[1925] A.C. 495

[HOUSE OF LORDS.]

SWEDISH CENTRAL RAILWAY COMPANY, LIMITED APPELLANTS; AND THOMPSON RESPONDENT.

1925 March 13. VISCOUNT CAVE L.C., LORD DUNEDIN, LORD ATKINSON, LORD SUMNER, and LORD BUCKMASTER.

Revenue — Income Tax — Residence — Company incorporated in England — Registered Office in England — Business carried on Abroad — Dual Residence — Liability to Taxation — Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Sch. D, Case V. —

A registered company can have more than one residence for the purposes of the Income Tax Acts.

So *held* by Viscount Cave L.C., Lord Dunedin, Lord Sumner, and Lord Buckmaster; Lord Atkinson dissenting.

Cesena Sulphur Co. v. Nicholson and Calcutta Jute Mills Co. v. Same (1876) 1 Ex. D. 428, De Beers Consolidated Mines v. Howe [1906] A. C. 455, Mitchell v. Egyptian Hotels [1915] A. C. 1022, New Zealand Shipping Co. v. Thew (1922) 8 Tax Cas. 208, and Bradbury v. English Sewing Cotton Co. [1923] A. C. 744 discussed.

Dictum of Buckley L.J. in American Thread Co. v. Joyce (1912) 6 Tax Cas. 1, 31 approved.

A company was incorporated in 1870 under the Companies Acts, 1862 and 1867, with the object of constructing and working a railway in Sweden. The registered office of the company was in London. In 1900 the company leased its railway to a traffic company for fifty years at an annual rent of 33,500 *l.* , which was to be paid to the company in England. The company's articles were afterwards altered for the purpose of removing the control and management of the business of the company from England to Sweden, and it was admitted that the business of the company had since been and now was controlled and managed from the head office in Sweden. In 1920 a committee was appointed by the directors of the company to transact merely formal administrative business in the United Kingdom, such as dealing with transfers of shares in the United Kingdom, affixing the seal of the company to share and stock certificates, and signing cheques on the London banking account of the company. Since 1920 no meetings of the company had been held in the United Kingdom. All dividends had been declared in Sweden, and no profits had been transmitted to the United Kingdom except in payment of dividends to the shareholders in the United Kingdom. Since 1920 the annual rent under the lease to the traffic company had been paid to the company in Sweden.

On an appeal by the company against an assessment to income tax under Case V. of Sch. D in respect of the rent of the railway for the years ending on April 5, 1921 and 1922, the Special Commissioners, while finding that the business of the company was controlled and managed from Sweden, held that the company was a person residing in the United Kingdom and affirmed the assessment:—

Held , (by the same majority) that, the company might have a residence here as well as abroad and that, on that assumption, there was evidence to support the conclusion of the

Commissioners.

Decision of the Court of Appeal [1924] 2 K. B. 255 affirmed.

APPEAL from an order of the Court of Appeal[1] affirming an order of Rowlatt J. upon a case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The question raised by the appeal was whether for the purposes of the Income Tax Acts the appellant company ought on the facts to be regarded as residing in the United Kingdom within the meaning of Sch. D, Case V.

The facts are stated in the report of the case before the Court of Appeal and also in the opinion of the Lord Chancellor.

The Special Commissioners found that the real control and management of the business of the company had been since 1920 and still was in Sweden, but held upon the authority of a passage from Lord Sumner's judgment in Mitchell v. Egyptian Hotels [2] that the company was a person residing in the United Kingdom and confirmed the assessment appealed against. This determination was affirmed by Rowlatt J., and the decision of the learned judge was in turn affirmed by the Court of Appeal by a majority (Pollock M.R. and Warrington L.J.; Atkin L.J. dissenting).

1925. Jan. 26, 27, 29. *Maugham K.C.* and *Latter K.C.* (with them *Bremner*) for the appellants. The question is whether a company whose business is carried on in Sweden can be regarded as residing in the United Kingdom for income tax purposes because its registered office is in England. According to the test laid down by this House a company resides where its real business is carried on, and the real business is carried on where the central management and control actually abides: De Beers Consolidated Mines v. Howe [3]; American Thread Co. v. Joyce [4]; New Zealand Shipping Co. v. Thew. [5] In this case the Special Commissioners have found that the real control and management of the appellant company is in Sweden, and their decision that the company is resident in the United Kingdom is contrary to the principle laid down by this House. That is a principle of universal application and applies equally to companies registered abroad and registered in the United Kingdom. It is true that in all the cases above cited the House was dealing with foreign companies, but no reliance was placed on that fact. In Cesena Sulphur Co. v. Nicholson and Calcutta Jute Mills Co. v. Nicholson [6], which came before a Divisional Court, the reasoning of the Court in determining the residence of the companies in question, both of which were registered in England, involved the same principle. Huddleston B. there expressly stated that the registration of a company was not conclusive of its residence, any more than birth was conclusive in the case of an individual, and that the residence of the company was determined by the place where the real business was carried on, although on the facts the Court decided that the place of registration and the place of control coincided. That reasoning has been approved and adopted by this House in the De Beers [3] and New Zealand Shipping Co.'s [7] cases. The principle above stated is inconsistent with the notion that a company can have more than one residence — at any rate a company carrying on a single business. Multiple residence, if it can be attributed to a company at all, must depend on control. Thus, if a company carries on business here with branches abroad it is resident here. In Bradbury v. English Sewing Cotton Co. [8], which was a later stage of American Thread Co. v. Joyce [9], this House had to determine, not merely the residence of a company, but the locality of its shares, and it adopted the same principle. There cannot be two localities of shares.

