No. 518.—High Court of Justice (King's Bench Division).—14th and 15th May, 1923.

Court of Appeal.—7th, 10th and 11th March, and 3rd April, 1924.

House of Lords.—27th and 29th January, and 13th March, 1925.

The Swedish Central Railway Company, Limited *v.* Thompson (H.M. Inspector of Taxes).[1]

Income Tax, Schedule D—English company controlled abroad—Residence—Rents arising abroad—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Schedule D, Case* V.

A Company which was incorporated in England under the Companies Acts for the purpose of constructing a railway in Sweden subsequently leased the railway to a Swedish concern for an annual rent of £33,500.

In October, 1920, *the Articles of Association were altered so as to remove the control and management of the Company to Sweden, and it was admitted by the Revenue that thereafter the Company was not assessable to Income Tax under Case* I *of Schedule D. Assessments were, however, raised upon it, as being resident in the United Kingdom, in respect of the full amount of the said annual rent of* £33,500 *under Case* V *of Schedule D.*

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[1] Reported C.A., [1924] 2 K.B. 255, and H.L., [1925] A.C. 495.

The rent was paid to the Company in Sweden, where all directors' and shareholders' meelings were held and dividends were declared, and no part of its profits was transmitted to the United Kingdom except in satisfaction of dividends and interest to shareholders and debenture holders in this country. Such dividends and interest were paid from the registered office of the Company in London, where the Company's seal was kept, and where all transfers of shares were made and registered. The Secretary of the Company resided in London, the Company had a banking account there, and there its accounts were made up and audited.

Held (*Lord Atkinson dissenting*), *that the Company remained resident in the United Kingdom, notwithstanding the removal of the control and management to Sweden, and that it had been rightly assessed to Income Tax under Case* V *of Schedule D in respect of the annual rent in question.*

CASE

Stated under the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

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1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 31st July, 1922, for the purpose of hearing appeals, The Swedish Central Railway Company, Limited (hereinafter called the Company), appealed against assessments to Income Tax in the sum of £33,500 for the years ending 5th April, 1921, and 5th April, 1922, made upon them under the provisions of the Income Tax Acts.

2. The assessments under appeal were made upon the Company under Case V of Schedule D of the Income Tax Act, 1918, in respect of an alleged rent paid to them under the following circumstances.

3. The Company was incorporated under the Companies Acts, 1862 and 1867, in December, 1870, with the objects of (*inter alia*) :—

(*a*) acquiring a concession for the construction of a railway between Frovi and Ludvika in the Kingdom of Sweden and constructing the railway authorised by such concession;

(*b*) maintaining and working the railway so to be constructed, and entering into any working or other arrangements with any other company for connecting the said railway with any other system;

(c) leasing the said railway to any person, persons or company.

The objects for which the Company was formed are set out fully in the Memorandum of Association of the Company, a copy of which is attached hereto and forms part of this Case.(1)

4. The Registered Office of the Company is situate at 11, Ironmonger Lane, London, E.C.2.

5. By an agreement dated 10th February, 1900, and made between the Company of the one part and the Traffic Company Grangesberg Oxelosund (hereinafter referred to as the Traffic Company) of the other part the Company leased to the Traffic Company its railway between Frovi and Ludvika for a term of 50 years as from 1st January, 1900, with a right to either party to terminate the said agreement after the same had been in force for 10 years.

6. The sum of £33,500 (in the said agreement called an annual rent) was payable quarterly in advance by the Traffic Company to the Company, such quarterly payments to be made at the Company's Office in London.

7. The said agreement of 10th February, 1900, was entered into at Stockholm and is in Swedish.

An English translation of the said agreement, which was handed in at the hearing of this appeal, is attached hereto and forms part of this Case.

8. At an Extraordinary General Meeting of the Company held at the Registered Office of the Company, 11, Ironmonger Lane, London, on 7th October, 1920, a resolution was passed with a view to the alteration of the Articles of Association of the Company.

The said Resolution was confirmed at a subsequent Extraordinary General Meeting on 22nd October, 1920.

Copies of the said Resolution and of the Articles of Association are attached hereto and form part of this Case.(1)

The alterations made in the Articles of Association in pursuance of the said Resolution are shewn in green ink.

9. The alterations in the Articles of Association were framed with the object of removing the control and management of the business of the Company from England to Sweden, and we are satisfied that since 22nd October, 1920, the business of the Company has been and now is controlled and managed from the Head Office, Stockholm, Sweden. This fact was admitted on behalf of the Respondent.

10. On the 22nd October, 1920, at a meeting of the Board of Directors of the Company, three Members of the said Board were appointed to be a Committee under Article 45a of the amended Articles of Association to deal with transfers of shares

(1) Omitted from the present print.

in the United Kingdom, attach the seal of the Company to share and stock certificates, and to sign cheques on the London Banking Account of the Company.

The Committee so appointed was empowered to transact merely formal administrative business in the United Kingdom.

11. Since the 22nd October, 1920, no Ordinary Meeting, General Meeting or Board Meeting of the Company has been held in the United Kingdom.

All dividends have been declared in Sweden, and no part of the profits of the Company has been transmitted to the United Kingdom except in payment of dividends to the shareholders in the United Kingdom. Copies of Minutes of Board Meetings and Shareholders' Meetings held between 22nd October, 1920, and 31st May, 1922, are attached hereto and form part of this Case.(1)

12. Since 22nd October, 1920, the said sum of £33,500 referred to in paragraph 6 hereof has been paid to the Company in Sweden.

13. The Secretary of the Company, Sir William B. Peat, resides in London, and the seal of the Company is kept at the Registered Office of the Company in London. The Company has a banking account in London. Transfers of shares are made in London and registered there. The accounts of the Company are made up and audited in London. Dividends are paid to English shareholders and interest to English debenture holders from the Registered Office in London.

14. It was contended on behalf of the Company that upon the facts as set out above :—

(*a*) the Company was not resident in the United Kingdom;

(*b*) the Company was not chargeable to Income Tax under Schedule D of the Income Tax Act, 1918; and alternatively,

(*c*) upon the true construction of the said agreement of 10th February, 1900, the said sum of £33,500 is not income arising from a rent in a place out of the United Kingdom within Rule 1 of Case V of Schedule D.

15. It was contended on behalf of the Respondent that :—

(*a*) the Company was resident in the United Kingdom and chargeable to Income Tax under Schedule D of the Income Tax Act, 1918;

(*b*) the agreement of 10th February, 1900, is a lease of the railway to the Traffic Company for a period of 50 years and the said sum of £33,500 is an annual rent

(1) Minutes of Board Meeting of 22nd October, 1920, only reproduced in the present print.

payable thereunder and the Company has been rightly assessed under Case V of Schedule D in respect thereof;

(*c*) the assessment appealed against should be confirmed.

16. The following cases were referred to:—

Egyptian Hotels, Limited *v.* Mitchell(1), [1914] 3 K.B. 118 and [1915] A.C. 1022.

Cesena Sulphur Co. *v.* Nicholson, I Ex. D. 428; 1 T.C. 88.

San Paulo (Brazilian) Railway Company *v.* Carter(2), [1896] A.C. 31.

De Beers Consolidated Mines *v.* Howe(3), [1906] A.C. 455.

American Thread Co. *v.* Joyce, [1913] A.C. 29; 6 T.C. 1 & 163.

Commissioners of Inland Revenue *v.* Korean Syndicate, Limited, [1921] 3 K.B. 258.

17. With the consent of the Appellants and Respondent we reserved our decision, which was communicated to the parties on 25th September, 1922, and was in the following terms:—

This is an appeal by the Swedish Central Railway Company, Limited, against assessments to Income Tax made upon them under Case V of Schedule D for the years 1920–21 and 1921–22.

The relative part of Schedule D which imposes the charge reads as follows:—

"Tax under this Schedule shall be charged in respect of—

(*a*) The annual profits or gains arising or accruing—

(i) to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere."

The chief question for our decision is whether the Appellant Company is "a person residing in the United Kingdom" within the meaning of those words in the charging Schedule.

The Appellant Company was incorporated under the Companies Act in December, 1870, and its Registered Office is situate in London. It is, in our opinion, resident in the United Kingdom in the same sense as that in which the Egyptian Hotels Company, Limited, was admitted to be so resident.

On the other hand, we are satisfied that the real control and management of the Appellant Company has been since October, 1920, and now is, in Sweden.

We have carefully considered all the authorities on the question of residence in the case of companies. It is to be noticed that in laying down that the place of control is to be taken as the sole test for determining the place of residence of

(1) 6 T.C. 152 and 542. (2) 3 T.C. 407. (3) 5 T.C. 198.

companies for Income Tax purposes, the Courts were dealing with foreign companies, and considering liability under Case I. In our opinion this doctrine must be confined to cases where the facts are similar. *The Egyptian Hotels, Ltd.*, v. *Mitchell*(1) appears to us to be a clear authority in support of the assessments under appeal; see especially Lord Sumner's opinion: " Where a resident in the United Kingdom is proprietor of a " profit-earning business wholly situate and carried on abroad " he is chargeable to Income Tax under Case V of Schedule D if " he takes no part in earning those profits, and if he takes any " part is chargeable under Case I. This is true whether the " proprietor is a natural or an incorporated person " (6 T.C. at p. 550).

We, therefore, hold that the Appellant Company is " a " person residing in the United Kingdom " and assessable under Case V, Schedule D.

A further point was argued on behalf of the Appellant Company, namely that the £33,500 received by the Company under the agreement of 10th February, 1900, is not a rent. On this point we hold that the said agreement is a lease and the £33,500 is rent.

The assessments under Case V for the years 1920–21 and 1921–22 are confirmed, subject to any agreed adjustment which may be necessary in respect of expenses in Sweden.

18. The Appellant Company immediately upon the determination of the appeal declared to us their dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

(Signed) N. ANDERSON,
H. M. SANDERS,
Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
13*th February*, 1923.

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

COPY MINUTES OF BOARD MEETING OF 22ND OCTOBER, 1920.

AT A MEETING OF THE BOARD OF DIRECTORS OF THE SWEDISH CENTRAL RAILWAY COMPANY, LIMITED, held at No. 11, Ironmonger Lane, E.C., on Friday, 22nd October, 1920, at 1.45 o'clock p.m.

Present :

COL. C. E. SWAINE, C.B., in the Chair.
COL. A. E. JENKINS.
SIR WM. B. PEAT, Secretary.

In Attendance:

T. Outen, Esq. (Messrs. Ashurst, Morris, Crisp & Co.).

A Transfer (No. 1,562) of Debenture Stock was submitted and new Certificates signed and sealed.

It was proposed by Col. Swaine,
seconded by Col. Jenkins,
and resolved—

" That in accordance with Article 45a of the Company's Articles " of Association the following Members of the Board
" A. Balfour,
" C. E. Swaine, and
" A. E. Jenkins
" are hereby constituted a Committee to deal with transfers, " attach the Seal of the Company to share and stock Certificates " and to sign cheques on the London Banking Account of the " Company.
" Two Members of this Committee to form a quorum."

(Signed) C. E. SWAINE,
Chairman.

COPY CONTRACT FOR LEASE OF THE SWEDISH CENTRAL RAILWAY TO THE GRANGESBERG-OXELOSUND TRAFFIC COMPANY.

Between the Swedish Central Railway Company, Limited, hereinafter called " the Frovi-Ludvika Company ", on the one part and the Traffic Company Grangesberg-Oxelosund, hereinafter called " the Traffic Company ", on the other part the following Contract, subject to the confirmation of each Company's shareholders' meeting, is made :—

Contract.

