

No. 692.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—  
22ND AND 23RD NOVEMBER, 1926.

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COURT OF APPEAL.—27TH, 28TH AND 31ST JANUARY, AND  
18TH FEBRUARY, 1927.

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HOUSE OF LORDS.—23RD AND 24TH JANUARY, 12TH JUNE AND  
23RD JULY, 1928.

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TODD (H.M. INSPECTOR OF TAXES) *v.* THE EGYPTIAN DELTA LAND  
AND INVESTMENT COMPANY, LIMITED.<sup>(1)</sup>

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*Income Tax, Schedule D—English Company controlled abroad—  
Residence—Mortgage interest and rents arising abroad—Income Tax  
Act, 1918 (8 & 9 Geo. V, c. 40), Schedule D, Cases IV and V.*

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<sup>(1)</sup> Reported K.B.D. and C.A., [1928] 1.K.B. 152; and H.L., [1929] A.C.1.

*The Respondent Company, incorporated in England under the Companies Acts for the purpose of dealing in and developing land in Egypt, altered its Articles of Association in 1907 so as to remove the control and management of the company to Cairo. The London directors retired and since 1907 the directors and secretary-general have been all resident in Cairo; all meetings of directors and of the Company have been held there; the seal, minute books, account books, register of transfers, and banking account kept there; the accounts made up and audited there; the dividends declared and paid there, and the reports issued there.*

*To meet the requirements of the Companies Acts the Company appointed a London secretary, who provides them with a registered office at his own business address in London, but no room or part of a room is appropriated to the Company. Registers of members, of directors and of bearer warrants are kept at this address, and the London secretary makes the statutory returns required by the Companies Acts. It was stated, however, that he has no power of attorney from the Company, that his position is purely formal, and that, although he performs certain incidental services on behalf of the Company, he has no authority to do anything more than the law requires the Company to do here.*

*The Company was assessed to Income Tax under Cases IV and V of Schedule D in respect of mortgage interest and rents arising abroad, but the General Commissioners allowed the Company's appeal on the ground that it was not resident within the United Kingdom.*

*Held, that incorporation under the Companies Acts and the consequential arrangements necessary to comply with those Acts did not alone render a company resident in the United Kingdom. The Commissioners' decision could not be disturbed as being, in this respect, erroneous in point of law.*

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CASE

Stated by the Commissioners for the General Purposes of the Income Tax for the City of London pursuant to the provisions of Section 149 of the Income Tax Act, 1918, for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax Act for the City of London held on the 16th day of November, 1925, at Gresham College, Basinghall Street, in the City of London, the Egyptian Delta Land and Investment Company, Limited, whose registered office is at No. 211/214, Gresham House, Old Broad Street (hereinafter called "the Company"), appealed

against assessments to Income Tax made upon it pursuant to the Rules of Schedule D of the Income Tax Act, 1918, as follows :—

1919-20	£3,212	Case V on Rents.
1920-21	£3,504	do.
1921-22	£3,732	do.
1922-23	£4,785	do.
1923-24	£3,000	} Case IV on Interest on Mortgages.
	£6,000	
1924-25	£3,000	} Case IV on Interest on Mortgages
	£7,000	

2. The Company was incorporated in England on the 20th day of April, 1904, under the Companies Acts, 1862 to 1900, as a company limited by shares. The nominal capital of the Company is £500,000 divided into 500,000 shares of £1 each of which 324,250 shares have been issued.

3. The objects for which the Company was established included the following :—

- “ (a) To purchase, or otherwise acquire, develop, hold, sell,  
“ let, or otherwise dispose of and deal in land, or other  
“ immovable property situate in any district in Egypt in  
“ which the Railways belonging to or that may at any  
“ time hereafter belong to the Egyptian Delta Light  
“ Railways, Limited, or any extension or branch thereof  
“ existing or hereafter constructed or proposed to be  
“ constructed may serve or be intended to serve.
- “ (b) To develop the sources of any such lands or other  
“ property by building, planting, draining, levelling,  
“ filling in, reclaiming, irrigating, clearing, farming,  
“ cultivating, colonising, stockraising, timber-growing,  
“ mining, quarrying, and otherwise dealing with the  
“ same, in such ways as may seem capable of improving  
“ directly or indirectly the property and undertaking of  
“ the Company ”.

A print of the Memorandum and Articles of Association of the Company marked “A” is annexed to and forms part of this Case.<sup>(1)</sup>

4. By special resolution of the Company passed on the 16th April, 1907, and confirmed on the 7th May, 1907, it was resolved (*inter alia*) :—

“ III. That it is desirable that the business and affairs of  
“ the Company should henceforth be managed and directed  
“ entirely from Egypt, and that accordingly the Articles of  
“ Association . . . . . be . . . . . varied . . . . . ”

<sup>(1)</sup> Not included in the present print.

Prints of the above and other special resolutions from time to time passed at extraordinary general meetings of the Company are contained in Exhibit "A" above mentioned and form part of this Case.

5. In pursuance of the said resolutions the business of the Company was in 1907 transferred to Cairo and has since that date been controlled managed directed and carried on entirely in Cairo with the results following all of which were proved in evidence before us and apply to the whole period since 1907 :—

- (a) In 1907 all the London directors retired and a new board of directors was appointed consisting of four members all of whom have been permanently resident in Cairo. Since 1907 no meeting of directors has been held in the United Kingdom. There has been no committee of directors in the United Kingdom.
- (b) The secretary-general of the Company has resided and resides in Egypt.
- (c) The seal was removed to and has been kept in Egypt. There is no duplicate seal. The minute books and all books of account of the Company were also removed to Egypt and have remained there.
- (d) The banking account of the Company is with the National Bank of Egypt at Cairo but the Company's former account with the London agency of the same Bank has never been formally closed but is only used by the London agency of the Bank for debiting small disbursements not exceeding £8 or £9 in any year made by the agency on instructions from Egypt no cheques being drawn on the account.
- (e) The register of transfers is kept in Cairo where transfers of shares are passed before being registered in London. Under one per cent. of the issued shares are registered shares.
- (f) The accounts of the Company and the books of account have been kept and made up and audited in Cairo.
- (g) Dividends have been declared in and paid exclusively from Cairo.
- (h) All meetings of the Company have been held in Cairo.
- (i) The reports of the directors are prepared and sent out from Cairo and there is a duplicate register of shareholders in Cairo.

6. In order to comply with the requirements of the Companies Acts there is a registered office of the Company in London at which the registers of members and directors and also a register of bearer

warrants are kept. To meet these statutory requirements the Company pay a fee to Mr. F. J. Horn who carries on the business of secretary of public companies and provides them with a registered office at his address at Gresham House, Old Broad Street, where the name of the Company appears with those of five other companies on the door. Mr. Horn receives for these services and for small incidental expenses £35 per quarter which he pays into an account in his own name with the London agency of the National Bank of Egypt. No separate room or part of a room is appropriated to the Company and in fact there are more companies than rooms. The statutory duties of the London secretary involve the filing of the annual summary with the Registrar of Joint Stock Companies after it has been checked in Egypt and signed there and of any other documents required to be filed with the Registrar. The transfers of shares are kept in his office after they have been passed in Cairo and the certificates issued from there. The share certificate book is kept in Cairo. The London secretary occasionally receives and deals with correspondence from shareholders. He would also receive any application for share warrants and any transfers which might be lodged at the registered office and would transmit the same to the Company in Egypt to be there dealt with. Certificates of shares in respect of London applications when received from Cairo would be handed by him to the person entitled thereto. The London secretary would also insert an advertisement of the closing by the Company of the share register as directed by the Board in Egypt. Further, he would receive from a shareholder and pay over to the Revenue any stamp duty due in respect of share warrants. In April, 1922, he received from Egypt and paid on behalf of the Company a sum due in respect of Corporation Profits Tax. The London secretary keeps a cash book in which he enters any expenditure on behalf of the Company and he would recoup himself out of the sums paid to him as aforesaid. It was stated to us by the London secretary that he held no power of attorney from the Company and that his position was purely formal and that he had no authority to do anything more than the law required the Company to do here.

7. The reports of the directors of the Company for the years 1920 to 1925 inclusive are annexed hereto marked " B " and may be referred to as part of this Case.<sup>(1)</sup>

8. The Company contended that in the circumstances as above stated the case of *The Swedish Central Railway Company, Ltd. v. Thompson*<sup>(2)</sup>, [1925] A.C. 495, was distinguishable and that the Company was resident in Egypt and not in the United Kingdom and that the mere fact that it had been registered in the United

(1) Not included in the present print

(2) 9 T.C. 342.

Kingdom and therefore had a registered office here and otherwise complied with the statutory requirements of the Companies Acts with regard to companies incorporated in the United Kingdom did not constitute residence in the United Kingdom for the purposes of the Income Tax Acts.

9. For the Crown it was contended that the case was not in principle distinguishable from that of *The Swedish Central Railway Company, Ltd. v. Thompson* and that the Company was resident in the United Kingdom for the purposes of the Income Tax Acts because :—

- (i) On any view of the facts required as a test of residence, other than management and control, the incorporation of a company in this country, the situation here of its registered office and the activities required by law to be performed here were essential and important elements which were all present in this case, and
- (ii) There were in addition (a) optional activities which could take place at the registered office and (b) the actual activities of the London secretary which as shewn by the evidence were appreciable and important.

10. The following cases were referred to :—

*Swedish Central Railway Co., Ltd. v. Thompson*, [1925]  
A.C. 495, 9 Tax Cases 342.

*Cesena Sulphur Co., Ltd. v. Nicholson*, 1 Tax Cases 88.

*Calcutta Jute Mills Co., Ltd. v. Nicholson*, 1 Tax Cases 83.

*American Thread Co. v. Joyce*, 6 Tax Cases 1 and 163.

*De Beers Consolidated Mines, Ltd. v. Howe*, 5 Tax Cases 198.

The Commissioners held that on the facts proved in evidence during the hearing of the appeal this case was distinguishable from the case of *The Swedish Central Railway Company, Limited v. Thompson* and found that the Company was not resident in this country for the purposes of the Income Tax Acts and they allowed the appeal.

On behalf of the Appellant dissatisfaction was expressed with the finding of the Commissioners as being erroneous in point of law and we were required to state a Case for the opinion of the High Court of Justice which we have stated and do sign accordingly.

H. S. KING,  
CECIL LUBBOCK,  
J. M. R. FRANCIS,  
A. C. GLADSTONE,  
W. HARDY KING,  
SPENCER J. PORTAL.

COPLEY D. HEWITT,

Clerk to the said Commissioners.

22nd October, 1926.

The case came before Rowlatt, J., in the King's Bench Division on the 22nd and 23rd November, 1926, and on the latter date judgment was given in favour of the Crown, with costs.

The Attorney-General (Sir D. Hogg, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Sir J. Simon, K.C., and Mr. A. M. Bremner for the Company.

#### JUDGMENT.

**Rowlatt, J.**—I think the two points that lie by the side of the questions in the present case are fairly clear. One is, the mere fact of registration does not determine the residence. One can conceive the Legislature providing for the incorporation of a company and leaving it entirely at large as to where it shall go, where it shall establish itself, and putting no ties of locality upon it at all. In circumstances like those I do not think upon the best view I can form of the authorities, that a company could be said to reside in the place to which it merely owed its birth. That I think is what was meant by Baron Huddleston, in *Cesena Sulphur Co. Ltd. v. Nicholson*<sup>(1)</sup> and that is what I think was meant by Lord Wrenbury in the passage to which reference has been made in *Bradbury v. The English Sewing Cotton Co. Ltd.*<sup>(2)</sup>. The other point is, I think, clear, and that is, that where a company has its control and management it resides, but not necessarily exclusively.

