of shares or debentures) or in its own shares or debentures. If the consideration is to be in cash, it is only necessary to revalue the undertakings to be acquired, but if the consideration is to be in shares, it may also be necessary to revalue the *absorbing* company's undertaking to arrive at a fair exchange value.

After the directors have agreed on the basis of amalgamation, a meeting of the members is convened to pass the necessary resolutions. But the scheme must be "cut and dried" before that date.



Exhibits

P 16

Students' Notes  
(undated)  
—contd.

Where the companies involved make up their accounts to different dates, a date for the amalgamation must be fixed. A future date is most satisfactory, so that all the companies concerned can prepare Balance Sheets as at the same date. The inconvenience of a separate stocktaking and balancing of the books at this date may, however, be avoided by taking the valuations as at the last Balance Sheet date. If a retrospective Balance Sheet date is chosen, it may be difficult to fix a fair rate of interest to be paid to the vendors as representing their equity in the profits prior to incorporation, but the avoidance of the additional work mentioned above will often make it desirable to face this difficulty. 10

All Balance Sheets must be adjusted in order to arrive at the net worth of each undertaking, and in doing so all assets must be valued on a consistent and comparable basis. Professional valuations are essential, and the valuers should be told on what bases they are to value, e.g., in the case of buildings, replacement value may or may not be fair, as one company may have a factory built in 1923, another one built in 1942. Adjustment must be made for assets purchased or sold between the date of valuation and the date of the actual amalgamation. Care must be taken to ensure that "going-concern" and not "break-up" values are adopted. 20

Stock prices should be agreed as between the respective companies, the condition of goods being taken into account. Work in Progress sometimes presents a difficulty, as the overhead expenses must either be included or excluded in all cases.

When reviewing past profits for the purpose of valuing goodwill the trade cycles must be taken into account, to ensure that the trend of future super-profits is gauged accurately. All profits must be adjusted to arrive at a figure which may be regarded as representing maintainable profits, abnormal and non-recurring losses and profits being eliminated. 30

It must be remembered that, with few exceptions, the value of fixed assets is almost entirely dependent upon their capacity to earn revenue, and this may have little or no relation to their original cost. Some would be quite valueless to any other business (e.g., rails of a tramway), whilst others (e.g., motor lorries) would have alternative uses. It is therefore clear that most undertakings can only be valued by reference to the earning power of the business as a whole, although in some cases (e.g., where the bulk of the assets are floating assets) the current value of the net assets, including goodwill, fixes the value of the concern. 40

7. **Liabilities** usually present no difficulty in valuation, except contingent liabilities. It is quite common for the vendors to be required to guarantee the figure of liabilities, any excess or deficiency being adjusted by a cash payment, when ascertained. In

order to save stamp duty it is common for an amount of book debts equal to the liabilities to be excluded from the assets transferred, the vendor collecting such debts and paying off the liabilities.

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

8. **Profits prior to amalgamation.**—Arrangements will normally have to be made for the vendors to receive dividends, or to draw in respect of the profits up to the date of amalgamation, e.g., a sole trader who is in the habit of drawing his profits after the annual accounts are prepared would be unfairly treated if the company took over his assets and liabilities as on the Balance Sheet date without making provision for his drawings on account of the profits. It is true that he would usually receive the value of the undrawn profits in the purchase consideration, but if the latter were in shares, he would be put to the trouble of realizing them.

#### HOLDING COMPANY SCHEME

9. Under this scheme a new company, or one of the companies concerned in the merger, will acquire a sufficient holding of the shares in the other concerns to control them, thus bringing about a unification of interests without any change in the legal entities of the members of the combine. Whether it will be preferable to utilize a new company or one of the existing companies as the holding company depends upon various factors, some of which have already been considered in paragraph 4. Usually the formation of a new company has certain advantages, e.g., an existing company may have a debenture issue outstanding, and since a scheme whereby the assets of the company are increased will enlarge the basis of the debenture-holders' security, they will be placed in a more powerful position and might adopt an intransigent attitude later on should the company get into difficulties; the members of the other companies may have a sentimental objection to their concerns being considered of less importance; future capital expansion may not be so easy.

A new company, moreover, enables secrecy to be preserved; it can be a private company, owning the share capital of the subsidiaries, which may be public companies.

A company with a large debenture or preference share issue is not, generally speaking, a suitable holding company inasmuch as the shares acquired in the new subsidiary will increase the security available for the holders of these "senior" securities.

Incidentally, it might be observed that debentures charging the assets of a holding company are a very poor type of security. The chief asset of the holding company will usually comprise the "junior" (i.e., ordinary or deferred) shares of its subsidiaries. Such shares participate on a winding-up of the subsidiary only after the claims of the creditors of the subsidiary have been satisfied and (usually) after the preference share capital has been repaid in full.

Exhibits  
 P 16  
 Students' Notes  
 (undated)  
 —contd.

It is possible for a holding company to make its financial structure so intricate, owing to the existence of a multitude of subsidiaries and sub-subsidiaries, and the "cross-holding" of shares by the various members of the merger, that it is very difficult to ascertain its true financial position. Under a complete amalgamation, whereby the undertakings are merged into one unit, these complications are avoided.

It is usually only necessary to acquire a majority of the *ordinary* shares of a company to obtain a controlling interest therein. The valuation of shares is discussed elsewhere. In practice, the basis on which the shares are to be purchased is usually agreed with the directors of the company, and the shareholders are then circularized with an offer to acquire their holdings, acceptance of such offer being recommended by the directors. 10

#### OTHER FORMS OF MERGER OF INTERESTS

Apart from the methods of amalgamation already dealt with, various other means are adopted to control competition. The more common modes are Trade Associations, Pooling Agreements, and Selling Organizations.

10. **A Trade Association** carries out the functions of controlling selling prices and protecting its members in all directions. To be effective, the association must be truly representative of the particular industry, and must therefore include all the most important members of it. In the interests of the public, however, it is as well that some of the persons engaged in the trade should be outside the association; and it may be beneficial to the association that some outside influence should keep its executive "on their toes" at all times. The danger of Trade Associations is that prices may be fixed too high, thus discouraging economy in costs and inducing new competition while depressing demand. The scope of such associations is limited, and there is always a tendency for members to break away. So long as they merely eliminate wasteful competition, such bodies are useful, but it is not desirable to eradicate healthy competition in favour of "corners" or monopolies. 20 30

11. **Pooling** means that an agreement between various firms is made whereby the profits of all the parties to the arrangement are paid into a pool and shared in the ratio found by reference to the average of a representative number of past years, or on some other agreed basis. Alternatively, quotas may be fixed for production.

Such an agreement is usually entered into for a term of years, and is essentially only a temporary arrangement. 40

In a pooling arrangement, accountants will be called in to ascertain past profits, &c., for the purpose of fixing pooling ratios and cross-checking the output, sales, profits, &c., for sharing

purposes during the continuance of the scheme. The agreement should define exactly what is meant by " profits ", e.g., it should lay down rules for calculating depreciation, valuing stock, remunerating managing and other directors, quotas of individual advertising (otherwise goodwill for the future may be built up at the expense of the pool), adjustments on fresh capital issues (e.g., for extending works), &c.

The apportionment of expenses, &c., is particularly difficult where some departments of any business are not in the pool.

- 10 12. **Selling Organization.**—A separate company or concern may be formed to market for the whole of the trade. This organization will take over the best salesmen, arrange for centralized depots, organize an efficient transport system, co-ordinate supplies, &c. Customers may, however, be suspicious that monopolistic prices will result, and competition may break out again.

Whilst such an organization can be wound up at the will of the members, the latter are handicapped in this respect, that their selling sections are gone, and their individual goodwill prejudiced. The stronger members then attract the best salesmen.

- 20 A selling organization may keep alive weak members, and keep back strong ones, unless quotas are carefully fixed for their respective contributions to sales.

#### VALUATION OF ASSETS FOR THE PURPOSES OF A MERGER FIXED ASSETS

13. **Methods of Valuation.**—For the purposes of an amalgamation, the consideration for the acquisition of a business may be arrived at either by valuing the individual assets of the concern, including goodwill, or by valuing the business on the basis of its earning capacity.

- 30 It will, however, be seen on further consideration that if the valuations are carried out on the correct bases the two methods will arrive at much the same result, since the aggregate of the values of the assets, plus the goodwill, or minus the " bad-will ", must equal the total capital sum on which the estimated future profits will represent an adequate return.

- 40 If the first method is employed, the fixed assets of all the merging companies should be valued by the same professional valuer on a going-concern basis. The term " going concern " means that a business is being operated at not less than a moderate or reasonable profit, and the valuer will assume that the business is earning reasonable profits when appraising the assets. (It will, of course, be realized that if the fixed assets are sold piecemeal, and not as part of a going concern, they would probably realize much less.) If it is

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

Exhibits  
 P 16  
 Students' Notes  
 (undated)  
 —contd.

found, when all the assets of the business, both fixed and floating, have been valued, that the profits represent more than a fair commercial return upon the capital employed in the business as shown by such valuation, the capitalized value of the excess (or "super-profits") will be the value of the goodwill, which must be added to the values of the other assets in arriving at the consideration to be paid for the business. If, however, the profits are less than a fair commercial return upon the capital employed as determined by valuing the assets on a going-concern basis, such deficit may be regarded as "bad-will", and something will have to be deducted from the aggregate of the valuations of the assets to allow for this. 10

In either case the ultimate amount of the consideration arrived at will thus represent the value of the business as a whole, having regard to the profits which it is capable of earning. This point is considered in more detail *infra* when dealing with goodwill.

The following are some of the special points to which consideration must be given in valuing specific assets:—

14. **Freehold Land.**—Land used for the purposes of the business should be valued by reference to its earning capacity. Where land is let, its rental will form the primary basis on which the value is fixed. Some land may have special value for extraneous purposes, but may be of little value from the point of view of the development of the business. Such land should be valued at market price, or, alternatively, it may not be taken over by the combine. 20

15. **Buildings.**—The normal basis of valuation would be the original cost, less depreciation at rates to be agreed between the parties. Special consideration must be given, however, to the age, character, lay-out, and state of repair of the buildings, and to their suitability for the purposes of business. Where buildings are old-fashioned and inconvenient, it may be more economical to acquire new and up-to-date premises, and such considerations must be taken into account in valuing the old buildings. 30

16. **Leasehold Premises.**—In addition to the character of the buildings, the unexpired term of the lease, the amount of the rent reserved thereby, and the possibility of a liability for dilapidations arising will affect the valuation.

17. **Plant, Machinery, and Equipment.**—Detailed inventories should be prepared showing the date of acquisition and cost of each piece of plant, so that adequate depreciation may be calculated. Additional depreciation should be deducted where the original cost of the machinery was abnormally high (as, for example, in the case of machinery purchased shortly after the war), so that the present book value of the asset is out of relation to its current earning power. Conversely, the asset should be written up where the original cost 40

was exceptionally low. In effect, the basis of valuation should be the estimated *present* cost of the machinery, less due allowance for the use which has already been extracted from it. The risk of early obsolescence, and the extent to which the plant has been maintained in a state of working efficiency out of revenue should also be taken into consideration.

Exhibits  
P 16  
Students' Notes  
(undated)  
—*contd.*

18. **Investments quoted on the Stock Exchange.**—These are usually valued at the mean quoted price at the date of the valuation. Where, however, the holding is very large, and the market is restricted, it may be permissible to take a somewhat lower value.

19. **Shares not quoted on the Stock Exchange.**—It will normally be necessary to value unquoted shares on an investment basis, due regard being paid to any special circumstances affecting the investment. The Balance Sheets and Profit and Loss Accounts of the companies in which shares are held should be obtained, and the results over a period of years examined.

The following general considerations should then be taken into account in arriving at the investment value of shares:—

- (a) The amount of the average maintainable profits of the company, as disclosed by past accounts, adjusted where necessary to give effect to any known facts or contingencies which may cause the future profits to diverge from the past average.
- (b) The dividends payable by the company on shares possessing dividend rights in priority to those in question.
- (c) The amounts which it is considered desirable to withhold from distribution as dividend each year in order to create and maintain necessary reserves.
- (d) By deducting (b) and (c) from (a), the amount of the average profits available for distribution to the holders of shares of the class held will be ascertained.
- (e) The average yield to be expected on shares of the same class in similar undertakings quoted on the Stock Exchange. In this connection, the extent to which the capital is represented by tangible assets, and the consistency with which dividends have been paid, would be taken into account.

The investment value of the shares will then be ascertained by the following formula:—

$$\frac{\text{Average rate of dividend payable}}{\text{Rate of yield expected}} \times \text{par value.}$$

Thus, if the average rate of dividend payable on £1 shares in a company is, say 10 per cent., and the yield on similar shares quoted

Exhibits  
 P 16  
 Students' Notes  
 (undated)  
 —contd.

on the Stock Exchange is 6 per cent., the value of the shares, apart from other considerations, would be :  $10/6$  of £1 = £1 13s. 4d. per share.

Other factors which may affect the valuation are—

- (a) The nature and extent of the security afforded by the assets, e.g., if the net assets are insufficient to cover the capital, or provide only a very small margin, the element of risk would be greater and the valuation would be made on the basis of a larger expected yield.
- (b) The prospect of a continuance of the revenue-earning capacity, demand for the output, &c. 10
- (c) The state of the investment market, and the general rate of interest on loanable capital.
- (d) The effect of the vendor's severance of his connection with the business (particularly where he was, in fact, the brains of the company), and the value of any office of profit attaching to the holder of the shares.
- (e) The adequacy of specific reserves, the nature and extent of secret reserves, the possibility of an issue of bonus shares, &c. 20
- (f) Rights of prior classes of members, extent of bond indebtedness, &c.
- (g) Any anticipated legislation, e.g., safeguarding, prohibition, tariffs, &c.
- (h) Continuance of present executive.
- (i) The voting power carried by the particular class of shares.

Generally speaking, the value per share attributable to a block of shares representing a controlling interest should be higher than that of a minority interest, as the former carries the power over the appointment of the directors, the distribution of dividends, and the control of the policy of the company. 30

A minority holder's price is normally dependent on the dividends actually paid on the shares, whereas a controlling interest price would be based on profits available for dividend, whether such profits are actually distributed or not, as the power of distribution is in the hands of the holders of these shares. Thus, if the capital of a company consists of 100,000 £1.6% Preference Shares and 100,000 £1 Ordinary Shares, on which 12 per cent. dividend has been regularly paid, and the average maintainable profits are £23,000, a minority holding might be valued as follows :— 40

|  |    |    |    |   |
|--|----|----|----|---|
| Preference Shares (assuming 5 per cent. to be a fair market yield) | .. | .. | .. | $\frac{5}{100} \times £1 = £1$ 4s. per share      |
| Ordinary Shares (assuming 6 per cent. to be a fair market yield)   | .. | .. | .. | $\frac{12}{100} \times £1 = £1$ 2s. 4d. per share |

For the purpose of valuing a *controlling* holding of ordinary shares, however, the following method should be adopted:—

|  |   |              |
|--|---|--------------|
|  | <b>£</b>  |              |
| Average adjusted profits .. .. .   | 23,000  |              |
| Deduct annual allocation to necessary <i>specific</i> and contingency reserves, say .. .. .                | 2,600   |              |
|  | 20,400  |              |
| Deduct amount required for Preference Dividend .. .. .   | 6,000   |              |
| Amount available for Ordinary Shareholders .. .. .   | £14,400   |              |
| 10 Capital Value of 100,000 Ordinary Shares on basis of 14,400 × 100 expected yield of 6 per cent. .. .. . | $= \frac{14,400 \times 100}{6} =$                     | £240,000     |
|  | $\text{Price per share} = \frac{£240,000}{100,000} =$ | $£2 \ 8 \ 0$ |

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

20. **Illustration of Valuation of Shares.**—The Balance Sheet of the X Y Company, Ltd., as on 31st March, was as follows:—

|    |  |         |                                    |         |
|----|--|---------|------------------------------------|---------|
|    |  | £       |                                    | £       |
| 20 | Capital: Authorized and Issued—              |         | Freehold Property .. .. .          | 50,000  |
|    | 30,000—8 per cent. Cum. Pref. Shares .. .. . | 30,000  | Plant and Machinery .. .. .        | 22,000  |
|    | 50,000 Ordinary Shares .. .. .               | 50,000  | Fixtures and Fittings .. .. .      | 8,000   |
|    | 5 per cent. Mortgage Debentures .. .. .      | 15,000  | Dies, Patterns, &c. .. .. .        | 8,190   |
|    | General Reserve .. .. .                      | 12,000  | Stock and Work in Progress .. .. . | 10,606  |
|    | Debenture Redemption Reserve .. .. .         | 6,000   | Sundry Debtors .. .. .             | 20,500  |
|    | Sundry Creditors .. .. .                     | 4,496   | Cash .. .. .                       | 16,700  |
|    | Taxation Reserve .. .. .                     | 6,000   |                                    |         |
|    | Profit and Loss Account (balance) .. .. .    | 12,500  |                                    |         |
|    |  | 135,996 |                                    | 135,996 |

30 The preference shares are entitled on a winding-up to repayment in full and to 25 per cent. of the residue remaining after repayment of the amounts paid up on the ordinary shares.

The results and dividends of the preceding four years are as follows:—

|    |                   |                   |                  |                   |  |                          |
|----|-------------------|-------------------|------------------|-------------------|--|--------------------------|
|    |                   |                   | <i>Dividends</i> |                   |  |                          |
|    | <i>Year to</i>    | <i>Net Profit</i> | <i>Ordinary</i>  | <i>Preference</i> |  | <i>Reserve Transfers</i> |
|    | <i>31st March</i> | £                 |                  |                   |  |                          |
| 40 | Year 1 .. .. .    | 6,169             | 10%              | 8%                |  | Nil                      |
|    | Year 2 .. .. .    | 226               | Nil              | 4%                |  | £1,500 from Reserve      |
|    | Year 3 .. .. .    | 2,241             | Nil              | 4%                |  | Nil                      |
|    | Year 4 .. .. .    | 10,750            | 5%               | 16%               |  | £2,500 to Reserve        |

The profit for the current year is £9,967 out of which it is proposed to pay the full preference dividend and 15 per cent. on the Ordinary shares.

#### VALUATION OF SHARES

The “cover” for the capital is as follows:—

|    |  |          |  |
|----|--|----------|--|
|    |  | £        |  |
| 50 | Total Assets as per Balance Sheet (excluding Goodwill) .. .. . | 135,996  |  |
|    |  | £        |  |
|    | Less Debentures .. .. .  | 15,000   |  |
|    | Sundry Creditors and Taxation Reserve .. .. .                  | 10,496   |  |
|    | Proposed Dividends <i>less</i> tax at, say, 9s. in £—          |          |  |
|    | Preference .. .. .   | £1,320   |  |
|    | Ordinary .. .. .   | £4,125   |  |
|    |  | 5,445    |  |
|    | Net Assets .. .. .   | £105,055 |  |



Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

The preference capital of £30,000 is thus covered more than three times, whilst the remaining net assets available as cover for the £50,000 ordinary capital, are over £75,000. The cover must therefore be considered as reasonably adequate.

(N.B.—Insufficient cover would increase the element of risk, and this would cause a higher yield to be expected on the shares than where the cover was adequate.)

The results of trading for the past four years indicate that the profits of the company are subject to very considerable fluctuation, and this would justify the expectation of higher dividend yields than could be obtained upon investments in business of a more stable character. 10

Assuming that the profits will be maintained at something in the region of £10,000 for the ensuing year, and taking an expected yield of 6 per cent. in the case of the preference shares and 8 per cent. on the ordinary shares, the *ex div.* values are as follows:—

|  |                            |              |                         |
|--|----------------------------|--------------|-------------------------|
| Preference Shares—   |                            |              |                         |
| Value per share : $\frac{3}{8} \times £1$                  | ..                         |              | = <u>£1 6 8</u>         |
|  |                            |              | £                       |
| Ordinary Shares—   |                            |              | 20                      |
| Estimated Profits ..                                       | ..                         |              | 10,000                  |
| Less Transferred to Reserve, say 20 per cent. of profit .. | ..                         | £            |                         |
|  |                            | 2,000        |                         |
| Year's Preference Dividend ..                              | ..                         | 2,400        |                         |
|  |                            | <u>4,400</u> |                         |
| Profits available for Ordinary Dividend                    | ..                         | <u>5,600</u> | = 11.2 % on capital     |
| Value per share  | $\frac{11.2}{8} \times £1$ | =            | <u>£1 8 0</u> (approx.) |

If, however, the average profits of the past four years are taken to be indicative of the future earnings, the valuation would be— 30

|   |                           |              |                    |
|---|---------------------------|--------------|--------------------|
| Estimated Profits, say ..               | ..                        |              | £5,000             |
| Less Transfer to Reserve, say ..        | ..                        | £1,000       |                    |
| Year's Preference Dividend ..           | ..                        | 2,400        |                    |
|   |                           | <u>3,400</u> |                    |
| Profits available for Ordinary Dividend | ..                        | <u>1,600</u> | = 3.2 % on capital |
| Value per share                         | $\frac{3.2}{8} \times £1$ | =            | <u>8s.</u>         |

To the above figures should be added an allowance for accrued dividends, the figure being adjusted from time to time as the year progresses. 40

Note.—The fact that the Preference Shareholders are entitled on a winding-up to 25 per cent. of the residue remaining after repayment of the amounts paid up on the ordinary shares would not influence the valuation unless and until winding-up of the company was contemplated.

## FLOATING ASSETS

Exhibits

21. **Cash at Bank and in hand.**—This would be taken at face value. If any part of the cash or bank balances is in terms of foreign currencies, it should be converted into sterling at the rates of exchange on the date of valuation.

P 16  
Students' Notes  
(undated)  
—contd.

22. **Book Debts and Bills receivable.**—These will be valued as for Balance Sheet purposes, the usual precautions being taken to see that adequate reserve is made for doubtful debts. Reserve should also be made for discounts which will be deducted by debtors.

10 In some cases, however, the debts are taken over at book value, each vendor guaranteeing the due payment thereof. Another method is for the book debts to be valued by an independent valuer, whose value shall be binding on all parties.

Book debts in foreign currencies are usually converted at the rate of exchange at the date of valuation. Where, however, there have been recent considerable fluctuations, it is sometimes agreed that the book debts shall be taken over at the average rate for the period over which the debts are collected and remitted to this country, or at the actual amount of such remittances.

20

23. **Stock in Trade.**—Considerable care must be taken with regard to the valuation of this asset. Sometimes each vendor company prepares an inventory of its own stock, and the other parties send representatives to check it. A small committee of all parties is then formed to agree prices. In other cases, independent professional valuers are employed.

It will be remembered that for ordinary Balance Sheet purposes stock is valued at cost, or current market price, whichever is the lower. THE VALUE FOR MERGER PURPOSES, HOWEVER, SHOULD BE THE CURRENT buying PRICE IN ALL CASES, IRRESPECTIVE OF COST.

30

Appropriate deductions must be made for old or out-of-date stock, and for stock not readily saleable.

24. **Work in Progress.**—This cannot be priced at a market value, since normally no market value exists until the stock is completed. The usual basis of valuation is actual cost (after adjusting the raw material to current market value), including labour and a fair proportion of overhead expenses (excluding, however, selling expenses).

40 Where a contract has been undertaken and is well advanced, the estimated profit to date may be added to, or the estimated loss deducted from, the cost. If this were not done the profits of the first year of the combine might be materially affected by the inclusion therein of the whole of the profit or loss on a contract which was well advanced at the date of the merger.

25. **Deferred Expenditure.**—The same principles should be applied as for Balance Sheet purposes. Where, for example, the benefit of a proportion of exceptional expenditure on advertising will be felt in the future, the vendors should be compensated therefor. The value of permanent signs and other forms of permanent advertising must also be agreed between the parties or appraised by an independent expert.

#### GOODWILL

26. Although the term “goodwill” is frequently used and its general meaning is usually well understood, it is one of considerable difficulty to define. 10

Lord Lindley referred to goodwill as follows:—

“The term ‘goodwill’ can hardly be said to have any precise significance. It is generally used to denote the benefit arising from connection and reputation, and its value is what can be got for the chance of being able to keep that connection and improve it. Upon the sale of an established business its goodwill has a marketable value, whether the business is that of a professional man or of any other person. But it is plain that goodwill has no meaning except in connection with a continuing business; and the value of the goodwill of any business to a purchaser depends, in some cases entirely, and in all very much, on the absence of competition on the part of those by whom the business has been previously carried on.” 20

A writer on Commercial Law has summarized the various definitions as follows:—

“All that can be gathered from the various definitions is that when the locality of the business premises makes the trade, goodwill represents the advantage derived from the chance that customers will frequent the premises in which the business has been carried on; that when the business is one which depends upon the reputation of a firm, the goodwill consists of the advantage which the owner derives from being allowed to represent himself as such; that when the business is due to the individuality of the owner, and when its reputation cannot be separated from his, the goodwill is all but non-existent; and that where the value of the business depends upon the business connection, the goodwill consists of the right to be properly introduced to those connections.” 30

Another writer has defined goodwill as— 40

“The advantage or benefit which is acquired by an establishment, beyond the mere value of the capital stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or common celebrity or reputation for skill, affluence, punctuality, or from

other accidental circumstances or necessities, or even from ancient partialities or prejudices.”

It is doubtful whether, today, the above definitions are sufficiently comprehensive, as goodwill may owe its value to so many things other than the situation of business premises and the continued favour of old customers.

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

Goodwill may be due, *inter alia*, to the following:—

- (a) The location of the business premises.
- (b) The nature of the firm's products or the reputation of its service.
- (c) The possession of favourable contracts, complete or partial monopoly, &c.
- (d) The personal reputation of the proprietors.
- (e) The possession of satisfied and contented employees.
- (f) The possession of trade marks, patents, or a well-known business name.
- (g) The favourable attitude towards the business of banks, investors, and others from whom credit or capital may be required arising from the integrity of the proprietors and the past history of the business.
- (h) Continuance of advertising campaigns.
- (i) The maintenance of the quality of the product, and development of the business with changing conditions.
- (j) The right to continue the name, policy, products, &c.
- (k) Freedom from legislative restrictions.

In one sense, every business that has a customer has a “goodwill”, but the use of the term in that sense has no real significance. Accounts are only concerned with valuable (i.e., *saleable*) goodwill, and this may be defined as—

- 30 “that element arising from the reputation, connection, or other advantages possessed by the business which enables it to earn profits greater than the return normally to be expected on the capital invested in the *tangible* assets, book debts, &c., employed in the business.”

In considering the return normally to be expected, regard must be had to the nature of the business, the risk involved, fair management remuneration, and any other relevant circumstances.

- 40 It must be realized that the value of goodwill cannot normally be ascertained separately from that of the fixed assets of a business. Without goodwill the fixed assets, shorn of their earning power, would be vastly inferior in value to that of the same assets when considered in conjunction with the goodwill. The goodwill and the fixed assets of a business together constitute the source of its earning power. Strictly, therefore, they should be considered together for the purpose of valuation, but when a value is placed upon the fixed assets, the difference between the total value of the

Exhibits  
 P 16  
 Students' Notes  
 (undated)  
 —contd.

business as a profit-earning investment and the value attributed to the tangible assets, book debts, &c., may be regarded as the value of the goodwill.

**27. Valuation of Goodwill.**—In arriving at a value to be placed on goodwill on the sale of a business, it is necessary to determine what is a fair rate of interest to be expected on the capital employed in the business, and for this purpose consideration must be given to the following:—

- (a) The return required on capital invested in an old-established concern of an inherently stable character would naturally be lower than that expected from a newly-established business of a more speculative character, because the "risk" element is so much greater in the latter (although, if successful, it may return larger profits). 10
- (b) A lower return would normally be expected from a business producing a necessity than from one dealing in luxuries, because the former would be less subject to fluctuations than the latter.
- (c) When the market for the products of a concern is in this country or the Dominions, it must be regarded as a more stable undertaking than one dependent for its customers upon some foreign country in which economic or political conditions are uncertain, and where restrictions on business may be imposed. 20
- (d) When competition is acute, greater risks are run and a larger return on capital is therefore to be expected.
- (e) When the demand for the products of an undertaking is dependent upon fashion or the popular taste of the public, considerable fluctuations in turnover may be experienced, and demand may in fact cease entirely. In such a case, there is a very considerable element of speculation in the investment of capital in that business, and a larger return thereon is to be expected. 30
- (f) Where the assets employed in a business are of such an unusual nature that they cannot easily be adapted to any other purpose, this fact would warrant a higher return on capital than would be expected when the capital was invested in assets of a more realizable character. (This fact also, of course, affects the values of the assets themselves.) 40

In determining the profits upon the basis of which goodwill is to be valued the following matters must be the subject of adjustment:—

- (i) Income from investments should be excluded, as the capital value of these investments will be arrived at separately

and the return therefrom will not normally be that expected from the use of the other assets. The investments represent working capital held in reserve for specific or contingent purposes.

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

- 10 (ii) The charges for depreciation should be reviewed, and where these are deemed to have been excessive the excess written back, or where inadequate, a further charge made.
- (iii) Income from any assets not required for the purpose of the business, e.g., surplus properties, should be excluded from profits for the same reason as income from investments.
- 20 (iv) Abnormal profits and losses should be eliminated from the profits of the years in which they occurred. In this connection it must be remembered that some non-recurring work is obtained *every* year by most professional firms; income of this character cannot be regarded as abnormal unless its nature is most exceptional, and cannot be expected to be replaced by other work in subsequent years. By "abnormal profits and losses" is meant profits and losses due to abnormal circumstances. The results of a particular year would not be excluded merely because the profit or loss is unusually high or low. The experience of many firms is that during a cycle of years certain particularly good or bad years are experienced, and these fluctuations form part of the normal experience of the business. It is only where the results of a particular year are vitiated by abnormal or non-recurring circumstances, e.g., a strike, that such results should be excluded.
- 30 (v) When remuneration has been paid to the proprietors or directors on too liberal or too meagre a scale, the charges should be added back and replaced by fair remuneration.
- (vi) Any exceptional expenditure on advertising must be adjusted so that each year is charged with the average normal expenditure. Similarly, when during the last year or two advertising has been curtailed, regard must be had to the probable effect thereof on the profits of future years, and if it is thought necessary, a normal charge for advertising should be made against the years in which the smaller expenditure was incurred.
- 40

In arriving at the profits, it must be borne in mind that the basis of past profits is taken, not as the measure of goodwill, but as an indication of what the profits can be expected to be in the future. The adjustments mentioned above are necessary to bring past profits into line with future expectations. Goodwill is the price paid for the right to the excess earnings of the *future*, not of the past.

Various bases are advocated for the valuation of goodwill, and the method to be adopted is frequently governed by the custom of the trade in which the business is engaged, and often gives results which could not be justified on any logical grounds.

The usual bases are summarized hereunder—

(i) **The average profits of past years multiplied by an agreed number.** Thus “ five years’ purchase of the net profits ” is often spoken of as the basis upon which goodwill is to be valued.

This method, however, is purely arbitrary and does not, except by accident, bear any relation to the true value of goodwill. 10

*Illustration.*—The average capital employed in a business is £10,000. The average profits made by the business during the last ten years have been £700 per annum.

On the basis of “ five years’ purchase,” £3,500 would be required for the goodwill of the business, whereas it is apparent that no goodwill exists; in fact, there is “ bad-will ”, since no one would be prepared to pay £13,500 for a business which would produce only £700 per annum. On a 10 per cent. basis such a business would be worth only £7,000 irrespective of the fact that there is £10,000 of capital invested therein. 20

As explained above, an amount representing the “ bad-will ” would have to be deducted from the aggregate of the values of the assets in arriving at the purchase price of the business.

(ii) **The gross income multiplied by an agreed number.**

This method is frequently adopted in professional businesses, but it suffers from most of the disadvantages of the preceding one, and from the further defect that it disregards altogether the working expenses, which may be excessive in relation to the turnover.

*Illustration.*—The average gross fees of an accountant are £1,000; his expenses are £600 per annum. At “ two years’ purchase ”, £2,000 would be required for the goodwill of the practice, but for this sum the purchaser would obtain a net income of only £400 per annum, i.e., probably less than the sum he would obtain as a salary from another firm. 30

It must be borne in mind, however, that a newly qualified professional man desiring to enter into practice is in a peculiar position. He can set up in practice on his own account, in which event he would probably have to live upon capital to a great extent for a number of years whilst his practice is developing; or he can acquire an existing business, or a share therein. By purchasing an existing business he saves himself the years of waiting and possible disappointment and resultant loss of capital incurred in endeavouring to build up a practice, and he is therefore willing to pay a larger premium than could ever be justified as a payment for goodwill as such. But the premium ought to be measured by the return which 40

is expected to be reaped in the future; the price paid for the opportunity of exercising his profession as a principal can easily be too high.

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

(iii) **The capital value of an annuity for an agreed number of years of an amount equal to the average "super-profits".**

For this purpose *super-profits* may be defined as the profits which can be expected in the future over and above the sum required to pay a fair return upon the capital invested, having regard to the risk involved in the particular business, and a fair remuneration for the services of the proprietors who work in the business.

*Illustration.*—The average net profits expected in the future are £20,000 per annum.

The average capital employed in the business is £100,000.

The rate of interest to be expected from capital invested in this class of business, having regard to the risk involved, &c., is 10 per cent.

Fair remuneration to the proprietors for their services in the business is £5,000 per annum.

|    |  |        |        |
|----|--|--------|--------|
|    |  | £      | £      |
| 20 | Average annual profits .. .. .                       | ..     | 20,000 |
|    | Less Interest on capital employed at 10 per cent. .. | 10,000 |        |
|    | Proprietors' remuneration .. .. .                    | 5,000  |        |
|    |  | -----  | 15,000 |
|    | Annual super-profits .. .. .                         | ..     | 5,000  |

The goodwill may now be valued either at "*x* years' purchase" of £5,000 or at the present value of an annuity of £5,000 per annum for an agreed number of years on a 10 per cent. basis.

