VOL. X.—PART VIII.

No. 561.—High Court of Justice (King's Bench Division).—19th and 20th March, and 10th April, 1924.

Court of Appeal.—18th, 19th and 20th November, 1924.

House of Lords.—5th, 8th and 9th February, and 23rd March, 1926.

Maclaine & Co. (as agents for Maclaine, Watson & Co.) *v.* Eccott (H.M. Inspector of Taxes).[1]

Eccott (H.M. Inspector of Taxes) *v.* Maclaine & Co. (as agents for Maclaine, Watson & Co.).[1]

Income Tax, Schedule D—Non-resident firm—Exercise of trade within the United Kingdom—Income Tax Act, 1853 (16 & 17 *Vict.*, *c.* 34), *Section* 2, *Schedule D—Finance* (No. 2) *Act*, 1915 (5 & 6 *Geo.* V, *c.* 89), *Section* 31.

A Java firm of general merchants and commission agents, controlled in that island, sold East Indian produce in the markets of the United Kingdom through the medium of a London firm of general merchants and commission agents, sometimes on their own account, and sometimes as agents for planters.

The London firm were duly charged to Income Tax in respect of commission earned, or treated, by arrangement with the Revenue authorities, as earned, from the Java firm, and were, in addition, assessed on behalf of the Java firm in respect of the profits of the latter from the exercise of trade within the United Kingdom.

The course of business between the Java firm and the London firm took various forms, falling within the following broad groups:—

(A) *The London firm sold here on commission produce which the Java firm had themselves undertaken to sell on commission on behalf of planters. The London firm took the necessary steps for receiving and storing the goods and delivering them to purchasers and received payment therefor. They accounted, after deduction of expenses and commission, for the proceeds to the Java firm, who in turn, after deduction of their expenses and commission, accounted to the original consignors of the goods.*

[1] Reported K.B.D., 131 L.T. 601, C.A., 132 L.T. 173, and H.L., [1926] A.C. 424.

(B) *The London firm sold in London, on commission, usually through brokers, goods consigned to them by the Java firm who had purchased them from planters. The London firm received the money realised by the sale, accounting therefor to the Java firm, less expenses.*

(C) *The London firm sold, on commission, sometimes through brokers, goods bought, or to be bought, by the Java firm who consigned them direct to the purchasers, whether in the United Kingdom or elsewhere, shipping them sometimes c.i.f. and sometimes f.o.b. Payment was effected by the purchasers providing a credit with a London bank upon which the Java firm drew. The London firm always purported to act as agents for the Java firm, and the latter invariably controlled the price at which the goods were sold.*

In the case of all transactions falling within groups (A), (B) *and* (C) *the contracts for sale were made in the United Kingdom.*

(D) *The London firm purchased goods in the United Kingdom and elsewhere on behalf of the Java firm for shipment to Java.* (*No question arose with respect to these transactions.*)

(E) *Special business was done during the War in connection with purchases of sugar by the British Government, viz.:—*

(i) *In* 1915 *the London firm sold to the Government* 54,000 *tons of sugar belonging to the Java firm which the latter had already authorised the London firm to sell at or above a certain price.*

(ii) *At the same time the Government gave a specific order to the London firm for a further* 146,000 *tons. The London firm telegraphed the order to the Java firm who in due course acquired and delivered that amount, together with a further* 20,000 *tons which the Government accepted.*

The negotiations with the Government were conducted by the London firm, who signed formal contracts covering the whole of the 220,000 *tons at* (i) *and* (ii) *supplied during the year* 1915, *subject to the approval of the Java firm as regards the payment clause therein.*

Payment was made by means of Treasury pay orders handed to the London firm who paid them into a London bank to the credit of a Java bank who had purchased the sterling from the Java firm.

(iii) *In* 1916 *and* 1917 *the Java firm purchased further quantities of sugar for the British Government under agreements negotiated by the London firm by which the Java firm received a commission on the sugar bought, to cover expenses in Java, and the London firm also received a commission. Formal contracts were no longer signed by the London firm, and payment was made by the British Government in Java in guilders, in effect against shipment, without the intervention of the London firm.*

Held, (i) *that the Java firm exercised a trade in the United Kingdom as regards all the transactions falling within the said groups* (A), (B), (C), *and* (E) (i) *and* (ii), *inasmuch as the contracts were in all cases made in the United Kingdom; but*

(ii) *that, as regards the transactions in group* (C), *in view of the provisions of Section* 31 (7) *of the Finance (No.* 2) *Act,* 1915, *the profits arising from sales to non-residents by the Java firm through the agency of the London firm should, where such profits were not received by the London firm, be excluded from the assessment in the name of the London firm as agents;*

(iii) *that the Java firm did not exercise a trade in the United Kingdom as regards the transactions falling within group* (E) (iii).

Crookston *v.* Furtado (5 T.C. 602), *and* Yokohama Specie Bank *v.* Williams (6 T.C. 634) *not followed.*

CASE

Stated under the Taxes Management Act, 1880, Section 59, 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 meetings of the Commissioners for the Special Purposes of the Income Tax Acts held on 16th and 25th October, 1919, at Windsor House, Kingsway, London, for the purpose of hearing appeals, Messrs. Maclaine and Company of 14 Fenchurch Street, London, appealed against assessments to Income Tax made upon them by the Additional Commissioners of Income Tax under the provisions of the Income Tax Acts in the following amounts for the years indicated :—

For the year ended	Assessments amounting to
5th April, 1916	£40,000
5th April, 1917	£40,000
5th April, 1918	£40,000

The assessments appealed against were made upon Maclaine and Company of London, as agents for Maclaine, Watson and Company of Java, in respect of profits deemed to arise to the Java firm from the exercise of trade in the United Kingdom.

Copies of the Notices of Assessment are annexed hereto marked [N/C], and are deemed part of this Case.(1)

2. Some ninety years ago a business of Merchants was set up in the Dutch East Indies, and has since been carried on under the names of Maclaine, Watson & Company at Batavia, McNeill & Company at Samarang, and Fraser, Eaton & Company at Sourabaya, either as one or several distinct businesses. The business is hereinafter referred to as the Java business. On the 29th June, 1912, an Agreement was entered into in Batavia whereby the partnership previously established to carry on the Java business (but which would expire on 31st December, 1912) was to be continued as from that date by the nine persons entering into the Agreement. This new partnership is hereinafter referred to as the Java firm and is established under Dutch Law.

A copy of a translation (from the Dutch language) of the Notarial Act whereby the terms of the new Agreement for partnership are set out is annexed hereto marked "A" and forms part of this Case.(1)

Of the nine partners referred to of the Java firm (eight of whom were " proprietary partners ") three were resident in Java at the time of the Agreement and the remainder, all of them having been previously resident in Java and engaged in the Java business, resided in the United Kingdom and have continued to so reside. The sole non-proprietary partner was resident and has continued to reside in Java. Since the Agreement one of the said partners resident in the United Kingdom has died, one (by name Mr. A. Thomson) of the said partners resident in Java has returned to reside in the United Kingdom, and one new partner residing in Java has been admitted a member of the firm, but notwithstanding these changes the arrangements made by the Deed have been continued.

It is agreed for the purpose of this Case that the general effect of those arrangements is that, while the capital of the firm is to the extent of over six-ninths thereof owned by the partners residing in the United Kingdom, being the older members of the firm, the head seat and control of the Java firm is in Java where the assets of the firm are situated and the accounts and balance sheets made up.

3. Some fifty years ago, partners in the Java business, who had returned to reside in the United Kingdom, undertook to buy manufactured goods to send out to the East Indies for sale in the course of the Java business, and for that purpose they constituted themselves the London agency of the Java firm. This agency has been at all material times carried on under the name of Maclaine and Company. As years went by the partners carrying on the agency undertook to arrange the sale in the London market of goods consigned to them by the Java firm, such goods

(1) Omitted from the present print.

being principally the products of the islands of the East Indies, and consisting of sugar, hides, rubber, tapioca, tea and other products. The goods so consigned were either goods purchased by the Java firm or goods consigned for sale on commission by that firm on behalf of planters and native growers. The London agency also undertook to make arrangements to sell goods through brokers in London, as hereinafter set out, such goods being consigned direct from Java to the purchasers, in whatever country such purchasers might happen to carry on business.

At a date before 1912 the London agency was a partnership formed under the name of Maclaine, Watson and Company, to carry on business as Merchants and Commission Agents and to take over the business of the London agency up to that time carried on under the name of Robert Henderson. By Indenture dated 19th December, 1912, made between the six partners of the Java firm who were resident in the United Kingdom, after reciting that the parties had for some time past carried on business as Merchants and Commission Agents under the style of Maclaine, Watson and Company which partnership would expire on 31st December, 1912, and that the parties had agreed to continue the business as therein appearing, it was agreed (inter alia) that the business should be carried on in London under the style of Maclaine and Company and should be that of General Merchants and Commission Agents, and that any profits which might be found to belong to any partner (on the taking of partnership accounts) should be carried to his credit in the books of the Java firm in Batavia. A copy of this Indenture is hereto annexed marked " B " and forms part of this Case.(1) The London firm as so constituted consisted of six partners all of whom were members of the Java firm. By an Agreement of 27th January, 1913 (a copy of which is annexed hereto marked " C " and forms part of this Case(1)), Mr. A. Thomson who had returned to the United Kingdom from Java to reside in the United Kingdom was admitted a partner of the London firm, but owing to death and the resignation of partners the partnership was in December, 1916, reduced to two members only, Mr. A. Thomson and Mr. A. F. Miesegaes, who have since continued to carry on the business of the London firm until 31st December, 1919, when Mr. Miesegaes retired.

4. For many years the London agency was carried on by the London firm in London without other remuneration than the payment of the London expenses by the Java firm. In the year 1891 an arrangement was entered into with the Surveyor of Taxes under which Income Tax was paid in respect of assumed profits of the London agency business upon the basis of an agreed scale of commission upon the value of the transactions carried out by the London agency in London, and for many years tax was paid upon a " pro forma " calculation made in the

(1) Omitted from the present print.

agreed manner, although no commission was actually paid to the London agency by the Java firm. In 1904 the agreed scale of commission was revised owing to changes which had taken place in the course of trade. In 1916 and 1917 the arrangements between the Java firm and the London firm as to the commission to be paid to the London firm (deemed under the arrangement between the London agency and the Revenue Authorities to be earned by the London firm) were further reconsidered, and a new arrangement was entered into. Under this arrangement the London firm is entitled to receive and actually receives payment by commission for work done on behalf of the Java firm, such payment not to be less than £12,000 in any year, half the excess if it exceeds £12,000 being *returnable*, and the London firm out of such commission is itself bound to pay and pays the expenses of the London business. This arrangement is embodied in a letter addressed to the Java firm by the London firm dated 8th October, 1917, a copy of which marked " D " is annexed to and forms part of this Case.(1) The £12,000 was not in fact exceeded in any year. Taking account of the expenses to be paid out of the £12,000 the net balance for the London firm was much the same as the pro forma scale of commissions under the old arrangement with the Surveyor of Taxes.

5. The London firm has no capital of its own. It uses so far as may be necessary for any purchases on behalf of the Java firm any moneys belonging to the Java firm which may be in its hands. It also acts as agents for two Dutch firms, but makes no purchases on their behalf. The receipts for the business done by the London firm for these two Dutch firms amounted in 1917 to £243 and have since been on an average about £180 per annum.

6. At the hearing of the appeal evidence was given to us by the production of documents and correspondence and by the evidence of Mr. A. Thomson, Mr. Miesagaes, and Mr. Paterson, who is a chartered accountant and who has for many years prepared the accounts of the London firm, to show the course of business between the London and Java firms. The course of business takes varied forms, which will be set out separately in the following Sections of this Case, numbered A, B, C, and D. The form of the business in any particular case is determined by the general nature of the business of the Java firm as merchants buying or collecting different kinds of products at a variety of places and ports in the Dutch East Indies, and by the conditions of the markets in which such goods may most profitably be sold. A series of special transactions is described in the Section numbered E, where owing to the exigencies of the War the usual course of business was not followed. The firms in Java and London are in constant telegraphic and postal communication with each other.

(1) Page 496 *post.*

Outside the course of business described in the following Sections, the Java firm do a very large business which does not in any way fall under review for the purpose of this Case.

Section A.

7. In some cases the Java firm collect goods and products from planters and other persons in the East Indies undertaking to sell them on commission on behalf of the owners. In these cases the Java firm conforms to any request of the persons desiring to sell the goods. If it is requested to sell the goods in London, it ships them under bills of lading drawn to the order of the Java firm and forwarded, after endorsement in favour of the London firm, by mail to London. Upon the arrival of the goods, the London firm takes all steps necessary for receiving, storing and marketing the goods. The London firm makes contracts for the sale of the goods, delivers the goods to the purchasers and receives payment therefor. It accounts, after deduction of its expenses and (since the agreement embodied in the letter of 8th October, 1917) of its commission, for the proceeds of the sale of the goods to the Java firm, which firm in turn, after deduction of its commission and expenses, accounts to the persons who consigned the goods for sale on commission.

Section B.

In other cases the Java firm purchases goods on its own account. In such cases if the goods are to be marketed in London, they are consigned by the Java firm to the London firm under bills of lading made out in favour of the London firm. The London firm makes all arrangements for receiving and marketing the goods, receives the money realised on sale of the goods and accounts to the Java firm for such moneys less expenses. The goods so consigned are in most cases sold through brokers on instructions given by the London firm. On payment of the price, the bills of lading are delivered by the London firm to the brokers endorsed in blank to enable the purchasers to obtain the goods. A specimen of such a Bill of Lading, by the s.s. Orestes, dated 3rd October, 1917,(1) (marked " E "), and of the relative Broker's Contract Note by Cox Bros., dated 14th December, 1917, (marked " F ")(1), are annexed to and form part of this Case.

Section C.

In other cases goods purchased by the Java firm are not consigned to the London firm. In such cases the Java firm advises the London firm that it has purchased or is able to purchase certain goods and desires to sell them at a named price. The London firm then either itself makes enquiries for purchasers, or instructs brokers to sell at the price named, and

(1) Omitted from the present print.

informs the Java firm by cablegram either that it has sold the goods or that the goods have been sold through brokers and in what way the money will be paid. In such cases since the goods are to be consigned to the purchaser by the Java firm it is essential for them to receive payment before the delivery of the goods, and the transactions are carried through as follows :—

The purchasers open a credit with a Bank in London in favour of the Java firm or make a payment to a Bank in London, the Bank being designated by the London firm as a Bank able to remit the money to Java or known as a Bank acting as London agent for Java Banks. The Bills of Lading are not made out in favour of the London firm but in favour of the purchaser, or of the Bank in London at which payment is being made or the credit has been opened. Bills of Exchange, to which are attached the Bills of Lading and the invoices of the Java firm, are then drawn upon the purchaser or upon the London Bank by the Java firm and sold to a Bank in Java, which is in communication by cablegram with the Bank in London to which the payment has been made or with which the credit has been opened by the purchaser. The Bank in Java which has purchased the Bills of Exchange sends them with the Bills of Lading to its own London agents, to present to the Bank in London from which it receives payment, and the Bank in London thus receiving the Bills of Lading delivers them to the purchaser. In this way the Java firm receives payment in Java from the Bank purchasing the Bills and the Bank purchasing the Bills is recouped by payment in London.

The goods sold in the manner above described in this Section are generally purchased by brokers acting either on their own account or on behalf of other persons, and may be consigned either to the United Kingdom or elsewhere. Thus in the case of a transaction described to us the London firm negotiated the sale on behalf of the Java firm of certain goods to purchasers in Vancouver. The purchasers opened a credit with a Bank in Vancouver, which opened a credit with a Bank in London and against this London credit the Java firm drew bills of exchange on the London Bank for the amount of their invoice. These bills were sold by the Java firm to a Bank in Java who paid the Java firm the equivalent in guilders. That Bank in Java sent the bills to its London agents and got payment for them from the London Bank which had given the credit.

The goods were sent direct from Java to Vancouver.

The negotiations undertaken by the London firm in transactions of the kind described in this Section take various forms. Sometimes the London firm merely instruct brokers to sell goods on behalf of the Java firm at a named price, for payment in the prescribed manner. Sometimes the price named cannot be obtained, but offers are made at a lower price and communicated by the London firm to the Java firm for acceptance or rejection.

Sometimes the London firm find purchasers at a better price and are able to arrange the sale to them. In carrying out the negotiations the London firm throughout purport to act as agents for the Java firm, with whom they are in constant telegraphic communication. The price at which the goods shall be sold is never fixed without the authority of the Java firm.

For the information of the Court the following copies of three typical contracts (marked " G," " H," and " I " respectively) are annexed to and form part of this Case.

G. 1st February, 1915. Contract through brokers to sell 6,000 tons of sugar to Edward Grey & Co., of Liverpool.(1)

H. 28th January, 1915. Contract through brokers to sell 2,000 tons of sugar to a firm in Tokio.(2)

I. 11th September, 1916. Contract by a firm of brokers acting as dealers to purchase hides, together with certain letters and telegrams leading up to such contract.(3)

In all the transactions referred to in this Section the contracts arranged by the London firm are for sales of goods by description. Goods of the description given may or may not be in the possession of the Java firm at the time when the contracts are made. The contracts are fulfilled by the delivery of goods of the required description, subject in most if not all cases to arbitration if any dispute arises in accordance with the usual practice in similar cases of the market in London or Liverpool in which the contracts are negotiated, as provided for in the various contracts.

The goods contracted to be sold are in accordance with the contracts put on board ship in Java from time to time in parcels till the whole quantity specified in each case has been despatched. The sales in some cases are on f.o.b. terms and in some cases on c.i.f. terms.

Section D.

Outside the transactions set forth in the three preceding Sections the London firm carries out other transactions on behalf of the Java firm. It buys manufactured goods for shipment from the United Kingdom to Java, and arranges for the purchase and shipment of manures and other commodities from the United Kingdom and the Continent to Java. It has also upon occasion received money due to the Java firm upon sales or transactions in which it has itself taken no share.

The purchases of manufactured goods from the United Kingdom were formerly in considerable quantities but in recent years have been greatly reduced.

(1) Page 498 *post.* (2) Page 499. (3) Page 501.

Section E.

I

[*Corresponds to groups of transactions described as* E (i) *and* E (ii) *in the headnote and judgments.*]

Owing to circumstances arising out of the War it became necessary for the Government, with a view to securing an adequate supply of sugar for the British Isles, to make arrangements itself to purchase large quantities of sugar. For that purpose the Right Honourable R. McKenna, who was at that time Home Secretary and later Chancellor of the Exchequer, in February, 1915, approached among others the London firm with a view to procuring sugar for the Government.

At that time the Java firm had purchased sugar for forward delivery in Java to be delivered during the sugar harvest beginning in June, and they had authorised the London firm to sell at or above certain prices, for June and later delivery, 61,500 tons free on board in Java. Payment for the sugar to be such as would enable the Java firm to receive the money in Java at the time of shipment from Java.

On 2nd February, 1915, Mr. McKenna, on behalf of the British Government verbally agreed to purchase 54,000 tons at agreed prices from the London firm as agents for the Java firm, and instructed the London firm to get the Java firm to procure for the British Government a further 146,000 tons at the same prices. This arrangement was confirmed by the London firm in a letter of the 3rd February, 1915, a copy of which appears in the bundle of correspondence marked " O " which is annexed to and forms part of this Case.(1) A copy of a contract with Messrs. Henry Tate and Sons referred to in that letter also appears in the said Exhibit.(2) By a second letter of 3rd February, 1915,(3) (Bundle O) the London firm informed Mr. McKenna that the Java firm had cabled that they had bought a further 35,000 tons and that the Java firm were under offer for large quantities of sugar upon his account.

Two days later, the London firm confirmed a further sale of 36,000 tons (being part of the 146,000 tons above mentioned), and Mr. McKenna raised the limit of price for the balance of the 146,000 tons on the understanding that the profits of the Java firm did not exceed a certain figure. This arrangement was confirmed by the London firm in a letter of the 5th February, 1915,(4) a copy of which appears in the Exhibit marked " O "

The negotiations thus entered into with Mr. McKenna were continued by interview and correspondence with him and with the Royal Commission on the Sugar Supply. The letters of the 6th, 8th, 10th and 11th February, 1915,(5) copies of which appear in the bundle marked " O ", show the course of these

(1) Page 513 *post.* (2) Page 514. (3) Page 516. (4) Page 517.
(5) Pages 518 to 520.

negotiations. Throughout these negotiations as appears by these letters the London firm put at the disposal of the Government the information communicated to it by the Java firm as to the price at which sugar could be obtained, and, with the consent of the Java firm, agreed on its behalf to a limitation of the profits to be made by the Java firm on the supplies of sugar for the Government. During these negotiations further quantities were agreed to be procured for the Government, and the prices and dates of delivery were from time to time altered.

The above arrangements for the supply of sugar made by the London firm in the year 1915 recorded in three formal Contracts dated 3/6th February, 1915, 3rd February /23rd March, 1915, and 16th April, 1915, signed by the London firm, copies of which (being Contracts in all for 220,000 tons) marked K, L, and M respectively, are annexed to and form part of this Case.(1)

The Contract of 3/6th February, 1915, for 50,000 tons of white sugar was approved by the Sugar Commission on the 29th March, 1915. The Contract of 3rd February /23rd March, 1915, for 150,000 tons brown sugar was approved on 23rd March, 1915. The Contract of 16th April, 1915, for 20,000 tons white sugar was approved on 20th April, 1915.

On 20th March, 1915, the London firm in sending the contracts to Mr. Runge for the Sugar Commission wrote to him that the payment clause in the Contracts was subject to the approval of their Java friends, and on 13th April, 1915, the London firm wrote to the Sugar Commission with reference to their letter of 20th March that they have received a cable from their Java friends agreeing to the payment clause as provisionally taken up in the Contract. Letters of 4th, 5th, 20th, 23rd, 24th, 25th, 27th and 29th March, of the 13th, 17th and 20th April, copies of which are contained in the bundle marked " O ",(2) passed in the course of the settlement of the terms of the said contract, and letters of the 30th April, and of the 1st, 3rd and 29th May, 1915, copies of which are also contained in the said bundle,(3) related to the arrangements made under the payment clause of the said Contracts.

The sugar so contracted to be supplied was delivered in various parcels or shipments under the following arrangements :

> The Java firm after putting on board ship a parcel of the sugar handed the Bill of Lading with a copy of the invoice to the representative of the Government (the British Consul) in Java, and the Consul sent a cable to the Sugar Commission giving the name of the ship and the quantity and value of the sugar. On the same day the Java firm, having previously negotiated with a Bank in Java a rate of exchange into guilders for a transfer by telegram of sterling placed with a London Bank, informed the Java Bank that on receipt by the Sugar Commission of the cable from the

(1) Pages 507, 509, and 512 *post*. (2) Pages 520 to 526. (3) Pages 527 to 529.

British Consul the amount of the invoice value of the shipment would be paid to the London agent of the Java Bank, and the Java firm sent a cable to the London firm giving the amount of the invoice and the name of the London Bank acting as agents for the Java Bank. A copy of a specimen cablegram from H.M. Consul General, Batavia, to the Foreign Office is at page 32 of the bundle marked " O ".(1) The London firm issued a provisional invoice, based on the cable from the Java firm, to the Sugar Commission for the amount of the shipment, and the Sugar Commission being able to satisfy itself from the cable of the British Consul that the amount claimed on such invoice was approximately correct issued a pay order in favour of the London firm. This pay order was endorsed by the London firm and paid into the London Bank acting for the Java Bank and to the credit of that Java Bank which had bought from the Java firm the pounds sterling deposited in London. The Java Bank was thus able to make payment in Java to the Java firm in guilders, at the rate of exchange previously arranged of the equivalent of the sterling deposited in London. (Copies of specimens of the receipts given by the London banks for the pay orders appear at page 33 of the bundle marked " O " (2)

It was provided in the contracts that in the event of telegraphic communication being interrupted the British Consul should pay the Java firm direct in Java for each parcel of sugar as it was shipped. The British Consul was authorised to do this by letter from Sir E. Grey, the Foreign Secretary, dated 24th May, 1915, a copy of which appears at page 29 of the bundle marked " O ".(3)

The final settlement of the accounts relating to the sugar supplied was postponed till the quantities actually shipped had been ascertained by the Government. This was done by means of a final invoice sent direct by the Java firm to the Sugar Commission in London.

Copies of the invoices delivered to the British Consul in Java relating to a shipment under the said contracts of 4,500 tons of sugar by s.s. Polruan in July, 1915, marked " N ", are annexed to and form part of this Case.(4)

II.