[LORD DUNEDIN referred to Levesque v. Smith. [10]]

In San Paulo (Brazilian) Ry. Co. v. Carter [11] this House held that the business of the

company was carried on partly in England and that consequently the company was taxable in respect of the full amount of its profits; but, if the place of incorporation was decisive of residence, the whole of Lord Halsbury's judgment was unnecessary. Mitchell v. Egyptian Hotels [12], where the House was equally divided, follows the same line of thought — namely, that residence depends on control and not upon registration. And see Daimler Co. v. Continental Tyre and Rubber Co. [13]

Sir Douglas Hogg A.-G. and *Reginald Hills* for the respondent. Unless it is established that central control is the sole and conclusive test of residence, and that a company cannot have two residences, the finding of the Commissioners disposes of the case. No doubt if dual residence for income tax purposes is impossible the Crown fails. In Goerz & Co. v. Bell [14] Channell J. thought that there was much to be said in favour of the view that a company might have two residences. So in the De Beers case in the Court of first instance[15] Phillimore J. suggested that a company, no less than a person, might have two residences. In that case the question was whether incorporation abroad rendered it impossible that the company should reside here. Lord Loreburn, in deciding that question in the negative, was careful not to say that the company could not reside elsewhere. That case only decides that central control constitutes a residence; it does not decide that there may not be another. In American Thread Co. v. Joyce [16] Buckley L.J. was of opinion that a corporation, like an individual, might have more than one place of residence, and in Bradbury v. English Sewing Cotton Co. [17] Sankey J. took the same view. The decision of this House in Mitchell v. Egyptian Hotels [18] really involves this principle. New York Life Insurance Co. v. Public Trustee [19] also supports the view that a company may have two residences, but that was not a taxing case. If necessary, it is submitted a company has a residence where its registered office is, though it may also have a residence where its central control abides. There is nothing in any of the decisions of this House which ought to have prevented Atkin L.J. from deciding according to his own inclination in favour of the Crown.

Maugham K.C. replied.

The House took time for consideration.

1925. March 13. VISCOUNT CAVE L.C. My Lords, the appellant company was incorporated under the Companies Acts, in the year 1870, with the object of constructing and working a railway in Sweden. This railway was, duly constructed, and in the year 1900 was leased by the company to a Swedish company for a term of fifty years at the yearly rent of 33,500 *l.* In October, 1920, a special resolution was passed altering the articles of association of the appellant company so as to remove the control and management of the business of the company from England to Sweden; and since that time the general meetings of the shareholders (of whom the majority are of Swedish nationality) and the meetings of the board have been held in Sweden, all dividends have been declared there, and no part of the profits of the company has been transmitted to the United Kingdom except for payment of dividends to the shareholders in the United Kingdom. In exercise of a power conferred by the articles of association, as altered by the special resolution, the board, on October 22, 1920, appointed three directors to be a committee to deal with transfers, to attach the seal of the company to share and stock certificates, and to sign cheques on the London banking account of the company. Since that time this committee has met regularly in London for the purposes mentioned. The secretary of the company resides in London, and the seal of the company is kept at the registered office of the company in London. The company has a banking account in London. Transfers of shares are made in London and registered there. The accounts of the company are made up and audited in London. Dividends are paid to English shareholders and interest to English debenture holders from the registered office in London.

In these circumstances the General Commissioners assessed the company to income tax under Case V. of Sch. D in respect of the yearly rent of 33,500 *l.* for the years ending on April 5, 1921, and April 5, 1922. On appeal to the Special Commissioners, those Commissioners confirmed the assessment but stated a case for the opinion of the High Court. In this case the Commissioners stated the above facts and, while finding that the business of the company "has been and now is controlled and managed from the head office, Stockholm, Sweden," they also held that the appellant company was "a person residing in the United Kingdom" and assessable under Case V. of Sch. D. They further held that the agreement of 1900 was a lease and that the 33,500 *l.* was "rent" within the meaning of r. 1 of the rules applicable to Case V., so as to be taxable on the full amount and not only on the share remitted to the United Kingdom; and on this point no question is now raised.

Upon the argument of the case stated before Rowlatt J. the learned judge held that the Commissioners were right in their decision; and on appeal to the Court of Appeal, that Court by a majority confirmed the decision of Rowlatt J.

Atkin L.J. dissented, being of opinion that he was bound by the authorities to hold that a company could only have one residence for the purposes of the Income Tax Acts, such residence being the place where (in the words used by Lord Loreburn in De Beers Consolidated Mines v. Howe [20] the real business of the company is carried on and where the central management and control actually abides. The present appeal is against this decision of the Court of Appeal.

My Lords, in my opinion a registered company can have more than one residence for the purposes of the Income Tax Acts. It has often been pointed out that a company cannot in the ordinary sense "reside" anywhere, and that in applying the conception of residence to a company it is necessary (as Lord Loreburn said in the De Beers case) to proceed as nearly as possible upon the analogy of an individual. "A company," he said, "cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business. …. The decision of Kelly C.B. and Huddleston B. in the Calcutta Jute Mills Co. v. Nicholson and the Cesena Sulphur Co. v. Nicholson [21], now thirty years ago, involved the principle that a company resides for purposes of income tax where its real business is carried on. Those decisions have been acted upon ever since. I regard that as the true rule, and the real business is carried on where the central management and control actually abides."