1. THE Frovi-Ludvika Company leases to the Traffic Company its Railway between Frovi and Ludvika with all that now belongs or in the future can belong to the same, such as permanent way, stations and other buildings, rolling stock and inventories of every kind.

2. THE length of lease is fixed at fifty years from and with the 1st January, 1900, with right however for either party to terminate this contract after the same has been in force ten years.

NOTICE of such termination shall be decided on at Shareholders' Ordinary General Meeting, and shall be given at least two years before the end of that year on which the Contract shall expire.

3. THE annual rent is 33,500 pounds English sterling paid quarterly in advance at the Frovi-Ludvika Railway Company's Office in London thus: £8,375 the 1st January, 1st April, 1st July, 1st October or, if one of these days be a holiday, then on the first following week-day, each year so long as this contract is in force.

4. THE Traffic Company takes over the Railway with permanent way, buildings, rolling-stock and inventories in condition such as it is, after inspection by three Arbitrators, of whom each part appoints one, and the third is appointed by the Direction of the Government Railway.

5. THE Traffic Company undertakes during the period of the lease to carry on the Railway's traffic and maintenance also to carry out all the new works station extensions buildings and provision of new material which may be required for the use of the traffic in conformity with the concession in force and other for the railway binding prescriptions. On the other hand the Traffic Company has the right to take during the same time all the railway traffic receipts, rents and other income of whatever denomination it may be.

6. DURING the period of the lease the Traffic Company takes over all rights and fulfils all obligations which the Frovi-Ludvika Company has to carry out in conformity with the concession and other stipulations belonging to the said Company.

The Traffic Company thus undertakes :—

(*a*) To take over the staff engaged in the management of the Railway in Sweden and carry out the agreements with said staff until they, in legal course, can cease.

(*b*) To be responsible as well for the pensioning up to an amount not exceeding 60 per cent. of the present salary of those of the staff who could not join the private Railways Pensions Fund, as for the payment to said Fund of the due contributions.

(*c*) To take over and fulfil all the other agreements entered into here in Sweden by the Frovi-Ludvika Company for the working and management of the same, until such in legal form can terminate.

(*d*) To pay all rates and taxes assessed on the Frovi-Ludvika Company here in Sweden which after the commencement of the lease fall due, on the other hand the

Traffic Company is exonerated from paying rates and taxes which, after the expiration of the lease, fall due.

(*e*) To accept the liability to compensate for damages in consequence of the Railway's working which, according to the law of the 12th March, 1886, or other decree now or in the future, can fall upon the occupier of the Railway. The Traffic Company also undertakes to furnish the Frovi-Ludvika Company with all statements and extracts of accounts which can be necessary for the last named Company's book-keeping and management.

7. THE Frovi-Ludvika Company has right to control the fulfilment of this Contract during the lease period as often as may be considered necessary, though not more than once a year, through the inspection by an expert of the Railway. The Traffic Company shall be informed of such inspection in order that it may be there represented and it must at its own cost make good all defects pointed out at such inspection unless the matter be submitted by the Traffic Company to compromise according to Clause 12 here below.

8. ON the expiration of this Contract the Traffic Company shall hand back to the Frovi-Ludvika Company the Railway with permanent way, buildings, rolling stock, and inventories all in at least quite as good condition as when it took them over.—To determine this, inspection shall be made in same manner as prescribed in preceding Clause 4. If it then be found that the Railway is in worse condition than when taken over, the Traffic Company is bound to compensate the Frovi-Ludvika that sum to which the Arbitrators value the outlay for remedying the defects, the Traffic Company may however against such compensation sum reckon the value of improvements made during the time of lease also according to the valuation of the Arbitrators: beyond this, the Traffic Company is not entitled to compensation for such improvements applying either to permanent way buildings, or inventories. The Frovi-Ludvika Company shall repay the Traffic Company that sum by which, according to valuation by the Arbitrators, the value of the rolling stock at the expiration of lease exceeds the same when the lease was entered upon.

9. ON the expiration of this Contract the Frovi-Ludvika Company shall take over all the staff then engaged on the Railway, and be responsible for payment of pensions and pension contributions then payable also take over and fulfil all contracts and engagements entered into by the Traffic Company relating to the lease.

10. ALL the inspections, valuations, etc., named in this Contract shall be made at the expense of the Traffic Company.

11. IF the Traffic Company fails to carry out this contract, the same, shall, if the Frovi-Ludvika Company so desires, terminate at the end of the current calendar year, with liability for the Traffic Company to compensate the Frovi-Ludvika Company for those losses which on account of the termination of the contract may occur to the same, for not longer period however than two years from the expiration of the Contract.

12. DISPUTES as to the meaning or fulfilment of this Contract may not be brought before a Court of Justice, but shall be settled by Arbitration in accordance with the Swedish law of the 28th October, 1887, respecting Arbitrators. In the matter, however, of the receipt of the rent due according to this Contract, the Frovi-Ludvika Company may, in usual course, have recourse to the executive authorities, or sue in the Law Courts.

13. THIS Contract is made out in two duplicate copies.

STOCKHOLM,

10*th February*, 1900.

The case was argued before Mr. Justice Rowlatt on the 14th and 15th May, 1923, when Mr. A. M. Latter, K.C., and Mr. A. M. Bremner appeared as Counsel for the Appellants, and the Attorney-General (Sir Douglas Hogg, K.C., M.P.) and Mr. R. P. Hills for the Crown.

Judgment was given on the latter day in favour of the Crown, with costs.

JUDGMENT.

Rowlatt, J.—This case raises a point long expected by some of us and now arrived, as to the position with regard to the question of its residence of a company registered in England, but doing its business abroad and controlling its business abroad. It has been held in a number of cases, of which it is sufficient to refer to the *De Beers* case(1), that a foreign company whose business is directed and controlled in England is to be treated as resident here for the purposes of the Income Tax Acts; and the Company before me, upon the finding of the Commissioners, would therefore, if a case under a similar law arose in Sweden, be held to be resident in Sweden, but the question is whether it cannot be treated as perhaps also resident in London. Of course, as has been said over and over again, there is difficulty in attributing residence to a corporation, but it is clear that it has to be done. It is clear that the place of incorporation is not the sole test of residence because, as Lord Parker says, a corporation can change its residence; it can for the purposes of enemy

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

character, which he was considering, of course, change it just as an individual can, and Mr. Hills contends that, just as an individual can have two residences, so can a corporation. It seems to me that the weight of authority is in favour of that view, as to which I see no difficulty. Lord Justice Buckley clearly regarded it as possible that a corporation could have two residences, and I cannot see any difficulty in it. I think myself it is easier for a corporation to have two residences than for a natural person because, after all, a natural person, existing as he does in space, as a physical body, can only be in one place at once, and if he has got a residence where he is not in fact, it is because it is all ready for him and he is prepared to go there and intends to go there, and merely is away temporarily, but he is away. It seems to me that as regards a company, which only exists in law and in the mind and does not occupy space at all, the residence which can be imputed to it can co-exist, the presence which can be imputed to a company can be in more places than one at the same time. Therefore I do not think there is any difficulty in the fact that it may be necessary to impute two residences to a company; nor did Mr. Latter deny it, but what he did say was that a company's residence depends only on the fact of control. It may have two residences if its control shifts every alternate six months or something of that sort from one capital to another. It may have both those residences, just as a natural person who lives a part of the year in one place and part of the year in another has both as his residences; but, said Mr. Latter, the only test of residence, one or more, is direction and control of the business. Mr. Latter said further: activity in a place by a company does not create residence, and I think he makes that good. A company may be residing in one place and do a great deal of business in another, as the Imperial Ottoman Bank has a business in London; it is not residing here but it has a branch here, and, therefore, when looking into a company, you must beware of falling into the error of saying that mere activity constitutes residence in a particular place.

The facts that I have to deal with here are short, because this Company is not a very active company. It is found in Mr. Latter's favour that the control and management of the business is now in Sweden. On the other hand, what it does in England, what its activities in England are, what can be said of it in England is not merely that it has been registered here, and not merely that it has activities here in the sense that the Imperial Ottoman Bank and parties who appeared in other similar cases had, because what is found is that the Secretary of the Company resides in London—that is nothing much; that the seal of the Company is kept at the registered office of the Company in London; that the Company has a banking account in London; the transfers of shares are made in London and registered there; the

accounts of the Company are made up and audited in London; dividends are paid to English shareholders and interest to English debenture holders from the registered office in London. Now it is to be observed that the Company is not merely active in England in the sense that it is carrying on some of its operations there, but it is in England performing some of the vital organic operations incidental to its existence as a company—keeping its seal (its registered office may be merely an address), having the banking account, its transfer books, its accounts made up and audited, and paying its dividend in London. Now those are vital functions affecting the very life and centre of the organisation of the Company, and it seems to me that if a company can have two residences at all, one of them must be in the place where, in addition to being the place of its registration, it performs these functions. Therefore, upon the facts, I think that the decision of the Commissioners is right, and the only misgiving that I have had is that I am not certain that they have really addressed themselves to the facts, and whether I am not finding facts for them, because they do seem rather to have misdirected themselves in their decision with regard to an extract from a judgment of Lord Sumner(1), and they have not, I think, quite faced the question as I have dealt with it; but I do not think it is any good sending the case back to them. My view is that the findings of fact which are set out in paragraph 13 are enough to establish that this English Company, which was born in England, has never left England, although it may also be a company in Sweden. Therefore I think that the appeal must be dismissed with costs.

An appeal having been lodged against the decision in the King's Bench Division, the case came before the Court of Appeal (Pollock, *M.R.*, and Warrington and Atkin, *L.JJ.*) on the 7th, 10th, and 11th March, 1924, when judgment was reserved. Mr. A. M. Latter, K.C., and Mr. A. M. Bremner appeared as Counsel for the Company, and the Attorney-General (Sir Patrick Hastings, K.C., M.P.) and Mr. R. P. Hills for the Crown.

Judgment was given on the 3rd April, 1924, in favour of the Crown with costs (Atkin, *L.J.*, dissenting), confirming the decision of the Court below.

JUDGMENT.

Pollock, M.R.—This is an appeal from a judgment of Mr. Justice Rowlatt, dated 15th May, 1923, whereby he confirmed the decision of the Commissioners for the Special Purposes of the Income Tax Acts upon an appeal by way of Case stated by the Commissioners. Assessments to Income Tax in the sum of £33,500 for each of the years ending 5th April, 1921, and 5th

(1) Viz., in The Egyptian Hotels, Limited v. Mitchell, 6 T.C. at 550.

April, 1922, were made upon the Appellants, the Swedish Railway Company, Limited, under Case V of Schedule D of the Income Tax Act, 1918, in respect of a rent paid to them under circumstances of which the following is a sufficient summary.

The Company was incorporated under the Companies Acts, 1862 and 1867, in December, 1870, with the objects of (*inter alia*) : (*a*) acquiring a concession for the construction of a railway between Frovi and Ludvika in the Kingdom of Sweden and constructing the railway authorised by such concession; (*b*) maintaining and working the railway so to be constructed, and entering into any working or other arrangements with any other company for connecting the said railway with any other system; (*c*) leasing the said railway to any person, persons or company. The registered office of the Company is situate at 11, Ironmonger Lane, London, E.C.3.

By an agreement dated 10th February, 1900, and made between the Company of the one part and the Traffic Company Grangesberg Oxelosund (hereinafter referred to as the Traffic Company) of the other part, the Company leased to the Traffic Company its railway between Frovi and Ludvika for a term of 50 years as from 1st January, 1900, with a right to either party to terminate the said agreement after the same had been in force for ten years. The sum of £33,500 (in the said agreement called an annual rent) was payable quarterly in advance by the Traffic Company to the Company, such quarterly payments to be made at the Company's Office in London. The said agreement of 10th February, 1900, was entered into at Stockholm and is in Swedish.