It may be well to emphasise at this point that in calculating the super-profits the amount deducted in respect of proprietor's remuneration should be a fair commercial return for his services, i.e., such a sum as he could command if he were managing the business for others.

In determining the number of years' purchase of the super-profits on the basis of which the goodwill should be valued, it must be borne in mind that goodwill is a constantly changing, and not a static asset. As soon as a business is taken over by a new proprietor the earning power created by the vendor begins to fade, and the new owner commences to create new goodwill of his own, for which he cannot be expected to pay. Gradually the old goodwill will completely disappear and will be replaced by new goodwill created by the purchaser of the business. The price to be paid to the vendor for goodwill should therefore be based upon the value of a *reducing* annuity, which will reflect the gradual diminution in the benefit received by the purchaser from the earning power created by the vendor.



Roughly, the average due date (i.e., half) of the number of years that it would take for the vendor's influence to fade out is the maximum number to be taken in valuing the goodwill under this method. It is the impossibility of determining accurately this figure that makes this method so unreliable.

The above remarks indicate the unfairness of the suggestion that is sometimes made that the vendor should be given an annuity for life, or deferred shares, as his consideration for the goodwill. By this method he would continue to receive payment long after what he had sold had become exhausted. The matter might be adjusted by an appropriate reduction in the amount paid for goodwill; this would involve too little being paid in the early years and too much in the later years, an inequitable position when regard is had to the relative financial advantages derived from the goodwill during those periods. 10

(iv) **The business as a whole is valued on a going-concern basis and the value attributed to the net tangible assets is deducted therefrom.**

*Illustration.*—

|   |  | £      |    |
|---|--|--------|----|
| Estimated annual future net profit .. .. .                |  | 20,000 | 20 |
| Less Proprietors' remuneration .. .. .                    |  | 5,000  |    |
|   |  | 15,000 |    |
| Profit available for interest on capital employed .. .. . |  | 15,000 |    |

On a 10 per cent. basis the value of the business is £150,000. If the value of the net assets (apart from goodwill) is £100,000, the goodwill is thus worth a maximum of £50,000.

In determining the rate of interest to be expected on capital invested in a business which is subject to competition, it is advisable to have regard to the return required to keep a good ordinary share in such a business at par. If there is no such guide, a fair figure can be arrived at by ascertaining what return would have to be offered to get an issue of ordinary shares underwritten. 30

**28. Trend of Profits.**—In all cases regard must be had to the trend of past profits. It will be realized that the same average profits are shown by both of the undermentioned businesses, although it is likely that A will continue to show a decrease in profits and B an increase—

|                 |  | A      |  | B      |    |
|-----------------|--|--------|--|--------|----|
|                 |  | £      |  | £      |    |
| Year 1 .. .. .  |  | 30,000 |  | 10,000 | 40 |
| Year 2 .. .. .  |  | 20,000 |  | 20,000 |    |
| Year 3 .. .. .  |  | 10,000 |  | 30,000 |    |
|                 |  | 60,000 |  | 60,000 |    |
| Average .. .. . |  | 20,000 |  | 20,000 |    |

In such a case it might be more equitable to value the goodwill by reference to a "weighted" average, in which the greater importance of the more recent results will be reflected.

*Illustration.*—

Exhibits

P 16  
Students' Notes  
(undated)  
—contd.

|                        | A                   |    | B                   |
|------------------------|---------------------|----|---------------------|
|                        | £                   |    | £                   |
| Year 1                 | 30,000 × 1 = 30,000 | .. | 10,000 × 1 = 10,000 |
| Year 2                 | 20,000 × 2 = 40,000 | .. | 20,000 × 2 = 40,000 |
| Year 3                 | 10,000 × 3 = 30,000 | .. | 30,000 × 3 = 90,000 |
|                        | 6                   |    | 6                   |
|                        | 100,000             |    | 140,000             |
|                        | £100,000            |    | £140,000            |
| 10 Weighted average .. | 6 = £16,666         |    | 6 = £23,333         |

The above method of “ weighting ” is merely intended as an illustration of the principle, and is not necessarily the method that should be employed in every case. Other and more suitable “ weights ” may be devised for particular circumstances.

20 **Trade Cycles** must also be borne in mind when estimating the profits to be earned in the future. It may be said that every business is subject to these cycles, and that if a graph of trading profits were prepared it would be found that the periods of boom and depression occurred at fairly consistent intervals. Obviously, the stage which has been reached in the trade cycle at the date on which the business is to be acquired must be taken into account in estimating future profits, and undoubtedly regard should preferably be had to a complete cycle.

Consider the position of a business for seven years at four different stages of the trade cycle, assuming the full period of the trade cycle to be twelve years, and the profits to range from £10,000 to £22,000.

|              | A           |           | B           |            | C           |           | D           |
|--------------|-------------|-----------|-------------|------------|-------------|-----------|-------------|
|              | Profit<br>£ |           | Profit<br>£ |            | Profit<br>£ |           | Profit<br>£ |
| 30 Year 1 .. | 10,000      | Year 7 .. | 22,000      | Year 10 .. | 16,000      | Year 4 .. | 16,000      |
| 2 ..         | 12,000      | 8 ..      | 20,000      | 11 ..      | 14,000      | 5 ..      | 18,000      |
| 3 ..         | 14,000      | 9 ..      | 18,000      | 12 ..      | 12,000      | 6 ..      | 20,000      |
| 4 ..         | 16,000      | 10 ..     | 16,000      | 1 ..       | 10,000      | 7 ..      | 22,000      |
| 5 ..         | 18,000      | 11 ..     | 14,000      | 2 ..       | 12,000      | 8 ..      | 20,000      |
| 6 ..         | 20,000      | 12 ..     | 12,000      | 3 ..       | 14,000      | 9 ..      | 18,000      |
| 7 ..         | 22,000      | 1 ..      | 10,000      | 4 ..       | 16,000      | 10 ..     | 16,000      |
|              | 112,000     |           | 112,000     |            | 94,000      |           | £130,000    |
| Average      | 16,000      |           | 16,000      |            | 13,429      |           | £18,571     |

40 It is apparent from the above that an average based on a past period of less than a complete cycle (or not equal to one-half of the cycle in the example given) will vary according to the exact position in the cycle at the date of the calculation. Thus if the business were purchased at stage C, a much smaller figure for goodwill would be paid than at stage A, if the same number of years' purchase of the average profits were taken; but the *same business* is being acquired in both cases. Similarly, an excessive figure would be paid if the purchase were made on the same basis at stage D, as this position is not affected by the lean years of the cycle.

Exhibits

P 16  
Students' Notes  
(undated)  
—contd.

29. **Illustration of Scheme for Amalgamation.**—The following are the respective Balance Sheets at 31st July of A Ltd. and B. Ltd:—

| A LTD.                                |         | ASSETS                                  |         |
|---------------------------------------|---------|---|---------|
| CAPITAL AND LIABILITIES               |         | ASSETS                                  |         |
| £                                     |         | £                                       |         |
| Authorized and Issued Share Capital : |         | Freehold Property, <i>at cost</i> ..    | 250,000 |
| 250,000 Ordinary Shares of £1 each    |         | Plant and Machinery <i>at cost less</i> |         |
| fully paid .. .. .                    | 250,000 | <i>depreciation</i> .. .. .             | 60,000  |
| 5 per cent. Mortgage Debentures ..    | 180,000 | Stock .. .. .                           | 90,000  |
| Sundry Creditors :                    | £       | Sundry Debtors .. .. .                  | 80,000  |
| Trade .. .. .                         | 25,000  | Investment in Government Securities     | 30,000  |
| Expenses .. .. .                      | 1,000   | Cash at Bank .. .. .                    | 10,000  |
| Income Tax .. .. .                    | 4,000   |   |         |
|                                       | 30,000  |   |         |
| Profit and Loss Account .. .. .       | 60,000  |   |         |
|                                       | 520,000 |   | 520,000 |

| B LTD.                                |         | ASSETS                                    |         |
|---------------------------------------|---------|---|---------|
| CAPITAL AND LIABILITIES               |         | ASSETS                                    |         |
| £                                     |         | £   |         |
| Authorized and Issued Share Capital : |         | Goodwill, <i>at cost</i> .. .. .          | 30,000  |
| 150,000 8% Preference Shares of £1    |         | Freehold Property, <i>at cost</i> .. .. . | 150,000 |
| each fully paid .. .. .               | 150,000 | Plant and Machinery, <i>at cost less</i>  |         |
| 200,000 Ordinary Shares of £1 each    |         | <i>depreciation</i> .. .. .               | 60,000  |
| fully paid .. .. .                    | 200,000 | Stock .. .. .                             | 120,000 |
|                                       | 350,000 | Lundry Debtors .. .. .                    | 60,000  |
| Sundry Creditors :                    | £       | Cash at Bank .. .. .                      | 30,000  |
| Trade .. .. .                         | 26,500  |   |         |
| Expenses .. .. .                      | 500     |   |         |
| Income Tax .. .. .                    | 3,000   |   |         |
|                                       | 30,000  |   |         |
| Profit and Loss Account .. .. .       | 70,000  |   |         |
|                                       | 450,000 |   | 450,000 |

Other relevant particulars are as follows:—

A Ltd.—

(i) Dividends paid for two preceding years, 10 per cent. and 12 per cent. less tax, respectively. For the year just ended it proposed to pay a dividend of 12 per cent. less tax.

(ii) The Government securities have been held for some years and yield 4 per cent. on their book value. 40

(iii) An independent valuation of the property and plant discloses the following values:—

|                  |         | £       |         |
|------------------|---------|---------|---------|
| Property .. .. . | .. .. . | .. .. . | 275,000 |
| Plant .. .. .    | .. .. . | .. .. . | 75,000  |

(iv) Adjusted profits after restating depreciation on plant and providing for directors' fees, and before charging interest on debentures, for the three years to 31st July, have been £42,000, £45,000 and £48,000. 50

B Ltd.—

(i) A dividend of 12 per cent. less tax has been paid on the ordinary shares for each of the two preceding years. A similar dividend is proposed for the year just ended. The preference dividend for the year has not yet been paid.

(ii) An independent valuation of the property and plant discloses the following values:—

|          |    |    |    |    | £       |
|----------|----|----|----|----|---------|
| Property | :: | :: | :: | :: | 180,000 |
| Plant    | :: | :: | :: | :: | 60,000  |

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

10 (iii) Depreciation was re-calculated on the same basis as that of A Ltd. and after making provision for depreciation and directors' fees, but before allowing for dividends on the preference shares, the adjusted profits for the three years to 31st July, were £40,000, £37,000 and £34,000.

You are required to suggest a scheme for amalgamating the two companies in the manner you think best.

Income tax may be assumed to be 9s. in the £.

*Solution.*—For the purpose of evolving a scheme of amalgamation of the two companies it will be necessary to take into account the revised values placed upon the assets on revaluation, and to compute the values of the goodwills of the two businesses.

#### VALUATION OF GOODWILL

20 In view of the fact that the profits of A Ltd. show an increasing trend, and those of B Ltd. a decreasing one, it is considered that the goodwill should be valued by reference to a "weighted" average of the profits of the past three years, in order that greater weight may be given, in arriving at the super-profits, to the more recent results.

|    | <i>Profits of A Ltd.</i> |   |   | <i>Profits of B Ltd.</i> |   |           |
|----|--------------------------|---|---|--------------------------|---|-----------|
|    | £                        | × | = | £                        | × | =         |
|    | 42,000                   |   |   | 40,000                   |   | 40,000    |
|    | 45,000                   |   |   | 37,000                   |   | 74,000    |
|    | 48,000                   |   |   | 34,000                   |   | 102,000   |
|    |                          |   |   | 6)276,000                |   | 6)216,000 |
| 30 | Average                  |   |   | 46,000                   |   | 36,000    |

Assuming that in both businesses 8 per cent. would be a fair return upon the capital employed, and that it is agreed to value the goodwills at 7 years' purchase of the super-profits, the valuation will be as follows:—

|   | <i>A Ltd.</i> |   | <i>B Ltd.</i> |   |
|---|---------------|---|---------------|---|
|   | £             | £ | £             | £ |
| Total Assets as per Balance Sheet (excluding Goodwill and Investments) .. | 490,000       |   | 420,000       |   |
| Add Increase on revaluation of assets—                                    | £             | £ | £             | £ |
| 40 . Property ..  | 25,000        |   | 30,000        |   |
| Plant ..  | 15,000        |   | —             |   |
|   | 40,000        |   | 30,000        |   |
|   | 530,000       |   | 450,000       |   |
| Less Creditors ..   | 30,000        |   | 30,000        |   |
| Proposed dividends (less tax) ..  | 16,500        |   | 19,800        |   |
|   | 46,500        |   | 49,800        |   |
| Net capital employed in trading operations ..                             | 483,500       |   | 400,200       |   |

| Exhibits        |  | <i>A Ltd.</i> | <i>B Ltd.</i> |
|-----------------|--|---------------|---------------|
|                 |  | £             | £             |
| P 16            | Net average profits .. .. .                            | 46,000        | 36,000        |
| Students' Notes | Less: Income from investments .. .. .                  | 1,200         | —             |
| (undated)       |  | <hr/>         | <hr/>         |
| —contd.         | Net trading profits .. .. .                            | 44,800        | 36,000        |
|                 | Less 8 per cent. on capital employed, as above .. .. . | 38,680        | 32,016        |
|                 |  | <hr/>         | <hr/>         |
|                 | Annual super-profits .. .. .                           | 6,120         | 3,984         |
|                 |  | <hr/>         | <hr/>         |
|                 | VALUE OF GOODWILL AT 7 YEARS' PURCHASE .. .. .         | 42,840        | 27,888        |

THE TOTAL VALUES OF THE TWO UNDERTAKINGS for the purposes of the amalgamation can now be computed as follows:—

|  | <i>A Ltd.</i> | <i>B Ltd.</i> |
|--|---------------|---------------|
|  | £             | £             |
| Net capital employed, as above .. .. . | 483,500       | 400,200       |
| Add Goodwill .. .. .                   | 42,840        | 27,888        |
| Investments .. .. .                    | 30,000        | —             |
|  | <hr/>         | <hr/>         |
|  | 556,340       | 428,088       |
|  | <hr/>         | <hr/>         |
|  | (say) 555,000 | (say) 425,000 |

These values are apportionable between the various interests in the companies according to the values of their respective holdings.

In the case of A Ltd. the above figure of £555,000 represents the value of 250,000 ordinary shares and £180,000 5 per cent. debentures. Assuming debentures carrying this rate of interest to be worth par, the value of the 250,000 ordinary shares may be taken as £555,000 less £180,000 = £375,000, or £1 10s. 0d. per share.

The share capital of B Ltd. consists of 150,000 8 per cent. preference shares and 200,000 ordinary shares. Assuming 6 per cent. to be a fair market yield on preference capital in this type of company the preference shares may be considered to be worth £150,000  $\times \frac{8}{6} = £200,000$  or £1. 6s. 8d. per share. The value of the ordinary capital will thus be £425,000 less £200,000 = £225,000, or £1. 2s. 6d. per share.

#### SCHEME FOR AMALGAMATION

Having valued the undertakings it must now be decided what is the most suitable scheme for merging their interests.

The merger may take one of the following forms:—

- (a) The absorption of one of the companies by the other;
- (b) The purchase of the two undertakings by a newly-formed company; or
- (c) A holding company scheme.

(a) If this method is decided upon it is suggested that A Ltd. should purchase the undertaking of B Ltd., the purchase consideration being the assumption of the liabilities, the allotment to the preference shareholders of 200,000 6 per cent. preference shares in A Ltd. (in the proportion of 4 new shares for every 3 old shares held), and the issue to the ordinary shareholders of 3 shares in A Ltd. for every 4 held in B Ltd., i.e., in proportion to the relative values

of the ordinary shares (A Ltd. 30s., and B Ltd. 22s. 6d.). This scheme would entail an increase of £350,000 in the authorized capital of A Ltd., and relief from stamp duty, under Section 55, *Finance Act, 1927*, would be obtained on the full amount thereof, as this does not exceed the authorized capital of B Ltd.

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

(b) If a new company is formed it should be registered with an authorized capital of £600,000, which is equal to the combined authorized capitals of the two companies, so that no additional stamp duty will be payable.

10 The new company should purchase the assets of both companies in consideration of—

(1) The assumption of the liabilities;

(2) The issue to the debenture holders of A Ltd. of £180,000 5 per cent. Mortgage Debentures;

(3) The allotment to the preference shareholders of B Ltd. of 200,000 6 per cent. preference shares in the new company at par being 4 new shares for every 3 old.

20 (From the point of view of the ordinary shareholders it would, of course, be preferable to pay off the preference capital at par, and issue the same number of new preference shares at 6 per cent., but in view of the volume of the preference capital it is doubtful if the necessary resolution for winding-up could be carried without their votes, which would not be given in favour of the scheme if it did not meet with their approval.)

(4) The allotment to the ordinary shareholders of 400,000 ordinary shares in the new company, at a premium of 10s. 0d. per share allocated in the following proportions:—

30 To the shareholders of A Ltd.  $\frac{375,000}{400,000}$  of 400,000 = 250,000 shares, or 1 new share for every 1 share now held;

To the shareholders of B Ltd.  $\frac{225,000}{600,000}$  of 400,000 = 150,000 shares, or 3 new shares for every 4 now held.

40 By issuing the shares at a premium the ordinary shareholders of each company will receive their proper proportion of the total ordinary capital of the new company, and the equivalent of the value of their present holdings, without the necessity of increasing the capital above the combined capitals of the two companies.

(c) If a holding company scheme is preferred, a new company, with an authorized capital of £400,000 in £1 ordinary shares should be registered, for the purpose of acquiring the whole of the ordinary capitals of A Ltd. and B Ltd. The consideration should be £375,000 for the ordinary shares in A Ltd. and £225,000 for those of B Ltd., and the shares of the holding company should be issued at a premium of 10s. 0d. per share, and in the same proportions as in (b) *supra*.

The debentures and preference shares need not be acquired.

In view of the fact that the adoption of either scheme (a) or (b) would have the effect of enlarging the security of the debenture holders of A Ltd. and of the preference shareholders of B Ltd. it would seem that the holding company scheme would be preferable from the point of view of the ordinary shareholders of both companies.

From the taxation viewpoint there would be little to choose between schemes (b) and (c), since in (b) the increase in the assessments on the profits of A Ltd. would be offset by the reduction in the assessments on those of B Ltd., whilst in (c) the taxation liability would not be affected at all. If scheme (a) is adopted, however, there will be a slight saving of tax by reason of the fact that on the winding up of B Ltd. that company will be assessed as having discontinued its business, which would result in a reduction in its current assessment. 10

#### REDUCTION OF CAPITAL

30. Under Section 55, *Companies Act, 1929*, a company may reduce its capital—

- (a) If authorized to do so by its Articles; and
- (b) By passing a Special Resolution; and
- (c) Obtaining the confirmation of the Court. 20

Subject to the above conditions being complied with, the capital of a company may be reduced *in any way*, and, in particular—

- (i) By extinguishing or reducing the unpaid liability on any of its shares (e.g., shares of £1 each on which only 10s. has been paid up, may be reduced to shares of 10s. each, fully paid, or 15s. each, 10s. paid);
- (ii) By cancelling or reducing capital which has been lost or is unrepresented by available assets; or
- (iii) By repaying to shareholders any paid-up capital which is in excess of the company's requirements. 30

Where the proposed reduction of capital involves either diminution of liability in respect of unpaid share capital (as in (i) *supra*) or repayment to shareholders of any paid-up capital (as in (iii) *supra*) and in any other case if the Court so directs, any creditor of the company is entitled to object to the reduction, and the Court may refuse to sanction the reduction unless such creditor is first paid off or secured.

The object of the above provisions is to protect the creditors, since the repayment of paid-up share capital or the cancellation of the liability of shareholders in respect of unpaid capital would obviously reduce the fund to which creditors would be entitled to look for satisfaction of their claims. Where, however, the liability on the shares has been fully paid up and the proposals do not involve any diminution in the liability of, or repayment of capital to, the shareholders, the creditors would usually not be affected by the proposed reduction of capital. 40

After the scheme has been sanctioned by the Court, a copy of the order, with a minute approved by the Court, must be filed with the Registrar of Companies, and notice of the registration must be published in such manner as the Court may direct. The register of members and the share certificates must be amended, and if the company's shares are quoted on the Stock Exchange notice of the reduction should be sent at once to the Share and Loan Department of the Stock Exchange.

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

### RECONSTRUCTIONS AND REORGANIZATIONS

10 31. The term "Reconstruction" usually connotes the winding up of an existing company and the sale of the undertaking to a new company in consideration of shares or other interests in the new company. The members of the old company will thus receive shares or other interests in the new company in exchange for their existing holdings.

20 Care should be taken to distinguish between an internal reorganization (e.g., a Reduction of Capital) and one which involves the sale of the undertaking to another company. The formation of a new company to take over a company's undertaking is resorted to where the law will not allow the required changes to be effected internally. It is often convenient, however, to adopt this method, even where the change could be effected in other ways, e.g., where the procedure by way of internal reconstruction would involve applications to the Court and the consequent delays and formalities.

30 One of the commonest reasons for a reconstruction is the need for further working capital, and the practicability and desirability of the alternative methods of providing this must be thoroughly explored before a decision can be arrived at; e.g., whether the additional capital shall be obtained by an issue of further shares, creation of bonds, borrowing on loan, borrowing from bankers, obtaining longer credit from suppliers, shortening credit terms for debtors, &c. Normally shares or long-term debentures would not be issued, unless the additional capital were required more or less permanently, and were capable of being utilized profitably so as not to reduce the profit available for the ordinary shareholders.

Reconstruction occasionally becomes necessary owing to the company's assets being in excess of requirements. The requisite adjustment cannot always be carried out by returning capital to the members, and it may be necessary to adopt other means.

40 Again, reconstruction is sometimes resorted to for domestic reasons, e.g., it may, in some cases, be desirable to decentralize the management of the business by converting departments or branches into separate companies; or sometimes to effect a saving in taxation.

32. **Rights of Dissentients.**—By Section 234, *Companies Act, 1929*, when a company is proposed to be, or is in the course of being, wound up *voluntarily* the liquidator may, with the consent of a



*special resolution*, sell the whole or part of the undertaking for shares, &c., in another company. Any member who did not vote in favour of the resolution may express his dissent to the liquidator—

- (a) in writing, addressed to him at the company's registered office;
- (b) within 7 days of the passing of the special resolution;
- (c) calling upon him either to abstain from carrying into effect the resolution; or alternatively to purchase his interest at a price determined by agreement or by arbitration.

(As compared with this, note that in a Reduction of Capital under Section 55 of the Act, *all shareholders*, whether they voted for the resolution or not, are *bound* by the scheme when once it has been sanctioned by the Court.) 10

Where the liquidator agrees to purchase the interests of the dissentient members he will raise the money in such manner as is determined by special resolution and must pay over the money before the company is dissolved.

**33. Compromise or Arrangement.**—It is also provided by Section 154, *Companies Act, 1929*, that where an application has been made to the Court under Section 153 for the sanctioning of a compromise or arrangement between a company and its creditors or members, and the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for reconstruction or amalgamation, and that under the scheme any property of a company concerned in the scheme is to be transferred to another company, the Court may direct what provision shall be made for any persons who within such time and in such manner as the Court directs, dissent from the compromise or arrangement. 20

**34. Scheme for Reconstruction or Reduction of Capital.**—The main points to consider in devising a scheme for Reconstruction or Reduction of Capital are as follows:— 30

(1) *The cause and object of the reduction of capital.*—The necessity for a reduction may be brought about by heavy trading losses, and the desirability of eliminating from the Balance Sheet a large debit balance on Profit and Loss Account, so that the company may be enabled to resume the payment of dividends out of current earnings. Or it may have become necessary to write down fixed assets to a figure bearing a closer relation to their present earning capacity, and so to avoid an excessive annual charge for depreciation, which would restrict, or altogether preclude, the payment of dividends. 40

(2) *The rights of the various classes of shareholders under the Articles of Association*, as to dividend; voting power, and the repayment of capital on a liquidation.

(3) *Where the assets are sufficient to provide for the repayment of the preference share capital in full, and (as is almost invariably the case) the latter is preferential as to return of capital, it would appear, at first sight, that the whole of the loss should fall upon the ordinary shareholders. It must be borne in mind, however, that the effective control of the company is usually vested in the holders of the ordinary shares by virtue of their superior voting rights, and that no dividend on the preference shares can be paid unless it is declared by the company in general meeting. Consequently the ordinary shareholders could normally insist, if no reduction of capital is carried out, that the debit balance on Profit and Loss Account be made good out of future profits (which is tantamount to the replacement of the ordinary capital out of such profits) before any profits become available for dividend. The preference shareholders, therefore, will probably be ready to accept some sacrifice in return for the prospect of immediate dividends, particularly as the resumption of dividends will bring about an increase in the market value of their shares, irrespective of what their nominal value may be.*

20 (4) *Whether the members are to be asked to provide additional capital.*—Where it is desired to reduce fully-paid shares to partly-paid shares and then to make calls upon the members to provide further capital, a reduction of capital under section 55 would not be appropriate, as no member can be bound without his consent in writing by any alteration in the memorandum or articles which in any way increases his liability to contribute share capital, or otherwise to pay money to the company (Section 22). In such a case the only course would be to transfer the assets to a newly-formed company in exchange for partly-paid shares, which would be distributed among the shareholders of the transferor company in exchange for their existing holdings. Any shareholder who dissented from the scheme could then require to be paid out (under Section 234 or 154) which would not be possible under Section 55.

40 (5) *If the loss to be written off exceeds the ordinary capital, prima facie the ordinary shareholders will have lost the whole of their capital. Nevertheless, they should not, for this reason alone, be deprived entirely of their equity in the business, and since the only alternative to a reduction of capital acceptable by all parties will be immediate liquidation, accompanied probably by heavy losses on the forced realization of the assets, which losses, in the circumstances, will fall entirely upon the preference shareholders, the case for their submission to a reduction of capital becomes stronger.*

In the circumstances outlined above, however, the bulk of the loss should be written off against the ordinary capital before anything is written off the preference shares, even though this may necessitate the writing down of the ordinary shares to a very low nominal value (say 6d. or 1s.). It must be borne in mind that the *true* value of

the shares depends primarily upon the income which they are capable of earning, and so long as the ordinary shares carry the right to the whole of the surplus profits after the preference shareholders have received their fixed dividend, the *real* value of the ordinary shares will not be reduced, no matter by how much the nominal value is written down.

In the case of preference shares, however, the position is different. Since these shares carry a fixed rate of dividend computed upon their *nominal* value, any reduction in such nominal value will automatically reduce the yield upon the shares and will, in effect, impose upon the preference shareholders a double sacrifice, viz., a reduction both of nominal capital and income. For example, if 100,000 7 per cent. preference shares of £1 each are reduced to 100,000 7 per cent. preference shares of 10s. each, not only is the capital reduced to £50,000 but the income on the shares is reduced from £7,000 to £3,500. Such a reduction in the amount required to pay the fixed preference dividend would have the effect of leaving a larger share of profit available for dividends on the ordinary shares, so that in spite of the fact that the nominal value of the ordinary share capital may have been almost entirely extinguished the ordinary shareholders will, from the point of view of income, be better off than before, and their shares may even *increase* in value. 10

It is therefore apparent that where the nominal value of the preference shares is reduced the preference shareholders should be compensated for the diminution of income entailed in such reduction either by (1) an increase in their *rate* of fixed dividend; or (2) some further participation in profits after a specified rate of dividend has been paid on the ordinary shares; or (3) the conversion of the whole or a proportion of the preference capital into ordinary shares carrying the same rights, both as to voting and dividend, as the remaining ordinary shares. 20 30

In some cases the ordinary shares may be subdivided into shares of a smaller denomination and a proportion of such shares surrendered to the preference shareholders.

In any case the scheme should be such that although, owing to the diminution in earnings, the *fixed* return on the preference shares may have to be reduced, the rights accorded to the preference shareholders must afford a *possibility*, should the profits be sufficient of their receiving an amount at least equal to that which would have been payable on their original holding. 40

(6) *Where the preference dividend is in arrear*, and the shares are cumulative, the preference shareholders should not be asked to surrender their right to such arrears without some compensation. Normally they should receive, as consideration for the cancellation of arrears of dividend, some form of investment which will yield them at least a nominal rate of interest on the amount of the arrears cancelled.

(7) As a point of practice, it is desirable that the company should, in addition to the special resolution reducing its capital, pass a further resolution to the effect that, in the event of the reduction becoming effective, the reduced share capital be increased by the creation of new shares of a nominal value equivalent to the amount of the reduction. In such a case, the Registrar of Companies does not require payment of capital duty and registration fees on the new shares, which are available for issue as and when required. It is necessary, however, that the further resolution should be contingent upon the reduction being confirmed by the Court, as otherwise exemption from the duty and fees cannot be obtained.

Exhibits

P 16  
Students' Notes  
(undated)  
—contd.

**Illustration of Scheme for Reconstruction.**—The condensed Balance Sheet of a manufacturing business as on 31st December is as follows :—

|                                   | £       |                                   | £       |
|-----------------------------------|---------|-----------------------------------|---------|
| Capital authorized and issued—    |         | Goodwill .. ..                    | 20,000  |
| 50,000 7 per cent. Cumulative     |         | Net Assets .. ..                  | 80,000  |
| Preference Shares of £1 each      | 50,000  | Profit and Loss Account (balance) | 25,000  |
| 75,000 Ordinary Shares of £1 each | 75,000  |                                   |         |
|                                   | 125,000 |                                   | 125,000 |

20

Each preference and ordinary share carries one vote and, on a winding up, the preference shares carry the right to a preferential return of capital, together with all dividend arrears (whether declared or not), but with no right of sharing in any surplus.

The business has passed through a period of bad trade and the preference dividend is five years in arrear, but it is anticipated that, in future, profits will amount to about £6,000 per annum.

The net assets, appearing in the Balance Sheet of 31st December at £80,000, are considered to be worth £71,500, but, in view of the recent history of the company, the goodwill is considered to be valueless at this date, although the making of profits in the future might re-create goodwill.

30

Do you consider that this is a case where some reorganization of capital is desirable? If so, give your reasons and redraft the Balance Sheet as it would appear when effect has been given to your recommendations and explain carefully your reasons for any recapitalization suggested and its effect upon the two classes of shareholders

*Solution.*—

40 *It is considered that reorganization of capital is desirable for the following reasons:—*

(1) Of the total capital of £125,000 contributed by the members only £71,500 is represented by available assets. Of the balance of

Exhibits  
 P 16  
 Students' Notes  
 (undated)  
 ---contd.

£53,500, £20,000 is represented by goodwill, which, in the company's present circumstances, must be regarded as of very little, if any, value, and the remainder has been lost.

(2) Although it is anticipated that the future profits of the company will be in the neighbourhood of £6,000 per annum, it would be imprudent to pay any dividends thereout until the existing debit balance on Profit and Loss Account has been extinguished.

(3) Preference dividends are in arrear to the extent of £17,500, which must first be paid out of available profits, in addition to current preference dividends, unless some reorganization, involving variation of the rights of the preference shareholders, is carried out. 10

(4) The rate of dividend at present payable on the preference shares absorbs £3,500 per annum which, in view of the reduced earning power of the company, represents an unduly high prior charge on the profits.

*The following scheme of reorganization of capital is recommended :—*

(a) The 57,000 ordinary shares of £1 each to be reduced to 75,000 shares of 6s. each, and the sum thus rendered available applied in writing off the following losses:— 20

|                                 | £                  |
|---------------------------------|--------------------|
| Goodwill .. .. .                | 19,000             |
| Net Assets .. .. .              | 8,500              |
| Profit and Loss Account .. .. . | 25,000             |
|                                 | <hr/> 52,500 <hr/> |

(b) The fixed rate of cumulative preference dividend to be reduced to 6 per cent., and the existing arrears of preference dividend to be cancelled.

(c) The 75,000 ordinary shares of 6s. each to be subdivided into 450,000 ordinary shares of 1s. each. 150,000 of these shares to be transferred to the existing preference shareholders in the proportion of 3 ordinary shares for every 1 preference share held, as compensation for the reduction of the cumulative preference dividend to 6 per cent., and the cancellation of the existing arrears. The remaining 300,000 new ordinary shares to be issued to the existing ordinary shareholders in the proportions of 4 for every £1 share now held. 30

(d) The authorized capital to be increased to £125,000, consisting of 50,000 6 per cent. cumulative preference shares of £1 each and 1,500,000 ordinary shares of 1s. each. 40

(e) Each preference and ordinary share to continue to carry one vote, and the rights of the preference shareholders on a winding-up to remain unchanged.

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

After effect has been given to the above recommendations the Balance Sheet will appear as follows:—

|   | £       |                  | £      |
|---|---------|------------------|--------|
| Capital—  |         | Goodwill .. ..   | 1,000  |
| Authorized :  |         | Net Assets .. .. | 71,500 |
| 50,000 6 per cent. Cum. Preference<br>Shares of £1 each .. ..             | 50,000  |                  |        |
| 1,500,000 Ordinary Shares of 1s.<br>each .. ..                            | 75,000  |                  |        |
|   | 125,000 |                  |        |
| Issued—   |         |                  |        |
| 50,000 6 per cent. Cum. Preference<br>Shares of £1 each, fully paid .. .. | 50,000  |                  |        |
| 450,000 Ordinary Shares of 1s.<br>each, fully paid .. ..                  | 22,500  |                  |        |
|   | 72,500  |                  | 72,500 |

20 The reasons for the suggested recapitalization are as follows:—

(1) Since the preference shareholders are entitled under the articles to priority as to repayment of capital and to arrears of dividend on a winding-up, the losses sustained must be regarded as being wholly of capital contributed by the ordinary members.