The question which I have to decide here is whether an English company having—I use the word without begging the question—the establishment which the law requires in this country, does not necessarily reside here, although its whole control and management may be abroad. Now it seems to me that the Companies' Act puts upon a company which is incorporated in England the obligation to have a residence here. It is not only that a company is compelled to perform certain duties here, and make certain returns, and so on; that it might possibly do from abroad; but the Act requires that it shall have a place here from which it does it. It seems to me, applying the analogy from a natural person to a company upon the question of residence, that that is saying that a company shall always be at home in England at a particular place.

Sir John Simon in his argument treated the obligations of the company as being practically to have an address at which it could be served with process. He kept dwelling upon that aspect of a company's head office. He said, very naturally, that it may be provided that service of process shall be good upon a person, natural or artificial, if effected at a particular place, without that amounting to residence at all, because service of process is permitted by many systems of law to be very artificial. That is

(1) 1 T.C. 88.

(2) 8 T.C. 481.

(Rowlatt, J.)

true, but all the other obligations which are laid upon a company must also be borne in mind, the keeping of the register, the right of the public to inspect the register, and so on. All those are things which the law insists a company shall be here to do. It seems to me that that fulfils the idea of residence. Lord Parker has observed in *Daimler Co. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.*<sup>(1)</sup> that a company can change its residence. Of course that is perfectly true of its voluntary residence which it obtains by having its control in a particular place; but I do not think what he said touches the question I have now to decide, as to whether an English company does not necessarily reside in this country if it performs, as it must perform, the duties laid upon it by Parliament. Parliament has said that the office for the purposes I have indicated must be in this country. That is perhaps an accident. At any rate it has said that it must have its establishment somewhere. It has also said that it must be in this country. It must have an establishment and the establishment must be here. That it is here is perhaps an accident, as I have said, but I think a company cannot be incorporated under the Companies' Act as an ambulatory being that can have no residence anywhere, or at any rate, not a residence where it has its registered office. That is my view upon it, but I am bound to say that if my view had been otherwise I should have hesitated long before I expressed it, having regard to what Lord Justice Warrington said in the *Swedish Central Railway Company's case*<sup>(2)</sup>. I do not think that what he said was really *obiter* in the sense of being a collateral observation by the way, which is what *obiter* means, of course. It really was a reason for his decision, although he also could have, and I think did, decide it upon a wider ground.

Therefore, both upon my own view, and still more in deference to what Lord Justice Warrington said, I think I must hold that the Crown here are entitled to succeed with costs.

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The Company having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Sargant and Lawrence, *L.JJ.*) on the 27th, 28th, and 31st January, 1927, when judgment was reserved. On the 18th February, 1927, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Sir J. Simon, K.C., and Mr. A. M. Bremner appeared as Counsel for the Company, and the Attorney-General (Sir D. Hogg, K.C.) and Mr. R. P. Hills for the Crown.

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<sup>(1)</sup> [1916] 2 A.C. 307.

<sup>(2)</sup> *Swedish Central Railway Company, Limited v. Thompson*, 9 T.C. 342.



JUDGMENT.

**Lord Hanworth, M.R.**—This is an appeal by the Company from a judgment of Mr. Justice Rowlatt given on 22nd November, 1926, whereby he reversed the decision of the Commissioners who had held that the Company was not resident in this country for the purposes of the Income Tax Acts.

The assessments upon the Company were made for the six financial years 1919-20 to 1924-25, in each of which there was a Finance Act which brought into operation the Income Tax Act, 1918, by virtue of Section 1 of that Act; and the respective assessments made upon the Company are set out in paragraph 1 of the Case Stated.

They are all made under Case IV or Case V of Schedule D. That Schedule charges Income Tax "in respect of—the annual profits or gains arising or accruing . . . to any person residing in the United Kingdom from any trade . . . whether the same be . . . carried on in the United Kingdom or elsewhere," in accordance with the several Cases enumerated in Clause 2 of the Schedule. The Company contends that it is not resident in the United Kingdom, and thus not chargeable to the Income Tax in any of the years specified. The facts are set out fully in the Case; it is only necessary to summarise them shortly here.

The Company was incorporated in England on the 20th April, 1904, under the Companies Acts 1862 to 1900 as a company limited by shares, and its objects were to purchase and hold and develop lands, and the resources of them, in Egypt. From 1907 the business of the Company has been controlled, managed, directed and carried on entirely in Cairo. No meeting of the directors has been held in the United Kingdom; the secretary-general of the Company has resided, and resides, in Egypt: the seal, the minute books and all books of account of the Company are kept in Egypt. The Commissioners held on the facts proved before them, that the Company was not resident in the United Kingdom for the purposes of the Income Tax Acts, and distinguished the case from the decision in *The Swedish Central Railway Company, Limited v. Thompson* <sup>(1)</sup>, [1925] A.C. 495. The question is thus directly raised whether a company incorporated and registered in the United Kingdom, which fulfils, as this Company in fact does, the obligations and duties imposed upon it under the Companies Acts, is resident here. Such obligations and duties include having a registered office in London, at which the register of members and directors, and also a register of bearer warrants, are kept. The annual summary is filed by the London secretary with the Registrar of Joint Stock Companies and the share

(<sup>1</sup>) 9 T.C. 342.

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register is closed after advertisement published in London. A company incorporated here must also comply with Sections 100 and 101 of the Companies (Consolidation) Act, 1908, as to the registration and inspection of mortgages, and if wound up, that process must be carried out here. Mr. Justice Rowlatt, in reversing the decision of the Commissioners, held that a company incorporated and registered here which performs, "as it must "perform, the duties laid upon it by Parliament," must be held to reside in this country, even though the facts show that its activities—so far as they can be without transgressing the law—are carried on elsewhere.

The subject of the residence of a company incorporated under the Companies Acts has been so recently, and so fully, discussed and considered both in this Court and in the House of Lords in the *Swedish Railway* case where the authorities are reviewed, that it is unnecessary to go over the whole of it again, except for the purpose of discovering whether the precise point to be decided in the present case has ever been determined. It is argued for the Company that in effect—if not in direct terms—the question has been concluded in their favour.

Until the decision in the *Swedish Railway* case, no case had decided that a limited company could have more than one residence. That is no longer an open question. The Lord Chancellor ([1925] A.C. at page 501) in the *Swedish Railway* case, says <sup>(1)</sup>: " . . . 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. Cad-* " *walader*<sup>(2)</sup>); and in 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."

This judgment is concurred in by Lords Dunedin and Sumner, and supported by Lord Buckmaster.

With this decision in mind I turn back to the two cases of the *Cesena Sulphur Company*<sup>(3)</sup>, and the *Calcutta Jute Mills Company*<sup>(4)</sup>, 1 Ex. D. 428. Both those companies were incorporated under the Companies Acts 1862 to 1867. The business of each of them was abroad. The Cesena Company worked mines of sulphur at Cesena in Italy; the Calcutta Company operated certain jute mills at Ishera, near Calcutta, in India. Both companies were

<sup>(1)</sup> 9 T.C. at pp. 372 and 373. <sup>(2)</sup> 5 T.C. 101. <sup>(3)</sup> 1 T.C. 88. <sup>(4)</sup> 1 T.C. 83

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held to be resident here, for their activities and work were directed from London. The question of dual residence was clearly referred to by Sir John Holker (page 437), but Chief Baron Kelly expressly gave no opinion upon it. Nor did Baron Huddleston. Their decision turned upon the answer to the question where was "*le centre de l'entreprise*"—to quote Baron Huddleston's phrase—and both Judges held that it was where the directions were given which were translated into action in Italy and India respectively.

It is contended that if incorporation and registration afford an affirmative answer, and indicate residence in the United Kingdom, the two cases might have been dealt with on that footing more speedily than they were upon the point argued before the Court; and attention is drawn to the observations of Baron Huddleston at page 453, where he says <sup>(1)</sup> that 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. Thus it is said these cases decide that the true test of residence is the place of the control of the business. No doubt that was the test applied; but the possibility of a dual residence, and of a different test as to one of them, was left open. The cases did not decide that the only possible test of residence was where was the place of control.

In *De Beers Consolidated Mines, Limited v. Howe*, [1906] A.C. 455, it was decided that a foreign corporation registered abroad may reside in this country, and so be subject to Income Tax. Lord Loreburn says <sup>(2)</sup> that (page 459) it was "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"; and he refers to the findings of the Commissioners that the trade or business of the company was carried on within the United Kingdom, and that the head seat and directing power of the affairs of the company were at the office in London. Upon those conclusions of fact, it followed in accordance with the decisions in the *Cesena*<sup>(3)</sup> and *Calcutta*<sup>(4)</sup> cases, that the company was resident within the United Kingdom. Lord Loreburn adheres to the above decisions, and regards the true question to be: Where is the company's real business carried on? He rejects the test proposed by Mr. Cohen, that a company resides where it is registered and nowhere else. It would, in my judgment, be improper to treat that rejection as connoting a decision that the incorporation

<sup>(1)</sup> 1 T.C. at p. 104.

<sup>(3)</sup> 1 T.C. 88.

<sup>(2)</sup> 5 T.C. at p. 213.

<sup>(4)</sup> 1 T.C. 83.

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and registration of a company cannot indicate the residence of a company. Dual residence was not considered. What was advanced was that a company can only have one residence—namely the place of its foundation. (See page 456<sup>(1)</sup>.) Without overruling the *Cesena* and *Calcutta* cases, that argument could not have been accepted; and these latter cases were followed for they had stood for thirty years. I cannot accept this decision as affirming the proposition that a company can only have one residence, and that that one is where the central management and control of the business abides. The words of Lord James of Hereford appear not inconsistent with the proposition of dual residence.

The passage cited in the argument from Lord Parker in the case of *Daimler Company, Limited*, [1916] 2 A.C., at page 339, does not appear germane to the present question, for the problem to be solved in that case was very different from the present, and his observations, concurred in no doubt by other noble Lords, were delivered *alio intuitu*.

In *Goerz v. Bell*, [1904] 2 K.B. at page 146, Mr. Justice Channell suggests that a company may have two residences and he gives reasons for thinking that the place where a company is incorporated may be its "local habitation": and Mr. Justice Phillimore appears to approve of the judgment of Mr. Justice Channell; see *De Beers* case <sup>(2)</sup>, [1905] 2 K.B., pages 632 and 633.

*The Egyptian Hotels, Limited v. Mitchell* <sup>(3)</sup> was much discussed in the *Swedish Railway* case <sup>(4)</sup>, and in the present. It is sufficient to recall, as the Lord Chancellor did in his speech in the *Swedish Railway* case <sup>(5)</sup>, [1925] A.C., at page 504, that the decision in the former case is only consistent with the basis of dual residence, the one, according to the decisions in the *Cesena* and *Calcutta* cases, being in Egypt; the other—which attracted Income Tax—where it was registered in this country. Lord Wrenbury had said in his judgment in *The Egyptian Hotels, Limited v. Mitchell* in the Court of Appeal, [1914] 3 K.B. at page 132<sup>(6)</sup>: "This Company "is incorporated in the United Kingdom; it is therefore resident here." An attempt was made to show that he had modified that opinion by what he said in his judgment in *Bradbury v. English Sewing Cotton Company*<sup>(7)</sup>, [1923] A.C. at page 767, but I do not take that view of the passage. I think that the paragraph<sup>(8)</sup> of Lord Wrenbury's speech on page 765, [1923] A.C., beginning: "In truth the place "of registration" must be read as referring to registration abroad. This would make the antithesis between that paragraph and the proposition stated in the next paragraph, which deals with registration in the United Kingdom, complete. It also protects the

<sup>(1)</sup> 5 T.C. at p. 211.<sup>(2)</sup> 5 T.C. 198.<sup>(3)</sup> 6 T.C. 152 and 542.<sup>(4)</sup> 9 T.C. 342.<sup>(5)</sup> *Ibid* at p. 374.<sup>(6)</sup> 6 T.C. at p. 544.<sup>(7)</sup> 8 T.C. 481.<sup>(8)</sup> *Ibid*. at p. 516.