[*Corresponds to group of transactions described as* E (iii) *in the headnote and judgments.*]

As the result of discussions between the London firm and the officials of the Sugar Commission, the arrangements above set out for the supplies of sugar in 1915 were modified as from

(1) Page 530 *post.* (2) Page 530. (3) Page 529.
(4) Omitted from the present print.

the beginning of 1916 onwards. The Java firm purchased sugar for the Sugar Commission under agreements negotiated by the London firm by which the Java firm was to receive a commission of so much per picul on the sugars bought, and formal contracts were no longer signed by the London firm.

The limit of price for these purchases was fixed in guilders because of the continuous fall in value of the pound sterling.

The Sugar Commission arranged with the British Treasury to obtain the required guilders in Java for the purchases of sugar, by the British Government negotiating a loan with a group of Dutch bankers in Amsterdam who placed guilders to the credit of the British Government in Java in order to pay the Java firm the amount of its sugar invoices. When the Dutch credit was exhausted, the British Government opened a credit with a group of bankers in London, against which credit the Java firm was authorised to draw bills of exchange.

The bills were sold by the Java firm to Banks in Java, and the guilders for the payment of their sugar invoices were thus obtained from the Java Banks.

Under these arrangements the Java firm purchased some 570,000 tons of sugar for the Government in the year 1916 and some 220,000 tons in the year 1917.

All sugar purchased for the Government was to be delivered free on board ship in Java. The earlier consignments were despatched under arrangements made by the Java firm with the Shipping Companies, but at a later stage, the Government itself undertook to make arrangements for sending ships to fetch the sugar.

Correspondence relative to sugar purchased for the British Government under this Section E, II, is annexed hereto, marked "P," and forms part of this Case.(1)

With a view to compensating them for the loss of business due to the Government undertaking the supply of sugar the London firm in the year 1915 paid brokers who had usually acted under the instructions of the London firm a sum of £10,000 which sum the London firm was unable to recover from the Government.

III.

Beyond the sugar supplied to the British Government, the Java firm also supplied large quantities to other Governments and purchasers during the War. In the case of supplies to the French Government, the arrangements were negotiated between the London firm and the Hudson Bay Company, acting for the French Government. In other cases sales were negotiated by

(1) Page 531 *post.*

the London firm through bankers in the manner described in Section C of this Case. It is not claimed that liability to taxation arises in respect of these transactions.

Copies of letters and documents annexed hereto (marked "Q" and "R" and forming part of this Case (1)) show in greater detail the course of the negotiations undertaken by the London firm for the sale of sugar to other Governments (see Exhibit Q) and purchasers (see Exhibit R).

8. In these circumstances at the hearing of the appeal Counsel on behalf of the London firm contended that the London firm was not in any way liable to Income Tax in respect of profits made by the Java firm, but was liable only to assessment in respect of its own profits.

9. The Inspector of Taxes contended that a trade was being exercised by the Java firm within the United Kingdom, the profits of which were assessable upon the London firm as agents for the Java firm.

10. We, the Commissioners who heard the appeal, having considered the facts and arguments submitted to us, gave our decision as follows :—

"We decide that upon the facts submitted to us the "business done by Maclaine and Company on behalf of the "firm in Java must be divided into several parts and "treated as follows :—

"1. There are the sales on commission by Maclaine "and Company of produce which is sold by the firm in "Java on commission on behalf of planters and others. "We hold under the authority of the case of the "*Yokohama Specie Bank* v. *Williams* (6 T.C. 634) that "these sales do not constitute a trade within the United "Kingdom exercised by the Java firm.

"2. There are the sales by Maclaine and Company of "goods which have been purchased by the Java firm from "planters and others and are consigned to Maclaine and "Company by the Java firm. In these cases Maclaine "and Company receive payment for the goods, and we "hold that whether the goods are sold through brokers "or are sold direct to persons buying on their own "account a trade is in the case of such sales exercised "within the United Kingdom by the Java firm and "liability to duty attaches.

"3. There are the sales through Maclaine and Com- "pany of goods which are consigned by the Java firm to "the purchasers and which are paid for direct to Java "by means of credits in London or Amsterdam. In

(1) Omitted from the present print.

" these cases Maclaine and Company do not receive pay-
" ment for the goods or handle the goods in any way,
" and we hold upon the authority of the case of
" *Crookston Brothers* v. *Furtado*, 5 T.C. 602, that in
" the case of such sales no trade is exercised within the
" United Kingdom by the Java firm.

" 4. As regards the sale of sugar, we hold that
" liability to duty attaches in the case of the 220,000 tons
" of sugar included in the contracts 3rd–6th February,
" 1915, 16th April, 1915, and 3rd February–
" 23rd March, 1915 and that no liability attaches in the
" cases of the other sales where payment was not made
" in the United Kingdom.

" A copy of this decision, which should be treated as
" an interim one, is being sent to both sides, and the Com-
" missioners must require Messrs. Maclaine and Company
" to send in an account showing their liability under it
" The Commissioners consider that the exact ascertainment
" of the liability would be facilitated if the two sides would
" meet to discuss the matter, and they will put the case
" down for further hearing upon the request of either side."

" The right to appeal to the High Court will arise when
" the final determination is given."

11. It was subsequently represented to us that much time and trouble would be required in ascertaining the liability of the Java firm in accordance with this decision, since the necessary information was available only in Java, and both parties to the appeal having expressed dissatisfaction with our decision as being erroneous in point of law, and requested us to state a Case for the opinion of the High Court, we have stated and signed this Case under the provisions of Section 59 of the Taxes Management Act, 1880.

12. The question for the decision of the High Court is whether the liability of the London firm as agents of the Java firm is to be ascertained in accordance with the directions given in our said decision.

W. J. BRAITHWAITE
P. WILLIAMSON
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
19*th June*, 1923.

EXHIBITS.

Exhibit "D."

Agreement as to Remuneration and Interest.

14, Fenchurch Street,
London, E.C.3.
8*th October*, 1917.

Messrs. Maclaine, Watson and Co., Batavia.

Dear Sirs,

Commissions.—With your approval we propose to charge you and Eastward friends the following rates of commission on all transactions *concluded by us on your* and their *behalf* :—

Sugar.—$\frac{1}{8}$ per cent. (one-eighth per cent.) which will be calculated on the f.o.b. price, all brokerages to be payable by you, and any Bank's or Banker's accepting commission, in the event of our having to arrange a Bank or Banker's credit on your account, will also be payable by you.

Hides and Skins.—$\frac{1}{2}$ per cent. (one half per cent.) calculated on the nett proceeds of account sales (all charges such as superintending, weighing, and brokerages, to be payable by you).

Tapioca, Tapioca roots, Kapok seeds, and similar produce.—$\frac{1}{2}$ per cent. (one half per cent.) calculated on the nett proceeds of account sales (all charges such as superintending, weighing, and brokerages, to be payable by you).

Rubber.—$\frac{1}{4}$ per cent. (one quarter per cent.) on nett proceeds of account sales.

Coffee.—$\frac{1}{2}$ per cent. (one half per cent.) on nett proceeds of account sales.

Tea.—$\frac{1}{2}$ per cent. (one half per cent.) on nett proceeds of account sales.

All other produce.—One half per cent. on nett proceeds of account sales.

Export Articles.

Sulphate of Ammonia or other Fertilizers.—$\frac{1}{4}$ per cent. (one quarter per cent.) on the c.i.f. cost.

Piece Goods.—1 per cent. (one per cent.) on the c.i.f. cost.

All other Articles according to value but not exceeding 1 per cent. on c.i.f. cost.

Insurances.—Any return allowances or commissions on insurances effected for you to belong to us.

Interest.—Interest on account current to be at the rates of interest we can obtain from time to time for money held by us on your account. In the event of our having to find money for your account through your credit balance with us being temporarily insufficient, you will pay us interest on current account at the rate of five per cent. per annum.

All telegram and cable expenses in connection with your and Eastward friends' business to be for your and their account. Any necessary travelling expenses in this country or on the Continent in connection with your and Eastward friends' business to be paid by you.

All disputes with buyers to be settled by us on your behalf, but in the event of these disputes involving large sums, we must consult you by letter, and, if necessary, by cable before settling same. Any arbitration fees in connection with disputes to be paid by you.

The above commissions to cover any other business we undertake for you including chartering of vessels.

This arrangement to be in force from the 1st January, 1917.

We trust that you will see your way to send all your business to us—at any rate all business in the United Kingdom. In the event of the Income Tax laws in the United Kingdom making you liable to pay the tax on the profits on business done through our Agency, we quite understand you will have to terminate our Agency, but we rely on your giving us timely notice of your intention to do this.

The tendency undoubtedly is in favour of Java doing its business with Eastern Markets *direct*, and we know for a fact that your competitors, e.g., Wellenstein, Krause and Co., Zorab Mesrope, and the leading Chinese firms transact only a comparatively small portion of that business through London Brokers. This being so, you will no doubt make similar arrangements in your own interests especially as in peace time the bulk of the Java sugar crop will be consumed in the East, and whatever Europe may want you could sell through brokers here without our agency. Needless to say that we shall keep you advised of any changes in the Income Tax law and although we should much regret it if we were ultimately obliged to liquidate our business, we fully realise that it is absolutely impossible for you to transact your business through us if by so doing you are liable for United Kingdom Income Tax. If the worst should happen, you may rely on our assistance in the re-arrangement of your business.

In the meantime our expenses here, which are very heavy, continue, and it is impossible to foresee whether we shall be able to make good our expenses from the Commissions above stated.

In the event of the Commissions being insufficient, we ask you to agree to make up the deficiency so as to give us £12,000 per annum.

In the event of the Commissions exceeding £12,000 per annum it is agreed that we shall return you half of the excess above £12,000.

In conclusion we trust that you will empower us to continue to make on your behalf such charitable contributions as we have hitherto made.

Please wire us before the end of the year that you agree to the above.

We are, dear Sirs,
Yours faithfully,
(*Sgd.*) MACLAINE & Co.

In reply to which M. W. and Co., Batavia wire 27th December, " Reference your letter 8th October, commissions agree : presume you including in 1917 accounts."

Exhibit " G."

F.O.B. CONTRACT No. 275.

10–11, Mincing Lane, London, E.C.
1*st February*, 1915.

Messrs. Maclaine, Watson & Co., Batavia, Java, per Messrs. Maclaine & Co., London.

We have this day sold for your account to : Messrs. Edward Grey & Co., Liverpool.

1. Six thousand (6,000) tons, 5 per cent. more or less at Buyer's option, First Runnings Java Sugar, in bags, of Crop 1915/1916 at 12s. 10½d. per cwt. telquel, *free on board ship.*

2. In the event of the Sugar being shipped to India and/or Burmah, shipment to be effected only by Conference Liners.

3. In the event of the Sugar being shipped by Liner, or in more than one bottom, or as part cargo, the quantity to be 6,000 tons without the 5 per cent. margin.

4. To be ready for shipment on the 15th July, 1915, at not more than four (4) Northern Ports, or two (2) Northern Ports and Tjilatjap, and to be shipped by Messrs. Maclaine, Watson & Co., and/or their agents on board steamer or steamers to be subsequently declared by Buyers.

5. The cargo or shipment to be composed of Sugar ranging not below No. 16 DSJC nor above No. 20 DSJC and to average not under No. 17 DSJC.

Average polarization of the sugar at time of shipment guaranteed not below 98.

6. Buyers to provide tonnage and necessary dunnage at their expense and to give earliest possible information about ship's movements.

7. Shippers to commence loading twelve (12) hours after written notice from the Captain that the steamer is ready to receive the cargo, but not necessarily before the 15th July, 1915. Sellers to be allowed for loading fifteen (15) working days if 6,000 tons and sixteen (16) like days if over 6,000 tons. Time occupied in shifting ports not to count nor days on which the cargo is prevented from being loaded by weather.

8. To be taken by Buyers at the nett shipping or Bill of Lading weight, calculating the picul as equal to 136 lbs. English.

9. Buyers to open a credit with a first class approved London Bank or Banker, to be confirmed by cable and/or letter at buyers' expense for an amount sufficient to cover invoice price of the shipment together with disbursements and/or advances as per Charter Party, and the Sellers or their agents are to draw under the said credit in three (3) months' sight drafts, with the relative documents attached, viz., Bills of Lading, Certificates of Origin, Abstract of Invoices, Specification of Weight and Tares, if possible, and for the due payment of which drafts upon maturity Buyers to remain responsible to Drawers. The Sellers are at liberty to draw by instalments as shipment proceeds, Bills of Lading being attached to the Drafts for the quantities drawn against. Any loss or sea damage by lighter to be included in the invoice and corresponding average papers to be attached.

10. Marine Insurance from shore to shore including Lighter risk and all war risks, to be at Buyers' risk, and to be covered by them at their expense.

11. If any casualty happens to the vessel subsequently declared, the Buyers are to provide the necessary tonnage to take away the Sugar, or in default of their doing so by the 31st August, 1915, Sellers are at liberty to charter tonnage at the current rates of freight for the Buyers' account.

12. Store-rent, Fire Insurance as customary, and interest at the rate of six (6%) per cent. per annum are to be charged on the Sugar or any portion thereof, if unshipped by the 15th August, 1915, unless through default of Shippers.

13. Any dispute arising out of this Contract to be settled by Arbitration of London Brokers in the usual manner, and this submission may be made a rule of the High Court of Justice or any Division thereof.

Brokerage half per cent.

(*Sgd.*) H. H. HANCOCK & Co.,
Brokers.

Exhibit "H."

CONTRACT No. 001689.

29, Mincing Lane,
London, E.C.

28*th January*, 1915.

Messrs. Maclaine, Watson & Co., Batavia, Java, per Messrs. Maclaine & Co., London, E.C.

We have this day sold for your account to Messrs. Masuda & Co., Tokio :—

1. 2,000 tons 5 per cent. more or less first runnings Java Sugar in baskets of the crop 1915/16 at 12/1½ per cwt., free on board ship, on basis 96 per cent. average polarization.

2. In the event of the sugar being shipped by Liner, or in more than one bottom, or as part cargo, the quantity to be 2,000 tons, without the 5 per cent. margin.

3. The average polarization of the whole shipment to be calculated on the basis of 96 per cent., 1½d. per cwt. per degree to be paid above or 3d. per cwt. per degree to be allowed below 96 per cent. polarization, fractions to be calculated in proportion. The polarization of the shipment to be established on the unopened shipping samples sent to London, by two public analytical chemists in London, and the mean of their results to be taken as the polarization of the shipment. Should they differ more than one-half (½) of a degree, a third public analytical chemist to be appointed, and the mean of the two nearest to be taken as final.

If sugars not taken delivery of in Java by Buyers on the 31st July, 1915, samples to be drawn and sent to London for polarization, and this polarization is to be taken as the basis of the invoice. The amount due for difference in polarization between contracting parties to be settled in cash in London irrespective of sugar reaching port of discharge or not.

4. To be ready for shipment on the first of July, 1915, at not more than two (2) ports (at Seller's option), on the Northern Coast of Java, and to be shipped by Messrs. Maclaine, Watson & Co. and/or their agents on board steamer or steamers to be subsequently declared by Buyers.

5. The cargo or shipment to be composed of sugars ranging not below No. 12 DSJC nor above No. 14 DSJC and the average is not to be below No. 12½ DSJC.

6. Buyers to provide tonnage and necessary dunnage at their expense, and to give earliest possible information about ship's movements.

7. Shippers to commence loading immediately the captain is ready to receive the cargo, but not necessarily before the first of July, 1915. Sellers to be allowed one working day for each 350 tons for loading, time occupied in shifting ports not to count, nor days on which the cargo is prevented from being loaded by weather.

8. To be taken by the Buyers at the net shipping, or Bill of Lading weight, calculating the picul as equal to 136 lbs. English.

9. Buyers to open a credit with a first class approved London Bank or Banker, to be confirmed by cable and/or letter at Buyers' expense for an amount sufficient to cover the invoice price of the shipment for 97 per cent. pol. together with disbursements and/or advances as per Charter Party, and the Sellers, and/or their agents, are to draw for 97 per cent. pol. under the said credit in three (3) months' sight drafts, with the relative documents attached, viz., Bills of Lading, Certificate of Origin, Abstract of Invoice, Specification of Weight and Tares, if possible,

and for the due payment of which drafts upon maturity, Buyers to remain responsible to drawers. The Sellers are at liberty to draw by instalments as shipment proceeds, Bills of Lading being attached to the drafts for the quantities drawn against. Any loss or sea damage by lighter to be included in invoice, and corresponding average papers to be attached.

10. Marine Insurance from shore to shore, including lighter risk and all war risks to be at Buyers' risk, and to be covered by them at their expense.

11. If any casualty happens to the vessel subsequently declared, the Buyers are to provide the necessary tonnage to take away the sugar, or in default of their doing so by the 15th August, 1915, the Sellers are at liberty to charter tonnage at the current rates of freight for the Buyers' account.

12. Store-rent, fire insurance as customary, and interest at the rate of six (6%) per cent. per annum are to be charged on the sugar, or any portion thereof if unshipped by the 31st July, 1915, unless through default of shippers.

13. Any dispute arising out of this contract to be settled by the arbitration of London Brokers in the usual manner, and this submission may be made a rule of the High Court of Justice, or any Division thereof.
Brokerage half per cent.

(*Sgd.*) C. CZARNIKOW LTD.,
Brokers.

Exhibit "I."

Correspondence and Documents relative to Hides business.

Contracts 11th September, 1916. HEGARTY BROS.
SCRIVEN BROS.

and documents leading thereto as follows:—

1916 Sep. 6. Letter Scriven Bros. to Maclaine & Co. requesting latter to cable out former's bids for hides.

,, 7. Letter Maclaine & Co. to Scriven that prices too low and confirming higher bids.

,, 7. Cablegram Maclaine & Co. to Fraser Eaton & Co. transmitting bids.

,, 9. Cablegram Fraser Eaton & Co. to Maclaine & Co. accepting bids "if better impossible."

,, 11. Letter Maclaine & Co. to Scriven informing them their offer accepted.

,, 11. Letter Maclaine & Co. to Hegarty confirming sale.

1916 Sep. 11. Letter Scriven Bros. to Maclaine & Co. enclosing Contract.

,, 11. Contract Scriven Bros. and Fraser Eaton & Co. per Maclaine & Co. c.i.f. Cash against documents on arrival of vessel.

,, 11. Contract Hegarty Bros. and Fraser Eaton & Co. per Maclaine & Co. c.i.f. Liverpool Cash against documents on arrival of steamer for 90 per cent. balance after receipt of weight note.

,, 11. Cablegram Maclaine & Co. to Fraser Eaton & Co. informing them of sale.

,, 12. Letter Maclaine & Co. to Scriven Bros. acknowledging Contract.

,, 12. Do. same to Hegarty Bros. do. do.

SCRIVEN BROS. & Co.,
40, Weston Street, S.E.

6th September, 1916.

Messrs. Maclaine & Co.,
14, Fenchurch Street, E.C.

Gentlemen,

Following up the writer's promise the following is the proposition we referred to, and shall be glad if you will cable it out in the hope that business may result :—

Buffalo Hides.

1,000 N at 16¼d.	1,000 K at 15d.
1,000 NPU at 16½d.	1,000 KPU at 15d.
1,000 NZ at 16¾d.	1,000 ZK at 15d.

500 O, 1,000 OZ at 10½d.

Ox and Cow Hides.

500 GA at 27d.	1,000 A at 25d.
1,000 BA at 22½d.	2,000 B at 22½d.
2,000 HB at 24½d.	1,000 PB at 19d.

1,000 BB at 19½d.

C.I.F. LIVERPOOL, landed weights, usual terms, shipments in different bottoms spread over a period of three months.

Awaiting your esteemed reply in due course.

Yours faithfully,

(Sgd.) SCRIVEN BROS. & Co.

14, Fenchurch Street,
London, E.C.
7th September, 1916.

Messrs. Scriven Bros. & Co.,
14, Weston Street, London, S.E.

Dear Sirs,

We are in receipt of your favor of yesterday's date, giving us various offers of Cow and Buffalo Hides for transmission by cable to our Java friends, and as advised you in our telephonic conversation this afternoon, your offers for Cow Hides are much too low, and we understood you to say that you would go more closely into this matter and advise us whether you could advance your prices. With regard to the Buffalo Hides, we are passing out, as arranged with you, the following orders:

1,000 each NPU and ZN Buffalo Hides at 16½d., and
1,000 each K, KPU, and ZK ditto at 15¼d.,

and will advise you of our friends' reply in due course.

Rejections.

We are not disposed to send out further orders for O and OZ unless you are prepared to accept same without any special conditions.

Yours faithfully,
(*Sgd.*) MACLAINE & Co.

COPY TELEGRAM, dated 7th September, 1916.
MACLAINE & Co. to FRASER EATON & Co.

Buffalo hides offer 1,000 each NPU, ZN 16½*d.*; KPU, K, ZK 15¼*d.* shipment before end September several bottoms counter offer.

COPY TELEGRAM.
From FRASER EATON & Co. to MACLAINE & Co.
Dated 9th September, 1916.

Two willing accept if better impossible hides marks NPU ZN, 1,000 each 16½*d.*; KPU ZK 500 each K 2,000 15¼*d.* Confirm.

14, Fenchurch Street,
London, E.C.
11th September, 1916.

Messrs. Scriven Bros. & Co.,
40, Weston Street,
Bermondsey, S.E.

Dear Sirs,

We confirm our telephonic conversation of this afternoon, wherein we advised you that we had received a cable from our

Java friends accepting your offers of the following hides :—

1,000 NPU Buffalo Hides	at 16½d.	Sept.–Dec. shipment.
1,000 NZ " "		
2,000 K " "	at 15¼d.	

and we shall be glad to receive your Contract covering these purchases in due course.

Yours faithfully,

(*Sgd.*) MACLAINE & CO.

14, Fenchurch Street, E.C.
11*th September*, 1916.

Messrs. Hegarty Bros.,
3, Leather Market,
Bermondsey, S.E.

Dear Sirs,

We confirm our telephonic conversation of this morning, wherein we offered you, on our Sourabaya friends' behalf—

500 KPU Buffalo Hides
500 ZK Buffalo Hides
September/December shipment, at 15½d. c.i.f. Liverpool,

and we have since learnt that you have accepted this bid, and shall therefore be pleased to receive your covering Contract in due course.

Yours faithfully,

(*Sgd.*) MACLAINE & CO.

SCRIVEN BROS. & CO.,
40, Weston Street,
11*th September*, 1916.

Messrs. Maclaine & Co.,
14, Fenchurch Street,
London, E.C.

Gentlemen,

We beg to enclose herewith Contract in quadruplicate for the Java Buffalo Hides concluded to-day, which we trust you will find in order.

We confirm telephone conversation when we asked you to ask Java when they think they will be able to offer KPU and ZK, as these latter weights are the ones we want more particularly than the light weights. We are taking these light weights with

the promise to our friends that we shall be making them offer of the heavier weights later on, and we do not want to disappoint them as you can understand.

Yours faithfully,

(*Sgd.*) SCRIVEN BROS. & CO.

Enclosure Contracts.

CONTRACT.

40, Weston Street,
London, S.E.
11*th September*, 1916.

No. 788/16.

Messrs. Maclaine & Co.,
14, Fenchurch Street, E.C.

We beg to confirm having bought through you this day the undermentioned goods from :—

Messrs. Fraser Eaton & Co., and/or McNeill & Co., and/or Maclaine Watson & Co.

One thousand (1,000) prime dry Java Buffalo Hides " NPU," 1st quality, own preparation, ranging 21½/27½ lbs.

One thousand (1,000) prime dry Java Buffalo Hides " ZN," 1st quality, own preparation, ranging 27½ lbs. and up, at 16½*d.* (Sixteen pence and one halfpenny) per lb.

Two thousand (2,000) dry Buffalo Hides " K," 1st quality, native preparation, ranging 13/21 lbs. at 15¼*d.* (Fifteen pence and one farthing) per lb.

C.I.F. Liverpool, landed weights.

MW Brand not to be included unless other brands unobtainable.

In the event of any dispute arising out of this contract same to be settled by Arbitration in London in the usual manner.

Shipment up to the end of the year 1916 from origin to Liverpool.

Insurance to be effected by shippers, W.P.A., including war risk for 10 per cent. above invoice value.

Reimbursements by net cash against documents on arrival of vessel.

We are, dear Sirs,
Yours faithfully,
(*Sgd.*) SCRIVEN BROS. & CO.

Commission Nil.
Discount Nil.
Brokerage Nil.