(2) As the company's earning power has diminished it is desirable that a reduction be made in the fixed rate of preference dividend, in order to bring it more into line with the current market-yield on similar shares, and to reduce the prior charge on profits.

30 (3) It is necessary to cancel the existing arrears of preference dividend to enable the payment of current dividends to be resumed without delay and thus to establish a reasonable market for the shares.

(4) To compensate the preference shareholders for the curtailment of their rights as above mentioned, they have been given a share in the equity, combined with a participation in the control of the company more commensurate with the proportion of the company's remaining capital which has been contributed by them.

40 (5) The goodwill has been retained in the books at the nominal figure of £1,000 in view of the fact that the resumption of earning power will, to some extent, re-create its value. If desired, however, the £1,000 may be written off out of profits over a short period of years.

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

(6) The effect of the proposed scheme of recapitalization upon the shareholders, assuming an average profit of £6,000 per annum of which, say, £750 is carried forward, will be as follows:—

The existing shareholders will receive—

|  | <i>Preference Shareholders</i> |   | <i>Ordinary Shareholders</i> |
|--|--------------------------------|---|------------------------------|
|  | £                              |   | £                            |
| 6 per cent. on £50,000 Preference Shares .. .. | 3,000                          | 10 per cent. on £15,000 Ordinary Shares .. .. | 1,500                        |
| 10 per cent. on £7,500 Ordinary Shares .. ..   | 750                            |   | 10                           |
|  | 3,750                          |   |                              |

The total amount receivable by the existing preference shareholders compares with £3,500 receivable under the old capitalization. The additional participation of £250 represents just under 1½ per cent. on the £17,500 arrears of preference dividend agreed to be cancelled. The ordinary shareholders will be receiving 2 per cent. on their original capital.

#### THE CAPITALIZATION OF A LIMITED COMPANY

35. The capital required by a limited company may be raised by means of— 20

- (1) Ordinary Shares.
- (2) Preference Shares.
- (3) Debentures.
- (4) Loans or Mortgages.

The effective use of capital may also be obtained by overdrafts from the bank and credit allowed by creditors, but as these methods are essentially short-term in character, they are ignored in this paper, wherein it is proposed to examine the forms in which capital of a more or less permanent nature may be obtained. 30

The method of capitalization to be adopted in any particular case must be determined after full consideration of the special requirements and circumstances of the case. Sometimes it may be intended that the whole of the capital shall be held only by the members of a family or a small circle of friends, in which case the company would probably be registered as a private one, and the types of capital and the rights attaching thereto may be agreed upon between the prospective members.

In other cases it may be desired to obtain the use of additional capital by inviting the public to subscribe thereto. In these circumstances careful consideration must be given to— 40

- (a) The past record of the business and the reputation of the promoters;

- (b) the state of the investment market, the prevailing yield on various classes of investment, and the current demand for and supply of capital;
- (c) having regard to (a) and (b), the type of offer which is most likely to meet with a successful response from the public.

Exhibits  
 P 16  
 Students' Notes  
 (undated)  
 —contd.

36. **Ordinary Shares.**—The issue of ordinary shares *only* has the advantage of simplicity; each shareholder undertaking an equal measure of risk and enjoying an equal amount of benefit per share.

10 Where two or more classes of shares are issued, the ordinary shares normally carry the largest degree of risk and possess the greatest potentialities both as to dividend and appreciation of capital. Moreover, in many cases, the control of the company is vested in the holders of the ordinary shares by means of the voting power attached to them, since preference shares frequently carry no votes unless their dividends are in arrear.

Where a company is formed to acquire a successful business, the vendors of the business or promoters of the company usually desire to retain for themselves the largest interest in the profits and the control of the company, and at the same time obtain for the company the use of capital subscribed by the public. These objects may be achieved by the issue of ordinary shares to the vendors in part or full payment of the purchase consideration, and the offer of preference shares or debentures for subscription by the public. If the business is one which commands the confidence of the public, the preference shares or debentures will form an attractive investment by reason of the priorities attaching to them.

20

Assume that the capital required by company is £100,000 of which amount £80,000 must be raised by a public issue, and that an average profit of £10,000 per annum is anticipated. If the whole of the capital (including that allotted to the public) were issued in the form of ordinary shares, the promoters would enjoy no greater benefit per share than other members, whilst such other members, or a group of them, might by virtue of their weight of voting power, be in a position to wrest the control of the company from the promoters. If, however, ordinary shares for £20,000 were allotted to the promoters, and the £80,000 required from the public were issued in the form of preference shares, carrying a fixed cumulative dividend of, say, 6 per cent., although this would probably be sufficiently attractive to ensure a satisfactory response from the public, only £4,800 per annum would be required to pay the preference dividend leaving £5,200 available for the promoters, representing 26 per cent. on their capital. At the same time the full control of the company's affairs would remain in their hands if the preference shares carried no voting power except when their dividends were in arrear. If, instead of preference shares, debentures

30

40



tures were issued, even a lower rate of interest might be offered with every prospect of success, but the debentures would probably have to be secured by some charge on the assets of the company, and this might, to some extent, restrict its activities.

The articles of the company may further provide that any surplus of assets, after repayment of the share capital in full, shall, on a winding-up, belong wholly to the ordinary shareholders, whose shares may thus have a very considerable actual and potential value.

37. Ordinary shares may, in turn, be divided into *Preferred and Deferred Ordinary Shares*. In such a case the rights of the preferred ordinary shares would be limited by the articles, the deferred ordinary shares ranking after them and being entitled to the residue of the profits after all prior interests have been satisfied. They may also be entitled, subject to the articles, to the whole of any surplus assets remaining on a winding up. 10

38. **Deferred, Management, or Founders' Shares** are sometimes allotted to the vendors or promoters, although the public may be allowed to subscribe for a proportion of them as an added inducement to subscribe for other classes of shares.

Deferred shares, in some cases, are issued to the vendors of the business in payment for the goodwill, and this may be an equitable method of paying for that asset, since the deferred shares will only be entitled to participate in the profits remaining after the other proprietors have received a sufficient return upon their capital. 20

39. It should be pointed out that where an issue of preference shares is made on terms analogous to those described above, whereby the preference shareholders enjoy no interest in the super-profits beyond their fixed dividend, the goodwill of the business is automatically vested in the ordinary or deferred shareholders, who are entitled to the whole of the super-profits after the payment of the preference dividend. Where, therefore, on the acquisition of an existing business by a company in consideration partly of cash and partly of shares, the whole, or practically the whole of the ordinary shares are allotted to the vendors of the business, only preference shares being offered for subscription to the public, the purchase consideration should include nothing for goodwill, as this asset is virtually retained by the vendors in the ordinary shares allotted to them, and they should not be paid, out of cash contributed by the public, for something which they are not selling. If, however, ordinary shares are offered for subscription to the public, there would usually be nothing inequitable in the inclusion in the purchase consideration of a reasonable sum for the goodwill which the vendors *are* selling. 30 40

*Illustration.*—In the prospectus of a company on an issue of preference shares the values of the assets to be acquired are shown as—

|                             | £      |
|-----------------------------|--------|
| Net tangible assets .. .. . | 60,000 |
| Goodwill .. .. .            | 25,000 |
|                             | 85,000 |

The price is to be satisfied as follows :—

|    |  |        |
|----|--|--------|
| 10 | Cash .. .. .   | 30,000 |
|    | All the Deferred Shares, viz., 100,000 of 1s. each .. .. . | 5,000  |
|    | 5 per cent. Mortgage Debentures .. .. .                    | 50,000 |
|    |  | 85,000 |

Exhibits  
P 16  
Students' Notes  
(undated)  
—contd.

The deferred shareholders are entitled to the balance of the profits after 6 per cent. has been paid to the preference shareholders, who are not entitled to vote at meetings unless their dividends are in arrear.

The above prospectus may be criticized on the following grounds :—

(1) The vendors are taking a charge over the assets they are purporting to sell, and would have the right, should the interest on the debentures fall into arrear, to appoint a receiver over the assets, including those represented by the preference capital.

(2) A considerable proportion of the cash subscribed by the preference shareholders is to be paid to the vendors as part of the consideration, so that although the preference shareholders are contributing a large proportion of the capital they will have no control over it. Moreover, the payment of the preference dividend is deferred to the payment to the vendors of interest on the debentures, for which they do *not* contribute cash.

(3) The vendors retain the benefit of the goodwill by reason of the fact that the whole of the deferred shares, which carry the right to the super-profits, are to be issued to them; in spite of this, they are to be paid in cash and debentures for 80 per cent. of the goodwill.

The above objections may be overcome if the deferred shares are equitably apportioned between the vendors and subscribers, and the latter obtain a reasonable proportion of the voting power.

The issue of deferred shares of a small nominal value in payment for goodwill can be utilized to avoid the heavy capitalization of this asset, and so to effect a saving in stamp duties on the formation of the company.

40 40. **Preference Shares.**—As explained above, by issuing preference shares in addition to ordinary shares, capital is raised at a fixed rate of interest, thus allowing all surplus profit to go to the ordinary shareholders. In other words, use of additional money is obtained without the necessity of extending to the subscribers the right to participate in the future prosperity of the company.

Exhibits

P 16

Students' Notes

(undated)

—contd.

An additional advantage may be obtained, if desired, by issuing to the vendors both ordinary and preference shares in satisfaction of the purchase price of the business acquired. By so doing the vendors are placed in possession of shares (the preference shares) which they can, if they so desire, realize for cash, without disturbing their control of the company. The same result would, however, be attained by paying part of the purchase consideration in cash, leaving the vendors to subscribe in cash for some of the preference shares should they so desire.

In some cases, in order to make the shares more attractive to the public, *Participating Preference Shares* are issued which carry, in addition to a fixed rate of dividend, the right to some further participation in profits, after a specified rate of dividend has been paid upon the ordinary shares. The right to participate in surplus profits may be limited to a certain percentage, or it may be unlimited. 10

Where, owing to increasing prosperity, a company accumulates surplus funds, considerable advantage would be conferred upon the ordinary shareholders by the repayment to the preference shareholders of the capital subscribed by them. This could not normally be done, however, except by way of a proper reduction of capital duly sanctioned by the Court. If, however, under powers in the articles, *Redeemable Preference Shares* are issued, the company obtains the right to repay the preference share capital on, before, or after an agreed date, or at the option of the company, according to the terms of the issue. The temporary nature of such shares may, therefore, be of considerable value. 20

In passing, the student is reminded that the precise rights attaching to preference shares must be defined in the memorandum or articles of the company, or in the prospectus of the issue.

In particular, it should be remembered that in the absence of express provisions in the articles, preference shares are— 30

- (a) Cumulative as to fixed dividend.
- (b) Not preferential as to repayment of capital in the event of winding-up of the company.
- (c) Entitled to participate *pari passu* with other classes of shares in any surplus of assets remaining, on liquidation, after the share capital has been repaid in full (*re Wm. Metcalfe & Sons*).

41. **Debentures.**—The *advantages* to be derived from a partial capitalization in the form of debentures are— 40

- (i) An issue of debentures is attractive to the public by reason of the security afforded.
- (ii) Income from the debentures is payable to the holders even though no profits are made by the company.

- (iii) From the viewpoint of the company the debentures represent temporary capital, and can be repaid when the company's financial position will allow, subject to the terms of issue.
- (iv) No voting rights are held by the debenture holders, and therefore, so long as their interest is duly paid and their security is not in jeopardy, they cannot in any way interfere with the management of the business.
- 10 (v) A lower rate of interest will normally be expected by debenture holders than by preference shareholders owing to the security given to the former.
- (vi) Subject to any provisions to the contrary contained in the terms of issue, a company may, when it has surplus funds, purchase its own debentures in the open market, and either hold them or cancel them. Such a procedure is not possible with shares.

The *disadvantages* which may arise from an issue of debentures are—

- 20 (i) Interest thereon must be paid even though insufficient profits are earned.
- (ii) In order to make the issue attractive the company should possess fixed assets of sufficient value which can be charged specifically in favour of the debenture holders.
- (iii) When debentures are redeemable, some provision for their redemption must be made. This provision would, normally, take the form of annual appropriations of profit, thus reducing the possible dividend to the ordinary shareholders for some years.
- 30 (iv) In the event of default in the payment of the debenture interest, or for any other cause provided for by the terms of issue, the debenture holders will have power to appoint a receiver, and thus take away from the shareholders the control of the company.
- (v) The existence of debentures may restrict the company's ability to borrow in the future, and perhaps restrict also its trade credit.

40 Debentures may be redeemable or irredeemable. When the need for the money is of a temporary character a redeemable issue should be made. When, however, the capital to be raised in this manner will be utilized in the acquisition of fixed assets, it must be remembered that redemption can only be effected by providing the funds therefore by appropriation of profit or by a new issue of capital.

The provision of the necessary funds by appropriations of profit will impose a temporary burden upon the ordinary shareholders, whose dividends must be restricted, but the subsequent elimination of the charge for debenture interest will confer considerable benefit in the future. In the case of an expanding business, however, it may be necessary to retain in the business a proportion of the profits made each year to provide the capital necessary to meet the requirements of expansion, and therefore too large a burden may be imposed upon profits if annual appropriations must also be made, to meet a redemption of debentures. In this event it will be necessary to raise further capital to repay the debentures, and if interest rates have advanced since the original issue was made, an increased burden will be imposed upon profits. When, therefore, debentures are issued at a time when interest rates are exceptionally low and the capital raised is required for permanent purposes, irredeemable debentures may offer considerable advantages. 10

**42. Loans or Mortgages.**—Except in the case of private companies, loans can rarely be raised without adequate security. In the case of private companies, the directors, who are possibly the sole shareholders, may be willing to meet the company's cash requirements with temporary loans without security. 20

Where a public company is concerned, long-term *secured* loans have little advantage over debentures. The cost of raising loans privately may be less than a public issue of debentures, but greater difficulty may be experienced in finding persons willing to advance large sums for long periods. When, however, short-term borrowing is necessary, the most economical method is undoubtedly by means of loans.

Where mortgages are granted on the company's property a long-term loan is necessary to warrant the expenses entailed. Money raised in this manner will usually be obtained through private sources, and the expenses necessary to a public issue are thus avoided, although a negotiation fee may have to be paid to the persons who arrange the loan. 30

**43. "Gearing" of Capital.**—The proportions in which it may be desirable that the total capital shall be represented by ordinary shares, preference shares, debentures, &c., must be determined by circumstances.

The smaller the proportion of preference shares and debentures the greater will be the security given to them, and consequently the lower the rate of interest or dividend which will be expected. The larger the proportion of preference shares and debentures the greater will be the possible rate of dividend on the ordinary shares. 40

Where the business to be carried on is of a speculative character, or the demand for its products is elastic, so that wide fluctuations in net profits may be anticipated, only a small proportion, if any,

of the capital should be represented by preference shares, otherwise it may often be found that the profits will often be insufficient to provide the full preference dividend.

Exhibits  
P 16  
Students' Notes  
(undated)

In general it is considered that the whole of the tangible assets, such as goodwill, patents, trade marks, &c., should be represented by ordinary or deferred capital, and that the preference capital should be covered at least twice by the net tangible assets, and the preference dividend three times by the average profits available for dividend.

- 10 When the amount of debentures and issued preference share capital is high in relation to the issued ordinary and deferred share capital, the capitalization of the company is said to be "*highly-g geared*". In this event the security given to the "senior" holders of capital, i.e., the debenture and preference shareholders, both as regards earnings and available assets, will be reduced and a correspondingly higher yield may be expected thereon. The ordinary dividends will fluctuate disproportionately as divisible profits rise and fall.

- 20 For example, a company has issued £100,000 5 per cent. Debentures, 100,000 6 per cent. Preference Shares of £1 each fully paid, and 20,000 Ordinary Shares of £1 each fully paid. If the divisible profits in any year amount to £13,000, £2,000 will be available for the ordinary shareholders, i.e., 10 per cent. on the ordinary share capital.

- If the divisible profits are increased in the subsequent year to £15,000, £4,000 will be available for the ordinary shareholders, i.e., 20 per cent. on the ordinary share capital. Thus an increase in the divisible profits of 15.4 per cent., i.e.  $\left(\frac{2,000 \times 100}{13,000}\right)$  has caused  
30 an increase in the possible ordinary dividend of 100 per cent.

Conversely, if the divisible profits had been reduced in the subsequent year to £12,000, £1,000 only would have been available for the ordinary shareholders, i.e., 5 per cent. on the ordinary share capital. A reduction in the divisible profits of 7.7 per cent. has caused a reduction in the possible ordinary dividend of 50 per cent.

- 40 When the general level of interest rates falls and when trading conditions are depressed, the anxiety of the ordinary shareholders in "*highly-g geared*" companies to obtain a reduction in the rates of debenture interest and preference dividends is understandable even if sometimes the methods adopted to achieve this object do not evoke admiration.

From the foregoing calculations, it will be appreciated that speculators purchase highly-g geared ordinary shares during boom conditions in the expectation of receiving very high dividends.

## SELF-EXAMINATION QUESTIONS

(Answers NOT to be submitted)

- (1) Distinguish between a horizontal and a vertical amalgamation.
- (2) What are some of the principal advantages to be obtained from the amalgamation of businesses?
- (3) What are the advantages and limitations of production on a large scale?
- (4) Compare the respective advantages and disadvantages of amalgamation by means of (a) the acquisition by a newly-formed company of several existing undertakings; (b) the absorption by an existing company of other undertakings; (c) a holding company. 10
- (5) State broadly the distinguishing features of (1) a price ring; (2) a trade association; (3) a pooling agreement.
- (6) The X Company, Ltd., whose capital consists of Ordinary Shares and Preference Shares, and which has a large issue of Debentures carrying a floating charge on the assets of the company, wishes to amalgamate with the Y Company, Ltd., whose capital consists of Ordinary Shares only, and which has no Debenture issue. Would you consider it preferable for the amalgamation to be effected by methods (a), (b), or (c) in Question 4, *supra*? 20
- (7) Explain how stamp duties on nominal capital and the transfer of assets may be minimized on an amalgamation.
- (8) Describe broadly the principles governing the valuation of (a) fixed assets, and (b) floating assets for the purpose of an amalgamation. On what basis should (i) Stock-in-trade; (ii) Work in Progress; (iii) Investments, be valued? In relation to the latter, would the basis of valuation be affected by the fact that the investments to be acquired represent shares carrying a controlling interest in a company? 30
- (9) Define Goodwill, and describe three methods by which it may be valued. 40

The average profits of a business are £12,000 per annum, and the net tangible assets, including book debts, amount to £150,000. The business is offered to a prospective purchaser on the basis that the assets and liabilities are to be taken over at their book values, and

Goodwill is to be taken at 3 years' purchase of the average profits. The prospective purchaser, however, says that no business is worth more than 10 years' purchase of the profits. Can you reconcile the views of the parties? Formulate suggestions for submission to them.

- 10 (10) What are your objections to valuing the Goodwill of a business on the basis of (a) so many years' purchase for the super-profits; (b) so many years' purchase of the turnover; (c) the value of an annuity equal to the super-profits?

What do you understand by the term "super-profits"?

- (11) To what extent does the trade cycle affect the calculation of the price at which a business is to be sold?
- (12) Describe the various ways in which a company may be capitalized.
- 20 (13) Is the vendor of an existing business justified in receiving (a) Cash; (b) Ordinary Shares; (c) Deferred Shares; (d) Debentures in payment for the Goodwill of a business by a company which is making a public issue of shares, and, if so, in what circumstances?
- (14) The Balance Sheets and Profit and Loss Accounts of two companies for a series of years are presented to you, and you are asked to formulate a scheme for the amalgamation of their interests. Describe the steps you would take and the principal points to which you would pay attention in carrying out this work.
- 30 (15) By what methods may a company reduce its capital? What are the chief points to consider in devising a scheme for the reduction of capital?
- (16) How may the rights of dissentient members be provided for on a reconstruction?
- (17) The Articles of a private company, of which you are auditor, provide that the price at which shares shall be transferred shall be the fair value of such shares as may be determined by the auditor of the company for the time being. By what general considerations would you be guided in arriving at a fair value?
- 40 (18) What do you understand by the statement that the capital of a company is "highly-gearred"? What are the dangers attendant upon such a capital structure?



Exhibits  
P 10  
Prices of  
Rubber from  
1922 to 1940

Prices of Rubber from 1922 to 1940

| P10     |         |        | Prices of Rubber for the Years 1922 to 1940 |         |         | P10     |          |  |
|---------|---------|--------|---|---------|---------|---------|----------|--|
|         |         |        |   |         |         | 1/10/45 |          |  |
|         | Highest | Lowest | Averages                                    |         | Highest | Lowest  | Averages |  |
| 1922 .. | .85     | .40    | .53   | 1932 .. | 15 1/32 | .08     | .11      |  |
| 1923 .. | 1.08    | .78    | .88   | 1933 .. | 21      | .08     | .15      |  |
| 1924 .. | 1.00    | .52    | .75   | 1934 .. | 38      | 20 1/2  | .31      |  |
| 1925 .. | 2.80    | .88    | 1.73  | 1935 .. | 33      | 26 1/2  | .30      |  |
| 1926 .. | 2.26    | .84    | 1.21  | 1936 .. | 51 1/2  | 34 1/2  | .41      |  |
| 1927 .. | 1.08    | .82    | .95   | 1937 .. | 67 1/2  | 32 1/2  | .50      |  |
| 1928 .. | 1.04    | 39 1/2 | .55   | 1938 .. | 45      | 26 1/2  | .37      |  |
| 1929 .. | 67 1/2  | 38 1/2 | .52   | 1939 .. | 58 1/2  | 42 1/2  | .47      |  |
| 1930 .. | 40 1/2  | 14 1/2 | .27   | 1940 .. | 60 1/2  | 52 1/2  | .55      |  |
| 1931 .. | 17 1/2  | 10 1/2 | .14   |         |         |         |          |  |

Prices from 1934 to 1940 are for couponed rubber. There was considerable speculation in coupons by producers and non-traders.

R 12  
Share List  
issued by  
the Colombo  
Brokers'  
Association  
(undated)

Share List issued by the Colombo Brokers' Association

167

SHARE LIST ISSUED BY THE COLOMBO BROKERS' ASSOCIATION

Tea Companies

|  | Amount paid |     |        |     |
|--|-------------|-----|--------|-----|
|  | per share   | B   | S      | T   |
|  | Rs.         | Rs. | Rs.    | Rs. |
| Agra Ouvah Estates Company, Ltd.               | 10          | —   | 23     | —   |
| Bopitiya Tea Estates, Ltd.                     | 10          | —   | 8      | —   |
| Castlereagh Tea Company, Ltd.                  | 10          | —   | —      | —   |
| Ceylon Provincial Estates Company, Ltd.        | 10          | —   | 14     | —   |
| Dickoya Tea Company, Ltd.                      | 10          | 11  | 13     | —   |
| Doomoo Tea Company of Ceylon, Ltd.             | 10          | —   | 10     | —   |
| Estates Company of Uva, Ltd.                   | 10          | —   | 12 1/2 | —   |
| Fairlawn Estates, Ltd.                         | 15          | —   | 15     | —   |
| Glasgow Estate Company, Ltd.                   | 10          | —   | 44     | —   |
| Great Western Tea Company of Ceylon, Ltd.      | 20          | —   | —      | —   |
| High Forest Estates Company, Ltd.              | 10          | —   | 21     | —   |
| Hillwood Tea Company, Ltd.                     | 10          | —   | 4*     | —   |
| Hunugalla Tea and Rubber Company, Ltd.         | 10          | —   | 9 1/2  | —   |
| Maha Uva Estate Company, Ltd.                  | 10          | —   | —      | —   |
| Marigold Tea Estates, Ltd.                     | 10          | —   | 8      | —   |
| Midford Ceylon Tea Estates, Ltd.               | 10          | 2*  | 3      | —   |
| Miyanawita Ceylon Tea Company, Ltd.            | 10          | —   | —      | —   |
| Mount Pleasant Tea Estates Company, Ltd.       | 10          | —   | 13     | —   |
| Mulhalkelle Tea Company, Ltd.                  | 10          | —   | 5      | —   |
| Do. (New issue)                                | 5 1/2       | —   | 3      | —   |
| Nahavilla Estates Company, Ltd.                | 10          | —   | 12     | —   |
| Nyanza Tea Company of Ceylon, Ltd.             | 10          | —   | —      | —   |
| Oonoogaloya Tea Company, Ltd.                  | 10          | —   | 8 1/2  | —   |
| Palmerston Tea Company, Ltd.                   | 10          | —   | 18     | —   |
| Parkside (Neilgherry Hills) Est. Company, Ltd. | 10          | —   | —      | —   |
| Pettiagalla Tea Company, Ltd.                  | 10          | —   | —      | —   |
| Richlands Tea Estates, Ltd.                    | 10          | —   | 9      | —   |
| Robgill Tea Company, Ltd.                      | 10          | —   | 10 1/2 | —   |
| Rosberry Tea Company, Ltd.                     | 10          | —   | 20     | —   |
| Shawlands Tea Company, Ltd.                    | 10          | —   | 3      | —   |
| St. James (Uva) Tea Company, Ltd.              | 10          | —   | 17     | —   |
| Stratheden Tea Company, Ltd.                   | 10          | 13  | —      | —   |
| Strathspey Tea Company, Ltd.                   | 10          | 9*  | 10     | —   |
| Theberton (Ceylon) Tea Estates, Ltd.           | 1           | —   | -/60   | —   |
| Theresia Estate Company, Ltd.                  | 10          | —   | —      | —   |
| Tilton Ceylon Tea Company, Ltd.                | 10          | —   | —      | —   |
| Tonacombe Estates Company of Ceylon, Ltd.      | 10          | —   | 10     | —   |
| Torrington Tea Estates, Ltd.                   | 10          | —   | 8      | —   |
| Uplands Tea Estates of Ceylon Ltd.             | 10          | —   | 10 1/2 | —   |

## Tea Companies (contd.)

|  | Amount paid |    | B   | S   | T   |
|--|-------------|----|-----|-----|-----|
|  | per share   |    |     |     |     |
|  | Rs.         |    | Rs. | Rs. | Rs. |
| Upper Maskeliya Estates Company, Ltd. .. | 10          | .. | —   | ..  | —   |
| Uva Highlands Tea Company, Ltd. ..       | 10          | .. | —   | ..  | —   |
| Uva Ketawala Tea Company, Ltd. ..        | 10          | .. | —   | 5   | ..  |
| Uvakelle Tea Company of Ceylon, Ltd. ..  | 10          | .. | —   | 10  | ..  |
| Wanarajah Tea Company of Ceylon, Ltd. .. | 20          | .. | —   | —   | ..  |
| Welimada Tea Company, Ltd. ..            | 10          | .. | —   | 11  | ..  |
| Westward Ho Tea Company, Ltd. ..         | 9           | .. | —   | —   | ..  |

Exhibits  
Rs. 12  
Share List  
issued by  
the Colombo  
Brokers'  
Association  
(undated)  
—contd.

## Rubber Companies

|   |    |    |     |     |    |   |
|---|----|----|-----|-----|----|---|
| Beverlac (Selangor) Rubber Company, Ltd. ..     | 10 | .. | —   | 6½* | .. | — |
| Biddescar Rubber Company, Ltd. ..               | 10 | .. | —   | 4   | .. | — |
| Blackwater Est. (Klang) Rubber Company, Ltd. .. | 10 | .. | —   | —   | .. | — |
| Bukit Darah (Selangor) Rubber Company, Ltd. ..  | 10 | .. | —   | 7   | .. | — |
| Cavunal Rubber & Tea Estates Company, Ltd. ..   | 10 | .. | —   | 5   | .. | — |
| Ceylon Planters' Rubber Syndicate, Ltd. ..      | 10 | .. | —   | 6*  | .. | — |
| Ceylon Rubber Company, Ltd. ..                  | 10 | .. | —   | —   | .. | — |
| Clunes Estates Company of Ceylon, Ltd. ..       | 10 | .. | —   | 7½  | .. | — |
| Cochin Rubber Company, Ltd. ..                  | 15 | .. | —   | —   | .. | — |
| Dorset Estates Company, Ltd. ..                 | 10 | .. | —   | —   | .. | — |
| Frocester Estates Rubber Company, Ltd. ..       | 10 | .. | —   | —   | .. | — |
| Gonagama Rubber Co., Ltd. ..                    | 10 | .. | —   | 9*  | .. | — |
| Good Hope (Selangor) Rubber Company, Ltd. ..    | 15 | .. | —   | 8   | .. | — |
| Hatbawe Rubber Company, Ltd. ..                 | 10 | .. | —   | —   | .. | — |
| Honiton Rubber Company, Ltd. ..                 | 10 | .. | —   | 2½  | .. | — |
| Horawala (Kalutara) Rubber Company, Ltd. ..     | 10 | .. | —   | —   | .. | — |
| Indo-Malay Estates, Ltd. ..                     | 10 | .. | —   | —   | .. | — |
| Jambulande Tea and Rubber Estates, Ltd. ..      | 10 | .. | —   | 3½* | .. | — |
| Jebong (Perak) Rubber Company, Ltd. ..          | 10 | .. | —   | 7½  | .. | — |
| Kalutara Company, Ltd. ..                       | 10 | .. | —   | 12* | .. | — |
| Kalutara Rubber Company of Ceylon, Ltd. ..      | 10 | .. | —   | —   | .. | — |
| Kendawe Tea and Rubber Company, Ltd. ..         | 5  | .. | —   | 2½  | .. | — |
| Kiriella Estate Company, Ltd. ..                | 10 | .. | —   | —   | .. | — |
| Kongsi Rubber Company, Ltd. ..                  | 10 | .. | —   | 8   | .. | — |
| Kudaganga Rubber Company, Ltd. ..               | 10 | .. | —   | —   | .. | — |
| Labugama Rubber Company, Ltd. ..                | 10 | .. | 1*  | —   | .. | — |
| Langat River Selangor Rubber Company, Ltd. ..   | 10 | .. | —   | 12  | .. | — |
| Lanka Rubber Company, Ltd. ..                   | 10 | .. | —   | —   | .. | — |
| Lansdowne Rubber Company, Ltd. ..               | 50 | .. | —   | —   | .. | — |
| Lapan Utan Rubber Company, Ltd. ..              | 10 | .. | —   | 9½  | .. | — |
| Lasahena Rubber Company, Ltd. ..                | 10 | .. | —   | —   | .. | — |
| Mahagama Rubber Company, Ltd. ..                | 50 | .. | —   | —   | .. | — |
| Mentenne Rubber Company, Ltd. ..                | 10 | .. | —   | 5   | .. | — |
| Mirishena Kalutara Rubber Company, Ltd. ..      | 10 | .. | —   | —   | .. | — |
| Niriwatte Company, Ltd. ..                      | 2  | .. | —   | —   | .. | — |
| Periyar Rubber Company, Ltd. ..                 | 10 | .. | 3½* | —   | .. | — |
| Pimbura Rubber Company, Ltd. ..                 | 10 | .. | —   | —   | .. | — |
| Ribu Rubber Company, Ltd. ..                    | 25 | .. | —   | —   | .. | — |
| Ruanwella Tea Company, Ltd. ..                  | 10 | .. | —   | —   | .. | — |
| Rubber Growers' Company, Ltd. ..                | 10 | .. | —   | 13  | .. | — |
| Rubber Plantations of Kalutara, Ltd. ..         | 10 | .. | —   | —   | .. | — |
| Selinsing Rubber Company, Ltd. ..               | 10 | .. | —   | 7½* | .. | — |
| Sittagama Rubber Company, Ltd. ..               | 10 | .. | —   | 4½* | .. | — |
| Tuan Mee (Slangor) Rubber Company, Ltd. ..      | 10 | .. | —   | —   | .. | — |
| Udabage Tea and Rubber Company, Ltd. ..         | 20 | .. | —   | 25  | .. | — |
| Udapolla Rubber Company, Ltd. ..                | 10 | .. | —   | 5*  | .. | — |
| Ullswater Rubber Company of Ceylon, Ltd. ..     | 10 | .. | —   | —   | .. | — |
| Usk Valley (Kalutara) Rubber Company, Ltd. ..   | 10 | .. | —   | 10  | .. | — |
| Vaikundam Company, Ltd. ..                      | 10 | .. | —   | 7½  | .. | — |

## Tea cum Rubber Companies

|  |    |    |   |      |    |   |
|--|----|----|---|------|----|---|
| Arratenne Tea and Rubber Company, Ltd. ..      | 10 | .. | — | 6    | .. | — |
| Atehencoil Tea Company (1934) Ltd. ..          | 1  | .. | — | 1/35 | .. | — |
| Craiglands Tea & Rubber Company, Ltd. ..       | 10 | .. | — | 7½   | .. | — |
| Deniyaya Tea & Rubber Estates Company, Ltd. .. | 10 | .. | — | —    | .. | — |
| Enselwatte Tea Company, Ltd. ..                | 15 | .. | — | 10   | .. | — |

Exhibits  
R 12  
Share List  
issued by  
the Colombo  
Brokers'  
Association  
(undated)  
—contd.

