No. 442.—IN THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—22ND JULY, 1919.

COURT OF APPEAL.—15TH AND 16TH APRIL, 1920.

HOUSE OF LORDS.—28TH FEBRUARY, 1922.

## THE NEW ZEALAND SHIPPING COMPANY LIMITED *v.* C. H. THEW (SURVEYOR OF TAXES).[1]

*Income Tax, Schedule D.—Residence.*

*The Appellants, a shipping Company incorporated in New Zealand with limited liability, has its registered office at Christchurch, New Zealand. A Board of Directors in London conducts all the business affairs of the company in the United Kingdom, has exclusive control of the financial and administrative business of the Company, and decides all important questions of policy. Subject to the powers vested in the London Board, a separate Board of Directors in New Zealand conducts the business affairs of the Company in Australasia and negotiates independently the most important of the freight contracts.*

*General meetings are held half-yearly in London and Christchurch, but the general account books of the Company are kept at the London Office, where the accounts are made up and dividends declared. Registers of Shareholders are kept in both countries.*

Held, *that the evidence before the Special Commissioners was sufficient to support the conclusion of fact that for Income Tax purposes the Appellant Company was resident in the United Kingdom, and that the local management in New Zealand did not constitute a separate trade or business.*

### 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.

1. At Meetings of the Commissioners for the Special Purposes of the Income Tax Acts, held on the 30th May, 1917, and the 30th October, 1917, for the purpose of hearing Appeals, the New Zealand Shipping Company, Limited, hereinafter called " the Company," appealed against an assessment to Income Tax in the sum of £266,060 (less an allowance of £105,574 for Wear and Tear of machinery and plant) for the year ending 5th April, 1916, made upon it by the Additional Commissioners of Taxes for the City of London under the provisions of the Income Tax Acts.

[1] Unreported.

2. The Company was registered in New Zealand on the 6th January, 1873, with limited liability under the laws of New Zealand. The authorised capital of the Company when registered was £100,000 in 10,000 shares of £10 each, subsequently increased to £1,000,000 in 100,000 shares of £10 each. By order of the Supreme Court of New Zealand, dated the 30th September, 1890, the authorised capital was reduced to and now consists of £800,000 in 100,000 shares of £8 each. Of these shares there has been issued £473,840 in 59,230 shares fully paid. The Company has authorised and outstanding £386,500 4 per cent. debenture stock secured by trust deed dated the 5th August, 1896. The trustees for the debenture holders were at the date of hearing Colonel B. M. Dawes, J. F. W. Deacon and Sir Timothy Coghlan, I.S.O.

3. By a resolution passed at an extraordinary general meeting of the shareholders of the Company held at Christchurch, New Zealand, on the 28th day of December, 1887, and confirmed at an extraordinary general meeting of the shareholders held at the same place on the 19th day of January, 1888, the then existing Articles of Association were superseded and replaced by other regulations. These other regulations were subsequently varied in certain particulars by resolutions passed in 1890, 1893 and 1895. These other regulations as so varied are those now in force and are contained in the "Memorandum of Association and Regulations of the New Zealand Shipping Company, Limited, 1915," which are hereto annexed and may be referred to as forming part of this case.(1)

4. By the Memorandum of Association of the Company it is provided, (*inter alia*) as follows :—

2. The registered office of the Company will be situate in Christchurch, New Zealand.

3. The objects for which the Company is established are (*inter alia*) :—

(*a*) The building, purchasing, chartering, hiring, equipping, fitting out, sailing under the British or other flag or flags, managing, re-selling and letting out to hire of ships or vessels or other craft of every description, whether propelled by steam or other power or not, or any share or interest therein.

(*b*) The carrying or conveying and transmitting of mails, specie, bullion, goods or merchandise and passengers by sea or land.

(*f*1) The purchasing as merchants of frozen or unfrozen meat and other articles of food and also goods and merchandise and the selling and disposing of the same and the acquiring and working of buildings, plant and machinery for preserving and freezing meat and other articles of food.

(*f*2) The subscribing for purchasing or otherwise accepting and taking shares in or debentures of any coal mining company in New Zealand and any meat freezing company in New Zealand or the United Kingdom.

(1) Omitted from the present print.

By Clause 1 (*k*) of the regulations of the Company it is provided as follows :—

> " 'Office' means the registered office from time to time of the Com-
> " pany in New Zealand or the chief or head office of the Company for the
> " time being in the United Kingdom respectively for the purpose of the
> " business which by these regulations is to be transacted at such ' office.' "

By Clause 2 the Company may borrow as the London Board may think fit.

By Clause 3 any branch or kind of business which by these presents is either expressly or by implication authorised to be undertaken by the Company, may, but without prejudice to the powers hereinafter given to the general meetings, be undertaken by the London Board at such time or times as they shall think fit, and further may be suffered by them to be in abeyance, whether such branch or kind of business may have been actually commenced or not so long as the London Board may from time to time deem it expedient to commence or proceed with such branch or kind of business.

By Clause 4 branch registers are authorised to be kept under the Companies Branch Registers Act, 1886 (New Zealand), and the Company is to keep a branch register under that Act in London, and all branch registers elsewhere than in New Zealand are to be under the control of the London Board, who may decline to make any further entries on the London Register if the number of shares shall exceed two-thirds of the total number of shares issued.

By Clause 5 the registered office of the Company is to be in the City of Christchurch, New Zealand, which shall be the office of the Company for the purposes of all business which cannot be transacted otherwise than at the registered office and for the purpose of the business of ordinary meetings in New Zealand and for the purpose of all business hereby authorised to be transacted by the New Zealand Board. The head or chief office for all other business of the Company shall be at London, in the United Kingdom. Any existing branch offices shall be and remain branch offices for the purpose of registration to the same extent as heretofore and for any purposes which the London Board shall think expedient for the commercial and ordinary business of the Company.

By Clause 7 the right of allotment of unissued shares is vested in the London Board.