The effect of this decision is that, when the central management and control of a company abides in a particular place, the company is held for purposes of income tax to have a residence in that place: but it does not follow that it cannot have a residence elsewhere. An individual may clearly have more than one residence: see Cooper v. Cadwalader [22]; and on principle there appears, to be no reason why a company should not be in the same position. The central management and control of a company may be divided, and it may "keep house and do business" in more than one place; and if so, it may have more than one residence.

When the authorities are examined, they do not appear to me to be inconsistent with the above view. In Cesena Sulphur Co. v. Nicholson and Calcutta Jute Mills Co. v. Same [23] it was held that a company which was registered in the United Kingdom and whose directors managed from this country a foreign business was resident in the United Kingdom within the meaning of the Income Tax Acts: but the question whether such a company also resided in the country where its business was carried on was not considered, and Kelly C.B. left open the question whether the same joint stock company might reside at more than one place. In San Paulo (Brazilian) Ry. Co. v. Carter [24] it was held that a company registered in the United Kingdom and carrying on its business partly here and partly abroad was taxable under Case I. and not under Case V. of Sch. D. It was plain that

the company was resident here, and no question of double residence arose. In Goerz & Co. v. Bell [25] the decision was that a company registered in a foreign country but having its head office and central management in London, was taxable here as a person residing in the United Kingdom. The question whether a company could have two residences was not material; but Channell J. said: "It is possible — though I do not decide the question one way or the other — that the company may have two residences. …. That is clear in the case of a person, and I think the condition of things might be the same with regard to a company." In De Beers Consolidated Mines v. Howe [26], which was a case of a company registered in a British colony and partly managed from London, the decision was in accordance with that given in Goerz & Co. v. Bell. [25] Phillimore J., in giving judgment in the High Court, said, "As was pointed out in Goerz & Co. v. Bell [25], a person and a company may have for the purposes of taxation two residences"; and on appeal to the House of Lords no opinion to the contrary was given. American Thread Co. v. Joyce [27] was another case in which a company registered abroad but controlled and managed in the United Kingdom was held to be resident here; and Buckley L.J., in giving judgment in the Court of Appeal, said: "A corporation, like an individual, may have more than one place of residence."

In all the cases above cited the companies concerned — some of them registered here and others registered overseas — were controlled and managed (either wholly or partly) by an English board meeting in England; and this being so, they were held to be "resident" here and taxable under Case I. In these circumstances the question whether they were also resident elsewhere did not arise, and the expressions quoted above as to the possibility in such a case of a double residence were in the nature of obiter dicta. But in Egyptian Hotels v. Mitchell [28] the point which is now under discussion actually arose. In that case a company incorporated in the United Kingdom carried on a hotel business in Egypt; and under the articles of association, as altered by special resolution, the company's affairs were to be carried on and managed by a local board meeting in Egypt, and the powers of the London board were confined to keeping accounts, recommending dividends, and controlling the capital. It was admitted that the company resided in England for the purposes of the Income Tax Acts; and the question for decision was whether the company's trade was carried on partially in England so that it was taxable under Case I. in respect of its whole profits in accordance with the San Paulo case[29], or whether, the trade being carried on wholly abroad, it was assessable only under Case V. in respect of profits received in this country. The decision of the Court of Appeal was that the whole control and management of the company's trade was in Egypt and not here, and accordingly that Case V. and not Case I. applied; and on appeal to this House, the voices being equal, the decision of the Court of Appeal was upheld. It is noticeable that the facts, as found by the Commissioners and interpreted in the Court of Appeal and in this House, were sufficient according to the principle of the De Beers case[30] to establish residence in Egypt, so that, if a company can have but one residence — namely, the place where its control and management abides, it must have been held that the company being resident in Egypt was not resident here, and accordingly was not taxable at all; but no such suggestion was made either by counsel or by any member of the tribunals by which the decision was given and upheld. This being so, while the case does not expressly decide that a company may have two residences for income tax purposes, the decision appears to be inconsistent with any other view.

In New Zealand Shipping Co. v. Thew [31] the principle of the De Beers case[30] was again applied by this House to a company registered overseas; but again no question of a double residence arose.

There remains the case of Bradbury v. English Sewing Cotton Co. [32], as to which, in view of the interpretation put upon it by Atkin L.J., it is necessary to say something. In

that case the question arose whether dividends paid by the American Thread Company at a time when, according to the above cited decision in Joyce's case[33], it was controlled and managed from Liverpool and was for income tax purposes resident there, were to be treated in the hands of an English shareholder as profits from a foreign business; and it was held by the Court of Appeal and by this House that they were not. The Crown, having established in Joyce's case[33] that the profits of the company during the period in question were for the purpose of taxing the company to be treated as earned here, could not now be heard to say that for the purpose of taxing the shareholders they were earned abroad. The source of income was the same in both cases. It is obvious that, so far as the decision goes, the case did not establish that a company can have only one residence; and my own observations, to which Atkin L.J. refers, were not directed to any question of residence but to the position of the shares as a source of income for income tax purposes. The point to which I was directing my attention is very clearly put by Lord Wrenbury in his speech in the same case.[34]

From the above examination it would appear that, while the authorities may not establish the possibility of a company having more than one residence for income tax purposes, they are at least not inconsistent with that view. I do not cite the decisions as to the residence of a company for the purpose of founding jurisdiction, because they relate to a different subject matter; but, so far as they go, they point to the same conclusion. I hold, therefore, that a company may, for income tax purposes, have a residence here as well as a residence abroad.

