disbursements permitted are such as are made for that purpose. It is not enough that the disbursement is made in the course of, or arises out of, or is connected with the trade, or is made out of the profits of the trade. It must be made for the purpose of earning the profits. In short, I agree with the judgment of Collins, M.R. I therefore think that the appeal should be dismissed with costs.

LORD JAMES OF HEREFORD—I confess that I did entertain some doubts during the discussion of this case at the Bar, but they are not doubts sufficient to cause me to differ from the judgments which have been delivered. In order to explain my position I may say that I agree entirely with the principle laid down by the Lord Chancellor. The only question is as to the application of that principle in one small matter to the facts of this case. If the fact were that the accident had occurred to a stranger walking in the street, then I should have no doubt at all. The doubt that was raised in my mind was caused by the fact that the accident happened to a person who was a customer in the house, and would not have been injured if the business of an innkeeper had not been carried on, and when it was in the course of the carrying on of a portion of that business that the customer who was injured was there. In that case I think that a different principle might be appealed to, and consequently my doubts existed. But they are not strong enough in relation to the application of this principle, about which there is no question, to cause me to dissent from the judgment proposed.

LORD ROBERTSON—I am clearly of opinion that the judgment is right.

LORD CHANCELLOR—I have been requested by LORD ATKINSON, who is unable to be present, to say that he concurs in the opinion which I have submitted to your Lordships.

Appeal dismissed.

Counsel for the Appellants—Danckwerts, K.C.—Bremner—P. G. Henriques. Agents—Metcalfe, Birkett, & Rowlatt, Solicitors.

Counsel for the Respondent—The Attorney-General (Sir J. Lawson Walton, K.C.)—Sir R. Finlay, K.C.—W. Finlay. Agent—Sir F. C. Gore, Solicitor of Inland Revenue.

HOUSE OF LORDS.

Monday, July 30.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Robertson, and Atkinson.)

DE BEERS CONSOLIDATED MINES, LIMITED *v.* HOWE.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Income-Tax—Company—Residence within the United Kingdom—Test—Income Tax Act 1853, *sec.* 2, *Schedule D.*

A company, for purposes of income-tax, resides in the country in which its real business is carried on, which means the country in which its central management and control are actually located.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., MATHEW and COZENS-HARDY, L.JJ.) who had affirmed a judgment of PHILLIMORE, J., upon a case stated for the opinion of the Court pursuant to section 59 of the Taxes Management Act 1880 by the Commissioners for the General Purposes of the Income Tax Acts for the City of London.

The facts appear from the judgment of the Lord Chancellor (Loreburn) *infra*, delivered after consideration.

LORD CHANCELLOR (LOREBURN) — The question in this appeal is whether the De Beers Consolidated Mines Limited ought to be assessed to income-tax on the footing that it is a company resident in the United Kingdom. Had the appellants prevailed upon that question an ulterior point would have demanded consideration. Your Lordships, however, being satisfied upon the first point, dispensed with further argument. Under the 2nd section of the Income Tax Act 1853, Schedule D, any person residing in the United Kingdom must pay on his annual profits or gains arising or accruing to him "from any kind of property whatever, whether situate in the United Kingdom or elsewhere," and also "from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere." Now, it is easy to ascertain where an individual resides, but when the inquiry relates to a company, which in a natural sense does not reside anywhere, some artificial test must be applied. 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. If that be so the appellant company must succeed, for it is registered in South Africa. I cannot adopt Mr Cohen's contention. In applying the conception of residence to a company we ought, I think, to proceed as nearly as we can upon the analogy of an individual. 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. An individual may be of foreign nationality and yet reside in the United Kingdom. So may a company. Otherwise it might have its chief seat of management and its centre of trading in England under the protection of English law, and yet escape the appropriate taxation by the simple expedient of being registered abroad and distributing its dividends abroad. The decision of Kelly, C.B., and Huddleston, B., in *Calcutta Jute Mills* v. *Nicholson* and *Cesena Sulphur Company* v. *Nicholson* (35 L.T. Rep. 275, 1 Ex. Div. 428), 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. It remains to be considered whether the present case falls within that rule. This is a pure question of fact, to be determined not according to the construction of this or that regulation or by-law, but upon a scrutiny of the course of business and trading. The case stated by the Commissioners gives an elaborate explanation of the way in which this company carried on its business. The head office is formally at Kimberley, and the general meetings have always been held there. Also the profits have been made out of diamonds raised in South Africa, and sold under annual contracts to a syndicate for delivery in South Africa upon terms of division of profits realised on resale between the company and the syndicate. And the annual contracts contain provisions for regulating the market in order to realise the best profits on resale. Further, some of the directors and life governors live in South Africa, and there are directors' meetings at Kimberley as well as in London. But it is clearly established that the majority of directors and life governors live in England; that the directors' meetings in London are the meetings where the real control is always exercised in practically all the important business of the company, except the mining operations. London has always controlled the negotiation of the contracts with the diamond syndicates, has determined policy in the disposal of diamonds and other assets, the working and development of mines, the application of profits, and the appointment of directors. London has also always controlled matters that require to be determined by the majority of all the directors, which include all questions of expenditure except wages, materials, and such like at the mines, and a limited sum which may be spent by the directors at Kimberley. The Commissioners, after sifting the evidence, arrived at the two following conclusions, viz.—(1) That the trade or business of the appellant company constituted one trade or business and was carried on and exercised by the appellant company within the United Kingdom, at their London office; (2) that the head and seat and directing power of the affairs of the appellant company were at the office in London, from whence the chief operations of the company, both in the United Kingdom and elsewhere, were in fact controlled, managed, and directed. These conclusions of fact cannot be impugned, and it follows that this company was resident within the United Kingdom for purposes of income tax, and must be assessed on that footing. I think, therefore, that this appeal fails. I will merely add that I agree with COLLINS, M.R., that residence of a company, within the meaning of the Income Tax Acts, is not necessarily the same thing as residence for the purpose of serving a writ.

LORD MACNAGHTEN concurred.

LORD JAMES OF HEREFORD—I concur in the judgment that has been delivered, holding that the decision of the Court of Appeal should be affirmed. It is true that the appellant company was registered in the colony, and it was contended that this registration constituted a foreign company which could not be resident within the United Kingdom. But I see no reason why this should be the case. Of course, a foreigner can reside here, and so can a foreign company. Then upon the facts, it seems clear that the business of diamond merchants was carried on by the De Beers Company in England. The principal office was here, and although the diamonds sold came from Kimberley, the profits were realised within the United Kingdom. The company therefore resided and carried on business here, and necessarily the provisions of the Act of 1853 as to profits and gains arising or accruing to any person resident within the United Kingdom and to profits and gains arising from any trade exercised within the United Kingdom apply. The appeal must be dismissed.

LORD ROBERTSON and LORD ATKINSON concurred.

Appeal dismissed.

Counsel for Appellants—Cohen, K.C.—Danckwerts, K.C. — Cassel. Agents — Hollams, Sons, Coward, & Hawksley, Solicitors.

Counsel for Respondents—The Attorney-General (Sir J. Lawson Walton, K.C.)—Sir R. Finlay, K.C.—W. Finlay. Agent — Sir F. C. Gore, Solicitor of Inland Revenue.