NO. 661.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—23RD JULY, 1926.

COURT OF APPEAL.—11TH FEBRUARY AND 11TH MARCH, 1927.

HOUSE OF LORDS.—26TH AND 27TH JANUARY, AND 9TH MARCH, 1928.

LEVENE v. THE COMMISSIONERS OF INLAND REVENUE.[1]

Income Tax—Residence—Ordinary residence—Income Tax Act, 1918 (8 & 9 *Geo.* V, *c.* 40), *Rule* 2 (*d*) *of the General Rules applicable to Schedule C, and Section* 46 (1)—*Finance Act*, 1924 (14 & 15 *Geo.* V, *c.* 21), *Section* 27.

Until March, 1918, *the Appellant, a British subject, leased a house in London. At that date he surrendered the lease and sold his furniture, and until January*, 1925, *he had no fixed abode but stayed at hotels either in this country or abroad. Until December*, 1919, *he stayed in England and it was admitted that up to that date he was both resident and ordinarily resident in the United Kingdom. In that month he went abroad and did not return until July*, 1920, *and from that date until January*, 1925, *he spent between four and five months each year in the United Kingdom, the reasons for his visits being to obtain medical advice for himself and his wife, to visit relatives and the graves of his parents, to take part in certain Jewish religious observances and to deal with his Income Tax affairs. In January*, 1925, *he leased a flat abroad and expected to continue to make visits to the United Kingdom though not to such an extent as in the past.*

The Appellant contended that for the years 1920–21 *to* 1924–25 *he was neither resident nor ordinarily resident in the United Kingdom, and that as being not resident he was entitled to exemption from Income Tax under Rule* 2 (*d*) *of the General Rules applicable to Schedule C in respect of the interest or dividends on any securities of a foreign State or a British Possession owned by him, and that as being not ordinarily resident he was entitled to exemption under Section* 46 (1), *Income Tax Act*, 1918, *in respect of the income from certain* 5 *per cent. War Loan of which he was the owner.*

The Special Commissioners, on application being made to them under Section 27 *of the Finance Act*, 1924, *decided that his claims for exemption failed.*

Held, *that the Appellant was resident and ordinarily resident in the United Kingdom in the years in question.*

(1) Reported (K.B.D. and C.A.) [1927] 2 K.B. 38; and (H.L.) [1928] A.C. 217.

CASE

Stated under the Finance Act, 1924, Section 27 (2), and the Income Tax Act, 1918, Section 149, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 8th June, 1925, for the purpose of hearing appeals, the said Commissioners heard and determined claims for relief from Income Tax made by Mr. Louis N. Levene (hereinafter called " the Appellant ") for the years ending respectively 5th April, 1921, 5th April, 1922, 5th April, 1923, 5th April, 1924, and 5th April, 1925.

2. At all material times the Appellant was the owner of securities of British possessions and in respect of the income arising therefrom he claimed relief under paragraph (*d*) of Rule 2 of Schedule C of the Income Tax Act, 1918, on the ground that he was not resident in the United Kingdom for the years in question. He was also the owner of British War Loan and in respect of the income arising therefrom he claimed relief under Section 46 of the Income Tax Act, 1918, on the ground that he was not ordinarily resident in the United Kingdom for the years in question. These claims had been refused by the Commissioners of Inland Revenue.

3. The Appellant is a British subject, and was formerly interested in a financial business in London. He discontinued this business in 1911 and since that date has had no occupation. He lived in a house in Curzon Street, London, of which he held a lease, until early in 1918 when he decided to break up his establishment and (to use his own expression) to " live abroad ". On the 20th and 21st March, 1918, his furniture, with the exception of a few articles which were included in his Marriage Settlement and have since been stored in London by order of the Trustees, was sold by auction, and on the 3rd April, 1918, he surrendered the lease of his house, making a payment of £400 to the freeholders on account of rent and dilapidations.

4. From March, 1918, until December, 1919, the Appellant continued to live in the United Kingdom, in hotels. In December, 1919, he went abroad and did not return until the 10th July, 1920, since when he has been in the United Kingdom for the following periods :—

1920—10th July to 24th November	... ...	19 weeks
1921—2nd July to 27th November	... ...	21 weeks
1922—9th April to 18th June 10th Sep. to 19th November	... ...	20 weeks
1923—12th April to 27th June 10th Sep. to 15th November	... ...	20 weeks
1924—10th April to 1st July 10th Sep. to 23rd November	... ...	22 weeks

During the remainder of these five years, he was staying at Monaco and at various places in France.

5. In 1917 and again in October, 1918, the Appellant applied for a passport for himself and his wife to leave England but such application was refused. Upon a third application being made in November, 1918, a passport for the Appellant and his wife was granted, but owing to the state of his wife's health the Appellant and his wife could not leave this country until December, 1919.

6. From March, 1918, until January, 1925, the Appellant had no fixed place of abode, but stayed in hotels, whether in this country or abroad. He did not retain rooms at any hotel when absent, nor was there any hotel in which he stayed so long or to which he returned so frequently that it could in any sense be described as his home. When in France he paid the Visitors' Tax. In the course of the years 1922, 1923 and 1924, he made endeavours to find a suitable flat in Monaco, and drafts of several tenancy agreements were produced to us but the negotiations came to nothing since none of the premises inspected were suitable, until in January, 1925, the Appellant took a lease of a flat in Park Palace, Monte Carlo, for nine years, for which he paid a premium of 130,000 francs and he lived there with his wife until he came to England for the purposes of the appeal. These premises were furnished by the Appellant. It was his intention to return to Monte Carlo and to live in his flat there with his wife. He expected to continue to make visits to England though not to such an extent as in the past. Since he gave up his house in 1918 he had had no intention of again taking a house or flat in the United Kingdom.

7. The Appellant is married but has no children. His wife has almost always accompanied him in his movements. Both he and his wife have indifferent health, and have been advised to live in the South of France and avoid the United Kingdom in the winter months. One of the reasons for their visits to England was to obtain medical advice. They also came to visit their relatives, his wife having five sisters and he himself six sisters and brothers residing in England. One of his brothers is mentally afflicted, and in April, May and June of 1924 the Appellant had to make fresh arrangements for his brother's care in a home at Brighton. Other reasons for his coming to England annually were to take part in certain Jewish religious observances, to visit the graves of his parents, who are buried at Southampton, and to deal with his Income Tax affairs.