By Clause 12 " the new shares may be disposed of as the London Board " shall think fit," and by a special resolution passed in London on the 14th June, 1893, authority to issue 40,000 preference shares was given to the London Board.

By Clause 14 the London Board is authorised to convert paid-up shares into stock.

By Clause 14 (*a*) the London Board may from time to time, if they think fit, fix the minimum amount of stock transferable and direct that fractions of a pound shall not be dealt with, with power nevertheless at their discretion to waive such rules in any particular case.

By Clause 17 certain persons are nominated and appointed as the New Zealand Board of Directors " for the purpose of all business necessary to be " transacted at the registered office of the Company and for registration of " transfers at the principal registry of the Company and for the exercise of

" the powers hereby conferred on the New Zealand Board and for the exercise " of such other powers of the directors as shall be delegated to them by the " directors acting in the United Kingdom but for such purposes only."

By Clause 19 certain persons are nominated and appointed as a London Board of Directors " for the purpose of issuing shares, making calls exercising " borrowing powers and all other financial, commercial or administrative " business of the Company not by these regulations expressly entrusted to " the directors acting in New Zealand."

By Clause 22 the directors acting in New Zealand and the directors acting in the United Kingdom shall be deemed to be two separate Boards respectively for the exercise of the powers of management hereby given to them respectively.

By Clause 23 the number of directors acting in New Zealand shall not be less than five nor more than ten, the number of directors acting in London shall not be less than five nor more than ten, the number in each case to include the director appointed under Regulation 21.

By Clause 28 the shareholders on the London register at the general meeting at which any directors acting in London (other than the person appointed to act as director under Regulation 21) retire shall fill up the vacated offices by electing a like number of persons. At the general meeting at which any directors acting in New Zealand other than the director appointed under Regulation 21 shall retire the shareholders whose names are on the New Zealand share register and not also on the London register shall fill the vacated offices by electing a like number of persons.

By Clause 38 the directors acting in New Zealand are entitled to an annual remuneration of £1,250 and the directors acting in the United Kingdom to an annual remuneration of £2,000.

By Clause 39 the directors are to conduct the business subject to General Meetings and subject to the separate powers of the London Board and New Zealand Board.

By Clause 40 the London Board shall, in addition to powers conferred by Regulation 19, conduct and manage all the business affairs of the Company in the United Kingdom and all other places not herein specified, and shall in and in respect of those places exercise all the powers, authorities and discretions of the Company except such of them as are expressly by the statutes and these regulations directed to be exercised at General Meetings or by the New Zealand Board.

By Clause 41 the New Zealand Board shall conduct and manage all the business affairs of the Company in New Zealand, Australia, Tasmania and the Islands of the Pacific Ocean, except such business affairs as are included in the powers expressly directed by Regulation No. 19 to be exercised by the London Board, and shall in and for those places exercise all the powers, authorities and discretions of the Company except only such of them as are by the statutes and these regulations expressly directed to be exercised at General Meetings or by the London Board.

By Clause 42 the London Board are authorised to appoint a manager elsewhere than in New Zealand, Australia, Tasmania and the Pacific Islands.

By Clause 43 the New Zealand Board may appoint a manager in New Zealand.

By Clause 44 the London Board may from time to time appoint in any country or place other than New Zealand, Australia, Tasmania or the Islands of the Pacific Ocean, any agent or representative of the Company or any secretaries superintendents, receivers, managers or other officers upon such terms and with such remuneration as the London Board shall think fit. And the New Zealand Board may from time to time appoint any agent or representative of the Company in any place in New Zealand, Australia, Tasmania or the Islands of the Pacific, or any secretaries, superintendents, receivers, managers or other officers upon such terms and with such remuneration as the New Zealand Board shall think fit.

By Clause 62 an ordinary meeting is to be held yearly in Christchurch, New Zealand, and in the same manner an ordinary meeting is to be held yearly in London. All other meetings " shall be deemed to be Extraordinary Meetings " and shall be held in London," and no special resolution shall be passed or confirmed except at an Extraordinary General Meeting.

By Clause 89 an ordinary meeting without any notice on that behalf (but subject to these regulations as to the separate powers of meetings in New Zealand and London respectively) may elect Directors, may elect and fix the remuneration of Auditors, may receive and either wholly or partially reject or adopt and confirm the accounts, balance-sheets and reports of the Board, may, subject to the provisions of these regulations, decide on any recommendation of the London Board of or relating to any dividend, and subject also to the provisions of these regulations and seven days' notice having been given to the Company by any shareholder in writing of the subject he intends to bring forward, may discuss any affairs of or relating to the Company.

By Clause 90 the ordinary meeting in London in every year shall appoint two auditors or such number of auditors as may be deemed by the meeting to be requisite. Such auditors need not necessarily be shareholders, but no Director or other officer of the Company shall be an Auditor while holding office. Until the first ordinary meeting of the Company the London Board shall appoint an auditor and subsequently, in default of the shareholders in ordinary meeting appointing such Auditors, the appointment of such shall devolve upon the London Board.

By clause 91 any occasional vacancy in the office of Auditor acting in the United Kingdom shall be supplied by the London Board.

By Clause 92 it is provided that at least 21 days before the day appointed for every ordinary meeting the London Board shall deliver to the Auditor the yearly accounts and balance-sheet to be produced to the meeting, and the Auditor shall receive and examine the same and within 14 days after the receipt thereof the Auditor shall report thereon to the London Board.

By Clause 93 the London Board is to publish and supply a report and accounts and balance-sheet seven days before the meeting, and shall forthwith supply a copy of the audited accounts and balance-sheet to the New Zealand Board.

By Clause 95 the Directors acting in New Zealand may in their discretion appoint an Auditor or Auditors at such remuneration and for such period as they think fit to audit the accounts of the Company and report thereon to the ordinary meeting in Christchurch.