In the present case it was found by the Commissioners that, while the business of the company was controlled and managed from the head office at Stockholm, so that the company would in the contemplation of English law have a residence in Sweden, the company was resident in the United Kingdom for the purposes of the Income Tax Acts; and it was hardly disputed that, assuming that a company can have two residences, there was sufficient material upon which that finding could be based. I am not at present prepared to say that registration in the United Kingdom would itself be sufficient proof of residence here; that point does not arise in this case, and I express no opinion upon it. But, however that may be, I am satisfied that the fact of registration together with the other circumstances which were found by the Commissioners to exist, were sufficient to enable them to arrive at their finding. It may be noted that the distinction between Case I. and Case V., which bulked so largely in some of the cases cited, is immaterial in the present case; and it need not now be considered.

For the above reasons I am of opinion that this appeal fails and should be dismissed with costs.

LORD DUNEDIN. My Lords, I have had the advantage of perusing the judgment just delivered by the Lord Chancellor. He has to my mind so exhaustively and satisfactorily examined the cases bearing on the subject, that, agreeing as I do with all he has said, I should only be guilty of repetition if I examined them for myself. I only wish to add two observations.

The first is that inasmuch as Lord Loreburn in the De Beers case professedly founded his judgment on the decisions in Calcutta Jute Mills Co. and Cesena Sulphur Co. [35], in both of which cases the place of registration coincided with the place of the head office where the business was really managed, it is impossible to hold that the test of the latter alone affords a test of the sole residence possible in the case of a company; and the dictum of Lord Loreburn is really the sheet anchor of the appellants' contention.

The second is that in view of what the Lord Chancellor has just said as to the terms of his own judgment in Bradbury v. English Sewing Cotton Co. [36], I think it expedient to remark that there is no inconsistency between the decision in that case and the decision

in Levesque v. Smith in the Privy Council (not yet reported). There the question did not turn on residence but on the locality of property; but I have no doubt that there also there was given an example of a company which had more than one residence.

LORD ATKINSON. My Lords, I have read and anxiously considered the judgments which have just been delivered by my two noble friends who have preceded me. I regret extremely that I am unable to concur with either of them. I take the view of the authorities expressed at length in the able judgment delivered in the Court of Appeal by Atkin L.J., and, like him, am convinced that these judgments cannot be reconciled with the cases which have been decided in this country during the last half century. On the question of the mode of acquisition by an incorporated company of a residence here, within the meaning of the Income Tax Acts, Atkin L.J. has clearly and ably analyzed most, if not all, of the authorities dealing with it. I need not attempt to perform again the task he has so well performed, and as the facts have been already fully stated, I need only restate them as far as it may be necessary to make this my judgment intelligible. I express no opinion as to whether it would be wise or unwise, just or unjust, manageable or embarrassing to confer upon incorporated companies the privilege of acquiring legally, for the purpose of the Income Tax Acts, two or more residences; but I have the strongest opinion that such an acquisition would conflict with the principles embodied in the authorities I have mentioned. It is, I think, not only not authorized by them; but is, on the contrary, in effect, forbidden by them. The word "person" is, no doubt, frequently used in Sch. D of the Income Tax Acts, and, of course, I am aware that an incorporated company is, according to our law, a "person," and that, therefore, companies which, like the appellant company in this case, manage great commercial or manufacturing enterprises in different parts of the world must answer to the description of persons to come within the reach of the Income Tax Acts. I have seen that it has been frequently said in argument in some of the authorities to which we have referred, if not in this case, "that if an individual, a real person, can acquire as many residences as he pleases, why should not this fictitious person, a company, be permitted by the law to do the same." A false analogy is the most misleading of all things. And I think if one considers even for a moment the means and methods by which a real person can acquire a residence, or several residences, it will be obvious that there is no real analogy between the two processes, and that the inference suggested by this question cannot reasonably be drawn. A real person can acquire a residence in a house by eating and sleeping in it, though he should be a hopeless paralytic, or an imbecile or a lunatic, or whether he is capable of transacting business, or has any business to transact, or whether he moves from house to house to improve his health, or promote his pleasure, or gratify his whims, whereas these incorporated companies have, as a rule, great enterprises to promote, conduct, govern and control. It was because of this, I think, that Lord Loreburn, in giving judgment in this House, in the De Beers case[37], said first: "A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see where it really keeps house and does business." Further on he states what he means by the words "doing business." He said, "The decision of Kelly C.B. and Huddleston B. in the Calcutta Jute Mills v. Nicholson and the Cesena Sulphur Co. v. Nicholson [38], now thirty years ago, involved the principle that a company resides for purposes of income tax where its real business is carried on. Those decisions have been acted upon ever since. I regard that as the true rule, and the real business is carried on where the central management and control actually abides." That judgment was concurred in by the four other members of the House who heard the case. But if the true rule be, as Lord Loreburn said, that the residence is where "the central management and control abides," then, unless a thing can have two or three different and separate centres, it would appear to me to be quite impossible, according to the ordinary use of language, that "the central control and management of a company" can at the same time abide in two or more different and separated places. I think this House is now bound by the decision on the De Beers case.[37] If it be desirable to alter the law as there laid down, it should, I think, be done by the Legislature, not by this House, and I, therefore, concur with Atkin L.J. This is, I think, the first case in which it has been attempted to alter

it. This was not, however, the only point that was decided in the De Beers case.[37] The House, following the decisions of Kelly C.B. and Huddleston B., in the Calcutta Jute case and Cesena case[38], decided, in effect, that neither in the case of English companies nor in that of foreign companies does the place of registration under the Companies Act of 1862 or 1867, or in the case of the latter companies under any similar legislation, suffice per se to fix, according to English law, the residence of a company.