8. The Appellant has always kept a bank account in London and since 1919 he has had accounts in Paris, in Nice, and since 1923 in Monte Carlo. Since giving up his residence here in 1918 the

London bank account has only been operated on to a small extent such as for payment of charitable subscriptions and other expenses incurred in this country.

9. It was contended on behalf of the Appellant :—

(*a*) That since December, 1919, he had not been resident or ordinarily resident in the United Kingdom.

(*b*) That under Rule 2 (*d*) of the General Rules applicable to Schedule C, he was entitled to exemption from Income Tax in respect of the interest or dividends on any securities of a foreign state or a British Possession owned by him ; and

(*c*) That under Section 46 of the Income Tax Act, 1918, he was entitled to exemption from Income Tax in respect of the interest on British Government securities issued with the condition that the interest thereon should not be liable to Income Tax so long as it was shown that the securities were in the beneficial ownership of persons not ordinarily resident in the United Kingdom.

10. It was contended on behalf of the Crown, *inter alia* :—

(1) That the Appellant had left the United Kingdom for the purpose only of occasional residence abroad within the meaning of Rule 3 of the General Rules applicable to Schedules A, B, C, D and E contained in the First Schedule to the Income Tax Act, 1918.

(2) That his regular coming to the United Kingdom for periods of from four to five months in each year showed that he was in the United Kingdom as part of the ordinary habits of his life.

(3) That during the years in question the Appellant was resident and ordinarily resident in the United Kingdom, and that he was not entitled to the relief claimed.

11. We, the Commissioners who heard the appeal, gave our decision in the following terms :—

" The Appellant is a British subject and until March, 1918, " he was a householder in London. He then surrendered the " lease of his house and sold his furniture, and from March, 1918, " until January, 1925, he did not occupy any fixed place of " residence, but lived in hotels, whether in this country or " abroad.

"He was admittedly resident and ordinarily resident in "the United Kingdom until December, 1919. He then went "abroad and in each subsequent year he has spent between "7 and 8 months abroad and between 4 and 5 months in the "United Kingdom.

"We are satisfied upon the evidence that when he left the "United Kingdom in December, 1919, he had formed the "intention, which he has consistently carried out ever since, "of living abroad for the greater part of the year, but of "returning to this country each year and remaining here for "considerable periods but not for a period equal in the whole "to 6 months in any year.

"The questions for decision are whether he was entitled "to exemption from Income Tax on War Loan interest under "Section 46 of the Income Tax Act, 1918, as a person not "ordinarily resident in the United Kingdom, and on interest "on securities of British Possessions under Rule 2 (*d*) of the "General Rules applicable to Schedule C as a person not resident "in the United Kingdom, and the years under review are "1921–22, 1922–23, 1923–24 and 1924–25.

"These are in our opinion questions of degree, and taking "into consideration all the facts put before us in regard to the "Appellant's past and present habits of life, the regularity and "length of his visits here, his ties with this country, and his "freedom from attachments abroad, we have come to the "conclusion that at least until January, 1925, when the Appel-"lant took a lease of a flat in Monte Carlo, he continued to be "resident in the United Kingdom. The claims for the years "in question therefore fail.

"In arriving at this decision we have not ignored Rule 2 "of the Miscellaneous Rules applicable to Schedule D. "Although in terms that Rule, like the portion of Section 39 "of the Act of 1842 reproduced in it, applies only to Schedule D "we consider that on practical grounds and in view of the "history of the provisions of the Income Tax Acts as to resi-"dence, no distinctions can properly be drawn in construing "the terms 'resident in the United Kingdom' for the purposes "of Schedule C and 'residing in the United Kingdom' for the "purposes of Schedule D. But while we do not accept the "principle that every person who has been ordinarily resident "in the United Kingdom in past years and now has no estab-"lished place of residence anywhere is necessarily chargeable "under Rule 3 of the Rules applicable to all Schedules as a "person actually residing in the United Kingdom, if he comes "here year by year for short periods, we do not think that "Rule 2 of the Miscellaneous Rules extends to exempt every

" such person from tax on his income from foreign and colonial " sources so long as he fulfils the condition of spending a larger " portion of the year out of the United Kingdom than in it. " In our view such persons' claims under either Schedule must " be determined on the balance of facts in each case."

12. The Appellant immediately upon the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law and in due course required us to state a Case for the opinion of the High Court pursuant to the Finance Act, 1924, Section 27 (2) and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

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

York House,
23, Kingsway,
London, W.C.2.
21st April, 1926.

The case came before Rowlatt, *J.*, in the King's Bench Division, on the 23rd July, 1926, when judgment was given in favour of the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. Cyril King appeared as Counsel for the Appellant, and the Solicitor-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—In this case we have to consider the meaning of the word " resident " and the phrase " ordinarily resident ". One question arises in connection with this gentleman's income from securities in British Possessions, and the other as regards his income from War Loan. There is first of all, a certain amount of difficulty attaching at first sight in determining exactly what is the meaning of " resident " and what is the meaning of " ordi- " narily ". The words " resident " and " residence " are in the first place quite clearly intended to describe, as I think I have said before, the attribute of the person. One must get out of one's mind altogether the use of the words " resident " and " residence " as applying to a building or anything of that kind. Secondly, when you speak of " residence " in the United Kingdom, speaking of an area or anything of that kind, it is clear—and I have the

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authority of the Lord President in *Miss Reid's* case(1)—that a person may be resident in the United Kingdom although within the United Kingdom he is a complete wanderer, as he put the case, absolutely a tramp, or if a rich person of the same type, wandering from hotel to hotel and never staying two nights in the same place. As regards the United Kingdom he is a resident although as regards no spot in the United Kingdom can he be said to be a resident. That so far creates no difficulty, but there is no doubt that the words " resident " and " residing " are capable of an ambiguity. When you speak of a person residing, do you mean that he has attributed to himself a quality which makes him describable in that way with reference to a place, or do you mean that he really is there? For legal purposes, prima facie one thinks of " residence " as describing the quality of a person, so that a person may be a resident in England and Scotland too, at the same time, in point of law, though at the moment of which you are speaking he may be actually living in Paris or anywhere else. In the Income Tax Acts the rule has not always been observed of sticking literally and closely to that meaning of the words " resi- " dent " and " residence", and to illustrate it one may look at this Rule 2 of the Miscellaneous Rules on page 552 of the latest edition of Dowell. This states it I think very well ; " A person shall not " be charged to tax under this Schedule as a person residing in " the United Kingdom "—that is to say, if you are going to make the basis of the charge the fact that he is a resident you shall not establish that proposition under the following circumstances, namely—if he is a person " who is "—observe " is", that is to say, who is personally situated—" who is in the United Kingdom for " some temporary purpose only, and not with any view or intent " of establishing his residence therein, and who has not actually " resided in the United Kingdom at one time or several times for " a period equal in the whole to six months," and so on ; " but if " any such person resides in the United Kingdom for the afore- " said period he shall be so chargeable for that year." It seems perfectly clear there that where it is said " who has not actually "resided" for a period, and then again "if any person resides" for a period " resides " there, simply means is or has been, just as the word " is " was used before. If a person is in the United Kingdom for six months, then that is enough, if you have no other ground to make him chargeable as a person residing. If he is not in the United Kingdom for six months, then unless you have some other way of charging him, he is not chargeable as a person residing by virtue of those facts. Therefore one has to be a little careful in seeing what is meant in this case by the word " resident."