At an Extraordinary General Meeting of the Company, held at the Company's office in London, on 7th October, 1920, a resolution was passed, and afterwards duly confirmed, with a view to the alteration of the Articles of Association of the Company, so as to remove the control and management of the business of the Company from England to Sweden. The Commissioners were satisfied that since 22nd October, 1920, the business of the Company has been, and now is, controlled and managed from the head office at Stockholm, Sweden, and this fact was admitted on behalf of the Respondent.

On the 22nd October, 1920, at a meeting of the Board of Directors of the Company, three members of the said Board were appointed to be a Committee under Article 45A of the amended Articles of Association, to deal with transfers of shares in the United Kingdom, attach the seal of the Company to share and stock certificates, and to sign cheques on the London banking account of the Company. The Committee so appointed was empowered to transact merely formal administrative business in the United Kingdom.

Since the 22nd October, 1920, no ordinary meeting, general meeting, or Board meeting, of the Company has been held in the United Kingdom. All dividends have been declared in Sweden, and no part of the profits of the Company have been transmitted to the United Kingdom except in payment of dividends to the shareholders in the United Kingdom. Since 22nd October, 1920, the sum of £33,500 referred to above has been paid to the Company in Sweden.

The Commissioners confirmed the assessments.

The question is thus directly raised whether an English company registered under the Companies Acts, carrying on business abroad, the control and management of which is also abroad, can be made liable to pay Income Tax, not only in respect of moneys remitted to England, which it is admitted would be liable to Income Tax under the Rules applicable to Case V of Schedule D of the Income Tax Act, 1918, but also in respect of the full sum of rent which is not paid in or remitted to London. Although, as stated, the business of the Company is abroad, and the payment of the rent is made in Sweden, it is to be observed that not only is the Company registered in England, but the Secretary of the Company resides in London, and the seal of the Company is kept at the registered office of the Company in London. The Company has a banking account in London. Transfers of shares are made in London and registered there. The accounts of the Company are made up and audited in London. Dividends are paid to English shareholders and interest to English debenture holders from the registered office in London.

The relevant charging words of Schedule D are as follows: "Tax under this Schedule shall be charged in respect of— "(*a*) The annual profits or gains arising or accruing (i) to any "person residing in the United Kingdom from any kind of "property whatever, whether situate in the United Kingdom or "elsewhere."

The question therefore is: Does the Appellant Company reside in the United Kingdom within the above charging words? There can be no question that the £33,500 is rent within the meaning of Case V, Rule 1, so that the assessment is correctly made if the Company is resident in the United Kingdom.

Our attention was called to a passage in Dicey's Conflict of Laws (3rd Edition, page 163), where he gives certain rules for determining what is the domicil of a corporation, and adds that "as regards the domicil of a corporation the distinction between "residence and domicil does not exist." It is not easy to frame such rules, and it is less easy to apply them to the circumstances of a particular case. But although such rules may be of service and give some guidance, we have to follow decisions binding upon this Court.

We were referred to *The Attorney-General* v. *Alexander* (10 Ex. 20), in which it was decided that the Imperial Ottoman Bank was not liable to be assessed to Income Tax in respect of its whole profits "as a person residing within the United "Kingdom", but was liable only in respect of the profits arising from its business carried on in England under the clause of the charging Section applicable to non-residents. The Imperial Ottoman Bank was a corporation created by Turkish law. "If "it were resident anywhere," said the Chief Baron, "it must "be resident in Constantinople where alone it has its seat."

In the cases of *The Cesena Sulphur Company* v. *Nicholson*, and the *Calcutta Jute Mills* v. *Same*(1), decided in 1876, it was held that both Companies were liable to pay Income Tax on the whole of their profits wherever earned on the ground that they were residing in the United Kingdom. Both Companies were incorporated under the Companies Acts, 1862 and 1867, though the Cesena Company was afterwards registered for all purposes in Italy. Their activities were entirely conducted abroad. The dividends required for the English shareholders were the only part of the profits of the Cesena Company sent to the United Kingdom. The Calcutta Company had no office or other place of business in the United Kingdom, but for registration it had an address in London at the office of one of the Directors. Baron Huddleston, at page 454(2), stated that he did not think the principle of law was really disputed that the artificial residence which must be assigned to the artificial person called a corporation is the place where "the real business is carried on." The decision gives an illustration of the application of that term; for though for most—if not for all—practical purposes, many persons might have described the Companies as carrying on their real business, the one in Italy, the other in India, it was held that they were resident in the United Kingdom.

The question again arose and was decided in the case which has of late years dominated this field of law, the *De Beers Consolidated Mines, Limited* v. *Howe*(3), [1906] A.C. 455. That Company was incorporated and registered in South Africa. Lord Loreburn, whose speech embraced the opinions of the other learned Lords, adopted in terms the decision in the cases of the *Cesena Sulphur Company* and the *Calcutta Jute Mills*, that a company resides for purposes of Income Tax where its real business is carried on, where the central management and control actually abides. In accordance with the proper application of this test, the House held that the De Beers Company resided within the United Kingdom because the real business was carried on, and the central management and control was in England. Lord Loreburn also emphasised that this question

(1) 1 T.C. 83 and 88. (2) 1 T.C. at p. 103. (3) 5 T.C. 198.

was one of fact to be determined, not according to the construction of this or that regulation or by-law, but upon a scrutiny of the course of business and trading.

The Commissioners have held the Swedish Central Railway Company, Limited, liable, and, so far as that decision is one of fact, it is binding upon this Court if there is evidence to support it. But in my judgment, inasmuch as the cases of *The Cesena Sulphur Company* and the *Calcutta Jute Mills* were definitely accepted as correct by the House of Lords, the light they throw upon the facts of the present case must not be neglected, nor can I accept the argument that the only test is the question " Where is the real business carried on? " considered as a question at large. That test must be applied as interpreted in the decided cases. It is true the House of Lords rejected Mr. Cohen's proposition " that a company resides where it is " registered and nowhere else." But if registration, *per se*, was thus held not to determine the question, equally the proposition that a company has one residence and one only—namely, where it is registered—was also rejected.

The existence of more than one residence for a company has been recognised in cases where the jurisdiction of the Courts over companies and service of a writ upon them has been in question. See *Carron Iron Company* v. *Maclaren* (5 H.L. Cas. 416, 450), and *Newby* v. *Van Oppen* (7 Q.B. 293). In an Income Tax case, *The American Thread Company* v. *Joyce* (6 Tax Cases at page 31), Lord Justice Buckley says: " A " corporation like an individual may have more than one place " of residence." For an illustration that an individual may have more than one place of residence so as to render him liable to pay Income Tax see *Cooper* v. *Cadwalader* (5 T.C. 101). I cannot accept the view that for purposes of the Income Tax Acts there cannot be a residence here of a company incorporated and registered here, even if by foreign law, or by the tests applied here to companies registered abroad, if those tests were used by the law of a foreign country, the same company might be held to be resident also in that foreign country.

Mr. Justice Channell said in *Goerz* v. *Bell* ([1904] 2 K.B. 136, at page 146), without deciding the question: " It is possible " that the Company may have two residences, one of which " may be such as to expose it to liability to Income Tax." That was another case where it was held that a company registered abroad, but having a head office in London where the controlling power was exercised, is assessable upon the whole of its profits as being resident in the United Kingdom. I do not shrink from the view that a company may have two residences in the sense above suggested.

We were pressed with the decision and dicta in the case of *Bradbury* v. *English Sewing Cotton Company*(1), [1923] A.C. 744. No doubt in that case Viscount Cave says, at page 753(2): "The question, therefore, arises whether the locality of the "shares or stock of a company is to be determined by its place "of incorporation and registration or by its place of residence "and trading. After some doubt, I have come to the conclusion "that the latter is the true view." Lord Wrenbury distinguishes between residence and nationality, and decides that the former is the test relevant to liability to Income Tax. The question that had to be determined in that case was whether dividends received on shares of the American Thread Company were to be treated as income from foreign possessions. The American Thread Company had during the earlier years in question been held liable to pay Income Tax in respect of those dividends because it was during those years resident here. Could the same sum be afterwards treated as income from foreign possessions? Viscount Cave stated, as above, the narrow question that was for decision, namely, what was the locality of the shares and stocks of the Company. This decision does not in my opinion govern the present case, nor is it inconsistent with the view that a company may have more than one place of residence.

There is no case, unless it be suggested that the *Egyptian Hotels* case(3) is one, which decides that an English company is not "resident" here. That case, however, is not a decision which affords any principle for guidance on this point. The direct admission was there made in paragraph 11 of the Case that the Company resided in England. (See 6 Tax Cases at page 159.) Residence did not matter in that case, for the points raised, and successfully argued, were that only the moneys remitted to England could be taxed under Case V of Schedule D, and that the whole of the profits were not taxable under Case I. The actual decision of the Court of Appeal, which held good as the Lords were equally divided, was that no part of the carrying on the trade was done in this country. Only the spending of the profits, made abroad, occurred over here. It is to be noted that the Master of the Rolls observed (page 544) that none of the previous decisions touched the case, and that Lord Justice Buckley commenced his judgment by saying, at page 544: "This Company is incorporated in the United Kingdom; it is "therefore resident here."

As to the present case, the register of the shareholders is here, transfers of shares are made in London and registered there, and that may be not only an important but even a vital

(1) 8 T.C. 481. (2) *Ibid.* at p. 508.
(3) The Egyptian Hotels, Ltd., *v.* Mitchell, 6 T.C. 152 and 542.

matter to the Company, should there ever be a war between this country and Sweden. (See *Daimler Company* v. *Continental Tyre Company*, [1916] 2 A.C., at page 330.)

As I have said, if the question be one of fact, the Commissioners had in my judgment abundant evidence to come to the conclusion they did. But if, as I think, the question as presented by the Commissioners is one of law, then I am of opinion, for the reasons that have been given by Mr. Justice Rowlatt and those that I have ventured to add, that his judgment is right, and must be affirmed.

The appeal must be dismissed with costs.

Warrington L.J.—The question in this case is whether on the true construction of the Income Tax Act, 1918, and in the events which have happened, the Appellant Company was, during the material period, " residing in the United Kingdom " so as to be assessable to Income Tax in respect of profits or gains arising or accruing from certain property in Sweden. The material period was that of the financial years 1920–21 and 1921–22. The assessment in question was made under Case V of Schedule D in respect of income arising from possessions out of the United Kingdom. The Commissioners stated a Case for the opinion of the Court, and their decision was upheld by Mr. Justice Rowlatt; hence this appeal.

The Company is an English Company incorporated under the Companies Acts. The Commissioners have found that the real control and management of the Company has been since October, 1920, and was at the date of their decision, in Sweden. The real question is whether that fact, which, in the case of a foreign company the real control and management whereof was in the United Kingdom, would be sufficient to establish that it is residing here, is also sufficient to exclude, in the case of an English company, residence in the United Kingdom. The Company was incorporated in the year 1870, under the Companies Acts, 1862 and 1867. Its main objects were to construct, maintain and work a railway between Frovi and Ludvika in the Kingdom of Sweden. The railway was duly constructed. By an agreement in writing dated the 10th February, 1900, the railway was leased to a Swedish Traffic Company for 50 years from the 1st January, 1900, terminable as therein mentioned, at a yearly rent of £33,500 payable quarterly in advance at the Company's office in London. Until October, 1920, the control and management of the Company's affairs was in London, but by special resolutions duly passed and confirmed on the 22nd October, 1920, the Articles of Association were altered with the object of removing the control and management from London to Sweden, and the Commissioners have found, as already stated, that this object has been attained. The registered office of the Company is in London, the Secretary resides there, the register

of shareholders is kept there as required by Section 30 of the Companies (Consolidation) Act, 1908, and the seal of the Company is kept at the registered office. The Company has a banking account in London. So much of the profits as represent dividends payable to shareholders in the United Kingdom are transmitted to London, but all dividends are declared in Sweden, where all general meetings and meetings of the Board have been held since the 22nd October, 1920. A Committee of three members of the Board resident in the United Kingdom has been appointed to deal with the transfers of shares in the United Kingdom, to attach the seal to share and stock certificates and to sign cheques on the London banking account. Since the 22nd October, 1920, the rent above mentioned has been paid in Sweden, but no alteration providing for such payment has been made in the agreement of 1900.