In the case of the Calcutta Jute Mills Co. v. Nicholson [38] the company was incorporated under these same statutes of 1862 and 1867. It was not registered or incorporated elsewhere.

In the case of the Cesena Sulphur Co. v. Nicholson , which was heard and decided immediately after and reported with the other, the company was incorporated under the same Acts, but was afterwards registered for all purposes in Italy. The then Attorney-General, Sir John Holker, apparently contended on behalf of the Crown that the registration of a company furnished conclusive evidence of its residence, and that if a company was registered in England it must be held to reside in England. Huddleston B., in dealing with this contention[39], said he could not assent to that proposition, and he continued: "I think the answer which was given during the argument is a good one. It is this:— Registration, like the birth of an individual, is a fact which must be taken into consideration in determining the question of residence. It may be a strong circumstance, but it is only a circumstance. It would be idle to say that in the case of an individual the birth was conclusive of the residence. So drawing an analogy between a natural and an artificial person, you may say that in case of a corporation the place of its registration is the place of its birth, and is a fact to be considered with all the others. If you find that a company which is registered in a particular country, acts in that country, has its office and receives dividends in that country, you may say that these facts, coupled with the registration, lead you to the conclusion that its residence is in that country."

The learned judge said further[40]: "There is not much difficulty in defining the residence of an individual; it is where he sleeps and lives. I adopt Mr. Matthews' suggestion that 16 & 17 Vict. c. 34, when it speaks of 'residing,' does not mean an artificial residence. It means an actual residence. Mr. Matthews argues, therefore, that when you deal with a trading corporation it means the place not where the form or shadow of business, but where the real trade and business is carried on, and that definition seems to be almost conceded by all the counsel." He then refers to the expressive French term used to express the same idea. It is "le centre de l'entreprise" — "the central point of the business." I presume the French lawyers when using this expression did not entertain the opinion that an enterprise might at the same moment have two or more different and separate "centres."

Kelly C.B. expressed himself to the same effect.[41] He said: "Then arises the question, what is the meaning of the word 'residing,' as applied to a joint stock company, and to this case? The answer is — whether there may or may not be more than one place at which a joint stock company can reside, I express no opinion at present — a joint stock company resides where its place of incorporation is, where the meetings of the whole company, or those who represent it, are held, and where its governing body meets in bodily presence for the purposes of the company, and exercises the powers conferred upon it by statute and by the articles of association."

From the report of the De Beers case in Court of Appeal[42], it appears that the company was, on March 13, 1888, registered with limited liability in the Deeds Office in Griqualand West in the colony of the Cape of Good Hope. It was also, on September 30 following, registered as an incorporated company in the same colony. Mr. Cohen, when supporting the appeal in this House, contended, as did Sir John Holker in the cases of the Cesena

Sulphur Co. and the Calcutta Jute Mills [43], that a corporation's only place of residence was the place of its incorporation. Lord Loreburn, in delivering judgment, dealt with this contention thus: "Mr. Cohen propounded a test which had the merits of simplicity and certitude. He maintained that a company resides where it is registered, and nowhere else. .... I cannot adopt Mr. Cohen's contention." And he then proceeds to lay down the test I have already mentioned — namely, that the residence of the company is where its real business is carried on, i.e., "where the central management and control actually abides." The Commissioners had found (1.) that the trade or business of the appellant company constituted one trade or business, and was carried on and exercised within the United Kingdom, i.e., at their London office; (2.) that the head and seat and directing power of the affairs of the company were at its office in London, whence the chief operations of the company, both in the United Kingdom and elsewhere, were, in fact, managed, controlled and directed. It was held accordingly, on these facts, that the company had, in accordance with the test laid down by Lord Loreburn, its residence, for the purposes of the Income Tax Acts, within the United Kingdom, and it was accordingly held liable to be assessed as it had been. These three cases, in two of which the companies dealt with were foreign companies and in one British, are all dealt with in precisely the same way, and on the same principles. There is not a suggestion, that I can find, in any case decided subsequently to the year 1906, that there is any difference as to the test to be applied to foreign companies as distinguished from English companies upon this question of residence. Of course, the same company may carry on two entirely separate and independent business enterprises. It may own, run and control a tramway enterprise in one country or place, and carry on, manage and control the business of patent medicine manufacturers in another, and of cotton spinners in a third. If these enterprises are really separate enterprises, independent of one another, then the test laid down by Lord Loreburn would apply to fix the separate residence of each of them for the purpose of the Income Tax Acts. In the course of the argument in several of the cases referred to, if not in this case, it was urged that there was no reason why a company, only carrying on one trade or business, should not be able to have two or more seats of control of that trade or business and, therefore, two or more residences; but no clear suggestion was made as to how these several residences of a single business were to be acquired. It cannot be held to be by registration alone without overruling the De Beers case[44] and the many cases which have followed and supported it. Registration must be supplemented by the carrying on and control of the business. It cannot be of the *real* or the whole and entire business of the company, for then all the other residences of the company would be left empty or derelict. There cannot be, it would appear to me, two systems of central management and control of one entire business situated in two distinct and separated places. Then if it only be a portion or fragment of the real business of the company which need be carried on in each residence, one may ask in vain, as I did during the progress of this case, how is that fragment to be ascertained? It appears to me to involve a contradiction in terms. What is to be its amount, what proportion of the whole? How are the several centres de l'entreprise to be fixed, their situation determined? The latter part of para. 17 of the case stated runs as follows: "The appellant company was incorporated under the Companies Acts in December, 1870, and its registered office is situate in London. It is, in our opinion, resident in the United Kingdom in the same sense as that in which the Egyptian Hotels Company, Ld., was admitted to be so resident. On the other hand, we are satisfied that the real control and management of the appellant company has been since October, 1920, and now is in Sweden. We have carefully considered all the authorities on the question of residence in the case of companies. It is to be noticed that in laying down that the place of control is to be taken as the sole test for determining the place of residence of companies for income tax purposes, the Courts were dealing with foreign companies and considering liability under Case I. In our opinion this doctrine must be confined to cases where the facts are similar. The Egyptian Hotels, Ld. v. Mitchell [45] appears to us to be a clear authority in support of the assessments under appeal; see especially Lord Sumner's opinion: 'where a resident in the United Kingdom is proprietor of a profit-earning business wholly situate and carried on abroad he is chargeable to income tax under Case V. of