(1) Reid *v.* Commissioners of Inland Revenue, 10 T.C. 673.

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With regard to " ordinarily ", " ordinarily " may mean either preponderatingly in point of time or time plus importance, or it may mean habitually as a matter of course, as one might say : in the ordinary course of a man's life, although in time it might be insignificant. When one gets the words " ordinarily resident " coupled together, one is brought, to my mind, up against the difficulty of the word " resident ", because if the word " resident " describes an attribute collected by the person which attaches to him, although at the moment he is not in the place where he has his residence in that sense, if that is the meaning of the word " resident ", I do not see how it is qualified by the word " ordinarily ", because a man may be in fact ordinarily at such and such a place, but if he has acquired the quality of residence, I do not quite see how it can be " ordinarily " or " extraordinarily ". I think I see the way to solve the difficulty, but the difficulty of the mere words does certainly strike me. Now there is no doubt that in this case the word " ordinary " is of very great importance, and I do not think it is possible to say that " ordinarily resident " is merely the same thing as " resident ". That is quite clearly shown when one looks at the provisions under Case IV of Schedule D on page 536 of Dowell. Case IV makes taxable only people who are resident in the United Kingdom. If they are not resident at all they are not taxed, but if they are resident in the United Kingdom a distinction arises between their being resident *simpliciter* and their not being ordinarily resident for this reason ; that if they are resident *simpliciter* then as regards foreign securities they are taxable on the whole of the income if they receive it here or not, but if they are not ordinarily resident, then they are only taxed on the part that is brought into the country. Therefore, ordinary residence must be something different from residence here, and I suppose it is also in the Section we have immediately to construe.

Now I will refer in passing to the General Rules applicable to the Schedules, No. 3 on page 581 of Dowell, which is, or was originally, the other half of the second Miscellaneous Rule which I have already referred to. " Every British subject whose ordinary " residence has been in the United Kingdom shall be assessed and " charged to tax, notwithstanding that at the time the assessment " or charge is made he may have left the United Kingdom, if he " has so left the United Kingdom for the purpose only of occasional " residence abroad." " Ordinary residence " there probably is contrasted with occasional residence in the sense of occasional sojourn, but there are the words " ordinary residence " again. Now it seems to me what the phrase " ordinary residence " means is this ; I think that " ordinary " does not mean preponderating, I think it means ordinary in the sense that it is habitual in the

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ordinary course of a man's life, and I think a man is ordinarily resident in the United Kingdom when the ordinary course of his life is such that it discloses a residence in the United Kingdom, and it might disclose a residence elsewhere at the same time. Therefore, I think, as has been thought in Scotland, that a man can have two ordinary residences not because he commonly is to be found at those places, but because the ordinary course of his life is such that he acquires the attribute of residence at those two places.

Now with that preface I look at the particular Sections. With regard to the War Loan Section, Section 46 of the Act, page 80 of Dowell—that applies to cases where the person is taxed in the first place regardless of residence, because it is tax payable in this country. There the person who is resident in this country gets off in my view, or is exempt in my view, if he is not " ordinarily resident ", in the sense that his usual course of life does not give him a residence here. With regard to the other Section, there the interest or dividends taxable are taxable prima facie because they are payable in the United Kingdom, but if the person who owns them is not resident in the United Kingdom he has not got to pay. There is no " ordinary " in that.

It seems to me that in this case the decision of the Commissioners must be affirmed. This gentleman, I think, is resident, and if he is resident, I think he is quite clearly ordinarily resident. It seems to me that they are quite within their rights as to the question of fact, to find that he was resident here. He is unattached to any spot here, but he is habitually here as much as he is anywhere else, for six months at any rate, for very nearly half the year. He is not taxable under the special six months clause that I have referred to, but independently of that he is here for very nearly half the year. He originally belonged here ; he has said that he is going to live abroad, but he always is here. There are reasons why he should come here, and here he is regularly every year for a large part of the year, as a matter of course, in an hotel or other place. It seems to me that the Commissioners are well entitled to find that he is in residence here and, as he ordinarily does the acts which support the residence, I think he is ordinarily resident here. It seems to me that the case is really on all fours with *Miss Reid's* case (1) in Scotland. Of course the circumstances differ. There are circumstances in that case which are not here, and vice versa. It seems to me that if Miss Reid is taxed and this gentleman is not taxed, there will be an unequal incidence of the law of Income Tax. Therefore I think that this appeal fails and must be dismissed with costs.

(1) Reid *v.* Commissioners of Inland Revenue, 10 T.C. 673.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Sargant and Lawrence, *L.JJ.*) on the 11th February, 1927, when judgment was reserved.

Mr. A. M. Latter, K.C., and Mr. Cyril King appeared as Counsel for the Appellant, and the Solicitor-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

On the 11th March, 1927, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

JUDGMENT.

Lord Hanworth, M.R.—This is an appeal from a judgment of Mr. Justice Rowlatt dated the 23rd July, 1926, by which he affirmed the decision of the Commissioners holding the Appellant liable to the assessment made upon him.

The questions for decision are whether he was entitled to exemption from Income Tax on War Loan interest under Section 46 of the Income Tax Act, 1918, as a person not ordinarily resident in the United Kingdom, and on interest on securities of British Possessions under Rule 2 (*d*) of the General Rules applicable to Schedule C as a person not resident in the United Kingdom; and the years under review are the four financial years 1921—1925.