## Tea cum Rubber Companies (contd.)

|  | Amount paid |    | B   | S   | T   |
|--|-------------|----|-----|-----|-----|
|  | per share   |    |     |     |     |
|  | Rs.         |    | Rs. | Rs. | Rs. |
| Gallebodde Estates Company of Ceylon, Ltd.     | 10          | .. | —   | 8½* | ..  |
| Do. (part paid)                                | 5           | .. | —   | —   | ..  |
| Girindi Ella Tea Company, Ltd.                 | 10          | .. | —   | 5½  | ..  |
| Golinda Tea & Rubber Company, Ltd.             | 7½          | .. | —   | 8   | ..  |
| Gona Adika Estates, Ltd.                       | 2           | .. | —   | 2   | ..  |
| Hunuwella (Pelmadulla) Rubber Company, Ltd.    | 10          | .. | —   | 13  | ..  |
| Kaluganga Valley Tea & Rubber Company, Ltd.    | 10          | .. | —   | 4   | ..  |
| Kandyan Hills Company, Ltd.                    | 10          | .. | —   | 12  | ..  |
| Kandy Rubber & Tea Estates, Ltd.               | 10          | .. | 4*  | 6   | ..  |
| Kelani Tea Gardens Company, Ltd.               | 10          | .. | —   | 10  | ..  |
| Kuttapitiya Tea & Rubber Company, Ltd.         | 10          | .. | 6½  | —   | ..  |
| L. L. P. Estates, Ltd.                         | 10          | .. | —   | 9½  | ..  |
| Lugaloya Tea & Rubber Company, Ltd.            | 10          | .. | —   | —   | ..  |
| Macaldeniya Tea & Rubber Company, Ltd.         | 10          | .. | —   | 5½  | ..  |
| Mayen (Ceylon) Tea & Rubber Company, Ltd.      | 10          | .. | —   | —   | ..  |
| Meall Mor (Ceylon) Estates, Ltd.               | 15          | .. | —   | 13  | ..  |
| Mocha Tea Company of Ceylon, Ltd.              | 10          | .. | —   | —   | ..  |
| Moneragalla Rubber Company, Ltd.               | 10          | .. | —   | 5½  | ..  |
| Neuchatel Estates, Ltd.                        | 15          | .. | —   | 16  | ..  |
| North-Western Estates, Ltd.                    | 10          | .. | —   | 8½  | ..  |
| Opalgalla Tea & Rubber Company, Ltd.           | 10          | .. | —   | 5   | ..  |
| Do. (New issue)                                | 8           | .. | —   | —   | ..  |
| Opatha Tea & Rubber Company, Ltd.              | 15          | .. | —   | 16  | ..  |
| Pelmadulla Valley Tea & Rubber Company, Ltd.   | 10          | .. | 8½  | —   | ..  |
| Poonagalla Valley (Ceylon) Company, Ltd.       | 10          | .. | —   | —   | ..  |
| Rayigam Company, Ltd.                          | 8           | .. | —   | 9½  | ..  |
| Saffragam Rubber & Tea Company of Ceylon, Ltd. | 50          | .. | 85* | 90  | ..  |
| Sittawaka Tea & Rubber Company, Ltd.           | 20          | .. | —   | —   | ..  |
| Talangawella Rubber & Tea Estates, Ltd.        | 10          | .. | —   | 7½  | ..  |
| Talgawela Tea Company of Ceylon, Ltd.          | 10          | .. | —   | 23  | ..  |
| Vogan Tea Company of Ceylon, Ltd.              | 10          | .. | —   | 17  | ..  |
| Warriapola Estates Company, Ltd.               | 10          | .. | —   | 7*  | ..  |
| Watapota Rubber & Tea Estates, Ltd.            | 10          | .. | —   | —   | ..  |
| Do. (New issue)                                | 7           | .. | —   | —   | ..  |
| Wellandura Tea & Rubber Co., Ltd.              | 15          | .. | —   | 17  | ..  |

## Ceylon Commercial Companies

|                                   |     |    |    |     |    |
|-----------------------------------|-----|----|----|-----|----|
| British Ceylon Corporation, Ltd.  | 7½  | .. | 5  | —   | .. |
| Brown & Company, Ltd.             | 10  | .. | 3* | 4   | .. |
| Ceylon Theatres, Ltd.             | 10  | .. | 16 | —   | .. |
| Colombo Hotels Company, Ltd.      | 100 | .. | 5  | 12½ | .. |
| Galle Face Hotel Company, Ltd.    | 100 | .. | —  | 82½ | .. |
| New Colombo Ice Company, Ltd.     | 10  | .. | —  | 13½ | .. |
| Nuwara Eliya Hotels Company, Ltd. | 30  | .. | 5  | 11  | .. |

## Rupee Coconut Companies (Ceylon and Straits)

|   |     |    |       |     |    |
|---|-----|----|-------|-----|----|
| Arcadia Coconut Estates, Ltd.             | 10  | .. | —     | 7½  | .. |
| Ceylon Coconut Company, Ltd.              | 100 | .. | —     | 37½ | .. |
| Coconut Estates of Perak, Ltd.            | 2½  | .. | —     | 2½  | .. |
| Dandegama Coconut Company, Ltd.           | 10  | .. | —     | —   | .. |
| H. Bastian Fernando Estates Company, Ltd. | 100 | .. | —     | —   | .. |
| Henavasal Coconut Estates, Ltd.           | 10  | .. | —     | —   | .. |
| Horekelly Estates Company, Ltd.           | 100 | .. | —     | —   | .. |
| Lower Perak Coconut Company, Ltd.         | 10  | .. | —     | —   | .. |
| Martin Coconut Estates of Chilaw, Ltd.    | 50  | .. | —     | 13½ | .. |
| Mola Eliya Coconut Estates, Ltd.          | 2½  | .. | -/50* | 1   | .. |
| Perak Kongsu Coconut Company, Ltd.        | 10  | .. | —     | 8   | .. |
| Perak River Coconut Company               | 10  | .. | —     | 6   | .. |
| Sir H. Dias Coconut Estates, Ltd.         | 100 | .. | —     | —   | .. |
| Telok Bharu Coconut Company, Ltd.         | 10  | .. | —     | —   | .. |

## Government Securities

(Minimum Quotations Rs. 10,000)

|   | Amount paid per share |    |     |     | S   | T  | Exhibits |
|---|-----------------------|----|-----|-----|-----|----|----------|
|   | Rs.                   | B  | Rs. | Rs. |     |    |          |
| Ceylon Government 3½ per cent. Loan 1957-62 | 100                   | .. | —   | ..  | 99½ | .. | —        |
| State Mortgage Bank 4½ per cent. Debs.      | 50                    | .. | —   | ..  | —   | .. | —        |
| State Mortgage Bank 3½ per cent. Debs.      | 50                    | .. | —   | ..  | 50  | .. | —        |

For further particulars see Quarterly List.

BY ORDER OF THE COMMITTEE.

Colombo, 30th August, 1939.

Note.—The share list will be issued on Mondays, Wednesdays and Fridays only.

N.B.—All quotations on this list are "Cum. Dividend" unless specifically stated "Ex. Dividend."

N.B.—Quotations in the above list are of Rs. 1,000 or over except those marked \* which are between Rs. 300 and Rs. 1,000. Transactions under Rs. 300 are not quoted.

† Indicates the brokerage is payable by the buyer.

Next settlement day for local transactions 8th September, 1939.

## R 13

## Share List issued by the Colombo Brokers' Association

## SHARE LIST ISSUED BY THE COLOMBO BROKERS' ASSOCIATION

## Tea Companies

|  | Amount paid per share |    |      |     | S    | T  | Exhibits |
|--|-----------------------|----|------|-----|------|----|----------|
|  | Rs.                   | B  | Rs.  | Rs. |      |    |          |
| Agra Ouvah Estates Company, Ltd.                 | 10                    | .. | 21   | ..  | —    | .. | —        |
| Bopitiya Tea Estates, Ltd.                       | 10                    | .. | 6½   | ..  | 8    | .. | —        |
| Castlereagh Tea Company, Ltd.                    | 10                    | .. | 20   | ..  | —    | .. | —        |
| Ceylon Provincial Estates Company, Ltd.          | 10                    | .. | 13½* | ..  | 14½  | .. | 14*      |
| Eickoya Tea Company, Ltd.                        | 10                    | .. | —    | ..  | —    | .. | —        |
| Doomoo Tea Company of Ceylon, Ltd.               | 10                    | .. | 10   | ..  | —    | .. | —        |
| Estates Company of Uva, Ltd.                     | 10                    | .. | 15½  | ..  | 17   | .. | 15½      |
| Fairlawn Estates, Ltd.                           | 15                    | .. | 15   | ..  | 16½  | .. | —        |
| Glasgow Estate Company, Ltd.                     | 10                    | .. | —    | ..  | 43*  | .. | —        |
| Great Western Tea Company of Ceylon, Ltd.        | 20                    | .. | 36   | ..  | —    | .. | —        |
| High Forest Estates Company, Ltd.                | 10                    | .. | 21   | ..  | 23   | .. | —        |
| Hillwood Tea Company, Ltd.                       | 10                    | .. | 2    | ..  | 3    | .. | —        |
| Hunugalla Tea & Rubber Company, Ltd.             | 10                    | .. | —    | ..  | 11   | .. | —        |
| Maha Uva Estate Company, Ltd.                    | 10                    | .. | 20   | ..  | —    | .. | —        |
| Marigold Tea Estates, Ltd.                       | 10                    | .. | —    | ..  | 12   | .. | —        |
| Midford Ceylon Tea Estates, Ltd.                 | 10                    | .. | 4    | ..  | 5*   | .. | —        |
| Miyawita Ceylon Tea Company, Ltd.                | 10                    | .. | —    | ..  | 11   | .. | 10½      |
| Mount Pleasant Tea Estates Company, Ltd.         | 10                    | .. | —    | ..  | —    | .. | —        |
| Mulhalkelle Tea Company, Ltd.                    | 10                    | .. | —    | ..  | —    | .. | —        |
| Do. (New issue)                                  | 5½                    | .. | —    | ..  | —    | .. | —        |
| Nahavilla Estates Company, Ltd.                  | 10                    | .. | 11½  | ..  | 12   | .. | —        |
| Nyanza Tea Company of Ceylon, Ltd.               | 10                    | .. | 8½   | ..  | 9½   | .. | —        |
| Oonoogaloya Tea Company, Ltd.                    | 10                    | .. | —    | ..  | —    | .. | —        |
| Palmerston Tea Company, Ltd.                     | 10                    | .. | 17   | ..  | —    | .. | —        |
| Parkside (Neigherry Hills) Estates Company, Ltd. | 10                    | .. | —    | ..  | 14½* | .. | —        |
| Pettiagalla Tea Company, Ltd.                    | 10                    | .. | 8½   | ..  | 10*  | .. | —        |
| Richlands Tea Estates, Ltd.                      | 10                    | .. | 10   | ..  | —    | .. | —        |
| Robgill Tea Company, Ltd.                        | 10                    | .. | 10½  | ..  | 12   | .. | —        |
| Roeberry Tea Company, Ltd.                       | 10                    | .. | 23   | ..  | 26   | .. | —        |
| Shawlands Tea Company, Ltd.                      | 10                    | .. | 2½   | ..  | 3*   | .. | —        |
| St. James (Uva) Tea Company, Ltd.                | 10                    | .. | 16   | ..  | 18   | .. | —        |
| Stratheden Tea Company, Ltd.                     | 10                    | .. | 15   | ..  | 17   | .. | —        |

R 13  
Share List  
issued by  
the Colombo  
Brokers'  
Association  
(undated)

## Exhibits

R 13  
Share List  
issued by  
the Colombo  
Brokers'  
Association  
(undated)  
—contd.

## Tea Companies (contd.)

|   | Amount paid<br>per share |          |          |          |
|---|--------------------------|----------|----------|----------|
|   | Rs.                      | B<br>Rs. | S<br>Rs. | T<br>Rs. |
| Strathspey Tea Company, Ltd.              | 10                       | 10       | 11*      | —        |
| Theberton (Ceylon) Tea Estates, Ltd.      | 1                        | -/35*    | -/40     | —        |
| Theresia Estate Company, Ltd.             | 10                       | 15       | —        | 15½      |
| Tilton Ceylon Tea Company, Ltd.           | 10                       | 2*       | —        | —        |
| Tonacombe Estates Company of Ceylon, Ltd. | 10                       | 11½      | 12½      | —        |
| Torrington Tea Estates, Ltd.              | 10                       | 7        | —        | —        |
| Uplands Tea Estates of Ceylon, Ltd.       | 10                       | 11       | 12       | 11½      |
| Upper Maskeliya Estates Company, Ltd.     | 10                       | 16½      | —        | —        |
| Uva Highlands Tea Company, Ltd.           | 10                       | 16       | —        | —        |
| Uva Ketawala Tea Company, Ltd.            | 10                       | 7        | 8        | —        |
| Uvakelle Tea Company of Ceylon, Ltd.      | 10                       | 11½      | —        | —        |
| Wanarajah Tea Company of Ceylon, Ltd.     | 20                       | 40       | 50       | —        |
| Welimada Tea Company, Ltd.                | 10                       | 10       | —        | —        |
| Westward Ho Tea Company, Ltd.             | 9                        | —        | —        | —        |

## Rubber Companies

|   |    |     |      |     |
|---|----|-----|------|-----|
| Beverlac (Selangor) Rubber Company, Ltd.          | 10 | —   | —    | —   |
| Biddescar Rubber Company, Ltd.                    | 10 | 3*  | 4    | —   |
| Blackwater Estate (Klang) Rubber Company,<br>Ltd. | 10 | 8*  | 10½  | —   |
| Bukit Darah (Selangor) Rubber Company, Ltd.       | 10 | 3½* | —    | —   |
| Cavunal Rubber & Tea Estates Company Ltd.         | 10 | 4*  | 6    | —   |
| Ceylon Planters' Rubber Syndicate, Ltd.           | 10 | 3*  | 4*   | —   |
| Ceylon Rubber Company, Ltd.                       | 10 | 13  | 15   | —   |
| Clunes Estates Company of Ceylon, Ltd.            | 10 | 7½* | 9    | —   |
| Cochin Rubber Company, Ltd.                       | 15 | 11½ | —    | —   |
| Dorset Estates Co., Ltd.                          | 10 | 7*  | —    | —   |
| Frocester Estates Rubber Company, Ltd.            | 10 | 11  | —    | —   |
| Gonagama Rubber Company, Ltd.                     | 10 | 8   | 9    | —   |
| Good Hope (Selangor) Rubber Company, Ltd.         | 15 | —   | 8½   | —   |
| Hatbawe Rubber Company, Ltd.                      | 10 | —   | —    | —   |
| Honiton Rubber Company, Ltd.                      | 10 | 2½  | 3*   | —   |
| Horawala (Kalutara) Rubber Company, Ltd.          | 10 | 9   | —    | —   |
| Indo-Malay Estates, Ltd.                          | 10 | 4*  | 6*   | —   |
| Jambulande Tea & Rubber Estates, Ltd.             | 10 | 2   | 4    | —   |
| Jebong (Perak) Rubber Company, Ltd.               | 10 | 5*  | 6*   | —   |
| Kalutara Company, Ltd.                            | 10 | —   | 16   | —   |
| Kalutara Rubber Company of Ceylon, Ltd.           | 10 | 5   | 6*   | —   |
| Kendawe Tea & Rubber Company, Ltd.                | 5  | —   | —    | —   |
| Kiriella Estate Company, Ltd.                     | 10 | 2½* | —    | —   |
| Kongsi Rubber Company, Ltd.                       | 10 | 6½* | 9    | —   |
| Kudaganga Rubber Company, Ltd.                    | 10 | 13  | —    | —   |
| Labugama Rubber Company, Ltd.                     | 10 | —   | —    | —   |
| Langat River Selangor Rubber Company, Ltd.        | 10 | 14½ | —    | 15* |
| Lanka Rubber Company, Ltd.                        | 10 | 30  | —    | —   |
| Lansdowne Rubber Company, Ltd.                    | 50 | 52½ | 62½* | —   |
| Lapan Utan Rubber Company, Ltd.                   | 10 | —   | —    | —   |
| Lassahena Rubber Company, Ltd.                    | 10 | —   | —    | —   |
| Mahagama Rubber Company, Ltd.                     | 50 | 30* | —    | —   |
| Mentenne Rubber Company, Ltd.                     | 10 | —   | 4*   | —   |
| Mirishena Kalutara Rubber Company, Ltd.           | 10 | 14  | —    | 15  |
| Niriwatte Company, Ltd.                           | 2  | —   | 3½   | —   |
| Periyar Rubber Company, Ltd.                      | 10 | 3   | —    | —   |
| Pimbura Rubber Company, Ltd.                      | 10 | —   | 17   | —   |
| Ribu Rubber Company, Ltd.                         | 25 | —   | 5½*  | —   |
| Ruanwella Tea Company, Ltd.                       | 10 | —   | 10   | —   |
| Rubber Growers' Company, Ltd.                     | 10 | 11  | 14   | —   |
| Rubber Plantations of Kalutara, Ltd.              | 10 | 14½ | 15½  | 15  |
| Selinsing Rubber Company, Limited                 | 10 | 5*  | —    | —   |
| Sittagama Rubber Company, Ltd.                    | 10 | 2   | 3½*  | —   |
| Tuan Mee (Selangor) Rubber Company, Ltd.          | 10 | 9   | 11   | —   |
| Udabage Tea & Rubber Company, Ltd.                | 20 | 25  | 28   | —   |
| Udapolla Rubber Company, Ltd.                     | 10 | 4*  | —    | —   |
| Ullswater Rubber Company of Ceylon, Ltd.          | 10 | —   | 4    | —   |
| Usk Valley (Kalutara) Rubber Company, Ltd.        | 10 | 9   | —    | —   |
| Vaikundam Company, Ltd.                           | 10 | —   | 8    | —   |

| <i>Tea cum Rubber Companies</i>                     |            |            |            | <i>Amount paid per share</i> |  |  | Exhibits |
|---|------------|------------|------------|------------------------------|--|--|----------|
|   | <i>Rs.</i> | <i>B</i>   | <i>S</i>   | <i>T</i>                     |  |  |          |
|   | <i>Rs.</i> | <i>Rs.</i> | <i>Rs.</i> | <i>Rs.</i>                   |  |  |          |
| Arratenne Tea & Rubber Company, Ltd. ..             | 10         | 5          | 7          | —                            |  |  |          |
| Atchencoil Tea Company (1934) Ltd. ..               | 1          | 1/07½      | —          | 1/10*                        |  |  |          |
| Craiglands Tea & Rubber Company, Ltd. ..            | 10         | —          | 7½         | —                            |  |  |          |
| Deniyaya Tea & Rubber Estates Company, Ltd. ..      | 10         | 5*         | —          | —                            |  |  |          |
| Enselwatta Tea Company, Ltd. ..                     | 15         | 9*         | 10         | —                            |  |  |          |
| Gallebodde Estates Company of Ceylon, Ltd. ..       | 10         | 8          | 10         | —                            |  |  |          |
| Do. (part paid) ..                                  | 5          | —          | 5          | —                            |  |  |          |
| Girindi Ella Tea Company, Ltd. ..                   | 10         | —          | 6½         | —                            |  |  |          |
| Gelinda Tea & Rubber Company, Ltd. ..               | 7½         | 7          | 8*         | —                            |  |  |          |
| Gona Adika Estates, Ltd. ..                         | 2          | —          | 1/90*      | —                            |  |  |          |
| Hunuwella (Pelmadulla) Rubber Company, Ltd. ..      | 10         | 14         | 15         | 14½                          |  |  |          |
| Kaluganga Valley Tea & Rubber Company, Ltd. ..      | 10         | 2          | —          | —                            |  |  |          |
| Kandyan Hills Company, Ltd. ..                      | 10         | 10         | 11½*       | —                            |  |  |          |
| Kandy Rubber & Tea Estates, Ltd. ..                 | 10         | 5          | 6          | —                            |  |  |          |
| Kelani Tea Gardens Company, Ltd. ..                 | 10         | 7          | 10         | —                            |  |  |          |
| Kuttapitiya Tea & Rubber Company, Ltd. ..           | 10         | 7          | 9          | —                            |  |  |          |
| L. L. P. Estates, Ltd. ..                           | 10         | —          | —          | —                            |  |  |          |
| Lugaloya Tea & Rubber Company, Ltd. ..              | 10         | 5          | 6          | —                            |  |  |          |
| Macaldeniya Tea & Rubber Company, Ltd. ..           | 10         | —          | 6*         | —                            |  |  |          |
| Mayen (Ceylon) Tea & Rubber Company, Ltd. ..        | 10         | 9½         | 10½        | —                            |  |  |          |
| Meall Mor (Ceylon) Estates, Ltd. ..                 | 15         | 12         | —          | —                            |  |  |          |
| Mocha Tea Company of Ceylon, Ltd. ..                | 10         | 16         | —          | 17½                          |  |  |          |
| Moneragalla Rubber Company, Ltd. ..                 | 10         | 4½         | 5½         | —                            |  |  |          |
| Neuchatel Estates, Ltd. ..                          | 15         | 15         | —          | —                            |  |  |          |
| North-Western Estates, Ltd. ..                      | 10         | —          | 9          | —                            |  |  |          |
| Opalgalla Tea & Rubber Company, Ltd. ..             | 10         | 5½*        | 6          | 5½*†, 5½*                    |  |  |          |
| Do. (New issue) ..                                  | 8          | 2½*        | 4½         | —                            |  |  |          |
| Opata Tea & Rubber Company, Ltd. ..                 | 15         | 17½        | 19½        | —                            |  |  |          |
| Pelmadulla Valley Tea & Rubber Company, Ltd. ..     | 10         | 11½        | —          | 12                           |  |  |          |
| Poonagalla Valley (Ceylon) Company, Ltd. ..         | 10         | 14½        | 15½        | 15                           |  |  |          |
| Rayigam Company, Ltd. ..                            | 8          | 12         | 14         | —                            |  |  |          |
| Saffragam Rubber & Tea Company of Ceylon, Ltd. ..   | 50         | 90         | 100        | —                            |  |  |          |
| Sittawaka Tea & Rubber Company, Ltd. ..             | 20         | 10         | —          | —                            |  |  |          |
| Talangawella Rubber & Tea Estates, Ltd. ..          | 10         | —          | 10         | —                            |  |  |          |
| Talgaswela Tea Company of Ceylon, Ltd. ..           | 10         | 25         | —          | —                            |  |  |          |
| Vogan Tea Company of Ceylon, Ltd. ..                | 10         | 17         | 20         | —                            |  |  |          |
| Warriapola Estates Company, Ltd. ..                 | 16         | —          | 6½         | —                            |  |  |          |
| Watapota Rubber & Tea Estates, Ltd. ..              | 10         | 9          | —          | 10                           |  |  |          |
| Do. (New issue) ..                                  | 7          | 5½*        | 6          | 6*                           |  |  |          |
| Wellandura Tea & Rubber Company, Ltd. ..            | 15         | 15½        | 19         | —                            |  |  |          |
| <i>Ceylon Commercial Companies</i>                  |            |            |            |                              |  |  |          |
| British Ceylon Corporation, Ltd. ..                 | 7½         | —          | 6          | —                            |  |  |          |
| Brown & Company, Ltd. ..                            | 10         | 3½         | 4          | —                            |  |  |          |
| Ceylon Theatres, Ltd. ..                            | 10         | 11         | —          | —                            |  |  |          |
| Colombo Hotels Company, Ltd. ..                     | 100        | 7½         | —          | —                            |  |  |          |
| Galle Face Hotel Company, Ltd. ..                   | 100        | 50         | 65         | —                            |  |  |          |
| New Colombo Ice Company, Ltd. ..                    | 10         | 13         | 15½        | 15*                          |  |  |          |
| Nuwara Eliya Hotels Company, Ltd. ..                | 30         | —          | —          | —                            |  |  |          |
| <i>Rupee Coconut Companies (Ceylon and Straits)</i> |            |            |            |                              |  |  |          |
| Arcadia Coconut Estates, Ltd. ..                    | 10         | —          | 7          | —                            |  |  |          |
| Ceylon Coconut Company, Ltd. ..                     | 100        | —          | —          | —                            |  |  |          |
| Coconut Estates of Perak, Ltd. ..                   | 2½         | 1*         | —          | —                            |  |  |          |
| Dandegama Coconut Company, Ltd. ..                  | 10         | —          | —          | —                            |  |  |          |
| H. Bastian Fernando Estates Company, Ltd. ..        | 100        | —          | —          | —                            |  |  |          |
| Henavasal Coconut Estates, Ltd. ..                  | 10         | —          | 2          | —                            |  |  |          |
| Horekelly Estates Company, Ltd. ..                  | 100        | —          | —          | 4*                           |  |  |          |
| Lower Perak Coconut Company, Ltd. ..                | 10         | 3          | 4½         | —                            |  |  |          |
| Martin Coconut Estates of Chilaw, Ltd. ..           | 50         | 7*         | —          | —                            |  |  |          |

R 13  
Share List  
issued by  
the Colombo  
Brokers'  
Association  
(undated)  
—contd.

## Exhibits

## Rupee Coconut Companies (Ceylon and Straits)—(contd.)

|                                    | Amount paid |    | B   | S   | T   |
|------------------------------------|-------------|----|-----|-----|-----|
|                                    | per share   |    |     |     |     |
|                                    | Rs.         |    | Rs. | Rs. | Rs. |
| Mola Eliya Coconut Estates, Ltd.   | 2½          | .. | —   | 1   | —   |
| Perak Tongsi Coconut Company, Ltd. | 10          | .. | —   | 6   | —   |
| Perak River Coconut Company        | 10          | .. | —   | —   | —   |
| Sir H. Dias Coconut Estates, Ltd.  | 100         | .. | 30  | 35  | —   |
| Telok Bharu Coconut Company, Ltd.  | 10          | .. | —   | 7*  | 1   |

—contd.

## Government Securities

(Minimum Quotations Rs. 10,000)

|  |     |    |     |    |   |   |
|--|-----|----|-----|----|---|---|
| Ceylon Government 3½ per cent. Loan, 1957-62 | 100 | .. | 100 | .. | — | — |
| Ceylon Government 3½ per cent. Loan, 1949-51 | 100 | .. | 99  | .. | — | — |
| Ceylon Government 3½ per cent. Loan, 1959-64 | 100 | .. | 100 | .. | — | — |
| State Mortgage Bank 4 per cent. Debs.        | 50  | .. | 50  | .. | — | — |
| State Mortgage Bank 3½ per cent. Debs.       | 50  | .. | 49  | .. | — | — |

For further particulars see Quarterly List.

BY ORDER OF THE COMMITTEE.

Colombo, 5th September, 1940.

N.B.—All quotations on this list are "Cum. Dividend" unless specifically stated "Ex. Dividend."

N.B.—Quotations in the above list are of Rs. 1,000 or over except those marked \* which are between Rs. 300 and Rs. 1,000. Transactions under Rs. 300 are not quoted.

† Indicates the brokerage is payable by the buyer.

Next settlement day for local transactions 27th September, 1940.

## Supplementary Share List issued by the Colombo Brokers' Association

70

## Tea Companies

|  | Amount paid |    | B   | S    | T   |
|--|-------------|----|-----|------|-----|
|  | per share   |    |     |      |     |
|  | Rs.         |    | Rs. | Rs.  | Rs. |
| Agra Elbedde Tea Company, Ltd.                 | 10          | .. | —   | —    | —   |
| Agra Tea Company of Ceylon, Ltd.               | 10          | .. | —   | —    | —   |
| Aigburth Tea Company, Ltd.                     | 2           | .. | —   | —    | —   |
| Allerton Tea Company of Ceylon, Ltd.           | 1           | .. | —   | 1    | —   |
| Brampton Tea Company, Ltd.                     | 10          | .. | —   | 5    | —   |
| Epalawa Tea & Rubber Company, Ltd.             | 10          | .. | —   | —    | —   |
| Forest Hill Tea Company, Ltd.                  | 10          | .. | —   | 3½*  | —   |
| Greenwood Estate Company, Ltd.                 | 10          | .. | —   | 8    | —   |
| Hangranoya Tea Estates, Ltd.                   | 10          | .. | —   | 8    | —   |
| Hatton Tea Company, Ltd.                       | 10          | .. | —   | —    | —   |
| Moolgama Estates Company, Ltd.                 | 10          | .. | —   | 15   | —   |
| Nelliampathy Hills (Cochin) Estates, Ltd.      | 2           | .. | —   | 1½   | —   |
| Rahatungoda Tea Company, Ltd.                  | 10          | .. | —   | —    | —   |
| Ratmalawinna (Balangoda) Estates Company, Ltd. | 15          | .. | —   | —    | —   |
| St. Heliers Tea Company, Ltd.                  | 10          | .. | 15  | —    | —   |
| Stafford Tea Estates, Ltd.                     | 10          | .. | —   | 4    | —   |
| Vellamali Tea Company, Ltd.                    | 15          | .. | 8   | —    | —   |
| Wagolla Estates Company, Ltd.                  | 10          | .. | —   | —    | —   |
| Walapane Tea Company, Ltd.                     | 10          | .. | —   | -/50 | —   |
| Weygalla Tea Company, Ltd.                     | 10          | .. | —   | —    | —   |

## Rubber Companies

|  |     |    |      |      |   |
|--|-----|----|------|------|---|
| Apthorpe Tea & Rubber Company, Ltd.              | 10  | .. | 5    | —    | — |
| Arawakumbura Rubber Company, Ltd.                | 10  | .. | —    | —    | — |
| Cocoawatta (Ceylon) Rubber & Tea Estates Company | 10  | .. | 2*   | —    | — |
| Damblagolla Rubber Estates, Ltd.                 | 10  | .. | —    | 3    | — |
| Dehiowita Rubber Company, Ltd.                   | 1   | .. | -/70 | -/90 | — |
| Eila Tea Company of Ceylon, Ltd.                 | 100 | .. | 50   | —    | — |
| Etambawela Rubber Company, Ltd.                  | 10  | .. | —    | —    | — |
| Gallawatte (Ceylon) Rubber Company, Ltd.         | 10  | .. | 4½   | 6    | — |
| G. W. Rubber Estates Company, Ltd.               | 10  | .. | 1½*  | —    | — |
| Hinwerelle Rubber Company, Ltd.                  | 10  | .. | 12   | 15   | — |

## Rubber Companies (contd.)

|  | Amount paid<br>per share |          |          |     | T | Exhibits  |
|--|--------------------------|----------|----------|-----|---|---|
|  | Rs.                      | B<br>Rs. | S<br>Rs. | Rs. |   |   |
| Kalkande Rubber Company, Ltd.                          | 10                       | —        | —        | —   | — | R 13<br>Share List<br>issued by the<br>Colombo<br>Brokers'<br>Association<br>(undated)<br>—contd. |
| Katiapola Rubber Company, Ltd.                         | 10                       | —        | 10       | —   | — |   |
| Kegalle Rubber & Tea Company of Ceylon,<br>Ltd.        | 10                       | 1½       | 2*       | —   | — |   |
| Kelani Valley Rubber Company, Ltd.                     | 10                       | —        | —        | —   | — |   |
| Muppene Valley (Ceylon) Rubber Company,<br>(1931) Ltd. | 10                       | 12       | 17½      | —   | — |   |
| Murraythwaite Rubber Company, Ltd.                     | 10                       | —        | —        | —   | — |   |
| Mylands Rubber Company, Ltd.                           | 10                       | —        | —        | —   | — |   |
| Nakkala Rubber Company, Ltd.                           | 10                       | —        | 6        | —   | — |   |
| Narangoda Rubber Company, Ltd.                         | 10                       | 9        | —        | —   | — |   |
| Panakura Estates, Ltd.                                 | 10                       | 9½       | 11       | —   | — |   |
| Pangalla Rubber Company, Ltd.                          | 9½                       | 1½       | 2½*      | —   | — |   |
| Pareekani Travancore Rubber Company, Ltd.              | 5                        | —        | —        | —   | — |   |
| Rajamaana Rubber Company, Ltd.                         | 10                       | —        | 1        | —   | — |   |
| Remuna Rubber Company, Ltd.                            | 10                       | —        | 8        | —   | — |   |
| Do. (Part paid)  | 5                        | —        | —        | —   | — |   |
| Rubli Rubber Company, Ltd.                             | 5                        | 3*       | 4        | —   | — |   |
| Tempo Tea & Rubber Company, Ltd.                       | 10                       | —        | —        | —   | — |   |
| Trafford Hill Estates, Ltd.                            | 10                       | 5        | 6½       | —   | — |   |
| Vauxhall Rubber Company of Ceylon, Ltd.                | 10                       | -/30     | —        | —   | — |   |
| Walagama Rubber Company, Ltd.                          | 10                       | 2*       | 3*       | —   | — |   |
| Weniwella Rubber Company, Ltd.                         | 10                       | —        | —        | —   | — |   |

## Tea cum Rubber Companies

|   |      |    |       |   |   |
|---|------|----|-------|---|---|
| Allagalla Tea & Rubber Company, Ltd.              | 10   | —  | —     | — | — |
| Ambalawa Estates Company of Ceylon, Ltd.          | 10   | —  | —     | — | — |
| Dickapitiya Tea & Rubber Company, Ltd.            | 10   | —  | —     | — | — |
| Gamawella Tea & Rubber Company, Ltd.              | 10   | —  | —     | — | — |
| Haughton Tea Company, Ltd.                        | 10   | —  | —     | — | — |
| Hulandawa Rubber & Tea Company, Ltd.              | 10   | —  | —     | — | — |
| Kalooogalla (Uva) Estates, Ltd.                   | -/50 | —  | —     | — | — |
| Kanapediwatte Tea Company, Ltd.                   | 10   | 15 | —     | — | — |
| Knavesmire Estates Company, Ltd.                  | 100  | —  | 45    | — | — |
| Logie Tea & Rubber Company, Ltd.                  | 10   | 8  | 10    | — | — |
| Lunugalla Tea & Rubber Company of Ceylon,<br>Ltd. | 10   | 2  | —     | — | — |
| Pine Hill Estates, Company, Ltd.                  | 10   | —  | —     | — | — |
| Rakwana Tea & Rubber Company, Ltd.                | 10   | —  | 8     | — | — |
| Ratwatta Cocoa Company, Ltd.                      | 100  | —  | 60x d | — | — |
| Rye Estates of Ceylon, Ltd.                       | 10   | 12 | 15    | — | — |
| Sikes Tea & Rubber Estates, Ltd.                  | 10   | —  | —     | — | — |
| Walaboda Tea & Rubber Company, Ltd.               | 10   | —  | —     | — | — |
| Walahanduwa Estates, Ltd.                         | 10   | —  | —     | — | — |

## Ceylon Commercial Companies

|   |     |    |       |   |   |
|---|-----|----|-------|---|---|
| A. R. Ephrams Co-operative Company, Ltd.      | 10  | —  | —     | — | — |
| A. & E. Motor Transport Company, Ltd.         | 10  | 16 | —     | — | — |
| Bank of Ceylon, Ltd.                          | 25  | 25 | —     | — | — |
| Broughams, Ltd.                               | 10  | 3  | —     | — | — |
| Ceylon Brewery, Ltd.                          | 10  | —  | —     | — | — |
| Ceylon Insurance Company, Ltd.                | 6   | 6* | —     | — | — |
| Colombo Apothecaries Company, Ltd.            | 10  | —  | 2½    | — | — |
| Colombo Fort Land & Building Company,<br>Ltd. | 3   | —  | 3     | — | — |
| Colombo Launch Company, Ltd.                  | 100 | —  | —     | — | — |
| Colombo Pharmacy                              | 5   | 3  | 6*    | — | — |
| Colonial Motor & Engineering Company, Ltd.    | 5   | —  | 2     | — | — |
| Fentons, Ltd.                                 | 10  | —  | —     | — | — |
| Kandy Hotels Company (1938), Ltd.             | 1   | —  | 1*    | — | — |
| Nawalapitiya Building Syndicate               | 10  | —  | —     | — | — |
| Plate Limited                                 | 2½  | —  | -/30* | — | — |
| Rowlands Garage, Ltd.                         | 6   | —  | 5     | — | — |
| Walker and Greig, Ltd.                        | 2   | —  | -/25  | — | — |



## Exhibits

R 13  
Share List  
issued by  
the Colombo  
Brokers'  
Association  
(undated)  
—contd.