By Clause 102 the Company shall have duplicate seals for use in New Zealand and in the United Kingdom respectively, and separate secretaries may be appointed to act at the New Zealand office and the London office respectively.

By Clause 116 the London Board shall from time to time set apart such sums as in their judgment shall be necessary or expedient for the purpose of forming one or more reserve or depreciation funds to be at the discretion of the London Board applied in equalising dividends or towards meeting ascertained or contingent claims on or liabilities of the Company and for the other purposes of the Company.

By Clause 117 all moneys carried to any reserve or depreciation fund and all other moneys of the Company not immediately required for use may be lodged on deposit or be invested in such securities or investments (other than the purchase of shares of the Company) as the London Board may from time to time think fit and proper, and in any case where thought fit such deposit or investment may be made in the names of trustees.

By Clause 118 all dividends are to be declared at the General Meetings in London.

By Clause 120 the net profits of the Company are to be the sum declared to be such by the London Board.

By Clause 121 before declaring the net profits the London Board shall set apart such sum to be carried to reserve or depreciation fund as in their judgment may be necessary.

By Clause 122 the net profits of the Company are to be appropriated to the payment of the dividend and the ultimate surplus as a general meeting in London shall direct.

By Clause 123 no larger dividend shall be declared than is recommended by the London Board.

By Clause 124 when in the opinion of the London Board the profits of the Company permit there may be a half-yearly dividend.

By Clause 130 all calls are to be made at the discretion of the London Board.

By Clause 131 the London Board may make calls before allotment.

By Clause 133 in the event of non-payment of calls an appointment of a new time or place of payment may be made by the London Board.

By Clause 138 the London Board may compound for the payment of any call.

By Clause 139 if any call in respect of any shares shall remain unpaid for fourteen days after the time appointed for that purpose the London Board (or the New Zealand Board in the case of a shareholder residing in New Zealand) may at any time thereafter give notice to the defaulting shareholder that unless the call with interest thereon from the time of its becoming due at the rate of 10 per cent. per annum is paid within fourteen days from the service of the notice the share will be liable to forfeiture, and if the said call and interest shall not be paid within fourteen days the London Board may at any time thereafter before the actual payment of the said call and interest declare the share forfeited for the benefit of the Company.

By Clause 140 if any shareholder upon whose shares the Company shall have a lien and charge shall not pay to the Company the moneys in respect of which the Company shall have the said lien and charge within two calendar months after notice in writing demanding payment shall have been given to him by or on behalf of the Company the London Board (or the New Zealand Board in the case of a shareholder residing in New Zealand) may at any time thereafter before actual payment declare the said shares or any of them forfeited for the benefit of the Company. Upon every forfeiture under this Article or at such time thereafter as the London Board shall think fit, the shares forfeited may be sold by or under the orders of the London Board, and in such manner as the London Board may deem expedient, and the net proceeds of the shares sold shall be applied in or towards payment of the said moneys, and any surplus of the net proceeds of the said shares sold shall be paid to the shareholders whose shares have been so forfeited.

By Clause 144 it is directed that the Company shall not sue for calls unless they first sell the forfeited shares in such manner as the London Board thinks reasonable.

By Clause 145 the London Board is empowered to remit the forfeiture of any share.

By Clause 147 the sales of forfeited shares may be made by the London Board at such times and on such conditions as they may think fit.

By Clause 149 the forfeited shares may be sold or extinguished at the discretion of the London Board.

By Clause 154 no shareholder shall be entitled to notice of general meetings in London unless his registered address be in the United Kingdom or he has given to the Company at the chief office in London an address for service within the United Kingdom, provided that this regulation shall not enable any general meeting to pass a special resolution unless notice of the intention to propose the same shall have been advertised in New Zealand according to these regulations at least eight weeks before the meeting and shall have been served on all the members at least eight weeks before such meeting, and for this purpose a letter posted in London shall be deemed to be duly delivered in New Zealand or any other part of the world within fifty-six days of the time of posting. That if thought desirable by the London Board at the time of convening an extraordinary general meeting for the purpose of passing special resolutions the London Board shall be at liberty to direct the New Zealand Board by telegram to issue notices to the shareholders on the New Zealand register convening a meeting in London on such day, time and place as the London Board may fix and specifying shortly the nature of the business to be transacted thereat and that the New Zealand Board shall be bound to issue such notice forthwith to the shareholders on the New Zealand register.

5. It was admitted that since 1888 the whole financial control of the Company and the management of its business and affairs other than the business affairs of the Company in Australasia, which consist of the purchases in Australasia and the arrangements for the freights from Australasia and the conveyance from Australasia to England of refrigerated meat, has been vested in and exercised by the London Board.

The following are extracts from the minutes of the meetings of directors in London :—

London, 20th January, 1888 : "It was explained to the Board that "it would be necessary to make early provision for a portion of the

"Company's requirements as acceptances amounting to over £5,000 "matured on the 5th proximo. In order to endeavour to provide for "these the Board requested that a cable should be despatched to the "Colony at once asking what wool ships of the Company had left the "Colony since the 28th of December and the amount of freight payable "in London free and available for obtaining advances against and that the "following resolution be recorded.

"On receipt of telegraphic information that the control of the Com- "pany is to be placed with the London Board we considered it our duty "to record on the minutes that on the 5th January we received a cable- "gram stating that the control having been transferred to London the "financing in future should be done here. This has been repeated by "cablegram together with further information that the whole of the "freights with the exception of £3,000 have been hypothecated, which "renders it impracticable to finance the Company in London, as there "is neither freight, money or property to do it with and the Bank of "New Zealand has expressed its determination not to assist in financing "the Company."

London, 13th February, 1888: "Mr. Lyne attended the meeting of "the Board and explained to them their powers under the amended articles. "He further advised the Board that in his opinion the directors in the "Colony had not now any power to borrow money or hypothecate freights "of vessels for advances."