The question on these facts is whether the Company is residing in the United Kingdom within the meaning of the Income Tax Act, 1918.

This case for the first time raises the question whether the fact that the real control and management of an English company is exercised abroad justifies the Court in holding that it is not resident here. This, and every other English company, of course, owes its existence to the Act under which it is incorporated. All its proceedings are directly or indirectly regulated by it and derive their validity from it. It is provided by Section 62 of the Companies (Consolidation) Act, 1908, that every company shall have a registered office to which all communications and notices may be addressed, and notice of the situation of which and of any change therein must be given to the Registrar. Under Section 131 the situation of the registered office determines the particular Court in which the company may be wound up. As already pointed out, the register of shareholders must be kept and must be open to inspection at such office. The conception of residence in the case of a fictitious person such as a company is, of course, artificial as is the company itself, and the locality of the residence can only be determined by analogy. In the absence of authority—and I will deal with the authorities presently—I should be prepared to hold that, having regard to the statutory provisions above mentioned, 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. For the purposes of the Income Tax Acts an individual may have more than one residence (*Cooper* v. *Cadwalader*, 5 T.C. 101), and I can see no reason for any distinction in this respect between an individual and a corporation. (See per Lord St. Leonards in *Carron Iron Company* v. *Maclaren*, 5 H.L. Cas. 416 and 458, and per Lord Justice Collins in *La Bourgogne*, [1899] 1 P. 16.) It is true that in these cases a

company was held to have a residence—or, as it was called by Lord St. Leonards, a domicil—in this country for purposes of founding jurisdiction, but in the case of a corporation it seems to me that there is no distinction between such a residence and residence generally, because it is evident that a corporation could not, as an individual can, be caught, merely temporarily present in this country, and so served with process. Moreover, when the Act provides that all communications and notices may be addressed to the registered office it seems to me to follow that the company must at all times be there ready to receive them. But even if I am wrong in the view that the registered office ought to be regarded as the statutory residence of the company, the facts in this case are sufficient to enable us to say that this Company at all events is residing there. I am quite prepared to hold that the keeping and entering up of the register of shareholders and its production for inspection are acts done by the corporation itself and are vital functions of its being which can only be performed where it is itself resident, and that accordingly this Company is, for that reason, resident in the United Kingdom. I think the other facts mentioned by Mr. Justice Rowlatt point in the same direction, but I prefer to rely on those connected with the register, because they are matters as to which, under the provisions of the Companies Act, the Company has no option.

I now turn to the authorities. The first general observation to be made is that there is no case in which it has been decided that an English company, the real control and management whereof is abroad, is not residing in the United Kingdom. The point has never called for decision. In the *Egyptian Hotels* case(1), [1914] 3 K.B. 118, and [1915] A.C. 1022, the facts raised the point, but residence in the United Kingdom was admitted. In the Court of Appeal, [1914] 3 K.B., at page 132, Lord Justice Buckley says: "This Company is incorporated in "the United Kingdom; it is therefore resident here." But this view was expressed without argument, and appears to be little more than an acceptance by the learned Lord Justice as correct of an admission on the part of the Company. The question decided was that a trade controlled and managed in Egypt was not carried on here, and the Company, therefore, was not liable to be assessed to tax under Case I of Schedule D, on the authority of *Colquhoun* v. *Brooks*(2), 14 App. Cas. 493. The only other case in which the question of residence has arisen in reference to an English company is *Cesena Sulphur Company* v. *Nicholson*(3), 1 Ex. D. 428, and there the Court came to the conclusion that the real and substantial business of the two Companies concerned was carried on in England, so

(1) The Egyptian Hotels, Ltd., v. Mitchell, 6 T.C. 152 and 542.
(2) 2 T.C. 490. (3) 1 T.C. 88.

that it became unnecessary to decide the question which arises in the present case. It is true that Baron Huddleston expressed the opinion that the registration in this country was only a circumstance to be taken into account, but it does not appear that there was any discussion as to the effect of the statutory provisions relating to the registered office, to which I have referred above.

The other authorities are cases in which foreign companies have been held to reside in the United Kingdom by reason of the real control and management thereof and of the business being in this country, and they are relied upon by the Appellants because of the terms in which the views of the learned Judges concerned in the decisions have been expressed, showing, as it is said, that the control and management finally determines the residence, not only of a foreign, but of an English company.

The leading case on this matter is *De Beers Consolidated Mines, Limited* v. *Howe*(1), [1906] A.C. 455. The Lord Chancellor, Lord Loreburn, there said at page 458(2): "I "cannot adopt Mr. Cohen's contention." (That was a contention that the company resides where it is registered.) "In "applying the conception of residence to a company, we ought, "I think, to proceed as nearly as we can upon the analogy of an "individual. A company cannot eat or sleep, but it can keep "house and do business. We ought, therefore, to see where it "really keeps house and does business. An individual may be of "foreign nationality, and yet reside in the United Kingdom. "So may a company. Otherwise, it might have its chief seat of "management and its centre of trading in England, under the "protection of English law, and yet escape the appropriate "taxation by the simple expedient of being registered abroad "and distributing its dividends abroad. The decision of Chief "Baron Kelly and Baron Huddleston, in the *Calcutta Jute Mills* "v. *Nicholson* and the *Cesena Sulphur Co.* v. *Nicholson*, now "thirty years ago, involved the principle that a company resides, "for purposes of Income Tax, where its real business is carried "on. Those decisions have been acted upon ever since. I "regard that as the true rule; and the real business is carried "on where the central management and control actually abides."

It is said here that, applying what Lord Loreburn said was the true rule, the present Company must be held to be resident in Sweden and not here. It is in these last three words that the fallacy, in my opinion, lies. The Company may have a residence in Sweden—as to this I express no opinion, for it may involve questions of Swedish law—but I cannot see why it should not always have a residence in the United Kingdom, and if it has, that is sufficient for the present purpose. (See Mr. Justice Channell in *Goerz* v. *Bell*, [1904] 2 K.B. 136, at page

(1) 5 T.C. 198. (2) *Ibid.* at p. 212.

146.) In this, as in other cases, it is in my opinion wrong to apply expressions of learned Judges used in reference to the facts of the case before them to essentially different facts, and thus give to them a meaning and effect which such Judges themselves might well repudiate.

The question as to the residence in this country of a foreign company again arose in the case of *The American Thread Company* v. *Joyce*, 6 T.C. 1, and was decided in accordance with the principle laid down in the *De Beers* case, but Lord Justice Buckley, at page 31, recognised that the place of incorporation might be a place of residence though not necessarily the only one.

The New Zealand Shipping Co. v. *Thew*, 8 T.C. 208, is another example of the application of the same principle, and I should not refer to it but for the fact that some stress was laid on the use by Lord Buckmaster, in reference to *De Beers* case, of the expression that what has to be ascertained is the " real " residence of the company. For myself, I do not attach much importance to the expression, but it is right to say that it is not used by Lord Loreburn; what he says is one must ascertain where it " really keeps house and does business." Lord Buckmaster, however, uses another expression which, with all respect to him, is not quite accurate, and the inaccuracy may be of some importance. He says at page 229 : " It has long been held that " in order to determine whether a company is resident in one " place or in another the registered office of the company is only " an incident in the evidence." What has in fact been said is that the place of incorporation is only an incident; the difference is material because in the cases of foreign companies the only fact found was the incorporation abroad, and there was no evidence as to any provisions of the foreign law as to registered office. In the only case of an English company in which the matter was discussed (*The Cesena Sulphur Co.* v. *Nicholson*[1]), Baron Huddleston uses the expression " the place of registra- " tion " and, as I have already pointed out, the statutory provisions as to the registered office were not mentioned.

There remains one other case to which I ought to refer, *Bradbury* v. *English Sewing Cotton Company*[2], [1923] A.C. 744. The question decided in that case was whether profits derived from shares held by an English company in the American Thread Company earned during the period of its residence in England as already mentioned, could, notwithstanding that fact, be treated as profits of the English Company from a foreign possession, and it was held that the previous decision as to the residence of the American Company was conclusive against the Crown. I have again carefully considered the speeches in that

(1) 1 T.C. 88. (2) 8 T.C. 481.

case, and particularly those of Lord Cave and Lord Wrenbury, and I cannot find in them anything inconsistent with the views I have expressed, always bearing in mind the fact that the company the residence of which they were discussing was a foreign company.

For the reasons I have given, I think on principle this English Company was during the material period residing in the United Kingdom, and there is no authority to the contrary. The decision of Mr. Justice Rowlatt was, therefore, in my opinion, correct, and this appeal must be dismissed with costs.

Atkin, L.J.—I do not propose to set out all the facts found by the Commissioners. It it sufficient to say that they find that "the real control and management of the Company is in "Sweden," and, at the same time, find that the Company is a person residing in the United Kingdom. The learned Judge has held that a company may reside in two places and that there is evidence upon which the Commissioners could find residence in England. If for the purposes of Income Tax dual residence is possible, I agree with this and, for the reasons given by the learned Judge and my Brothers, I think that there was evidence upon which the Commissioners could find residence in England, unless for the purposes of Income Tax the residence of a limited company has a special meaning and can be only one place. If only in one place, there is strong authority for saying that such place is where the central management and control is. For the purposes of deciding where the "residence" of an incorporated company is, we are told that we are to proceed as nearly as we can upon the analogy of an individual (*De Beers* v. *Howe*[1], [1906] A.C., per Lord Loreburn, at page 458). An individual may reside in more places than one (*Cooper* v. *Cadwalader*, 5 T.C. 101—an Income Tax case). So, for other purposes than Income Tax, may a corporation—see *La Bourgogne*, [1899] A.C. 431, where a foreign shipping corporation with its head office in Paris had an office here with its name painted up and did business through an agent. Lord Halsbury said: "It "appears to me that as a consequence of these facts the "Appellants are resident here in the only sense in which a com- "pany can be resident—to use the phrase which Mr. Joseph "Walton has so constantly used, they are 'here.'" In this sense it is obvious that a company's residence may be not singular or dual, but multiple. In a recent case in this Court we had to consider the position of a great American life assurance corporation which carried on business in its own name in most of the civilised countries of the world, and we held that a debt incurred by it in this country payable at its office in this country was situate here, both because the company was resident here and because it had localised the debt here. Herein lies the

(1) 5 T.C. 198.

difficulty of the case, for if what I have called multiple residence is recognised here for Income Tax purposes, foreign corporations so resident and making part of their profits here will be liable to pay Income Tax on the whole of their profits wherever made, and we may presume that foreign nations will not be slow to follow suit in respect of English companies of similarly wide activities. For these reasons it has been argued that the Court would not recognise more than two residences, one what Lord Buckmaster (*New Zealand Shipping Co.* v. *Thew*)(1), calls "the real residence" where the real business is carried on, the other the place where the company is incorporated and has a registered office, where it exercises at any rate some of the functions of its corporate life, where the laws operate which brought it into existence, regulate its constitution and will regulate its dissolution. On the other hand, if a company may have more than one residence, it is not easy to see why its residences should be confined to two. The argument for the Appellants was that it has been decided that the test of residence for Income Tax purposes admits of only one residence, the place where the real business is really carried on. It will be necessary to consider the decisions and dicta on this point.