## Preference Shares and Debentures

|   | Amount paid<br>per share | B   | S   | T   |
|---|--------------------------|-----|-----|-----|
|   | Rs.                      | Rs. | Rs. | Rs. |
| Agra Elbedde Tea Company, Ltd., 7 per cent. cum. pref. shares                 | 10                       | —   | —   | —   |
| Do. 5 per cent. debs.   | 1,000                    | —   | —   | —   |
| Aigburth Tea and Rubber Company, Ltd., 7 per cent. cum. part pref.            | 2                        | —   | 2½  | —   |
| Allerton Tea Company of Ceylon, Ltd., 7 per cent. non-cum. pref. shares       | 5                        | 3½  | —   | —   |
| Arabalawa Estates Company of Ceylon, Ltd., 7½ per cent. cum. pref. shares     | 10                       | —   | —   | —   |
| Apthorpe Estates, Ltd., 6 per cent. mort. debs.                               | 500                      | —   | —   | —   |
| Arratenne (Ceylon) Tea & Rubber Estates, Ltd., 7½ per cent. cum. pref. shares | 10                       | —   | 13  | —   |
| British Ceylon Corporation, Ltd., 6 per cent. cum. pref. shares               | 5                        | —   | 5½  | —   |
| Bukit Darah Selangor Rubber Company, Ltd., 8 per cent. prefs.                 | 10                       | —   | —   | —   |
| Burnside Ceylon Estates Company, Ltd., 7 per cent. cum. pref.                 | 10                       | 9½  | —   | —   |
| Clunes Estates Company of Ceylon, Ltd., 7 per cent. pref.                     | 10                       | —   | —   | —   |
| Coconut Estates of Perak, Ltd., 8 per cent. cum. part. prefs.                 | 10                       | —   | —   | —   |
| Colombo Hotels Company, Ltd., 5 per cent. first mort. debs.                   | 100                      | 65  | —   | —   |
| Deensland (Uva) Tea Company, Ltd., 5 per cent. debs.                          | 386                      | 175 | —   | —   |
| Do. 6 per cent. cum. pref.  | 10                       | —   | 2   | —   |
| Ella Tea Company of Ceylon, Ltd., 7 per cent. debs.                           | 100                      | —   | —   | —   |
| Do. 6 per cent. prefs.  | 100                      | —   | —   | —   |
| Estates Company of Uva, Ltd., 7 per cent. cum. pref. shares                   | 10                       | 11½ | —   | —   |
| Etambawela Rubber Company, Ltd., 8 per cent. mort. debs.                      | 100                      | 60  | —   | —   |
| Fairlawn Estates, Ltd., 7 per cent. cum. pref. shares                         | 15                       | 16  | —   | —   |
| Gamawella Tea & Rubber Company, Ltd., pref. ord.                              | 10                       | —   | —   | —   |
| Girindi Ella Tea Company, Ltd., 7½ per cent. cum. pref. shares                | 10                       | —   | —   | —   |
| Hangranoya Tea Estates, Ltd., 7½ per cent. cum. pref. shares                  | 10                       | —   | 12½ | —   |
| H. Bastian Fernando Estates, Company, 7 per cent. debs.                       | 100                      | 25  | —   | —   |
| Hillwood Tea Co., Ltd., 7½ per cent. cum. pref. shares                        | 10                       | —   | 10  | —   |
| Hunugalla Tea & Rubber Company, Ltd., 7 per cent. cum. pref. shares           | 10                       | —   | —   | —   |
| Kalooogalla (Uva) Estates, Ltd., 5 per cent. non-cum. pref.                   | 5                        | —   | —   | —   |
| Kaluganga Valley Tea & Rubber Company, Ltd., 7 per cent. prim. debs.          | 500                      | —   | 480 | —   |
| Do. 8 per cent. second debs.  | 500                      | —   | 460 | —   |
| Kalutara Company, Ltd., 7 per cent. prefs.                                    | 10                       | —   | —   | —   |
| Kandy Hotels Company (1938) Ltd., 7 per cent. non-cum. pref.                  | 5                        | —   | 5   | —   |
| Kelani Tea Gardens Company, Ltd., 7 per cent. cum. prefs.                     | 10                       | —   | —   | —   |
| L. L. P. Estates, Ltd., 6 per cent. debs.                                     | 500                      | —   | —   | —   |
| Lugaloya Tea & Rubber Company, Ltd., 7½ per cent. cum. pref.                  | 10                       | 9   | 10  | —   |
| Lunugalla Tea & Rubber Company of Ceylon, Ltd., 6 per cent. cum. part pref.   | 10                       | —   | 10  | —   |
| Macaldeniya Tea & Rubber Company, Ltd., 6 per cent. debs.                     | 500                      | —   | —   | —   |
| Midford (Ceylon) Tea Estates, Ltd., 7 per cent. debs.                         | 100                      | —   | —   | —   |
| Mulhalkelle Tea Company Ltd., 7 per cent. cum. pref. shares                   | 10                       | —   | —   | —   |

## Preference Shares and Debentures (contd.)

|   | Amount paid      |          |          |          | S<br>Rs. | T<br>Rs. | Exhibits<br>R 13<br>Share List<br>issued by<br>the Colombo<br>Brokers'<br>Association<br>(undated)<br>—contd. |
|---|------------------|----------|----------|----------|----------|----------|---|
|   | per share<br>Rs. | B<br>Rs. | S<br>Rs. | T<br>Rs. |          |          |   |
| Nahavilla Estates Company, Ltd., "A", 6 per cent. cum. pref. ..                     | 10               | 11½      | —        | —        | —        | —        |   |
| Do. 7 per cent. cum. pref. ..   | 10               | 11½      | —        | —        | —        | —        |   |
| Nelliampathy Hills (Cochin) Estates Company, Ltd., 6 per cent. cum. pref. shares .. | 2                | —        | 2        | —        | —        | —        |   |
| New Colombo Ice Company, 7 per cent. cum. pref. ..                                  | 10               | —        | —        | —        | —        | —        |   |
| Nyanza Tea Company of Ceylon, Ltd. 8 per cent. cum. pref. shares ..                 | 10               | —        | —        | —        | —        | —        |   |
| Do. 7 per cent. cum. pref. shares ..  | 10               | —        | —        | —        | —        | —        |   |
| Orion Tea Company, Ltd. 7 per cent. cum. pref. shares ..                            | 10               | —        | 10       | —        | —        | —        |   |
| Poonagalla Valley Ceylon Company, Ltd. 7 per cent. cum. pref. shares ..             | 10               | 11½      | —        | —        | —        | —        |   |
| Rajamaana Rubber Company, Ltd., 7½ per cent. cum. pref. ..                          | 10               | 9        | —        | —        | —        | —        |   |
| Rakwana Tea & Rubber Company, Ltd., 7 per cent. cum. pref. ..                       | 10               | —        | 12       | —        | —        | —        |   |
| Richlands Ceylon Tea Estates, Ltd., 7½ per cent. cum. pref. ..                      | 10               | 11½      | 13½      | —        | —        | —        |   |
| Roeberry Tea Company of Ceylon, Ltd., 7 per cent. cum. pref. shares ..              | 10               | 11½      | —        | —        | —        | —        |   |
| Rowlands Garages, Ltd., 8 per cent. cum. pref. ..                                   | 10               | 9        | 11       | —        | —        | —        |   |
| Strathspey Tea Company, Ltd., 7 per cent. cum. pref. shares ..                      | 10               | —        | —        | —        | —        | —        |   |
| Telok Bharu Coconut Company, Ltd., 8 per cent. cum. part pref. ..                   | 10               | —        | 11       | —        | —        | —        |   |
| Tempo Tea & Rubber Company, Ltd., 7 per cent. cum. pref. ..                         | 10               | —        | —        | —        | —        | —        |   |
| Theberton (Ceylon) Tea Estates, Ltd., 7 per cent. non-cum. part pref. ..            | 4                | —        | 5        | —        | —        | —        |   |
| Tilton (Ceylon) Tea Estates, Ltd., 6½ per cent. mort. debs. ..                      | 100              | —        | —        | —        | —        | —        |   |
| United Nilgiri, 7 per cent. (1936) debs. ..   | 100              | —        | —        | —        | —        | —        |   |
| Upper Maskeliya Estates Company, Ltd., 7 per cent. pref. shares ..                  | 10               | 11½      | —        | —        | —        | —        |   |
| Vauxhall Rubber Company of Ceylon, Ltd. 5 per cent. debs. ..                        | 1,000            | —        | —        | —        | —        | —        |   |
| Vellamali Tea Company, Ltd., 7 per cent. debs. ..                                   | 100              | —        | —        | —        | —        | —        |   |
| Wagolla Estates Company, Ltd., 7 per cent. cum. pref. ..                            | 10               | —        | 7½       | —        | —        | —        |   |
| Walapane Tea Company, Ltd., 7 per cent. debs. ..                                    | 1,000            | —        | 900      | —        | —        | —        |   |
| Walaboda Tea & Rubber Company, Ltd. 7 per cent. cum. pref. ..                       | 10               | 5        | 7½       | —        | —        | —        |   |
| Walker & Greig, Ltd., 7 per cent. non-cum. pref. ..                                 | 2                | -/50     | -/75     | —        | —        | —        |   |
| Welimada Tea Company of Ceylon, Ltd., 6½ per cent. debs. ..                         | 1,000            | —        | —        | —        | —        | —        |   |

For further particulars see Quarterly List.

Colombo, 5th September, 1940.

BY ORDER OF THE COMMITTEE.

N.B.—All quotations on this list are "Cum. Dividend" unless specifically stated "Ex Dividend".

N.B.—Quotations in the above list are of Rs. 1,000 or over except those marked\* which are between Rs. 300 and Rs. 1,000. Transactions under Rs. 300 are not quoted.

† Indicates the brokerage is payable by the buyer.

Note.—Share Rule 8 (b) now reads—

Delivery of shares sold for "Payment against Documents" shall be at Seller's option and must be made within six Calendar months from the date of contract, and payment is due to the Seller 3 days after receipt by the Selling Broker of the relative documents.

Should documents not be delivered to the Selling Broker within six Calendar months from the date of contract the Buyer shall have the right of—

- (i) Re-purchasing such shares at the risk of the seller who will be liable for any loss incurred by such re-purchase;
- (ii) Cancelling the contract.

Next settlement day for local transactions 27th September, 1940.

P 12

Balance Sheet at December 31, 1936

C. W. MACKIE & COMPANY, LIMITED

Balance Sheet as at 31st December, 1936

| <i>Capital, Liabilities and Credit Balances</i>                   |             | Rs. | c. | <i>Assets and Debit Balances</i>                    |         | Rs. | c.        |
|---|-------------|-----|----|---|---------|-----|-----------|
| <i>Share Capital :</i>  |             |     |    |   |         |     |           |
| Authorized and issued—  |             |     |    | <i>Leasehold Property :</i>                         |         |     |           |
| 19,800 8 per cent. cumulative preference                          | 990,000 0   |     |    | Annesley Stores .. .. .                             | 275,780 | 37  |           |
| shares of Rs. 50 each .. .. .                                     | 10,000 0    |     |    | Barge—  | 1,591   | 20  |           |
| 5,000 Management shares of Rs. 2 each .. .. .                     | 1,000,000 0 |     |    | As at 31st December, 1935 .. .. .                   | 159     | 12  |           |
|   |             |     |    | Less Depreciation at 10 per cent. per annum .. .. . |         |     | 1,432 8   |
| <i>Security Deposit :</i>   |             |     |    | <i>Plant and Machinery :</i>                        |         |     |           |
| As shown in Schedule .. .. .                                      | 1,500 0     |     |    | As at 31st December, 1935 .. .. .                   | 7,761   | 53  |           |
| <i>Sundry Creditors :</i>   |             |     |    | Additions during the year .. .. .                   | 840     | 4   |           |
| As shown in Schedule .. .. .                                      | 36,534 70   |     |    | Less Depreciation at 10 per cent. per annum .. .. . |         |     | 7,741 41  |
| <i>National Bank of India, Ltd., overdraft (secured</i>           |             |     |    | <i>Tools :</i>                                      |         |     |           |
| <i>by lien on rubber stocks) .. .. .</i>                          | 715,630 65  |     |    | As at 31st December, 1935 .. .. .                   | 466     | 42  |           |
| <i>Suspense Account :</i>   |             |     |    | Additions during the year .. .. .                   | 311     | 73  |           |
| As shown in Schedule .. .. .                                      | 12,209 61   |     |    | Less Depreciation at 20 per cent. per annum .. .. . |         |     | 778 15    |
| <i>Leasehold sinking fund</i> .. .. .                             | 81,335 89   |     |    | <i>Motor Vehicles :</i>                             |         |     |           |
| <i>Reserve against fluctuations in rubber export duty</i> .. .. . | 3,457 37    |     |    | As at 31st December, 1935 .. .. .                   | 16,490  | 52  |           |
| <i>Motor Lorries Insurance Fund</i> .. .. .                       | 8,644 98    |     |    | Less Depreciation at 20 per cent. per annum .. .. . |         |     | 3,298 10  |
|   |             |     |    | <i>Furniture :</i>                                  |         |     |           |
|   |             |     |    | In Office—  |         |     |           |
|   |             |     |    | As at 31st December, 1935 .. .. .                   | 2,694   | 44  |           |
|   |             |     |    | Less Depreciation at 10 per cent. per annum .. .. . |         |     | 2,425 00  |
|   |             |     |    | In Store—   |         |     |           |
|   |             |     |    | As at 31st December, 1935 .. .. .                   | 548     | 39  |           |
|   |             |     |    | Less Depreciation at 10 per cent. per annum .. .. . |         |     | 54 84     |
|   |             |     |    |   |         |     | 493 55    |
|   |             |     |    | <i>Investments at cost of Acquisition :</i>         |         |     |           |
|   |             |     |    | 1,000 shares, Nonsuch Tea Estates, Limited, of      |         |     |           |
|   |             |     |    | Rs. 10 each .. .. .                                 |         |     | 25,649 30 |

*Note.*—The dividends on the preference share capital of the Company have not been paid for the years ended 31st December, 1930, 1931, 1932, 1933, 1934, 1935 and 1936, respectively.

There is a contingent liability in respect of Bills of Exchange under discount with the Bank, not matured at 31st December, 1936, amounting to £1,16,893 6s. 8d. sterling.

|  |    |                     |
|--|----|---------------------|
| <i>Stocks</i> : Valued at the lower of approximate average cost price of current market value, as certified by Mr. A. E. Williams: |    |                     |
| Rubber   | .. | 720,072 37          |
| Sundry   | .. | 10,578 65           |
|  |    | 730,651 2           |
| <i>Rubber Exchange of New York</i> :   |    |                     |
| As at 31st December, 1935  | .. | 5,000 0             |
| Amount written off   | .. | 4,700 0             |
|  |    | <u>300 0</u>        |
| <i>Sundry Debtors</i> :  |    |                     |
| As shown in Schedule   | .. | 513,914 99          |
| <i>Debts due by Directors</i> :  |    |                     |
| C. W. Mackie Jnr.  | .. | 6,373 83            |
| A. E. Williams   | .. | 6,831 97            |
|  |    | <u>13,205 80</u>    |
| <i>Suspense Account</i> :  |    |                     |
| As shown in Schedule   | .. | 11,934 61           |
| <i>Deposits</i> :  |    |                     |
| As shown in Schedule   | .. | 2,280 0             |
| <i>Cash</i> :  |    |                     |
| On current account with Mercantile Bank of India, Ltd.   | .. | 4,985 44            |
| In hand  | .. | 81 37               |
|  |    | <u>5,066 81</u>     |
| <i>Profit and Loss Account</i> :   |    |                     |
| Balance at debit   | .. | 254,623 32          |
|  |    | <u>1,859,313 20</u> |

245

We certify that the above Balance Sheet contains, to the best of our belief, a true account of the Capital and Liabilities and of the Property and Assets of the Company.

(Sgd.) M. J. HARDING,  
Under letter of appointment, July 23, 1937. } Directors.  
(Sgd.) A. E. WILLIAMS.

We have audited the above Balance Sheet of Messrs. C. W. Mackie and Company, Limited, with the books and vouchers of the Company and have obtained all the information and explanations we have required. We certify that, in our opinion, the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of affairs of the Company according to the best of our knowledge and belief and as shown by the books of the Company.

Colombo, 31st December, 1937.

(Sgd.) FORD, RHODES, THORNTON & Co.,  
Chartered Accountants.

Exhibits  
P 12  
Balance  
Sheet at  
December 31,  
1935—contd.

Balance Sheet at December 31, 1939

C. W. MACKIE & COMPANY, LIMITED

Balance Sheet as at 31st December, 1939

| <i>Capital, Liabilities and Credit Balances</i>           |           | <i>Assets and Debit Balances</i> |         |
|---|-----------|----------------------------------|---------|
|   | Rs.       | c.                               | Rs.     |
|   | c.        | Rs.                              | c.      |
| <i>Share Capital :</i>                                    |           |                                  |         |
| Authorized and issued—                                    |           |                                  |         |
| 19,800 8 per cent. cumulative preference                  | 990,000   | 0                                | 275,780 |
| 5,000 Management shares of Rs. 50 each                    | 10,000    | 0                                | 37      |
| 5,000 Management shares of Rs. 2 each                     | 1,000,000 | 0                                |         |
| <i>Depositor :</i>  |           |                                  |         |
| Per Schedule  | ..        | 500                              | 4       |
| <i>Sundry Creditors :</i>                                 |           |                                  |         |
| Per Schedule  | ..        | 37,077                           | 4       |
| National Bank of India, Ltd. (overdraft secured)          | ..        | 1,485,471                        | 60      |
| <i>Suspense Account :</i>                                 |           |                                  |         |
| Per Schedule  | ..        | 104,659                          | 99      |
| <i>Leasehold Sinking Fund</i>                             | ..        | 89,669                           | 17      |
| <i>Reserve against fluctuations in rubber export duty</i> | ..        | 3,457                            | 37      |
| <i>Motor Lorries Insurance Fund</i>                       | ..        | 10,813                           | 98      |
| <i>Profit and Loss Account</i>                            | ..        | 642,172                          | 98      |
|   |           |                                  | 1,349   |
|   |           |                                  | 32      |
|   |           |                                  | 11,021  |
|   |           |                                  | 44      |
|   |           |                                  | 1,038   |
|   |           |                                  | 76      |
|   |           |                                  | 2,509   |
|   |           |                                  | 69      |
|   |           |                                  | 7,529   |
|   |           |                                  | 7       |
|   |           |                                  | 1,964   |
|   |           |                                  | 25      |
|   |           |                                  | 196     |
|   |           |                                  | 42      |
|   |           |                                  | 999     |
|   |           |                                  | 78      |
|   |           |                                  | 18      |
|   |           |                                  | 50      |
|   |           |                                  | 418     |
|   |           |                                  | 28      |
|   |           |                                  | 41      |
|   |           |                                  | 82      |
|   |           |                                  | 376     |
|   |           |                                  | 46      |

346

Note.—The Dividends on the 8 per cent. cumulative preference shares have not been paid for the period from 1st January, 1930, to 31st December, 1939.

|   |            |              |
|---|------------|--------------|
| <i>Investments at cost of Acquisition:</i>                        |            |              |
| 1,000 shares of Rs. 10 each, Nonsuch Tea Estate, Limited .. .. .  |            | 25,649 30    |
| <i>Stocks:</i>  |            |              |
| Rubber .. .. .  | 719,461 51 |              |
| Sundry .. .. .  | 28,819 22  |              |
|   | <hr/>      | 748,280 73   |
| <i>Rubber Exchange of New York</i>                                |            | 300 0        |
| <i>Sundry Debtors:</i>  |            |              |
| As shown in Schedule .. .. .                                      |            | 2,269,670 40 |
| <i>Loans to Directors:</i>  |            |              |
| Balance as at 31st December, 1938 .. .. .                         | 18,152 86  |              |
| Add Advances during year .. .. .                                  | 6,863 57   |              |
|   | <hr/>      | 24,515 93    |
| Deduct Payments during year .. .. .                               | 1,299 18   |              |
|   | <hr/>      | 23,216 75    |
| <i>Suspense Account:</i>  |            |              |
| As shown in Schedule .. .. .                                      |            | 6,848 75     |
| <i>Deposits:</i>  |            |              |
| As shown in Schedule .. .. .                                      |            | 3,580 0      |
| <i>Cash:</i>  |            |              |
| On Current Account with Mercantile Bank of India, Limited .. .. . | 3,324 10   |              |
| In hand .. .. .   | 118 16     |              |
|   | <hr/>      | 3,442 26     |
|   | <hr/>      | 3,373,821 68 |

We certify that the above Balance Sheet contains to the best of our belief a true account of the Capital and Liabilities, and of the Property and Assets of the Company.

(Signed) A. E. WILLIAMS  
C. W. MACKIE, JNR. } Directors.  
J. C. MACKIE

*Report of the Auditors.*

To: The Members of C. W. Mackie & Co., Ltd.

We have examined the above Balance Sheet with the Books and Accounts of the Company for the year ended 31st December, 1939, and we have obtained all the information and explanations we have required. In our opinion such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs as at 31st December, 1939, according to the best of our information and the explanations given to us and as shown by the Books of the Company.

Colombo, 28th August, 1940.

FORD, RHODES, THORNTON & Co.,  
Chartered Accountants.

Exhibits  
P 8  
Balance  
Sheet at  
December 31,  
1939—contd.











Exhibits  
R 3  
Profit and  
Loss Account  
for the Year  
ended December  
31, 1940

R 3  
**Profit and Loss Account for the Year ended December 31, 1940**

C. W. MACKIE & COMPANY, LIMITED

*Profit and Loss Account for the Year ended 31st December, 1940*

| Dr.                                     | Rs.     | c. | By Agency :                       | Rs.     | c. |
|---|---------|----|-----------------------------------|---------|----|
| To audit fees .. .. .                   | 2,200   | 0  | Fire insurance commission .. .. . | 531     | 81 |
| Interest on Bank overdraft, &c. .. .. . | 15,396  | 67 | Dividends on investments .. .. .  | 1,548   | 39 |
| Bonus .. .. .                           | 6,791   | 70 | Profit on trading .. .. .         | 707,618 | 21 |
| Bad Debts .. .. .                       | 1,945   | 77 |                                   |         |    |
| Income Tax Reserve .. .. .              | 70,000  | 0  |                                   |         |    |
| Balance carried down .. .. .            | 613,364 | 27 |                                   |         |    |
|   | 709,698 | 41 |                                   | 709,698 | 41 |

|   |           |    |  |           |    |
|---|-----------|----|--|-----------|----|
| To advances to staff written off .. .. .                                    | 1,566     | 12 | By balance as at 31st December, 1939 .. .. . | 642,172   | 98 |
| Income Tax Reserve .. .. .  | 140,000   | 0  | Balance brought down .. .. .                 | 613,364   | 27 |
| General Reserve .. .. .   | 150,000   | 0  |  |           |    |
| 8 per cent. cumulative preference dividends for 1930, 1931 and 1932 .. .. . | 287,600   | 0  |  |           |    |
| Balance carried to Balance Sheet .. .. .                                    | 726,371   | 13 |  |           |    |
|   | 1,255,537 | 25 |  | 1,255,537 | 25 |

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(Sgd.) \_\_\_\_\_  
for Commissioner of Estate Duty.  
14/12/48.

C. W. MACKIE & COMPANY, LIMITED

*Store Working Account for the Year ended 31st December, 1940*

| To Wages                 | Rs.     | c. | By Receiving, warehousing and shipping .. .. .               | Rs.     | c. |
|--------------------------|---------|----|--|---------|----|
| Sundry materials .. .. . | 90,715  | 60 | Receiving, warehousing and shipping .. .. .                  | 626,924 | 92 |
| Shipping charges .. .. . | 175,836 | 16 | Receiving, warehousing and shipping .. .. .                  | 625,552 | 50 |
| Lorries expenses .. .. . | 40,439  | 82 | 50,044,200 lb. @ 1 1/4 cent per lb. .. .. .                  | 625,552 | 50 |
| Rent, rates, &c. .. .. . | 11,031  | 84 | Receiving and warehousing 548,967 @ 1/4 cent per lb. .. .. . | 1,372   | 42 |
| Harbour dues .. .. .     | 14,265  | 56 |  |         |    |
| Salaries .. .. .         | 22,434  | 33 |  |         |    |
| Fire insurance .. .. .   | 22,164  | 0  |  |         |    |
| Stationery .. .. .       | 1,875   | 0  |  |         |    |
|                          | 1,565   | 21 |  | 626,924 | 92 |

|   |          |                   |
|---|----------|-------------------|
| Depreciation—Plant ..                     | 1,226 44 |                   |
| Store furniture ..                        | 41 15    |                   |
| Tools ..                                  | 153 60   |                   |
| Motor vehicles ..                         | 1,882 27 |                   |
|   |          | 3,903 46          |
| <i>General Charges</i> ..                 |          | 6,481 16          |
| Repairs to stores ..                      |          | 75 0              |
| Balance carried down ..                   |          | 236,737 78        |
|   |          | <u>626,924 92</u> |
| To Salaries ..                            |          | 46,680 0          |
| Rent and rates ..                         |          | 5,164 72          |
| Stationery ..                             |          | 1,188 8           |
| Depreciation, office furniture ..         |          | 176 78            |
| Donations ..                              |          | 8,545 0           |
| General charges ..                        |          | 3,601 84          |
| Balance transferred to Trading Account .. |          | 254,447 66        |
|   |          | <u>319,804 8</u>  |

By Balance brought down ...  
Postage, petties and cables ..

236,737 78  
83,066 30

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353

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for Commissioner of Estate Duty.  
14/12/48.

Exhibits  
R 3  
Profit and  
Loss Account  
for the Year  
ended December  
31, 1940—  
contd.

## Exhibits

## C. W. MACKIE &amp; COMPANY, LIMITED

*Trading Account for the Year ended 31st December 1940*

| R 3<br>Profit and Loss<br>Account for the<br>Year ended<br>December 31,<br>1940— <i>contd.</i> |                                   | £          | Rs.        | c.    | Loss      | Profit        |
|--|-----------------------------------|------------|------------|-------|-----------|---------------|
|  |                                   |            | Rs.        | c.    | Rs. c.    | Rs. c.        |
|  | Rubber stock at 1st January, 1940 | 2,034,717  | 719,461    | 51 .. |           |               |
|  | Rubber purchases ..               | 51,213,523 | 26,964,310 | 57    |           |               |
|  |                                   | 53,248,240 | 27,683,772 | 8     |           |               |
|  | Rubber stock at 31st Decr., 1940  | 1,964,770  | 971,403    | 39    |           |               |
|  |                                   | 51,283,470 | 26,712,368 | 69    |           |               |
|  | Rubber sales ..                   | 51,313,436 | 27,039,634 | 65    |           |               |
|  |                                   | 29,966     |            |       |           | .. 327,265 96 |
|  | <i>New York Consignments :</i>    |            |            |       |           |               |
|  | Farr and Company ..               | ..         | ..         | ..    | 9,576 94  |               |
|  | H. W. French Co. Inc. ..          | ..         | ..         | ..    |           | .. 12,202 80  |
|  | Freight rebates ..                | ..         | ..         | ..    |           | .. 5,392 77   |
|  | Interest ..                       | ..         | ..         | ..    |           | .. 123,689 73 |
|  | Claims ..                         | ..         | ..         | ..    | 5,803 77  |               |
|  | Profit on Store working ..        | ..         | ..         | ..    |           | .. 254,447 66 |
|  |                                   |            |            |       | 15,380 71 | 722,998 92    |
|  |                                   |            |            |       |           | 15,380 71     |
|  |                                   |            |            |       |           | 707,618 21    |

True Copy.

(Sgd.) \_\_\_\_\_.

for Commissioner of Estate Duty.

14/12/48.

## Balance Sheet at December 31, 1940

C. W. MACKIE &amp; COMPANY, LIMITED

Balance Sheet as at 31st December, 1940

## Capital, Liabilities and Credit Balances

|   | Rs.     | c. | Rs.       | c. |
|---|---------|----|-----------|----|
| <i>Share Capital :</i>                                    |         |    |           |    |
| Authorized and issued—                                    |         |    |           |    |
| 19,800 8 per cent. cumulative preference                  | 990,000 | 0  |           |    |
| shares of Rs. 50 each                                     | 10,000  | 0  |           |    |
| 5,000 Management shares of Rs. 2 each                     |         |    | 1,000,000 | 0  |
| <i>Depositor :</i>  |         |    |           |    |
| Per Schedule  | ..      | .. | 800       | 0  |
| <i>Sundry Creditors :</i>                                 |         |    |           |    |
| Per Schedule  | ..      | .. | 102,721   | 54 |
| <i>Suspense Account :</i>                                 |         |    |           |    |
| Per Schedule  | ..      | .. | 104,694   | 76 |
| <i>Leasehold Sinking Fund</i>                             | ..      | .. | 92,446    | 93 |
| <i>Reserve against fluctuations in rubber export duty</i> | ..      | .. | 3,457     | 37 |
| <i>Motor Lorries Insurance Fund</i>                       | ..      | .. | 11,536    | 98 |
| <i>Income Tax Reserve</i>                                 | ..      | .. | 101,372   | 76 |
| <i>General Reserve</i>                                    | ..      | .. | 150,000   | 0  |
| <i>Profit and Loss Account</i>                            | ..      | .. | 726,371   | 13 |

## Assets and Debit Balances

|  | Rs.    | ₹. | c.         |
|--|--------|----|------------|
| <i>Leasehold Property :</i>                        |        |    |            |
| At cost—Annesley Stores                            | ..     | .. | 275,780 37 |
| <i>Plant and Machinery :</i>                       |        |    |            |
| At cost less sales and depreciation—               |        |    |            |
| As at 31st December, 1939                          | 11,021 | 44 |            |
| Additions during the year                          | 1,243  | 0  |            |
| <i>Less Depreciation at 10 per cent. per annum</i> | 12,264 | 44 |            |
|  | 1,226  | 44 |            |
|  |        |    | 11,038 0   |
| <i>Tools :</i>                                     |        |    |            |
| At cost less sales and depreciation—               |        |    |            |
| As at 31st December, 1939                          | 3,849  | 32 |            |
| Additions during the year                          | 186    | 66 |            |
| <i>Less Depreciation at 10 per cent. per annum</i> | 1,535  | 98 |            |
|  | 153    | 60 |            |
|  |        |    | 1,382 39   |
| <i>Motor Vehicles :</i>                            |        |    |            |
| At cost less sales and depreciation—               |        |    |            |
| As at 31st December, 1939                          | 7,529  | 7  |            |
| <i>Less Depreciation at 25 per cent. per annum</i> | 1,882  | 27 |            |
|  |        |    | 5,646 80   |
| <i>Furniture (in Office) :</i>                     |        |    |            |
| At cost less sales and depreciation—               |        |    |            |
| As at 31st December, 1939                          | 1,767  | 83 |            |
| <i>Less Depreciation at 10 per cent. per annum</i> | 176    | 78 |            |
|  |        |    | 1,591 5    |
| <i>Furniture (in Stores) :</i>                     |        |    |            |
| At cost less sales and depreciation—               |        |    |            |
| As at 31st December, 1939                          | 376    | 46 |            |
| Additions during the year                          | 35     | 0  |            |
| <i>Less Depreciation at 10 per cent. per annum</i> | 411    | 46 |            |
|  | 41     | 15 |            |
|  |        |    | 370 31     |

Exhibits  
R 4  
Balance  
Sheet as at  
December  
31, 1940

|  |            |              |              |
|--|------------|--------------|--------------|
| <i>Investments at cost of Acquisition:</i>                       |            |              |              |
| 1,000 Shares of Rs. 10 each Nonsuch Tea Estates,<br>Ltd. . . . . |            |              | 25,649 30    |
| <i>Stocks as certified by Mr. A. E. Williams:</i>                |            |              |              |
| Rubber . . . . .   | 971,403 39 |              |              |
| Sundry . . . . .   | 39,911 6   |              |              |
|  |            | 1,011,314 45 |              |
| <i>Rubber Exchange of New York</i>                               |            |              | 300 0        |
| <i>Sundry Debtors:</i>   |            |              |              |
| Per Schedule . . . . .   |            |              | 884,330 55   |
| <i>Loans to Directors:</i>                                       |            |              |              |
| Balance as at 31st December, 1939 . . . . .                      | 23,216 75  |              |              |
| Add Advance during year . . . . .                                | 5,618 33   |              |              |
|  |            | 28,835 8     |              |
|  |            | 21,715 89    |              |
| <i>Deduct Payments during year</i>                               |            |              | 7,119 19     |
| <i>Suspense Account:</i>   |            |              |              |
| Per Schedule . . . . .   |            |              | 11,033 95    |
| <i>Deposits:</i>   |            |              |              |
| Per Schedule . . . . .   |            |              | 3,580 0      |
| <i>Cash:</i>   |            |              |              |
| National Bank of India, Ltd. . . . .                             | 20,285 65  |              |              |
| Mercantile Bank of India, Ltd. . . . .                           | 4,543 15   |              |              |
| Imperial Bank of India, Ltd. . . . .                             | 29,232 15  |              |              |
| In hand . . . . .  | 204 17     |              |              |
|  |            | 54,265 12    |              |
|  |            |              | 2,293,401 47 |

*Report of the Auditors*

To: The Members of C. W. Mackie & Company, Ltd.