4th June, 1888: "Resolved that the solicitor be consulted to make "arrangements for an early meeting of shareholders to alter Articles of "Association to have entire control in London."

6. On the 18th December, 1888, a general meeting of shareholders was held at the Cannon Street Hotel in the City of London and the annual report of the Company was issued from London dated the 8th December, 1888. A copy of the said report is hereto annexed and marked "B" and may be referred to as forming part of this case.(1)

From the date of the last-named general meeting general meetings of the Company have been held yearly in London and Christchurch in accordance with Article 62 and all extraordinary general meetings have been held in London and dividends declared at the London general meeting.

The balance sheets and profit and loss accounts were prepared by the Company at their London Office and were examined, audited and signed by the London accountants in each of the years 1889 to 1916.

7. Pursuant to the said resolution of 4th June, 1888, new regulations were drafted with the view of carrying the said resolution into effect and transferring the control of the Company to London, but no alterations of the Articles of Association or regulations pursuant to the said resolution were made. It was proposed that a scheme should be submitted to the New Zealand Board for the future management of the Company on the basis of their leaving the control of the Company's affairs to the London Board and only acting in New Zealand in accordance with the views of the London Board. Formal effect has not been given to this proposal.

(1) Omitted from the present print.

8. In the year of assessment there were 16 directors of the Company, of whom William C. Dawes was Chairman of the Company, with six other directors, all resident in England, and eight directors with Mr. Aynesley Chairman, all resident in Christchurch, and one director resident at Wellington, New Zealand. The management in London is carried out by two joint managers under the direction of the London Board. In New Zealand there is a general manager and the Company has offices and managers at all the principal ports and all the managers in New Zealand act under the direction of the New Zealand Board.

9. The Company have a fleet of 16 to 18 steamers, which vessels earn the profits made by the Company. All the vessels forming the fleet are registered in the United Kingdom under the shipping laws of Great Britain, but almost all the investments and other property except ships are in New Zealand—about two-thirds of the freight is earned in New Zealand. The rate of freight is however about two-thirds higher from New Zealand than from Great Britain, chiefly by reason of the extra expense caused by the necessity for refrigerating apparatus. Approximately the value of the whole of the Company's investments and property is one-ninth of the value of the ships. The most important contracts made by the Company relating to the carriage of goods are those entered into by the New Zealand Board with the frozen meat companies and other homeward shippers from New Zealand and are made in general without reference to the London Board. Frequent communication is necessary between the New Zealand Board and the London Board in connection with these contracts owing to the fact that a shipping Company with whom the Company make joint contracts for shipments from New Zealand and three of the principal Meat Companies whose goods they carry have their headquarters in London, and consequently it is inevitable that negotiations in connection with the contracts made in New Zealand should be partially conducted in London. The New Zealand Board consult the London Board in regard to all important questions of policy and in regard to transactions which involve the expenditure of large sums of money, but no definite limit has been fixed to the expenditure which they may incur without consultation. A number of extracts from the Minute Books, Correspondence Books and Cable Books of the Company, relating to the operations of the New Zealand Board, were produced and discussed at the hearing of the appeal. These extracts showed that the consultations between the two Boards almost invariably lead to agreement between them as to the course to be followed. There have been instances in which suggestions made by the London Board have been abandoned on the New Zealand Board representing that it was not desirable that they should be adopted. In the one instance adduced in which an acute difference of opinion arose between them, the London Board cabled an explanation of the reasons why they could not adopt the proposals of the New Zealand Board, and the New Zealand Board thereupon accepted the decision of the London Board in the following terms :—
" 'Rimutaki' homeward loading. 'Rimutaki' loading for West Coast in
" accordance with your arrangements with Federal Steam Navigation Com-
" pany. The Board in the Colony strongly protests against absence of previous
" consultation and sanction of Board in the Colony in making arrangements
" for despatch of steamer involving disturbance of the usual New Zealand
" Despatches. Diversion of 'Rimutaki' has raised serious unpleasantness
" which timely consultation might have obviated."

A copy of extracts from the Minutes of the London and New Zealand Boards and from letters and telegrams is hereto annexed and marked " C " and may be referred to as forming part of this case.(1)

(1) Omitted from the present print.

10. The general books of the Company, comprising all their accounts, are kept at the head office in London. Separate books and accounts of the freights obtained and the expenses incurred by the New Zealand Board are kept in New Zealand. These New Zealand accounts are duplicated in London, and the balances shown by them are transferred to the general books of the Company. These balances do not accurately represent the profits and losses arising from the operations immediately conducted and managed by the New Zealand Board. For the purpose of apportioning the profits of the Company between those operations and the rest of the business of the Company it is possible to earmark the freights and other receipts obtained by the New Zealand Board and a large part of the expenses incurred in connection with the homeward voyages. Other expenses cannot be similarly earmarked and can only be apportioned *pro rata*. Accounts in which the profits were apportioned on this basis were prepared for the purpose of the appeal, and were produced.

11. The register of shareholders is in duplicate and one of such registers is kept in London and the other is kept at Christchurch. A register of the shareholders is kept in accordance with the provisions of Sections 100 to 120 of the New Zealand Companies Act, 1903, and in accordance therewith a duplicate of the branch register in London is kept in New Zealand. A duplicate of the New Zealand register is also kept in London. Shares can be transferred from one register to the other, but the London Board may decline to make any further entries on the London Register until the number of shares entered therein shall be reduced to two-thirds of the total number of the ordinary shares issued. The officers, etc., of the fleet are appointed by and subject to dismissal by and their remuneration fixed by the London Board. The London Board acquaint themselves with the views of the New Zealand Board as to the acquiring, building, etc., of the steamers required for the fleet, but alone decide with regard to such matters.