It is unnecessary to repeat at length the facts found by the Commissioners, and set out in the Case Stated. The first three paragraphs of their careful decision summarise sufficiently those upon which the decision must turn :—" The Appellant is a British " subject and until March, 1918, he was a householder in London. " He then surrendered the lease of his house and sold his " furniture, and from March, 1918, until January, 1925, he did " not occupy any fixed place of residence, but lived in hotels, " whether in this country or abroad. He was admittedly resident " and ordinarily resident in the United Kingdom until December, " 1919. He then went abroad and in each subsequent year he " has spent between 7 and 8 months abroad and between 4 and 5 " months in the United Kingdom. We are satisfied upon the " evidence that when he left the United Kingdom in December, " 1919, he had formed the intention, which he has consistently " carried out ever since, of living abroad for the greater part of " the year, but of returning to this country each year and " remaining here for considerable periods but not for a period " equal in the whole to 6 months in any year."

The terms " resident " or " ordinarily resident " occur many times throughout the Income Tax Act, 1918. Thus in Section 46 referred to, the words are " persons who are not ordinarily

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" resident in the United Kingdom "; in Clause 1 of Schedule D, " residing "; and in Rule 1 applicable to Case IV of Schedule D the words are " not resident " and in Rule 2 " not ordinarily " resident ". There are many other places where the words are to be found. I find it difficult to attach any distinction of meaning to the word " ordinarily " as effecting the term " resident ", unless it be to prevent facts which would amount to residence being so estimated, on the ground that they arose from some fortuitous cause, such as illness of the so-called resident or of some other person, which demanded his continuance at a place for a special purpose otherwise than in accordance with his own usual arrangement and shaping of his movements.

I agree with Mr. Justice Rowlatt that to find residence it is not necessary to find a building or " seat " as that word is sometimes used. A resident may pass from place to place, house to house, hotel to hotel—for life at an hotel has become a fixed habit to many owing to the exigencies of modern life—and still be a resident. I also agree with his view as to the meaning and effect of Rule 2 of the Miscellaneous Rules applicable to Schedule D. There are a number of decisions upon the meaning of residence in various Acts of Parliament, but none of them assist in deciding the question of its meaning under the Taxing Acts.

Residence must indicate something more than mere presence. In the cases that have been decided on this question, some efforts have been made towards definition, but as a rule by way of contrast to the facts of the case under review.

Thus in *Attorney-General* v. *Coote* (4 Price 183), the subject had become possessed of a house in Connaught Place. The antithesis put by Baron Graham was framed: " Was his " residence occasional or for a temporary purpose?" And the answer given, based on the fact of the possession of a house in London, was in the negative. Two sailors were held to be resident where their wives and family lived— (*Re Young*, 1 T.C. 57; and *Re Rogers*, 1 T.C. 225)—and where they themselves went when on shore.

In *Lloyd* v. *Sulley*, Lord Shand (2 T.C. at p. 45) describes the negation of residence as " temporary [residence] without any " characteristic of settled residence about the occupation of his " house at Minard ", in Argyllshire. *Turnbull* v. *Foster* (6 T.C. 206) was held to be in contrast with *Lloyd* v. *Sulley*. The subject was a merchant carrying on business in Madras, and had his usual residence in Madras, and was not in the United Kingdom, at all, during the year of assessment—though his wife and family were there.

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In *Cooper* v. *Cadwalader* (5 T.C. 101), an American came to Scotland regularly in the shooting season and could have come whenever he liked. He had a complete establishment so his arrival was not for a casual purpose, but in accordance with his intention and habit of life. The above observations or tests, so called, may be of service in order to remind the Court of the points that must not be overlooked, but they afford no concrete definition.

Probably it is not possible to frame one. Residence must depend on questions of degree and of fact; and I think the Commissioners were right in saying that the subject's claim to exemption must be determined on the balance of the facts in each case.

I suggest as a characteristic factor for consideration, even if it does not fulfil the nature of a test, to ascertain if the suggested alternative place of residence is one which the subject seeks willingly and repeatedly in order to obtain rest or refreshment or recreation suitable to his choice : where for a time he is embedded in the enjoyment of what he desired to attain, and found in the abode of his own option.

Another factor may be found—and an important one—if he returns to and seeks his own fatherland in order to enjoy a sojourn in proximity to his relations and friends.

The Commissioners have acted in accordance with these principles. They had abundant material on which in the application of them to the facts of the case their conclusion could be based.

In my judgment they came to a right decision and I agree with Mr. Justice Rowlatt. For these reasons this appeal must be dismissed with costs.

Sargant, L.J.—The Appellant here has been charged with Income Tax for the five financial years ending on 5th April, 1925, in respect of (*a*) interest or dividends of securities of British Possessions payable in the United Kingdom and (*b*) income from British War Loan. He has claimed relief from this Income Tax as to (*a*) under Rule 2 (*d*) of the General Rules of Schedule C of the Income Tax Act, 1918, and as to (*b*) under Section 46 (1) of the Act itself; and he has been refused relief in both cases, as to (*a*) on the ground that he has not proved that he was not resident in the United Kingdom, and as to (*b*) on the ground that he has not shown that he was not ordinarily resident in the United Kingdom. In each case the Appellant had to prove or show the facts necessary to obtain relief to the Commissioners of Inland Revenue, since the Treasury have directed that claims under Section 46 (1) shall be dealt with by the Commissioners of Inland Revenue.

(Sargant, L.J.)

The facts so proved or shown appear in the Case Stated by the Special Commissioners; and we have to decide on those facts whether the Special Commissioners were wrong in law in deciding that the Appellant had not proved that he was not resident in the United Kingdom during the years in question. I use the word " resident " only and omit the phrase " ordinarily resident " because, whatever possible distinction between the word and the phrase may be drawn on the facts of some particular case, I cannot see in the facts of the present case anything to warrant the drawing of any such distinction. His habit of life through each of the five years has been in its ordinary course.

In the Rule and the Section in question " resident " must I think be given a meaning corresponding to that of " residing " in the phrase " any person residing in the United Kingdom " in heads (*a*) (i) and (ii) of the first charging section in Schedule D of the Act. The first meaning of the word " reside " in the Concise Oxford Dictionary is " have one's home, dwell permanently "; and that the word is used in this charging section with this connotation appears to be made reasonably clear by Rule 2 of the Miscellaneous Rules applicable to Schedule D, which exempts from the class of persons residing in the United Kingdom any person " who is in the United Kingdom for some " temporary purpose only, and not with any view or intent of " establishing his residence therein, and who has not actually " resided in the United Kingdom " for a total period of six months in the year of assessment. The language of this Rule draws a marked distinction between mere physical presence, called " actual residence ", which by the final words of the Rule makes a person chargeable if he is actually resident for six months, and that presence which is in the course of being at home and therefore amounts to residence in the ordinary sense. In other words, the residence which makes a person chargeable depends not on mere presence in the United Kingdom (unless that is for six months in all), but on the quality of the presence in relation to the objects and intentions of the person sought to be made chargeable.