We have examined the above Balance Sheet with the Books and Accounts of the Company for the year ended 31st December, 1940, and we have obtained all the information and explanations we have required. In our opinion such Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs as at 31st December, 1940, according to the best of our information and the explanations given to us and as shown by the Books of the Company.

Colombo, 21st June, 1941.

(Sgd.) FORD, RHODES, THORNTON & Co  
Chartered Accountants.

(Sgd.) \_\_\_\_\_,  
Commissioner of Estate Duty.  
1412/48.

R 5

Balance Sheet as at December 31, 1941

C. W. MACKIE & COMPANY, LIMITED

Trading and Profit and Loss Account—Year ended 31st December, 1941

|   | Lb. | Rs. c.               | Lb.   | Rs. c.              |
|---|-----|----------------------|---|---------------------|
| To Rubber Stock at 1st January, 1941            | ..  | 1,964,770            | ..  | 998,430 50          |
| Less: Reserve for Coupons                       | ..  | 50,391,976           | ..  | 22,027 11           |
| Purchases of Rubber and Coupons                 | ..  | 47,668               | ..  | 971,403 39          |
| Excess—Gain in Weight                           | ..  | 52,404,412           | ..  | 26,172,422 41       |
| Profit carried down                             | ..  | 409,106 11           | ..  | 47,762,934          |
|   |     | <u>27,552,931 91</u> |   | <u>25,084,196 0</u> |
| To Loss on New York Consignment                 | ..  | 1,025 76             | ..  | 409,106 11          |
| Claims  | ..  | 13,865 97            | ..  | 193,806 41          |
| Balance carried down to Profit and Loss Account | ..  | 705,646 52           | ..  | 115,837 22          |
|   |     | <u>720,538 25</u>    |   | <u>2,288 51</u>     |
| To Audit fees                                   | ..  | 2,200 0              | ..  | 705,646 52          |
| Interest—                                       | ..  | 5,555 31             | ..  | 661 11              |
| C. W. Mackie, decd. 1940                        | ..  | 534 15               | ..  | 1,207 35            |
| Do. 1941  | ..  | 41,489 88            | ..  | 3,457 37            |
| Bank Interest, &c.                              | ..  | 47,530 34            | ..  | 11,536 98           |
| Bad debts                                       | ..  | 7,764 16             | ..  |                     |
| Bonus 1941 working                              | ..  | 27,322 14            | ..  |                     |
| Travelling expenses                             | ..  | 1,680 0              | ..  |                     |
| Balance being net profit                        | ..  | 86,465 64            | ..  |                     |
|   |     | <u>636,043 69</u>    |   | <u>14,994 35</u>    |
|   |     | <u>722,509 33</u>    |   | <u>722,509 33</u>   |
| To Taxation Reserve                             | ..  | 100,000 0            | ..  | Rs. c. 726,371 13   |
| Balance per Balance Sheet                       | ..  | 865,669 77           | ..  | 2,187 0             |
|   |     | <u>965,669 77</u>    | Less: Advances to staff written off                                       | 6,858 5             |
|   |     |                      | Bonus to staff 1940   | 150,000 0           |
|   |     |                      | General Reserve   | 150,000 0           |
|   |     |                      | 8 per cent. cumulative preference dividends, less tax 1935, 1936 and 1935 | 237,600 5           |
|   |     |                      | Net profit for 1941   | <u>396,745 5</u>    |
|   |     |                      |   | <u>329,626 8</u>    |
|   |     |                      |   | <u>636,043 69</u>   |
|   |     |                      |   | <u>965,669 77</u>   |

Exhibits  
R 5  
Balance Sheet as at December 31, 1941





**Trading and Profit and Loss Account for Year ended December 31, 1942**

C. W. MACKIE & COMPANY LIMITED.

*Trading and Profit and Loss Account ended 31st December, 1942*

| 1941       |   | 1942          |                 | 1941       |  | 1942          |               |
|------------|---|---------------|-----------------|------------|--|---------------|---------------|
| Rs.        | lb.   | Rs.           | lb.             | Rs.        | lb.                                    | Rs.           | c.            |
| 1,964,770  | To Rubber stock                                 | 4,641,478     | By Rubber sales | 25,034,196 | 47,762,934                             | 44,403,803    | 23,956,497 78 |
| 50,331,976 | Purchases                                       | 40,487,954    | Commission      | 2,468,736  | 4,641,478                              | 777,337       | 533,337 39    |
| 26,172,423 | Excess gain in weight                           | 51,713        | Rubber stock    | 52,404,412 | 45,181,145                             |               |               |
|            |   | 45,181,145    |                 |            |  |               |               |
| 409,106    | To profit carried down                          | 785,477 51    |                 | 27,552,932 |  | 29,489,835 67 |               |
| 27,552,932 |   | 29,489,835 67 |                 |            |  |               |               |
| 1,026      | To Loss on New York consignment                 | 11,027 88     |                 | 409,106    | By Gross profit on rubber brought down | 785,477 51    |               |
| 13,866     | Claims  | 1,055,190 42  |                 | 193,306    | Profit from Store Working Account      | 139,007 18    |               |
| 705,646    | Balance carried down to Profit and Loss Account | 1,055,190 42  |                 | 115,837    | Interest on rubber sales               | 132,373 39    |               |
|            |   |               |                 | 2,259      | Freight rebates                        | 9,360 22      |               |
| 720,538    |   | 1,066,218 30  |                 | 720,538    |  | 1,066,218 30  |               |
| 2,200      | Audit fees                                      | 2,200 0       |                 | 706,646    | Balance brought down                   | 1,055,190 42  |               |
| 6,089      | Accountant charges                              | 6,225 0       |                 | 661        | Agency—Fire Insurance Commission       | 546 22        |               |
| 41,500     | Interest C. W. Mackie (deceased)                | —             |                 | 1,208      | Dividends on investments (net)         | 1,010 70      |               |
| 7,104      | Bank interest, &c.,                             | 12,170 76     |                 | 14,994     | Reserves written back                  | —             |               |
| 27,892     | Bad debts                                       | 3,991 87      |                 |            |  |               |               |
| 1,680      | Bonus   | 26,711 65     |                 |            |  |               |               |
| 636,044    | Travelling expenses                             | 1,005,448 6   |                 |            |  |               |               |
|            | Balance carried down                            | 1,056,747 34  |                 | 722,509    |  | 1,056,747 34  |               |

*Profit and Loss Appropriation Account*

| Rs.          |   | Rs.          |                                      | Rs.        |         | Rs.                                |             |
|--------------|---|--------------|--------------------------------------|------------|---------|------------------------------------|-------------|
| c.           | Rs.   | c.           | Rs.                                  | c.         | Rs.     | c.                                 | Rs.         |
| 30,000       | To Reserves   | 30,000 0     | By Balance as at 31st December, 1941 | 865,669 77 | 320,626 | Less advances to staff written off | 2,442 0     |
| 100,000      | Furlough  | 100,000 0    |                                      |            | 636,044 | S per cent. cumulative             |             |
| 370,000      | Ceylonese staff retiring and death gratuities   | 370,000 0    |                                      |            |         | preference dividends               |             |
| 332,696 49   | Executive profit sharing scheme   | 332,696 49   |                                      |            |         | (less tax) 1936-1941               | 475,200 0   |
| 150,000 0    | Taxation  | 150,000 0    |                                      |            |         | Profit for 1942 brought down       | 388,027 77  |
| 1,232,696 49 | Equalization of dividends   | 1,232,696 49 |                                      |            |         |                                    | 1,005,448 6 |
|              | General Reserve (subject to confirmation at Annual Meeting 1942 (less tax))   | 79,200 0     |                                      |            |         |                                    |             |
|              | Proposed dividend on management shares 50 per cent. (free of tax subject to confirmation at the Annual General Meeting) | 50,000 0     |                                      |            |         |                                    |             |
|              | Balance per balance sheet   | 31,579 34    |                                      |            |         |                                    |             |
| 965,670      |   | 1,393,475 83 |                                      |            |         |                                    |             |

True Copy. (Sgd.)  
for Commissioner of Estate Duty.  
14/12/48.

Exhibits  
R 6  
Trading and Profit and Loss Account for Year ended December 31, 1942



**R 7**  
**Balance Sheet at December 31, 1942**

C. W. MACKIE & COMPANY, LTD.  
*Balance Sheet as at 31st December, 1942*

|  | 1941      | 1941    | 1941    | 1941   | 1941      | 1941 | 1941      |
|--|-----------|---------|---------|--------|-----------|------|-----------|
|  |           |         |         |        |           |      |           |
| <b>LIABILITIES</b>   |           |         |         |        |           |      |           |
| <b>SHARE CAPITAL</b>   |           |         |         |        |           |      |           |
| <i>Authorized and issued—</i>  |           |         |         |        |           |      |           |
| 19,800 8 per cent. cumulative preference shares of Rs. 50 each .. .. .   |           |         |         |        |           |      |           |
| 5,000 management shares of Rs. 2 each .. .. .                            |           |         |         |        |           |      |           |
|  | 1,000,000 | 1,500   | 990,000 | 10,000 | 1,000,000 | 0    | 0         |
| <i>Creditors and specific reserves and provision for taxation—</i>       |           |         |         |        |           |      |           |
| Depositor .. .. .  |           |         |         |        |           |      |           |
| Staff and workmen .. .. .  |           |         |         |        |           |      |           |
| C. W. Mackie, deceased .. .. .   |           |         |         |        |           |      |           |
| Sundries .. .. .   |           |         |         |        |           |      |           |
| Provision for net amount of proposed dividend management shares .. .. .  |           |         |         |        |           |      |           |
| Furlough reserve .. .. .   |           |         |         |        |           |      |           |
| Ceylonese staff retiring and death gratuities reserve .. .. .            |           |         |         |        |           |      |           |
| Executive profit sharing scheme .. .. .                                  |           |         |         |        |           |      |           |
| Provision for taxation .. .. .   |           |         |         |        |           |      |           |
| Bank overdraft .. .. .   |           |         |         |        |           |      |           |
| <b>Reserves—</b>   |           |         |         |        |           |      |           |
| General .. .. .  |           |         |         |        |           |      |           |
| Equalisation of dividends .. .. .  |           |         |         |        |           |      |           |
| Profit and Loss Account .. .. .  |           |         |         |        |           |      |           |
|  | 1,500     | 49,471  | 21,156  | 35     | 21,683    | 40   | 61,656    |
|  | 183,848   | 188,980 | 50,000  | 0      | 30,000    | 0    | 100,000   |
|  | 134,143   | 605,730 | 370,000 | 0      | 550,000   | 0    | 1,186,996 |
|  | 300,000   | 865,670 | 550,000 | 0      | 150,000   | 0    | 700,000   |
|  |           |         |         |        |           |      | 31,579    |
|  |           |         |         |        |           |      | 34        |
| <b>ASSETS</b>  |           |         |         |        |           |      |           |
| <i>Leasehold property—</i>   |           |         |         |        |           |      |           |
| Annesley Stores at cost .. .. .  |           |         |         |        |           |      |           |
| Less: Leasehold sinking fund .. .. .                                     |           |         |         |        |           |      |           |
|  | 180,556   | 12,088  | 275,780 | 37     | 98,002    | 45   | 177,777   |
| <i>Plant and machinery—</i>  |           |         |         |        |           |      |           |
| At cost, less sales and depreciation as at 31st December, 1941 .. .. .   |           |         |         |        |           |      |           |
| Additions 1,556 less sales 300 .. .. .                                   |           |         |         |        |           |      |           |
|  | 12,088    | 13,344  | 12,088  | 6      | 1,256     | 0    | 13,344    |
| Less: Depreciation at 10 per cent. .. .. .                               |           |         |         |        |           |      |           |
|  |           | 1,334   | 1,334   | 40     | 1,334     | 40   | 12,009    |
| <b>Tools—</b>  |           |         |         |        |           |      |           |
| At cost, less sales and depreciation as at 31st December, 1941 .. .. .   |           |         |         |        |           |      |           |
| Less: Amount written-off .. .. .   |           |         |         |        |           |      |           |
|  | 1,340     | 1,340   | 1,389   | 90     | 1,389     | 90   | 1,389     |
| <b>Motor vehicles—</b>   |           |         |         |        |           |      |           |
| At cost less sales and depreciation as at 31st December, 1941 .. .. .    |           |         |         |        |           |      |           |
|  | 17,238    | 17,238  | 1,100   | 0      | 4,034     | 51   | 5,134     |
| <b>Furniture—</b>  |           |         |         |        |           |      |           |
| At cost, less sales and depreciation as at 31st December, 1941 .. .. .   |           |         |         |        |           |      |           |
| Less: Sales .. .. .  |           |         |         |        |           |      |           |
| Depreciation .. .. .   |           |         |         |        |           |      |           |
|  | 2,161     | 2,161   | 2,100   | 59     | 216       | 6    | 1,944     |
| <b>Investments at cost—</b>  |           |         |         |        |           |      |           |
| 1,000 shares of Rs. 10 each fully paid Nonsuch Tea Estates, Ltd. .. .. . |           |         |         |        |           |      |           |
|  | 25,649    | 25,649  | 583,887 | 89     | 583,887   | 89   | 25,649    |
| <b>Stocks—as certified by Mr. A. E. Williams</b>                         |           |         |         |        |           |      |           |
| Rubber .. .. .   |           |         |         |        |           |      |           |
| Sundry materials .. .. .   |           |         |         |        |           |      |           |
|  | 2,168,738 | 34,899  | 583,887 | 89     | 583,887   | 89   | 585,921   |
| <b>Rubber Exchange of New York Debtors</b>                               |           |         |         |        |           |      |           |
| Staff and Workmen .. .. .  |           |         |         |        |           |      |           |
| Sundry .. .. .   |           |         |         |        |           |      |           |
|  | 300       | 14,059  | 31,648  | 37     | 47,848    | 11   | 300       |
| <b>Bills receivable</b> .. .. .  |           |         |         |        |           |      |           |
| Payments in advance unexpired .. .. .                                    |           |         |         |        |           |      |           |
|  | 2,355,397 | 5,165   | 69,497  | 78     | 473,659   | 54   | 3,232     |
|  |           |         | 3,232   | 21     | 3,232     | 21   | 12,103    |

Exhibits  
**R 7**  
Balance Sheet  
at December  
31, 1942

Exhibits  
R 7  
Balance  
Sheet  
at December  
31, 1942  
—contd.

|           |  |                 |              |
|-----------|--|-----------------|--------------|
|           |  |                 |              |
|           | <i>Debitors—</i>                       |                 |              |
| 2,580     | .. Sundry                              | 2,580           | 0            |
| 13,680    | .. Principal Collector (Harbour dues)  | 13,680          | 0            |
| 60,582    | .. Principal Collector (duty and dues) | 10,963          | 38           |
|           | <i>Cash—</i>                           |                 | 28,243 58    |
| 298       | .. In hand                             | 146             | 26           |
| 44,373    | .. At banks—Ceylon                     | 526,090         | 19           |
| —         | .. At bank—London                      | 1,000,000       | 0            |
|           |  | 1,526           | 236 45       |
|           |  | <i>£. s. d.</i> |              |
|           | On fixed deposit                       | 74,500          | 0 0          |
|           | On current account                     | 69              | 15 10        |
|           |  | 74,569          | 15 10        |
| 5,282,342 |  |                 |              |
|           |  | 2,918,575       | 66           |
|           |  | 5,282,342       | 2,918,575 66 |

*Report of the Auditors.*

To : The Members of C. W. Mackie & Co., Ltd.

We have examined the above Balance Sheet with the books and accounts of the Company and have obtained all the information and all the information and explanations we have required. In our opinion the above Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs according to the best of our information and the explanations given to us, and as shown by the books of this Company.

Colombo, 26th May, 1943.

(Sgd.) FORD, RHODES, THORNTON & Co.,  
Chartered Accountants.

(Sgd.) ..... } *Directors.*

**F. B. Lander's Valuation of Preference and  
 Management Shares**

*Valuation of Shares of C. W. Mackie & Co., Ltd., as at 6th  
 September, 1940, made by F. B. Lander, A. C. A., Partner  
 of Ford, Rhodes, Thornton & Co., the Company's  
 Auditors*

10 The last audited Balance Sheet available at 6th September, 1940,  
 was the Balance Sheet as at 31st December, 1939, which with the  
 Directors recommendations regarding appropriations of profits was  
 adopted on 14th September, 1940.

Draft accounts for the 6 months ended 30th June, 1940, had been  
 taken out for the information of the Directors prior to 6th Septem-  
 ber, 1940, and these accounts amended as necessary for taxation,  
 and for the recommendations affecting the 1939 accounts have been  
 prepared and are being certified. In order to ascertain the position  
 at 6th September, 1940, apportionments have been made of the  
 accounting profits for the 6 months ended 31st December, 1940,  
 as regards—

20 Rubber sales on a proportion of rubber gross profits for the 6  
 months.

Rubber handled on quantities handled 1st July—6th September.  
 Expenses on a time basis.

30 The Company is a private Company, and since 1926 the whole of  
 the management shares have been held by the late C. W. Mackie  
 who was a Life Director. 1,000 of the 5,000 management shares  
 were until 1926 held by Mr. N. J. G. Robertson and 375 by others  
 and these were acquired from Mr. Robertson and others as willing  
 sellers by Mr. Mackie as a willing buyer on a balance sheet valuation  
 as at 31st December, 1926, at a price of Rs. 224.67 per share. There  
 have been no transactions in these shares since 1926 and no dividends  
 on Management Shares were subsequently declared up to 6th Sep-  
 tember, 1940. The business of the company is that of rubber  
 dealers, warehousemen and shippers, and such business is highly  
 speculative, and the profits or losses have been dependent on the  
 fluctuations in the rubber market, and the recurrent slumps and  
 booms. From 1st January, 1927, to 6th September, 1940, the trad-  
 ing profits of the company have exceeded the trading losses by  
 Rs. 1,06,729 only, before provision for preference dividends and  
 40 taxation, and from 1st January, 1931, to 31st December, 1938,  
 inclusive, the Company had a large balance at debit on Profit and  
 Loss Account, all reserves previously created having been utilized.  
 Reference is directed to statement C accompanying this Valuation.

## Exhibits

P 2  
 F. B. Lander's  
 Valuation of  
 Preference and  
 Management  
 Shares  
 (undated)  
 —contd.

As regards the management shares, I consider that no value other than the nominal value of Rs. 2 per share could be placed on such shares on a yield basis. On a Balance Sheet basis of valuation however I consider that at 6th September, 1940, these shares had an aggregate value of Rs. 203,094.41 or a value of Rs. 40.6188 per share. This aggregate value of Rs. 203,094.41 represents the net assets remaining for the Management Shares after provision for the liability to preference share holders for capital and arrears of dividends, and for taxation. No deduction has been made for any depreciation in the aggregate value of these shares by reason of the death of the Life Director or for the extreme gravity of the international situation at 6th September, 1940. No commercial value can in my opinion have attached to goodwill in the case of this company at 6th September, 1940, having regard to the speculative nature of the Company's business and past trading results. I enclose the following statements in support of my valuation of the Managements Shares:— 10

- A.—Balance Sheet as at 30th June, 1940, and accompanying Trading and Profit and Loss Account for six months (Comparative figures for 1940 and at 31st December, 1940, are also shown). 20
- B.—Statement showing Detailed Valuation of Shares as at 6th September, 1940.
- C.—Statement of Profits and Losses 1927-1940, Dividends and Reconciliation of Undistributed Profits, &c.

*Preference Shares*

At 6th September, 1940, preference dividends were in arrears from 1st January, 1930, although the Directors had on 5th September, 1940, recommended the payment of dividends for 1930-1932 out of the balance of profits available as at 31st December, 1939. At 6th September, 1940, there were available, excluding reserve, profits which would have permitted the declaration of all dividends (less tax) up to and including 6th September, 1940, and I accordingly value these shares as at 6th September, 1940, at Rs. 87.601 per share including all arrears of dividend, less income tax at 12 per cent. the rate appropriate at 6th September, 1940. In making this valuation of Rs. 87.601, I have made no deduction for the fact that the dividends for periods after 1st January, 1932, had not been recommended for payment, or for the possibility that the Directors would in view of the speculative nature of the business wish to build up an adequate general reserve before recommending further distribution or profits. 30 40

(Sgd.) F. B. LANDER.

Colombo, 18th May, 1944.

## Statement B accompanying F. B. Lander's Valuation of Shares

C. W. MACKIE AND COMPANY, LIMITED

Statement B.—Accompanying Valuation of Shares at 6th September, 1940

Exhibit

P 6  
Statement B  
accompanying  
F. B. Lander's  
Valuation  
of Shares

|  | Rs.     | c. | Rs.       | c. |
|--|---------|----|-----------|----|
| <i>Value of Management Shares at 30th June, 1940—</i>  |         |    |           |    |
| Total assets .. .. .   |         |    | 2,286,005 | 2  |
| Less Creditors and provision for taxation .. .. .  | 400,186 | 27 |           |    |
| Preference shares—Arrears 1930–1932 .. .. .  | 209,088 | 0  |           |    |
| Preference shares 1933–30.6.1940 .. .. .   | 522,720 | 0  |           |    |
| Preference share capital .. .. .   | 990,000 | 0  |           |    |
|  |         |    | 2,121,994 | 27 |
|  |         |    | 164,010   | 75 |
| <br><i>Value of Management Shares at 6th September, 1940—</i>  |         |    |           |    |
| Value as at 30th June, 1940 .. .. .  |         |    | 164,010   | 75 |
| Add Gross profit on rubber 1.7.40–6.9.40   |         |    |           |    |
| 9,217,596 lb.  |         |    |           |    |
| — × 21,065 .. .. .   |         |    | 6,693     | 0  |
| 29,011,619   |         |    |           |    |
| Gross profit on Store working  |         |    | .         |    |
| 9,038,400 lb. × 1½ cts. .. .. .  |         |    | 112,980   | 0  |
| 95,670 lb. × ¼ cts. .. .. .  |         |    | 239       | 0  |
|  |         |    | 119,912   | 0  |
| Less General expenses—   |         |    |           |    |
| 68   |         |    |           |    |
| — Rs. × 134,480 .. .. .  |         |    | 49,699    | 0  |
| 184  |         |    |           |    |
| Estimated Net profit for 68 days .. .. .   |         |    | 70,213    | 0  |
| Less Income tax at 15 per cent. .. .. .  |         |    | 10,532    | 0  |
|  |         |    | 59,681    | 0  |
| Less Preference dividends 1.7.40–6.9.40, less income tax at 12 per cent. .. .. .                           |         |    | 12,698    | 4  |
|  |         |    | 46,982    | 96 |
|  |         |    | 210,993   | 71 |
| Deduct Amount by which book value of investment exceeded Brokers' valuation at 6th September, 1940 .. .. . |         |    | 7,899     | 30 |
|  |         |    | 203,094   | 41 |
| <br>Valuation of Management Shares—per share Rs. 40·6188   |         |    |           |    |
| <br><i>Value of Preference Shares at 6th September, 1940—</i>  |         |    |           |    |
| Share value .. .. .  |         |    | 990,000   | 0  |
| Arrears of dividends, 1st January, 1930—6th September, 1940 .. .. .  | 846,029 | 59 |           |    |
| Less Income tax at 12 per cent. .. .. .  | 101,523 | 55 |           |    |
|  |         |    | 744,506   | 4  |
|  |         |    | 1,734,506 | 4  |
| <br>Value per share Rs. 87·601   |         |    |           |    |

True Copy.  
(Sgd.) LANDER.





## 3. The position from 1926, when last a management dividend was paid may be summarized:

| <i>Available at December 31, 1926—</i>       |    | <i>Rs.</i>              |
|--|----|-------------------------|
| General Reserve ..                           | .. | 750,000                 |
| Sundry Reserves ..                           | .. | 7,901                   |
| Credit balance on profit and loss account .. | .. | 356,913                 |
|  |    | <hr/>                   |
|  |    | 1,114,814               |
| <br>   |    |                         |
| <i>Less: Losses 1927-1940</i>                | .. | <i>Rs.</i><br>2,126,901 |
| Taxation and sundries ..                     | .. | 214,343                 |
|  |    | <hr/>                   |
| <i>Less: Profits 1927-1940</i>               | .. | 2,341,244               |
|  | .. | 2,233,630               |
|  |    | <hr/>                   |
|  |    | 107,614                 |
| <br>   |    |                         |
| <i>Less: Dividends—Management</i>            | .. | <i>Rs.</i><br>Nil       |
| Preference 1927-1929 ..                      | .. | 237,600                 |
| <i>Less: Waived</i>                          | .. | 168,506                 |
|  |    | <hr/>                   |
| Preference 1930-1940 ..                      | .. | 69,600                  |
|  | .. | 744,506                 |
|  |    | <hr/>                   |
|  |    | 814,106                 |
| <br>   |    |                         |
| Available at 6th September, 1940 ..          | .. | 193,094                 |
|  |    | <hr/>                   |

*Note.*—At 31st December, 1926, the value of the Management Shares was Rs. 1,113,368 plus their nominal value of Rs. 10,000, i.e., Rs. 224.6736 per share. The Motor Insurance Fund was at that date regarded as a liability.

True copy.  
(Sgd.) LANDER.

Exhibits

P 7  
Statement C  
accompanying  
F. B. Lander's  
Valuation  
of Shares—  
*contd.*

Exhibits

R 2  
 Ford, Rhodes,  
 Thornton & Co's  
 Valuation of  
 Preference and  
 Management  
 Shares  
 (undated)

R 2

**Ford, Rhodes, Thornton & Co's Valuation of Preference  
 and Management Shares**

(C. W. MACKIE (DECEASED))

*Share Valuation of C. W. Mackie & Co., Ltd.*

The figure of profit or loss for the period 1st January, 1940, to date of death has not as yet been made available to us. Therefore in arriving at our valuation of the preference and management shares in C. W. Mackie & Co., Ltd., we first considered the assets of the Company as they appeared in the last Balance Sheet as at 31st December, 1939, but have made certain adjustments thereto which we consider equitable, without however bringing into account the value of Goodwill if any or the value of the unexpired portion of the lease if any. On this basis we arrived at a sum of Rs 3,264,807. 10

From this sum must be deducted firstly, liabilities which on the same date amounted to approximately Rs. 1,627,708 and secondly the Preference Share Capital of Rs. 990,000 leaving the net value of the assets at Rs. 647,099. There is a credit of Rs. 642,173 on Profit and Loss Account which for purposes of valuation we have considered as available for part of the arrears of preference dividends which amount in all to Rs. 792,000. The balance of arrears has been disregarded. We then arrive at the following valuation: 20

|                   |     |     |             |
|-------------------|-----|-----|-------------|
| Management Shares | ... | Rs. | .985 each.  |
| Preference Shares | ... | Rs. | 82.43 each. |

(Sgd.) FORD, RHODES, THORNTON & CO.

R 11  
Valuation by Satchithananda

" A "

Exhibits  
R 11  
Valuation by  
Satchithananda  
(undated)

*Profits and Losses for Five Years prior to the date of death*

| Year                         | Loss   |    | Profit  |    |
|------------------------------|--------|----|---------|----|
|                              | Rs.    | c. | Rs.     | c. |
| 1935 .. 1/3 of 281,901 .. .. | 93,967 | 0  |         |    |
| 1936 .. .. ..                |        |    | 97,391  | 0  |
| 1937 .. .. ..                | 40,690 | 0  |         |    |
| 1938 .. .. ..                |        |    | 131,186 | 0  |
| 1939 .. .. ..                |        |    | 669,070 | 0  |
| 1940 .. 2/3 Year .. ..       |        |    | 426,596 | 0  |

*Weighted*

|                               |        |   |           |   |
|-------------------------------|--------|---|-----------|---|
| 1935-36 .. 1 × 29,039 L.. ..  | 29,039 | 0 |           |   |
| 1936-37 .. 2 × 5,337 P.. ..   |        |   | 10,674    | 0 |
| 1937-38 .. 3 × 73,894 P.. ..  |        |   | 221,682   | 0 |
| 1938-39 .. 4 × 489,775 P.. .. |        |   | 1,959,100 | 0 |
| 1939-40 .. 5 × 507,420 P.. .. |        |   | 2,537,100 | 0 |

29,039 0 4,728,556 0

29,039 0

4,699,517 0

Weighted Average =  $\frac{4,699,517}{15}$  = 313,300 0

15

|  |        |   |  |  |
|--|--------|---|--|--|
| Less : Cumulative Preference Dividend 8 per cent. (nett) | 67,320 | 0 |  |  |
| Reserve .. .. .  | 30,000 | 0 |  |  |
|  | 97,320 | 0 |  |  |

215,980 0

The average yield to be expected from this Company has been taken at 16 per cent. On this basis the value of the Management Share Capital is .. .. .

.. 215,980 × 100

1,349,875 0

16

The value of each Management Share .. = Rs. 270

P. O. Box No. 154,  
Colombo,  
Ceylon.  
9th August, 1943.

The Assessor,  
Estate Duty,  
Colombo.

*C. W. Mackie, Snr., deceased*  
*ED/M 646*

10

Sir,

With further reference to your letter of the 17th April last, we have now had an opportunity of conferring with the Auditors who made the valuation of shares in Messrs. C. W. Mackie & Co., Ltd. The last Balance Sheet of the Company prior to the date of death was the Balance Sheet as at 31st of December, 1939. The Auditors valued the gross assets in that Balance Sheet at Rs. 3,264,807. From this sum fell to be deducted liabilities amounting to Rs. 1,627,708. After taking off the preference share capital Rs. 990,000 the net value of the assets was Rs. 647,099. This item was approximately covered by the credit on the Profit and Loss Account, namely, Rs. 642,173 which, for the purposes of the valuation, was considered by the Auditors as being available for part of the arrears of dividend payable in respect of the Cumulative Preference Shares. These arrears amounted in all to Rs. 792,000 as the Company had, for several years prior to 1939, been running at a heavy loss. In fact there was approximately ten years arrears of preference dividend unpaid. This fact would have been bound to affect the market value of the shares assessed in terms of section 20 (1) of the Estate Duty Ordinance. 20 30

The Auditors, however, disregarded the balance arrears of preference dividend not covered by the 1939 profits, and this enabled them to place some valuation upon the Management Shares, although strictly speaking those shares were on the Balance Sheet valueless.

You will see that the Auditors allowed a sum of Rs. 32.43 for each Preference Share by way of arrears of dividend. This represented approximately eight years' arrears of dividend which appears to be the maximum which could be allowed in the circumstances as the Company had not then any further assets with which to pay any further dividend and no purchaser of the shares at that time could have been expected to pay more than the Auditors' valuation. 40

So far as the Management Shares are concerned, it is obviously extremely difficult to fix a valuation in terms of section 20 (1). The Auditors tell us that, if the 1939 Balance Sheet basis is accepted, no value at all could be placed on these shares, but that on the whole it might not be possible to say that no one would buy such shares at the time because, owing to the war, there had been far less fluctuation in the world market prices of rubber and for this reason it was reasonable to expect that the Company would not have to face the heavy losses sustained in previous years due to fluctuations in the price of rubber. Nevertheless a buyer would obviously desire to inspect the previous Balance Sheets all of which showed heavy losses and the fact that a profit had been made for 1939 and that a profit might reasonably be expected for 1940 would not add very materially, if at all, to the value of the Management Shares because almost the whole of the Company's assets were required to cover the nominal value of the preference share capital and ten years' cumulative dividends at 8 per cent. per annum accrued due thereon.

Exhibits  
R 8  
Letter  
9.8.43  
—contd.

20

The Assessor,  
Estate Duty.

Yours faithfully,  
(Sgd.) JULIUS & CREAMY.

R 1  
Letter

R 1  
Letter  
3.11.43

P. O. Box No. 154,  
Colombo,  
Ceylon.  
3rd November, 1943.

The Commissioner of Estate Duty, Colombo.

30

*Estate of C. W. Mackie, deceased*  
*Estate No. ED/M 646*

Dear Sir,

With reference to your letter of the 21st ultimo, we forward herewith for your reference and return the Auditors' Report on the valuation of the shares of C. W. Mackie & Co., Ltd., and the Articles of Association of the Company. Please return these to us at your earliest convenience.

40

We also enclose a Declaration Form duly filled in with a stamp of Re. 1 affixed thereto and would request you to send us a Provisional Certificate of Payment of Duty for use outside the Island at your earliest convenience.

Yours faithfully,  
(Sgd.) JULIUS & CREAMY,

372

Exhibits  
R 9  
Letter  
1.12.43

R 9  
Letter

P. O. Box No. 154,  
Colombo,  
Ceylon.  
1st December, 1943.

The Assessor,  
Estate Duty Office,  
Colombo.