3, Leather Market,
Bermondsey,
London, S.E.
11*th September*, 1916.

Messrs. Fraser Eaton & Co.,
Sourabaya, Java.

Dear Sirs,

We have this day bought from you through Messrs. Maclaine & Co., London, a parcel of 1,000 Java buffalo hides :—

FE and/or MNC MW/KPU	500 Hides	at 15½d. combined per lb.
MNC MW/ZK	500 Hides	

for shipment September/December to Liverpool, landed weights, cash against documents on arrival of steamer for 90 per cent. invoice value, balance after receipt of weight note.

The hides to be of usual average weights and selection of the mark. Goods to be insured by you against all risks including war risk, mines, air-craft, etc., for 10 per cent. above invoice value. Should the ship or ships be lost the documents are to be handed over to us against payment, but you are not to replace the goods so lost.

Contract is subject to force majeure or Governmental prohibitions, but in case of non-shipment you are to provide us with the necessary proof so that we may defend ourselves against our buyers.

The hides to be weighed in Liverpool as soon as possible after arrival of the steamer by sworn weighers.

Any dispute arising under this contract to be settled by mutual consent, failing which by arbitration by members of the hide trade in the usual London or Liverpool manner.

We beg to remain, dear Sirs,

Yours faithfully,

p.p. HEGARTY BROTHERS,
(*Sgd.*) E. HARROD.

COPY TELEGRAM.

MACLAINE & Co., London, to FRASER EATON & Co., Sourabaya, dated 11/9/16.

Hides sold Scriven NPU 1,000 each 16½*d*. 2,000 K 15¼*d*. Hegarty KPU ZK 500 each 15½*d*.

14, Fenchurch Street,
London, E.C.
12*th September*, 1916.

Messrs. Scriven Bros & Co.,
40, Weston Street,
London, S.E.

Dear Sirs,

We are in receipt of your favor of yesterday's date handing us Contract (in quadruplicate) covering your purchase of :—

1,000 NPU (Buff) } at 16½d.
1,000 ZN ,, }
2,000 K ,, at 15½d.

for which we are obliged, and now beg to return slip duly signed.

Yours faithfully,
(*Sgd.*) MACLAINE & Co.

14, Fenchurch Street,
E.C.
12*th September*, 1916.

Messrs. Hegarty Bros.,
3, Leather Market,
Bermondsey,
S.E.

Dear Sirs,

We are in receipt of your Contract of yesterday's date covering your purchase of :—

500 KPU Buffalo Hides } at 15½d.
500 ZK ,, ,, }

which appears to be quite in order, and for which we thank you.

Yours faithfully,
(*Sgd.*) MACLAINE & Co.

Exhibit "K."

London,
3/6*th February*, 1915.

1. For and on behalf of Messrs. Maclaine, Watson & Co., Batavia, Java, we have sold to the Royal Commission on the Sugar Supply.

2. 50,000 *tons* (fifty thousand tons) 5 per cent. more or less White Java Sugar No. 25 and/or above D.S.J.C. packed in bags, of the crop 1915–16.

3. *At* 14*s.* 6*d. per cwt.* Free on board ships.

4. *To facilitate chartering* buyers have the option of taking 5 per cent. more or 5 per cent. less than 50,000 tons, but it is understood that they shall lift as near as possible 50,000 tons nett of sugar.

5. *The sugar to be invoiced* at Shipping weights calculating the picul as equal to 136 lbs. English.

6. *Store rent*, fire insurance as customary, and interest at the rate of 6 per cent. per annum are to be charged on the sugar, or any portion thereof, if still unshipped six weeks after the date of shipment as declared in the following paragraph unless through default of shippers, and sellers are then at liberty to charter for buyers' account at current rates.

7. *To be ready for shipment.*

As to	6,000	tons	ready	to load	25th June.
	6,000	,,	,,	,,	10th July.
	6,000	,,	,,	,,	15th ,,
	6,000	,,	,,	,,	20th ,,
	6,000	,,	,,	,,	31st ,,
	7,000	,,	,,	,,	5th August.
	7,000	,,	,,	,,	15th August.
	6,000	,,	,,	,,	10th September.
	50,000				

at not more than four (4) ports (at sellers' option) on the north coast of Java, or at Tjilatjap, and two (2) north ports for each cargo of not exceeding 7,000 tons, Tjilatjap, if used, to be first or last port, at sellers' option, and part shipments, if any, up to about 1,000 tons at one port only, and to be shipped by Messrs. Maclaine, Watson & Co., and/or their Agents on board steamer/s to be subsequently declared by buyers.

8. *Buyers to provide tonnage* and necessary dunnage at their expense, and to give earliest possible information about ship's movements.

9. *Shippers to commence loading* twelve hours after receipt of written notice from the Captain that the steamer is ready to receive cargo, but not necessarily before the dates specified in paragraph 7 for the quantities therein mentioned sellers to be allowed one (1) working day for each 350 tons for loading, time occupied in shifting ports not to count, nor days on which the cargo is prevented from being loaded by weather.

10. Payment to be made in cash in London for provisional invoice amount of each shipment on receipt of cable by buyers from His Britannic Majesty's Representative in Java that full

sets of Bills of Lading and Certificates of Origin have been deposited with him. In the event of cable communication being broken or interrupted Maclaine, Watson & Co. are to have the right to draw for shipment on demand the Government to provide them with a credit authorising them to do so.

Or in the event of no tonnage being available six weeks after the dates named as ready for shipment, sellers are to have the option of calling for payment in London for the full value of the sugar on satisfying His Britannic Majesty's Representative in Java that the sugar is stored and held for account of the buyers.

11. *If any loss or sea-damage by lighter*, corresponding average papers to be attached to documents.

12. *Marine Insurance*, from shore to shore, including lighter risk and all war risks to be for buyers' account.

13. *Any dispute* arising out of this contract to be submitted for arbitration to the Sugar Association of London, under the Rules governing Cane Sugar Contracts.

14. *This Contract* is subject to the Rules of the Sugar Association of London (Cane Sugar Section) as fully as if same had been expressly inserted herein notwithstanding either or both parties to it be not members of the Association.

(*Sgd.*) MACLAINE & CO.

Approved.

(*Sgd.*) H. W. P.

29*th March*, 1915.

Exhibit "L."

London,

3*rd February*/23*rd March*, 1915.

1. For and on behalf of Messrs. Maclaine Watson and Co., Batavia, Java, we have sold to the Royal Commission on the Sugar Supply.

2. 150,000 *tons* (one hundred and fifty thousand tons) 5 per cent. more or less first runnings Java Sugar packed in baskets and/or bags, of the Crop 1915/16.

3. At 12s. 6d. for 47,000 tons
12s. 9d. „ 10,000 „
13s. 0d. „ 68,000 „
14s. 0d. „ 14,000 „
14s. 3d. „ 11,000 „
} free on board ship on basis 96 per cent. average outturn polarization of each offer.

4. *To facilitate chartering* buyers have the option of taking 5 per cent. more or 5 per cent. less than 150,000 tons, but it is understood that they shall lift as near as possible 150,000 tons nett of sugar, any excess or shortage to be adjusted at the average price of the 5 purchases.

5. *The Sugar to be invoiced* at Shipping weights calculating the picul as equal to 136 lbs. English.

6. *The Sampling* to be supervised at Scottish ports by the Greenock Sugar Association, at Lancashire and Yorkshire ports by the Lancashire Sugar Association, and at London and all other United Kingdom ports by the Sugar Association of London, sellers and buyers each paying one half of the fees.

7. *The polarization* of each cargo or of each shipment is to be established on the average of the sound portion landed, according to the Rules of the Sugar Association for Cane Sugar.

8. *Degrees above* 96 *per cent.* to be paid for at 1½d. and below to be allowed for at 3d. per cwt. per degree, fractions in proportion.

9. *The Invoice* to be made up on the polarization arrived at as above and the nett shipping weights.

10. *Should the whole of a cargo or the whole of a shipment be delivered damaged*, the invoice to be made up at shipping weight and London polarization of shipping samples.

11. *If sugar not taken delivery* of in Java by buyers on the 30th September, 1915, samples to be drawn and sent to London for polarization to be made according to the Rules of the Sugar Association, and this polarization is to be taken as the basis of the invoice.

12. *Store rent*, fire insurance as customary, and interest at the rate of six per cent. per annum are to be charged on the sugar or any portion thereof if still unshipped after six weeks of the date of shipment as declared in the following paragraph unless through default of shippers, and sellers are then at liberty to charter for buyers' account at current rates.

13. *To be ready for shipment.*

As to	6,000	tons ready to load 10th June.
	13,000	,, ,, ,, ,, 15th ,,
	12,000	,, ,, ,, ,, 20th ,,
	23,000	,, ,, ,, ,, 25th ,,
	6,000	,, ,, ,, ,, 1st July.
	6,000	,, ,, ,, ,, 5th ,,
	19,000	,, ,, ,, ,, 15th ,,
	12,000	,, ,, ,, ,, 20th ,,
	12,000	,, ,, ,, ,, 25th ,,
	6,000	,, ,, ,, ,, 1st August.
	7,000	,, ,, ,, ,, 10th ,,
	7,000	,, ,, ,, ,, 15th ,,
	7,000	,, ,, ,, ,, 20th ,,
	14,000	,, ,, ,, ,, 31st ,,
	150,000	

at not more than four (4) ports (at sellers' option) on the North Coast of Java or at Tjilatjap and two (2) North ports for each cargo of not exceeding 7,000 tons, Tjilatjap, if used, to be first or last port, at sellers' option, and part shipments, if any, up to about 1,000 tons at one port only and to be shipped by Messrs. Maclaine, Watson & Co. and/or their agents on board steamer/s to be subsequently declared by buyers.

14. *Each cargo* or shipment to be composed of sugars ranging not below No. 10 D.S.J.C. and not above No. 21 D.S.J.C. and averaging collectively not below No. 12½ D.S.J.C.

15. *Buyers to provide tonnage* and necessary dunnage at their expense and to give earliest possible information about ship's movements.

16. *Shippers to commence loading* twelve hours after receipt of written notice from the Captain that the steamer is ready to receive cargo but not necessarily before the dates specified in paragraph 13 for the quantities therein mentioned sellers to be allowed one (1) working day for each 350 tons for loading, time occupied in shifting ports not to count, nor days on which the cargo is prevented from being loaded by weather.

17. *In the event of non-arrival* of the steamer or steamers in United Kingdom through loss of vessel/s after shipment, the final invoice to be made up on the net shipping weight, calculating the picul as equal to 136 lbs. English, and at polarization of shipping samples.

18. Payment to be made in cash in London for provisional invoice amount of each shipment on receipt of cable by buyers from His Britannic Majesty's Representative in Java that full set of Bills of Lading and Certificates of Origin have been deposited with him. In the event of cable communication being broken or interrupted Maclaine, Watson & Co. are to have the right to draw for shipments on demand the Government to provide them with a credit authorising them to do so.

Or in the event of no tonnage being available six weeks after the dates named as ready for shipment, sellers are to have the option of calling for payment in London for the full value of the sugar on satisfying His Britannic Majesty's Representative that the sugar is stored and held for account of the buyers.

19. *If any loss or sea-damage by lighter*, corresponding average papers to be attached to documents.

20. *Marine Insurance* from shore to shore, including lighter risk and all war risks to be for buyers' account.

21. *Any dispute* arising out of this contract to be submitted for arbitration to the Sugar Association of London, under the Rules governing Cane Sugar contracts. For the purpose of this rule buyers are considered to be refiners.

22. *This contract* is subject to the Rules of the Sugar Association of London (Cane Sugar Section) as fully as if same had been expressly inserted herein notwithstanding either or both parties to it be not members of the Association.

(*Sgd.*) MACLAINE & Co.

Approved.
H.W.P.
23.3.15.

Exhibit "M."

London, 16*th April*, 1915.

1. As in A(1).
2. 20,000 tons—as in A.
3. At 17s. 6d. per cwt. free on board ship.
4. As in A, except for 50,000.
5. As in A.
6. do.
7. To be ready for shipment.

As to	7,000	tons	ready to load		15th June.
,, ,,	7,000	,,	,,	,, ,,	20th ,,
,, ,,	6,000	,,	,,	,, ,,	25th ,,
	20,000				

&c. as in A.

8. As in A.
9. do.
10. do.
11. do.
12. do.
13. do.
14. do.

(*Sgd.*) MACLAINE & Co.

Approved.
(*Sgd.*) H. W. PRIMROSE.
20*th April*, 1915.

(1) "A" in this Exhibit refers to the Contract printed as Exhibit "K."

Exhibit "O."

3rd February, 1915.

The Rt. Hon. Reginald McKenna, P.C., M.P.,
Home Secretary,
Whitehall, S.W.

Sir,

With reference to our conversation with you last evening, we confirm having sold to His Majesty's Government on behalf and for account of our Java friends, Messrs. Maclaine, Watson & Co., Batavia :—

6,000 tons Java White Sugar ready for shipment on 1st July, 1915.
4,000 tons Java White Sugar ready for shipment on 20th July, 1915.
6,000 tons Java White Sugar ready for shipment on 15th August, 1915.
6,000 tons Java White Sugar ready for shipment on 31st August, 1915.

at a price of 14s. 6d. per cwt. f.o.b. Also :—

5,000 tons Java Sugar No. 12 and higher ready for shipment on 15th June, 1915.
6,000 tons Java Sugar No. 12 and higher ready for shipment on 25th June, 1915.
9,000 tons Java Sugar No. 12 and higher ready for shipment on 30th June, 1915.
3,000 tons Java Sugar No. 12 and higher ready for shipment on 10th July, 1915.
3,000 tons Java Sugar No. 12 and higher ready for shipment on 15th August, 1915.
6,000 tons Java Sugar No. 12 and higher ready for shipment on 31st August, 1915.

at a price of 12s. 6d. per cwt. f.o.b. basis 96 per cent. polarization, all other conditions similar to those embodied in contracts between Messrs. Henry Tate & Sons, Ltd., and ourselves through Messrs. C. Czarnikow, Ltd., dated August last(1).

We further thank you for giving us an order in hand to buy further 28,000 tons White Sugar and 118,000 tons Java Sugar No. 12 and higher, at the above prices to be ready for shipment not later than 15th August, which we have cabled out to Java yesterday.

We shall be glad if you will kindly confirm the above, and

Remain, Sir,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

P.S. We enclose herewith the pencil note which we submitted to you yesterday.

(1) Page 514 *post*.

CONTRACT NO. 04361.

29, Mincing Lane,
London, E.C.
19*th August*, 1914.

Messrs. Maclaine, Watson & Co., Batavia, Java, per Messrs. Maclaine & Co., London, E.C.

We have this day sold for your account to Messrs. Henry Tate and Sons Ltd., London:

Fifteen thousand (15,000) *tons 5 per cent. more or less first runnings Java sugar packed in bags, of the crop* 1914–15.

At 17s. 6d. *per cwt. free on board ships, on basis* 96 *per cent. average outturn polarization.*

In the event of any quantity against this contract being shipped other than in complete cargoes, the total contract quantity to be 15,000 tons net sugar as near as possible.

The sugar to be invoiced at Shipping weights calculating the picul as equal to 136 lbs. English.

The sampling to be supervised at Scottish ports by the Greenock Sugar Association, at Lancashire and Yorkshire ports by the Lancashire Sugar Association, and at London and all other United Kingdom ports by the Sugar Association of London, sellers and buyers each paying one-half of the fees.

The polarization of each cargo or of each shipment is to be established on the average of the sound portion landed, according to the Rules of the Sugar Association for Cane Sugar. Degrees above 96 per cent. to be paid for at 1½d. and below to be allowed for at 3d. per cwt. per degree, fractions in proportion.

The invoice to be made upon the polarization arrived at as above and on the net shipping weights.

Should the whole of a cargo or the whole of a shipment be delivered damaged the invoice to be made up at shipping weight and London polarization of shipping samples.

If sugar not taken delivery of in Java by buyers on the 30th November, 1914, samples to be drawn and sent to London for polarization, to be made according to the Rules of the Sugar Association, and this polarization is to be taken as the basis of the invoice.

Store rent, fire insurance as customary, and interest at the rate of six (6) per cent. per annum are to be charged on the sugar, or any portion thereof if unshipped by the 30th November, 1914, unless through default of shippers, and sellers are then at liberty to charter for buyers' account at current rates.

To be ready for shipment on the 1st September, 1914, at not more than four (4) ports (at sellers' option) on the Northern coast of Java or at Tjilatjap and two (2) Northern ports for each

cargo and part shipments (if any) up to about 1,500 tons at one port only and to be shipped by Messrs. Maclaine, Watson & Co., and/or their agents on board steamers to be subsequently declared by buyers.

Each cargo or shipment to be composed of sugars ranging not below No. 10 D.S.J.C. and not above No. 21 D.S.J.C., and averaging collectively not below No. 12½ D.S.J.C.

Buyers to provide tonnage and necessary dunnage at their expense, and to give earliest possible information about ship's movements.

Shippers to commence loading immediately the Captain is ready to receive the cargo, but not necessarily before the 1st September, 1914. Sellers to be allowed one (1) working day for each 350 tons for loading, time occupied in shifting ports not to count, nor days on which the cargo is prevented from being loaded by weather.

In the event of the non-arrival of the steamer or steamers in United Kingdom through loss of vessels after shipment, the final invoice to be made up on the net shipping weight, calculating the picul as equal to 136 lbs. English, and at London polarization of shipping samples.

Payment/s to be made by instalments as shipment/s proceeds by cash in London for provisional invoice amount of each shipment on receipt of cable by buyers from a first class Bank in Batavia that the full sets of Bills of Lading to the order of Messrs. Henry Tate and Sons, Ltd., London, with quantities of tons shipped, together with Certificate of Origin, are in their possession. If any loss or sea-damage by lighter, corresponding average papers to be attached to documents.

Marine Insurance from shore to shore, including lighter risk and all war risks, to be at buyers' risk and to be covered by them at their expense.

Any dispute arising out of this contract to be submitted for arbitration to the Sugar Association of London, under the Rules governing Cane Sugar contracts.

This contract is subject to the Rules of the Sugar Association of London (Cane Sugar Section) as fully as if the same had been expressly inserted herein notwithstanding either or both parties to it be not members of the Association.

Brokerage 1½ per cent.

C. CZARNIKOW, LTD.

(*Sgd.*) J. LAGEMANN,

Director.

3rd February, 1915.

The Rt. Hon. Reginald McKenna, P.C., M.P.,
Home Office,
Whitehall, S.W.

Sir,

In continuation of our letter of even date, we beg to inform you that our Java friends cable to-day having bought :—

14,000 tons White Sugar, and
21,000 ,, basis 96 per cent. Sugar

delivery of which is spread over July to October. We are unable to say at present how much of the above will be ready for shipment by the 15th August.

Our feeling is that we shall experience considerable difficulty in filling your order unless you can see your way to extend time of shipment to 15th September, or at any rate, to 31st August, and we should be glad to have your instructions.

India is a strong buyer at present, and, as you are doubtless aware, the freight to Calcutta is only 16s. 3d. per ton as compared with 55s. and probably more to United Kingdom, so they can well afford to pay a comparatively higher price.

Our Java friends are under offer for large quantities of Sugar on your account, and we hope to let you know to-morrow what they have been able to do.

We are, Sir,

Your obedient Servants,

(*Sgd.*) MACLAINE & CO.

Home Office,
Whitehall, S.W.
4th February, 1915.

Dear Sirs,

I have received your letter dated 3rd February, and I confirm the sales of sugar to His Majesty's Government and the arrangements for further purchases stated therein.

Yours faithfully,

(*Sgd.*) R. MCKENNA.

Messrs. Maclaine & Co.

Home Office,
Whitehall, S.W.
4th February, 1915.

Dear Sirs,

In reply to your second letter dated 3rd February, I agree in view of your representations to extend the time of shipment to August 31st. I shall, however, rely on you to get as early shipment as possible.

Yours faithfully,
(*Sgd.*) R. MCKENNA.

Messrs. Maclaine & Co.

5th February, 1915.

The Rt. Hon. Reginald McKenna, P.C., M.P.,
Home Secretary,
Whitehall, S.W.

Sir,

With reference to our conversation with you last evening, we confirm having sold further to His Majesty's Government on behalf and for account of our Java friends, Messrs. Maclaine, Watson & Co., Batavia :—

15,000 tons Java White Sugar ready for shipment during July and up to 31st August,

6,000 tons Java White Sugar ready for shipment during July and up to 10th September,

at a price of 14s. 6d. per cwt. f.o.b. Also :—

15,000 tons Java Sugar No. 12 and higher ready for shipment July and up to 31st August,

at a price of 12s. 6d. per cwt. f.o.b. basis 96 per cent. polarization, all other conditions similar to those embodied in contracts between Messrs. Henry Tate & Sons, Ltd., and ourselves through Messrs. C. Czarnikow, Ltd., dated August last(1).

You further agreed to raise your limit for the basis 96 per cent. Sugar to 12s. 9d. per cwt. f.o.b. authorising our friends to buy in case of need at 13s. on the understanding that their profit shall not exceed 6d. net per cwt. which limits we cabled out last night.

We shall keep you fully advised of any purchases effected by our friends on your account, and awaiting your confirmation of the above.

We remain, Sir,

Your obedient Servants,
(*Sgd.*) MACLAINE & CO.

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(1) Page 514 *ante*.

Home Office,
Whitehall, S.W.

6th February, 1915.

Dear Sirs,

I have received your letter of 5th February, and I confirm the arrangements stated therein.

Yours faithfully,

(*Sgd.*) R. MCKENNA.

Messrs. Maclaine & Co.

6th February, 1915.

The Rt. Hon. Reginald McKenna, P.C., M.P.,
Home Secretary,
Whitehall, S.W.

Sir,

Our Java friends' cable of 5th inst. received late last night advises purchases on your account of :—

10,000 tons basis 96 per cent. pol., June–31st August delivery at 12*s.* 9*d.* f.o.b. making therefore in all up to date :—

47,000 tons basis 96 per cent. pol. at 12*s.* 6*d.* f.o.b.
10,000 tons basis 96 per cent. pol. at 12*s.* 9*d.* f.o.b.
43,000 tons White Sugar at 14*s.* 6*d.* f.o.b.

100,000 tons.

The Java Market being very firm in sympathy with the American markets, we fear, that our friends are not likely to buy much even at your enhanced limit of 13*s.* f.o.b. basis 96 per cent. pol. Unfortunately, speculators here continue to worry the Java market with the result that prices are rapidly advancing.

We shall be glad to know whether you are prepared to reconsider your limits, and have meantime instructed our friends to buy all they can at 13*s.* f.o.b. basis 96 per cent. pol.

We remain, Sir,

Your obedient Servants,

(*Sgd.*) MACLAINE & Co.

8th February, 1915.

The Rt. Hon. Reginald McKenna, P.C., M.P.,
Home Secretary,
Whitehall, S.W.

Sir,

We confirm our two letters of 6th inst., and can now advise you that our Java friends have succeeded in buying for your account 18,000 tons basis 96 per cent. pol. at 13*s.* f.o.b.

They are still under offer for large quantities, but it is extremely doubtful whether their offers will be accepted in view of the very keen competition they have to face. America comes again stronger to-day, $3\frac{3}{4}$ cts. c. and f. having been paid for prompt Cubas and $3\frac{5}{8}$ cts. c. and f. for March shipment. France is in the market for Javas, and much to our surprise India is bidding higher prices for whites, viz. :—15*s.* 7½*d.* c. and f. Calcutta, and would doubtless pay 15*s.* 9*d.* c. and f. equal to 14*s.* 11¼*d.* f.o.b.

The usual difference in price between whites and browns in Java is 1*s.* 4½*d.* per cwt. Thus the value of browns to-day would be 13*s.* 6¾*d.* f.o.b. equal to 13*s.* 3¾*d.* f.o.b. basis 96 per cent.

Our friends have now executed half of your order for basis 96 per cent. sugar, viz. :—75,000 tons, and it looks as if they will not be able to buy much more unless you raise your limit, as to which we await your instructions.

Needless to add that our friends are not entertaining business with any of their numerous clients as long as they are working for the British Government.

We remain, Sir,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

8th February, 1915.

The Rt. Hon. Reginald McKenna, P.C., M.P.,
Home Secretary,
Whitehall, S.W.

Sir,

Confirming our letter of even date, we beg to advise you that our Java friends have succeeded in buying further for your account :—

15,000 tons basis 96 per cent. pol. at 13*s.* f.o.b.

making in all 90,000 tons of this description.

We remain, Sir,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

We trust you will let us have your instructions regarding raising your limit and extending time of shipment as early as ever possible to-morrow morning.