12. It was contended on behalf of the Company :—

(*a*) That as the Company was incorporated and registered in New Zealand and was subject to the supreme control of the Courts there and of the Legislature there and carried on the principal part of its trade there, and as the constitution of the Company provided that the registered office should be in New Zealand the Company was resident in New Zealand, and that the fact that, subject to the control of the New Zealand Courts and Legislature the London Board had in respect of financial matters only been given a control over the New Zealand Board, was not a sufficient ground for deciding that the Company was resident in the United Kingdom. In support of this contention reference was made to Sections 274 and 275 of the Companies (Consolidation) Act, 1908, Section 1 (*d*) of the Merchant Shipping Act, 1894, and Sections 111 to 120, Section 130, and Sections 297 to 309 of an Act termed the Companies Act, 1903, enacted by the General Assembly of New Zealand in Parliament assembled.

(*b*) That the operations of the New Zealand Board constituted a separate trade or business which was entirely controlled and carried on in New Zealand ; that so far as the London Board took part in negotiations connected with the contracts made in New Zealand they acted merely as agents for the New Zealand Board, and that the profits arising from the operations of the New Zealand Board

should not be included in the profits of the Company chargeable to Income Tax. Reference was made to the case of The Egyptian Hotels Limited *v.* Mitchell (6 Tax Cases, p. 542).

13. It was contended on behalf of the Crown that the evidence before the Commissioners established that the whole of the operations of the Company, both in the United Kingdom and elsewhere, were under the control and direction of the London Board, that the London Board alone managed and controlled all the most important business of the Company, that the Company was resident in the United Kingdom, that the local management in New Zealand did not constitute a separate trade or business, that the Company's trade or business constituted one trade or business and was carried on and exercised in the United Kingdom at the head or chief office in London, and that the whole of its profits were chargeable to Income Tax.

14. We, the Commissioners who heard the appeal, were of opinion that the contentions of the Crown as stated in the preceding paragraph were correct, and we accordingly confirmed the assessment.

15. The Company immediately upon the determination of the Appeal declared to us its 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 Taxes Management Act, 1880, Section 59, which Case we have stated and do sign accordingly.

P. WILLIAMSON,

G. F. HOWE,

W. J. BRAITHWAITE,

Commissioners for the Special Purposes of the Income Tax Acts.

Windsor House,
83, Kingsway,
London, W.C.2,
17*th December*, 1918.

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The case came on for hearing before Mr. Justice Rowlatt on the 22nd July, 1919, when judgment was delivered in favour of the Respondent, with costs.

The learned judge held that the case was governed by the decision in *New Zealand Shipping Company, Limited*, v. *Stephens* (reported 5 T.C. 553) and refused the Appellants' application *in limine* for the case to be remitted for the Special Commissioners so to state their findings as to enable the Court to consider whether the evidence before the Commissioners justified their conclusions of fact.

Mr. Ryde, K.C., Mr. Edwardes Jones and Mr. G. St. G. Pilcher appeared as Counsel for the Appellant Company and the Attorney-General (Sir Gordon Hewart, K.C., M.P.), Mr. T. H. Parr and Mr. R. P. Hills as Counsel for the Respondent.

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JUDGMENT.

*Rowlatt*, J.—All I say in this case is that it is governed by the previous decision; but I record that Mr. Ryde before me took the point that it does not appear clearly whether the Commissioners found the facts in detail and stated a conclusion of law, or whether they found a conclusion of fact and stated facts as disclosing evidence justifying their finding. My own view is that the latter is what they did and that the evidence is abundant to support their finding.

The appeal is dismissed with costs.

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An Appeal having been lodged against the decision in the King's Bench Division, the case was heard in the Court of Appeal on the 15th and 16th April, 1920. Scrutton, L.J., who had appeared as Counsel for the Appellant Company in the case of *New Zealand Shipping Company, Limited*, v. *Stephens* (reported 5 T.C. 553) did not sit at the hearing and by consent of both parties the appeal was heard by the Master of the Rolls (Lord Sterndale) and Warrington, L.J.

Sir John Simon, K.C., Mr. Edwardes Jones and Mr. G. St. G. Pilcher appeared as Counsel for the Appellant Company and the Attorney-General (Sir Gordon Hewart, K.C., M.P.), Mr. T. H. Parr and Mr. R. P. Hills as Counsel for the Respondent.

The Court refused to remit the case to the Special Commissioners and gave judgment on the 16th April, 1920, in favour of the Respondent, with costs.

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JUDGMENT.

*Lord Sterndale*, M.R.—This is an appeal from a decision of Mr. Justice Rowlatt in which he affirmed the decision of the Special Commissioners holding that the Appellants, the New Zealand Shipping Company, were liable to be assessed for Income Tax in this country. His judgment is very short. He says this:—"All I say in this case is that it is governed by the previous decision, "but I record that Mr. Ryde before me took the point that it does not appear "clearly whether the Commissioners found the facts in detail and stated a con- "clusion of law, or whether they found a conclusion of fact and stated facts as "disclosing evidence justifying their finding. My own view is that the latter "is what they did, and that the evidence is abundant to support their finding."

I might content myself by repeating those words as my judgment and perhaps it would be wise for me to do so, but in deference to the argument that has been addressed to us I propose to state my conclusion in rather more detail, though not in great detail, I hope.

The Appellants are a shipping company owning a large number of ships and carrying by means of those ships cargoes between Australasia and Great Britain, and, I daresay, other places. I think the bulk of the business is carrying frozen meat from Australasia to Europe, and, I suppose, general cargoes the other way. The business of making the contracts and the freight arrangements and so on on the New Zealand side is entrusted to a Board of Directors in New Zealand. The making of the similar arrangements for the outward cargo from Great Britain is in the hands of the London Board and, of course, there is work to be done by the London Board at this end in respect of the cargoes that come from New Zealand. There is work also to be done by the New Zealand Board in respect of the cargoes which go from this country to New Zealand.