In *Attorney-General* v. *Alexander*, (1874) 10 Ex. 20, the Imperial Ottoman Bank, who carried on a branch in London by a London committee but were established in Constantinople by Turkish law and had their seat fixed there, were held not to be resident in the United Kingdom so as to be assessable for all their profits wherever made. "London," said Chief Baron Kelly, "is not the chief seat of carrying on the business of "the Bank." In *Cesena Sulphur Company, Limited*, and *Calcutta Jute Mills Company, Limited* v. *Nicholson*(2), (1876) 1 Ex. D. 428, there were two English companies concerned, both registered in England with registered offices in England. In both cases the actual operations from which the profits were made took place abroad, in Italy and India respectively. Chief Baron Kelly, at page 445(3), answering the question what is the meaning of residence as applied to a joint stock company and to that case, said, "The answer is—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 or those who repre-"sent it are held, and where its governing body meets in bodily "presence." Baron Huddleston, after saying that residence means not an artificial residence but actual residence and approving of Counsel's argument that it means the place where the real trade and business is carried on, proceeds to negative

(1) 8 T.C. 208.
(2) 1 T.C. 83 and 88. (3) 1 T.C. at p. 95.

the argument that registration of a company in England was conclusive of residence in England, stating that it is a strong circumstance analogous in an individual to the place of birth, and then proceeds, " But I do not think that the principle of " law is really disputed that the artificial residence which must " be assigned to the artificial person called a corporation is the " place where its real business is carried on. I have to ask " myself where the real and substantial business was carried " on." He proceeds to say that in both cases it was in England. The importance of this judgment is that the test is being applied to English companies registered here with registered offices here and subject to all the provisions of the Companies Act, 1862. I cannot see how Baron Huddleston's test admits of dual residence, or at any rate of any residence that is not determined by the question where is the real business carried on. In *Goerz* v. *Bell*, [1904] 2 K.B. 136, Mr. Justice Channell had to deal with a company registered in the Transvaal but with its head office and directing powers in this country. After saying that it was possible, though he did not decide the point, that a company might have two residences, he came to the conclusion that the company was resident in England and if he had to decide between London and Johannesburg, he would prefer London. The next case is *De Beers* v. *Howe*(1), [1906] A.C. 455, to which I have already referred. It is contended by the Appellants that this decision determines the point in their favour. In that case the Company was registered in the Cape Colony; its head office, by Article 3 of the Articles, was at Kimberley, where, by the Articles, all general meetings had to be held; its business was however controlled by Board meetings in London, and the Commissioners had found that the trade or business was exercised by the Company within the United Kingdom at its London office and that the head and seat and directing power were at the office in London. Lord Loreburn, after refusing to accept the contention that a company resides where it is registered and nowhere else, and after making the reference to the analogy of an individual which I have mentioned, says(2), " The decision of Chief Baron Kelly and Baron Hud- " dleston, in the *Calcutta Jute Mills* v. *Nicholson* and the *Cesena* " *Sulphur Co.* v. *Nicholson*, now thirty years ago, involved the " principle that a company resides, for purposes of Income Tax, " where its real business is carried on. Those decisions have " been acted upon ever since. I regard that as the true rule, " and the real business is carried on where the central manage- " ment and control actually abides. It remains to be considered " whether the present case falls within that rule." He then held that, applying this rule, the finding of fact of the Commissioners established that the Company was resident in the United Kingdom. With this judgment Lord Macnaghten, Lord

(1) 5 T.C. 198. (2) *Ibid.* at p. 213.

Robertson and Lord Atkinson expressly agreed. It is truly said that this decision only relates to a company registered abroad, but for the purposes of testing the residence of a foreign company Lord Loreburn approves and adopts the test prescribed by the Exchequer Division for an English company. It can hardly be doubted that in the *Cesena* case the test adopted rejected incorporation and registered office as sufficient, and required investigation of further facts, namely, the place of the real business, and that the judgment in that case proceeded upon the basis that such test was the only test. If it is laid down in the lower Court as the only test of residence and is expressly approved and adopted in the House of Lords as the test of residence, I find it very difficult to avoid the conclusion that it was adopted as the only test. There is nothing in the judgment of Lord Loreburn which suggests that he had in his mind the possibility of dual residence involving some other test of residence than that which he laid down, and a test which if it were available would be different from and inconsistent with the test accepted from the Exchequer Division. The doctrine of residence of a trading corporation which appears to me to be approved by the decision in *De Beers* v. *Howe*, namely, that the sole test is where is the business really carried on, finds support from dicta in several succeeding cases in the House of Lords. In *Daimler Company, Ltd.*, v. *Continental Tyre and Rubber Company (Great Britain), Ltd.*, [1916] 2 A.C. 307, one of the questions debated was whether the Continental Company was an alien enemy. The Company was registered in England and had its registered office in London and was formed for the purpose of selling in the United Kingdom motor-car tyres made in Germany by a German company. Its directors were resident in Germany and, since the war, at any rate, met in Germany. In the course of discussing the question of enemy character, Lord Atkinson, at page 318, said, " Strange as it may appear, the " minute book of the Company showing presumably from what " centre the business of the Company was managed and directed " was not given in evidence before any of the three tribunals. " The embarrassing and, as I think, rather unfortunate result " of this omission is that the full facts showing in what country, " England or Germany, lay the real business centre from which " the governing and directing minds of the Company operated " regulating and controlling its important affairs were never dis- " closed. These are, however, the very things which, for the " purpose of Income Tax, at all events, have been held to deter- " mine the place of residence of a company like the Respondent " Company so far as such a fictitious legal entity can have a " residence (*De Beers Consolidated Mines* v. *Howe*), and I can " see no reason why for the purpose of deciding whether the " carrying on by such a company of its trade or business does or " does not amount to a trading with the enemy, they should not

" equally determine its place of residence." Those words are obiter, but they apply the principle of *De Beers* v. *Howe* back again, as in the *Cesena* case, to an English company, and I do not think that Lord Atkinson, in saying that the things mentioned would " determine the place of residence," meant would " determine one of the places of residence " of a company.

In *New Zealand Shipping Company* v. *Thew*, 8 T.C. 208, Lord Buckmaster had to deal with the case of a company registered in New Zealand with a registered office fixed by the Memorandum of Association in New Zealand and a register of members kept both in New Zealand and in London. He says, at page 229, " Now it has long been held that in order to deter- " mine whether a company is resident in one place or in another " the registered office of the company is only an incident in the " evidence. In the *De Beers* case (5 T.C. 198) it was stated " that you must find out what is the chief seat of management " and the centre of trading of the company in order to ascertain " what is its real residence; and again in the *Cesena Sulphur* " *Company* v. *Nicholson* (1 T.C. 88), Chief Baron Kelly said : " ' The real business is carried on where the central manage- " ' ment and control actually abides.' " I notice two things in these sentences : first that Lord Buckmaster refers to the two cases he mentions as laying down the same test, one of them being the case of an English company and the other of a foreign company; secondly, that he speaks of " the real residence," which presumably means the only residence.

In *Bradbury* v. *English Sewing Cotton Company*(1), [1923] A.C. 744, a company registered in the United States had for three years been taxed as resident in this country on the principle laid down in the *De Beers* case. The control and real residence was then transferred to the United States. In assessing the profits of a corporation holding shares in the American Company, the question arose whether during the years the American Company was resident in this country the English shareholder was receiving dividends on the shares as profits from a foreign possession. I think that the ultimate decision was based upon the ground that the Revenue Authorities having taxed the Company during the three years as resident in England, could not thereafter be heard to say that during those years it was resident in America, and that the headnote in the Law Reports states the decision too broadly. But, in the course of his judgment, Lord Cave said, at page 753(2), " The question " therefore arises whether the locality of the shares or stock of " a company is to be determined by its place of incorporation " and registration or by its place of residence and trading. " After some doubt, I have come to the conclusion that the " latter is the true view. ' Shares in a company,' said Sir

(1) 8 T.C. 481. (2) 8 T.C. at p. 508.

" James Hannen, in *re Ewing*, (1881) 6 P.O. at page 23, ' are " ' locally situate where the head office is; ' and I think this " means that they are locally situate where the company's " principal place of business is found. . . . It was decided " in *Joyce's* case(1) that during the first three years the American " Company was here for all the purposes of Income Tax; and " the Company being here I find it impossible to hold that its " stock was abroad." I think that so far as that Company is concerned, Lord Cave was expressly negativing the possibility of double residence, one in the place of incorporation and registration and one in the place where the principal place of business was.

It is necessary to refer to the case of *Mitchell* v. *The Egyptian Hotels*(2). That was a case of a company registered in England with its registered office in London, which carried on the business of conducting an hotel in Egypt. It was admitted before the Commissioners that the Company was resident in England, but, as it was assessed on its full profits, it was further necessary for the Revenue Authorities to show that some part of the trade was exercised in England; otherwise, under the decision in *Colquhoun* v. *Brooks*(3), the Company could only be assessed on such of its profits as were remitted to this country. The Commissioners found that the head seat and controlling power of the Company were in England. But this finding was reversed in the Court of Appeal, who held that the control and management was in Egypt and that therefore the trade was solely exercised in Egypt. This decision was upheld in the House of Lords, the members being equally divided. In the result, therefore, we have facts which, on the principle of *De Beers*, show residence abroad, and we have an admission that the Company was resident here. And in addition to the admission we have the statement by Lord Justice Buckley: " This Company is incorporated in the United " Kingdom; it is therefore resident here ", a proposition which in its wide form is clearly inconsistent with the *Cesena* case(4).

All that it is necessary to say is that the case shows that the test which determines residence may in some cases determine also the place where the trade is wholly carried on; and it was in the latter aspect only that the Courts had to deal with the facts in view of the admission of residence in England made before the Commissioners and recorded by them in their findings of fact.

San Paulo (Brazilian) Railway Company v. *Carter*(5), [1896] A.C. 31, is a case raising the same point as the *Egyptian Hotels* case. There a company registered in England owned a railway

(1) The American Thread Company *v.* Joyce, 6 T.C. 1 and 163.
(2) 6 T.C. 152 and 542.
(3) 2 T.C. 490.
(4) 1 T.C. 83.
(5) 3 T.C. 407.

in Brazil where the business operations took place. In that case also it was admitted that the Company was resident in England and it was found that the control and direction was in London where the business of the Company was carried on under the direction of the Directors. The decision of the House of Lords in that case was that the business was at any rate partially, if not wholly, carried on in this country and the Company was therefore not protected from assessment by the principle of *Colquhoun* v. *Brooks*. No question of residence therefore arose.

In this condition of the authorities, we are asked to decide for the first time that for Income Tax purposes there are two tests of residence for corporations; one, place of incorporation, registered office and perhaps in addition some functional activity; secondly, place where the real business is carried on; and that therefore a company may have two residences. It appears to me that the *Cesena* case(1) expressly negatives the first test, and that case has the authority of the House of Lords. The weight of authority seems to me to indicate that for Income Tax purposes there can only be one residence, " the real resi- " dence," and that is the place where the real business is carried on. In principle I should have said that the place of incorporation and of registered office is conclusive of residence, and that if one residence only is possible there is that residence. In other words, I should respectfully agree with the dictum of Lord Wrenbury in the *Egyptian Hotels* case above cited. But that view seems to me excluded by the *Cesena* case. Nor do I myself see any difficulty in saying that a corporation can reside in two places, but for Income Tax purposes, as I have said, that seems excluded by the authorities cited. It is plain, however, that if a company may have, for Income Tax purposes, a dual residence, it has to be explained why, for the same purposes, it may not have multiple residence, and how multiple residence for purposes of jurisdiction is reduced, if it is reduced, to dual residence for Income Tax purposes. These problems, in my view of the case, must be solved elsewhere.