**(Lord Hanworth, M.R.)**

paragraph from the wide interpretation that is suggested for it. In the previous and cognate case, *American Thread Company v. Joyce*, 6 T.C. at page 31, Lord Wrenbury had stated in wider terms the more compressed statement that he repeated in the *Egyptian Hotels* case. His words are: "A Corporation like an individual may have more than one place of residence. The place which immediately occurs to one as presumably its place of residence is the place of incorporation. That has been spoken of in some of the cases as the place of its birth, it is the place of its birth, but is more than that, it is the place whose laws determine its status, it is according to the law of that place that it is a Corporation; and therefore it is not only its birth but its status which depends upon the place in which its incorporation takes place, and it would be difficult, I think, to say under any circumstances the place of incorporation may not, for some purposes at any rate, as for instance with regard to jurisdiction, be always the place of residence."

Further, Lord Dunedin in the *Swedish Railway* case said that it is impossible to hold that the test of where the business was really managed alone affords a test of the sole residence possible in the case of a company.

From this examination of the authorities, it appears first, that on the question of the dual residence of a company there is no sufficient authority for holding that the seat and control of the business afford the only test of residence or residences; and, secondly, there is authority for holding that the place of incorporation—the place whose laws determine its status, and the social contract between the shareholders—ought to be held to be one of the company's residences.

Lord Justice Warrington in the *Swedish Railway* case [1924] 2 K.B. at page 268 <sup>(1)</sup>, definitely stated that he was prepared to hold that "the registered office is a residence of the company, and that it must be regarded as residing there at whatever other place, at home or abroad, it may also reside."

Lord Justice Atkin, at page 281, said <sup>(2)</sup>: "In principle I should have said that the place of incorporation and of registered office is conclusive of residence." It must be noted that a little earlier he had postulated "place of incorporation, registered office, and perhaps in addition some functional activity" as forming a residence of a company.

The Lord Chancellor's words in his judgment on the case, [1925] A.C., at page 505<sup>(3)</sup>, that he was "not at present prepared to

(1) 9 T.C. at p. 360.

(2) *Ibid.* at p. 370.

(3) *Ibid.* at p. 375.

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“say that registration in the United Kingdom would itself be “sufficient proof of residence here” do not exclude the possibility that registration coupled with the functional activity required by law would be held by him to be sufficient.

Lord Buckmaster described registration as “one of the “critical facts in the determination of residence in this country, “but not necessarily the sole and exclusive fact.”<sup>(1)</sup>

Upon these authorities, in my judgment the decision of Mr. Justice Rowlatt is right.

Let me turn to the alternative. A company can have more than one residence. The place where the business is managed and controlled does not alone afford the test of the sole residence possible in the case of a company. Is it possible to hold that a company incorporated and registered here, which owes its status to the laws of this country, which has to do, and does, certain acts in conformity with those laws, and cannot cast aside those duties; whose shareholders' rights and whose dissolution are regulated by those laws, can claim to be non-resident here? If the matter is to be determined by analogy, I should affirm that a man with a local habitation, and bound by, and compelled to do certain acts in accordance with, local laws—even if his compliance with them were in some measure formal—could not prevent the inference being drawn that he “kept house” in that locality.

For these reasons the appeal must be dismissed with costs.

**Sargant, L.J.**—This appeal raises the general question whether a company incorporated under the Companies (Consolidation) Act, 1908, as a company limited by shares must necessarily be liable to Income Tax under the Income Tax Act, 1918. The incorporation of the company now in question did in fact take place in the year 1904 under the Companies Acts 1862 to 1900; but this fact makes no difference, since Section 245 of the Act of 1908 provided for the application of that Act to the Company as if it had been formed and registered under that Act as a company limited by shares. And though, as appears in paragraph 9 (ii) of the Case, a contention was at one time raised on behalf of the Crown that there were certain optional activities of the Company and certain actual activities of their secretary which might accentuate the liability of the Company to Income Tax, no stress was laid on these activities in the argument before this Court. The Crown throughout relied on the broad general proposition that the Act of 1908 imposed continuing obligations on all companies registered under that Act, and, at any rate, on all companies registered like this Company

<sup>(1)</sup> 9 T.C. at p. 387.

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as companies limited by shares, which necessarily involved a residence here on their part sufficient to render them liable to Income Tax. The authorities on the question have already been examined in the judgment of the Master of the Rolls, and I do not propose to make any further examination of them. They seem to me to tend very strongly in favour of the contention of the Crown, and to be almost, if not quite, conclusive so far as this Court is concerned. For in the *Swedish Railway Company* case<sup>(1)</sup> Lord Justice Warrington distinctly expressed the view as one of the foundations of his judgment that a company registered under the Companies Act must necessarily have a residence here for the purposes of Income Tax, Lord Justice Atkin appearing to take the same view though somewhat less emphatically. And though on appeal to the House of Lords the Lord Chancellor, in an opinion concurred in by the majority of the House, preferred to base his decision on the view that the fact of registration together with certain other comparatively trifling circumstances entitled the Commissioners to find that the Swedish Railway Company had a residence here, I do not think that he intended to cast any doubt on the views of Lord Justice Warrington and Lord Justice Atkin, or to do more than to keep the general question open so far as the ultimate tribunal was concerned. The important difference between the *Swedish Railway* case and the present is that there the Commissioners found as a fact that the company had a residence in England, while here they have arrived at a nearly contrary, though somewhat mixed, finding of fact and law, that the Company "was not resident in this country for the purposes of the Income Tax Acts". While, therefore, in the former case it was sufficient for the Crown to prove that there were facts on which the Commissioners could come to the conclusion they did, it is incumbent on the Crown in the present case to demonstrate that the facts are such as to prevent the Commissioners from arriving at the conclusion against residence here. Whether or no they are so prevented depends on a somewhat closer examination of the relevant provisions of the Act of 1908 than apparently took place in the *Swedish Railway* case. Under Section 2 of that Act a company limited by shares may be incorporated by seven persons subscribing a Memorandum of Association and otherwise complying with the requirements of the Act in respect of registration. Under Section 3 in the case of such a company the Memorandum must state (*inter alia*) (1) the name of the company; (2) the part of the United Kingdom in which the registered office is to be situate; (3) the objects of the company, and (4) the amount of share capital and the division

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(1) 9 T.C. 342.

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thereof into shares ; under Section 7 the company may not alter its Memorandum except as provided by the Act ; under Section 8 (3) a company cannot alter its name except with the approval of the Board of Trade ; and under Section 9 any alteration of the Memorandum of a company cannot take effect until it has been approved by the Court as therein mentioned. Under Section 15 the Memorandum and Articles, if any, are to be delivered to the Registrar in the appropriate part of the United Kingdom, and are to be registered by him. And upon registration of the Memorandum the Registrar is to certify the incorporation of the company, and upon and from the date certified by him the subscribers of the Memorandum and future members of the company become and are a body corporate with a common seal. Under Section 25 of the Act every company has to keep a register of its members and in default is liable for penalties ; under Section 26 every company limited by shares has to make a detailed annual return to the Registrar of (*inter alia*) the shares issued, the amounts of calls made, received and unpaid, any amounts paid for commission on the issue of shares and debentures, the names and addresses of the directors of the company, and the total amounts of all debts due from the company in respect of mortgages and charges registrable by the company. Under Section 30 the register of members is to be kept at the registered office of the company and is to be open to inspection as therein provided ; under Section 32 power is given to the Court, on proper application, to rectify the register ; and under Section 34 companies are empowered to keep registers in any colony of members registered in such colony, but in such case a duplicate of a colonial register is to be kept at the registered office. A company limited by shares may, under Section 45, reorganise its share capital as therein mentioned, but any such reorganisation must be confirmed by the Court in order to be effective ; and where such an order of the Court has been made an office copy thereof has to be filed with the Registrar within seven days. Further under Section 46 such a company may reduce its capital, but here again it is essential to the efficacy of the reduction that it should be confirmed by the Court, and when this has been done the Registrar has to register the Order of the Court, and a Minute approved by the Court of the altered state of the company's capital. Under Section 62 of the Act every company must have a registered office to which all communications and notices may be addressed, and notice of the situation of the registered office and of any change therein has to be given to and recorded by the Registrar. It would seem, though it is not so stated in terms in Section 62, that by virtue of Section 3 the original or changed office must be within the United Kingdom. At any



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rate this is so in the case of the company now in question. Under Section 63 the name of the company is to be placed conspicuously outside every office or place of business; and under Section 75 every company is to keep at its registered office a register of the names, addresses and occupations of its directors or managers, and to keep the Registrar informed thereof. Section 93 of the Act provides for the forwarding to the Registrar of Companies of particulars of mortgages and charges on the property of companies, for the keeping by him of a register thereof, for the inspection of that register, and for the keeping by the companies at their registered offices of copies of such mortgages and charges. Section 96 enables the Court to extend in certain cases the time for registering any mortgage or charge. Section 100 compels companies to keep a register of mortgages; and Section 101 enables inspection of this register and of the copies of mortgages kept by companies under Section 93. Under Section 109 power is given to the Board of Trade to appoint inspectors to investigate the affairs of any company and to report thereon in such manner as the Board direct. Under Section 112 in default of the appointment by a company of auditors at each annual meeting the Board of Trade may, on the application of any member, appoint auditors. Under Section 116 any document may be served on a company by leaving it at, or sending it by post to, the registered office of the company. Under Section 130 a company is deemed to be unable to pay its debts and so to be liable to be wound up compulsorily if a creditor for over £50 has served on the company by leaving the same at its registered office a demand requiring the payment of the debt and the company has defaulted for three weeks; and under Section 131 the Courts having jurisdiction to wind up companies registered (as this company is) in England are the High Court, the Chancery Courts of the Counties Palatine of Lancaster and Durham, and the County Courts.

The cumulative effect of the foregoing Sections is, in my judgment, decisive and leads irresistibly to the conclusion that a company regulated by the Companies (Consolidation) Act, 1908, has a residence (though not necessarily a sole residence) in this country analogous to the residence of an individual. Such a company from its incorporation, or birth, onwards is subjected to continuing statutory regulations which define the limits of its powers towards others and control the relations of the company to its members and of the members *inter se* in most important and, indeed, vital respects. Though the centre of the Company's business activities and the main direction and management of its external affairs may be in Egypt, the centre of its constitution as a company and of its domestic arrangements is definitely fixed in

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this country and at its registered office. It is here that the Company is compelled to keep the particulars of its capitalisation, its membership and its liabilities to debenture holders and mortgagees. It is here that the Company can always be found and communicated with, and that it can be served with notices, including notices to pay debts so as to become amenable to winding up in case of default. Further, it is through the medium of the Registrar of Companies and the Courts of this country that the various obligations of the Company that have been referred to have to be enforced. And it is by the necessity of complying with the statutory prohibitions as to reduction of capital except with the leave of the Court and the statutory regulations as to the registration of mortgages, as to the appointment of auditors and as to the publication of the names of the directors, that the financial credit and stability of the Company are assured. In my judgment the provisions of the Act of 1908 not only enable a company to be born here, but necessarily keep the company domiciled here throughout its existence. And, though residence is less than domicile, and may often occur without domicile, yet I doubt whether an obligatory and continuous domicile in England, such as seems to me to result from the provisions of the Act of 1908 in the case of such companies as this, does not necessarily involve residence at the place of domicile. But however this may be, the requirements of the Act are, in my judgment, such as to keep the Company here, and make it "at home" here, to such an extent as to give it a notional residence in this country sufficient to incur liability to Income Tax.

I agree, therefore, that the appeal should be dismissed with the usual consequences.