10th February, 1915.

The Rt. Hon. Reginald McKenna, P.C., M.P.,
Home Secretary,
Whitehall, S.W.

Sir,

Confirming our letter of 8th inst., we beg to advise that our Java friends have succeeded in buying further for your account :—

15,000 tons basis 96 per cent. pol. at 13*s*. f.o.b.

making in all 105,000 tons of this description.

We remain, Sir,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

11th February, 1915.

The Rt. Hon. Reginald McKenna, P.C., M.P.,
Home Secretary,
Whitehall, S.W.

Sir,

Confirming our letter of yesterday's date, we beg to advise that our Java friends authorise us to close further against your order :—

20,000 tons basis 96 per cent. pol. at 13*s*. f.o.b.

which brings the total quantity of this description up to 125,000 tons.

The market in Java being considerably firmer owing to speculative purchases by competitors, we think it unlikely that they will be able—for the present at least—to effect further purchases except at a much higher price.

We remain, Sir,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

4th March, 1915.

Dear Mr. Runge,

Enclosed copy of proposed contract for basis 96 per cent. pol. sugars as discussed by us yesterday.

You will see we have taken up the payment clause as proposed by you, copy of which we are passing out to our Java friends by to-morrow's mail, but of course until we have their sanction,

which we have asked them to cable, we cannot confirm meantime.

If you agree with the enclosed in all other respects, please let us know and we will have a contract for the whites drawn up on the same lines and then, on receipt of our Java friends' cable, we can finally pass same.

Yours very truly,

(*Sgd.*) MACLAINE & Co.

5th March, 1915.

Messrs. Maclaine, Watson & Co.,
Batavia.

Dear Sirs,

In connection with our sales to the Government, the Authorities here wish to have the clause in the Contract regarding payment taken up in the following terms :—

> " Payment to be made in cash in London for provisional invoice, amount of each shipment on receipt of cable by buyers from His Britannic Majesty's Representative in Java that full set of Bills of Lading and Certificates of Origin have been deposited with him. In the event of cable communication being broken or interrupted Maclaine, Watson & Co. are to have the right to draw for shipments on demand, the Government to provide them with a credit authorising them to do so."

From this you will see that the documents are to be handed to His Britannic Majesty's Representative and not to the Bank with whom you have negotiated your exchange, and we should be glad to know that you can arrange this with the Bank.

Of course, this is not in accordance with customary procedure, but as the bank will receive advice from their correspondents in London within a day or two that the cash has been collected here by them, we imagine that your Bank in Java (we presume it will probably be the Java Bank) will not object to this arrangement under your guarantee.

If we are correct in our supposition, please telegraph us " Payment Clause agree " when we shall understand there is no objection on the part of the Bank to the above arrangement.

While on this subject with a view to reducing the enormous telegraphic expenses we incurred last year, we would mention that as far as we can see we should only require to know from you the name of the steamer, the value of the invoice, and the name of the Bank to whom the amount must be paid, and that consequently if you were to wire :—

" Pay Lloyds 17,500 Clan Macfadyen,"

you would be giving us all the information we require for, of course, His Majesty's Representative will have to telegraph full particulars of each shipment to the authorities here.

We may mention that nothing has been decided yet regarding chartering, but we think it is highly probable that the Admiralty will make arrangements for lifting this sugar.

Rates of freight are excessively high, and anything up to 80*s.* per ton would probably have to be paid in the open market to charter the 25 to 30 steamers required to lift the Government's purchases. We fear, therefore, that it is more than likely you will make nothing out of address commission though we will endeavour to get something reserved for you for looking after ships' business, etc.

Yours faithfully,
(*Sgd.*) MACLAINE & CO.

20*th March*, 1915.

J. J. Runge, Esq.,
Scotland House,
Westminster, S.W.

Dear Mr. Runge,

I hand you herewith contracts for the 50,000 tons white Javas and 139,000 tons Java sugars basis 96 per cent., which I think are now to our mutual satisfaction. Kindly confirm.

It is understood that as regards the payment clause (i.e., disposal of the documents) *it is subject to the approval of our Java friends* and that, in the event of cable communication being broken and our friends consequently drawing against their shipments on demand, the difference in the exchange will be refunded in due course. In connection with this no doubt we shall also shortly be hearing from you regarding the credit to be opened in Maclaine, Watson & Co.'s favour.

Thanks also for the correspondence with Sir Henry Primrose regarding Certificates of Origin which I return herewith.

Yours very truly,
(*Sgd.*) A. THOMSON.

Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.
23*rd March*, 1915.

Dear Mr. Thomson,

I am sending you an official letter confirming Contract for 139,000 tons raws.

On looking through your Contract for the whites, it seems to me that the clause " in the event of any quantity " might operate very unfairly, and I would suggest :—

" For such quantity as is shipped as complete cargoes, buyers shall have the option of taking 5 per cent. more or less."

Credit.—Could you let me know which is the large Bank that does most of the Java credits, as we should probably approach them about a credit in the event of cable communication being broken.

Yours very truly,
(*Sgd.*) J. J. RUNGE.

A. Thomson, Esq.,
Messrs. Maclaine & Co.,
14, Fenchurch Street, E.C.

Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

23*rd March*, 1915.

Messrs. Maclaine & Co.,
14, Fenchurch Street,
London, E.C.

Dear Sirs,

I am instructed to acknowledge receipt of your contract 3rd February—17th March covering 139,000 tons of raw Java sugar, with the terms of which the Commission is in full agreement.

I would suggest that the 11,000 tons purchased of you to-day should be incorporated in the above contract, particularly with regard to the clause " To facilitate chartering."

Yours faithfully,
(*Sgd.*) J. J. RUNGE.

24*th March*, 1915.

Dear Mr. Runge,

Thanks for your letters of 23rd inst.

I don't understand where your objection to the clause " In the event of any quantity, etc.," comes in, the intention being but should the Commission lift a portion of their purchases by liners they should arrange then to take as near as possible 50,000 tons exactly nett of sugar.

However, we can substitute if you like "To facilitate chartering buyers have the option of taking 5 per cent. more or 5 per cent. less than 50,000 tons but it is understood that they shall lift as near as possible 50,000 tons nett of sugar."

Credit.—As you know last year as far as we were concerned all the financing of the Commission's purchases was put through the Java Bank in conjunction with Lloyds Bank here; I would therefore suggest that you should approach Lloyds Bank. But in view of the large amount involved it would be desirable to divide the credits as much as possible over a number of the leading banks here, such as Parrs, Barclays, Williams Deacon, Royal Bank of Scotland, and London City and Midland Bank, etc., though for our part we should have thought a credit opened by the Treasury would have been simpler, the Government remaining in any case responsible for due payment of our Batavia friends' drafts.

We are quite agreeable to incorporating the new purchase of 11,000 tons in the contract, but as it seems possible that there may eventually be further additions, we shall probably have to start fresh again sooner or later.

Of course in any case the Clause commencing "to facilitate chartering" would carry on from contract to contract as already arranged.

Chartering.—In this connection we would request you when closing with Shipowners, to take up a clause to the following effect:—

"Stevedores for the loading of the vessel to be subject to Maclaine, Watson & Co. or their agents' approval."

The enclosed copies of correspondence from McNeill & Co., Samarang, which I would request you to return to me, explain the reason for the above request.

Yours faithfully,

(*Sgd.*) A. THOMSON.

Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

25th March, 1915.

Dear Mr. Thomson,

Thanks for your letter of yesterday.

My point with regard to the 5 per cent. clause was that if we shipped say 500 tons in one of the Raw Sugar steamers we would, under your clause, sacrifice our 5 per cent. option on the remaining 45,000 tons, whereas surely what is reasonable is that

buyers should have the option to facilitate chartering. Why not have the same clause on the Raw Contract 7? I enclose the Contract.

Stevedores.—Under the arrangements for freight which I hope to make, I hope to be able to include the clause you want. I return the press copy.

Credit.—I will pursue your suggestion further.

Yours very truly,
(*Sgd.*) J. J. RUNGE.

A. Thomson, Esq.,
Messrs. Maclaine & Co.,
14, Fenchurch Street,
London, E.C.

27th March, 1915.

Dear Mr. Runge,

I return you herewith the White Sugar Contract for 50,000 tons which is now in order I hope.

If you will return me the basis 96 per cent. pol. Contract I will have the last purchase 11,000 tons taken up therein and return it to you.

Yours very truly,
(*Sgd.*) A. THOMSON.

J. J. Runge, Esq.,
Scotland House,
Victoria Embankment, S.W.

Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.
29th March, 1915.

Messrs. Maclaine & Co.,
14, Fenchurch Street,
London, E.C.

Dear Sirs,

I am instructed to acknowledge receipt of your Contract 3–6 February, covering 50,000 tons White Java Sugar with the terms of which the Commission is in full agreement.

I also enclose the Contract for 139,000 tons of Raw Sugar with the request that the purchase of March 23rd of 11,000 tons be incorporated in it.

Yours faithfully,
(*Sgd.*) J. J. RUNGE.

13*th April* 1915.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

With reference to our letter of 20th March to Mr. J. J. Runge, we can inform you that we have just received a cable from our Java friends agreeing to the payment clause as provisionally taken up in our Contract with you, which kindly note.

We are, Gentlemen,
Yours faithfully,
(*Sgd.*) MACLAINE & Co.

17*th April*, 1915.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

Enclosed we beg to hand you Contract for a further quantity of 20,000 tons White Java Sugar at 17s. 6d. made out on exactly the same conditions as our Contract of 3rd–6th February, and shall be glad to hear from you that you agree to same. You will doubtless agree that these 20,000 will be shipped before the 50,000 tons, Contract 3rd–6th February.

We are, Gentlemen,
Yours faithfully,
(*Sgd.*) MACLAINE & Co.

Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.
20*th April*, 1915.

Messrs. Maclaine & Co.,
14, Fenchurch Street,
London, E.C.

Dear Sirs,

I beg to acknowledge receipt of your letter of the 17th inst., enclosing Contract for 20,000 tons White Java Sugar at 17s. 6d. per cwt. with the terms of which the Commission are in full agreement.

The last paragraph of your letter is not quite clear, the Contract of February 3rd–6th containing only 6,000 tons of June delivery and these 6,000 tons and the Contract of 16th inst., will be the first shipment of white sugar.

Yours faithfully,

(*Sgd.*) J. J. RUNGE.

Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

30*th April*, 1915.

A. Thompson, Esq.,
Messrs. Maclaine & Co.
14, Fenchurch Street, E.C.

Dear Sir,

I am instructed to forward to you a copy of a letter which has to-day been received by the Commission from the Treasury, and to inform you that unless you see any reason to the contrary, the Commission proposes to proceed upon the line suggested in that letter.

I shall be glad if you will let me have your views as to this at your earliest convenience.

Yours faithfully,

(*Sgd.*) G. S. REWCASTLE.

[Enclosure to above letter.]

Copy letter received from the Treasury, S.W.

29*th April*, 1915.

Sir,

I have laid before the Lords Commissioners of His Majesty's Treasury Mr. Rewcastle's letter of the 31st ulto. stating that in a contract made by the Royal Commission on the Sugar Supply for the purchase of Java Sugars, the sellers insist upon the insertion of a clause to the effect that if cable communication should be broken between Java and this country at the time of shipment they should be enabled to draw on a Bank in Java on a

credit opened by the Commission for the price represented by documents handed by them to the British Representative in Java.

The probability of the cable communication being broken is so remote that My Lords think that the Commission cannot fairly be expected to incur expense in opening credits in Java which might in fact never be used. Moreover, the contingency can be sufficiently guarded by authorising the British Representative in Java to draw Bills on London.

The Commission should therefore, after consultation with the Foreign Office, address to His Majesty's Representative in Java a letter authorising him to draw sight Bills on London in the event of its being necessary to make payments for purchases at a time when cable communication is interrupted.

The Bills would be drawn on the Sugar Commission in London or, if thought more convenient, on the Chief Clerk at the Foreign Office for the account of the Sugar Commission, and His Majesty's Representative could obtain any funds required by him for the purpose of paying the sellers by discounting these bills at a local Bank. There can be no doubt that the Bills would be readily taken up by the Banks as His Majesty's Representative could produce the letter authorising him to draw the bills and the banks would have the additional security of the documents handed over by the sellers.

I am, Sir,

Your obedient Servant,

1*st May*, 1915.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

We have to acknowledge receipt of your favour of 30th ulto. handing us copy of a letter which you have received from the Treasury.

We think the procedure therein suggested would be sufficient to meet our Java friends' requirements, but would request, if possible, that we might receive a copy of the letter addressed to His Majesty's Representative in Java for the information of our friends and ourselves.

We are, Gentlemen,

Your obedient Servants,

(*Sgd.*) MACLAINE & CO.

Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment,
S.W.
3rd May, 1915.

Messrs. Maclaine & Co.,
14, Fenchurch Street,
E.C.

Dear Sirs,

I am in receipt of your letter of the 1st May and am glad to note that the procedure suggested in the Treasury letter of 30th April will be sufficient to meet your friends' requirements, and I am instructed to inform you that a copy of the letter addressed to His Majesty's Representative in Java will be handed to you for the information of your friends and yourselves.

Yours faithfully,
(*Sgd.*) C. S. REWCASTLE,
Secretary.

Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment,
S.W.
29th May, 1915.

Messrs. Maclaine & Co.,
14, Fenchurch Street, E.C.

Dear Sirs,

With reference to payments in Java in the event of cable communication being interrupted at time of shipment, I am instructed to transmit herewith a copy of a letter addressed to H.M. Consul General at Batavia under date May 24th.

Yours faithfully,
(*Sgd.*) J. J. RUNGE.

[Enclosure to above letter.]

24th May, 1915.

Sir,

With reference to the telegram from this Department of the 17th instant, I am directed by Secretary Sir E. Grey to transmit to you herewith a copy of a letter from the Royal Commission on the Sugar Supply as to the steps which it is

desired that you should take to effect payments for sugar bought in Java, in the event of a breakdown in the cable communication with this country at the time when certain contracts are being carried out.

You are authorised in the circumstances mentioned to draw bills at sight on the Secretary of the Royal Commission in London, and to discount these bills with a local bank in order to procure the sums required for paying the sellers.

As suggested by the Treasury in the letter of April 29th, you may produce this despatch as your authority for drawing the bills in question and the bank discounting the bills may hold, as additional security, the documents handed over by the sellers of the sugar.

You should at once duly notify the Secretary of the Sugar Commission at Scotland House, Victoria Embankment, London, S.W., of any bills which you may thus draw upon him.

I am, Sir,
Your most obedient humble servant,

COPY OF TELEGRAM FROM BECKETT (CONSUL GENERAL), BATAVIA, TO FOREIGN OFFICE, LONDON, DATED 26TH JUNE, 1915.

" Thirty Maclaine Watson deposited with me complete sets Bills Lading Certificates Origin Sixhundred Tons Sugar Dromonby value Tenthousand Fivehundred Pounds Sixhundred Tons Ayr value Tenthousand Fivehundred Pounds Sixhundred Tons Samara value Tenthousand Fivehundred Pounds Eighthundred Tons Galavale value Tenthousand Onehundredfifty Pounds Beckett."

Samples of the receipts given by the Banks:—

" 17*th June*, 1915. Received of Maclaine & Co. the sum of £20,300 by cheque of the Royal Commission on the Sugar Supply on the Paymaster General for the credit of the Java Bank, Batavia, Java.

For Lloyds Bank Limited,
pro Manager."

" 5*th July*, 1915. Received of Maclaine & Co. the sum of £14,997 12*s.* 1*d.* by one cheque of Royal Commission on the Sugar Supply on Paymaster General for credit of our Branch at Batavia, Java.

For the Hong Kong & Shanghai Banking Corporation,
Manager."

" 19*th July*, 1915. Received of Maclaine & Co. the sum of £27,163 14*s*. 5*d*. by cheque of Royal Commission on the Sugar Supply on Paymaster General for credit of Ned. Ind. Escompto Miji.

For Parr's Bank Ltd.,
Cashier."

" 22*nd July*, 1915. Received of Maclaine & Co. the sum of £11,600 by cheque of the Royal Commission on the Sugar Supply on Paymaster General for the credit of the Nederlandsche Handel My.

per pro Union of London & Smiths Bank Ltd.,
Manager."

" 6*th September*, 1915. Received of Maclaine & Co. the sum of £13,187 10*s*. 0*d*. by cheque of the Royal Commission on the Sugar Supply on Paymaster General for credit of our Batavia Branch.

For the Chartered Bank of I.A. and China,
pro Manager."

Exhibit " P."

21*st December*, 1915.

Dear Sir Robert,

In connection with our conversation yesterday regarding the terms on which we would propose to execute Government orders for Java sugars, we can advise you as follows :—

We would suggest that we should buy the sugars in Java in guilders per picul of 136 lbs. in the customary assortments, i.e. :—

Whites.—No. 25 and above D.S.J.C.

Channel Assortment.—No. 16 and higher polarization guaranteed minimum 98 per cent.

American Assortment.—In baskets or bags No. 11 and higher on basis of polarization 96 per cent., 9 cents up and 18 cents down per degree.

That to the price we pay in Java we should add 25 guilder cents per picul to cover all charges, i.e. store-rent, fire insurance, interest, Java brokerage, receiving, weighing, sampling and lighterage on board, which we may mention is what it costs us all round to deliver the sugar f.o.b.

In addition we would charge 25 cents. per picul as our commission.

For example, if we bought :—

Whites there would be	first cost	f.11.50	
	charges	.25	
	commission	.25	
		f.12.00	f.o.b.
Channel Assortment	first cost	f.10.25	
	charges	.25	
	commission	.25	
		f.10.75	f.o.b. telquel.
American Assortment	(basis 96 per cent. No. 11 and above).		
	first cost	10.00	
	charges	.25	
	commission	.25	
payment for 97 per cent. pol.		.09	
		10.59	f.o.b.

in addition to which in connection with American Assortment there would be a final settlement for superiority polarization at 1½*d.* per degree on outturn tests on the samples drawn from the cargo on delivery here.

We may mention that should the total quantity purchased on the above items exceed, say 300,000 tons, we should be prepared to discuss a modification of commission on the quantity in excess.

Needless to say that we are at all times at your disposal to discuss matters further, should you desire to see us.

We are, dear Sir,
Yours truly,
(*Sgd.*) MACLAINE & Co.

Sir Robert Park Lyle, Bart.,
Mincing Lane,
London, E.C.

10*th January*, 1916.

Dear Sir,

In the course of our conversation with you on the 6th inst. at which our proposals for purchasing Java sugars for account of the Government, as embodied in our letter to you of 21st ulto. were discussed, three points were raised by you, i.e. :—

(1) The elimination of "Java Classification."

(2) The objection to sugar packed in baskets.

(3) The possibility of a modification in the Commission.

We are now in a position to make the following suggestions on behalf of our Java friends, Messrs. Maclaine, Watson & Co.

(1) They are, in principle, very averse to dropping the "Java Classification" for the simple reason that they buy on these terms, and there is such a very wide difference of opinion in the different consuming countries of the world regarding the colour or shade of Java sugars, which are scarcely ever of the same shade as the standard samples. However, as the business is entirely for the Government, they would be willing to waive their objections and to drop the "Java Classification."

(2) With regard to so-called American Asst. No. 11 and higher basis 96 per cent. pol. which is still to a great extent packed in baskets, the Government should give distinct limits for sugar in bags and sugar in baskets.

(3) The question of commission is one, of course, of vital importance to our friends in Java, their charges account being very heavy, in addition to which their cable expenses are enormous; they think, therefore, that a commission of 25 cents. per picul is not out of the way, considering that they place their services unreservedly at the disposal of the Government, and give them their whole-hearted support.

Further, there is another point which we omitted to discuss with you at our interview and that is, are we to understand that the brokers in London, viz., Messrs. C. Czarnikow Ltd., J. V. Drake & Co., and Tolme & Runge, are again to be left in the cold this year? You will readily understand that our Java friends cannot be expected to remunerate the brokers here if they have to be satisfied with a less commission than 25 cents per picul; on the other hand we feel sure that you agree with us that something is due to the brokers here, if we wish to be kept properly informed of what is going on in the world. Under the circumstances therefore, we would propose that the commission be fixed at 25 cents per picul, with the distinct understanding that in any case our Java friends should be guaranteed not less than f.1,000,000 (one million guilders) nett.

Should the total quantity purchased exceed 5,000,000 piculs, say roughly 300,000 tons, our friends would be prepared to reduce the commission on the excess quantity to 20 cents per picul, out of which they would pay brokers 2 cents.

With regard to the China refineries it was mentioned by you that the Commission would not object if we could induce them to combine their orders also with those of the Government regarding which, as you will readily understand, we have no certainty whatsoever, but in any case we feel that, until the possibility of competition for Java sugars from the side of the French Govern-

ment is finally eliminated by an arrangement between the two Governments, it would be useless for us to take the matter up seriously with the China refineries.

We are, dear Sir,
Yours faithfully,
(*Sgd.*) MACLAINE & CO.

Sir Robert Park Lyle, Bart.,
21, Mincing Lane,
E.C.

9th March, 1916.

Dear Sir,

We confirm our conversation last night with Mr. McKenna and yourself at the Treasury, when we were instructed to authorise Maclaine, Watson & Co., Batavia, to buy for the British Government up to :—

50,000 tons Whites—
June–July delivery price not to exceed f.11.50 f.o.b.
Aug.–Sept. delivery price not to exceed f.11.25 f.o.b.

50,000 tons Average 17 or basis 96 per cent. pol. sugars.

Average 17—
June–July delivery price not to exceed f.10.25 f.o.b. telquel.
Aug.–Sept. delivery price not to exceed f.10 f.o.b. telquel.

Basis 96 per cent.—
In bags, June–July delivery price not to exceed f.10 f.o.b. basis 96 per cent.
In baskets, June–July delivery price not to exceed f.9⅞ f.o.b. basis 96 per cent.
In bags, Aug.–Sept. delivery price not to exceed f.9¾ f.o.b. basis 96 per cent.
In baskets, Aug.–Sept. delivery price not to exceed f.9⅝ f.o.b. basis 96 per cent.

It is of course understood that Maclaine, Watson & Co's. commission, as laid down in our letters to you of 21st December and 10th January, is not included in above prices and therefore has to be added.

Instructions as above were passed out by cable last night to our Java friends.

Regarding the order for :—
25,000 tons this Crop Whites at f.11.50 f.o.b. for April shipment, we have meantime not telegraphed Java, as we wish to consult you further before doing so.

Java cable of yesterday's date (received this morning) reads :—

" Wellenstein Krause & Co. are bidding for 1,500 tons
" June Whites f.11⅝ and for 1,500 tons July f.11½ f.o.b.
" and Kian Gwan for 6,000 tons July/August Whites f.11½
" f.o.b."

We are, Dear Sir,
Yours faithfully,
(*Sgd.*) MACLAINE & Co.

Sir Robert Park Lyle, Bart.,
21, Mincing Lane, E.C.

21, Mincing Lane,
London, E.C.
9*th March*, 1916.

Messrs. Maclaine & Co.
14, Fenchurch Street,
London, E.C.

Dear Sirs,

I am in receipt of your letter of to-day's date confirming what was arranged at the Treasury last night with Mr. McKenna.

The details set forth by you are in order, and I agree that it is understood that Messrs. Maclaine, Watson & Co's commission is not included in the prices stated and is to be as laid down in your letters to me of 21st December and 10th January, with the one exception that there is no guarantee as to a minimum.

With regard to the 25,000 tons old crop white sugar; as explained to you verbally this afternoon *I am arranging that tonnage be sent out*, and while your friends will doubtless exercise a wise discretion as to the time and method of purchase, *it is important that they should realize that the ships must not be kept waiting for the sugar.*

I am,
Yours faithfully,
(*Sgd.*) ROBT. PARK LYLE.

12*th April*, 1916.

Dear Sir,

We confirm our two letters of 10th inst.

We yesterday cabled our Java friends your revised limits, viz. : Whites f.12½ f.o.b., Browns f.11½ f.o.b., American in Bags f.11¼, in Baskets f.11⅛ f.o.b., basis 96 per cent. pol. adding

that time of delivery was immaterial but that you naturally preferred early sugars and to do the best they could on your behalf.

We have just received their reply advising the following purchases :—

2,400 tons Sugar basis 96 per cent. pol. June–July delivery at f.10½ f.o.b.

5,000 tons Average 17 July–August delivery at f.10½ f.o.b.

9,000 tons Average 17 June–July delivery at f.10¾ f.o.b.

3,000 tons Average 17 August–September delivery at f.10¼ f.o.b.