Schedule D if he takes no part in earning those profits, and, if he takes any part, is chargeable under Case I. This is true whether the proprietor is a natural or an incorporated person.' We, therefore, hold that the appellant company is 'a person residing in the United Kingdom' and assessable under Case V., Schedule D."

If by this opinion the Commissioners meant to say that the principle embodied in the judgment of the House in the De Beers case[46] did not apply to companies incorporated in Great Britain, but did apply to those incorporated elsewhere, their opinion is grotesquely unsound. In the case of Calcutta Jute Mills Co. v. Nicholson [47] the company was a purely English company incorporated in England under the Companies Acts of 1862 and 1867, but not elsewhere. In the other case reported in the same report the company was incorporated first under the same Acts and afterwards registered in Italy. The decision of this House on the De Beers case[46] was founded on the decision of Kelly C.B. and Huddleston B. in these two cases. These two learned judges treat them both in precisely the same way, and do not in any way suggest that the principles which they lay down for determining the residence of a company do not apply equally to foreign and British companies.

In San Paulo (Brazilian) Ry. Co. v. Carter [48], the appellant company was an English company registered under the Joint Stock Companies Act, but its business was the making, maintaining, managing and working a certain railway in Brazil. The very same principles were applied to it as were adopted in the De Beers case[46] in order to determine whether the company resided in London or Brazil. It was decided that it resided in London, because, as the Commissioners found, the control and direction of it was in London, and its business was carried on in London under the direction of its directors. When that was decided the only question which remained for consideration was whether it was taxed on all its gains and profits under the First Case of Sch. D of the Income Tax Acts, or on only such portion of those gains and profits as were transmitted to this country under the Fifth Case of that Schedule. It was decided that it was assessable under the First Case.

The view which Rowlatt J. took of the performance of the Commissioners in this case is more accurate than flattering. He said: "Therefore, upon the facts, I think that the decision of the Commissioners is right, and the only misgiving that I have had is that I am not certain that they have really addressed themselves to the facts and whether I am not finding the facts for them, because they do seem rather to have misdirected themselves in their decision with regard to an extract from a judgment of Lord Sumner, and they have not, I think, quite faced the question as I have dealt with it; but I do not think it is any good sending the case back to them. My view is that the findings of fact which are set out in para. 13 are enough to establish that this English company, which was born in England, has never left England, although it may also be a company in Sweden. Therefore, I think that the appeal must be dismissed with costs."

As, however, the Commissioners based their finding upon the case of the Egyptian Hotels v. Mitchell [49], it is, I think, desirable that one should closely examine the report of that case not only in this House but in the Court of Appeal.

The Court of Appeal, which dealt with that case, was composed of Cozens-Hardy M.R., as he then was, Buckley L.J., as he then was, and Channell J. From the report of the case in that Court, it appears that the company was registered in England under the Companies Acts of 1862 to 1893. It was what is styled an English company. At a meeting of the Commissioners for general purposes of the Income Tax Acts for the City of London, it was assessed to income tax on a sum of 43,332 *l.* under Sch. D, Case I. This assessment was ultimately confirmed by the General Commissioners. On appeal to Horridge J. the assessment was affirmed. The facts are stated with accuracy and sufficient fullness in the headnote of the case as reported in the Court of Appeal. It is there set forth that the company had carried on in Egypt their hotel business till the year 1908. That in that year