The London Board, it is admitted, have the entire control in financial matters —they have control in other matters to which I shall refer directly—and the separate accounts which are necessarily kept in New Zealand and which would have to be kept if it were only an agency, are sent to London and there the accounts of the Company are made up. After being made up they are sent back to New Zealand and the New Zealand Board have the power, if they think fit, to appoint auditors to examine the accounts. The Company is registered in New Zealand. The registered office of the Company is situate at Christchurch, New Zealand, and the definition given in the Articles of the word "office" is :—"'Office' means the registered office from time to time of the "Company in New Zealand, or the chief or head office of the Company for the "time being in the United Kingdom respectively for the purpose of the business "which by these regulations is to be transacted at such office." The question therefore is whether the Company comes within either the first or the second paragraph of Section 2 of Schedule D(1), and the argument that has been addressed to us has chiefly proceeded in respect of the first paragraph, namely, whether this Company is a Company residing in the United Kingdom. Now upon that the thirteenth and fourteenth paragraphs of the Special Case come to this conclusion : "(13) It was contended on behalf of the Crown that the "evidence before the Commissioners established that the whole of the opera-"tions of the Company, both in the United Kingdom and elsewhere, were "under the control and direction of the London Board; that the London "Board alone managed and controlled all the most important business of the "Company; that the Company was resident in the United Kingdom; that the "local management in New Zealand did not constitute a separate trade or "business; that the Company's trade or business constituted one trade "or business, and was carried on and exercised in the United Kingdom at "the head or chief office in London, and that the whole of its profits were "chargeable to Income Tax. (14) We, the Commissioners who heard the "appeal, were of opinion that the contentions of the Crown as stated in the "preceding paragraph were correct, and we accordingly confirmed the assess-"ment."

Now if that finding stands, it is not disputed that the decision is right, but it is said that that finding ought not to stand. I wish just to say a word as to what in my opinion is the position of the Commissioners in a case of this kind. I cannot say it has been directly argued, but it certainly has been suggested, not only in this case but in other cases, that the duty of the Commissioners is to set out the circumstances which they find to exist and to leave the Court to come to its own conclusion as to what those circumstances prove. In my opinion that is not a correct view of the functions of the Commissioners. I do not know in this case, but from remarks that have been made in other cases it seems to have been founded upon what I think is a misapprehension of what was said by Lord Justice Farwell in the case of the *New Zealand Shipping Company* and *Stephens* in 5 Tax Cases.(2) It is read sometimes as if the Lord Justice had said that the Commissioners must not state one side or the other out of Court. I am quite sure that nothing of that kind could have been said and for this reason, that there are numbers of authorities which show that the findings of fact are for the Commissioners; and if the decision depends upon a fact, if they find in one way or the other they must inevitably state one side or the other out of Court and to say that they must not do so is to say that they must not perform their duty. But as a matter

(1) Section 2, Income Tax Act, 1853. (2) 5 T.C. 553.

of fact that is not what the Lord Justice said at all. What he said was this :— "I only wish to add that I also agree with the passage read from Lord Justice "Vaughan Williams' Judgment, that the Commissioners ought not to state "either side out of Court "—he does not stop there ; he goes on—" by stating "under the guise of fact that which is really law." Now as to that of course it is a perfectly sound and proper remark, if I may say so with respect. But it is very far distant from the contention that the Commissioners ought only to state the circumstances and leave the Court to draw its own conclusions of fact as well as law. It seems to me the true position is this. The Commissioners are bound to find the facts. In finding the facts they are bound to act upon legal principles and upon evidence which in law can support their finding, and they should state their findings of fact ; but if they are requested to do so and if it be possible—sometimes it might not be—then I think they should upon the face of the case state the circumstances upon which they have come to that conclusion, in order that the Court may judge whether in law those circumstances afford any evidence for the conclusion of fact to which the Commissioners have come. That seems to me to be the proper conclusion and it is exactly to my mind what was said by Lord Sumner, then Mr. Justice Hamilton, in the *American Thread Company* v. *Joyce*.(1) He quotes Lord Justice Moulton who said : " 'The point of law which the Commissioners desired "'to raise was whether there was any such evidence as would justify a jury "'in coming to the conclusions expressed in the Commissioners' findings "'and an examination of the case convinces me that the Commissioners "'intended to put before the Court the whole of the evidence which they had "'before them.' Why ? 'So that the Court might judge whether it justified "'those findings,' not so that the Court might judge what findings to arrive "at itself, but whether the evidence which was before them justified their "finding." Then the learned Judge says : "The facts as found they have "stated in the first part of paragraph 17, and then they have stated in the "previous paragraph the materials on which they so found, and in so doing "they have invited, and only invited, the determination in point of law of the "question whether there was evidence upon which they could reasonably "arrive at the conclusion to which they did arrive."

That was also dealt with by Mr. Justice Sankey in the case of the *Inland Revenue Commissioners* v. *Maxse*,(2) in 1918, 2 K.B., pages 718 and 719. He quotes the then Master of the Rolls, Lord Cozens Hardy, in the *Gramophone and Typewriter, Limited*, v. *Stanley*,(3) saying "The question arises on a case "stated by the Commissioners. It is undoubtedly true that, if the Com- "missioners find a fact, it is not open to this Court to question that finding "unless there is no evidence to support it. If, however, the Commissioners "state the evidence which was before them and add that upon such evidence "they hold that certain results follow, I think it is open, and was intended "by the Commissioners that it should be open, to the Court to say whether "the evidence justified what the Commissioners held." Then Mr. Justice Sankey goes on, "I do not think, however, that that passage supports the "contention founded upon it "—the contention being very much the one with which I am now dealing. "It is not possible for this Court to say that the "finding is against the weight of evidence or to find the facts. This Court "must accept the facts as stated and decide any question of law arising upon "them, including the question whether there is any evidence to support the

(1) 6 T.C. I (2) [1918] 2 K.B. 715. (3) 5 T.C. 358.