2,400 tons Average 17 August–September delivery at f.10⅜ f.o.b.

They are doubtless negotiating for further quantities and advise us that they have bid for Mirandolle Voute & Co's balances, viz. :—

1,200 tons Whites June–July delivery at f.12 f.o.b. combined with—42,000 tons Whites balances of crops August-November delivery at f.11¾ f.o.b.

regarding which we hope to hear in the course of the next few days either direct by cable from Holland, or from Java, but when, we are not in a position to say as cables from Holland in any direction are subject to endless delay.

Our friends add that the Exports for March were 57,000 tons, a by no means negligible quantity.

We are, dear Sir,

Yours faithfully,

(*Sgd.*) MACLAINE & Co.

Sir Robert Park Lyle Bart.,
21, Mincing Lane,
London, E.C.

14*th April*, 1918.

Dear Sir,

We confirm our two letters of yesterday's date.

Our Java cable to hand this morning advise the purchase of :—

16,500 tons Am. Ass. in bags Aug. and later delivery at f.10½ f.o.b. basis 96 per cent. pol.

4,500 tons Avge. 17 July–Aug. delivery
10,000 tons Avge. 17 June delivery
} at f.10¾ f.o.b.

With regard to the purchase of 3,000 tons American Ass. August delivery advised yesterday at f.10½ f.o.b. our friends inform us that the Sugar is in Baskets and the price should be f.10¼ f.o.b. which kindly note.

They further add that Wellenstein Krause & Co., secured 3,000 tons Whites June–July delivery at f.12 f.o.b. which no doubt they bid for some time ago.

Yours faithfully,
(*Sgd.*) MACLAINE & Co.

Sir Robert Park Lyle Bart.,
21, Mincing Lane,
E.C.

3*rd May*, 1916.

Dear Sir,

We hand you enclosed a statement showing the average prices of the purchases of sugars, which our friends in Java have made on behalf of the Sugar Commission, we should be glad to know that you agree same.

As arranged with you, these purchases of :—

52,800 tons American Asst. basis 96 per cent. pol. costing f.10.87³p. pol. f.o.b.
124,200 tons Average 17 costing f.11.06⁴ p. pol. f.o.b.
120,800 tons Whites costing f.12.38⁹ p. pol. f.o.b.

will be treated as the first contract, any subsequent purchases our friends may later make on your behalf will then comprise a second contract to be treated separately.

With your consent we propose to request our Java friends to make up their invoices for these first purchases on the basis of :—

f.10.87 p. pic. f.o.b. for the American Asst. basis 96 per cent. pol. 9 cts. for 97 per cent. pol.
f.11.06 p.pic. f.o.b. for the Average 17.
f.12.39 ,, ,, ,, ,, Whites,

and later a final adjustment will be made at the end of the season, when the quantities delivered under their contracts for balances are known, which may affect the average prices seeing that same have been calculated on the *estimated* quantities.

Yours faithfully,
(*Sgd.*) MACLAINE & Co.

Sir Robert Park Lyle Bart.,
21, Mincing Lane,
London, E.C.

P.S. The quantities and prices taken up in the above mentioned statement are of course taken from advices by cable, and are subject to subsequent confirmation by letter.

17*th May*, 1916.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

We have to acknowledge receipt of your letter of 16th inst.

We note that in connection with our Java friends' purchases of old crop sugars you have instructed the Netherlands Trading Society, Batavia, to pay our friends on 31st May f.6,471,854.

For your guidance we may mention that we fancy the amount required will be rather larger than above mentioned, in view of shipping charges, interest, etc., but we will refer to this matter again when shipment has been completed.

We note the further instructions to the Trading Society regarding payments to be made to our friends for new crop sugars and in this connection we hand you herewith a statement showing the average prices of the purchases of sugar, which our friends in Java have lately made, and which have now been taken over by you, with which we understand you agree.

These purchases which represent :—

5,500 tons American Asst. basis 96 per cent. pol. costing f.11¾ p. pic. f.o.b.

64,700 tons Average 17 costing f.12.142 p. pic. f.o.b.

48,000 tons Whites costing f.13¼ p. pic. f.o.b.

3,800 tons White seconds costing f.13.04 p. pic. f.o.b., will be treated as the second contract.

As arranged with Mr. Runge we propose to request our Java friends to make up their invoices for these purchases on the basis of :—

f.11¾ p. pic. f.o.b. for the American Asst. basis 96 per cent. pol. 9 cts. for 97 per cent. pol.

f.12.15 p.pic. f.o.b. for the Average 17.

f.13¼ ,, ,, ,, ,, Whites,

f.13.04 ,, ,, ,, ,, White seconds, to which they will add their commission of 25 cts. per picul and as arranged Contract 2 will be shipped first, to be followed by Contract 1; of course a final adjustment will be made at the end of the season, when the actual quantities delivered under balances have been ascertained.

Certificate of Origin.—We understand that Certificates of Origin as supplied with documents last year are all that is required provided they are vised by the British Consul. Kindly confirm this.

Bills of Lading.—We await your written instructions regarding the making up of these and note that they are to be handed to the British Consul for transmission to the Royal Commission as soon as our friends have received payment.

We are, Gentlemen,

Your obedient Servants,

(*Sgd.*) MACLAINE & Co.

11*th August*, 1916.

The Royal Commission on the Sugar Supply,

Scotland House,

Victoria Embankment, S.W.

Gentlemen,

Sales of Sterling Exchange.

Reverting to our letter of 9th inst., we can inform you that we have just received the following cable from our Java friends :—

" Confidential finance Java Bank willing buy provided
" have free disposal gold London Handelsbank Escompto
" My. not buying forward consider advisable allow us sell
" three months drafts daily whenever possible at best rate
" obtainable to-day's rate eleven twenty five."

From the above it is evident that our friends can make no headway in selling sterling exchange for forward delivery, and it would appear that the Banks for immediate delivery prefer drafts at 3 m/sight.

Under the circumstances it would appear to us to be best that you should authorise our friends at act as they suggest, in which case we would propose cabling as follows :—

" Confidential finance leave your freehanded."

Kindly let us know, if possible by telephone to-day, whether this has your approval. Should you wish to be kept advised of their sales, we could add the words :—

" Advise sales."

We are, Gentlemen,

Your obedient Servants,

(*Sgd.*) MACLAINE & Co.

12*th August*, 1916.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

Sales of Sterling Exchange.

Confirming our letter of yesterday's date, we have now cabled our Java friends as follows :—

" Confidential finance authorise selling daily but not " below eleven twenty advise sales."

as arranged with Mr. Runge by telephone this morning.

We are, Gentlemen,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

14*th August*, 1916.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

Sales of Sterling Exchange.

Confirming our letter of 12th inst. we can inform you that our Java friends cable us to-day that they have sold sterling bills at 3 m/st. to the extent of £50,000—at Exchange f.11.25 per £ sterling.

We are, Gentlemen,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

In this connection further similar letters have been addressed to the Royal Commission frequently ever since.

8*th March*, 1917.

Dear Sir,

We confirm our letter of yesterday's date.

Reverting to our conversation to-day, when you informed us that you wished to secure 8,400 tons of ready Whites for the Italian Government and 15,000 tons for the Sugar Commission,

we now confirm that we have telegraphed our Java friends as follows :—

" Whites buy cheapest possible not exceeding f.14¾ f.o.b. 25,000 tons 10 per cent. buyers option March 15th May."

On receipt of their reply we will communicate with you again.

We are, dear Sir,
Yours faithfully,
(*Sgd.*) MACLAINE & CO.

Sir Robert Park Lyle, Bart.,
21, Mincing Lane,
E.C.

9th March, 1917.

Dear Sir,

Reverting to our letter of yesterday's date, we have just received a cable from our Java friends reading as follows :—

" Whites closed fourteen five eights freeboard March fifteenth May average quality time of year other conditions our number fourteen (i.e. provided not for India or resale locally)."

We therefore confirm that our Java friends have bought for your account :—

8,400 tons Whites for the Italians.
15,000 tons Whites for the Sugar Commission.

at f.14.62½ f.o.b. to which must be added our friends commission at 20 cents per picul.

We will send you a contract for the 8,400 tons to-morrow.

We are, dear Sir,
Yours faithfully,
(*Sgd.*) MACLAINE & CO.

Sir Robert Park Lyle, Bart.,
21, Mincing Lane,
E.C.

3rd May, 1917.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

In accordance with your instructions, per Mr. Chas. Hales, we cabled Java friends on 1st inst., to buy at best not exceeding f.13 f.o.b. sufficient White Sugar to fill ss. " Bushu Maru " estimated to carry 3,500 tons due about 12th inst.

We have to-day received our friends' reply informing us that they have closed, on conditions as per our contract with you of 9th March, for May shipment at f.12¼ f.o.b., whereas they have in hand for reply in Java on Sunday further 16,500 tons May–June shipment.

We shall to-day request our friends to make out the invoice for the Italian Government at f.12.45 f.o.b., and we await your instructions regarding the 16,400 tons of sugar in hand.

We are, Gentlemen,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

4th May, 1917.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

We confirm our two letters of yesterday's date.

With regard to the 16,500 tons Whites which our Java friends have in hand, we confirm receipt of your instructions through Mr. Chas. Hales to-day, viz. :—That our friends should endeavour to close 5,000 tons only at f.12.25 f.o.b. and get the balance, say 11,500 tons again in hand for reply next Wednesday; we will advise you of the result in due course.

In reply to a cable we despatched yesterday, inquiring regarding crop prospects, weather and present prices of New Crop Sugars, our friends cable :—

> " Crop prospects good weather improving although still some rain, June July quotations Whites f.13½ f.o.b. Average 17 f.12 3/8 f.o.b. expect lower prices if confidential abstain meantime."

We are, Gentlemen,
Your obedient Servants,
(*Sgd.*) MACLAINE & Co.

7th May, 1917.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.

Gentlemen,

We confirm our letter of 4th inst.

In their cable of last Saturday, received late in the afternoon, our Java friends advise us that they have closed the 5,000 tons Whites (crop 1916–17) May–June shipment at f.12.25 f.o.b.

and that they have the balance (say 11,500 tons) in hand on the same conditions for reply in Java on Wednesday next.

The Director of Commercial Services declares the ss. "Murcia" expected to clear from Singapore on 5th inst. to lift about 6,500 tons, which we presume is the same steamer declared in your letter of 4th inst. under the name of "Mercier."

We are, Gentlemen,
Your obedient Servants,
(*Sgd.*) MACLAINE & CO.

MACLAINE & CO.,
London.
19*th October*, 1917.

The Royal Commission on the Sugar Supply,
Scotland House,
Victoria Embankment, S.W.1.

Gentlemen,

Reverting to our letter of 8th inst. we now beg to inform you that our Java friends have allotted the following Contract numbers to the direct purchase made by your Commission in Holland :—

Contract No. 17 138,000 tons average No. 17 sugars average price f.9.20 f.o.b.

Contract No. 18 12,000 tons basis 96° sugars average price basis 96° f.o.b.

on which Contracts, as proposed by Sir Robert Park Lyle, our Java friends are to charge 20 cents per picul commission.

We are, Gentlemen,
Your obedient Servants,
(*Sgd.*) MACLAINE & CO.

The case was argued before Rowlatt, *J.*, in the King's Bench Division on the 19th and 20th March, 1924, when judgment was reserved.

Sir John Simon, K.C., M.P., Mr. F. D. MacKinnon, K.C., and Mr. A. M. Bremner appeared as Counsel for Maclaine & Co., and the Attorney-General (Sir Patrick Hastings, K.C., M.P.), and Mr. R. P. Hills for the Crown.

On the 10th April, 1924, Rowlatt, *J.*, gave judgment in favour of the Crown as regards all transactions falling within groups (B), (C) and (E) (i) of the headnote, holding that in respect of these

transactions the Java firm were exercising a trade within the United Kingdom, and against the Crown as regards the transactions falling within groups (A), and (E) (ii) and (iii).

JUDGMENT.

Rowlatt, J.—In these cases the questions are whether Messrs. Maclaine, Watson & Co., of Java (whom I will call the Java firm), are assessable to Income Tax in the name of Messrs. Maclaine & Co., of London (whom I will call the London firm), as exercising a trade within the United Kingdom, through the latter firm as their agents.

The two firms, though most intimately connected, were treated in the argument on both sides as independent firms. The London firm are general merchants and commission agents. The Java firm, so far as material to this case, are also merchants and commission agents selling East India produce in the markets of the United Kingdom, sometimes on their own account and sometimes as agents on commission for planters, and for this purpose they availed themselves of the services of the London firm. Until the making of an arrangement which was embodied in a letter dated the 8th October, 1917, the London firm received no remuneration from the Java firm beyond the payment of their expenses. Since that arrangement they have been paid or allowed a commission. The appeals now before me relate to the years ending April, 1916, 1917 and 1918, a period partly before and partly after the change, but nothing turns on the distinction. The London firm, before they in terms took a commission, worked for the Java firm in consideration of the interest which the partners had in it and by arrangement with the Inland Revenue were treated for the purposes of their own taxation as in fact earning a commission. On this footing the case was argued before me.

The transactions in question are grouped by the Commissioners in five Sections, A, B, C, D, and E.

In Section A the London firm sold here on commission on behalf of the Java firm goods which the Java firm had themselves been employed to sell on commission for planters and others in Java.

In Sections B and C the Java firm had bought, or would buy, the goods and employed the London firm to sell them here on commission at prices controlled by the Java firm. The forms and places of delivery and payment varied.

Section D was not argued by either side.

Section E related to special business done with the British Government when they became purchasers of sugar during the War.

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Under the Income Tax Act, 1842, Schedule D, non-residents are liable to tax in respect, among other things, of any trade exercised by them within the United Kingdom. To make them liable the Java firm must be brought within those words. If they do exercise a trade within the United Kingdom, then, under Section 41 of the Act of 1842 (which is not confined to Schedule D) as amended by Section 31 of the Finance (No. 2) Act of 1915, they can be assessed in the name of their agent, if one can be found. But Section 41 of the Act of 1842 is a machinery and not a taxing section, and the amendment in 1915 (so far as concerns this case, for I am not considering what may be the effect of Sub-sections (3), (4) and (5)) does not alter its character. Ever since *Tischler* v. *Apthorpe* (2 T.C. 89) it has been settled that if the non-resident can be found here he can be assessed directly without resort to his agent.

Under Section 41 of the Act of 1842 the non-resident in a case like this could be charged in the name of an agent only if the latter had the receipt of the profits or gains to be charged, out of which Section 44 gave him the right to recoup himself the tax. The amendment of 1915 removed this limitation and the position now is that an agent may be charged who has no security for his indemnity. If there had been nothing more it might have become a question what connection (if any) was necessary between the agency and the profits to make the agent the assessable agent for those profits (on this topic reference may be made to Lord Herschell's speech in *Grainger* v. *Gough*, 3 Tax Cases, at page 468).

It was to determine this, I think, that Sub-section (2) of Section 31 in the Act of 1915 was inserted. The effect is that an agent is assessable, or to be more accurate, the non-resident is assessable in his name, in respect of the profits directly or indirectly arising from his agency. The consequence of the alteration of the law in 1915 will be a vast increase in the number of cases in which the Revenue will be able to attach the profits made by non-residents by exercising a trade in the United Kingdom, but the important thing to be borne in mind is that the main question is still the same, namely: Does the non-resident exercise a trade within the United Kingdom?

It was pointed out in the Court of Appeal in *Smidth* v. *Greenwood*(1), and repeated in *Weiss, Biheller and Brooks* v. *Farmer*(2), that it is better to adhere to the phrase in the Statute than to paraphrase it by such an expression as "carrying on business," and then seek to apply the paraphrase.

Now a non-resident exercising a trade in the United Kingdom will usually do it through an agent or possibly a group of agents.

(1) 8 T.C. 193. (2) 8 T.C. 381.

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I say " usually," because he might come to this country for a short time without becoming a resident and exercise a trade (or an employment or vocation, which are on the same footing) and incur liability to taxation, which it might or might not be possible to enforce, without having an agent at all or perhaps only having an agent to supplement his own activities. Usually, however (and that is what is alleged in this case), he acts wholly through a single agent, and the question which arises is whether the transactions effected through the agent disclose the exercise of a trade in which the non-resident principal is the trader. The agent, of course, may be exercising a trade of his own in the course of which he accepts the agency. The point is whether beyond this and as the result of his actions there is exercised a trade in which his principal is the trader.

Now it is clear that, where the question is whether a non-resident exercises a trade in the United Kingdom by selling goods here through an agent, it is immaterial that the agent is an independent person or firm, whose own trade it is to undertake agency. Nor is it necessary that the agent here should bring about privity of contract between the non-resident and the purchaser (*Weiss, Biheller and Brooks* v. *Farmer*, 8 T.C. 381). He may contract himself as principal. The crucial thing is that he should be in the fiduciary relation of an agent, so that his profit is limited to commission. The trade consisting of the sales is, then, the trade of the non-resident. It seems to me, however, that there are cases where an agent is employed as to which it is necessary to draw a distinction. The non-resident may be one whose own function is, for example—I do not assume to speak exhaustively—to render services to clients in his own country, and he may be employed by such clients to procure the rendering in this country of such services as he would render himself if the acts involved were to be done in his own country. He then employs a person in this country who carries on here an independent business of the same kind to do those acts as his agent, whereby the rendering of the original service due by the non-resident to his client will be achieved. In such a case it seems to me it cannot be said that the non-resident is exercising any trade, employment, or vocation here. The agent exercises his own trade, employment or vocation here, and there is nothing more. The *Yokohama Specie Bank* v. *Williams* (6 T.C. 634), which came before me under the unamended Section in 1915, was a case of this kind. There a foreign bank, employed to issue a foreign loan on the London market, had in its turn employed a bank here to do the actual work. I held that it was not assessable in the name of the latter, and I ventured to put, and may be excused for repeating, the analogy of a foreign solicitor being employed abroad to get transacted through a solicitor here legal business in this country. For the purpose of

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the present case I am of opinion that a foreign commission agent employing a commission agent here by way of sub-agency is in the same position. The latter may do all the acts which according to *Grainger* v. *Gough*(1) and similar cases constitute a sale here, but the non-resident behind him does not receive the profits of the selling, but only a commission, and the trade of selling is not his. His trade is that of a commission agent, and is not exercised here by the resident commission agent whom he employs. All the profits earned by the commission trade here belong to the latter.

These considerations dispose of the question raised upon Section A of the Case before me, which I decide, as did the Special Commissioners, against the Crown.

Sections B and C comprise cases where the Java firm as merchants employed the London firm on commission to sell goods which the Java firm had bought or would buy abroad. The trade of selling was in these cases undoubtedly the trade of the Java firm. The question is whether enough of the incidents of it took place in this country to make it exercised here. The contracts were in every case made in the United Kingdom. Payment was effected by the purchasers providing a credit with a London bank upon which the Java firm drew. The goods were shipped c.i.f. or f.o.b., consigned sometimes to this country and sometimes to others.

I think the result of the cases is that the place of the making of the contract is the most vital element, and further that there may be trades in which the making of the contracts in this country is alone enough to establish the exercise of the trade here. I think Lord Justice Brett and Lord Justice Cotton were of this opinion in *Erichsen* v. *Last*(2). Most of the cases have dealt with foreign manufacturers seeking in this country a market for their wares, and the question has been really (as Lord Justice Fry pointed out in *Werle* v. *Colquhoun*(3)) whether they have, in addition to manufacturing, set up a merchant's trade here. In such cases the place of delivery and the mode of payment have often been given a certain prominence. The case before me, however, deals with a trade in produce, the subject of world-wide commerce. Markets exist here in which shipments of these commodities can be sold and resold, consigned c.i.f. to this country or elsewhere, or f.o.b. in the country of origin. The Java firm are shippers, and through the London firm enter these markets to sell. I do not think it possible that they exercise a trade here in respect of the goods that come here and not in respect of those that go elsewhere. Nor do I think it can make any difference where or by what device they arrange to receive

(1) 3 T.C. 462. (2) 4 T.C. 422. (3) 2 T.C. 402.

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payment. It is all arranged here. I think the making of the contracts in such a market is the trade.

Sir John Simon, however, contended that I ought to take the same view that I took in *Wilcock* v. *Pinto & Company*(1) (129 L.T. 534)—but I think the cases are quite different. There a non-resident sold from abroad through a broker on the market in the United Kingdom. Here the Java firm employ the London firm to sell from London. The reason why I decided that case as I did was that I thought that a broker, though he effects transactions, does not occupy the place of the merchants. If the principals in *Wilcock* v. *Pinto & Company* had been in the United Kingdom they would still have employed a broker. If in this case the Java firm had been here they would have superseded the London firm.

I learn that *Wilcock* v. *Pinto & Company* is under appeal, and the Attorney-General did not shrink from contending that on a market like Covent Garden every foreigner who consigns goods to salesmen there is exercising a trade in this country. If this views turn out to be correct, that will be a shorter answer to Sir John Simon's contention. The business results will, however, be curious, because a broker or salesman would not normally contemplate undertaking a liability for Income Tax or possess the figures to make a return or any means of extracting them. Yet he would undoubtedly be an agent assessable.

I now come to Section E, which falls into several subdivisions. The first of these comprises the first 54,000 tons of sugar (22,000 of white and 32,000 tons of No. 12) mentioned in the letter, which served as a sold note, of 3rd February, 1915, on page 1 of the Exhibit marked "O"(2). The Java firm had bought the sugar and the London firm had instructions to sell it. They sold it in the ordinary course of business to the Government, and I think this transaction is indistinguishable from those in Sections B and C and that the Crown succeeds as to these.

The next sub-division comprises the remainder of the sugar purchased by the Government in 1915, and I confess I find the transactions a little difficult to classify. As recorded in the above-mentioned letter of 3rd February, Mr. McKenna gave the London firm an order in hand to buy further 146,000 tons at the same prices as those at which the sale to him of the 54,000 tons had been made, and the London firm telegraphed this to Java. This was certainly not a contract of sale *de præsenti*. On the other hand, if one seeks to treat what passed as an employment of either firm as agents one is met by the circumstance that there is no provision for their remuneration, but they are left to make their own profit, as if they were simple sellers to the Govern-

(1) 9 T.C. 111. (2) Page 513 *ante*.

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ment, to an unlimited extent in the first instance, but afterwards subject to the understanding that it was not to exceed 6*d.* net per cwt. I think the legal effect of what took place is that Mr. McKenna offered to buy sugar from the Java firm through the London firm as sellers, to the amount and on the terms named, with the added understanding, in the unusual circumstances of the occasion, that the Java firm were going to endeavour to supply themselves with this sugar only for the specific purpose of accepting this offer, and that if they did so it would *eo instanti*, and without waiting for communication, be appropriated to Mr. McKenna's order, and the Java firm be as completely covered as if they had bought as agents. If this is not so, I think the sale must at least have been complete when the Java firm despatched the message to the London firm for communication to the Government. I cannot believe that the Government would have thought itself free to revoke the order up to the time when the London firm despatched a communication to them. The circumstances were not the every-day circumstances of commerce. I do not think it would be true to say that Mr. McKenna had merely given an order on the market here. The Java firm were in substance working for the British Government in Java and I do not think they exercised a trade here in doing so.

There only remains for consideration the transactions which took place in 1916 and 1917. Here the sugar was bought on commission *simpliciter*. The arrangements were made between the Government and the London firm, and are to be found in the letters in the bundle of Exhibits marked "P"(1). Two commissions of 25 cents. per picul were to be added to the cost. One was to cover expenses in Java. The other was spoken of by the London firm as "our commission." Whether the Java firm shared in it does not appear. Payment was made by the British Government in guilders in Java in effect against shipment. I apprehend these payments included both commissions as nothing is stated about any account between the Government and the London firm. On these facts the question is whether the Java firm were exercising the trade of commission agents in London, because their employment was arranged here. They earned their commission in Java and were covered there in the currency employed in the purchase, and in my view did not exercise a trade in the United Kingdom. I am, of course, only concerned with an assessment on the Java firm in the name of the London firm as agents. Whether the London firm have been, or could have been, assessed as principals in respect of these transactions and to what extent does not concern me. In the result I decide the question on this part of the Case against the Crown.

(1) Page 531 *ante*.

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In conclusion I cannot forbear expressing regret at the time it has taken to bring this case, which is one of wide importance, to trial. I see the appeal before the Commissioners was argued in October, 1919, but the Case was not stated till June, 1923. It is explained that figures were waited for. The delay has been unfruitful, and the Case might just as well and should have been stated on the points of principle in the first instance.