by certain resolutions they had altered their articles of association. That these resolutions provided that all the company's affairs and business in Egypt should be carried on and managed by a local board to the exclusion of any board of directors other than the local board. That the local board were to meet only in Egypt, and were to be affected only by resolutions of general meetings held in Egypt, and were to exercise all the powers of the company requisite for the Egyptian business. They were to retain the profits in Egypt and remit only to England what might be necessary to pay the dividends of the shareholders resident there, and to meet the expenses of the local board. The London Board was to keep accounts, recommend dividends and control the capital. The only business carried on in Egypt was the hotel business. The resolutions had been strictly acted upon from the date of their confirmation. No question as to the residence of the company was raised at all for decision in the case. It was, on the contrary, expressly admitted[50] that the company resided in England. The company contended, on the authority of Colquhoun v. Brooks [51] and the San Paulo case[52], that they never carried on the business in connection with their hotels wholly or partly in the United Kingdom. The Commissioners, purporting to found themselves entirely on the De Beers case[53], held that the head, seat and controlling power of the company remained in England with the board of directors, and were of opinion on the facts that the assessment was duly and properly made. The Master of the Rolls, in delivering judgment, said[54]: "This is an appeal from a decision of Horridge J. which raises a question whether, within the meaning of the Income Tax Acts, the company, which is an English company and resident in London, with registered offices here, is chargeable in respect of annual profits arising from carrying on a trade. …. The company at one time admittedly were carrying on a business in London, not because the hotels, which are their only assets, were in the United Kingdom, for they were in Egypt, but because the control of the company was in the hands of the London board of directors. The brain and management and control were here, and the authorities have plainly settled that if you find that, it does not in the least matter where the actual selling of the goods and buying of the goods takes place." He then refers to the change in the articles in August, 1908, entrusting the Egyptian Board with the exclusive management and control of the Egyptian business, and says that after that the London Board controlled no part of the trade which was in Egypt.

Buckley L.J., as he then was, commences his judgment by saying: "This company is incorporated in the United Kingdom; it is therefore resident here." There must be some mistake in the report of this statement, since incorporation does not necessarily imply residence. If he had said, "This company is incorporated in the United Kingdom, and is admitted to be resident there," it would have been quite correct. He then proceeds, "The question to be answered is does this company carry on or exercise a trade in the United Kingdom? In my opinion it does not." He then states that down to 1908 it was exercising a trade in the sense that it was controlling the trade from here (London), managing from here but not after that date. Channell J. concurs and says: "I think the case may be put very shortly. It is obvious that the spending of the profits, if any, of a business is not a carrying on of the business, nor is any other way of dealing with the profits, other than spending them, any more a mode of carrying on the business. The matters relied upon by the respondent are merely powers to deal with the profits of the business." The appeal was accordingly allowed.

The company appealed to the House of Lords.[55] The noble Lords who heard it were Earl Loreburn, Lords Parker of Waddington, Parmoor and Sumner. Lords Parker and Sumner held that the division of profits formed no part of the profit-earning business of the company and that the company's business was wholly carried on abroad, that consequently the company was assessable to income tax under the Fifth Case of Sch. D in respect only of the portion of its profits remitted to this country. Lords Loreburn and Parmoor held that there was evidence to support the finding of the Commissioners, that the company was assessable under the First Case of Sch. D in respect of the whole of their profits. The

consequence of that division of opinion was that the decision of the Court of Appeal was affirmed and now stands as a decision of this House.

Lord Parker, in delivering judgment, said: "The effect of the decision of this House in Colquhoun v. Brooks [56] may be stated as follows: Where a person resident in the United Kingdom is interested in a trade or business wholly carried on abroad, such trade or business for the purposes of the Income Tax Acts falls under the head of 'Possessions in any part of Her Majesty's Dominions out of Great Britain or Foreign Possessions,' within the meaning of case 5 of Sch. D, and accordingly no part of the profits or gains of such trade or business is assessable to tax under Sched. D, unless and until it be transmitted to and received in the United Kingdom. Where, however, the trade or business is carried on wholly or in part within the United Kingdom, the profits and gains thereof are assessable to tax under case 1 of the schedule." Lord Parker, lower down, proceeded to add the following words: "My Lords, in considering whether the principle of Colquhoun v. Brooks [56] applies to any particular circumstances, it is also necessary to bear in mind your Lordships' decision in the case of San Paulo (Brazilian) Ry. Co. v. Carter [57] to the effect that a trade or business cannot be said to be wholly carried on abroad if it be under the control and management of persons resident in the United Kingdom, although such persons act wholly through agents and managers resident abroad. Where the brain which controls the operations from which the profits and gains arise is in this country the trade or business is, at any rate partly, carried on in this country." He then proceeds to deal with the facts of the case.

Lord Sumner said: "Where a resident in the United Kingdom is proprietor of a profit-earning business wholly situate and carried on abroad, he is chargeable to income tax under case 5 of Sched. D if he takes no part in earning those profits." (That is really what was decided in Colquhoun v. Brooks. [58]) Lord Sumner then proceeds: "And, if he takes any part, is chargeable under case 1. This is true whether the proprietor is a natural or an incorporated person; whether he takes part in earning the profits in his own person or only by agents or servants. The question is whether the profits are wholly or partly earned from a business wholly or partly carried on in the United Kingdom. If he takes a part at home in earning the profits, its importance relatively to that taken by the agents abroad does not matter, nor does the liability to be charged under case 1 depend on active interference. Control exercised here over business operations abroad, though they are far greater in volume or magnitude, will suffice for case 1: San Paulo (Brazilian) Ry. Co. v. Carter." [59] I think these two judgments are in perfect accord. There is not any difference in their meaning or substance. The question dealt with by both of the noble Lords was whether the profits and gains earned by the hotel business of the company were assessable under Case I. of Sch. D or Case V. of that Schedule, and not at all the question as to where was the residence of that company, or whether it was situate in London or Egypt. I utterly fail to see how any persons with the faintest knowledge of the subject could come to the conclusion that either of these judgments dealt with the question as to whether the Swedish Central Railway Company had two residences or one. On the whole, therefore, I am of opinion that the decision appealed from is inconsistent with all the authorities which have in this country dealt with this question of the residence of companies for the last forty-eight years and is, therefore, erroneous and should be reversed. It may well be that the usual consequences which Atkin L.J. alludes to in his judgment will follow from a decision that a company may have multiple residences. It appears to me to be not improbable. There are no materials available upon which one can form a definite opinion on this point, as I have already said. With the rest of his judgment I, however, thoroughly concur.