" conclusion of the Commissioners." That seems to me to be a perfectly correct statement of the law and to agree with all the other decisions on the point. In this case, in my opinion, the Commissioners have set out with the greatest fairness the circumstances upon which they have come to the conclusion that they did, and it is open to us, and I propose, to examine the question whether there was evidence upon which they could so find. If there were, then I agree with Mr. Justice Sankey that we cannot say the verdict was against the weight of evidence or find the facts for ourselves.

The point put shortly in this case is this. It is contended that on the circumstances disclosed here the only conclusion to which the Commissioners could properly come in law was that the Company was carrying on two separate businesses, one in New Zealand and one in London, and that they only resided in Great Britain for the purpose of the business which was carried on in London, and they ought therefore to be assessed in this country only upon the profits of the business carried on in London, and that everything that belonged to the business carried on in New Zealand was not subject to taxation here. Whether subject to taxation there or not is a matter with which we have nothing to do. I cannot imagine any question which could be more emphatically a question of fact; nor can I imagine any question upon which the finding of intelligent business men would not be infinitely more valuable than the finding of any judges. I do not dispute, of course, that a Company may carry on two businesses. An instance was put by Sir John Simon which suggested that a Company might carry on a butcher's business in New Zealand and a milk business in England and they would be two separate businesses. I am not concerned to deal with that case or to deny it. I only say it seems to me to be miles away from the case with which we have to deal. Certainly the nearer case is the case of the Egyptian Hotels(1) to which we were referred. In that case all the business working, if I may call it so, of the Hotels out of which the profits were made was carried on in Egypt. There were directors in London and all that they did was to receive the profits, make up the accounts and distribute the profits. It was held that those were two separate businesses, that the making of the profits and the distribution of the profits were two quite separate things. It was however dealt with by every one of the judges, so far as I know, as a question of fact and not a question of law, and I think it will be obvious that to follow that case as an authority upon a different set of facts is a thing that must be done with very great circumspection. Because the position was this. The learned Judge in the Court of First Instance found that they were not two businesses. The Court of Appeal found that they were. In the House of Lords two noble lords agreed with the Judge of First Instance and two noble lords agreed with the Court of Appeal, and therefore to follow that as an authority upon a different set of facts is rather a difficult thing to do. But I am assuming that a Company can carry on two businesses and can, for the purposes of taxation, be in respect of those two businesses resident in two separate countries. I will assume that. Therefore as it seems to me the two main questions are, was this Company resident in Great Britain, and was the business which it carried on there a separate business from that carried on in New Zealand?

Now with regard to the question whether it was resident, I think what we have to look at is quite clearly stated in the case of the *De Beers Consolidated Mines* and *Howe*(2) by Lord Loreburn. He said: " Mr. Cohen " propounded a test which had the merits of simplicity and certitude. He

(1) *The Egyptian Hotels, Ltd.*, v. *Mitchell*, 6 T.C. 542. (2) 5 T.C. 198.

" maintained that a Company resides where it is registered and nowhere else. " If that be so, the Appellant Company must succeed, for it is registered " in South Africa. I cannot adopt Mr. Cohen's contention. In applying " the conception of a residence to a Company, we ought, I think, to proceed " as nearly as we can upon the analogy of an individual. A Company cannot " eat or sleep, but it can keep house and do business. We ought, therefore, " to see where it really keeps house and does business. An individual may " be of foreign nationality, and yet reside in the United Kingdom. So may a " Company. Otherwise it might have its chief seat of management and its " centre of trading in England under the protection of English law and yet " escape the appropriate taxation by the simple expedient of being registered " abroad and distributing its dividends abroad. The decision of Chief Baron " Kelly and Baron Huddleston in the *Calcutta Jute Mills* v. *Nicholson*(1) and " the *Cesena Sulphur Company* v. *Nicholson*,(2) now thirty years ago, involved " the principle that a Company resides for purposes of Income Tax where " its real business is carried on. Those decisions have been acted upon ever " since. I regard that as the true rule, and the real business is carried on where " the central management and control actually abides." I think that that is just as accurate a statement of law now as it was at the time it was pronounced. I wholly fail to see how that question is affected in any way by the fact, to which we were referred, that a Company registered abroad has now before beginning to carry on any business in England to file its articles at Somerset House. How that possibly affects the principles laid down by Lord Loreburn I fail to see.

Now we have to apply those principles to the facts of this case. I do not propose to read all the case in detail, but I will refer to some portion of it. I have already referred to the definition of " office " which shows that the chief or head office is in England. The London Board have the control of borrowing. The London Board is the only Board which can direct an extraordinary meeting to be held, an extraordinary meeting being the only meeting at which a special resolution can be carried and therefore the only meeting which can deal with anything but the routine business of the Company. With regard to the routine, an ordinary meeting is held in New Zealand and an ordinary meeting is also held in London, but " all other meetings shall be deemed to be extra- " ordinary meetings, and shall be held in London and no special resolution " shall be passed or confirmed except at an extraordinary general meeting." Then, as I have already said, the accounts of the New Zealand Board and the business done there are kept in separate books in New Zealand; but they are sent to London, not for the purpose only—as in the *Egyptian Hotel Company's* case—of distributing the profits appearing upon those accounts, but for the purpose of being dealt with in conjunction with the other accounts of the business and making up a profit and loss account and balance sheet of the two businesses, if you like to call them so for the moment, the business done in New Zealand and the business done in London. The powers of the New Zealand Board of Directors are thus stated. They are " directors of the " Company for the purpose of all business necessary to be transacted at the " registered office of the Company, and for registration of transfers at the " principal registry of the Company, and for the exercise of the powers hereby " conferred on the New Zealand Board, and for the exercise of such other " powers of the directors as shall be delegated to them by the directors acting " in the United Kingdom, but for such purposes only."

(1) 1 T.C. 83. (2) 1 T.C. 88.