The Appellant lays great stress on the connotation of the word " reside " as implying a home or an establishment, and differentiates his case from those of *Lloyd* v. *Sulley* (2 T.C. 37), *Cooper* v. *Cadwalader* (5 T.C. 101), *Thomson* v. *Bensted*[1] (56 Sc. L.R. 10) and *Pickles* v. *Foulsham* (9 T.C. 261), on the ground that in those cases the taxpayer had a home or establishment in the United Kingdom. He points out that not only did he give up the lease of his house in London in the year 1918, but that since then he has lived entirely in hotels, whether in

(1) 7 T.C. 137.

(Sargant, L.J.)

England or abroad, until January, 1925, when he took a lease for nine years of a flat at Monte Carlo. And he contends that, while merely living at various hotels in the United Kingdom for four or five months in the year, he cannot properly be said to be residing in the United Kingdom within the meaning of the Statute.

I agree that the cases referred to do not conclude the matter against the Appellant, but, on the other hand, I do not think that they assist him. They determine that when the individual has a home here in the ordinary sense he is taxable; but they do not determine that he cannot have a home here unless he has an establishment here. It seems to me that an individual may so arrange his life as to constitute an hotel his residence in the sense of being his home; and although, if he stays at a series of hotels in different places in the United Kingdom, he may not be resident in ordinary language at any one of those places, he may yet be resident in the United Kingdom. The very point came up for decision in *Reid* v. *The Commissioners of Inland Revenue*(1) (1926 S. L.T. 365), which was a rather stronger case for the taxpayer than the present and was decided in favour of the Crown; and, in my judgment, that decision was correct.

The Special Commissioners have treated the question quite properly as one of degree and to be determined on the balance of facts in each case. They have found the facts most carefully and have stated fully the considerations that actuated them. I cannot find that they have omitted any relevant considerations, or have taken into account any that are irrelevant; and I cannot see any reason for differing from their conclusions or from the judgment of Mr. Justice Rowlatt. It seems to me that, during the years in question, the Appellant elected in each such year to adopt a regular system of life in accordance with which he and his wife made their abode and lived in this country for a period of between four and five months in each year, and that they were therefore resident in the United Kingdom not merely in the sense of being present here but in the fuller sense of making their home here.

What practical difference, if any, has been or will be caused in the Appellant's position in this respect by the lease of the flat at Monte Carlo from January, 1925, is outside the limits of this case.

Lawrence, L.J.—I agree that this appeal should be dismissed. Mr. Justice Rowlatt in upholding the decision of the Commissioners has followed the Scotch case of *Reid* v. *Commissioners of Inland Revenue*, 10 T.C. 673. In my opinion that case was rightly decided and is indistinguishable from the present case.

(1) 10 T.C. 673.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Cave, *L.C.*, Viscount Sumner and Lords Buckmaster, Atkinson and Warrington of Cliffe) on the 26th and 27th January, 1928, when judgment was reserved.

Mr. Maughan, K.C., and Mr. Nissim appeared as Counsel for the Appellant, and the Attorney-General (Sir Douglas Hogg, K.C.), the Solicitor-General (Sir Thomas Inskip, K.C.) and Mr. R. P. Hills for the Crown.

On the 9th March, 1928, judgment was delivered unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

JUDGMENT.

Viscount Sumner.—My Lords, early in 1918 Mr. Levene, a British subject, formed the intention to " live abroad ". He sold his house in Mayfair, sold such furniture as was not in settlement, and then lived in hotels in England for the best part of two years. I will assume that, but for passport difficulties and the condition of his wife's health, he would have gone abroad sooner. He left England in December, 1919.

Accordingly on 6th April, 1920, at the beginning of the five years of charge now in question, he was, in the words of Rule 3 of the General Rules, " a British subject, whose ordinary residence " has been in the United Kingdom " and so he remained chargeable to tax notwithstanding, if he had left the United Kingdom for the purpose only of occasional residence abroad. Was that the only purpose of his leaving so far as residence is concerned?

The Special Commissioners found that it was, and I think it is clear that they had evidence before them on which they could so find. His only declaration was that he meant to live abroad, not saying whether it was to be an occasional or a constant, a part time or a whole time sojourn. He was advised by his doctor to seek a better climate, which is consistent with returning to England when English weather mends. He had gone out of business in England and had broken up his establishment, but he still had in England business interests connected with his Income Tax assessments, and ties of filial piety and religious observance, for his father was buried at Southampton and he was himself a member of the English community of Jews. What he actually did was to come back to England after an absence of about seven months, and he remained for nearly five. In the meantime he had not set up an establishment abroad but had lived in hotels. This, however, was only what he had done in England from March, 1918, to December, 1919.

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I think there was ample evidence before the Commissioners to show that a man, who left England to live abroad as he had been living here, and when warm weather came returned to his native country and to his permanent associations, had in 1919 " left the United " Kingdom for the purpose of occasional residence only ". If so, he remained chargeable.

So much for the year of charge 1920–21. In the following years he was a bird of passage of almost mechanical regularity. No material change occurred in his way of living, for his enquiries for a permanent flat came to nothing until so late as not to affect his life and residence for the period in question.

It is suggested that the Commissioners misdirected themselves in point of law, because they took into account, with regard to the earlier years, conduct which only occurred subsequently. I agree that the taxpayer's chargeability in each year of charge constitutes a separate issue, even though several years are included in one appeal, but I do not think any error of law is committed if the facts applicable to the whole of the time are found in one continuous story. Light may be thrown on the purpose with which the first departure from the United Kingdom took place, by looking at his proceedings in a series of subsequent years. They go to show method and system and so remove doubt which might be entertained if the years were examined in isolation from one another. The evidence as a whole disclosed that Mr. Levene continued to go to and fro during the years in question, leaving at the beginning of winter and coming back in summer, his home thus remaining as before. He changed his sky but not his home. On this I see no error in law in saying of each year that his purpose in leaving the United Kingdom was occasional residence abroad only. The occasion was the approach of an English winter and when with the promise of summer here that occasion passed away, back came Mr. Levene to attend to the calls of interest, of friendship and of piety. My Lords, for these reasons I think it unnecessary to express, in regard to Mr. Levene's case, any opinion on the question of the tests of residence which are material for Income Tax purposes, or on the meaning of " temporary " in this connection, in cases where a person, not within Rule 3, comes from abroad to the United Kingdom and remains for a longer or shorter time but not permanently. Of the other conclusions of the Commissioners I say nothing except that, in my opinion, they in no way impair the soundness of their conclusion on Rule 3.