I feel constrained by authority to come to the conclusion that this appeal should be allowed and the assessment discharged.

Notice of appeal having been given against the decision in the Court of Appeal, the case came on for hearing in the House of Lords before Viscount Cave (Lord Chancellor) and Lords Dunedin, Atkinson, Sumner and Buckmaster on the 27th and 29th January, 1925, when judgment was reserved.

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(1) 1 T.C. 83.

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

On the 13th March, 1925, judgment was given in favour of the Crown with costs (Lord Atkinson dissenting), confirming the decision of the Court below.

JUDGMENT.

Cave, L.C.—My Lords, the Appellant Company was incorporated under the Companies Acts in the year 1870, with the object of constructing and working a railway in Sweden. This railway was duly constructed, and in the year 1900 was leased by the Company to a Swedish company for a term of 50 years at the yearly rent of £33,500. In October, 1920, a special resolution was passed altering the Articles of Association of the Appellant Company so as to remove the control and management of the business of the Company from England to Sweden; and since that time the general meetings of the shareholders (of whom the majority are of Swedish nationality) and the meetings of the Board have been held in Sweden, all dividends have been declared there, and no part of the profits of the Company has been transmitted to the United Kingdom except for payment of dividends to the shareholders in the United Kingdom. In exercise of a power conferred by the Articles of Association, as altered by the special resolution, the Board, on the 22nd October, 1920, appointed three Directors to be a Committee to deal with transfers, to attach the seal of the Company to share and stock certificates, and to sign cheques on the London banking account of the Company. Since that time this Committee has met regularly in London for the purposes mentioned. The Secretary of the Company resides in London, and the seal of the Company is kept at the registered office of the Company in London. The Company has a banking account in London. Transfers of shares are made in London and registered there. The accounts of the Company are made up and audited in London. Dividends are paid to English shareholders and interest to English debenture holders from the registered office in London.

In these circumstances the General Commissioners assessed the Company to Income Tax under Case V of Schedule D in respect of the yearly rent of £33,500 for the years ending on the 5th April, 1921, and the 5th April, 1922. On appeal to the Special Commissioners, those Commissioners confirmed the assessment but stated a Case for the opinion of the High Court. In this Case the Commissioners stated the above facts, and, while finding that the business of the Company " has been and now is

" controlled and managed from the Head Office, Stockholm, " Sweden," they also held that the Appellant Company was " a person residing in the United Kingdom " and assessable under Case V of Schedule D. They further held that the agreement of 1900 was a lease and that the £33,500 was " rent " within the meaning of Rule 1 of the Rules applicable to Case V, so as to be taxable on the full amount and not only on the share remitted to the United Kingdom; and on this point no question is now raised.

Upon the argument of the Case Stated before Mr. Justice Rowlatt the learned Judge held that the Commissioners were right in their decision; and, on appeal to the Court of Appeal, that Court by a majority confirmed the decision of Mr. Justice Rowlatt. Lord Justice Atkin dissented, being of opinion that he was bound by the authorities to hold that a company could only have one residence for the purposes of the Income Tax Acts, such residence being the place where (in the words used by Lord Loreburn in *De Beers* v. *Howe*(1), [1906] A.C. 455) the real business of the company is carried on and where the central management and control actually abides. The present appeal is against the decision of the Court of Appeal.

My Lords, in my opinion a registered company can have more than one residence for the purposes of the Income Tax Acts. It has often been pointed out that a company cannot in the ordinary sense " reside " anywhere, and that in applying the conception of residence to a company it is necessary (as Lord Loreburn said in the *De Beers* case) to proceed as nearly as possible upon the analogy of an individual. " A company," he said(2), " cannot eat or sleep, but it can keep house and do " business. We ought, therefore, to see where it really keeps " house and does business . . . The decision of Chief Baron " Kelly and Baron Huddleston in *The Calcutta Jute Mills* v. " *Nicholson* and *The Cesena Sulphur Company* v. *Nicholson*(3), " (1876) 1 Ex. D. 428, now thirty years ago, involved the " principle that a company resides for purposes of Income Tax " where its real business is carried on. Those decisions have " been acted upon ever since. I regard that as the true rule; " and the real business is carried on where the central manage- " ment and control actually abides."

The effect of this decision is that, when the central management and control of a company abides in a particular place, the company is held for purposes of Income Tax to have a residence in that place; but it does not follow that it cannot have a residence elsewhere. An individual may clearly have more than one residence (see *Cooper* v. *Cadwalader*, (1904) 5 T.C. 101); and in principle there appears to be no reason why a company should

(1) De Beers Consolidated Mines, Ltd. *v.* Howe, 5 T.C. 198.
(2) *Ibid.* at p. 212. (3) 1 T.C. 83 and 88.

not be in the same position. The central management and control of a company may be divided, and it may " keep house and do business " in more than one place; and if so, it may have more than one residence.

When the authorities are examined, they do not appear to me to be inconsistent with the above view. In *Cesena Sulphur Company* v. *Nicholson* and *Calcutta Jute Mills Company* v. *The Same*(1), (1876) 1 Ex. D. 428, it was held that a company which was registered in the United Kingdom, and whose directors managed from this country a foreign business, was resident in the United Kingdom within the meaning of the Income Tax Acts; but the question whether such a company also resided in the country where its business was carried on was not considered, and Chief Baron Kelly left open the question whether the same joint stock company might reside at more than one place. In *San Paulo (Brazilian) Railway Company* v. *Carter*(2), [1896] A.C. 31, it was held that a company registered in the United Kingdom and carrying on its business partly here and partly abroad, was taxable under Case I and not under Case V of Schedule D. It was plain that the company was resident here, and no question of double residence arose. In *Goerz* v. *Bell*, [1904] 2 K.B. 136, the decision was that a company registered in a foreign country, but having its head office and central management in London, was taxable here as a person residing in the United Kingdom. The question whether a company could have two residences was not material; but Mr. Justice Channell said (at page 146): " it " is possible, though I do not decide the question one way or the " other, that the company may have two residences . . . That " is clear in the case of a person, and I think the condition of " things might be the same with regard to a company." In *De Beers* v. *Howe*(3), [1905] 2 K.B. 612, [1906] A.C. 455, which was a case of a company registered in a British colony and partly managed from London, the decision was in accordance with that given in *Goerz* v. *Bell*. Mr. Justice Phillimore in giving judgment in the High Court, said " As was pointed out " in *Goerz* v. *Bell*, a person and a company may have for the " purposes of taxation two residences; " and on appeal to the House of Lords no opinion to the contrary was given. *The American Thread Company* v. *Joyce*, (1912) 6 T.C. 1 and 163, was another case in which a company registered abroad but controlled and managed in the United Kingdom was held to be resident here; and Lord Justice Buckley in giving judgment in the Court of Appeal, said(4): " A corporation, like an " individual, may have more than one place of residence."

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(1) 1 T.C. 83 and 88. (2) 3 T.C. 407.
(3) De Beers Consolidated Mines, Ltd. *v.* Howe, 5 T.C. 198.
(4) 6 T.C. at p. 31.

In all the cases above cited the companies concerned—some of them registered here and others registered overseas—were controlled and managed (either wholly or partly) by an English Board meeting in England; and this being so, they were held to be "resident" here and taxable under Case I. In these circumstances the question whether they were also resident elsewhere did not arise, and the expressions quoted above as to the possibility in such a case of a double residence were in the nature of *obiter dicta*. But in *Mitchell* v. *The Egyptian Hotels*(1), [1914] 3 K.B. 118, [1915] A.C. 1022, the point which is now under discussion actually arose. In that case a company incorporated in the United Kingdom carried on a hotel business in Egypt; and under the Articles of Association, as altered by special resolution, the company's affairs were to be carried on and managed by a local board meeting in Egypt, and the powers of the London board were confined to keeping accounts, recommending dividends, and controlling the capital. It was admitted that the company resided in England for the purposes of the Income Tax Acts; and the question for decision was whether the company's trade was carried on partially in England so that it was taxable under Case I in respect of its whole profits in accordance with the *San Paulo* case(2), or whether, the trade being carried on wholly abroad, it was assessable only under Case V in respect of profits received in this country. The decision of the Court of Appeal was that the whole control and management of the company's trade was in Egypt and not here, and accordingly that Case V and not Case I applied; and on appeal to this House, the voices being equal, the decision of the Court of Appeal was upheld. It is noticeable that the facts, as found by the Commissioners and interpreted in the Court of Appeal and in this House, were sufficient according to the principle of the *De Beers* case(3) to establish residence in Egypt, so that, if a company can have but one residence, namely, the place where its control and management abides, it must have been held that the company being resident in Egypt was not resident here, and accordingly was not taxable at all; but no such suggestion was made either by counsel or by any member of the tribunals by which the decision was given and upheld. This being so, while the case does not expressly decide that a company may have two residences for Income Tax purposes, the decision appears to be inconsistent with any other view.

In *New Zealand Shipping Company* v. *Thew*, (1922) 8 T.C. 208, the principle of the *De Beers* case was again applied by this House to a company registered overseas; but again no question of double residence arose.

(1) 6 T.C. 152 and 542.
(2) San Paulo (Brazilian) Railway Company *v.* Carter, 3 T.C. 407.
(3) De Beers Consolidated Mines, Ltd. *v.* Howe, 5 T.C. 198.

There remains the case of *Bradbury* v. *English Sewing Cotton Company*(1), [1923] A.C. 744, as to which, in view of the interpretation put upon it by Lord Justice Atkin, it is necessary to say something. In that case the question arose whether dividends paid by the American Thread Company at a time when, according to the above cited decision in *Joyce's* case(2), it was controlled and managed from Liverpool and was for Income Tax purposes resident there, were to be treated in the hands of an English shareholder as profits from a foreign business; and it was held by the Court of Appeal and by this House that they were not. The Crown, having established in *Joyce's* case that the profits of the company during the period in question were, for the purpose of taxing the company, to be treated as earned here, could not now be heard to say that for the purpose of taxing the shareholders they were earned abroad. The source of income was the same in both cases. It is obvious that, so far as the decision goes, the case did not establish that a company can have only one residence; and my own observations, to which Lord Justice Atkin refers, were not directed to any question of residence but to the position of the shares as a source of income for Income Tax purposes. The point to which I was directing my attention is very clearly put by Lord Wrenbury in his speech in the same case (page 767)(3).

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

In the present case it was found by the Commissioners that, while the business of the Company was controlled and managed from the head office at Stockholm, so that the Company would in the contemplation of English law have a residence in Sweden, the Company was resident in the United Kingdom for the purposes of the Income Tax Acts; and it was hardly disputed that, assuming that a company can have two residences, there was sufficient material upon which that finding could be based. I am not at present prepared to say that registration in the United Kingdom would itself be sufficient proof of residence here; that point does not arise in this case, and I express no opinion upon it. But, however that may be, I am satisfied that the fact of registration together with the other circumstances

(1) 8 T.C. 481.
(2) The American Thread Company v. Joyce, 6 T.C. 1 and 163.
(3) 8 T.C. at p. 517.

which were found by the Commissioners to exist, were sufficient to enable them to arrive at their finding. It may be noted that the distinction between Case I and Case V, which bulked so largely in some of the cases cited, is immaterial in the present case, and it need not now be considered.