**Lawrence, L.J.**—I agree. The difficulties which frequently arise in determining whether a corporation is residing in the United Kingdom for the purposes of liability to Income Tax are abundantly illustrated by the cases cited by Counsel during the hearing of this appeal, which demonstrate that the application by analogy to a corporation of the considerations determining the residence of a human being is in many instances far from easy. In the present case, however, the neat point to be determined is whether a limited company incorporated in England under the Companies Acts is or is not necessarily residing at its registered office in England for Income Tax purposes, even although it has the centre of its affairs abroad where its business activities are conducted and where all its general and board meetings are held. This point is one of general application, and, if answered in the affirmative, frees all similar cases in the future from the uncertainty as to the facts which have hitherto determined the residence of a company incorporated under the Companies Acts.

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In view of the judgments of Lord Justice Warrington in the *Swedish Central Railway* case <sup>(1)</sup>, and of the Master of the Rolls and Lord Justice Sargant in the present case (in which judgments I entirely concur) it would only result in needless repetition if I were to state at any length the reasons which have led me to the conclusion that the decision of Mr. Justice Rowlatt in this case is right.

In my opinion it is one of the basic conceptions of the scheme as formulated by the Legislature in the Companies Acts that a company incorporated under those Acts will during its entire existence have a permanent home in that part of the United Kingdom in which the Memorandum of Association states that its registered office is to be situate, and further that such home will be its registered office at which it must fulfil its statutory obligations and at which (wherever else it may reside or carry on its business) it can always be found in residence by its creditors, by its shareholders, by the Registrar of Companies, and by the Board of Trade. This I think is clearly shown by the elaborate provisions contained in the Acts for safeguarding the interests of creditors and shareholders, many of which provisions would be rendered more or less futile if the company could remove itself from the country where it was incorporated and could set up its abode exclusively in some distant foreign land. To mention only a few of these provisions, the company and those responsible for the conduct of its affairs are subjected to the jurisdiction of the Courts of this country, and all offences made punishable by any fines may be prosecuted under the Summary Jurisdiction Acts; the rights and liabilities of the shareholders are defined and regulated exclusively by reference to the law of this country, and are enforceable in the Courts of this country; the company is bound to keep its register of members and register of charges at its registered office and to give facilities for inspection there; the company is prohibited from reducing its capital except by the leave of the Courts of this country; the company has to keep in close touch with the Registrar of Companies with whom it has to file various documents and to whom it has to make various returns; and the Board of Trade is given power to cause an investigation to be made into the company's affairs. In contrast to these provisions is the power conferred on the company on certain conditions to keep a branch register of members in any colony where it transacts business (Section 34 of the Companies (Consolidation) Act, 1908), to authorise the execution by an attorney of deeds outside the United Kingdom (Section 78), and to have for use abroad a seal which must be a facsimile of

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<sup>(1)</sup> 9 T.C. 342.

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its common seal with the addition on its face of the name of the country, district or place where it is to be used (Section 79). All these provisions seem to me to negative the idea that the company is at liberty to reside exclusively abroad and to treat its registered office merely as an address for service, as was suggested by the Appellants' Counsel. It would indeed seem strange if a company, having obtained the privileges of incorporation in England on the condition that its registered office will be situate in England and that it will comply with all the requirements of the Companies Acts, could after incorporation abandon its English residence and yet retain all the advantages incident to its status as an English company. The analogy of the birth in England of a human being who subsequently goes to reside permanently and exclusively abroad does not seem to me to be applicable to an English company incorporated under the Companies Acts; such a company is a mere creature of the Legislature, and not only its birth but its subsequent existence and status seem to me to be dependent entirely on its constant compliance with the conditions laid down by the Legislature, for which purpose I think that it is essential that it should be and remain resident at its registered office in England. If this view be sound there cannot, I think, be any doubt that every company incorporated under the Companies Acts is residing at its registered office for the purpose of liability to Income Tax.

In my opinion the appeal fails and ought to be dismissed with costs.

**Mr. Reginald Hills.**—My Lords, the appeal will be dismissed with costs?

**Lord Hanworth, M.R.**—Yes.

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The Company having appealed against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Sumner and Lords Atkinson, Buckmaster, and Warrington of Clyffe) on the 23rd and 24th January, 1928. The appeal was subsequently ordered to be set down for further argument by one counsel only on each side upon the effect of Rule 7, General Rules applicable to Schedules A, B, C, D and E, Income Tax Act, 1918, upon the contentions for the Crown. This matter was argued on the 12th June, 1928, when judgment was reserved.

On the 23rd July, 1928, judgment was delivered unanimously against the Crown, with costs, reversing the decisions of the Courts below.

Mr. H. P. Macmillan, K.C., the Hon. Geoffrey Lawrence, K.C., and Mr. A. M. Bremner appeared as Counsel for the Company, and the Attorney-General (Sir D. Hogg, K.C.) and Mr. R. P. Hills for the Crown.

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## JUDGMENT.

**Viscount Sumner.**—My Lords, the Commissioners' finding, upon evidence which was sufficient to support it, was in favour of the subjects. It can only be challenged upon some ground of law sufficient to enable the Inland Revenue to succeed, but which they overlooked. Accordingly the Respondent contends, and necessarily so, that incorporation under the Companies (Consolidation) Act, with the attendant statutory obligations, in itself and as matter of law makes a British company a person resident in the United Kingdom within the Income Tax Act, 1918. If this had been merely a factor to be considered along with others relating to the Company's affairs, it would have been, like other questions of fact and of degree, a matter for the Commissioners and their finding in favour of the Appellants would be conclusive.

The word "resident", used for over a century in these Taxing Acts, was introduced long before limited liability was freely recognized by the law, but in and before 1853 all incorporations were brought under charge. None existed with the precise forms of incorporation and obligation enacted for companies with limited liability since 1862. The words "a person resident" were of course used of incorporated persons without any reference to the provisions subsequently enacted.

My Lords, I think it follows that the first question here is the interpretation of the Companies (Consolidation) Act, 1908, and not that of the Income Tax Acts. Only if its provisions make an English limited liability company resident in England does any further question arise. Now the Companies (Consolidation) Act says nothing about the "residence" of the companies incorporated under it and, as regards Income Tax, it was passed *alio intuitu*. The question is not "Where does such a company reside, if it must reside somewhere?" but "Has the Act of 1908 constituted "for companies any residence at all?"—a thing not in any case analogous to the residence of an individual. Residence is not inherent in a company in the nature of things and residence for the purpose of taxation is matter for express legislation.

Furthermore, down even to 1853 most taxpayers were natural persons. As to number it is so still, though whether they now pay more than companies do I do not know. Throughout the Income Tax Acts "resident" with its various qualifications "actually", "ordinarily", "occasionally", "temporarily", and so forth, is used in a sense in every way appropriate to natural persons, but only artificially applicable to incorporated persons and never really appropriate. Indeed, I think that "a person ordinarily "resident in the United Kingdom" as used in the Income Tax Act is so inappropriate a term for a person, albeit an artificial one, who is always and by law immovably resident in the United

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Kingdom, that it cannot be sustained; and so the Legislature itself seems to have thought, for I find in Section 39 of the Finance (No. 2) Act, 1915 (a cognate enactment to the Income Tax Act), the provision that "the . . . . businesses to which this Part " of this Act applies are all . . . . businesses . . . . " carried on in the United Kingdom, or owned or carried on in any " other place by persons ordinarily resident in the United " Kingdom ", which is the formula thought necessary to include the English businesses of English companies and to bring them under Excess Profits Duty.

At first perhaps the Courts might have said that as a corporation could not "reside" anywhere in any true sense, they must leave it to the Legislature to enact residence in an artificial sense, but they felt bound to make the Acts work as they found them and arrived at a compromise, under which certain propositions I think are now well settled. The word "resident", it is laid down, has to be applied to artificial persons by analogy from natural persons. With these, residence depends on personal facts. Place of birth, nationality and allegiance are not the tests, nor is domicile, except in a sense that makes it barely distinguishable from residence. Voluntary choice and habitual and repeated action are mainly material, such as making a home, keeping an establishment, pursuing a settled object in or at a particular place. A man can change his residence at will, except that a certain duration of time or fixity of decision is requisite, and, but for the peculiar cases of a convict in gaol or a lunatic lawfully detained in a madhouse, I do not think that residence is ever determined for a natural person simply by the law. Accordingly, under the decisions as well as in principle, "resident" is a term exceedingly unsuited to describe a statutory "person", which can never be non-resident because by the law of its being it is a fixture. The analogy that is really possible between a natural person and a company is that of carrying on business at a place great or small, and in my opinion for the purpose of Income Tax, both on the words of the Acts and on the cases, the residence of a foreign company is preponderantly if not exclusively determined by this kind of fact.

Turn now to the Companies (Consolidation) Act. A form of incorporation is indeed prescribed, but how does that affect the matter any more than the sealing of a royal charter or the royal assent to a private bill? This at most does no more than bring the embryo company to the birth, which in a natural person is not the test. The first effect of the incorporation is to make the new company amenable to English law and English law courts and to give it the status of an English company, but these things only place it in the same position as a British subject born or domiciled

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here, or as a natural person who, "resident" or not, is within reach of English legal process. Then the company is to be wound up or to get leave to alter its memorandum or to reduce its capital, in an English Court of Law. The domiciled Englishman is similarly under this personal law as to marriage and divorce, intestate administration and bankruptcy. An English company must, under English law, pay its debts and may be fined, but so may anyone else who can be duly served with process for acts justiciable in this country. There is no analogy to "residence" here in the sense settled by the decisions for natural persons. These matters depend on the duty of obedience to English law.

What does the Companies (Consolidation) Act say more? A company must have a registered office in the United Kingdom, though it can move it about. Then it must keep certain lists and registers, and allow inquirers to inspect them, and although failure in any of these respects does not *ipso facto* work its dissolution, nor is performance of these essential and important obligations a condition concurrent to its continuing to be incorporated, heavy fines may be inflicted for non-performance, and if not paid may, I assume, lead to winding-up. My Lords, between these requirements and the case of a natural person there is no analogy at all, for the natural person is not subject to them. How then do they constitute a residence such as is shared by a natural person and is analogous to his? It is said that the company is always really present at its registered office, and if you seek it there you will find it. I can make little of this. The Income Tax Acts themselves distinguish between being "in" this country and being "resident" here (No. 2 of the Miscellaneous Rules applicable to Schedule D), and Mr. Cadwalader<sup>(1)</sup> and Miss Reid<sup>(2)</sup> are examples of persons who had a "residence" here, though they were themselves nearly always elsewhere. At night and on Sundays and holidays you will not find the company at its head office except in a mystical sense, but I would point out that a truer analogy and a more satisfying residence is to be found in "keeping house and "doing business" there than in a continuous statutory presence even during the hours of darkness and of Divine Worship. I respectfully find this argument too transcendental for acceptance. Furthermore, all these requirements are enacted for other purposes than those of taxing profits and gains. As far as the Companies (Consolidation) Act goes, no business need be done at this office and no profits or losses made there. Nobody in authority need be present, perhaps nobody at all. The inspection of these registers and so on is the price paid for limitation of liability. It is directed

<sup>(1)</sup> Cooper v. Cadwalader, 5 T.C. 101.

<sup>(2)</sup> Reid v. Commissioners of Inland Revenue, 10 T.C. 673.

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for the assistance of creditors or intending creditors. It is not devised in order to attract tax. That is the business of a special taxing Act.