I wish, however, to point out the position in which Mr. Levene and others like him now find themselves. It is trite law that His Majesty's subjects are free, if they can, to make their own arrangements so that their cases may fall outside the scope of the taxing

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Acts. They incur no legal penalties and, strictly speaking, no moral censure, if, having considered the lines drawn by the Legislature for the imposition of taxes, they make it their business to walk outside them. It seems to follow from this and from other general considerations that the subject ought to be told, in statutory and plain terms, when he is chargeable and when he is not. The words " resident in the United Kingdom ", " ordinarily " or otherwise, and the words " leaving the United Kingdom for the purpose " only of occasional residence abroad ", simple as they look, guide the subject remarkably little as to the limits within which he must pay and beyond which he is free. This is the more likely to be a subject of grievance and to provoke a sense of injustice when, as is now the case, the facility of communications, the fluid and restless character of social habits, and the pressure of taxation have made these intricate and doubtful questions of residence important and urgent in a manner undreamt of by Mr. Pitt, Mr. Addington or even Sir Robert Peel. The Legislature has, however, left the language of the Acts substantially as it was in their days, nor can I confidently say that the decided cases have always illuminated matters. In substance persons are chargeable or exempt, as the case may be, according as they are deemed by this body of Commissioners or that to be resident or the reverse, whatever resident may mean in the particular circumstances of each case. The tribunal thus provided is neither bound by the findings of other similar tribunals in other cases nor is it open to review, so long as it commits no palpable error of law, and the Legislature practically transfers to it the function of imposing taxes on individuals, since it empowers them in terms so general that no one can be certainly advised in advance whether he must pay or can escape payment. The way of taxpayers is hard and the Legislature does not go out of its way to make it any easier. If it had been possible in this case to apply the principle that a taxing Statute must impose a charge in clear terms or fail, since it is to be construed *contra proferentem*, our duty would have been plain, but since the words are plain and it is only their application that is haphazard and beyond all forecast, Mr. Levene has no remedy in your Lordships' House.

So far as it is permissible to express an opinion on the facts, I think that for the purpose of taxing his Colonial and Indian securities Mr. Levene was at all material times resident in the United Kingdom and, for the purpose of taxing his holding in War Loan, it could not be said of him that he was not ordinarily resident here. Accordingly in my judgment his appeal fails.

Viscount Cave, L.C. (read by Lord Atkin).—My Lords, the Appellant, Mr. L. N. Levene, has been assessed to Income Tax on his dividends from securities of British possessions and from

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War Loan for the tax year 1921–22 and the succeeding three tax years, and has claimed to be excused from such tax, that is to say, from tax on the dividends from the securities of British possessions on the ground that during the years in question he was not "resident" in the United Kingdom within the meaning of Rule 2 (*d*) of the General Rules applicable to Schedule C of the Income Tax Act, 1918, and from tax on the dividends on War Loan on the ground that during the same years he was not "ordinarily resident" in the United Kingdom within the meaning of Section 46 (1) of the Act. On appeal to the Special Commissioners under Section 27 of the Finance Act, 1924, those Commissioners disallowed the Appellant's claim to exemption and confirmed the assessment, subject to a Case which they stated for the opinion of the High Court; and on the argument of the Case the decision of the Commissioners was affirmed by Mr. Justice Rowlatt and afterwards by the Court of Appeal. Mr. Levene has now appealed to this House.

From the Case stated by the Special Commissioners it appears that the Appellant is a British subject, and formerly lived in a house in Curzon Street, London, of which he held a lease, until the month of March, 1918, when he decided to break up his establishment and (to use his own expression) to "live abroad"; that he then sold his furniture and surrendered the lease of his house, and until December, 1919, continued to live in the United Kingdom, in hotels. In December, 1919, he went abroad and did not return until the 10th July, 1920, since when he has been in the United Kingdom for the following periods:—1920—10th July to 24th November, 19 weeks; 1921—2nd July to 27th November, 21 weeks; 1922—9th April to 18th June and 10th September to 19th November, 20 weeks; 1923—12th April to 27th June and 10th September to 15th November, 20 weeks; 1924—10th April to 1st July and 10th September to 23rd November, 22 weeks. During the remainder of these five years, he was staying at Monaco and at various places in France.

From March, 1918, until January, 1925, the Appellant had no fixed place of abode, but stayed in hotels, whether in this country or abroad. In the course of the years 1922, 1923 and 1924, he made endeavours to find a suitable flat in Monaco, but the negotiations came to nothing since none of the premises inspected were suitable, until in January, 1925, the Appellant took a lease of a flat in Park Palace, Monte Carlo, for nine years, for which he paid a premium of 130,000 francs, and he lived there with his wife until he came to England for the purposes of the appeal to the Commissioners. Both he and his wife have indifferent health, and have been advised to live in the South of France and avoid the United Kingdom in the winter months. One of the reasons for their visits

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to England was to obtain medical advice. They also came to visit their relatives in England, and (on one occasion) to make arrangements for the care of a brother of the Appellant who is mentally afflicted. Other reasons for his coming to England annually were to take part in certain Jewish religious observances, to visit the graves of his parents, who are buried at Southampton, and to deal with his Income Tax affairs.

After setting out the above facts and the contentions of the parties, the Commissioners gave their decision in the following terms: " The Appellant is a British subject and until March, 1918, " he was a householder in London. He then surrendered the lease " of his house and sold his furniture, and from March, 1918, until " January, 1925, he did not occupy any fixed place of residence, " but lived in hotels, whether in this country or abroad. He was " admittedly resident and ordinarily resident in the United Kingdom " until December, 1919. He then went abroad, and in each " subsequent year he has spent between seven and eight months " abroad and between four and five months in the United Kingdom. " We are satisfied upon the evidence that when he left the United " Kingdom in December, 1919, he had formed the intention, which " he has consistently carried out ever since, of living abroad for the " greater part of the year, but of returning to this country each " year and remaining here for considerable periods but not for a " period equal in the whole to six months in any year. The " questions for decision are whether he was entitled to exemption " from Income Tax on War Loan interest under Section 46 of " the Income Tax Act, 1918, as a person not ordinarily resident in " the United Kingdom, and on interest on securities of British " Possessions under Rule 2 (*d*) of the General Rules applicable to " Schedule C as a person not resident in the United Kingdom, and " the years under review are 1921–22, 1922–23, 1923–24 and " 1924–25. These are in our opinion questions of degree, and " taking into consideration all the facts put before us in regard to " the Appellant's past and present habits of life, the regularity and " length of his visits here, his ties with this country, and his " freedom from attachments abroad, we have come to the conclusion " that at least until January, 1925, when the Appellant took a lease " of a flat in Monte Carlo, he continued to be resident in the " United Kingdom. The claims for the years in question therefore " fail ".