*C. W. Mackie, deceased*  
*ED/M. 646*

10

Dear Sir,

Replying to your letter of the 29th ultimo we contend that we have already submitted to you all the information which we can give you on this subject. Apart from that consideration we do not see how it is possible to value the Goodwill of a Company whose only business is to buy and sell rubber. We would add that for some years prior to the year in which the death occurred the business had been run at a loss owing no doubt to adverse market conditions. In other words the question as to whether the Company makes a profit or not depends mainly, if not entirely, upon market conditions and not upon any asset which can be described, in the case of a limited company such as this as Goodwill.

20

Yours faithfully,

(Sgd.) JULIUS & CREASY.

P 13  
Letter  
9.12.44

P 13  
Letter

9th December, 1944.

The Assessor,  
Estate Duty,  
Colombo.

30

*ESTATE OF C. W. MACKIE (SNR.) DECEASED*

Dear Sir,

We are in receipt of your letter ED/M 646 of the 7th instant and agree that the 38,800 shares in Inchley Ltd., should be valued as at the date of death. This valuation will be at the same rate as the 45 shares in the same Company belonging to the deceased at the time of his death, namely, Rs. 10.35 per share, being the Auditors' valuation.

We are now almost ready to forward to you the further documents. After you have had an opportunity of looking through these it might perhaps be desirable for a conference to be arranged with a view to discussing without prejudice those items in respect of which it may be possible to arrange a settlement.

Exhibits  
P 13  
Letter  
9.12.44  
—contd.

Yours faithfully,  
(Sgd.) JULIUS & CREASY.

P 14  
Letter

P 14  
Letter  
7.11.45

10

7th November, 1945.

The Commissioner of Estate Duty,  
Estate Duty Office,  
Colombo.

*Estate of C. W. Mackie, deceased*  
*EDM. 646*

Dear Sir,

20 With reference to the Estate Duty Appeal in the above case and in particular to your letter of the 31st of August last year we now hand you statements of the evidence the appellants witnesses propose to give and certain of the documents relied upon and in terms of section 37 2B we shall be glad if you will give the appellant an opportunity of placing before you further documents and evidence in support of the statements enclosed herewith.

Will you please insert in our list of documents and witnesses reports on rubber sales kept by the Chamber of Commerce and an official of such body to produce such reports.

Yours faithfully,  
(Sgd.) JULIUS & CREASY.

P 15  
Letter

P 15  
Letter  
5.2.46

30

5th February, 1946.

The Commissioner of Estate Duty,  
Colombo.

*Estate of C. W. Mackie, deceased*  
*EDM. 646*

Dear Sir,

We refer to our letter of the 7th of November last with which we sent you statements of the evidence of the appellant witnesses and certain of the documents relied upon by the appel-



Exhibits  
 P 15  
 Letter  
 5.2.46  
 —contd.

lants. We requested you in that letter to give the appellants an opportunity of placing before you further documents and evidence in support of the statements and we repeat this request because we feel that a discussion with you on the documents and evidence submitted might prove helpful in settling the valuation which has not so far been agreed.

Yours faithfully,  
 (Sgd.) JULIUS & CREASY.

R 10  
 Letter  
 30.3.46

R 10  
 Letter

P. O. Box No. 154,  
 Colombo,  
 Ceylon.

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30th March, 1946.

The Commissioner of Estate Duty,  
 Colombo.

*Estate of C. W. Mackie, deceased*  
*Estate No. EDM 646*

Dear Sir,

We refer you to our letter of the 7th of November last and 20  
 5th ultimo in connection with the appeal by the executors against the assessment made by you. Mr. F. B. Lander of Messrs. Ford, Rhodes, Thornton & Co., and Mr. G. T. Hale, Senior Partner of this firm are likely to leave the Island very shortly and it will be convenient if your decision under section 37 of the Estate Duty Ordinance is made as early as possible.

Yours faithfully,  
 (Sgd.) JULIUS & CREASY.

P 11  
 Letter  
 23.5.46

P 11  
 Letter

23rd May, 1946.

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The Commissioner of Estate Duty,  
 Colombo.

*Estate of C. W. Mackie, Snr., Deceased*  
*Your Reference ED/M/646*

Dear Sir,

We thank you for your letter of the 20th instant, received today, and we note that you have accepted the appeal with regard to the items referred to in paragraph 3, 4 and 5 of the notice of

objection delivered to you. We also note that you are maintaining your valuation of the Preference Shares and that you have reduced the value of the Management Shares of Rs. 250 per share. You do not disclose the basis on which you arrived at your original valuation nor do you disclose the basis on which you now find it necessary to reduce the value of the Management Shares from Rs. 300 to Rs. 250. You will appreciate in the absence of this information or any disclosure of this nature it is impossible for the appellants to take into consideration any factors which you have felt have a bearing on the valuation and which make the valuation placed upon the shares by the appellants incorrect. You will appreciate that we made two requests for an opportunity of discussing the question arising on this appeal with you, but this suggestion was not availed of by you. We are taking steps to proceed to the District Court and appeal against your determination, but it occurs to us that it is unfortunate that both the State and the subject should be required to proceed with an appeal when no reasons are adduced for the determination made by yourself.

Exhibits  
P 11  
Letter  
28.5.46  
—contd.

Yours faithfully,

(Sgd.) JULIUS & CREASY.

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**Judgment in D. C., Colombo  
Case No. 72/T. (Special)**

D. C. 72/T. (Special).

February, 1949.

Z  
Judgment in  
D. C., Colombo,  
Case No. 72/T  
(Special)  
Feb., 1949

JUDGMENT

This is an appeal by the executor of the estate of one G. L. Lyon against an assessment made by the Commissioner of Estate Duty in respect of the estate of the late G. L. Lyon who died on the 26th February, 1943. It would appear that the deceased and one A. R. A. Heath were carrying on business of Tea Merchants under the name, style, and firm of Heath & Co., in terms of a deed of partnership dated 31st July, 1936, marked P2. The partnership deed provided in paragraph 18 thereof that in the event of the death of either partner the interest of such deceased partner in the partnership business and assets shall cease as from the date of such death and the property assets and goodwill of the business shall become the property of the continuing or surviving partner. Paragraph 19 of the partnership deed provided for the manner in which the amount payable by the surviving partner was to be computed

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## Exhibits

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 Judgment in  
 D. C., Colombo,  
 Case No. 72/T.  
 (Special)  
 Feb. 1949  
 —contd.

and sub-paragraph 3 thereof provided that in repayment of the deceased partner's share in the goodwill, book debts and other assets the sum of £3,000 shall be paid if such deceased partner was the said G. L. Lyon.

In the declaration of statement forwarded to the Commissioner of Estate Duty (D7) the estate was valued by the appellant at Rs. 422,550.67. This did not contain a separate amount on account of goodwill as such. The Assessor dealing with this particular matter, who gave evidence in this case, thereupon requested the appellant to submit a statement of the capital invested and asked for a valuation of the goodwill. In response to that request the appellant sent documents D11 and D12. D12 sets out the valuation of Lyon's share of the goodwill at £3,000 which is the amount fixed in paragraph 19 of the partnership deed. The assessor was not prepared to accept this figure but by the provisional notice of assessment dated the 25th October, 1943, which was based on the figures submitted by the appellant in his original declaration, the estate duty was fixed at a sum of Rs. 89,864.48. Subsequently by an additional notice dated the 12th July, 1945, this figure was increased to Rs. 156,898. In this additional notice the value of the deceased's share of the goodwill of the firm of Heath & Co. was fixed at Rs. 585,000. The appellant on receipt of this additional assessment gave notice, in terms of the Estate Duty Ordinance, to the Commissioner of Estate Duty objecting to the assessment. In that notice, as stated in paragraph 7 of the petition of appeal, he objected to the Assessor's valuation of the said share of the goodwill. The Commissioner reduced the amount of the goodwill from Rs. 585,000 to Rs. 425,000 and by his letter dated the 18th February, 1949, notified the appellant that he had determined to maintain the assessment at that figure. The appeal is against "the valuation of the deceased's share of the goodwill in the firm of Heath & Co.". The appellant's contention is that it should be valued at £3,000 which, according to the ruling rate of exchange at the time, amounts to Rs. 40,000. It will thus be seen that the only ground of objection specified in both the notice of assessment to the Commissioner and in the petition of appeal is in respect of the valuation of the deceased's share of the goodwill.

In the course of the argument before this Court learned Counsel for the appellant in addition to questioning the valuation relied upon two other matters in support of the appellant's case. One was that there was a bona fide purchase under the partnership deed of the deceased's share of the goodwill for £3,000-0-0; that such purchase was made for full consideration in money or money's worth as provided for by section 10 of the Estate Duty Ordinance, and that, therefore, no estate duty was leviable in respect of any sum over and above £3,000-0-0. The other contention was that inasmuch as the executors of the deceased received only £3,000-0-0

from the surviving partner they were accountable for estate duty only in respect of that sum and if the Crown sought to recover at a higher figure they should proceed against the person to whom the property passed, namely, A. R. A. Heath. He relied on sections 24 and 25 of the Estate Duty Ordinance in support of this contention. It is to be noted that neither of these grounds was notified to the Commissioner of Estate Duty in terms of section 33 (1) of the Estate Duty Ordinance and the learned Solicitor-General in the course of his address objected to this Court considering them. The objection that the proper party to be sued was not the executor of Lyon but the other partner Heath was raised only in the concluding address of learned Counsel for the appellant. No reference to it was made even in the opening. In any event in view of the express provisions of the Estate Duty Ordinance (section 39) I do not think the appellant can be allowed to rely upon grounds which were not specifically set out in the notice of objections served upon the Commissioner. The notice of objections itself was not put in evidence but it is clear from the petition of appeal that the only ground of objection was with regard to the valuation. I do not, therefore, propose to consider these grounds of appeal against the assessment. It was conceded that when a partner dies his share of the partnership assets including the goodwill is, in terms of the provisions of the Estate Duty Ordinance, deemed to pass on his death to his heirs—vide case of Attorney-General *v.* Boden (1912) 1 K.B. p. 539.

At the commencement of the hearing the learned Solicitor-General intimated that the Crown was restricting the value of Lyon's share of the goodwill to Rs. 275,000 and that notice of it had, prior to the proceedings, been given to the appellant.

What the court is called upon to do in cases of this nature is to find out what the market value of the property is in terms of section 20 of the Estate Duty Ordinance. According to the provisions of section 20, "the value of any property shall be estimated to be the price which in the opinion of the assessor such property would fetch if sold in the open market at the time of the death of the deceased". The contention of the appellant is that the goodwill of the business of Heath & Co. had no commercial value at the time of the death of Lyon but inasmuch as the executor had received £3,000-0-0 for it from Heath he was prepared to pay estate duty on that amount. The Crown, on the other hand, took up the position that in view of the super-profits which the business had earned in the past the goodwill was of considerable value and that the figure mentioned in the partnership deed was totally inadequate. The Crown in its assessment assigned to Lyon half the value of the goodwill but the appellant contends that in view of the proportion in which, according to the partnership deed P2, payment has to be made for the goodwill in case of retirement or death Lyon was

Exhibits  
Z  
Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

Exhibits  
Z  
Judgment in  
D. C., Colombo.  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

entitled only to a 3/8 share and Heath to a 5/8 share of it, though with regard to profits both partners drew in equal shares.

The questions for decision in this appeal are three in number and may be formulated as follows:—

- (1) Was the goodwill of Heath & Co. of any commercial value at the time of the death of Lyon?
- (2) If so, what is its value?
- (3) What share of the goodwill was Lyon entitled to?

In order to decide these questions it is necessary to trace the history of the firm of Heath & Co. According to the evidence of Mr. Campbell who was then an assistant in the firm, Heath & Co. succeeded the firm of Rodwell & Heath, which was started in 1894 with one Rodwell and Heath as partners. When Rodwell retired Heath took on his younger brother and continued the business under the firm name of Heath & Co. The business consisted of exporting tea and, sometimes, rubber. Lyon—the assessment in respect of whose estate forms the subject matter of this appeal—joined the firm in 1906 as an assistant. He became a partner in 1930. The terms of the original partnership deeds are not known; they were not produced but apparently from time to time new contracts were entered into between the two partners relating to the partnership business. According to the evidence of Mr. Campbell, Heath & Co. began to purchase tea for and on behalf of Bushells as buying agents from about 1918, but at that time Bushells also purchased part of their requirements from importers in Australia. Bushells are the largest retail packeteers of tea in Australia and hold about 50 per cent. of the Australia trade: 67 per cent. of the exports of Ceylon tea to Australia go to Bushells. Campbell who was an apprentice at Bushells in 1923 was learning the art of tea tasting. In course of time he acquired a special knowledge of the particular requirements of Bushells and in 1928 was sent out to Ceylon to look after their interests here and see that the right type of tea was sent to meet with Bushells' requirements. He came to Ceylon and joined Heath & Co. as an assistant in January, 1929, and from that time on was responsible for all the teas purchased by Heath & Co. for Bushells. He was paid a salary by Heath & Co. From 1929 all Bushells requirements in regard to Ceylon tea were purchased entirely by Heath & Co. in Ceylon. Shortly afterwards in 1932 one Mathewson came out from London in circumstances similar to those under which Campbell came to Ceylon and joined the firm as an assistant. He was sent out by Lyons of Great Britain, who are well known as retailers of tea in the United Kingdom. They are said to have the third largest packing business in the United Kingdom. Thereafter all teas purchased by Heath & Co. for Lyons were attended to by Mathewson. Neither with Lyons nor

with Bushells did Heath & Co. have any written contract. According to the balance sheets which were produced the bulk of Heath & Co's business was in respect of teas purchased on a commission basis for Bushells and Lyons; the funds were provided by Bushells and Lyons. Heath & Co. purchased, stored, bulked and put the tea on board ship from Ceylon. For this they were paid a commission of 1 per cent. and other incidental expenses. In the year 1935 Lyon and Heath took into their partnership one of their assistants by the name of Burt: the partnership deed P1 was produced.

10 According to this each of the original partners Heath and Lyon contributed Rs. 75,000 towards the capital and Burt Rs. 25,000. After two years provision was made for the division of profits in the proportion of 4: 4: 2. Under clause 18 of that deed on the retirement or death of any partner the property, assets and goodwill of the firm were to become property of the surviving partners in the proportions in which they were entitled to share in the profits. Under paragraph 19 the goodwill was to be assessed as follows:—

20 £5,000-0-0 to Heath, £3,000-0-0 to Lyon and £1,000-0-0 to Burt to be paid to the representatives of the deceased partner. Burt however, died in 1936 and in December that year partnership deed P2 was entered into between Lyon and Heath. According to this profits were to be divided equally by the partners. Heath was to be the controlling partner and in the event of retirement or death the surviving partner was to pay the heirs of the deceased partner in respect of goodwill a sum of £5,000-0-0 if Heath happened to be the retiring or the deceased partner, and £3,000-0-0 if Lyon happened to be the retiring or the deceased partner. Lyon, as I observed earlier, died on the 26th February, 1943. Thereafter a partnership agreement was entered into on the 8th April, 1944,

30 between Heath, Campbell and Mathewson (P3). According to this the capital was to be as follows:—Heath Rs. 120,000; Mathewson and Campbell each Rs. 15,000. Profits were to be divided as follows:—Heath 80 per cent. and each of the others, 10 per cent., and in the event of retirement of the junior partners no provision is made for payment on account of goodwill.

The history of the firm as recounted above shows that the firm name of Heath & Co. was in existence from about 1897. It was perhaps because it was a well established firm that it drew the attention of foreign firms like Bushells of Australia and Lyons of the United Kingdom. The firm had built up a lucrative business

40 in the export of tea and Campbell admits that it was because the firm was well established that it was able to secure the agency of Bushells. He also concedes that Heath & Co. held a high place in the export business in Ceylon. Although the bulk of their business was with Bushells and Lyons the balance sheets which were produced show that they did do a considerable business with other firms all over the world. P4 is a statement of the earnings of Heath & Co., giving details of commissions earned from Bushells.

Exhibits  
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Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

Exhibits  
Z  
Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

Lyon and others. It will be seen from this statement that from about December, 1936, the commission earned from other sources was large; almost as large in 1937 as Lyons; in 1938 a little over the commissions earned from either Lyons or Bushells; in 1939 more than the commission earned from Lyons, partly due, as explained by Mr. Campbell, to the fact that from 1939 September the Tea Commissioner became the sole exporter of teas to the United Kingdom. Subsequently when the Tea Commissioner became the sole purchaser of Ceylon tea and no exports were permitted to the United Kingdom, Heath & Co. began to attract the attention of exporters in England and importers all over the world. Though firms in England could not import tea to England as the Ministry of Food under war conditions became the sole importer, they were able to do business with out markets and many of them according to Campbell's evidence chose Heath & Co. as their agents in Ceylon to purchase teas on their account in Ceylon and export it direct from Ceylon to their constituents in other parts of the world. Heath & Co. established direct contacts also with merchants in other lands. An examination of the balance sheets and profit and loss accounts produced reveals this in a very striking fashion. D1 is the profit and loss account of the firm for the six months ended 30th June, 1938. Out of a total commission of nearly Rs. 136,000, Rs. 80,000 represents commission earned from Lyons and Bushells: the balance 40 odd thousand rupees represents commission from 29 other firms who apparently came to Heath & Co. because they were well known. Likewise D2, the balance sheet for the six months ended 30th June, 1940, shows that out of a commission of Rs. 58,000 about Rs. 30,000 represents Bushells and Lyons, and the balance outside firms. In point of fact at that time the commission from Lyons was only Rs. 2,272 and many of the outside firms paid higher commissions to Heath & Co. D3 shows that out of a commission of Rs. 219,000, Rs. 38,000 represents earnings from Bushells, Rs. 13,000 from Lyons and the rest from outside firms. One of them is the Alexandria Export & Import Company. As a result of dealings with this Company, Heath & Co. during the six months in question earned a commission amounting to Rs. 40,000 which is more than they got from even Bushells. Apart from this Company a commission of Rs. 28,000 was earned from Joseph Travers & Son. Rs. 16,000 from Joseph Tetley & Co., Rs. 18,000 from H. E. Burke & Co., Ltd., Rs. 13,850 from Haelleson & Lyon. There were also other companies from which small commissions were earned the total of such commission being Rs. 219,535. The profit and loss account for the six months ended December, 1942 (D15), likewise shows large commissions earned from Burke & Co., Joseph Traverse & Co., Ltd., Overseas Trading Corporation, Haelleson & Lyon and the Alexandria Export & Import Company. Of a total of Rs. 158,005 commissions from Bushells and Lyons amount to only

Rs. 29,744 and Rs. 920 respectively. Similarly the accounts up to 30th June, 1941 (D17), 31st December, 1941 (D16), 31st December, 1940 (D18), 31st December, 1939 (D19), 30th June, 1939 (D20), show profits obtained by way of commission from various firms in England and elsewhere. Mr. Campbell's evidence is that the firm attracted this business because he says that round about that time they were well known and the firms in England with contacts in America got into touch with them and got them to execute orders on behalf of these foreign firms. These contacts were made, according to him, by these foreign firms who wrote to them direct and followed it up by samples; no assistance was given to Heath & Co. by the banks: there is no question of any letters of credit. This alone show the name of Heath & Co. was well known or at least commanded a certain amount of confidence among the big Tea Houses in the United Kingdom. One firm, the Alexandria Export & Import Company, is an Egyptian firm. It would appear they originally had dealings with local shippers by the name of Meera Mohideen & Co. They got into difficulties with Meera Mohideen, so far as delivery was concerned and this Egyptian firm in consequence gave up dealing with Meera Mohideen and contacted Heath & Co. The name of Heath & Co., it will thus be clear commanded respect and was well known to business houses all over the world.

From these facts it would be reasonable to infer that there was a goodwill attaching to the firm at or about the time of the death of Lyon. It is a goodwill which brought them considerable business and in the case of Heath & Co. the goodwill consisted chiefly of the firm name. From 1942 the Tea Commissioner became the sole exporter and he exported to the Governments of the United Kingdom and Australia according to a quota system approved by the British Government. Heath & Co. were allowed to do part of this export business by the Tea Commissioner who naturally had recourse to and availed himself of the facilities afforded by the firms which had been in the trade and had done export before. Heath & Co. according to the Tea Commissioner who gave evidence, was one of the largest exporters. He placed them in rank the second in the list of exporters, the first being Harrisons & Crosfield. From about 1943 most of the commission was from the Tea Commissioner as by then the firm was not able to deal directly with Bushells of Australia or with Lyons of London.

The Accountant called by the appellant, Mr. Illingworth, expressed the opinion that there was hardly any commercial goodwill in the business of Heath & Co. He based his opinion on the fact that on the death of Lyon the continuation of the goodwill of Heath & Co. would depend on the continuation of the business of Bushells and Lyons with Heath & Co. He was of the opinion that Bushells and Lyons would take away their business and that if Campbell and Mathewson, who were sent by Bushells and Lyons,

Exhibits  
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Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.



Exhibits  
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Judgment in  
D. C., Colombo,  
Case No. 72/1,  
(Special)  
Feb., 1949  
—contd.

left the firm all the business done with these two importers in Australia and England will cease. He also thought that because of the progress of the war in 1943 there was very little possibility of the business being sold as the war affected all facilities of buying and selling businesses. I am unable to accept this Accountant's opinion with regard to the goodwill of Heath & Co. Mr. Campbell's evidence regarding reputation of the firm in foreign countries and the balance sheets already referred to show that the firm was held in high esteem in business circles outside Ceylon. That alone is an asset which is of commercial value. The facts referred to by Mr. Illingworth may to some extent affect the valuation but they do not justify the opinion that there was no commercial goodwill at all, or if there was anything, that it was negligible. There is also the fact that the partners themselves thought it necessary to put a value upon the goodwill. There would have been no need to do so if there was no value at all attached to it. This leads me to the second question already referred to which came up for decision, namely, what is the value of the goodwill. 10

In this particular case it seems to me that there has been a lack of evidence with regard to essential matters which it is necessary to establish in order to ascertain with any degree of accuracy the value of the goodwill. Before dealing with the accounting part of it, it is necessary to consider the evidence led in regard to matters which would either enhance or depreciate the value of the goodwill. I have already referred to the fact that Heath & Co. is a name which had been known to the business world in Ceylon from about 1894, for a period of nearly 50 years. It also commanded a good reputation outside. If a potential buyer was assured of the continuance of this business in the manner in which it was being conducted at the time of the death of Lyon there can be very little doubt that he would pay a very substantial amount for the goodwill but there are certain facts disclosed in the evidence which to some extent affect the value to be placed upon the goodwill. I shall deal with these one by one. 20 30

At the time of the death of Lyon the position with regard to the future of Heath & Co. became somewhat uncertain. At that time there was no partner in Ceylon. The business was more or less entirely in the hands of Campbell and Mathewson. They themselves did not appear to know what the position would be. Campbell's evidence is that he had contacted Heath and Heath asked him to carry on as best he can till some formal arrangements were made. Campbell appears to have addressed a letter to the Tea Commissioner (D4) on the 20th August, 1943, about six months after the death of Lyon. That letter is somewhat revealing. It says that the connection between the firm of Heath & Co. and Bushells was a matter of trading convenience and was continued 40

mainly because of the old friendship of Bushells with the late G. L. Lyon. The letter continues—

“ Due to Lyon's recent death and the ties between Heath & Co. and Messrs. Bushells (Pty.) Ltd. are now not as strong as in former years, the purport of this letter is to inquire from you if in the event of Messrs. Bushells (Pty.) Ltd. resuming business as tea exporters in the name of Ceylon Teas Limited whether you will grant them the equivalent quota ”, &c.

Exhibits  
Z  
Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

10 This letter was written by Mr. Campbell as Director of Ceylon Teas Limited. It will be seen that with the death of Lyon there was a possibility of Bushells withdrawing their business and carrying on the business in the name of Ceylon Teas Limited which, according to letter D4, is a subsidiary company of Bushells (Pty.) Ltd. Even Campbell was not certain of how events may develop. He thought of the possibility of Bushells resuming business in the name of Ceylon Teas Limited of which company Bushells (Pty.) Ltd. is the parent. The buyer of the business of Heath & Co. will no doubt after inquiry take this matter into consideration. It is a factor which will certainly reduce the value of the goodwill

20 because it was the connection with Bushells that gave Heath & Co. a substantial and a regular portion of their profits. There was also the possibility of the two men sent out originally by Bushells and Lyons not continuing under Heath & Co., after the dissolution of the partnership on the death of Lyon. It is not known whether the connection with Lyons of London was due to the influence exercised by Heath or due to any friendship which that company had with the late Lyon, but so long as Mathewson remained there was no need to anticipate the withdrawal of that business. Even if Mathewson left, though there was a possibility of his

30 securing the business either for himself or for another firm, there was no reason to suppose that Lyons would completely take away their business particularly as Heath was a surviving partner who may have continued the business of Heath & Co. with someone else. Except when business has been given on account of personal friendship it is not usual in the trade for contacts long established and working satisfactorily to be abruptly terminated merely because one of the partners die. Therefore, though the purchaser may consider the fact that Mathewson and Campbell were sent out by Bushells and Lyons and that they may terminate their connection

40 with Heath & Co. with the possibility of the business with Lyons and Bushells being withdrawn or diminished he will not be justified in coming to the conclusion that Bushells and Lyons will refuse to continue dealing with Heath & Co. if other satisfactory arrangements for the selection of the teas suitable to their needs were made. Heath & Co. had done so even before Campbell and Mathewson joined the firm. There is no reason to suppose that they would not continue to do so. Nonetheless the fact that there was a possibility

Exhibits  
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Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

of Campbell and Mathewson terminating their employment under Heath & Co. is a factor which a potential buyer will consider in valuing goodwill and which will consequently in his eyes somewhat diminish it. On this point it is interesting to note the observations of the Tea Commissioner with regard to the opinion he held of Campbell and Mathewson. He had appointed them in their personal capacity as surveyors and measurers for the purpose of the export trade which was in his hands. He expressed the view, in my opinion, somewhat extravagantly, that Heath & Co. without Campbell and Mathewson would be like Hamlet without the Prince of Denmark, but continued to say that if those gentlemen had left and if the work was not done competently it was in his discretion to reduce the quota and remove them (Heath & Co.) completely from his list of exporters. He was prepared to give Mathewson and Campbell a portion of Heath & Co's quota. Presumably this portion, according to the correspondence D4 and D5, related to that portion of Heath & Co's business which would have been handled by Ceylon Teas Limited. Heath & Co. would still have continued to get a portion of its export business. In cross-examination the Tea Commissioner said that if a firm had been previously carrying on a large business as exporter and were in a position to do the export business as well as they had done before he would not have been justified in reducing their quota. It will thus appear that the mere fact that Campbell and Mathewson had left Heath & Co. would not even in the eyes of the Tea Commissioner have justified his denying them their quota if they were in a position to continue to do the business as well as they had done it before. The difficulty appears to have been to obtain good tea tasters who could have handled the business efficiently. According to Illingworth even in Heath & Co. the staff was altogether insufficient and Campbell and Mathewson had to work long hours to enable them to cope with the work.

It was contended on behalf of the appellant that inasmuch as in the partnership deed the goodwill was valued at Rs. 8,000 the Commissioner should follow the English practice and accept it as the true value. Reference was made to Hanson, p. 162, where it is stated that the official practice in England is to accept the price mentioned in the Partnership deed as the price which the surviving partner should pay to the representative of the deceased partner in order to purchase his interests, for the purpose of estate duty. The passage in question goes on to state that the Commissioners are not however bound to accept the values fixed by the deed, which is not a purely commercial transaction. The deed P2 was executed in 1936, just over six years prior to the death of Lyon. Actually a higher valuation was placed upon the goodwill in the earlier deed P1 dated 1935. There appears to be no reason for supposing that the goodwill would have diminished: on the contrary it appears to have increased in value. The value put upon the goodwill in P2

appears to be purely an arbitrary figure fixed by the partners in order to avoid disputes with regard to it as between the partners in the event of retirement or dissolution. This is the view expressed by the appellant himself in his letter D35 dated the 4th October, 1944, addressed to the Assessor of Estate Duty. As stated by Mr. Satchithananda, Chartered Accountant, who was called by the Crown, in the course of his evidence, the goodwill of a business is a changing asset. Its value enhances from time to time as profits increase and its value diminishes when profits of the business decrease. The figure given for the goodwill in 1936 even if accurate must necessarily be different in regard to a period of time six years later. There have been cases in which courts have not accepted the value placed upon goodwill in deeds of partnership. Even in Boden's case the deed of partnership in paragraph 18 thereof provided that in the case of H. S. Boden or R. S. Boden if either of them should die, his legal representative would be entitled to payment for goodwill which was to be valued at three times the net yearly share in the profits. With regard to Henry Boden he was not to be allowed any payment on account of goodwill. Despite this provision Justice Hamilton was of the view that in that particular case as the business was largely personal like that of a portrait painter or of a speculator in various stocks which his individual skill enabled him to select, the goodwill of the business was of very little value. I am, therefore, unable to accept the contention that the figure mentioned in the partnership deed must be accepted as a correct valuation of the goodwill of the business.

With regard to the valuation itself the Assessor originally adopted a method which must now be regarded as obsolete, a method which is discussed by Seed in his book, "Goodwill as a Business Asset" at pages 103 to 105. Commenting on this system he says—

"The practice of stating the value of the goodwill as so many years' purchase of the total profits is a practice which has the support of a rather long tradition. Taken by itself, however, the number of years' purchase of the profits which the price of the goodwill represents is not necessarily any criterion of the reasonableness of that price or of the price to be paid for the business as a whole."

This varies according to the nature of the business from 3 and 5 to 7 years or even more. The method recommended by Seed is one suggested by the Accountant Satchithananda and later adopted by the Assessor. According to this system, having estimated the future maintainable profits one is required to ascertain the return expressed as a percentage which the purchaser is entitled to expect from capital invested in the undertaking having regard to current rates of interests and the degree of risk. From these two figures the exchange value of the business will be ascertained. It will be

Exhibits

Z  
Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

Exhibits

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Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

the capital that will be required at the rate of return already ascertained to produce the average future maintainable profits. From this, if the value of the tangible assets are deducted what will be left would be the value of the goodwill. In this case the Accountant ascertained the future maintainable profits from the balance sheets and profits and loss accounts which were supplied by the appellant. His computation is shown in D36. He took the average profits from 1936 to 1942 but as in 1942 the profits were very much above the average he reduced it to the 1941 figure. The text books however state that a three-year period is often employed. (Vide Dymond on Death Duties, page 252). Mr. Satchithananda in cross-examination admitted that he made no profits for excess profits duty and said that he did so, because he had scaled down the profits of 1942, which were extraordinary profits, to the figure of 1941. Actually it seems to me that he was labouring under a misapprehension when he thought that this adjustment would be sufficient to overcome that difficulty. It is well known, and on this point there is the evidence of Mr. Campbell too, that in view of an impending war practically from 1938 and certainly from 1939, the prices of all commodities including tea began to rise sharply, so much so that the duty on excess profits was introduced in 1941. This rise in price of commodities continued throughout the war. Excess profits duty was under Ordinance No. 38 of 1941 leviable on the profits arising from any business in any accounting period ending after the 1st January, 1941, and calculated in respect of the previous twelve months. It was payable only in respect of profits over and above what was regarded as normal profits earned by the business prior to the war. This normal profit was termed the "pre-war standard of profit" and was calculated on the average of any two of the last three pre-war trade years to be selected by the tax-payer. Last pre-war trade year means the year ending on the date between August 31, 1938, and September 30, 1939, to which the accounts of the business have been made up: so that in the case of Heath & Co. it would have been the year ended December, 1938. For the purpose of that Ordinance the profits of 1939 would be regarded as profits enhanced by war conditions. Particularly in view of the evidence of Mr. Campbell one may regard the profits earned certainly in 1939, 1940, 1941 and 1942 as profits in excess of what the business would normally be expected to earn due to war conditions. According to the method adopted by Mr. Satchithananda it is important, and on this point all text writers and authorities are agreed, that extraordinary profits of this nature should not be taken into account. Seed in his book at page 110 says that "in adjusting the accounts all exceptional items or notable variations in the figures or percentages should be scrutinised and profits of an exceptional nature eliminated." A purchaser of the goodwill of

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Heath & Co. in 1943 would, therefore, base his calculation not upon war profits but upon the profits which the business would have normally earned in peace time. He would eliminate the exceptional profits that the business made during the war, but Mr. Satchithananda has failed to do so. The purchaser would not have known when the war would end and what the resulting position would be. There had already in February, 1943, been 3½ years of war. Perhaps he would have been justified in concluding that the war would not last much longer. Mr. Satchithananda has eliminated only the profits of the particular year but no one will gainsay the fact that during the war years and even immediately prior to it profits of most business were on a more than normal scale. If, therefore, one were to adopt as normal profits the average of profits for the last three years prior to the war, the calculation will have to be confined to the three years 1936, 1937 and 1938. The tax payer under the Excess Profits Duty Ordinance was given the option of choosing two or those three years and Heath & Co. would have no doubt chosen 1936 and 1937. As it is usual in these matters to take three years I propose considering only the profits for the years 1936, 1937 and 1938. In my opinion if the subsequent years 1939, 1940 and 1941 are included in the calculation then suitable adjustment will have to be made for excess profits duty and this the Accountant did not do.

The next point to consider is the rate of return on the capital employed. Mr. Satchithananda proceeded on the footing that 14 per cent. per annum would be reasonable. He expressed the view that 6 per cent. according to the current rates of interest would be a reasonable return on the capital represented by tangible assets and he added to that 8 per cent. although in his view 6 per cent. would have been sufficient as a risk allowance. He did so he says because there were other firms who were not so reliable as Lyons and Bushells with whom the firm of Heath & Co. was doing business. It seems to me, however, that this is really no ground for increasing the risk return. It is better for a business to have several clients each doing a small quantity of trade with it than to have two or three large businesses though well established and very few smaller ones. In the case of the former the withdrawal of one or two businesses will not materially affect the profits, whereas in the latter case if the two large business houses withdraw their patronage the business must necessarily suffer large losses. Mr. Satchithananda would have been justified in increasing the rate to 14 per cent. because the bulk of the business was with Bushells and Lyons and although they would normally not be expected to withdraw the business except for good reason there was still the possibility of their doing so. That would have justified his act in increasing the percentage allowed on account of risk. The only other evidence on this point is that of Mr. Illingworth also an Accountant. He in

Exhibits  
 Z  
 Judgment in  
 D. C., Colombo,  
 Case No. 72/T.  
 (Special)  
 Feb., 1949  
 —contd.