It is, I think, a legitimate test to see what is the minimum action by the company which will satisfy the Act, for if the argument for the Crown is right even that minimum must inevitably result in "residence" here. The head office need not be in any frequented or convenient place. It may be shared with any number of other persons, natural or incorporated. Whatever has to be done may be left, as it was here, to an independent contractor. No officer of the company nor even any servant need attend. The provisions of the Income Tax Act, which regulate the place at which a taxpayer is to be assessed, ignore altogether the head office of a company which does not carry on its business there. (See Rule 4 (1) of the Miscellaneous Rules applicable to Schedule D.) Either the place of trade or the place of manufacture or the "ordinary residence" is to be the place. If the company has no place of trade here and does nothing at its head office but the minimum and occasional formalities required by the Act, it is surely an impossible straining of plain words to call that its "ordinary residence". I cannot find anything to forbid the discharge of these obligations by purely mechanical means. A name on a doorpost; a letter box in a door accessible to the public; a glass-fronted case under a lamp containing the lists required, so placed that they may always be read from outside, with an occasional visit of a clerk to alter the lists and take away the letters, would seem to satisfy the Act—though of course I express no decided opinion about it. In so far as service may be by post or delivery at the office, the letter box suffices. If it has to be personal, the Act merely authorises someone whom the company arranges to have there—an office-keeper or a typist—to accept service, a thing which the company might have done for itself. Notices and returns could be sent to the Registrar from abroad. Though the spirit of the company may be imagined to brood over these arrangements, I do not see how the company itself is there at all. The office is its English address, but its business may be elsewhere. If this is "residence" I think it is "residence" not by analogy to that of a natural person but by an independent metaphor. At any rate if it is to be called "residence", only the Legislature can do it. In doing so a Court of construction would not be interpreting the Act but amending it. Either the Companies (Consolidation) Act should say "A company registered under this Act is always resident at its registered office for all purposes", though "residence" is a matter quite outside the scope of an Act which deals only with a company's constitution, obligations and rights, or the Income Tax Act should say "A company registered under the Companies Act shall be deemed to be



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“ at all times a person resident in the United Kingdom for Income “ Tax purposes ”, which would raise a crop of difficulties for the Inland Revenue in other directions to be dealt with when the time comes.

My Lords, I now turn to the authorities. This point exactly in its present form appears not to have been actually decided before this case. In my opinion the *Swedish Central Railway* case<sup>(1)</sup> does not at all conclude it, and on the other hand the whole current of authority since the *Cesena Sulphur Company's* case<sup>(2)</sup> has been such as to make the point one which should be decided against the Revenue and should not be reopened.

All that was decided in the *Swedish Central Railway* case was that the company could have two residences, one in England as well as one in Sweden. Your Lordships were not asked to decide more. It is true that by admission the controlling power over the business was in Sweden, but other business was done in London the character and importance of which, though set out in the Case, was not discussed at the Bar. It was a matter of degree on the facts and your Lordships cannot be deemed to have come to some unexpressed conclusion on that ground merely because you did not for yourselves declare either that there was no evidence of business carried on in England or that there was no need to discuss the carrying on of business because the effect of registration was conclusive. Nor is it decisive of the point to say now that the business done in England was only administrative. It was in fact a good deal more, and in the static condition of the company's affairs it was not much less important than the Swedish part. If new questions arose the Swedish directors could settle them, but as things were little had to be done anywhere except “ adminis- tration ”, as is often the case with companies, and that was fairly divided between the two countries. I would particularly draw attention to the powerful judgments of my noble and learned friend Lord Atkinson and of Lord Justice Atkin as showing how strong are the grounds for saying that since the *De Beers* case<sup>(3)</sup> the test of taxable residence for any company has been settled to be the carrying on of business here and not the bare operation of the Companies (Consolidation) Act.

In the Court of Appeal the majority held not only that a company could have more residences than one but that the English registration together with the English statutory requirements would suffice to constitute such residence, even though the central control of the business carried on was abroad. This was the argument for

(1) *Swedish Central Railway Company, Limited v. Thompson*, 9 T.C. 342.

(2) *Cesena Sulphur Company, Limited v. Nicholson*, 1 T.C. 88.

(3) *De Beers Consolidated Mines, Limited v. Howe*, 5 T.C. 198.

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the Crown, advanced then so far as I know for the first time in any case by Sir Patrick Hastings. Before your Lordships Sir Douglas Hogg presented the case in rather a different form, [1925] A.C. at pages 498-499, "unless it is established that central control is the sole and exclusive test of residence . . . the finding of the Commissioners disposes of the 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." It is, I think, plain that your Lordships' House affirmed the judgment of the Court of Appeal on the first of these two grounds only, for the Lord Chancellor says at page 501<sup>(1)</sup>: "An individual may clearly have more than one residence . . . and in 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." This was said with reference to the fact that there was evidence on which the Commissioners could act of business done in England sufficient in importance and in amount to give a residence on that ground. The Lord Chancellor then, at page 505, expressly reserved the point now in debate. No other noble Lord went beyond his above quoted words, and Lord Buckmaster at page 519, after referring to the *New Zealand Shipping Company's* case<sup>(2)</sup>, says<sup>(3)</sup>, "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." This was in accordance with the whole current of authority down to that time and I would observe that the importance of the fact was for the Commissioners.

My Lords, as I venture to think that the law has been already decided against the Respondent's proposition, or if not formally decided has so long been taken at the Bar and on the Bench to be settled, that I must I fear defend this position even at the cost of treading again the weary road of the Tax Cases. This question was a live question over fifty years ago. It was formally contended in *Attorney-General v. Alexander*, 10 Ex. at page 28, that a corporation's status is and can only be in the country where it is constituted, a labour-saving proposition that must have commended itself strongly and would hardly have been rejected if it could

(1) 9 T.C. at pp. 372 & 373.

(2) *New Zealand Shipping Company, Limited v. Thew*, 8 T.C. 208.

(3) 9 T.C. at pp. 386 & 387.

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reasonably have been entertained. The case was decided on the ground that, apart from questions of residence in the country of incorporation, the claim for tax failed because the Bank did not carry on business here, as the Attorney-General claimed that it did. I will, however, quote his argument; on page 26 he says: "such a body has no locality except by its acts and must be said "to reside where its substantial business is carried on", and on page 30 Chief Baron Kelly says: "If . . . this Corporation can be "said to be resident anywhere . . . it must be resident in Constantinople, where alone it has its 'seat'", not, that is, its place of incorporation, but its chief place of business; while Baron Amphlett at page 34 makes his opinion plain that the locality of this seat alone and not the place of incorporation determines the question of residence. In the *Cesena Sulphur*<sup>(1)</sup> and *Calcutta Jute*<sup>(2)</sup> Companies' cases, 1 Ex. D.428, the Attorney-General again contended, alternatively to the carrying on of business here, that "its seat and "residence can only be in the country where it is created and "constituted". For this, sundry United States cases were referred to which were not much in point, but the challenge was boldly taken up by Counsel for the Calcutta Jute Company, who says at page 442: "The test of residence, at least for fiscal purposes, is not where is the company incorporated but where is the "real trading carried on."

How then do the learned Barons deal with the point thus clearly raised before them? On page 445 Chief Baron Kelly answers the question "What is the meaning of the word 'residing' as applied "to a joint stock company?" thus<sup>(3)</sup>: "Whether there may or "may not be more than one place at which the same 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 . . . are held, and where its "governing body meets in bodily presence . . . and exercises "the powers conferred upon it . . ." Baron Huddleston at page 452 says<sup>(4)</sup>: "I adopt Mr. Matthews' suggestion, that 16 and "17 Vict. c. 34, when it speaks of 'residing', does not mean an "artificial residence; it means an actual residence", and then on page 453 he shows how and in what sense actual residence is used when, negating the Crown's contention that "if a company was "registered in England it must be held to reside in England", he says<sup>(5)</sup>: "Registration, like the birth of an individual . . . must be "taken into consideration . . . but it is only a circumstance", and

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(1) 1 T.C. 88.

(2) *Calcutta Jute Mills Company, Limited v. Nicholson*, 1 T.C. 83.

(3) *Ibid.* at p. 95.

(4) *Ibid.* at p. 103.

(5) *Ibid.* at p. 104.

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he goes on to review as other circumstances all the direction and control and administration which take place in England, leading to the conclusion that when those circumstances show the main place of business to be here, then and thereby the company resides here.

Your Lordships will observe that so much of the Respondent's present contention as rests on an English company's "residence" in the country of its incorporation was raised in the *Cesena* case by Sir John Holker, Attorney-General, and was negatived by both the learned Judges of the Court of Exchequer. So much was an express decision and is now in point. The *Cesena* case has not only never been overruled, but it has far too long been cited with respect to be overruled now, nor were your Lordships asked to do so. How are we to decline to follow it? No doubt the Court's decision might have been arrived at without dealing with this point, but are we to say that the explicit rejection of it was therefore a mere *obiter dictum*, or that the point remains open because the Attorney-General argued it without mentioning the statutory obligations which the Companies Acts imposed? All that remains is an argument which Sir John Holker (not ignorant of the Companies Acts I am sure) elected to pass by, namely the statutory obligations of such a company. Surely this does not reopen the decision.

Before passing from the *Cesena* case, the case of *The Imperial Continental Gas Association v. Nicholson*<sup>(1)</sup>, 37 L.T. 717, also decided by Chief Baron Kelly and Baron Huddleston shortly afterwards, ought to be mentioned. In it the same difference in language between the two judgments is to be noticed. Both agreed that as regards the question of Schedule D, the two cases are on all fours. Chief Baron Kelly (page 721) says<sup>(2)</sup>: "This being a foreign undertaking . . . belonging to a joint stock company, established, incorporated and resident in England . . . the whole of the profits . . . are assessable to Income Tax in this country", while Baron Huddleston says<sup>(3)</sup> (page 722): "Here . . . according to the decision of the Court in the *Calcutta Jute Mills* case, the business "is carried on at the place whence the orders emanate. That is the central point where the business is carried on . . . and where the whole transactions occur and . . . it would be assessed here".

So matters stood for over thirty years. Importance chiefly attached to the place where the control of the business was exercised (see *San Paulo (Brazilian) Railway, Limited v. Carter*<sup>(4)</sup>, [1896] A.C. 31), the place of incorporation being a subordinate matter and

<sup>(1)</sup> 1 T.C. 138.

<sup>(3)</sup> *Ibid.* at p. 147.

<sup>(2)</sup> *Ibid.* at p. 144.

<sup>(4)</sup> 3 T.C. 407.

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the subsequent statutory requirements attracting no attention at all. Then in 1906 the *De Beers* case<sup>(1)</sup>, albeit that of a foreign company, was decided in terms which in my opinion render it conclusive of the present issue.

It was at one time thought that the authority of the *Cesena Company's* case had been shaken (see per Mr. Justice Charles in the *London Bank of Mexico v. Aphorpe*<sup>(2)</sup>, [1891] 1 Q.B. at page 388), and in 1904, in *Goerz & Co. v. Bell*, [1904] 2 K.B. 136, "residence" again came up for discussion before Mr. Justice Channell. Though registered abroad, the Goerz Company had its head office in London, where the directing and controlling power was exercised, and the case directly raised the question whether a company registered abroad and not in the United Kingdom can reside here for Income Tax purposes. *Wingate's* case<sup>(3)</sup>, 24 R. 939, was one in which a foreign company, though taxed because it carried on the whole of its business here, was yet held to have been "resident" abroad. The Attorney-General contended<sup>(4)</sup>, and so Mr. Justice Channell held, that registration was only one point to be considered and that the carrying on of the business of the company was the substantial test. After suggesting that a company may possibly have two residences, he asks whether the registration and incorporation abroad prevented residence in the United Kingdom, and replies that the English Companies Acts provide in the registered office of a company the place where anyone who wants to find this company officially must go to find it. He adds that the company in question merely provided by its articles, that all summonses and notices should be served at its head office, in effect saying that "so far as the company has a local habitation it is at the head office", but, as the control and direction were exercised from London, which was the true head office, he finally held that, notwithstanding the South African registration and incorporation, the company was resident in London and was chargeable accordingly. "If it were necessary to decide between Johannesburg and London", he says, "I think that the considerations which go to make up the local habitation of such a body rather show that this company is to be found in London and not in Johannesburg". This sentence supports the finding of the Commissioners in the present case, but how the previous observations can assist the Inland Revenue I am at a loss to imagine, while the statement positively made in [1914] 3 K.B. at p. 132<sup>(5)</sup>, without discussion, that residence

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(1) 5 T.C. 198.