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

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

The first is that, inasmuch as Lord Loreburn in the *De Beers* case(1) professedly founded his judgment on the decisions in *Calcutta Jute Mills* and *Cesena Sulphur Company*(2), in both of which cases the place of registration coincided with the place of the head office where the business was really managed, it is impossible to hold that the test of the latter alone affords a test of the sole residence possible in the case of a company; and the dictum of Lord Loreburn is really the sheet anchor of the Appellants' contention.

The second is that in view of what the Lord Chancellor has just said as to the terms of his own judgment in *Bradbury* v. *English Sewing Cotton Company*(3), I think it expedient to remark that there is no inconsistency between the decision in that case and the decision in *Brassard* (in place of *Levesque*) v. *Smith* in the Privy Council, [1925] A.C. 371. There the question did not turn on residence but on the locality of property; but I have no doubt that there also there was given an example of a company which had more than one residence.

Lord Atkinson.—My Lords, I have read and anxiously considered the judgments which have just been delivered by my two noble friends who have preceded me. I regret extremely that I am unable to concur with them. I take the view of the authorities expressed at length in the able judgment delivered in the Court of Appeal by Lord Justice Atkin, and, like him, am convinced that these judgments cannot be reconciled with the cases which have been decided in this country during the last half century. On the question of the mode of acquisition by an incorporated company of a residence here, within the meaning of the Income Tax Acts, Lord Justice Atkin has clearly and ably analysed most, if not all, of the authorities dealing with it. I need not attempt to perform again the task he has so well performed, and as the facts have been already fully stated, I need only restate them as far as it may be necessary to make this

(1) 5 T.C. 198. (2) 1 T.C. 83 and 88. (3) 8 T.C. 481.

my judgment intelligible. I express no opinion as to whether it would be wise or unwise, just or unjust, manageable or embarrassing to confer upon incorporated companies the privilege of acquiring legally, for the purpose of the Income Tax Acts, two or more residences; but I have the strongest opinion that such an acquisition would conflict with the principles embodied in the authorities I have mentioned. It is, I think, not only not authorised by them, but is, on the contrary, in effect, forbidden by them. The word " person " is, no doubt, frequently used in Schedule D of the Income Tax Acts, and, of course, I am aware that an incorporated company is, according to our law, a " person " and that, therefore, companies which, like the Appellant Company in this case, manage great commercial or manufacturing enterprises in different parts of the world must answer to the description of persons to come within the reach of the Income Tax Acts. I have seen that it has been frequently said in argument in some of the authorities to which we have referred, if not in this case, " that if an individual, a real " person, can acquire as many residences as he pleases, why " should not this fictitious person, a company, be permitted by " the law to do the same." A false analogy is the most misleading of all things. And I think if one considers, even for a moment, the means and methods by which a real person can acquire a residence, or several residences, it will be obvious that there is no real analogy between the two processes, and that the inference suggested by this question cannot reasonably be drawn. A real person can acquire a residence in a house by eating and sleeping in it, though he should be a hopeless paralytic or an imbecile or a lunatic, or whether he is capable of transacting business, or has any business to transact, or whether he moves from house to house to improve his health, or promote his pleasure, or gratify his whims, whereas these incorporated companies have, as a rule, great enterprises to promote, conduct, govern and control. It was because of this, I think, that Lord Loreburn, in giving judgment in this House, in the *De Beers* case(1), [1906] A.C. 455, said first: "A com- " pany cannot eat, or sleep, but it can keep house and do " business. We ought, therefore, to see where it really keeps " house and does business." Further on he states what he means by the words " doing business." He said " the decision " of Chief Baron Kelly and Baron Huddleston in *Calcutta Jute* " *Mills* v. *Nicholson* and *The Cesena Sulphur Company* v. " *Nicholson*(2), 1 Ex. D. 428, now thirty years ago, involved the " principle that a company resides for the purposes of Income " Tax where its real business is carried on. Those decisions " have been acted on ever since. I regard that as the true rule, " and the real business is carried on where the central manage-

(1) De Beers Consolidated Mines, Ltd. v. Howe, 5 T.C. 198, at p. 212.
(2) 1 T.C. 83 and 88.

" ment and control actually abides." That judgment was concurred in by the four other members of the House who heard the case. But if the true rule be, as Lord Loreburn said, that the residence is where " the central management and control " abides," then, unless a thing can have two or three different and separate centres, it would appear to me to be quite impossible, according to the ordinary use of language, that " the " central control and management of a company " can at the same time abide in two or more different and separated places. I think this House is now bound by the decision on the *De Beers* case. If it be desirable to alter the law as there laid down, it should, I think, be done by the Legislature, not by this House, and I, therefore, concur with Lord Justice Atkin. This is, I think, the first case in which it has been attempted to alter it. This was not, however, the only point that was decided in the *De Beers* case. The House, following the decisions of Chief Baron Kelly and Baron Huddleston, in the *Calcutta Jute* case and *Cesena* case, decided, in effect, that neither in the case of English companies, nor in that of foreign companies does the place of registration under the Companies Acts of 1862 or 1867, or, in the case of the latter companies, under any similar legislation, suffice *per se* to fix, according to English law, the residence of a company.

In the case of the *Calcutta Jute Mills* v. *Nicholson*, 1 Ex. D. 428, the company was incorporated under these same statutes of 1862 and 1867. It was not registered or incorporated elsewhere. In the case of the *Cesena Sulphur Company* v. *Nicholson*, which was heard and decided immediately after and reported with the other, the company was incorporated under the same Acts, but was afterwards registered for all purposes in Italy. The then Attorney-General, Sir John Holker, apparently contended on behalf of the Crown that the registration of a company furnished conclusive evidence of its residence, and that if a company was registered in England it must be held to reside in England. Baron Huddleston, in dealing with this contention at page 453 of the Report(1), said " he could not " assent to that proposition, and thought that the answer given " to it in argument was a good one. It was 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 in the case of an individual that the " birth was conclusive of the residence, so, drawing an analogy " between a natural and artificial person, you may say that " in case of a corporation the place of its registration is the " place of its birth and is a fact to be considered with all others. " If you find that a company which is registered in a particular

(1) 1 T.C. at p. 104.

" country acts in that country, has its office and receives " dividends in that country, you may say that these facts " together with registration lead you to conclude that its " residence is in that country."

At page 452(1) the learned Judge said further: " There is " not much difficulty in defining the residence of an individual; " it is where he sleeps and lives. I adopt Mr. Matthews' " suggestion that 16 and 17 Victoria, Chapter 34, where it " speaks of residing, does not mean an artificial residence but an " actual residence. Mr. Matthews argues, therefore, that if " you deal with a trading corporation it means the place not " where the form or shadow but where the real trade and " business is carried on, and that definition seems to be almost " conceded by all the Counsel." He then refers to the expressive French term used to express the same idea. It is " *le centre* " *de l'entreprise* "—" the central point of the business." I presume the French lawyers when using this expression did not entertain the opinion that an enterprise might at the same moment have two or more different and separate " centres."

Chief Baron Kelly expressed himself to the same effect. He said(2): " Then arises the question, what is the meaning of the " word ' residing ' as applied to a joint stock company and to " this case? The answer is (whether there may be or may not " be more than one place at which a joint stock company can " reside, I express no opinion at present) a joint stock company " resides where its place of incorporation is, where the meetings " of the whole company or those who represent it are held, and " where its governing body meets in bodily presence, for the " purposes of the company, and exercises the powers conferred " upon it by Statute and by the Articles of Association."

From the report of the *De Beers* case(3) in the Court of Appeal, [1905] 2 K.B. 612, it appears that the company was, on the 13th March, 1888, registered with limited liability in the Deeds Office in Griqualand West in the Colony of the Cape of Good Hope. It was also, on the 30th September following, registered as an incorporated company in the same Colony. Mr. Cohen, when supporting the appeal in this House, contended, as did Sir John Holker in the cases reported in 1 Ex. D. 428, that a corporation's only place of residence was the place of its incorporation. Lord Loreburn, in delivering judgment, dealt with this contention thus(4): " Mr. Cohen " propounded a test which has the merit of simplicity and " certitude. He maintained that a company resides where it " is registered and nowhere else. I cannot assent to that." And he then proceeds to lay down the test I have already mentioned, namely, that the residence of the company is where its

(1) 1 T.C. at p. 103. (2) *Ibid.* at p. 95.
(3) De Beers Consolidated Mines, Ltd. *v.* Howe, 5 T.C. 198.
(4) 5 T.C. at p. 212.

real business is carried on, that is, " where the central manage-
" ment and control really abides." " The Commissioners have
" found (1) that the trade or business of the Appellant Company
" constituted one trade or business, and was carried on and
" exercised within the United Kingdom, that is, at their London
" Office; (2) that the head and seat and directing power of the
" affairs of the company were at its office in London, whence
" the chief operations of the company, both in the United
" Kingdom and elsewhere, were in fact managed, controlled and
" directed." It was held accordingly on these facts, that the company had, in accordance with the test laid down by Lord Loreburn, its residence, for the purposes of the Income Tax Acts, within the United Kingdom, and it was accordingly held liable to be assessed as it had been. These three cases, in two of which the companies dealt with were foreign companies and in one British, are all dealt with in precisely the same way, and on the same principles. There is not a suggestion, that I can find, in any case decided subsequently to the year 1916, that there is any difference as to the test to be applied to foreign companies as distinguished from English companies upon this question of residence. Of course, the same company may carry on two entirely separate and independent business enterprises. It may own, run and control a tramway company in one country or place, and carry on, manage and control the business of patent medicine manufacturers in another, and of cotton spinners in a third. If these enterprises are really separate enterprises, independent of one another, then the test laid down by Lord Loreburn would apply to fix the separate residence of each of them for the purpose of the Income Tax Acts. In the course of the argument in several of the cases referred to, if not in this case, it was urged that there was no reason why a company, only carrying on one trade or business, should not be able to have two or more seats of control of that trade or business and, therefore, two or more residences; but no clear suggestion was made as to how these several residences of a single business were to be acquired. It cannot be held to be by registration alone without over-ruling the *De Beers* case and the many cases which have followed and supported it. Registration must be supplemented by the carrying on and control of the business. It cannot be of the real or the whole and entire business of the company, for then all the other residences of the company would be left empty or derelict. There cannot be, it would appear, two systems of central management and control of one entire business situated in two distinct and separated places. Then if it only be a portion or fragment of the real business of the company which need be carried on in each residence, one may ask in vain, as I did during the progress of this case, how is that fragment to be ascertained? It appears to me to involve a contradiction in terms. What is

to be its amount, what proportion of the whole? How are the several *centres de l'entreprise* to be fixed, their situation determined?

The latter part of the 17th paragraph of the Case Stated runs as follows: "The Appellant Company was "incorporated under the Companies Acts in December, 1870, "and its registered office is situate in London. It is, in our "opinion, resident in the United Kingdom in the same sense "as that in which the Egyptian Hotels Company, Limited, "was admitted to be so resident. On the other hand, we are "satisfied that the real control and management of the Appellant "Company has been since October, 1920, and now is, in Sweden. "We have carefully considered all the authorities on the "question of residence in the case of companies. It is to be "noticed that in laying down that the place of control is to be "taken as the sole test for determining the place of residence "of companies for Income Tax purposes, the Courts were dealing with foreign companies and considering liability under "Case I. In our opinion this doctrine must be confined to "cases where the facts are similar. *The Egyptian Hotels, Limited* v. *Mitchell*(1) appears to us to be a clear authority "in support of the assessments under appeal; see especially "Lord Sumner's opinion: 'Where a resident in the United King-"'dom is proprietor of a profit-earning business wholly situate "'and carried on abroad he is chargeable to Income Tax under "'Case V of Schedule D if he takes no part in earning those "'profits, and if he takes any part is chargeable under Case I "'This is true whether the proprietor is a natural or an incor-"'porated person.' (6 T.C. at page 550.) We, therefore, "hold that the Appellant Company is 'a person residing in the "'United Kingdom' and assessable under Case V, Schedule D."