It is obvious that the conclusions of the Commissioners above quoted are so worded as not to be mere inferences in law from the facts found in the earlier part of the Case, but to be themselves substantive findings of fact; and accordingly under the well established rule those findings cannot be disturbed by the Courts unless there was no evidence to support them. But before dealing with that question I think it desirable to say something

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about a matter which was much discussed during the argument, namely, the meaning of the word "reside" and the expression "ordinarily reside" as used in the Income Tax Act.

My Lords, the word "reside" is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell "permanently or for a considerable time, to have one's settled or "usual abode, to live in or at a particular place". No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income Tax Act and Schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word "reside". In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure. Thus, a master mariner who had his home at Glasgow where his wife and family lived, and to which he returned during the intervals between his sea voyages, was held to reside there, although he actually spent the greater part of the year at sea (*Re Young*; 1875, 1 Tax Cases 57; *Rogers* v. *Inland Revenue*, 1879, 1 Tax Cases 225). Similarly a person who has his home abroad and visits the United Kingdom from time to time for temporary purposes without setting up an establishment in this country is not considered to be resident here—although if he is the owner of foreign possessions or securities falling within Case IV or V of Schedule D, then if he has actually been in the United Kingdom for a period equal in the whole to six months in any year of assessment he may be charged with tax under Rule 2 of the Miscellaneous Rules applicable to Schedule D. But a man may reside in more than one place. Just as a man may have two homes—one in London and the other in the country—so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable with tax in this country. Thus, in *Cooper* v. *Cadwalader* (1904, 5 Tax Cases 101) an American resident in New York who had taken a house in Scotland which was at any time available for his occupation, was held to be resident there, although in fact he had only occupied the house for two months during the year; and to the same effect is the case of *Loewenstein* v. *de Salis* (1926, 10 Tax Cases 424). The above cases are comparatively simple, but more difficult questions arise when the person sought to be charged has no home or establishment in any country but lives his life in hotels or at the houses of his friends. If such a man spends the whole of the year in hotels in the United Kingdom, then he is held to reside in this country; for it is not necessary for that purpose that he should continue to live in one place in this country but only that he should

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reside in the United Kingdom. But probably the most difficult case is that of a wanderer who, having no home in any country, spends a part only of his time in hotels in the United Kingdom and the remaining and greater part of his time in hotels abroad. In such cases the question is one of fact and of degree, and must be determined on all the circumstances of the case (*Reid* v. *The Commissioners*, 1926 S.C. 589, 10 Tax Cases 673). If for instance such a man is a foreigner who has never resided in this country, there may be great difficulty in holding that he is resident here. But if he is a British subject the Commissioners are entitled to take into account all the facts of the case, including facts such as those which are referred to in the final paragraph above quoted from the Case stated in this instance. Further, the case may be different, and in such a case regard must be had to Rule 3 of the General Rules applicable to all the Schedules of the Income Tax Act, which provides that every British subject whose ordinary residence has been in the United Kingdom shall be assessed and charged to tax notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose only of occasional residence abroad.

Turning to the facts of this case, I think it clear that the Appellant falls within the category last described. He is a British subject and formerly resided in England. Early in the year 1918 he formed the project of living abroad and thereupon broke up his establishment in this country; but in fact he continued to reside here in hotels until the end of the year 1919. He then went abroad from time to time, but continued to live in hotels either here or in France and he did not actually find a home abroad until the month of January, 1925, when he took a lease of a flat at Monte Carlo. The result is that during the period from the end of 1919 until January, 1925, he went much abroad, partly for the sake of his own and his wife's health, partly no doubt to search for a house or flat, and partly (as may be inferred from the finding of the Commissioners) in the hope of escaping liability to the English Income Tax; but none of these purposes was more than a temporary purpose, and he regularly returned to England for the greater part of the summer months though for less than one half of each year. On these facts I think that it was plainly open to the Commissioners to find that during the years in question he was resident in the United Kingdom, and I think it probable that Rule 3 above quoted applied to him.

It remains to be considered whether during the period in question the Appellant " ordinarily resided " in the United Kingdom for the purposes of Section 46 of the Act, and I think that there was material upon which the Commissioners could answer this question in the affirmative. The suggestion that in order to determine

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whether a man ordinarily resides in this country you must count the days which he spends here and those which he spends elsewhere, and that it is only if in any year the former are more numerous than the latter that he can be held to be ordinarily resident here, appears to me to be without substance. The expression " ordinary " residence " is found in the Income Tax Act of 1806 and occurs again and again in the later Income Tax Acts, where it is contrasted with usual or occasional or temporary residence; and I think that it connotes residence in a place with some degree of continuity and apart from accidental or temporary absences. So understood, the expression differs little in meaning from the word " residence " as used in the Acts; and I find it difficult to imagine a case in which a man while not resident here is yet ordinarily resident here. Upon this point also, as upon the other, I think that the finding of the Commissioners cannot be disturbed. For these reasons I am of opinion that this appeal fails and I move your Lordships that it be dismissed with costs.

Lord Atkinson.—My Lords, I concur with the judgment of the Lord Chancellor which has just been read by my noble and learned friend Lord Atkin.

Lord Warrington of Clyffe.—My Lords, the Appellant in this case claims relief from Income Tax for the financial years ending respectively on the 5th April, 1921, the 5th April, 1922, the 5th April, 1923, the 5th April, 1924 and the 5th April, 1925.

His claim falls under two heads: (1) In respect of income payable in the United Kingdom on securities of British possessions and (2) in respect of income of British War Loan.

The claim under the first head is based upon Rule 2 (*d*) of the Rules applicable to Schedule C: " 2. No tax shall be chargeable " in respect of—(*d*) The interest or dividends on any securities " of . . . a British possession which are payable in the United " Kingdom, where it is proved to the satisfaction of the Commis- " sioners of Inland Revenue that the person owning the securities " and entitled to the interest or dividends is not resident in the " United Kingdom ".