The Attorney-General.—My Lord, I rather apprehend that your Lordship finds partially in favour of the Crown and partially in favour of the Company.

Rowlatt, J.—Yes. I do not think there ought to be costs on either side.

The Attorney-General.—I was going to suggest that.

Rowlatt, J.—That is so, Mr. Bremner, is it not?

Mr. Bremner.—My Lord, I have only one observation to make upon it. Of course the important thing has been the sugar; by far the most important question we were fighting about was the sugar, and it may be that if there had been no sugar in the case, and if we had not lost on the 220,000 tons before the Commissioners and been called here to support a larger figure——

Rowlatt, J.—What I think is this. This case is sure to go further, I suppose. You can make up your minds as to what you are going to fight for and what you are not; but so far the whole thing has come up, the whole subject has been discussed. In view of the various points which arise, in some the Respondent, whoever he is, has succeeded, and in some the Appellant has succeeded, and I do not see my way to split it up. I had considered it, but I forgot to put it down on paper.

Mr. Bremner.—I have made my observations and I must leave it entirely to your Lordship.

Rowlatt, J.—Govern your appeals with astuteness and perhaps you will get the costs elsewhere.

Both sides having appealed against the decision in the King's Bench Division, the case was argued before the Court of Appeal (Pollock, *M.R.*, and Warrington and Scrutton, *L.JJ.*) on the 18th, 19th and 20th November, 1924, when Sir John Simon, K.C., M.P., Mr. A. M. Latter, K.C., and Mr. A. M. Bremner appeared as Counsel for Maclaine and Co., and Sir Patrick Hastings, K.C., M.P., and Mr. R. P. Hills for the Crown.

On the last-named date judgment was delivered allowing the Crown's appeal, except as regards the decision upon group (E) (iii) of the Java firm's transactions, and dismissing the firm's appeal, their Lordships holding that the Java firm were exercising a trade in the United Kingdom as regards the transactions falling within groups (A), (B), (C) and (E) (i) and (ii).

JUDGMENT.

Pollock, M.R.—These appeals are two appeals from a decision of Mr. Justice Rowlatt given on the 10th April, 1924. Messrs. Maclaine & Co., the subjects, as agents for Messrs. Maclaine, Watson & Co., appeal against the decision of Mr. Justice Rowlatt whereby they were held liable for certain Income Tax; and the Crown, in the second appeal, have appealed against the decision of Mr. Justice Rowlatt, and ask, so far as Mr. Justice Rowlatt excused Messrs. Maclaine, Watson & Co., through Messrs. Maclaine & Co., from liability to Income Tax, that that decision should be reversed. Now the Case sets out some facts fully and in detail, but for the purposes of my judgment it is necessary to summarise a few of the paragraphs which are contained in the Case. It appears that Messrs. Maclaine and Co. are a firm carrying on business in London, and the firm of Maclaine, Watson & Co. are a firm carrying on business at Batavia; and they have, though under a slight change of name, being practically the same firm, also a business in Samarang and at Sourabaya in Java. They are in fact distinct businesses; the London business is distinct from the business of Maclaine, Watson & Co., which is carried on at Batavia; but a number of the partners, if I recollect rightly, or some of the partners, are the same. The business is an old one; it was set up something over 90 years ago; therefore Messrs. Maclaine & Co. in London and Messrs. Maclaine, Watson & Co. in Batavia hold a position which their long continuance in business has earned them as large merchants; and the London firm are what I may call the corresponding house in London who transact the business as a rule on behalf of Maclaine, Watson & Co. in Batavia.

In paragraph 3 of the Case it is stated:—"As years went "by the partners carrying on the agency undertook to arrange "the sale in the London market of goods consigned to them by "the Java firm, such goods being principally the products of "the islands of the East Indies and consisting of sugar, hides, "rubber, tapioca, tea and other products. The goods so con- "signed were either goods purchased by the Java firm or goods "consigned for sale on commission by that firm on behalf of "planters and native growers. The London agency also "undertook to make arrangements to sell goods through brokers "in London, as hereinafter set out, such goods being consigned "direct from Java to the purchasers, in whatever country such "purchasers might happen to carry on business." With regard to the London firm, it is stated in paragraph 5:—"The London "firm has no capital of its own. It uses, so far as may be "necessary for any purchases on behalf of the Java firm, any "moneys belonging to the Java firm which may be in its hands. "It also acts as agents for two Dutch firms, but makes no

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" purchases on their behalf. The receipts for the business done " by the London firm for these two Dutch firms amounted in " 1917 to £243 and have since been on an average about £180 " per annum." It follows from those figures given that practically the London firm acts on behalf of the Java firm exclusively.

Now it is sought by the Crown to render Messrs. Maclaine, Watson and Co. of Batavia liable in respect of trade exercised in this country. The relevant sections are these :—Schedule D of the Income Tax Act, 1853, provides that a charge is made " for and in respect of the annual profits or gains arising or " accruing to any person whatever, whether a subject of Her " Majesty or not, although not resident within the United " Kingdom, from "—I leave out immaterial words—" trade or " employment exercised within the United Kingdom." But the charge is, by Section 41 of the Income Tax Act, 1842, " any " person not resident in Great Britain . . . . shall be chargeable " in the name of . . . . any factor or agent having the receipt " of any profits or gains arising as herein mentioned." Therefore, until the Act of 1915, the annual profits or gains in respect of which the non-resident firm could be taxed were profits or gains which were received in the United Kingdom. Section 31 of the Finance (No. 2) Act of 1915 altered that and amended Section 41, the section which I have just read, and, by Sub-section (1) (*b*), Section 41 was extended so as to make non-resident persons so chargeable, although the branch, or agent, or manager may not have the receipt of the profits or gains of the non-resident. Hence, at the present time, the non-resident firm may be liable to taxation, although the profits or gains have not been received into the hands of their agent over here. But by Sub-section (6) of Section 31 of the Act of 1915, it is provided that Section 41, and the amendment to which I have referred, is not to render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent, not being an authorised person carrying on the non-resident's regular agency. So that, if the non-resident person has a fortuitous piece of business in the hands of a broker whom he has employed just for once and not as a regular system, that broker should not be charged in respect of the profits or gains of the non-resident person whom he represents.

But that exemption does not apply here, because it has been held that Messrs. Maclaine & Co. do hold a regular agency for Messrs. Maclaine, Watson & Co. in Batavia upon the facts stated in the Case, and indeed I do not think it is contended otherwise. We have therefore got to determine whether the Java firm, Messrs. Maclaine, Watson & Co. at Batavia, is liable in respect of the profits of trade exercised in the United Kingdom.

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Now before I go into the details, it is important to state that since the date when the case was before Mr. Justice Rowlatt another case having much bearing upon the present case has been decided. On the 25th July a judgment was given in the Court of Appeal by my brothers, Lords Justices Bankes, Scrutton and Sargant, in the case of *Wilcock* v. *Pinto & Co.*(1) That case has in my opinion a very considerable bearing upon the present case. The decision of the Court of Appeal in that case was not before Mr. Justice Rowlatt, and he had not the opportunity of finding out what guidance was to be obtained from that case. We sitting here as the Court of Appeal are bound by the decision come to in *Wilcock* v. *Pinto & Co.* Now that case I think decided this, that when you are discussing the question and endeavouring to ascertain whether a firm or person is exercising a trade in England, you have to look first of all at the contracts, and, if the contracts by which the trade is exercised were made over here, I think the primary test is fulfilled. There may be other factors which will contribute to hardening the presumption which arises from the fact that the contract is made over here, such as that payment is to be made over here and that delivery is to be made over here, but the Court of Appeal in *Wilcock* v. *Pinto* have said that the question of where the delivery is to take place is not a vital factor in deciding whether or not the trade has been exercised over here. In the particular case of *Wilcock* v. *Pinto* it was found that the contracts for the sale of cotton were made in England, and it was also found that the price of the goods was payable in England, and those two factors were held to show that the trade was exercised in England. Having regard to the decisions in the House of Lords and I think in the case of *Wilcock* v. *Pinto*, it does not appear that the question where payment is to be made is vital, although helpful; the real test is: where were the contracts made?

There are two cases in priority to all others which are always cited upon this point. The first is the case of *Erichsen* v. *Last*(2), (1881) 8 Q.B.D. 414. It is a case in which Lord Justice Brett and Lord Justice Cotton in the course of their judgments gave some sort of test which has been approved in subsequent cases and in the House of Lords; but *Erichsen* v. *Last* was dealt with in *Grainger* v. *Gough*(3), [1896] A.C. 325, and the observations that have been made, and which are referred to in *Erichsen* v. *Last*, received the approval of the House of Lords. In *Grainger* v. *Gough* the Crown failed to establish the right to tax because it was found that the contracts for the wine to be supplied were all made abroad; but many observations were made in that case as to the tests which ought to be applied to see where the trade was being carried on, and in particular there are the words of Lord Herschell, which were quoted in

(1) 9 T.C. 111. (2) 4 T.C. 422. (3) 3 T.C. 462.

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the case of *Wilcock v. Pinto*, which appear on page 335(1) : " In " all previous cases contracts have been habitually made in this " country. Indeed, this seems to have been regarded as the " principal test of whether trade was being carried on in this " country " ; and my brother, Lord Justice Scrutton, in dealing with the effect of the cases to which we are referred and the observations which are made by the learned Lords, says this in his judgment in *Wilcock* v. *Pinto*(2) : " Therefore the English " Courts have laid down . . . . the principle that the making " of contracts in this country for the sale of goods by a non- " resident through an agent is the exercising of a trade in this " country " ; and he adds that there is only one case to the contrary, the Scotch case of *Crookston* v. *Furtado*(3). That case was disapproved by all the members of the Court who decided *Wilcock* v. *Pinto*, and it is important to observe that at the time when Mr. Justice Rowlatt gave his judgment he had not learned that the Court of Appeal had refused to accept the reasoning and decision in *Crookston* v. *Furtado*, a Scotch case which is to be found in 1911 S.C. 217.

Now it appears to me, after carefully considering *Erichsen* v. *Last*(4) *Grainger* v. *Gough*(5), and *Wilcock* v. *Pinto*(2), that, at any rate for the purposes of this Court, the crucial test as to whether trade is exercised in this country is whether or not a contract is made here. The question of delivery has been decided by the Court of Appeal not to be a primary test, and the question of payment, although it may be helpful in deciding the question, has also not been held to be the primary test.

I come now to the questions which have to be considered and decided in the present case. The matter relates to sugar in the largest measure, but there are I think other goods, and the detailed figures have been separated in different sections by the Commissioners, which is a convenient method of dealing with the separate facts with regard to these various commodities. Section A deals with the case where the Java firm collect goods and products from planters and others in the East Indies, undertaking to sell them on commission on behalf of the owners. Mr. Justice Rowlatt has held in respect of these that the firm are not liable. " If it is requested to sell the goods in London, " it ships them under bills of lading drawn to the order of the " Java firm and forwarded after endorsement in favour of the " London firm by mail to London. Upon the arrival of the " goods, the London firm takes all steps necessary for receiving, " storing and marketing the goods. The London firm makes " contracts for the sale of the goods, delivers the goods to the " purchasers and receives payment therefor. It accounts, after " deduction of its expenses and (since the agreement embodied

(1) 3 T.C. at p. 466. (2) 9 T.C. 111 at p. 134. (3) 5 T.C. 602.
(4) 4 T.C. 422. (5) 3 T.C. 462.

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" in the letter of 8th October, 1917) of its commission, for the " proceeds of the sale of the goods to the Java firm, which firm " in turn, after deduction of its commission and expenses, " accounts to the persons who consigned the goods for sale on " commission." Now when that paragraph, which is the finding of the Commissioners, is rightly understood, I think the case is a simple one. What the London firm receives is remuneration for carrying out the business in London. The Java firm sells the goods and exercises a trade in England through their regular agents; but in so doing the Java firm are not acting merely as—I want to avoid the word " agent "; they are not acting in a manner which is contrary to their usual custom. What they are doing is they are actually carrying on their business of acting as selling agents, and the way in which they carry on that business of selling is through the particular agency of Maclaine & Co. I think that is what is intended to be indicated by the words which I have quoted from the Case. In other words, the Java firm itself is carrying on the business of an agency, although the contracts in respect of that agency are made in London, and it carries on business.

It was said that this case fell within the decision in the *Yokohama Specie Bank* v. *Williams*, 6 T.C. 634. What Mr. Justice Rowlatt held in that case was that the Yokohama Specie Bank, which was the Bank over here in London, was not carrying on the business of its so-called principals, but had really been the channel through which certain business had been offered, the sale of certain securities which had been offered in London. But although that case may be justified on the particular findings, it is not an authority which would prevent the business of agency of the foreign principals being carried on over here by agents over here on behalf of their principals, the agency business carried on by the foreign principals being their source of profit and the trade which they carry on. It seems to me that Mr. Justice Rowlatt in dealing with this has forgotten or overlooked the fact that the trade which is to be taxed may be a business of agency. Mr. Justice Rowlatt's words are: " The " latter may do all the acts which according to *Grainger* v. " *Gough*[1] and similar cases constitute a sale here, but the non-" resident behind him does not receive the profits of the selling, " but only a commission, and the trade of selling is not his." But the trade of acting as agent may be his, and he may receive the profits of so acting as agent. It appears to me when rightly understood upon the facts the case appears, on tests being applied, clearly to be a piece of business which is carried on over here by the foreign agent through his factor or representative over here, and falls within the tax. On that point, therefore, Mr. Justice Rowlatt's decision ought to be over-ruled.

(1) 3 T.C. 462.

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With regard to Section B, there is a limited appeal only; that is to say, Sir John Simon appeals so far as the East Indian produce has been sold through brokers, and it is suggested that in those cases a differentiation can be made from the cases which have been passed in ordinary course through the hands of Messrs. Maclaine and Co. Mr. Justice Rowlatt has decided that in favour of the Crown, and I do not desire to say more in respect to Section B except that I agree with what Mr. Justice Rowlatt has decided.

With regard to Section C, the goods in C are not consigned to the London firm, and the Commissioners' decision was based, as we were told, on the decision in *Crookston* v. *Furtado*(1). Mr. Justice Rowlatt reversed the decision of the Commissioners and decided in favour of the Crown. Now that really I think follows on the same principle as applies to Section B, and I am not going into details in the case of Section C. Section D was really not before us.

I come now to Section E, which is the more important part. There were certain purchases of sugar to which I must refer in detail. E (i) may be described as relating to 54,000 tons; E (ii) relates to 166,000 tons, and E (iii) relates to the business carried on by Messrs. Maclaine, Watson & Co. in the years 1916 and 1917 on terms different from those on which the purchase of sugar had been arranged in E (i) and E (ii). I am dealing now with E (i). On the 3rd February, 1915, Messrs. Maclaine & Co. of London wrote to the then Home Secretary, Mr. Reginald McKenna, and said: "With reference to our conversation with "you last evening, we confirm having sold to His Majesty's "Government on behalf and for account of our Java friends, "Messrs. Maclaine, Watson & Co."—I will call them two parcels of 22,000 tons and 32,000 tons, making together the 54,000 tons—"at a price of 12s. 6d. per cwt. f.o.b. basis 96 per cent. "polarisation, all other conditions similar to those embodied in "contracts between Messrs. Henry Tate & Sons, Ltd., and "ourselves through Messrs. C. Czarnikow, Ltd., dated August "last." Now that letter clearly says: "We confirm having sold "to His Majesty's Government." No remuneration for Messrs. Maclaine and Co., if they are to be treated as agents, is provided, and upon a commercial document of that sort one would not expect to find any provision for commission, because in clear terms it appears to say that Maclaine & Co. "confirm having "sold to His Majesty's Government on behalf and for account "of our Java friends." That is to say, the contract is made here; the contract is made on behalf of Messrs. Maclaine, Watson & Co., who are the principals; it is made by Messrs. Maclaine & Co., who are their regular agents; it is made over

(1) 5 T.C. 602.

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here in London; and, if I am right in saying the test of exercising a trade is the making of a contract in London, it appears quite clear from that letter that there was a trade in respect of that 54,000 tons exercised over here in London. And so it has been held by Mr. Justice Rowlatt as well as by the Commissioners.

Now it is said that the true effect of that letter, and subsequent letters—because both E (i) and E (ii) are dealt with together by Mr. Latter—is that there was a direction by the Government to purchase the sugar in Java, and, although on the face of it it may look as if contracts were made here in London, the real business was done in Java, and that it falls therefore within the principle of *Grainger* v. *Gough*(1), rather than the principle of *Wilcock* v. *Pinto*(2). The letter goes on: "We further thank "you for giving us an order in hand to buy further 28,000 tons "white sugar and 118,000 tons Java sugar No. 12 and higher." Now that is for 146,000 tons, and in order not to complicate the matter by further arithmetic, one may take that 146,000 tons as being representative of the actual figure of 166,000 tons which represents E (ii). The contract which is referred to in that letter, the contract with Messrs. Henry Tate & Sons, Ltd., is upon the next page, and that clearly is an ordinary contract—a broker's sold note which is used in London, and contains the terms for payment to be made in London. So far as the documents of the 3rd February go, it appears to be quite a simple case of a contract made over here for payment for goods sold over here, in respect of which payment is to be made over here, and to be completely governed by the doctrine laid down in the case of *Wilcock* v. *Pinto*.

But it is said that if you will look on further at the correspondence, you will see that owing to the exceptional circumstances prevailing at that time, there was no intention of Messrs. Maclaine & Co. in fact selling to the representative of the Government, but they were being employed to transmit an order or offer to Messrs. Maclaine, Watson & Co., and that as and when Messrs. Maclaine, Watson & Co. found sugar available in Batavia, that then a contract came to be made by the appropriation of the sugar so found to the order which had been transmitted to them. I cannot so read the documents. I cannot find that the documents that we have before us are consistent with any such method of doing business. I will not refer to them all, but on the 4th February Mr. McKenna writes back in answer to the letter of the 3rd February which I have read, as follows: "I have received your letter dated "3rd February, and I confirm the sales of sugar to His Majesty's "Government and the arrangements for further purchases

(1) 3 T.C. 462. (2) 9 T.C. 111

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" stated therein." He treats the 54,000 tons as a sale at once to His Majesty's Government. On the 5th February Messrs. Maclaine & Co., after an interview which had taken place on the 4th, write : " With reference to our conversation with you " last evening, we confirm having sold further to His Majesty's " Government on behalf and for account of our Java friends, " Messrs. Maclaine, Watson & Co.", 36,000 tons of Java sugar. Those documents seem to be quite plain; they are sold notes in effect really indicating a contract made over here—a contract of sale made in London to His Majesty's Government. They add at the bottom of the page : " We shall keep you fully " advised of any purchases effected by our friends on your account, " and awaiting your confirmation of the above." That is as to prices. Now it appears to me that Messrs. Maclaine & Co. were anxious to show that their representatives, Messrs. Maclaine, Watson & Co. in Java, were doing all that they possibly could to comply with or to overcome the stringency and difficulty of the situation with regard to sugar which the Government had taken in hand, and no doubt they would from time to time convey to the Government the happy information that they had been able to secure some sugar; but I do not think that any of those indications are intended to alter the direct nature of the trading by contracts made in England for the purpose of the supply of sugar.

Our attention is called to the letter of the 8th February, and Mr. Latter says that by that time no less an amount than 75,000 tons of sugar—I think of the 166,000 tons—had been purchased. That letter contains these words : " We confirm " our two letters of 6th instant, and can now advise you that " our Java friends have succeeded in buying for your account " 18,000 tons." It is said that the use of those words " for " your account " indicates that what had been done was that the Java friends had purchased in Java and sold to the Government in Java and not over here. The letters which I have referred to seem to contradict that view, and, although there are some other passages in the letters relied upon by Mr. Latter, it is to be remembered that this very important factor existed, namely, that, as indicated in the first letter of the 3rd February, there was no remuneration payable to Messrs. Maclaine & Co. for acting as agents in the matter. Mr. Latter suggests that the limit of profit which was to be granted as a margin to the Java firm may supply that deficiency. I do not so read it. It seems to me that Maclaine & Co. in London are direct sellers on behalf of Maclaine, Watson & Co., and that there is nothing to detract from or alter the plain view of the letters written which indicate sales over here, and that the position is reinforced when one considers that the documents, the two contracts " K " and " L," are sent on the 4th March by Messrs. Maclaine & Co. The

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first dealt with is " L "; that is a document which is supposed to summarise purchases which had been made between the 3rd February and the 23rd March, and it says this: " For and " on behalf of Messrs. Maclaine, Watson & Co., Batavia, Java, " we have sold to the Royal Commission on the Sugar Supply " 150,000 tons more or less " of sugar of the crop 1915-16. It is sold f.o.b. and again " payment to be made in cash in " London "; and, in a certain event, which did not take place, namely, cable communication being broken, there are other provisions made. I do not refer to them, because cable communication was not broken.

Now although those contracts are quite clearly contracts made in London for the direct supply by Maclaine & Co., on behalf of Maclaine, Watson & Co., to the Government, it is said that we are entitled to disregard those documents, to go back to the letters which had been written previously, and to find in those letters an authorisation that Maclaine & Co. in London are to transmit offers to Maclaine, Watson & Co. in Java for the purpose of the contract being made in Java. It appears to me that, whether one looks at the earlier documents, that is the letters, or whether one looks at documents " K " and " L," the only true deduction to be made from those two plain documents is that the contracts were made in London.

Our attention was called to the case of *Lovell & Christmas, Limited* v. *Commissioner of Taxes (New Zealand)*, [1908] A.C.46. In that case the Appellants, Lovell & Christmas, had made profits in a commission which was deducted by them from moneys received in London under agency contracts of sales effected in London of goods brought from New Zealand; it was held that those profits were made in London, because the profits were made where the purchase price was realised. The parties to that judgment were Lord Loreburn, Lord Ashbourne and Lord Macnaghten. The judgment which was delivered by Sir Arthur Wilson contains this passage (at page 51):—" One rule " is easily deducible from the decided cases. The trade or " business in question in such cases ordinarily consists in making " certain classes of contracts and carrying those contracts into " operation with a view to profit; and the rule seems to be that " where such contracts, forming as they do the essence of the " business or trade, are habitually made, there a trade or business " is carried on within the meaning of the Income Tax Acts, so " as to render the profits liable to Income Tax." He then refers both to *Grainger* v. *Gough*(1) and *Erichsen* v. *Last*(2). In that case he comes to the same conclusion that the Court of Appeal came to in *Wilcock* v. *Pinto*(3), and holds that where the contract is made there the business is exercised.

(1) 3 T.C. 462. (2) 4 T.C. 422. (3) 9 T.C. 111.

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Upon the materials which are before us in reference to E (ii), the 166,000 tons, I think it is plain that the contracts were made in London, and therefore the trade was exercised in London. With regard to E (i), the 54,000 tons, Mr. Justice Rowlatt held that Messrs. Maclaine & Co. were liable to taxation. On E (ii) he took a somewhat curious view which enabled him to hold them immune from tax. He holds that the business may be treated as if Messrs. Maclaine, Watson & Co. were, as and when they obtained sugar, able to appropriate it to the Government and so make a contract by their acts out in Java. Or he puts it in a different way: that the contract was complete when the Java firm despatched a message to the London firm for communication to the Government. If either of these suggestions is to be accepted, one must find them accepted by and acceptable to the Government. They are deductions from the facts rather than facts themselves, and I do not see that at any point these suggestions were brought to the attention of the Government, or acquiesced in by them. I do not see on what ground one has a right to make such deductions from the facts found by the Commissioners. They are, at any rate, deductions rather than actual facts, and upon the plain documents which indicate the contract over here and the payment over here, I think the cases of E (i) and E (ii) are both brought within the doctrine laid down in *Wilcock* v. *Pinto*[1], and that Mr. Justice Rowlatt's decision as to the 166,000 tons must be reversed. As to E (iii), the liability of the firm for the business they carried on in 1916 and 1917, the terms were quite different; they are contained in documents which are attached to the Case. Sir Patrick Hastings has felt a difficulty in arguing that appeal, which would be, if he were to succeed, inconsistent with the arguments which he has made upon E (i) and E (ii); and that appeal is not pressed.

For the reasons which I have given, I think the judgment of Mr. Justice Rowlatt must be reversed as to A, and as to the 166,000 tons in E (ii). Under these circumstances, the appeal of Messrs. Maclaine & Co. will be dismissed with costs; the appeal of the Crown is allowed as to A and E (ii), but is dismissed as to E (iii), and E (iii) involves a very serious matter.

Sir Patrick Hastings.—Will your Lordship hear me upon the question of costs before coming to a decision, because there was a curious Order made in the Court below?