(2) 3 T.C. 143.

(3) *James Wingate & Co. v. Webber*, 3 T.C. 569.

(4) In *Goerz & Co. v. Bell*.

(5) *Egyptian Hotels, Ltd. v. Mitchell*, 6 T.C. at p. 544.

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follows from incorporation here, must be read in its context, namely, a business carried on here by a person who is charged as a "resident" here.

It was in this state of the authorities that the *De Beers* case<sup>(1)</sup> was decided in the House of Lords in 1906. The Appellants argued that "a company resides where it is registered and nowhere else", a proposition which, even in a case relating to a foreign company, almost necessarily involved some consideration of the effect of the Companies Acts in this connection, whether it was discussed or not. This perfectly general proposition, which had been advanced by former Crown Counsel almost in the same terms in the *Cesena* case, was now met by a total denial. Sir Robert Finlay, Attorney-General, was not heard in the House of Lords, it is true, but in the Courts below he is reported as saying "the question where a company resides is mainly a question of fact. The place of its incorporation or registration is one circumstance but only a circumstance to be taken into account" accepting and citing the *Cesena Sulphur Company's* case as authority, equally in the case of a foreign as in that of an English company. In an often-quoted passage Lord Loreburn rejected the Appellant's contention. The process of deciding the residence of a company he said was one of seeing where it really keeps house and does business, not of considering the place or the form of its incorporation or the statutory obligations imposed by the *lex loci*. He then said that the *Cesena* case and the *Calcutta Jute* case, in the former of which he had himself appeared as Counsel, had been acted on for thirty years and involved the principle that a company resides for purposes of Income Tax where its real business is carried on, and "the real business is carried on where the central management and control actually abides". "I regard that", he said, "as the true rule", and Lords Macnaghten and Robertson concurred without more, while Lord James of Hereford added a remark which shows how prominently the question of the place of registration was before the mind of the House.

So far, my Lords, it does not seem to have occurred to any Judge that there might be two kinds of residence or two tests of its acquisition, one for the purpose of entangling foreign companies in British taxation and another for that of tying British companies down, so that they cannot wholly escape it. I submit that such a doctrine is illogical in form and in substance unjust. Residence may no doubt be constituted by various kinds of acts, but how it can be constituted in one place by doing something there and, at the same time, in another place by doing nothing I cannot understand.

In considering the true effect of the decision in the *De Beers* case the following matters have to be borne in mind. At that time

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(1) 5 T.C. 198.

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and for twenty years afterwards it was assumed that a limited liability company could not have two residences, for Income Tax purposes; either it resided abroad or it did not. The *Cesena Sulphur Company's* case was open to review both in the Court of Appeal and in the House of Lords, and, although it had stood for thirty years, it had been criticised in the meantime, and what appeared to be its principal ruling was expressly challenged. It was, therefore, natural and proper to consider not only the fact that the De Beers Company was registered abroad but the circumstances of that registration. To this I wish to direct attention. The De Beers Company was incorporated, as the report of the case before Mr. Justice Phillimore states, under Section 3 of the Act 13 of 1888 of the Cape of Good Hope, which enabled a company, registered with limited liability under the Colonial Joint Stock Companies Limited Liability Act, 1861, to become a body corporate on satisfying certain formalities. The material provisions of the Act of 1861 were that it applied to partnerships of more than twenty-five members, and to partnerships whereof the capital was divided into shares transferable without the express consent of all the members. Such partnerships could obtain from the Colonial Registrar of Deeds a certificate of registration with limited liability. They had to lodge with him their deed of settlement, executed by not less than twenty-five shareholders holding not less than three-fourths of the nominal capital and endorsed with a certificate that not less than ten per cent. had been paid up by them, and the Registrar was to receive and to keep a copy of such deed with a list of the shareholders and of the number of their shares. Thereafter the joint stock company had to expose its name on the outside of every office where its business was carried on. No increase could be made in its capital until it had been registered with the Registrar, with proof of payment of ten per cent. on the increased capital, and, in case of the execution of new or supplementary deeds of settlement, copies had to be lodged with him. Twice a year the directors had to make a return to the Registrar of every transfer made in the company's share register and of the changes in the names of the existing shareholders by marriage or otherwise. The returns, deeds and registers thus kept by the Registrar were open to public inspection on payment of a fee, not exceeding one shilling, and copies might be taken and were to be receivable in evidence. The performance of these obligations was enforced by liability to fines, and the certificate of registration conferred on members the benefit of limited liability.

My Lords, I think it is evident that in choosing between registration and carrying on business as the proper test for the single residence of the De Beers Company it was proper to enquire into the circumstances of its registration and not merely to act upon the

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fact and the place, and, as it was proper and natural to do so, I presume that it was done. The report does not mention any argument of Counsel or judicial observation upon the Act above cited, but, even if Counsel can be supposed to have overlooked it, one must presume that the Lords Justices and the noble and learned Lords did not neglect to consider all relevant materials. This Act is, I think, sufficiently *in pari materia*, both in its scheme and in its details, with the Companies Consolidation Act, to have brought before the minds of both tribunals all the considerations on which the Counsel for the Crown have relied in the present case. Accordingly it seems to me that the decision against the South African registration as the determining factor of the company's residence was really in the circumstances a judicial negation of the Inland Revenue's argument and was more than a mere adoption of the previous decision that registration alone, apart from consequent statutory obligation, will not establish residence. Having adopted that view, the further adoption of control and carrying on of business as the test alike for the De Beers Company and for the Cesena Sulphur Company followed in logical course. I submit that, even technically, the *De Beers* case is a binding authority today. Even if it be otherwise and there be no technical decision of the issue, whether a British company may not acquire a taxable residence here both by carrying on business here and by being incorporated here under the Limited Liability Acts, still, that a House so composed should, after consideration, have adopted a canon, so expressed as to lay down one rule supported by one train of reasoning, without meaning that the rule applied equally to companies of both kinds exclusively of any other rule or reasoning, is I confess more than I can credit.

I will refer to two later cases in your Lordships' House (fully recognising that in neither case was the issue of a British company's residence directly raised) for the purpose of citing language so used as to suggest that there is no vital distinction between the tests applicable to a foreign and those applicable to a British company, alleged to reside here. In *American Thread Co. v. Joyce*, 6 T.C. at p. 165, Lord Halsbury, referring, I think, to the *San Paulo (Brazilian) Railway Company's* case<sup>(1)</sup>, in [1896] A.C., says: "I myself have taken the same view of this, I think, some years before the *De Beers* case, and that view has been since, I think, adopted in this House more than once, that the real test, which after all is only a question of analogy—you cannot talk about a Company residing anywhere—and that which has been accepted as a test, is where what we should call the head office in popular language is, and where the business of the Company is really

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(1) 3 T.C. 344 and 407.



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“ directed and carried on in that sense.” This expression of opinion can only mean that for both British and foreign companies alike the test is where on the facts (including among all the others the fact of incorporation here or there) the company’s business is really directed and carried on.

In *The Egyptian Hotels, Limited v. Mitchell*<sup>(1)</sup>, [1915] A.C. 1022, the argument of Sir John Simon, Attorney-General, (pages 1034, 1035) is: “ In *De Beers Consolidated Mines v. Howe* Lord Loreburn lays down the principle as the result of the cases as follows: ‘ The real business is carried on where the central management and control actually abides ’—and the Commissioners find substantially in the terms of that judgment. Lord Loreburn also states his opinion, following *Cesena Sulphur Co. v. Nicholson*, that a company resides for purposes of Income Tax where its real business is carried on. . . . That statement involves that a trading company carries on some part at least of its business at the place where it resides, and this company admittedly resides in this country.” The admission here mentioned of course was as to the transaction of a part of the business here and did not refer to the English incorporation, on which, as on the Companies (Consolidation) Act, no stress was laid. There is a further case, *John Hood & Co., Ltd. v. Magee*, 7 T.C. 327, in which a United Kingdom company was again held to be chargeable under Case I of Schedule D, because in fact an important, and indeed the chief part of its business was carried on at Belfast, and the *De Beers* case was discussed without any suggestion that the test, mentioned in it, was not as universal as its language would imply. Finally I would call attention to *Bradbury v. English Sewing Cotton Co., Ltd.*<sup>(2)</sup>, [1923] A.C. 744, in which the references made to the rule laid down in the *De Beers* case, both in argument for the successful parties (page 747) and in the opinions delivered (pages 753, 755 and 765) by the Lord Chancellor and Lords Shaw and Wrenbury, respectively, are all made in terms that mention no second sense of residence and suggest no alternative to Lord Loreburn’s rule, whether the company in question be foreign, as it was then, or British, as in the present case.

I wish however to refer specially to *The New Zealand Shipping Co., Ltd. v. Thew*, 8 T.C. 208, though again this is the case of a company incorporated abroad. Lord Sterndale and Lord Justice Warrington in the Court of Appeal and Lord Buckmaster in your Lordships’ House (see especially page 229) in whose opinion all the other noble and learned Lords present concurred, all speak of the rule laid down in the *De Beers* case as if no other mode of determining any company’s residence was known to them or could be

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(1) 6 T.C. 152 and 542.

(2) 8 T.C. 481.

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put forward. Lord Sterndale quotes (page 223) Lord Loreburn's rule and adds, "I think that that is just as accurate a statement of law now as it was at the time it was pronounced." Accurate it may have been but, if the present argument for the Respondents is to be sustained, it was sadly lacking in precision, for it bears all the appearance of a universal test. Lord Sterndale proceeds to say that these principles cannot possibly be affected by the statutory obligation of a company registered abroad to file its articles at Somerset House on beginning business here, and Lord Justice Warrington says of this (page 228)<sup>(1)</sup>, as I think may truly be said of the statutory requirements imposed on English companies: "It is merely one of the conditions which must be fulfilled before they can lawfully do so. When that condition is fulfilled, then they can lawfully carry on the business; and if the circumstances are such as to bring them within the principle to which I have referred, they are just as much carrying on the business in this country as if they had not been compelled to file and had not filed their articles." I would also like to quote in this connection his observation in *Lysaght's case*<sup>(2)</sup> (which it is true is not a case of a company), "I have reluctantly come to the conclusion that it is now settled by authority that the question of residence or ordinary residence is one of degree, that there is no technical or special meaning attached to either expression for the purposes of the Income Tax Act . . .".

My Lords, in support of my view that this rule of Income Tax law has long been deemed to be settled by common consent I would refer to the opinion of the legal profession as it may be gathered from books of admitted authority. Dowell's work first appeared in 1874 and contained no note on the residence of a British company. His second edition, 1885, after citing the *Cesena* case said (page 208): "the residence of a joint stock company incorporated and registered in England is in the United Kingdom and therefore the company is chargeable on profits from business carried on abroad as well as from business carried on in the United Kingdom"; and this was repeated in the 3rd edition in 1890 (page 221). In 1895 the 4th edition (pages 244 and 245) modified this as follows: "in order to give effect to the Act as applied to joint stock companies we must suppose that a company has a residence . . . . In determining the question of residence, registration must be taken into consideration. It is a strong circumstance, but only a circumstance; it is a fact to be considered with all the others; but where a company does acts as in the *Cesena Company's case* it is a company residing in the United Kingdom". For this the *Cesena*, the *Calcutta Jute* and the *Imperial Continental Gas Com-*

<sup>(1)</sup> 8 T.C. at p. 228.<sup>(2)</sup> 13 T.C. 511, at p. 536.