Exhibits

Z

Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

fact stated that he was not competent to express any opinion or to give any figure. In answer to court on this very question he said:

“ I might say 20 per cent. another might say 15 per cent. I cannot express an opinion. I think it is for the man who is engaged in the trade to say what return he will expect.”

No one in the trade was called by either side to give evidence as to what a reasonable business man would expect. Mr. Campbell did no doubt at the tail end of his re-examination say that in the present state of Heath & Co. and in view of the uncertain state of business generally he would consider 20 per cent. a fair return. Under the deed or partnership P3 entered into between him, Mathewson and Heath on the retirement or death of Heath, all the goodwill was to go to Heath's legal representative. Heath is now dead and the partnership created by the deed P3 is dissolved. While Mr. Campbell's estimate of the return in the present state of Heath & Co. may be correct, I do not think without knowing what the present state of Heath & Co. is, this Court will be justified in accepting that figure as a reasonable return a business man would have expected on his capital if in 1943 he invested it in the firm of Heath & Co. After Heath's death one does not know what the constitution of Heath & Co. was or what the rights and liabilities of the partners were. That of course would have been known to Mr. Campbell who is one of the partners. Without appearing to question the integrity of Mr. Campbell, as he appears ex facie to be a person interested in the result of this case, I would prefer to act upon the evidence of disinterested persons like Illingworth and Satchithananda. Mr. Satchithananda in arriving at his figure of 14 per cent. was however not aware of certain facts. He was for instance not aware of the existence of Campbell and Mathewson or the part they played in the business conducted by the firm Heath & Co. There can be no doubt that if they left the firm the business relations of Heath & Co. with Bushells and Lyons would not have been as smooth as before and there was even the possibility of it being adversely affected though this is by no means certain. Bushells, in spite of the fact that they had a subsidiary company in Ceylon by the name of Ceylon Teas Limited, of which Campbell was a Director, chose even then though teas were exported in the name of the Ceylon Teas Limited, to allow Heath & Co. to buy for them on commission at the auctions. The reason for this is not very clear and the learned Solicitor-General complained that Mr. Campbell was not frank with regard to it. The fact, however, remains that despite the existence of this subsidiary Company to which the services of Mr. Campbell were available, Bushells preferred to do business with Heath & Co.

It was contended that because Mathewson and Campbell had special qualification and aptitude in selecting teas for export to Bushells and Lyons, if they terminated their services a buyer of

Lyons share in the open market would find himself at a great disadvantage. It has, however, been a well established principle that in assessing the market value of a thing the court will not exclude any particular purchaser. As stated by Hanson in his book on Death Duties, page 164, a consideration of the authorities on the subject leads to the conclusion that " an estimate of the price which property would fetch in a market in which would-be purchasers are present must allow for the prices which persons particularly interested in the property will be prepared to give " and in considering such persons where a partnership is put up for sale the surviving partner must not be excluded, so that in order to assess the value of goodwill of Lyon's share one must not exclude Campbell and Mathewson as possible purchasers; nor must one exclude Heath. Viewed in this light the special position occupied by Mathewson and Campbell in the firm of Heath & Co. loses much of the significance which the appellant sought to attach to it.

Mr. Satchithananda in his evidence also stated that in valuing the goodwill he did not take into consideration the fact that a partner had the right to terminate the partnership by notice. Learned Counsel for the appellant contended that this fact was a very important factor in assessing the goodwill and it would considerably influence the rate. Mr. Campbell also appears to have expressed the same view in his evidence. It was contended that a purchaser who steps into Lyon's shoes might find himself confronted with a dissolution of the partnership brought about by the other partner, Heath, giving the requisite six months' notice as provided for in the deed of partnership; but what one has to consider is that although Heath had that right to dissolve the partnership is he likely to exercise it. The business was at that time earning large profits. Heath himself preferred to remain in England as a sleeping partner. He wanted in Ceylon someone who would do the work for him. If there was a satisfactory person there is no reason why he should wish to terminate the partnership, but in spite of it if he did choose to terminate the partnership by notice what would be the result? To ascertain this one must refer to the partnership deed itself. Paragraphs 18 and 19 deal with it. If Heath were to terminate the partnership by notice he has to retire from the firm and the partnership assets and goodwill will become the property of the surviving partner. All that the surviving partner had to do was to pay Heath the amounts provided for in para. 19: in respect of the goodwill he will pay Heath only £5,000-0-0. It is only if he is unable to pay that the business, as provided for in para. 21, will be wound up and only in that event will A. R. A. Heath be entitled to carry on the business under the name of Heath & Co. If there was no winding up and the surviving partner made the payments provided for in para. 19 to the retiring partner then Heath would not have been entitled to trade under the name of Heath & Co., though he would have been able

Exhibits

Z

Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.



Exhibits

Z

Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

to trade under his own name without the additional words “ and Company ”. (Vide decision in *Churton v. Douglas*, Johns. page 174 referred to in *Lindley on Partnership*. 9th edition at page 537). Is it likely, therefore, that Heath would have wished to deprive himself of the goodwill attaching to the name of Heath & Co. by dissolving the partnership by giving the requisite notice? In this connection learned Counsel for the appellant relied upon the case of *Austin v. Boys* reported in 2 *De Cox & Jones’ Chancery Reports* at page 626. In that case two solicitors were carrying on business in partnership. According to the deed of partnership it was to be in existence for a period of seven years and contained two paragraphs (10 and 11) with regard to what should happen in the case of death or retirement. Paragraph 11 provided that in the case of retirement the surviving partner had to pay the retiring partner for his share in the goodwill of the business a fair market value. Two days before the termination of the partnership by lapse of time one of the partners Mr. Austen gave notice dissolving the partnership and claimed his share of the goodwill. It was held *inter alia* that as the partnership had only two days more to run there was hardly any goodwill which could have been claimed. Before coming to that conclusion, however, the learned Judge the Lord Chancellor expressed the view that as the business was one concerning the professional practice of solicitor there was hardly any goodwill. He went on to observe that “ the term ‘ goodwill ’ seems wholly inapplicable to the business of a solicitor which has no local existence, but is entirely personal, depending upon the trust and confidence which persons may repose in his integrity and ability to conduct their legal affairs ”, but with regard to that particular partnership deed he conceived the possibility of goodwill being established as there was the possibility of one of the partners retiring some years before the expiration of partnership and conforming to the stipulation that he should not practice within two miles of the post office, using his best endeavours to recommend clients and so on and engaging not to interfere with his successor. In view of those stipulations there would have been a goodwill as between the partners if for instance one partner retired some years before the 7 years had elapsed, but as the partnership had only two days to expire its value would be practically nil. The stipulation with regard to not practising according to the interpretation placed upon the partnership deed by the court was not indefinite but confined to the period of the partnership. The decision in that case turned wholly on the facts established and in my view is inapplicable to cases of the nature now under consideration. In that case the period of the partnership as provided for in the agreement had not expired but even if it had the parties to the partner-

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ship would have been governed by the terms of the old partnership deed as provided for in section 27 of the Partnership Act. It is conceded that in the firm of Heath & Co. although the period provided for in the partnership deed P2 had expired the partners were still bound by the stipulations contained in it though they would continue as partners in a partnership at will.

Exhibits  
Z  
Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—*contd.*

As I observed earlier the evidence with regard to the reasonable return on capital which a business man investing on a business of the nature of Heath & Co. will expect is more or less totally absent in this case. We only have the evidence of the Accountants. Mr. Satchithananda has placed it as 14 per cent.; Mr. Illingworth at a minimum of 15 and a maximum of 20 per cent. which he said may even extend to 30 per cent. For the reasons I have already given Mr. Satchithananda's figure of 14 per cent. does not take certain relevant facts into consideration. The figure should accordingly be placed at something more than 14 per cent. The minimum figure mentioned by Mr. Illingworth is 15 per cent. and in all the circumstances of this case I think it would be reasonable to fix a return of 15 per cent. Twenty per cent., which is a figure given by Mr. Campbell would certainly appear to be too high particularly when one considers the fact that in the case of tea properties the normal return one expects according to Illingworth is between 9 to 12 per cent. Tangible assets according to the figures given by Mr. Satchithananda amounts to Rs. 817,873. Calculating the goodwill in the same way as the Crown has done in this case (vide D36) the computation will be as follows:—

|    |  |    |                 |            |
|----|--|----|-----------------|------------|
|    |  |    |                 | <i>Rs.</i> |
|    | 1936 Profits   | .. | ..              | 191,493    |
|    | 1937 Profits   | .. | ..              | 169,430    |
| 30 | 1938 Profits   | .. | ..              | 263,337    |
|    |  |    | Total           | 624,260    |
|    |  |    | Average Profits | 208,087    |
|    | Add interest on capital debited annually in the accounts |    |                 | 9,000      |
|    |  |    |                 | 217,087    |
|    |  |    |                 | 36,000     |
|    | Less Partners' remuneration—                             |    |                 |            |
|    | Available for interest on capital—                       |    |                 |            |
|    | future maintainable profits                              | .. | ..              | 181,087    |
|    | Capitalised at 15 per cent.                              | .. | ..              | 1,207,247  |
| 40 | Less value of tangible assets                            | .. | ..              | 817,873    |
|    | Value of goodwill  | .. | ..              | 389,374    |

I would accordingly assess the goodwill of the business at the figure of Rs. 389,374.

Exhibits

Z  
 Judgment in  
 D. C., Colombo,  
 Case No. 72/T.  
 (Special)  
 Feb., 1949  
 —contd.

Checking this result by the other method of computation originally adopted by the Assessor the average profit being Rs. 181,087, 15 per cent. of tangible assets of Rs. 817,873 would amount to Rs. 122,680. The difference which would represent super-profits would amount to Rs. 58,407. The value of goodwill as computed above would, therefore, amount to a little over six years' purchase of the super-profits.

The next question for decision is whether the deceased Lyon was entitled to a half share of the goodwill or to a three-eighth share. In considering this matter one has again to look into the history of the firm. It was a business built up by Heath and his brother from 1906 through their joint efforts. Lyon was taken into partnership only in 1930 so that for a period of about 24 years Lyon had no interest in the goodwill. He began to assist in developing the goodwill only from 1930. It is but natural that the oldest member of the firm who founded it and built up the good name and reputation should reserve for himself a greater share of the goodwill although with regard to the profits the parties, were to draw in proportion to the capital subscribed. Lyon himself agreed with Heath that in the event of his death Heath would pay him less than he would pay Heath's executors in the event of Heath's death. He was content to share the goodwill in the proportion of 5; 3. In several cases dealt with in the English Courts goodwill has been divided among the partners in proportion which differ from the proportions in which profits are shared. I see nothing wrong in this. A man who has devoted many years of his life in building up the firm's name must surely in regard to that name be entitled to a greater share than any one who comes into it at a later stage, contributing towards the capital perhaps in equal shares and drawing equal profits, but having exerted himself less and for a shorter period than his partner in building up the reputation and integrity attached to the firm name. It seems to me, therefore, that the goodwill should be divided between Heath and Lyon in the proportions in which payments in respect of it as between the partners had to be made according to the partnership agreement. I accordingly hold that it is only three-eighth of the goodwill that will pass on Lyon's death to the surviving partner, which according to the above computation would amount to three-eighth of Rs. 389,374 or Rs. 146,015.

In my view, therefore, the goodwill or Lyon's share of Heath & Co., should be assessed at Rs. 146,015 and I make order accordingly. The Crown in its assessment originally fixed the figure at Rs. 585,000. Subsequently it was reduced to Rs. 425,000. It was against this assessment that the appeal was lodged. After the appeal was lodged and just before the hearing, this figure was reduced to Rs. 275,000. Had the appellant not appealed he would probably have had to pay Duty on a valuation of Rs. 585,000.

By appealing he has been able to reduce the assessment of the value of the goodwill considerably and in order to do so he was compelled to come into Court. He has not succeeded entirely in reducing the assessment to the figure given in the Partnership deed and in his return. In the circumstances I think he is entitled to some costs. I accordingly make order awarding him half the costs of the inquiry.

Exhibits  
Z —  
Judgment in  
D. C., Colombo,  
Case No. 72/T.  
(Special)  
Feb., 1949  
—contd.

(Sgd.) N. SINNETAMBY,  
Addl. District Judge.

- 10 Pronounced in open court in the presence of Mr. Billimoria of Julius & Creasy for appellant and Mr. Adv. Kadirgamar also takes notice for the Ay. General. Crown Proctor is absent.

(Sgd.) N. SINNETAMBY,  
A. D. J.

Exhibits

X  
Balance on  
Profit and  
Loss Account  
at end of  
Financial  
years from  
31.12.26 to  
31.12.35  
based on P 7

X

**Balance on Profit and Loss Account at end of Financial Years from  
December 31, 1926, to December 31, 1935, based on P 7**

*Balance on Profit and Loss Account at the end of Financial Years from 31st, December 1926, to 31st December, 1935, based on P 7 and commencing with surplus of Rs. 1,114,814 shown in that document. In respect of the period 1927 to 1929, the Preference Share Holders waived Preference Dividends aggregating Rs. 168,000—but the table set out below shows the position as if there had been no such waiver.*

| Year<br>31st December | Balance on Profit and Loss<br>Account<br>Debit or Credit Actual |           | Amount of<br>Arrears of<br>Preference<br>Dividend | Net Surplus or<br>Deficit |           |
|-----------------------|---|-----------|---|---------------------------|-----------|
|                       |   | Rs.       |   |                           | Rs.       |
| 1926                  | Credit  | 1,114,814 | Nil   | Surplus                   | 1,114,814 |
| 1927                  | "   | 1,044,079 | 79,200  | "                         | 965,879   |
| 1928                  | "   | 991,512   | 158,400   | "                         | 833,112   |
| 1929                  | "   | 978,845   | 227,600   | "                         | 751,245   |
| 1930                  | "   | 203,165   | 316,800   | Deficit                   | 113,625   |
| 1931                  | Debit   | 186,408   | 396,000   | "                         | 582,408   |
| 1932                  | "   | 689,490   | 475,200   | "                         | 1,164,690 |
| 1933                  | "   | 246,329   | 554,400   | "                         | 800,729   |
| 1934                  | Credit  | 7,883     | 633,600   | "                         | 626,217   |
| 1935                  | Debit   | 274,524   | 712,800   | "                         | 987,324   |

## AAC 1

**Statement showing Aggregate and Average Annual Profit/Loss based on P 7**

C. W. MACKIE, Deceased

*Aggregate and Average Annual Profit/Loss of C. W. Mackie & Co., Ltd., based on P 7*

AAC 1  
Statement  
showing  
Aggregate  
and Average  
Annual  
Profits/Loss  
based on P 7

| Year    | No. of<br>Year | Aggregate from<br>31.8.40 |             | Average Annual<br>Profit/Loss<br>before paying<br>Pref. Div.<br>which equals<br>Rs. 79,200 p.a.<br>gross or<br>Rs. 67,320 net<br>at Rate of Tax at<br>Date of Death | Value per Management Share<br>(Gross) Capitalised at |     |     |
|---------|----------------|---------------------------|-------------|---|--|-----|-----|
|         |                | Profit                    | Loss        |   | 15%  | 20% | 25% |
|         |                | Rs.                       | Rs.         | Rs.   |  |     |     |
| 1939/40 | .. 1           | 764,415                   | —           | 764,415   | 913  | 685 | 548 |
| 1938/39 | .. 2           | 1,339,458                 | —           | 669,729   | 774  | 580 | 466 |
| 1937/38 | .. 3           | 1,425,792                 | —           | 475,264   | 515  | 396 | 317 |
| 1936/37 | .. 4           | 1,431,129                 | —           | 357,782   | 371  | 278 | 223 |
| 1935/36 | .. 5           | 1,402,088                 | —           | 280,417   | 281  | 201 | 161 |
| 1934/35 | .. 6           | 1,298,721                 | —           | 216,453   | 183  | 137 | 110 |
| 1933/34 | .. 7           | 1,405,582                 | —           | 200,797   | 176  | 121 | 98  |
| 1932/33 | .. 8           | 1,543,329                 | —           | 192,666   | 151  | 113 | 91  |
| 1931/32 | .. 9           | 1,077,750                 | —           | 119,750   | 54   | 40  | 32  |
| 1930/31 | .. 10          | 559,145                   | —           | 55,915  | Nil  | Nil | Nil |
| 1929/30 | .. 11          | 28,486                    | —           | 2,771   | Nil  | Nil | Nil |
| 1928/29 | .. 12          | 2,499                     | —           | 208   | Nil  | Nil | Nil |
| 1927/28 | .. 13          | —                         | loss 64,124 | 4,933   | Nil  | Nil | Nil |
| 1926/27 | .. 14          | 201,272                   | —           | 14,362  | Nil  | Nil | Nil |
| 1925/26 | .. 15          | 1,334,197                 | —           | 88,946  | 13   | 10  | 8   |
| 1924/25 | .. 16          | 2,449,740                 | —           | 153,109   | 99   | 73  | 59  |
| 1923/22 | .. 17          | 2,749,385                 | —           | 161,728   | 110  | 82  | 66  |
| 1922/23 | .. 18          | 307,637                   | —           | 170,879   | 122  | 91  | 74  |

## AAC 2

## Statement showing Position if Mackie died on December 31, 1938

## AAC 2

| Year | No. of Years | Aggregate from 31. 12. 38 |           | Average Annual Profit/Loss before Paying Pref. Div. which equals Gross Rs. 79,200 |        | Value per Management Share (Gross) Capitalised at |     |     |
|------|--------------|---------------------------|-----------|---|--------|---|-----|-----|
|      |              | Profit                    | Loss      | Profit  | Loss   | 15%   | 20% | 25% |
|      |              | Rs.                       | Rs.       | Rs.   | Rs.    |   |     |     |
| 1938 | 1            | 149,846                   | —         | 149,846   | —      | 94  | 70  | 56  |
| 1937 | 2            | 109,156                   | —         | 54,578  | —      | Nil   | Nil | Nil |
| 1936 | 3            | 206,548                   | —         | 68,849  | —      | Nil   | Nil | Nil |
| 1935 | 4            | —                         | 75,359    | —   | 18,840 | Nil   | Nil | Nil |
| 1934 | 5            | 329,071                   | —         | 65,814  | —      | Nil   | Nil | Nil |
| 1933 | 6            | 772,232                   | —         | 128,705   | —      | 66  | 49  | 39  |
| 1932 | 7            | 269,150                   | —         | 38,450  | —      | Nil   | Nil | Nil |
| 1931 | 8            | —                         | 121,423   | —   | 15,178 | Nil   | Nil | Nil |
| 1930 | 9            | —                         | 896,103   | —   | 99,567 | Nil   | Nil | Nil |
| 1929 | 10           | —                         | 908,770   | —   | 90,877 | Nil   | Nil | Nil |
| 1928 | 11           | —                         | 961,337   | —   | 87,394 | Nil   | Nil | Nil |
| 1927 | 12           | —                         | 1,032,072 | —   | 86,006 | Nil   | Nil | Nil |
| 1926 | 13           | —                         | 94,414    | —   | 7,263  | Nil   | Nil | Nil |
| 1925 | 14           | 1,439,046                 | —         | 102,789   | —      | 31  | 24  | 18  |
| 1924 | 15           | 1,738,786                 | —         | 115,919   | —      | 46  | 35  | 29  |
| 1923 | 16           | 2,038,240                 | —         | 127,390   | —      | 64  | 48  | 38  |
| 1922 | 17           | 2,409,287                 | —         | 141,723   | —      | 84  | 63  | 50  |

Exhibits

AAC 2  
Statement  
Showing  
Position  
if Mackie  
died on  
31. 12. 38

## AAC 3

## Statement showing Position if Mackie died on December 31, 1939

## AAC 3

| Year | No. of Years | Aggregate from 31. 12. 39 |         | Average Annual Profit/Loss before Paying Pref. Div. Gross Rs. 79,200 |        | Value per Management Share (Gross) Capitalised |     |     |
|------|--------------|---------------------------|---------|--|--------|--|-----|-----|
|      |              | Profit                    | Loss    | Profit   | Loss   | 15%  | 20% | 25% |
|      |              | Rs.                       | Rs.     | Rs.  | Rs.    |  |     |     |
| 1939 | .. 1         | 787,641                   | —       | 787,641  | —      | 944  | 708 | 566 |
| 1938 | .. 2         | 937,487                   | —       | 468,743  | —      | 520  | 389 | 320 |
| 1937 | .. 3         | 896,797                   | —       | 298,932  | —      | 293  | 219 | 175 |
| 1936 | .. 4         | 994,189                   | —       | 248,547  | —      | 225  | 169 | 135 |
| 1935 | .. 5         | 712,282                   | —       | 142,456  | —      | 84   | 63  | 50  |
| 1934 | .. 6         | 965,994                   | —       | 160,999  | —      | 109  | 82  | 65  |
| 1933 | .. 7         | 1,409,155                 | —       | 201,308  | —      | 162  | 122 | 99  |
| 1932 | .. 8         | 906,073                   | —       | 113,259  | —      | 45   | 34  | 27  |
| 1931 | .. 9         | 515,500                   | —       | 57,277   | —      | Nil  | Nil | Nil |
| 1930 | .. 10        | —                         | 259,180 | —  | 25,918 | Nil  | Nil | Nil |
| 1929 | .. 11        | —                         | 271,847 | —  | 24,713 | Nil  | Nil | Nil |
| 1928 | .. 12        | —                         | 324,414 | —  | 27,034 | Nil  | Nil | Nil |
| 1927 | .. 13        | —                         | 395,149 | —  | 30,396 | Nil  | Nil | Nil |
| 1926 | .. 14        | 542,509                   | —       | 38,751   | —      | Nil  | Nil | Nil |
| 1925 | .. 15        | 2,075,969                 | —       | 138,398  | —      | 80   | 60  | 49  |
| 1924 | .. 16        | 2,375,709                 | —       | 148,482  | —      | 92   | 69  | 55  |
| 1923 | .. 17        | 2,675,163                 | —       | 157,363  | —      | 104  | 78  | 62  |
| 1922 | .. 18        | 3,046,210                 | —       | 169,234  | —      | 120  | 90  | 72  |

AAC 3  
Statement  
Showing  
Position  
if Mackie  
died on  
31. 12. 39

## AAC 4

## Statement showing Position if Mackie died on December 31, 1940

A A C 4

Exhibits  
A A C 4  
Statement  
showing  
Position  
if Mackie  
died on  
31. 12. 40

| Year | No. of<br>Year | Aggregate<br>Profit from<br>31. 12. 40<br>Profit | Annual Average<br>Profit before<br>Paying Pref.<br>Div. which<br>equals |     | Value of Management<br>Share (Gross) Capitalised at |     |     |
|------|----------------|--|---|-----|---|-----|-----|
|      |                |  | Rs. 79,200 Gross  | Rs. | 15%   | 20% | 25% |
| 1940 | 1              | 681,798  | 681,798   | 803 | 602   | 481 |     |
| 1939 | 2              | 1,469,439  | 743,719   | 874 | 655   | 524 |     |
| 1938 | 3              | 1,619,285  | 539,761   | 614 | 460   | 379 |     |
| 1937 | 4              | 1,578,595  | 394,649   | 420 | 315   | 252 |     |
| 1936 | 5              | 1,675,987  | 335,197   | 341 | 255   | 204 |     |
| 1935 | 6              | 1,394,080  | 232,347   | 204 | 153   | 122 |     |
| 1934 | 7              | 1,647,792  | 235,399   | 205 | 155   | 123 |     |
| 1933 | 8              | 2,090,953  | 261,369   | 243 | 182   | 146 |     |
| 1932 | 9              | 1,587,871  | 176,430   | 130 | 97  | 78  |     |
| 1931 | 10             | 1,197,298  | 119,730   | 54  | 40  | 32  |     |
| 1930 | 11             | 422,618  | 38,424  | Nil | Nil   | Nil |     |
| 1929 | 12             | 409,951  | 34,162  | Nil | Nil   | Nil |     |
| 1928 | 13             | 357,384  | 27,491  | Nil | Nil   | Nil |     |
| 1927 | 14             | 286,649  | 20,476  | Nil | Nil   | Nil |     |
| 1926 | 15             | 1,224,307  | 81,620  | 3   | 2   | 1   |     |
| 1925 | 16             | 2,757,767  | 172,360   | 124 | 93  | 74  |     |
| 1924 | 17             | 3,057,507  | 179,853   | 139 | 100   | 80  |     |
| 1923 | 18             | 3,356,961  | 186,498   | 143 | 107   | 86  |     |
| 1922 | 19             | 3,728,008  | 196,211   | 152 | 117   | 94  |     |

## AAC 5

Summary of Valuation of Management Shares for different  
Years capitalised at 15 per cent.

AAC 5

A A C 5  
Summary  
of Valuation  
of Management  
shares for  
Different Years  
Capitalised at  
15 per cent.

Summary of Valuation of Management Shares for Different Years capitalised at  
15 per cent. as shown in AAC. 1, 2, 3 and 4

| No of<br>years | 31. 8. 1940 | 31. 12. 1940 | 31. 12. 1939 | 31. 12. 1938 |
|----------------|-------------|--------------|--------------|--------------|
| 1              | 913         | 803          | 944          | 94           |
| 2              | 774         | 874          | 520          | Nil          |
| 3              | 515         | 614          | 293          | Nil          |
| 4              | 371         | 420          | 225          | Nil          |
| 5              | 281         | 341          | 84           | Nil          |
| 6              | 183         | 204          | 109          | 66           |
| 7              | 176         | 205          | 162          | Nil          |
| 8              | 151         | 243          | 45           | Nil          |
| 9              | 54          | 130          | Nil          | Nil          |
| 10             | Nil         | 54           | Nil          | Nil          |
| 11             | Nil         | Nil          | Nil          | Nil          |
| 12             | Nil         | Nil          | Nil          | Nil          |
| 13             | Nil         | Nil          | Nil          | Nil          |
| 14             | Nil         | Nil          | Nil          | 31           |
| 15             | 13          | 3            | 80           | 46           |
| 16             | 99          | 124          | 92           | 64           |
| 17             | 110         | 133          | 104          | 84           |
| 18             | 122         | 143          | 120          | Nil          |
| 19             | Nil         | 152          | Nil          | Nil          |

**AAC 6**  
**Comparative Table**

AAC 6

|  | Valuation of Management Shares | Cost of acquiring 25 per cent. of the voting rights by purchasing all the Management Shares and 1,200 of the decd's Pref. Shares to cost Rs. 105,120 at Rs. 87.60 per share | Cost of acquiring simple majority voting rights by acquiring all Management Shares and 7,800 of decd's Pref. Shares to cost Rs. 683,280 at Rs. 87.60 per share | Cost of acquiring majority voting rights by acquiring all decd's Management Shares plus 3,801 additional Pref. Shares (making a total of 13,002) to cost at Rs. 87.60 | Total value of business 19,800 Pref. Shares at Rs. 87.60 Rs. 1,734,506 | Total Net Assets Balance Sheet Value 31-12-1939, viz., 8 months before date of death | Total Net Assets Balance Sheet Value 31-12-1940, viz., 4 months after date of death |
|--|--------------------------------|---|--|---|--|--|---|
| 1. Executor's valuation at Rs. 40.68 per share             | 203,094 ..                     | 308,214 ..  | 886,374 ..   | 1,384,454 ..  | 1,937,600 ..   | —  | —   |
| 2. Assessor's valuation at Rs. 300 per share ..            | 1,500,000 ..                   | 1,605,120 ..  | 2,183,280 ..   | 2,681,360 ..  | 3,234,506 ..   | 1,746,624 ..   | 1,984,614   |
| 3. Mr. Sathchithananda's valuation at Rs. 270 per share .. | 1,350,000 ..                   | 1,405,120 ..  | 2,033,280 ..   | 2,531,360 ..  | 3,084,506 ..   | —  | —   |
| 4. Commissioner's valuation at Rs. 250 per share ..        | 1,250,000 ..                   | 1,355,120 ..  | 1,933,280 ..   | 2,431,360 ..  | 2,984,506 ..   | —  | —   |

Exhibits  
A A C 6  
Comparativ  
Table



Exhibits  
AAC 7  
Statement showing the Value of Management Shares on Basis of Average of Gross Profit during Periods Five Years Capitalized at 15 per cent. and ignoring Arrears of Preference Dividend

AAC 7

Statement showing the Value of Management Shares on Basis of Average of Gross Profit during Periods Five Years Capitalized at 15 per cent. and ignoring Arrears of Preference Dividend

AAC 7

VALUE OF MANAGEMENT SHARES on Basis of the Average of the Gross Profit (available for Management Shares) during the previous 5 Years Capitalized at 15 per cent. and ignoring Arrears of Preference Dividend

| 5 Years to 31st December | Aggregate previous 5 Years Profit | Loss      | Average Annual Profit available to Management Shares | Value of Management Shares at 15 per cent. | Total Cost of 5,000 Management Shares | Aggregate of succeeding five Years less Pref. Dividend but ignoring Actual Arrears Profit | Loss      |
|--------------------------|-----------------------------------|-----------|--|--|---------------------------------------|---|-----------|
| 31.12.26                 | 3,441,959                         | —         | 609,072  | 812  | 4,060,000                             | —   | 1,697,222 |
| 31.12.27                 | 2,999,577                         | —         | 529,715  | 694  | 3,770,000                             | —   | 2,129,569 |
| 31.12.28                 | 2,947,556                         | —         | 450,811  | 600  | 6,000,000                             | —   | 1,633,841 |
| 31.12.29                 | 2,935,149                         | —         | 387,830  | 517  | 2,585,000                             | —   | 1,367,462 |
| 31.12.30                 | 27,009                            | —         | Nil  | Nil  | Nil                                   | —   | 874,689   |
| 31.12.31                 | —                                 | 1,801,222 | —  | —  | —                                     | —   | 386,724   |
| 31.12.32                 | —                                 | 1,783,569 | —  | —  | —                                     | 75,668  | —         |
| 31.12.33                 | —                                 | 1,237,841 | —  | —  | —                                     | —   | —         |
| 31.12.34                 | —                                 | 971,462   | —  | —  | —                                     | 316,282   | —         |
| 31.12.35                 | —                                 | 478,659   | —  | —  | —                                     | 1,279,915   | —         |
| 31.12.36                 | 927                               | —         | —  | —  | —                                     | —   | —         |
| 31.12.37                 | 471,668                           | —         | 15,354   | 20   | 100,000                               | —   | —         |
| 31.12.38                 | 178,353                           | —         | Nil  | Nil  | Nil                                   | —   | —         |
| 31.12.39                 | 712,282                           | —         | 63,256   | 84   | 420,000                               | —   | —         |
| 31.12.40                 | 1,675,915                         | —         | 256,983  | 341  | 1,705,000                             | —   | —         |

## A.A.C. 8

## Statement of Computation in Salvesens Case

AAC 8

Exhibits

AAC 8  
Statement  
of Computation  
in Salvesens  
Case

| Year                 | Issued<br>Capital | Profit                               | Loss       | Dividend | Earnings%<br>Capital | Reserve |
|----------------------|-------------------|--------------------------------------|------------|----------|----------------------|---------|
| 1909/10              | £20,000           | 3,342                                | —          | —        | 16%..                | —       |
| 1910/11              | "                 | 35,142                               | —          | 100%..   | 175%..               | —       |
| 1911/12              | —                 | —                                    | 444        | —        | —                    | —       |
| 1912/13              | —                 | —                                    | 3,141      | —        | —                    | 10,000  |
| 1913/14              | —                 | 12,205                               | —          | 50%..    | 60%..                | —       |
| 1914/15              | —                 | 46,388                               | —          | 60%..    | 233%..               | —       |
| 1915/16              | —                 | 41,230                               | —          | 100%..   | 206%..               | —       |
| 1916/17              | —                 | 87,132                               | —          | ?        | 440%..               | 20,000  |
| 1917/18              | —                 | 12,115                               | —          | ?        | 60%..                | —       |
| 1918/19              | —                 | —                                    | 79,183     | ?        | —                    | —       |
| 1919/20              | —                 | 659                                  | —          | —        | —                    | —       |
| 1920/21              | —                 | —                                    | 79,767     | ?        | —                    | —       |
| 1921/22              | £100,000          | 78,540                               | —          | ?        | 78%..                | —       |
| 1922/23              | —                 | 175,365                              | —          | 10%..    | 175%..               | —       |
| 1923/24              | —                 | 156,775<br>(of which 50<br>P. P. I.) | —          | 15%..    | 156%..               | —       |
| 1924/25              | —                 | 329,832                              | —          | 20%..    | 329%..               | —       |
| 1925/26              | —                 | 280,189                              | —          | 20%..    | 280%..               | —       |
|                      |                   |                                      | Average    |          | 24%..                | 164%..  |
| 1926/27              | —                 | 171,122                              |            |          |                      |         |
| Total Earnings over  |                   |                                      | £1,000,000 |          |                      |         |
| Total Dividends paid |                   |                                      | £115,000   |          |                      |         |

Crown Valuation : Average Profit last 3 years (less P. P. I. payment) = £220,000 capitalised at 40 per cent. — £5. 10s. 0d.

Exors. Valuation :—Expected dividend 15 per cent.

Actual Average Dividend 20 per cent. over last 4 years and 24 per cent. over whole period.

$$\text{Value of Shares} = \frac{20}{15} \times 1 = \text{£1. 6s. 8d.}$$