LORD SUMNER. My Lords, I concur in the motion about to be proposed from the Woolsack.

LORD BUCKMASTER. My Lords, according to the principles enunciated in De Beers

Consolidated Mines v. Howe [60] and New Zealand Shipping Co. v. Thew [61], the appellants contend that they would be held to reside in Sweden and therefore cannot be resident here. That argument, in my opinion, is open to serious criticism.

The levying of taxation is essentially a matter of domestic jurisdiction. A company may do such acts within the jurisdiction of this country as causes it to be liable here as resident to income tax without excluding the possibility that it may also be held to be resident in another jurisdiction for the same or another purpose.

In principle both the cases quoted show only liability in the circumstances to taxation here, and the statement in New Zealand Shipping Co. v. Thew [61], that for purposes of determining residence "the registered office is only an incident in the evidence," would have left the Courts in New Zealand full discretion, if they thought fit, to declare that in their jurisdiction the place of incorporation of a company or its registered office was the sole test.

The statements in that case must be related to its facts. The phrase "real residence," to which Warrington and Atkin L.JJ. call attention, means no more than this: that the actual residence was here as determined by the principles enunciated. For purposes of our income tax the real and not a merely nominal residence was here, and if there were also residence elsewhere that did not displace it. The reference to the registered office is important; it is, to my mind, one of the critical facts in determination of residence in this country, but not necessarily the sole and exclusive fact. It varies in consequence in every instance. Nor, even if it were the sole fact, would it follow that a company incorporated and with a registered office elsewhere could not also be resident here for purposes of income tax.

Order of the Court of Appeal affirmed, and appeal dismissed with costs.

Lords' Journals, March 13, 1925.

Solicitors for the appellants: *Ashurst, Morris, Crisp & Co.*

Solicitor for the respondent: *Solicitor of Inland Revenue.*

1. [1924] 2 K. B. 255.

2. [1915] A. C. 1022, 1039.

3. [1906] A. C. 455, 458.

4. (1913) 6 Tax Cas. 163.

5. 8 Tax Cas. 208, 229.

6. 1 Ex. D. 428, 453, 454.

7. 8 Tax Cas. 208, 229.

8. [1923] A. C. 744.

9. 6 Tax Cas. 163.

10. (P. C.) not yet reported.

11. [1896] A. C. 31, 38.

12. [1915] A. C. 1022.

13. [1916] 2 A. C. 307, 319, 339.

14. [1904] 2 K. B. 136, 146.

15. [1905] 2 K. B. 612, 632.

16. 6 Tax Cas. 1, 31.

17. (1921) 8 Tax Cas. 481, 491.

18. [1915] A. C. 1022.

19. [1924] 2 Ch. 101, 110.

20. [1906] A. C. 455, 458.

21. 1 Ex. D. 428.

22. (1904) 5 Tax Cas. 101.

23. 1 Ex. D. 428.

24. [1896] A. C. 31.

25. [1904] 2 K. B. 136, 146.

26. [1905] 2 K. B. 612, 632; [1906] A. C. 455.

27. 6 Tax Cas. 1, 163.

28. [1914] 3 K. B. 118; [1915] A. C. 1022.

29. [1896] A. C. 31.

30. [1906] A. C. 455.

31. 8 Tax Cas. 208.

32. [1923] A. C. 744.

33. 6 Tax Cas. 1, 163.

34. [1923] A. C. 767.

35. 1 Ex. D. 428.

36. [1923] A. C. 744.

37. [1906] A. C. 455, 458.

38. 1 Ex. D. 428.

39. 1 Ex. D. 453.

40. 1 Ex. D. 452.

41. 1 Ex. D. 445.

42. [1905] 2 K. B. 612; [1906] A. C. 455, 458.

43. 1 Ex. D. 428.

44. [1906] A. C. 455.

45. 6 Tax Cas. 550; [1915] A. C. 1022, 1039.

46. [1906] A. C. 455.

47. 1 Ex. D. 428.

48. [1896] A. C. 31.

49. [1914] 3 K. B. 118; [1915] A. C. 1022.

50. [1914] 3 K. B. 127.

51. (1889) 14 App. Cas. 493.

52. [1896] A. C. 31.

53. [1906] A. C. 455.

54. [1914] 3 K. B. 130, 132, 134.

55. [1915] A. C. 1022, 1036, 1037, 1039.

56. 14 App. Cas. 493.

57. [1896] A. C. 31.

58. 14 App. Cas. 493.

59. [1896] A. C. 31.

60. [1906] A. C. 455.

61. 8 Tax Cas. 208.