The claim under the second head is based upon Section 46 of the Income Tax Act, 1918: " Where the Treasury have before the " commencement of this Act issued or may thereafter issue any " securities which they have power to issue for the purpose of " raising any money or any loan, with a condition that the interest " thereon shall not be liable to tax or super-tax, so long as it is " shown, in manner directed by the Treasury, that the securities " are in the beneficial ownership of persons who are not ordinarily " resident in the United Kingdom, the interest of securities issued " with such a condition shall be exempt accordingly ".

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War Loan Stock was issued under the condition mentioned in the Section.

In order therefore to support his claims it was incumbent on the Appellant to prove that in the one case he was not resident, and that in the other he was not ordinarily resident in the United Kingdom.

His claims having been rejected by the Commissioners of Inland Revenue he appealed to the Special Commissioners of Income Tax. They expressed their decision in the following terms: "These" (viz., the questions they had to decide) "are in our "opinion questions of degree, and taking into consideration all the "facts put before us in regard to the Appellant's past and present "habits of life, the regularity and length of his visits here, his "ties with this country, and his freedom from attachments abroad, "we have come to the conclusion that at least until January, 1925, "when the Appellant took a lease of a flat in Monte Carlo, he "continued to be resident in the United Kingdom".

It will be observed that they do not in express terms state that he continued to be ordinarily resident here, but, from the terms in which they state the question they had to decide, it is clear that the decision was intended to cover both cases.

At the request of the Appellant the Commissioners stated a Case for the opinion of the High Court. The case came before Mr. Justice Rowlatt on the 23rd July, 1926, who affirmed the decision of the Commissioners and dismissed the appeal. An appeal to the Court of Appeal was dismissed by an Order dated the 16th March, 1927.

It is not quite clear whether the Commissioners intended their decision to be a finding of fact or a conclusion of law. If it were the former there is at least ground for saying that it was not open to appeal, but as the case was argued in both Courts below and in this House upon its merits, I think I ought to state shortly my reasons for thinking the decision was correct.

The Appellant is a British subject. Down to March, 1918, he had a permanent home in London. In that month he sold his furniture and in April he surrendered the lease of his house. He continued, however, to live in England in various hotels until December, 1919. So far there is no question that he was both resident and ordinarily resident in the United Kingdom.

He is married but has no children. His family ties are in this country, his wife having five sisters and he himself six brothers and sisters residing here.

Apparently under medical advice to the effect that he and his wife should live in the South of France and avoid the United Kingdom in the winter months, he and his wife in December, 1919, went abroad. They returned to this country on the 10th

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July, 1920. From that day until the 24th November, 1920, they remained in England. They then again went abroad until the 2nd July, 1921, when they returned here and stayed until the 27th November. They then went abroad. On the 9th April, 1922, they returned to England where they stayed until the 18th June. They were abroad until the 10th September. From that day until the 19th November they stayed here. They then went abroad and remained there until the 12th April, 1923. On that day they returned and stayed in this country until the 27th June. They then went abroad returning on the 10th September and staying here until the 15th November. They were abroad from that day till the 10th April, 1924, when they returned here and stayed until the 1st July. From that day until the 10th September they were abroad. They then returned and stayed until the 23rd November when they again went abroad. In no year of assessment did their stay here extend to six calendar months. While abroad they had no settled home but lived in hotels at Monaco and at various places in France. In England also they lived in hotels. The Appellant states that he intended throughout to live abroad, but his intention does not appear to have been of a very pressing character, for, though he made in the course of the years 1922 to 1924 endeavours to find a suitable flat he did not succeed until January, 1925. Since he gave up his house in 1918 he has had no intention of again taking a house or flat in the United Kingdom. He stated to the Commissioners various reasons for his visits to England—to obtain medical advice—to visit relatives—to take part in certain Jewish religious observances—to visit the graves of his parents—to deal with his Income Tax affairs.

These being the facts the question is whether the Commissioners, the King's Bench Division, and the Court of Appeal were wrong in the conclusion at which they respectively arrived.

I do not attempt to give any definition of the word " resident ". In my opinion it has no technical or special meaning for the purposes of the Income Tax Act. " Ordinarily resident " also seems to me to have no such technical or special meaning. In particular it is in my opinion impossible to restrict its connotation to its duration. A member of this House may well be said to be ordinarily resident in London during the Parliamentary session and in the country during the recess. If it has any definite meaning I should say it means according to the way in which a man's life is usually ordered.

In the present case, taking the several years of assessment in succession, in that ending the 5th April, 1921, there is no substantial difference between the nature of his residence abroad and that of his residence here except that the former was for a longer period. He did in fact what many wealthy people do at the

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present time, he spent the winter and spring, and in this particular instance the early summer, abroad and the rest of the summer and the autumn here, again going abroad for the winter. In the year ending the 5th April, 1922, there was no substantial change, but in those ending the 5th April, 1923 and the 5th April, 1924, we find a change to this extent, that he now returns to this country in April, goes abroad for the usual summer holiday, and returns to this country till the winter season comes round again. I will assume that, for the purpose of determining whether in any year he is ordinarily resident, the usual ordering of his life must be judged by what he does in that and preceding years only; still in the first year the circumstances show that the stay in England was as much in the ordinary course as his previous residence, and in subsequent years he developed habits of periodical changes of abode each one of which may be said to be in accordance with the usual ordering of his life.

I have not thought it necessary to rest my opinion upon the third of the General Rules applicable to all Schedules but it is difficult to see any answer to the case of the Respondents under it. The Appellant is a British subject, his ordinary residence was unquestionably in the United Kingdom until December, 1919, and I fail to see that his subsequent departure from the United Kingdom in any of the years in question was otherwise than for the purpose of occasional residence abroad.

Rule 2 of the Miscellaneous Rules applicable to Schedule D has no direct application to this case which is under Schedule C, and I do not see that it throws any light on the two questions which here arise for decision.

In conclusion I desire, as far as I am concerned, to leave open the question whether the Appellant's position has been altered by the acquisition in January, 1925, of a flat in Monte Carlo as his settled residence there.

On the whole I am of opinion that the appeal fails and ought to be dismissed with costs.

Viscount Sumner.—My Lords. I am asked to say that my noble and learned friend, **Lord Buckmaste.**, concurs with the Motion I am about to propose.

Questions put:

That the judgment appealed against be reversed.

The Not Contents have it.

That the judgment appealed against be affirmed, and this appeal dismissed with costs.

The Contents have it.

[Solicitors:—Mr. M. A. Jacobs; the Solicitor of Inland Revenue.]