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panies' cases are cited. The 6th edition, 1908, adds that the principle of the decision in the *Cesena* case was approved in the *Goerz Co.* and in the *De Beers Co.* cases, and the 7th edition, 1913, contents itself with a summary of all decided cases to date. Conversely I have endeavoured to find in the great authorities on the Companies Act, Lindley and Buckley, using the editions for which those celebrated authors were personally responsible, any warrant for the view of those Acts in their relation to Income Tax, for which the Respondents contend. They cite the case that has been so often referred to but the proposition that an English limited liability company is by law always a resident in the United Kingdom is conspicuously absent. Thus I find in Lindley on Companies, 5th edition, 1889, page 38, the last revision by the learned author himself, the statement that "a registered company does not necessarily dwell where its registered office is situate", citing the *Cesena* and the *Keynsham Blue Lias*<sup>(1)</sup> cases; and my noble and learned friend Lord Wrenbury, in his last revision, 9th edition, 1909, says, page 154, "for the purpose of the Income Tax Acts the place of registration of a company is not any more than the birthplace of an individual conclusive as to its residence. A company registered here, with a registered office here and governed by a Board, which meets here, is no doubt resident here (*Cesena*), but also a company registered abroad, whose head office and directors' meetings are here, is resident here (*Goerz*). The test of residence is not registration but where the company does its real business, where the central management and control abide (*De Beers*)". Similarly, Professor Dicey, in the first and second editions of his Conflict of Laws, which were wholly his own, dwells in his Rule 19 on the principal place of business as being the domicile of a trading company and then describes the same test as determining its residence, and in his Appendix on Income Tax Law, his note on the *De Beers* case is "what should be noted is the close connection between residence in the United Kingdom and the carrying on business there. In the case of a trading corporation or company the two things can hardly be separated for the simple reason that such a company has not, in fact, any residence but resides, from a legal point of view; in the country where the central control and management of its affairs is to be found", a proposition only slightly modified on page 777 of the 2nd edition. No one of these great authorities doubts, any more than Lord Loreburn doubted, that the test is the same for English companies as for foreign ones, or entertains any idea that for Income Tax purposes performance of the statutory obligations of a registered company has any different significance from that of

(1) The Keynsham Blue Lias Lime Company, Ltd. v. Baker, 2 H. & C. 729.

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mere registration. Similarly, I have looked into the cases relating to the jurisdiction of County Courts over companies. I do not say that they afford much assistance but they show that the place where the business is carried on has long been an integral fact along with that of the registered head office in deciding where a company "dwells" within the County Courts Act, 9 and 10 Vict. c. 95, S. 128 (*Taylor v. Crowland Gas Co.*, 11 Ex. 1) and in *Keynsham Blue Lias Co. v. Baker*, 2 H. & C. 729, where the two were not the same, it was the place of manufacture, where the contract sued on was made, and not the London head office, where the directors met, that satisfied the word "dwells". In neither case were the statutory requirements of the Acts, under which the respective companies were incorporated, treated as having any importance.

I venture to submit that a long current of judicial expressions, whether technically *obiter* or not, the general agreement of the most valuable text books and the course taken in argument by so many law officers of the Crown afford sufficient warrant for saying that the rule is settled and ought not to be disturbed. Sir Richard Baggallay and Sir John Holker advanced the present contention, though not on all the present grounds, but it was not accepted. Thenceforward one Law Officer after another until very recently has treated the rule as having been concluded, under circumstances that implied that the rule was an exhaustive one. Did they all miss the point or did they dismiss it as untenable?

In my opinion these eminent men did not miss the point but, apart from the unsuitability of the word "resident" to the technicalities of the Companies Acts, they saw that the interests of the Revenue demanded a different construction. With Victorian rates of Income Tax it was long before it became worth while for English companies, which exploited foreign trades or properties, to incur the trouble and expense of removing the management from England. They were content to rely on the foreign locality of their enterprise. The crude attempt to rely on the place of incorporation, which was made in reply by the Crown, failed at once and was advisedly dropped, for, had it succeeded, the Revenue could not have charged foreign companies trading here. It had not yet been foreseen that the doctrine of double residence could be applied to companies, still less that, if it could, double tests of residence could be tolerated, namely, incorporation for English companies and actual trading for foreign ones, a rightabout-face attitude condemned in *Bradbury's case*<sup>(1)</sup> by Lord Chancellor Cave, [1923] A.C. pages 753, 754, as intolerable.

My Lords, on reference to the Income Tax Act, 1918, I think

(1) 8 T.C. 481, at p. 508.

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it must appear that the Legislature itself has by that Act recognised the principle, which I submit was established by the previous current of authority, that for Income Tax purposes the residence of an English limited liability company depends not on its English registration and statutory obligations but on the facts as to the mode and place in which it controls and directs its affairs. The initial words of No. 7 of the General Rules applicable to all Schedules "Where a non-resident person, not being a British subject or a "British, Indian, Dominion, or Colonial firm or company, or "branch thereof, carries on business with a resident person . . . ." etc., appear to me in plain English to assume that a "person", being a British company, may be a "non-resident person", and this without any qualification dependent on the manner of its incorporation. If so, the fundamental proposition, on which the argument for the Respondent has been rested, is conclusively negatived.

It is, however, contended that the Rule, properly construed, refers only to such persons, including companies, as are non-resident, and therefore cannot relate or refer to any companies, which by law must be always resident. There are British companies which can be non-resident, such for example as have been incorporated by some Statute or Royal Charter, not containing provisions equivalent in effect to those pointed out in the Companies (Consolidation) Act, and to these, but to these only, the Rule applies.

My Lords, I have not been able to adopt this view. It begs the whole question. It has been admitted that all the other "persons" mentioned after the words "not being" are used unrestrictedly and in this respect the drafting was said to have been "loose"; but surely, unless express words to the contrary are to be found, words of exception like these are simply used in order to take the things enumerated out of the prior general words, because they would otherwise be included in them. In effect, I think this Rule, had it been drafted in paragraphs, one dealing with British subjects, the next with British companies, the next with British firms, and so on, would have meant and rightly should have read: "Any non-resident British company, which carries on business "with a resident person . . . ." The matter is not to be brushed aside as the result of unskilful drafting or of hasty discussion in Committee. It was argued that a Rule framed *alio intuitu* should not be read as unsettling the settled law as to the residence of English limited liability companies, but the truth is that it was framed for the purpose of applying to a new case the Income Tax law as it then stood and was understood to have been interpreted by the Courts, and to use it now for the purpose of declaring by a

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tacit assumption a novel interpretation of the Companies Act in the teeth of the decisions of the Court, would be contrary to all the principles on which taxing legislation is framed. It is not thus that draftsmen perform their difficult task. Of course in later stages changes occur which, being the work of many minds and different processes of thought, may mar the symmetrical draft which was the work of one. For this no apology is ever made, though we are often asked to show it suitable judicial indulgence, but I think this contention fails as soon as the origin of Rule 7 is historically considered.

It was first enacted as Section 31 (3) of the Finance (No. 2) Act, 1915, a Section which added to the previous rules on the subject of non-residence and extended them, till the Consolidation Act of 1918 converted them into a code dealing with the whole topic. The Section begins: "(1) Section forty-one of the Income Tax Act, 1842 . . . shall, so far as it relates to the taxation of non-residents, "be extended" in two particular respects; "(2) A non-resident "person shall be chargeable . . . in the name of the branch, "factor, agent, receiver, or manager", through whom the profits chargeable arose, and then follows (3), the provision which is now General Rule No. 7. Section 41 of the Act of 1842 provided a method of vicariously charging certain incapacitated natural persons and was not framed for the purpose of charging incorporated persons; nor had it anything to do with the system of incorporating companies with limited liability. Where then there was added to that Section a provision relating to a wholly different category of chargeable persons, namely companies, one would expect that the new provision would deal with companies generally, except in so far as express limiting words were employed; but one would not expect that a provision, dealing with the chargeability of non-resident companies, would leave the chargeability of the most important class of such companies to be inferred only from an assumed construction of a non-taxing Act, which had not till that time been laid down by any uniform current of decisions. I am clearly of opinion that this General Rule adopts and, in effect, declares the view of the law as to the residence of companies generally, which had previously been assumed and acted on in the decisions for a generation or more, and gives statutory recognition to them, and, if so, the Respondent's argument cannot be accepted.

The matter is one of very general importance. Many companies have, at the cost of some trouble and expense, transferred their control and management abroad on the faith of decisions, or if you will, *dicta*, to the effect that by so doing they could legitimately reduce the burden of their taxation. Are they now to reconsider their position and if so in what direction? The present contention shuts out English companies from the advantages with regard to

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income from Colonial and other securities, which the Act secures to such natural persons as change their residence in terms of the Rules, for companies cannot so change it. Such a discrimination must affect the question of the future incorporation of new concerns in England and the further question must arise whether British status and British protection are in business worth the price. It is a pity that among the above-mentioned advantages were those offered by the Treasury on the issue of certain War Loans to investors generally, for English companies, though they may hold the stocks, cannot have the benefit of exemption from tax, since they cannot be persons "not ordinarily resident in the United Kingdom", Section 46 (1). Most of all is it to be regretted, if this grave change is to be brought about because the Crown adopts a line of argument which appears to be the contrary of that long put forward on its behalf and thus obtains, as a matter of construction, something, as it seems to me, which the Legislature alone can make law.

In my opinion, the appeal should be allowed with costs here and below, the judgments of the Court of Appeal and Mr. Justice Rowlatt should be set aside, and the decision of the Commissioners should be restored, and I move your Lordships accordingly.

**Lord Atkinson.**—My Lords, I have had the privilege and advantage of reading more than once and have carefully studied the judgment which my noble and learned friend upon the Woolsack has just delivered. I think the conclusions at which he has arrived are sound and are borne out by the facts to which he has referred. In my view his judgment is sound in every particular.

My Lords, I have been asked to read the judgment which has been prepared by my noble and learned friend **Lord Buckmaster** who is unfortunately unable to be present.

**Lord Buckmaster** (read by Lord Atkinson).—My Lords, by Schedule D of the Income Tax Act, 1918, tax is charged in respect of profits or gains arising or accruing "to any person residing in the United Kingdom" from the property there specified. By Rule 1 of the General Rules every body of persons is chargeable like a person, and by Section 237 "body of persons" means among other things "any company".

The Appellants are a company incorporated in England under the Companies Acts, and the only question raised on this appeal is whether, by reason solely of the fact that its registered office must be here, such a company is a person "residing" in the United Kingdom within the meaning of Schedule D.

The difficulty which this question presents is due to the fact that residence is essentially a condition applicable to men, and the tests for its determination, such as living and sleeping, can

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have no proper counterpart in an abstract entity such as an incorporated company which can neither live nor sleep. It must, however, be assumed that a company *has* a residence, and if the question is looked at entirely apart from authority, I should have thought that the place of the registered office was also the place where the abstraction known as "a company" resided. It is the place where all notices must be served. It constitutes its address for purposes of legal process, the books which the company is compelled by law to keep must be there kept and held ready for inspection, and it seems to me a fair inference that this is consequently a place where it resides.

The matter cannot, however, be considered in this separate and detached way. In the first place, the decision in the *Cesena Sulphur*<sup>(1)</sup> and the *Calcutta Jute Mills*<sup>(2)</sup> cases, 1 Ex. D. 428, if not in express terms, yet by necessary inferential implication decided that a company registered in this country did not have a residence here by reason of that fact alone; subsequent authorities have so accepted this conclusion and companies have arranged their business upon the hypothesis that it was exact. The most definite statement to this effect is to be found in the words of Lord Loreburn (*De Beers Consolidated Mines, Limited v. Howe*, [1906] A.C. at page 458) where he says<sup>(3)</sup>: "The decision . . . 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".

In order to see exactly what was the effect of this decision the cases need further examination. They were decided together. The *Cesena* was a company which was registered both here and in Italy, and in the *Calcutta Jute Mills* case the company was registered only here. It is plain that had the Court regarded the fact that incorporation here, with its necessary consequences of having a registered office and the other associated obligations, was sufficient to establish residence, the cases might have been decided upon that ground, but they clearly were not, and, though there are passages in the judgment of Chief Baron Kelly, page 444, which suggest that the registered office might be regarded as a residence, the subsequent statements show that he turned once more to the consideration of where the control of the business was and held that that decided the residence in England. Baron Huddleston spoke more definitely on the matter; at page 453 the argument that registration was conclusive of residence was advanced by the Attorney-General, but this argument the learned judge rejected in these words<sup>(4)</sup>: "Registration, like the birth of an individual, is

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<sup>(1)</sup> 1 T.C. 88.