Pollock, M.R.—Then I will say nothing as to costs of either appeal in order to leave the matter quite open for both sides. I merely say that the appeal of Messrs. Maclaine & Co. will be dismissed and the appeal of the Crown allowed as to A and E (ii).

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(1) 9 T.C. 111.

Warrington, L.J.—I am of the same opinion. Under Schedule D of the Income Tax Acts in force at the time the questions raised by this case arose, the Income Tax was charged for or in respect of the annual profits or gains accruing to a person non-resident in the United Kingdom from any trade, employment or vocation exercised within the United Kingdom, and such a person was liable to be charged in the name of an agent resident in the United Kingdom, notwithstanding that such agent had not the receipt himself of the profits and gains, provided only that it is a regular agent—an authorised person carrying on the non-resident's regular agency. The present Respondents to the proceedings in the Special Case, Messrs. Maclaine & Co., whom I will call the London firm, are authorised persons having the regular agency on behalf of the Java firm of Maclaine, Watson & Co. Therefore the Java firm is chargeable in their name if the Java firm was in fact exercising a trade, employment or vocation within the United Kingdom. Now in my opinion they were, in the several cases which I will mention, exercising a trade, vocation or employment in this country.

The main test which is now well settled in dealing with these commercial matters and in seeking to ascertain whether an employment or vocation is carried on in this country is to ascertain whether the necessary and usual contracts are habitually made in this country. If they are so made, then as a general rule the employment or vocation will be held to be carried on in this country. That position is strengthened by the fact, if it be also the fact, that the money payable under such contracts is payable in this country, and that the goods themselves are deliverable in this country. The non-existence of either of the last two mentioned facts would not prevent the trade being carried on in this country if the contract were made in this country.

Now the cases resolve themselves in this appeal into four general classes. There is first a class in which the Java firm were carrying on the trade or vocation of commission agents. They were at the same time merchants, but that does not matter. For this purpose we are concerned with that part of their business which consisted in acting as commission agents; that is what is described in the Commissioners' Case as the class A. In that case Mr. Justice Rowlatt has held that the Java firm were not carrying on through the London firm the business of commission agents, but were merely employing the London firm to carry on their, the London firm's, business of commission agents. Now in my opinion upon the facts as found—I do not propose to detail them—that conclusion is erroneous. I am satisfied on the statements made by the Commissioners that the

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Java firm were as much carrying on in this country the business of commission agents as if they had been resident in this country; that the London firm was doing on their behalf exactly what the Java firm would have done itself if it had been resident here, that is to say, they marketed the goods; they found, through brokers or otherwise, the purchasers for the goods; they received the purchase money and they remitted that purchase money to the Java firm. So that in fact all the profits which the Java firm derived from that part of their commission agency business which they transacted through the London firm were made in London and by the transactions in London. For these reasons it seems to me plain that, so far as the division or class A is concerned, the learned Judge was wrong in holding that the Java firm was not exercising a trade or vocation in this country.

The next class is that which is placed by the Commissioners under Section B. Now under that Section what happened was this: the Java firm were carrying on the business of merchants, and they were transmitting their goods to the London firm who sold them sometimes through brokers and sometimes otherwise, but more usually through brokers. There again, as it seems to me, the London firm were doing in this country exactly what the Java firm as merchants would have done if they had been resident in this country; and consequently, the Java firm were, through the London firm, exercising the trade of merchants in the United Kingdom.

The next section is Section C. That only differs from B in this respect, that the goods in this case were not consigned to the London firm, but in every other respect the London firm was carrying on on behalf of the Java firm the business of merchants exactly in the same way as the Java firm would have done if they had been resident here. That is to say, the contracts were all made in London; payments were to be in London; the delivery was sometimes in London, sometimes abroad, according as the purchaser required; but the whole transaction was carried out in London as part of a London merchant's trade, and it seems to me it makes no difference whatever that in some but not all of the cases a broker was employed to carry on that transaction. Surely that is only what any merchant carrying on business in the City of London would do and is no real distinction of this trade from the trade of any other merchant. With regard to all those Sections, therefore, it seems to me that the Java firm was exercising a trade in the United Kingdom through the agency of the London firm, and therefore that the appeal of the Crown where the decision has been in the taxpayer's favour ought to be allowed, and the appeals of the taxpayer where the decisions have been against them ought to be dismissed.

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Now I come to a rather more special class of cases described under what the Commissioners call Section E. That is—I am going to use an expression without prejudice for the moment—the sale of sugar to the British Government. Now, with regard to the first of the cases, the sale of 54,000 tons which the Java firm already possessed, as to that, with all respect, it seems to me there can be no real question that both the Commissioners and the Judge were right. That was a simple sale effected by a contract in London of 54,000 tons of sugar to be delivered in London and at a price to be paid in London. Therefore, if those two last elements are necessary, those elements exist, and it was about as plain an instance of a trade in London as could be conceived.

With regard to the rest, the Java firm did not possess at the time—that was in February, 1915—more than the 54,000 tons. The British Government was anxious, in order to mitigate the scarcity of sugar in this country caused by the War, to acquire as much sugar as they could. They therefore, taking the expression in one of the letters, gave an order to buy further tons of sugar—gave an order to the London firm to be communicated to the Java firm. I think what that really means is this—it must be borne in mind that the letter in which the expression is used is written by the London firm to Mr. McKenna referring to a conversation which had taken place the day before; and I think if you look at this letter and look at the transaction and see how it was carried out, what it means is: If you, the Java firm, go into the market and buy more sugar, we will take it over from you at certain prices. Probably there was at that moment no binding contract on either side; that is to say, it was an offer on the part of the Government which could have been withdrawn before it had been accepted by the Java firm. But what happened afterwards was that the Java firm did buy further parcels of sugar, amounting altogether to 166,000 tons, and did communicate to their agents for transmission to the Government here the fact that those purchases had been made. When all those purchases had been made the transaction was recorded in writing in three formal documents, two of which were ordinary contracts of sale, one relating to white sugar and one relating to the other classes of sugar, with all the provisions which are usually inserted in such contracts—in fact they follow the model which had been used in sales to Messrs. Henry Tate & Sons; the third of them related to one parcel only which was bought rather late in the course of the transactions, but which repeats in a skeleton form the provisions contained in one of the earlier documents. The result of that is that the transactions were recorded in those documents as simple transactions of sales by the Java firm to the British Government at certain prices: contracts made in London, the goods to be delivered in London, the price to be

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paid in London; and that in my opinion expresses the true nature of the transactions between the parties.

The learned Judge has taken the same view; that is to say, he has rejected, as I reject, the theory that the Java firm were acting merely as agents for the Government to buy on their behalf. That seems to me perfectly untenable and the learned Judge has rejected it. But the conclusion he has come to is that there were successive contracts for the purchase of successive parcels, each contract becoming a concluded bargain when the Java firm in Java despatched a cable saying that they had bought the particular parcel for fulfilling the Government's offer. Now, with all respect to the learned Judge, again on the facts as found and on the documents that conclusion seems to me to be impossible. I will assume for this purpose and for the moment that there were successive contracts of sale and not one contract embodied *ex post facto* in the formal documents; I will assume there were successive contracts for sale; but in my opinion neither party was bound until the fact of the purchase in Java had been communicated to the Government, and the communication to the Government did not take place until the cable received from Java by the London firm was communicated by them to the Government. In that view of it then, each of these successive contracts was a contract concluded in London, and therefore a contract made in London, because it is quite plain that the offer was made in London. That view, that the cable required communication, is supported by the correspondence, because whenever that matter is referred to, Maclaine & Co. tell the representatives of the Government that they will in due course communicate to them any further purchases made "on "your account." That is the expression which is usually used. It seems to me, therefore, that, whether you look at the formal documents as each containing single contracts for sale, or whether you look at the matter as consisting of a series of contracts for sale, in my opinion all those contracts were made in London. They were made upon the terms of the model contract enclosed in the first letter from Maclaine & Co. to Mr. McKenna, and they were therefore contracts which provided for delivery in London and for payment to the purchaser in London. It seems to me, therefore, that as regards the whole of the transactions under E, except the last division which I will refer to directly, the Java Company were exercising a trade in this country.

With regard to E (iii), the last division, Sir Patrick Hastings does not really press the appeal of the Crown, and I think it would be impossible for him to succeed on that and at the same time succeed on A. I think he could not succeed under E (iii), because the transaction there seems to me to be this: merely the Java firm acting in Java as agents for the British Government to buy sugar for them on commission. That being so, that is a

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trade carried on in Java and not in London. I think therefore on that point the appeal of the Crown fails and must be dismissed. In all other respects the appeal of the Crown succeeds and the appeal of the taxpayer fails.

Scrutton, L.J.—As we are reversing the decision of the learned Judge below on two points, and as it is possible that this case may go higher, I think it right to deliver judgment in my own words, although the fact that I have already expressed myself on the questions of principle in this case in the case of *Wilcock* v. *Pinto*(1) will enable me to be shorter than I otherwise should be.

Messrs. Maclaine, Watson & Co. of Java have been assessed by the Commissioners of Income Tax as persons not resident in the United Kingdom exercising a trade in the United Kingdom. As Messrs. Watson, Maclaine & Co. of Java are not in England to be assessed, under the authority of the Finance (No. 2) Act 1915, Section 31, they have been assessed in the name of their agents, being authorised persons carrying on the non-resident's regular agency. They have been assessed in respect of two classes of business: first of all, their general trade in goods sold in the United Kingdom or sold through them as commission agents in the United Kingdom; and, secondly, in a specific class of transactions in connection with sugar acquired by the Royal Commission on Sugar Supply during the War. In the first class of case the Commissioners have dealt with three different sets of facts which they have set out as A, B and C. B is the case where Maclaine, Watson & Co. of Java consign goods for sale to Maclaine & Co. of London. C is the case where they instruct Maclaine & Co. of London to sell goods, but do not consign the goods to the United Kingdom. I will say more about the facts of that case in a moment. A is the case where, acting as commission agents for owners of the goods in Java, they procure contracts to be made in the United Kingdom through Maclaine & Co., their agents.

Now I deal first with B and C. There is no doubt that the contracts for sale of those goods are made in the United Kingdom. In Section B the Case finds that they are sold through brokers on instructions given by the London firm and that the London firm deliver the bills of lading on payment of the price. So that you have contracts made in England, the bills of lading, the symbols of the goods, are delivered in England, the price is paid in England. Those facts appear to me to be identical with the facts on which in the case of *Wilcock* v. *Pinto*(1) we held Messrs. Pinto of Egypt to be exercising a trade in the United Kingdom. I say no more, therefore, about Section B.

(1) 9 T.C. 111.

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The appeal of the taxpayer is based on the fact that the sale is made through brokers with, I presume, the corollary that the profits are made through brokers, and that consequently you cannot assess in the name of Maclaine & Co. But the Case states that the brokers sell on instructions given by the London firm, and under those circumstances it appears to me that the sale is effected and the profits made directly or indirectly through the London firm who give the instructions to the brokers and control them in their actions. There seems to be nothing more to be said about B.

In C the difference is that the goods do not necessarily come to London. Maclaine & Co. of London are instructed by Maclaine, Watson & Co. of Java to make contracts for the sale of goods, but the goods do not come to London unless the purchaser is in London or wants them in London or in England; they may go to people in the United States or Japan, or to anywhere else where the contract of purchase made in London requires that they should be sent. I do not quite understand the Case as stated because, when one comes to the decision of the Commissioners, the Commissioners say these goods are paid for directly to Java by means of credit in London or Amsterdam; but one may search the whole of Section C through and find nothing about Amsterdam or any facts stated as to credit in Amsterdam at all; one can only find a credit in Vancouver, and I am quite sure Vancouver is not Amsterdam. But, so far as I can follow Section C, the original decision of the Commissioners, which I will come to in a moment, was based on the fact that the Java firm, having got their contract of sale made in London, wanted as all commercial men do, to get the price, or the money representing the price, as soon as possible. They thereupon drew bills of exchange on the bank at which there was a credit in London, and the statement of facts throughout always speaks of the credit being in London. They then discounted the bill of exchange with a Dutch Bank in Java. The Commissioners seem to have taken the view that discounting the bill of exchange for the price was payment of the price. I respectfully cannot understand why they did so. All that discounting a bill of exchange for the price is in effect is an assignment of the right to receive the price from the purchaser to a third person for valuable consideration which puts in the hand of the seller the money he wants. The Court of Appeal had occasion very elaborately to explain this system in *Hannay's* case(1), [1918] 2 K.B. 623, and the passage I refer to is at page 659 and 660. It is quite clear that, whatever else discounting a bill of exchange is, it is not payment of the price by the purchaser. To get the price from the purchaser, the bill

(1) Guaranty Trust Company of New York *v.* Hannay & Co.

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of exchange has to come to London to be presented against the credit with the bill of lading attached, and then the credit on behalf of the purchaser pays the price to the person presenting the bill of exchange. It seems to me, therefore, that in Case C there is equally a contract made in London, payment of the price in London, delivery of the bill of lading in London. The facts are rather obscure as to what happens to the bill of lading in some of the cases, but, generally, the Commissioners state that the bill of exchange which has been discounted comes forward with the bill of lading attached.

I think it is enough in the view I hold of the authorities which I express in the case of *Wilcock* v. *Pinto*[1] that you get the contracts made in London. I stated in *Pinto's* case in this way: "I think the English Courts have laid down for my "guidance the principle that the making of contracts in this "country for the sale of goods by a non-resident through an "agent is the exercising of a trade in this country." But in view of something which has been said during this argument, I wish to make it clear that what I may call the converse is not necessarily true, that if you get the contract made out of the United Kingdom there is not an exercising of trade in this country. One has only to take the case of a contract made between an Englishman and a Frenchman in France for goods to be manufactured in England, delivered in England, and paid for in England. In a case like that the fact that the contract was made in France would not involve the conclusion that a trade was not exercised in this country. In my view the principle is simply this, that if you get a contract made in this country you generally—I think always—get a trade exercised in this country, because out of the contract arises the profit. The Commissioners in Case C very naturally felt themselves bound by the decision of the Scotch Courts in the case of *Crookston* v. *Furtado*[2] which dealt, amongst other things, with this very question of discounting bills and presentation of bills of exchange in London with bills of lading attached, and held that there was not a trade exercised in this country. In *Pinto's* case[1] we expressed the opinion that *Crookston* v. *Furtado* should not be followed. Mr. Justice Rowlatt, without knowing of our decision, came to the same conclusion, that the Commissioners had come to a wrong decision, and in both Cases B and C, in both of which the subject appeals against decisions of Mr. Justice Rowlatt, I think the appeal fails and the assessment was accurate.

The third case on the general dealing with goods was the case which the Commissioners put as Case A, which is the case where the Java firm were employed in Java as commission agents to effect sales in England, and through their agents, Maclaine & Co., effect sales in England, from which there come

(1) 9 T.C. 111, at p. 134. (2) 5 T.C. 602.

(Scrutton, L.J.)

to them not profits of sale but profits of acting as commission agents. The Commissioners, and Mr. Justice Rowlatt affirming them, have dealt with this case on the authority of Mr. Justice Rowlatt's own decision in the *Yokohama Specie Bank* v. *Williams*, 6 T.C. 634. Now I am not quite clear whether that case should be dealt with on the assumption that it has nothing to do with this case, or that it has something to do with this case and is wrong; but that one of the two results follow I am quite clear. In the *Yokohama Bank* case there were during seven years seven transactions by the Tokio Bank in which they employed English banks to raise loans in England, the proceeds of which were remitted to the clients of the Tokio Bank in Japan. They were assessed in the name of one of the English banks. That bank said quite truly: I cannot get the contract of employment of the Tokio Bank; I do not know on what terms they were employed, or whether they have made any profit at all. You have no materials on which you can assess the Tokio Bank for profits. Well, I should have been inclined myself, as a human being, to draw the inference that the Tokio Bank was acting for profit in floating loans, and to have assessed them in the way in which the Crown generally do in some fancy figure, and left them to prove that it was wrong, which is the regular procedure of those who represent the Crown. But Mr. Justice Rowlatt took the view, as I follow him, that, as they were employed in Tokio, profits—if there were any, and there was no evidence that there were any—may be made in Tokio. He expressly distinguished the case of the foreign merchant buying or selling goods habitually in the country; but it appears to me that if a commission agent regularly exercises a trade of selling on commission in a foreign country, from which profits in the way of commission come to him, he is trading in that foreign country, exercising the trade of a commission agent, and I am not at all sure that the proper decision in the *Yokohama Bank* case was not that the Tokio Bank was exercising through an agent the trade of floating loans in England, from which certain profits, which it could be made to disclose, resulted to it as such an agent. At any rate, it does not seem to me to apply to a case where the foreign firm is habitually exercising the trade of a commission agent in England through an agent, the agent making contracts for sale of the goods which the foreign firm is employed as commission agent to sell. Such an employment seems to me to come within the same principles as the case of *Wilcock* v. *Pinto*[1]. For these reasons I think that in this case Mr. Justice Rowlatt came to the wrong conclusion, and that the subject ought to be assessed under head A, the goods sold as commission agents, as well as under heads B and C, the goods sold out and out, whether consigned under B, or not consigned under C.

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[1] 9 T.C. 111.

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Then one comes to the sugar case. The Government, and afterwards the Sugar Commission, wanted sugar during the War. The first thing they did was to buy 54,000 tons of sugar from Maclaine, Watson & Co. through Maclaine & Co.; that was a contract made in England, sugar to be delivered in England, price paid in England. That appears to me to be clearly within the *Pinto* case(1), and only an example of Case B, the general heading. In that case it seems to me therefore that the assessment, which both the Commissioners and Mr. Justice Rowlatt said was rightly made, must stand.

The next head is rather more difficult and turns upon the interpretation of a bundle of correspondence marked "O."(2) After looking at that document marked "O" I confess I am very much impressed by the fact that commercial men choose a particular form of document in which to draw up their contracts, and when they come to me afterwards and say that those ordinary commercial documents do not mean that which they would ordinarily mean, I regard them with considerable suspicion, because commercial men have not generally the habit of drawing up documents in forms which do not represent what they mean. The letter of the 3rd February, after dealing with the 54,000 tons which have been dealt with under head E (i), and with which I have just dealt, goes on to say: "We further thank you for "giving us"—this letter being written by the London agents—"an order in hand to buy further 28,000 tons white sugar and "118,000 tons Java sugar No. 12 and higher, at the above prices "to be ready for shipment not later than 15th August." Now Sir John Simon argued to us that that is not a sale at all: it is an employment of the Java firm to buy on commission for the Government. The remark that one makes at once when such an interpretation is suggested, is: And where have these commission agents stipulated for their commission, which is the one thing they are going to get out of it? When one finds that there is nothing about commission in the supposed employment as commission agents, and when one finds that the parties themselves subsequently continually speak of "our sale to the "Government"; page 13, "In connection with our sales to the "Government," writing to their own clients(3); page 16, "11,000 "tons purchased of you" in a letter written by the Sugar Commission to Maclaine & Co.(4); and when they draw up two contracts "K" and "L" using the words "we have sold to "the Royal Commission"—I decline to believe that this document, without any commission mentioned, was intended as an employment as commission agents and did not terminate in a sale.

(1) 9 T.C. 111. (2) Page 513 *ante*. (3) Page 521 *ante*.
(4) Page 523 *ante*.

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Mr. Justice Rowlatt has taken a somewhat different and more tenable view. He has said, and I think rightly : This cannot be a sale out and out. Maclaine & Co. and Maclaine, Watson & Co. did not know that they could get 146,000 tons of sugar. It is an offer by the Government to buy 146,000 tons of sugar if they can get it at that price. And then he says next : Now either one of two things happened as the legal result. Either this is an offer which is accepted by buying in Java a quantity, and the moment the sugar was bought in Java there was a contract to the extent of that sugar, and the contract was made in Java, and the contract being made in Java it is not assessable. Now I think it is clear law that these, so to speak, tenders or offers to sell may sometimes be accepted by mere action without communication. The subject can be found discussed in Sir Frederick Pollock's work on Contracts at page 36 of the 9th Edition, where he says : " Where the acceptance is to consist of an act—" as despatching goods ordered by post—it seems that no further " communication of the acceptance is necessary than the per- " formance of the proposed act, or at any rate the proposer may " dispense with express communication, and an intention to dis- " pense with it may be somewhat readily inferred from the nature " of the transaction." Now that is expressed, as can be seen, with considerable doubt, and I am not at all sure that it is a complete statement of the law on the subject, which in my opinion has not yet been settled. I do not think the mere doing of an act which would fit in with the contract is enough, unless it is clearly identified with the contract. One may take this case : supposing that besides this letter Messrs. Maclaine & Co. had a similar offer from the French Government to the same effect, and had bought 20,000 tons of sugar at the price named in both letters, which contract would have been accepted by that purchase of 20,000 tons? Obviously, until you had had an appropriation or identification of that 20,000 tons with one or other contract communicated to the other contracting party, you would not have had a contract at all in that case, because the purchase would be ambiguous. Now in this case there is nothing in this contract as so far made to bind Maclaine & Co. to deal with no other person. They could have completed this contract by buying 146,000 tons of sugar from some other source, shipment not later than the 15th August. Consequently it seems to me that the first head of Mr. Justice Rowlatt's judgment fails, because there is no act done in Java which is an unequivocable acceptance of this contract. The second line of Mr. Justice Rowlatt's judgment is that there may be an acceptance or a making of a contract by purchase of goods communicated to the other party, that he did not think it was necessary in this case that there should be communication to the other party, that it was enough if the seller, Maclaine, Watson & Co., com-

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municated to their own agents in England. Now I cannot find any justification in the letters whatever for the assumption that the British Government would be satisfied if Maclaine & Co. knew and they, the British Government, did not. On the contrary, I find Maclaine & Co. saying continually: We shall communicate with you as soon as something is done. Therefore, neither on the ground of possible making of a contract by purchase in Java, nor on the other ground mentioned by Mr. Justice Rowlatt of sending a telegram in Java which under the English principles may be acceptance of a contract, but sending it to your own agent instead of to the purchaser, do I see any ground for saying that the contract was made in Java. Further, as I have already said, it does not follow that because the contract was made in Java, if it was made in Java, that there is necessarily not a trade exercised in the United Kingdom. For these reasons it appears to me that the Commissioners took the right view in regard to the 166,000 tons, which was that Maclaine, Watson & Co. were assessable on it, and that Mr. Justice Rowlatt's very careful application of certain principles of the law of contract was incorrect because the facts did not support the principles that he endeavoured to apply. Therefore it seems to me that the appeal of the Crown succeeds on that head which we have called E (ii), though it is not exactly the language of the Commissioners. The third matter the Crown has not argued, and I therefore say nothing about it.

The result is that the appeal of the taxpayer fails on every point in this Court; the appeal of the Crown succeeds on point A and as to the point on the 166,000 tons, but fails on the further and very large and substantial amount which is represented by the last heading of the Commissioners.

Sir Patrick Hastings.—May I say a word to your Lordship on the question of costs? The Order in this case was drawn up in this form. There were six heads, A, B and C; then there were two heads of E I[1], although they are not enumerated, and the third of course is E II[2].

Scrutton, L.J.—In the Court below each of you failed on certain points?

Sir Patrick Hastings.—Each of us failed on three points.

Scrutton, L.J.—So the learned Judge said no costs?

Sir Patrick Hastings.—Yes, my Lord.

Scrutton, L.J.—In this case Mr. Latter has failed on every point; I suppose you do not object to his having to pay costs?

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[1] *I.e.*, Section E I of the Stated Case, comprising the groups of transactions described as E (i) and E (ii) in the headnote and judgments.
[2] *I.e.*, Section E II of the Stated Case, dealing with the group of transactions described as E (iii) in the headnote and judgments.

Sir Patrick Hastings.—No, my Lord, I rather approve of that, if I may say so.

Scrutton, L.J.—You have succeeded on one point and lost on another, so why should there be any costs on that point?

Sir Patrick Hastings.—May I suggest a variation of the Order in the Court below? The result is that out of six points the Crown has won on five, and, if I may say so, Mr. Justice Rowlatt would not have ordered us to have no costs in the Court below if we had won on five out of six points.

Pollock, M.R.—That is the common practice I believe in the old days of pleading; when there were half a dozen counts in a declaration, only one being material, it was said one party had won on one and lost on five others, therefore the costs ought to be divided as one to five; but I do not think that idea was usually accepted by the Court.

Sir Patrick Hastings.—I am not speaking of a case where one point is important and the other unimportant. Here many of these points are of great importance. For instance, B and C are most important. I am asking that we should have the costs of my friend's appeal here, and that the Order in the Court below should be varied by giving us a substantial proportion of the costs in the Court below—I should suggest five-sixths, and that some Order more favourable than that which your Lordship suggested should be made as to our cross appeal in this Court.