If by this opinion the Commissioners meant to say that the principle embodied in the judgment of the House in the *De Beers* case(2) did not apply to companies incorporated in Great Britain, but did apply to those incorporated elsewhere, their opinion is grotesquely unsound. In the case of the *Calcutta Jute Mills* v. *Nicholson*(3), reported in 1 Ex. D. 428, the company was a purely English company incorporated in England under the Companies Acts of 1862 and 1867, but not elsewhere. In the other case reported in the same Report the company was incorporated first under the same Acts and afterwards registered in Italy. The decision of this House on the *De Beers* case was founded on the decision of Chief Baron Kelly and Baron Huddleston in these two cases. These two learned Judges treat them both in precisely the same way, and do not in any way suggest

(1) 6 T.C. 152 and 542. (2) 5 T.C. 198. (3) 1 T.C. 83.

that the principles which they lay down for determining the residence of a company do not apply equally to foreign and British companies respectively.

In the *San Paulo (Brazilian) Railway Company* v. *Carter*(1), [1896] A.C. 31, the appellant company was an English company registered under the Joint Stock Companies Act, but its business was the making, maintaining, managing and working a certain railway in Brazil. The very same principles were applied to it as were adopted in the *De Beers* case, in order to determine whether the company resided in London or Brazil. It was decided that it resided in London, because, as the Commissioners found, the control and direction of it was in London, and its business was carried on in London under the direction of its directors. When that was decided, the only question which remained for consideration was whether it was taxed on all its gains and profits under the First Case of Schedule D of the Income Tax Acts, or on only such portion of those gains and profits as were transmitted to this country under the Fifth Case of Schedule D. It was decided that it was assessable under the First Case.

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

As, however, the Commissioners based their finding upon the case of *The Egyptian Hotels Company* v. *Mitchell*(2), [1915] A.C. 1022, it is, I think, desirable that one should closely examine the report of that case not only in this House but in the Court of Appeal, [1914] 3 K.B. 118.

The Court of Appeal, which dealt with that case, was composed of Sir Herbert Cozens Hardy, Master of the Rolls, as he then was, Lord Justice Buckley, as he then was, and Mr. Justice Channell. From the report of the case in that Court, it appears that the company was registered in England under the Companies Acts of 1862 and 1867. It was what is styled

(1) 3 T.C. 407. (2) 6 T.C. 152 and 542.

an English company. At a meeting of the Commissioners for General Purposes of the Income Tax Acts for the City of London, it was assessed to Income Tax on a sum of £43,322 under Schedule D, Case I. This assessment was ultimately confirmed by the General Commissioners. On appeal to Mr. Justice Horridge, the assessment was affirmed. The facts are stated with accuracy and sufficient fulness in the head note of the case as reported in the Court of Appeal. It is there set forth that the company had carried on in Egypt their hotel business till the year 1908; that in that year by certain resolutions they had altered their Articles of Association; that those resolutions provided that all the company's affairs and business in Egypt should be carried on and managed by a local board to the exclusion of any board of directors other than the local board; that the local board were to meet only in Egypt, and were to be affected only by resolutions of general meetings held in Egypt, and were to exercise all the powers of the company requisite for the Egyptian business. They were to retain the profits in Egypt and remit only to England what might be necessary to pay the dividends of the shareholders resident there, and to meet the expenses of the local board. The London board was to keep accounts, recommend dividends and control the capital. The only business carried on in Egypt was the hotel business. The resolutions had been strictly acted upon from the date of their confirmation. No question as to the residence of the company was raised at all for decision in the case. It was, on the contrary, expressly admitted (Appendix, page 127) that the company resided in England. The company contended, on the authority of *Colquhoun* v. *Brooks*(1) and the *San Paulo* case(2), that they never carried on the business in connection with their hotels wholly or partly in the United Kingdom. The Commissioners, purporting to found themselves entirely on the *De Beers* case(3), held that the head, seat and controlling power of the company remained in England with the board of directors, and were of opinion on the facts that the assesment was duly and properly made. The Master of the Rolls, in delivering judgment, said (page 180 of the Report(4)): "This is an appeal from a decision of Mr. "Justice Horridge which raises a question whether within the "meaning of the Income Tax Acts the company, which is an "English company resident in London with registered offices "there, is chargeable in respect of annual profits arising from "the carrying on of a trade. The company at one time was "carrying on a business in London, because the control of "the company was in the hands of the board of directors there. "The brain and management and control were there, and the

(1) 2 T.C. 490. (2) San Paulo (Brazilian) Railway Company *v.* Carter, 3 T.C. 407. (3) De Beers Consolidated Mines, Ltd. *v.* Howe, 5 T.C. 198. (4) 6 T.C. at p. 542.

" authorities have plainly settled that if you find that, " it does not in the least matter where the actual selling of the " goods and buying takes place." He then refers to the change in the Articles in August, 1908, entrusting the Egyptian board with the exclusive management and control of the Egyptian business, and says that after that the London board controlled no part of the trade which was in Egypt.

Lord Justice Buckley, as he then was, commences his judgment by saying(1) : " This company is incorporated in the United " Kingdom ; it is therefore resident here." There must be some mistake in the report of this statement, since incorporation does not necessarily imply residence. If he had said : "This company " is incorporated in the United Kingdom, and is admitted to be " resident there," it would have been quite correct. He then proceeds, " The question to be answered is, does this company " carry on or exercise a trade in the United Kingdom? In " my opinion it does not." He then states that down to 1908 it was exercising a trade in the sense that it was controlling the trade from here (London), managing from here, but not after that date. Mr. Justice Channell concurs and says(2) : " I think the case may be put very shortly. It is obvious that " the spending of profits, if any, of a business is not in any way " a carrying on of the business, nor is any other way of dealing " with the profits, other than spending, any more a mode of " carrying on the business. The matters relied upon by the " respondent are merely powers to deal with the profits of the " business." The appeal was accordingly allowed.

The Crown appealed to the House of Lords. The appeal is reported in [1915] A.C. 1022. The noble Lords who heard it were Earl Loreburn, Lords Parker of Waddington, Parmoor, and Sumner. Lords Parker and Sumner held that the division of profits formed no part of the profit-earning business of the company and that the company's business was wholly carried on abroad, that consequently the company was assessable to Income Tax under the Fifth Case of Schedule D in respect only of the portion of its profits remitted to this country. Lords Loreburn and Parmoor held that there was evidence to support the findings of the Commissioners, that the company was assessable under the First Case of Schedule D in respect of the whole of their profits. The consequence of that division of opinion was that the decision of the Court of Appeal was affirmed and now stands as a decision of this House.

Lord Parker, in delivering judgment, said (pages 1036, 1037)(3) : " The effect of the decision of this House in *Colquhoun* " v. *Brooks*(4), 14 A.C. 493, may be stated as follows : Where " a person resident in the United Kingdom is interested in a " trade or business wholly carried on abroad, such trade or

(1) 6 T.C. at p. 544. (2) *Ibid.* at p. 546. (3) *Ibid.* at p. 548. (4) 2 T.C. 490.

" business for the purposes of the Income Tax Acts falls under " the head of ' Possessions in any part of His Majesty's " ' Dominions out of Great Britain or Foreign Possessions ' " within the meaning of Case V of Schedule D, and accordingly " no part of the profits or gains of such trade or business is " assessable to the tax under Schedule D unless it is transmitted " to and received in this country. Where, however, the trade is " carried on wholly or in part within the United Kingdom, the " profits and gains thereof are assessable to the tax under Case I " of the Schedule." Lord Parker, lower down on page 1037, proceeded to add the following words: " My Lords, in con- " sidering whether the principle of *Colquhoun* v. *Brooks* applies " to any particular circumstances, it is also necessary to bear " in mind your Lordships' decision in the case of *The San Paulo* " *(Brazilian) Railway Company* v. *Carter*(1), [1896] A.C. 31, to " the effect that a trade or business cannot be wholly carried on " abroad if it be under the control and management of persons " resident in the United Kingdom, although such persons act " wholly through agents and managers resident abroad. Where " the brain which controls the operations from which the gains " and profits arise is in this country the trade or business is " at any rate partly carried on in this country." He then proceeds to deal with the facts of the case.

Lord Sumner, in delivering his judgment at page 1039(2), is reported to have said: " Where a resident in the United " Kingdom is proprietor of a profit-earning business, wholly " situate and carried on abroad, he is chargeable to Income Tax " under Case V of Schedule D if he takes no part in earning " those profits." (That is really what was decided in *Colquhoun* v. *Brooks*.) Lord Sumner then proceeds: " And if " he takes any part is chargeable under Case I. This is true, " whether the proprietor is a natural or incorporated person, " whether he takes part in earning the profits in his own person " or only by agents or servants. The question is whether the " profits are wholly or partially earned from a business wholly " or partially carried on in the United Kingdom. If he takes " a part at home in earning the profits, its importance, relatively " to that taken by the agents abroad, does not matter, nor does " the liability to be charged under Case I depend on active " interference. Control exercised here over business operations " abroad, though they are far greater in volume or magnitude, " will suffice for Case I (*San Paulo (Brazilian) Railway Company* " v. *Carter*)." I think these two judgments are in perfect accord. There is not any difference in their meaning or substance. The question dealt with by both of the noble Lords was whether the profits and gains earned by the hotel business of the company are assessable under Case I of Schedule D or Case V of

(1) 3 T.C. 407. (2) 6 T.C. at p. 550.

that Schedule, and not at all the question as to where was the residence of that company, or whether it was situate in London or Egypt. I utterly fail to see how any persons with the faintest knowledge of the subject could come to the conclusion that either of these judgments dealt with the question as to whether the Swedish Central Railway Company had two residences or one. On the whole, therefore, I am of opinion that the decision appealed from is inconsistent with all the authorities which have in this country dealt with this question of the residence of companies for the last 48 years and is, therefore, erroneous and should be reversed. It may well be that the usual consequences which Lord Justice Atkin alludes to in his judgment will follow from a decision that a company may have multiple residences. It appears to me to be not improbable. There are no materials available upon which one can form a definite opinion on this point, as I have already said. With the rest of his judgment I, however, thoroughly concur.

Lord Sumner.—My Lords, I concur in the motion about to be proposed from the Woolsack.

Lord Buckmaster.—My Lords, tested by the principles enunciated in *De Beers* v. *Howe*(1) in [1906] A.C. 455, and *New Zealand Shipping Company* v. *Thew* in 8 T.C. 208, the Appellants contend that they would be held to reside in Sweden and therefore cannot be resident here. That argument, in my opinion, is open to serious criticism.

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

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

The statements in that case must be related to its facts. The phrase " real residence," to which Lord Justice Warrington and Lord Justice Atkin call attention, means no more than this : that the actual residence was here as determined by the principles enunciated. For purposes of our Income Tax the real and not a merely nominal residence was here, and if there were also residence elsewhere that did not displace it. The reference

(1) 5 T.C. 198.

to the registered office is important; it is, to my mind, one of the critical facts in determination of residence in this country, but not necessarily the sole and exclusive fact. It varies in consequence in every instance. Nor, even if it were the sole fact, would it follow that a company incorporated and with a registered office elsewhere could not also be resident here for purposes of Income Tax.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs.

The Contents have it.