<sup>(2)</sup> 1 T.C. 83.

<sup>(3)</sup> 5 T.C. 198, at p. 213.

<sup>(4)</sup> 1 T.C. at p. 104.



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“ a fact which must be taken into consideration in determining  
“ the question of residence. It may be a strong circum-  
“ stance, 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 the 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 ”.

The decision, therefore, did clearly declare that the real place of business was a test of residence, and until the decision of this House in the case of *The Swedish Central Railway v. Thompson*<sup>(1)</sup>, [1925] A.C. 495, no one seems to have suggested that residence need not be unique.

It was subsequent to and probably consequent upon that decision that this dispute arose, and pursuant to its authority the Court of Appeal have held that as a residence may be dual the existence of a registered office here is one of its decisive tests.

In forming this opinion, however, a matter which does not appear to have been fully argued has been overlooked. In 1915 a new Rule was added to the General Rules of the Income Tax Acts, incorporated in the Act of 1918 as Rule 7, which begins in these terms:—“ Where a non-resident person, not being a British  
“ subject or a British, Indian, Dominion, or Colonial firm or  
“ company . . . carries on business with a resident person . . . ”.

This Rule clearly is based on the hypothesis that a British company need not reside here since it may be “ non-resident ”.

If, therefore, the phrase “ British company ” includes a company incorporated under the Companies Acts, it is obvious the place where its registered office may be is not the critical consideration for determining residence, since such a company must have its registered office here and could not, therefore, be non-resident.

The only road of escape from this difficulty is the one pointed out by the Attorney-General which lies in saying the words “ British company ” have a limited meaning, and only deal with such companies as need not have a registered office and can, therefore, be non-resident, as for example, companies incorporated by Royal Charter.

This argument results in cutting down the phrase “ British company ” to a relatively insignificant number of companies and depriving it of its most obvious meaning, and that without any reason capable of being extracted from the Rule. Had that been

(1) 9 T.C. 342.

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the real purpose of the Statute it should have been, as it easily could, more simply and directly expressed.

In my opinion, however, such was not its meaning or its purpose. In 1915 the *Cesena* case had been decided for nearly fifty years, the test it laid down had again and again been applied and the statement of Baron Huddleston had not been contradicted in any considered judgment, the statement of Lord Wrenbury in *The Egyptian Hotels, Ltd. v. Mitchell*<sup>(1)</sup>, [1914] 3 K.B. at p. 132, being really nothing but an interjection. The result was that in 1915 residence for a company was sought by examining its seat of business, and registration as a sole test was overlooked. It was in these circumstances that the Act of 1915 was passed, and its effect was to give legislative sanction to the view that registration alone was not decisive of residence.

It is for this reason that in my opinion the appeal succeeds and should be allowed with costs.

**Lord Warrington of Clyffe** (read by Lord Atkin).—

My Lords, the question in this case is whether or not the Appellant Company was in the years of assessment a person residing in the United Kingdom within the meaning of Schedule D of the Income Tax Act, 1918, construed of course with due regard to other relevant provisions of the Act.

The Company was incorporated on the 20th April, 1904, under the Companies Acts, 1862 to 1900, as a company limited by shares. By the Memorandum of Association it was stated in accordance with the Statute that the registered office of the Company is situate in England.

The actual registered office is at Gresham House, Old Broad Street, in the City of London. This is in fact the office of Mr. F. J. Horne who carries on there the business of Secretary of Public Companies and performs there on behalf of the Company and certain other companies the functions necessary to be performed by them in order to comply with the requirements of the Companies Acts. The names of the companies for whom he acts are on the door of the office.

The business of the Company is carried on in Egypt and its affairs are controlled and managed there.

The case thus raises the question whether a company incorporated under the Companies Acts and therefore having a registered office in the United Kingdom, at which under the Statutes certain duties have to be, and are in fact, performed on its behalf, and notices and other documents affecting the Company are to be served, is as a legal consequence of these facts a person residing in the United Kingdom within the meaning of the Income Tax Act, 1918.

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<sup>(1)</sup> 6 T.C. 542, at p. 544.

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Assessments to Income Tax for the years 1919-20 to 1924-25 under Schedule D, Cases IV and V, having been made upon the Company by the Commissioners of Inland Revenue the Company appealed to the General Commissioners for Income Tax for the City of London. The Commissioners found that the Company was not resident in this country. At the request of the present Respondent they stated a Case for the opinion of the Court. The case came before Mr. Justice Rowlatt in the King's Bench Division on the 23rd November, 1926, who allowed the Respondent's appeal from the decision of the Commissioners. His judgment was on the 18th February, 1927, affirmed by the Court of Appeal. Hence the present appeal to this House.

The statutory provisions relating to this and all other companies incorporated under the Companies Acts are now contained in the Companies (Consolidation) Act, 1908.

Under that Act every company is to have a registered office to which all communications and notices may be addressed. Every company is to keep a register of its members containing certain particulars enumerated in the Statute (Section 25). An annual list of members with a summary specifying a large number of particulars relating to its capital and its liabilities and assets is to be prepared and is to be contained in a separate part of the register of members (Section 26 (3)). A copy of every instrument creating any mortgage or charge requiring registration under the Act is to be kept at the registered office and such copies are to be open to inspection by any creditor or member of the company. The register of members, and therefore of course the annual list and summary which are a part of it, are to be kept at the registered office, and under certain conditions are to be open to inspection by members and other persons, and any member or other person may require a copy of the register, or of the list or summary or of any part thereof respectively, on payment of the prescribed sum. Every company is to keep at its registered office a register containing the names, addresses, and occupations of its directors or managers. A document may be served on a company by leaving it at or sending it by post to the registered office. This provision extends to service of a writ and of a petition for winding up and such service is equivalent to personal service. Service may be thus effected at any time of the day or night.

By No. 1 of the General Rules applicable to all Schedules to the Income Tax Act, 1918, it is provided that every body of persons is to be chargeable to tax in like manner as any person is chargeable under the provisions of the Act.

Inasmuch therefore as tax is imposed upon a person residing in the United Kingdom it is clear that the artificial person, a

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company under the Companies Act amongst other bodies of persons, is regarded as capable of residing in the United Kingdom, although of course, inasmuch as it neither eats nor sleeps nor performs any of the physical or social functions of a natural person, the fact of residence depends upon other considerations than those which determine the residence of an individual.

Independently of authority, and in the absence of any relevant provisions of the Income Tax Act, 1918, throwing light on the meaning attributed by the Legislature to the words "residing" and "resident" as used in the Act, I should probably have been of opinion that the provisions of the Companies Act to which I have referred lead to the conclusion that, whatever other residence the company may have, the Legislature has provided that the registered office shall be a residence.

Certain corporate functions imposed upon it by the Act are to be performed at that place. Service of the most important documents, which in the case of individual persons must be served personally, may be effected by their being left at or sent by post to the registered office without restriction as to time.

The cumulative effect of these provisions apparently creates for the company a statutory home, where it is to perform the corporate functions above mentioned, and where it is regarded as at all times present and ready to receive such documents and communications as are left or sent there.

This state of things would go some way to establish that in the case of a registered company there are present those conditions which in the case of an artificial person may constitute a residence in that part of the United Kingdom in which by the terms of its Memorandum of Association the registered office is situate.

But I have to consider the authorities and such relevant provisions as may be found in the Act of 1918 and to determine whether the opinion I have above expressed can be maintained in view particularly of the provisions of the Act.

At the date of the passing of the Act of 1918 the authorities were in this position:—

In *The Cesena Sulphur Company, Ltd. v. Nicholson*<sup>(1)</sup> and *The Calcutta Jute Company, Ltd. v. Nicholson*<sup>(2)</sup>, 1 Ex.D.418, Baron Huddleston expressed himself as follows (page 453): "In the present argument the Attorney-General advanced a proposition to which I cannot assent. He suggested that the registration of a company was conclusive of its residence, that if a company was registered in England it must be held to reside in England. I

(<sup>1</sup>) 1 T.C. 88.

(<sup>2</sup>) 1 T.C. 83.

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“ 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 the 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 regis-  
“ tered in a particular country, acts in that country, has its office  
“ and receives dividends in that country, you may say that those  
“ facts, coupled with the registration, lead you to the conclusion  
“ that its residence is in that country.” The case, however, was  
decided on the ground that in both cases the company in question  
carried on substantial business in this country.

In *De Beers Consolidated Mines, Ltd. v. Howe*<sup>(1)</sup>, [1906] A.C. 455, it was decided in this House that in the case of a company registered abroad the test of residence is where it really keeps house and does its real business, and the real business is carried on where the central management and control actually abides.

In 1918, it was, I think, assumed that the general current of authority, and in particular the *Cesena* case, the *De Beers* case and certain other cases as to foreign companies had settled the question as to British companies, viz., that the mere fact of incorporation in this country, though an important circumstance, would not involve residence here, though the provisions of the Companies Act as to the registered office referred to above were not considered in those cases. In this assumed state of the law the Act of 1918 was passed, and there is in that Act one provision which to my mind shows conclusively that the Legislature accepted and acted on that view of the law. It is found in No. 7 of the Rules applicable to all Schedules. The material part of the Rule is as follows: “ Where a non-resident person, not being a British  
“ subject or a British, Indian, Dominion, or Colonial firm or com-  
“ pany, or branch thereof, carries on business with a resident  
“ person ”, and certain facts and circumstances appear to the  
Commissioners, then “ the non-resident person shall be assess-  
“ able and chargeable to tax in the name of the resident person  
“ as if the resident person were an agent of the non-resident  
“ person ”.

This Rule appears to me clearly to assume that a British company equally with an individual British subject might for the

(1) 5 T.C. 198.

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purposes of the Act be a non-resident person. I can see no legitimate reason for excluding from the expression "British company" a company registered under the Companies Act; in fact the Rule as a whole indicates to my mind that such companies were those principally referred to. The result is that as every British company is under a statutory obligation to have a registered office to which there are attached by Statute the incidents and characteristics above referred to, every such company notwithstanding the provisions as to the registered office may for the purposes of the Act be a non-resident company.

If this be the true construction of the Act it cannot be maintained that as a matter of law the Commissioners were bound to decide that the Appellant Company was resident in this country. The question before them was thus one of fact; there was ample evidence on which they could find as they did and it was not competent to Mr. Justice Rowlatt and the Court of Appeal to reverse their decision. The appeal ought to be allowed with costs here and below.

It is right to add that though the point was raised in the Court of Appeal it appears not to have been pressed and there is no reference to it in any of the judgments. It was not mentioned by Counsel at your Lordship's Bar but was raised by one of your Lordships after the original argument, and the case was restored that it might be dealt with.

The case of *The Swedish Central Railway Company, Ltd. v. Thompson*<sup>(1)</sup>, [1925] A.C. 495, was decided subsequently to the Act of 1918. The point on which as I think this case turns was not raised. There are however *dicta* in my judgment in that case in the Court of Appeal, [1924] 2 K.B. 255, which cannot be supported having regard to the present decision.

*Questions put:*

That the Order appealed from be reversed.

*The Contents have it.*

That the judgments of the Court of Appeal and of Mr. Justice Rowlatt be set aside, that the decision of the Commissioners for the General Purposes of the Income Tax be restored, and that the Respondent do pay to the Appellants their costs here and below.

*The Contents have it.*

[Solicitors:—The Solicitor of Inland Revenue; Messrs. Herbert Smith & Co.]

<sup>(1)</sup> 9 T.C. 342.