Pollock, M.R.—We need not trouble you, Mr. Latter, unless you want to vary the Order I proposed to make?

Mr. Latter.—No, my Lord.

Pollock, M.R.—The Order will be as suggested: Mr. Latter's appeal fails with costs. The Crown's appeal partly failed and therefore there will be no costs, and no alteration of the Order in the Court below.

Maclaine & Co. having appealed against the decision of the Court of Appeal as regards the transactions falling within groups (C) and (E) (i) and (ii) in the headnote, the case was argued in the House of Lords on the 5th, 8th and 9th February, 1926, when judgment was reserved.

Sir John Simon, K.C., M.P., Mr. A. M. Latter, K.C. and Mr. A. M. Bremner appeared as Counsel for Maclaine & Co., and the Attorney-General (Sir Douglas Hogg, K.C., M.P.) and Mr. R. P. Hills for the Crown.

Judgment was delivered on the 23rd March, 1926, varying the decisions of the Courts below, their Lordships holding unanimously (i) that the Java firm exercised a trade in the

United Kingdom as regards all the transactions falling within the said groups (C) and (E) (i) and (ii), inasmuch as the contracts were in all cases made in the United Kingdom, but (ii) that, as regards the transactions in group (C), in view of the provisions of Section 31 (7) of the Finance (No. 2) Act, 1915, the profits arising from sales to non-residents by the Java firm through the agency of the London firm should, where such profits were not received by the London firm, be excluded from the assessment in the name of the London firm as agents.

JUDGMENT.

Viscount Cave, L.C.—My Lords, the question to be determined on this appeal is whether Messrs. Maclaine, Watson and Company, of Java, (whom I will call the Java firm) have been properly assessed by the Commissioners for Special Purposes of Income Tax, in the name of Messrs. Maclaine and Company, of London, (whom I will call the London firm) as their agents, to Income Tax in respect of the profits arising from certain trading transactions.

The Java firm has its commercial residence in Java, where it carries on an extensive business in the sale (either as principal or on commission) of the products of the Dutch East Indies, such as sugar, hides, rubber, tapioca and tea. The London firm, which consists of certain partners or retired partners in the Java firm but is a distinct partnership concern, acts as the general agent of the Java firm in London, and on the instructions of that firm effects sales in England (either directly or through brokers) of considerable quantities of goods, of which some are consigned to the London firm for sale and delivery, while others are not so consigned but when sold are delivered by the Java firm to the purchasers. Payment for the goods so sold is made sometimes through the London firm, but oftener directly to the Java firm or to bankers in London designated by the Java firm for that purpose. Until October, 1917, the London firm received no remuneration from the Java firm for its services, but since that date it has been paid or allowed a commission; the appeal relates to transactions which took place partly before and partly after this change, but nothing turns on the distinction.

The transactions with which the Commissioners for Special Purposes had to deal were, in the Case stated by them for the opinion of the Court, grouped in five Sections—A, B, C, D and E; but this appeal is concerned with Sections C and E only. I will take first Section C, which relates to goods purchased by the Java firm and on its instructions sold by the London firm in London, such goods not being consigned to the London firm but being delivered by the Java firm directly to the purchasers. In all these cases the contracts of sale were negotiated

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and entered into, or the instructions for sale were given to the brokers, by the London firm as agent for the Java firm; but the prices at which the goods were sold were never fixed without the authority of the Java firm, and payment was made by the purchasers through London bankers selected by that firm. It was held by the Commissioners on the authority of the case of *Crookston* v. *The Inland Revenue* (1911 S.C. 217; 5 T.C. 602), that in the case of these sales no trade was exercised within the United Kingdom by the Java firm, which was accordingly not assessable in the name of the London firm in respect of the profits so made. Mr. Justice Rowlatt came to a different conclusion, and his judgment was affirmed by the Court of Appeal; the first question is whether that decision is correct?

My Lords, I feel no doubt that, except as to a particular class of transactions which I will mention later, the conclusion reached by Mr. Justice Rowlatt and the Court of Appeal under this head was right. The assessments in question relate to the years 1916, 1917 and 1918, and are therefore regulated by the Income Tax Acts of 1842 and 1853 and the Finance (No. 2) Act of 1915. Under Schedule D of the Act of 1853 tax was payable in respect of the annual profits or gains accruing to any person, whether a subject of His Majesty or not, resident in the United Kingdom, from any trade "exercised within the United Kingdom." By Section 41 of the Act of 1842 any person chargeable with Income Tax in respect of any such profits or gains and not resident in the United Kingdom was made chargeable in the name of any agent having the receipt of the profits or gains as if such person were resident in Great Britain; and by Section 31 of the Finance (No. 2) Act, 1915, Section 41 of the Act of 1842 was extended so as to make a non-resident person chargeable in the name of his regular agent in the United Kingdom in respect of profits and gains arising through such agent, although the agent might not have the receipt of the profits or gains of the non-resident. From these enactments it follows that, if the Java firm exercised a trade within the United Kingdom through the agency of the London firm, the Java firm is (subject to an exception which I will refer to later) chargeable with tax on the profits of that trade in the name of the London firm, whether those profits did or did not pass through the hands of the London firm; and accordingly the principal questions to be determined are whether the Java firm did so exercise a trade in this country, and whether the profits arising from the transactions described in Section C were profits of that trade.

The question whether a trade is exercised in the United Kingdom is a question of fact, and it is undesirable to attempt to lay down any exhaustive test of what constitutes such an exercise of trade; but I think it must now be taken as established that in the case of a merchant's business, the primary object of which

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is to sell goods at a profit, the trade is (speaking generally) exercised or carried on (I do not myself see much difference between the two expressions) at the place where the contracts are made. No doubt reference has sometimes been made to the place where payment is made for the goods sold or to the place where the goods are delivered, and it may be that in certain circumstances these are material considerations; but the most important, and indeed the crucial, question is, where are the contracts of sales made? Statements to this effect by Lord Justice Brett and Lord Justice Cotton in *Erichsen* v. *Last*(1) ((1881) 8 Q.B.D. 414) were quoted with approval in this House in the case of *Grainger* v. *Gough*(2) ([1896] A.C. 325); and the same principle was the basis of the decisions in *Werle* v. *Colquhoun*(3) ((1888) 20 Q.B.D. 753), *Lovell and Christmas* v. *Commissioners of Taxes* ([1908] A.C. 46), *Greenwood* v. *Smidth*(4) ([1922] 1 A.C. 417), and *Wilcock* v. *Pinto*(5) ([1925] 1 K.B. 30). The decision in *Crookston* v. *The Inland Revenue* (1911 S.C. 217; 5 T.C. 602) may probably be supported for the second reason given by the Court, namely, that the profits there in question had not been received by the agents; but on the question first discussed, namely, as to the place where the trade was carried on, I think that the reasoning of Lord Dundas is to be preferred to that of the other members of the Court.

My Lords, if in the present case this test is applied to the transactions falling under the heading C, it will appear plainly that in the cases falling under that heading the trade of the Java firm was exercised in this country. It is true that the goods were not consigned to the London firm nor was the purchase money paid to them, and that in every case the goods sold were delivered by the Java firm direct to purchasers inside or outside the United Kingdom; but the contracts for sale were made in London through the agency of the London firm, and the purchase money was in most cases paid through a London bank. I think it clear that this part of the trade of the Java firm was exercised within the United Kingdom.

But there remains a serious question as to the effect of Sub-section (7) of Section 31 of the Finance (No. 2) Act, 1915, which is in the following terms: "The fact that a non-resident person "executes sales or carries out transactions with other non-"residents in circumstances which would make him chargeable "in pursuance of this section in the name of a resident person "shall not of itself make him chargeable in respect of profits "arising from those sales or transactions." It was contended on behalf of the Appellants that the effect of this Sub-section is to exempt them from assessment in respect of the profits of any

(1) 4 T.C. 422. (2) 3 T.C. 462. (3) 2 T.C. 402. (4) 8 T.C. 193.
(5) 9 T.C. 111.

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sales by the Java firm to non-residents, though effected through their agency. It is noticeable that no reference to this contention is to be found in the Case Stated or in any of the judgments in the Courts below; but your Lordships were assured by Counsel for the Appellants that the point was fully taken before those tribunals, and accordingly it must be dealt with.

My Lords, Sub-section (7) of Section 31 has not yet received full consideration in any reported case. In *Smidth* v. *Greenwood*, [1921] 3 K.B. at page 595(1), Lord Justice Atkin referred to it as a sub-section "the precise meaning of which no one in "the course of the argument was prepared to state," and in a very recent case of *Muller* v. *Lethem*(2) Mr. Justice Rowlatt observed that "no one had been able to tell him quite "what effect this sub-section had;" but in the latter case the learned Judge gave a doubting assent to the suggestion put forward by Counsel for the Crown "that people thought "business wholly carried on abroad might be brought into "taxation by reason of the circumstance that there was an agent "in England who intervened in some way in the business, and "that it (the sub-section) was put in to keep out that sort of "case, which would not come in really if the matter were under-"stood, because the initial condition has to be fulfilled that the "business shall be carried on in England." A similar explanation was put forward in the present case by the learned Attorney-General, who laid emphasis on the words "executes sales or "carries out transactions" contained in the sub-section, and contended that the only effect of the sub-section was to free from tax the profits on sales made abroad and only completed in this country. With the greatest respect for the opinion of Mr. Justice Rowlatt, I do not think this explanation gives proper effect to the words of the sub-section. The sub-section applies only to sales or transactions by a non-resident "in circumstances "which would make him chargeable in pursuance of this section "in the name of a resident person;" and in the case of sales and transactions wholly made or entered into abroad, those circumstances do not exist. The sub-section must, therefore, apply to sales made here through an agent or other person resident here; and no construction can, I think, be accepted which makes it applicable only to sales made abroad. Having read the sub-section more than once, I have come to the conclusion that its intention and effect is to exempt from taxation in the name of a resident agent or other person in the position of an agent all sales and transactions between non-residents, even though effected through the medium of that agent or other person, except in cases where the agent or other person receives the profits. It is, I think, important to bear in mind the history of

(1) 4 T.C. 193, at p. 205.
(2) To be reported in the next Volume of Tax Cases.

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these provisions for vicarious taxation. The effect of Section 41 of the Act of 1842 was to tax the foreigner trading through an agent in this country only if the profits of the trading passed through the hands of the agent. Doubtless it was found that this provision was evaded by the expedient of arranging that, where goods were sold by a foreign trader through an agent here, the proceeds of sale should not pass through the hands of the agent but should be paid to a foreign agent or to the principals; and accordingly by Section 31 of the Act of 1915 the condition of payment through an agent was repealed. But there was an obvious danger lest so large an extension of the machinery for taxing persons resident abroad on transactions in this country should damage the position of this country as a centre of foreign trade; and accordingly the Section contains two provisions designed to avoid that result. Sub-section (6) ensures that a non-resident instructing a broker or other casual agent in this country shall not be chargeable in the name of such broker or agent in respect of the profits arising from his activities; and Sub-section (7), as I read it, provides that when one non-resident sells goods to another non-resident through the regular agent of the former in the United Kingdom and the proceeds of sales do not pass through the agent's hands, the agent shall not (in the absence of other circumstances which make him chargeable) be chargeable with the tax. In both these cases there were good reasons for the exemption; for in both cases the proceeds of the transaction would not normally pass through the hands of the broker or agent, who would therefore have no direct means of protecting himself against the charge of Income Tax, and in both cases the imposition of the charge would tend to divert business from this country. It appears to me that the juxtaposition of the two sub-sections is not accidental, and that similar reasons of policy may well account for them both. It is true that in order to arrive at this construction a wide meaning must be given to the expression " executes sales or carries out trans- " actions," for that expression must be held to include the actual contracts of sale; but it is plain that the words " sales or " transactions carried out " contained in Sub-section (6) have that wider meaning, and it appears to me that the like meaning must be given to the similar expressions in Sub-section (7). The alternative is to hold that Sub-section (7) is a mere unintelligible collection of words, and this I am unwilling to do.

Counsel for the Appellants asked your Lordships to go further, and to hold that the effect of Sub-section (7) is wholly to exempt a non-resident trading with another non-resident through an agent in the United Kingdom from taxation of his profits in that trade. The point does not arise in this case, and it is enough to say that in my opinion this contention was not made out. It was

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held in *Smidth's* case(1) that Section 31 deals with machinery only and that Sub-section (2) of the Section was not to be construed as imposing a charge which did not previously exist; and, similarly, I do not think that Sub-section (7) was intended to remove any existing charge. The words " make him charge-" able " appear to mean " make him so chargeable," that is to say, chargeable in pursuance of the Section in the name of a non-resident person.

My Lords, the second part of the appeal relates to certain sales described in Section E of the Case, being sales of about 220,000 tons of sugar by the Java firm to the British Government; and as to 146,000 tons of this sugar it was contended on behalf of the Appellants that the sales were made not through their agency but by the Java firm in Java. This point was fully dealt with in the judgment of the learned Master of the Rolls, and it is enough to say that I agree entirely both with his summary of the facts and with the conclusion at which he and the learned Lords Justices arrived. The formal contracts for the sale of this sugar were made between the London firm " for and on behalf " of " the Java firm and the Sugar Commission; and, even apart from these formal contracts, the correspondence appears to me to show clearly that throughout these transactions the London firm acted as the agents of the Java firm and themselves concluded the sales. I think that on this point the appeal wholly fails.

For the above reasons I am of opinion that the Order of the Court of Appeal should be varied by discharging the Order of Mr. Justice Rowlatt in so far as it reversed the decision of the Commissioners with regard to sales by the Java firm to non-resident persons in respect of which the profits were not received by the Appellants, and that the matter should be remitted to the Commissioners with a direction to exclude from the assessment the profits on sales of that description, and that in other respects the Order of the Court of Appeal should be affirmed. There should be no costs of this appeal.

My Lords, my noble and learned friend, **Viscount Haldane**, desires me to say that he concurs in this judgment.

Lord Atkinson.—My Lords, I have had the pleasure and advantage of reading the judgment which has just been delivered by my noble and learned friend on the Woolsack and I thoroughly concur in it.

Lord Shaw of Dunfermline.—My Lords, I agree with the conclusions announced by the Lord Chancellor and, in substance, with the entire reasoning upon which those conclusions are reached. I only venture to state separately the views which I

(1) Smidth & Co. v. Greenwood, 8 T.C. 193.

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entertain as to the bearing and effect of Section 31 of the Finance (No. 2) Act, 1915, 5 & 6 Geo. V, c. 89.

But I may be allowed before doing so to add but a few words to those of the Lord Chancellor in regard to the case of *Crookston* v. *Furtado*(1). It humbly appears to me that the judgment of the majority of the learned Lords of the Second Division was erroneous. I think the weight of authority upon the subject in England was much too lightly treated. As illustrative of this I may cite the following passage from Lord Salvesen's judgment(2): "I am fully aware," says he (it was a clear case of a contract completed in England), "that my opinion runs counter "to some dicta of the English Judges, and especially to the "dictum of Lord Justice Brett in the case of *Erichsen*(3), which "was quoted without disapproval in the subsequent case of "*Grainger and Son*(4), and from which it might be inferred that "the fact that a foreign company makes its contracts in England "for the sale of its goods there, even when it does so through an "agent, is of itself sufficient to constitute an exercise of trade "by a foreign company so as to render it amenable to assessment "under our fiscal law."

My Lords, in the case of *Grainger* Lord Herschell said(5): "In all previous cases contracts have been habitually made in "this country. Indeed this seems to have been regarded as the "true test whether trade was being carried on in this country. "Thus in *Erichsen* v. *Last*(3) the present Master of the Rolls said: "'The only thing which we have to decide is whether upon the "'facts of this case this company carry on a profit-earning trade "'in this country. I should say that whenever profitable con-"'tracts are habitually made in England, by or for foreigners, "'with persons in England because they are in England to do "'something or supply something to those persons, such "'foreigners are exercising a profitable trade in England, even "'though everything to be done by them in order to fulfil the "'contracts is done abroad.'"

It appears to me that it gives insufficient weight to the important judgment in *Grainger's* case(4) to treat it as having quoted the observations of Lord Justice Brett in *Erichsen* v. *Last*(3) "without disapproval," and I agree with the learned Lord Dundas that Lord Herschell agreed with and approved of Lord Esher's expressions.

I go so far as respectfully to adopt as my own the judgment of Lord Dundas, who dissented from the majority of the Second Division Judges, and in particular to accept his statement to this effect(6): "I now come to the last and, as I think, the most "important question of fact, namely, whether or not the con-

(1) 5 T.C. 602. (2) *Ibid.* at p. 623. (3) 4 T.C. 422. (4) Grainger & Son *v.* Gough, 3 T.C. 462. (5) *Ibid.* at p. 466. (6) 5 T.C. at p. 614.

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" tracts of sale by the Company were made within the United " Kingdom. In my opinion they were so made. It is admitted " that ' the Appellants have authority to sell the Company's " ' phosphates at or over minimum prices fixed by the Company. " ' The Appellants make the sales without reference to the Com- " ' pany. It is left to the Appellants' discretion to whom to " ' sell.' Crookston Brothers, therefore, are not mere canvassers " for orders to be approved or rejected by their principals, but " have full authority to make contracts of sale so long as the " price they contract for is not below the prescribed minimum."

Lord Dundas gives a careful citation of the authorities and adds(1), " If I am right in holding that the sales are made in " this country I consider that it follows from the decisions and " particularly from the opinions in *Grainger and Sons* v. " *Gough*(2) that the Company exercises a trade here."

I humbly think that both Mr. Justice Rowlatt and the Court of Appeal were right in disregarding *Crookston* v. *Furtado*(3), and in holding that it did not correctly interpret the Income Tax Act in the particular mentioned.

With especial reference to Sub-section (7) of Section 31 of the Act of 1915 the House is confronted in this case directly, and apparently for the first time, with the necessity for a decision upon the question of what I will for shortness call " double " foreigner " transactions, that is to say, transactions in which the goods of one foreign merchant are sold to another foreign merchant and are delivered direct from the vendor's premises in one foreign country to the vendee's premises in another.

With regard to a considerable section of the goods under head C of this case, that is admitted to have been the nature of the transaction, the kind of transaction which is directly aimed at as an exception in Sub-section (7). But there are, no doubt, difficulties in the construction of the Sub-section in its relation to the Section, and of the Section in relation to the general body of taxing statutes.

Granted that the goods passed from vendor to vendee as described, namely, without reaching or passing through this country, it is, however, one of the admitted facts of the case that the vendor, namely the Java firm, had regular agents (the London firm), and that the contract of sale for the goods so transferred, say from Java to Vancouver, was made in London. In substance nothing else took place in London. The payment was made into a credit opened by the Java firm with a London Bank, but was received by the Java firm in Java.

No point arises in the case as to the agency of the Appellants. It was not that of a firm casually employed or of a broker on 'Change. The Appellants were regular agents.

(1) 5 T.C. at p. 615. (2) 3 T.C. 462. (3) 5 T.C. 602.

(Lord Shaw of Dunfermline.)

I have already observed upon the Scotch decision of the case of *Crookston* v. *Furtado*(1) in 1911 S.C. 217. I may say at once that I think it is now too late in the day, in a case with all its circumstances, such as that now under consideration of the House, where the contracts were made in London by regular agents in London, to deny that that crucial and fundamental fact conclusively affirms the proposition that the sales thereunder were in the exercise of a trade within the United Kingdom.

The sales in question were as stated " double foreigner " transactions, the foreign vendor having a regular English agent and having completed the trade contracts—of which these transactions form a part—in England. It is clear that the language of Schedule D of Section 2 of the Act of 1853 imposing Income Tax on the annual profits and gains arising from trade " exercised " within the United Kingdom," although such profits accrue to a person " whether a subject of Her Majesty or not, although not " resident within the United Kingdom," would, so far as the principal contracting party is concerned, apply to this case. The ground is accordingly clear for the consideration of the question under Section 31 of the Act of 1915.

My Lords, my first proposition upon the Finance (No. 2) Act of 1915, Section 31, is that in my view no repeal either express or implied was effected of the liability of a foreign resident exercising a trade within the United Kingdom—that foreign resident still remains liable to Income Tax under the British taxation statutes. How he, the foreigner, is to be got at and the tax recovered from him is a question for the taxing authorities.

But the question before this House is not as to the liability of that foreigner direct but as to the vicarious liability of his English regular agent who has made the contracts in England. This raises the peculiar question of the position of those agents as persons responsible to the English taxing authorities for the taxation not upon profits which they themselves make by way of commission but also upon the actual profits of the transactions arising to their foreign principals.

It is manifest that the question is of wide importance, the object of the Legislature being the imposition of a tax upon profits from all trade exercised in England but, upon the other hand, to avoid the injury to or destruction of that great volume of foreign trade the central exercise of which by the making of contracts is through agents in Britain. In 1842 by Section 41 of the Income Tax Act of that year non-residents were made chargeable in the name of factors, agents or receivers " having " the receipt of any profits or gains arising as therein men- " tioned." The reason for this proviso was obvious, namely,

(1) 5 T.C. 602.

(Lord Shaw of Dunfermline.)

that the agent thus in receipt of the profits or gains would be able to debit himself in his account with his principal for the taxation upon those profits levied upon that principal through him, the agent.

This state of matters gave rise, it was found, to evasion; and it was altered by Section 31 of the Finance (No. 2) Act, 1915. A former provision of the law (Section 41 of the Income Tax Act of 1842), in so far as it related to the taxation of non-residents, was extended so as to make these non-residents chargeable although the agent might not have the receipt of the profits or gains. The stage that matters had then reached was accordingly that the profits on trade exercised for a foreign principal by a British agent were taxable in that agent's name. It appears to me on a purview of the Section that it was in the contemplation of the Legislature that the goods the subject of the transactions were to reach this country and that the agent would thus be in a position of being able, without much practical difficulty, to effect his relief as against his principal for the Income Tax which he had paid on his behalf.

I think, further, that the general idea of the Section was that although contracts, for instance, sales, had been made in this country on behalf of a non-resident, the other party to the contract, namely, the purchasers, were here. For instance, Lord Justice Brett in *Erichsen*[1] describes the general case as of contracts " habitually made in England by or for foreigners, " with persons in England, because they are in England." I do not say that it is necessarily so, but that appears to be a statement, at least, of the general case, and, if so, the agent would again be protected by being in contact with one party to the transaction in England.

But there still remains a large branch of agency business to be preserved, business which had neither the protection of a contracting party being here nor of the goods being here. These protections appear to me to be contained in Sub-sections (6) and (7). After full consideration I think these two Sub-sections should simply be read together.

The first, namely, Sub-section (6), is that a non-resident person is not to be chargeable in the name of a casual, but only of a regular agent, and the second, namely, Sub-section (7), is that in the case of what I have called " double foreigner " transactions the agent is not responsible in respect of profit arising from sales or transactions between one non-resident person and another non-resident person, that is to say, that " double " foreigner " business, though transacted through a regular agent in England, does not make that agent responsible for taxation upon it. To that extent, namely, when there is neither one of

(1) Erichsen *v.* Last, 4 T.C. 422.

(Lord Shaw of Dunfermline.)

the parties to the transaction in this country, or when the goods never reach this country but are sent direct from one foreign country to another, the agent conducting the business in London has no vicarious responsibility for the taxation. That taxation will rest directly upon his principal in respect of having exercised a trade in England.

As to the language of the Section, I think the carrying on of a trade is the same as the exercising of a trade, and that " sales " or transactions carried out " are part of the exercise or carrying on of a trade.

In the result accordingly considerable parts of the trade in question in this case being admittedly " double foreigner " trade, that is, a trade, say, direct between Java and Vancouver, appear to me cut out of the ambit of an agent's responsibility for taxation, and I agree with my noble and learned friend on the Woolsack that if it were not so cut out the protection to agents manifestly aimed at by Sub-section (7) would disappear. In my humble judgment that protection must be given effect to; the statute prescribes it.

Lord Sumner.—My Lords, for the reasons given in the judgments which have just been delivered I agree with the motion to be proposed from the Woolsack.

Questions put:—

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be varied by discharging the Order of Mr. Justice Rowlatt in so far as it reversed the decision of the Commissioners with regard to sales by the Java firm to non-resident persons in respect of which the profits were not received by the Appellants, and further remitted with a direction to exclude from the assessment the profits on sales of that description, and in other respects affirmed.

The Contents have it.

That each party do bear its costs of this Appeal.

The Contents have it.