There is another clause dealing with that:—"The New Zealand Board "shall conduct and manage all the business affairs of the Company in New "Zealand, Australia, Tasmania, and the islands of the Pacific Ocean, except "such business affairs as are included in the powers expressly directed by "regulation No. 19 to be exercised by the London Board, and shall in and for "those places exercise all the powers, authorities and discretions of the "Company, except only such of them as are by the statutes and these regula- "tions expressly directed to be exercised at general meetings or by the "London Board."

Then there follow a number of clauses which I need not read showing the entire financial control of the London Board over the business.

Then it is stated: "It was admitted that since 1888 the whole financial "control of the Company and the management of its business and affairs "other than the business affairs of the Company in Australasia—which "consist of the purchases in Australasia and the arrangements of the freights "from Australasia and the conveyance from Australasia to England of re- "frigerated meat—has been vested in and exercised by the London Board."

It is also stated:—"The Company have a fleet of 16 to 18 steamers, "which vessels earn the profits made by the Company. All the vessels form- "ing the fleet are registered in the United Kingdom under the Shipping Laws "of Great Britain but almost all the investments and other property except "ships are in New Zealand. About two-thirds of the freight is earned in New "Zealand. The rate of freight is however about two-thirds higher from "New Zealand than from Great Britain chiefly by reason of the extra expense "caused by the necessity for refrigerating apparatus. Approximately the "value of the whole of the Company's investments and property is one-ninth "of the value of the ships. The most important contracts made by the "Company relating to the carriage of goods are those entered into by the "New Zealand Board with the frozen meat companies and other homeward "shippers from New Zealand and are made in general without reference to "the London Board. Frequent communication is necessary between the New "Zealand Board and the London Board in connection with these contracts "owing to the fact that a shipping company with whom the Company make "joint contracts for shipments from New Zealand and three of the principal "meat companies whose goods they carry have their headquarters in London, "and consequently it is inevitable that negotiations in connection with the "contracts made in New Zealand should be partially conducted in London." It then goes on to say that there have been communications between the London Board and the New Zealand Board, and that the New Zealand Board has practically always acted upon the suggestions of the London Board, and that where a difference took place between the two the New Zealand Board submitted to the view of the London Board.

In another paragraph it is stated that, "The officers, &c., of the fleet "are appointed by and subject to dismissal by, and their remuneration is fixed "by, the London Board. The London Board acquaint themselves with the "views of the New Zealand Board as to the acquiring, building, etc., of the "steamers required for the fleet, but alone decide with regard to such matters."

Then to go to the question of books, the statement in the case is this:— "The general books of the Company comprising all their accounts are kept "at the head office in London. Separate books and accounts of the freights "obtained and the expenses incurred by the New Zealand Board are kept "in New Zealand. These New Zealand accounts are duplicated in London

" and the balances shown by them are transferred to the general books of the " Company. These balances do not accurately represent the profits and losses " arising from the operations immediately conducted and managed by the New " Zealand Board. For the purpose of apportioning the profits of the Company " between those operations and the rest of the business of the Company, it is " possible to earmark the freights and other receipts obtained by the New Zea- " land Board and a large part of the expense incurred in connection with the " homeward voyages." That would be the expenses of the master and crew and provisions and so on. " Other expenses cannot be similarly earmarked " and can only be apportioned *pro rata*. Accounts in which the profits were " apportioned on this basis were prepared for the purpose of the appeal and " were produced."

Then it deals with the register and goes on to say that :—" The London " Board may decline to make any further entries on the London Register " until the number of shares entered therein shall be reduced to two-thirds " of the total number of the ordinary shares issued." I do not think that is really of importance.

Those, I think, are the most important of the statements made in the case.

In the first place is it possible for any Court to say that there was no evidence there upon which the Commissioners could come to the conclusion that it was one business and not two ? Or, to put it in another way, as it was put during argument, suppose I was sitting with the Commissioners as a jury, can it be argued that it was my duty to direct the Commissioners that on that evidence they could only find that this was two businesses ? It seems to me that the question only wants stating to answer itself. I will not say—I do not think it necessary to say—that if they had found the other way, we should be obliged to say there was no evidence upon which they could so find. It is not necessary to go so far as that, but it certainly seems to me that there was ample evidence upon which they could find that this was one business and not two, and that the business that was done in New Zealand was only done by the New Zealand Board with the powers which were delegated to them by the Company for the purposes of carrying on local business. That is all they did. It is impossible in my opinion to say that the Commissioners were wrong when they said " This is one business. We cannot separate the business of making " the contracts for the homeward voyages from New Zealand from the business " of dealing with the cargoes carried on those voyages, and from the business " of sending cargoes to New Zealand which have to be dealt with in New " Zealand by the New Zealand Board." There was ample evidence, in my opinion, that the finding of the Special Commissioners was quite right.

If that be so, where is the place of residence of the business ? The test propounded by Lord Loreburn, which I have already stated I consider is just as valid now as it was when it was stated by him in 1906, is " A Company re- " sides for purposes of Income Tax where its real business is carried on. . . . " The real business is carried on where the central management and control " actually abides."(1) The Commissioners have found that that is in London. It is quite unnecessary to say that they could not have found anything else, but it seems to me there is ample evidence upon which they could so find and that really determines the whole matter. There are other findings to which they have come in that paragraph 14, which I have already read, adopting the contentions of the Crown in paragraph 13, but when you have once ascertained

(1) *De Beers Consolidated Mines, Ltd.*, v. *Howe*, 5 T.C. 213.

that it is one business, and that the residence of the Company carrying on the business is in London, there is no more that it is necessary to consider. I do not suggest any doubt whatever that the findings of the Commissioners on the other points were perfectly sound. There is ample evidence to support all the findings to which they came, and in my opinion, this appeal should be dismissed with costs.

*Warrington*, L.J.—I am of the same opinion. By the Income Tax Act of 1853, Section 2, under Schedule D, Income Tax is chargeable amongst other things " for and in respect of the annual profits or gains arising or accruing " to any person residing in the United Kingdom . . . . from any profession, " trade, employment, or vocation, whether the same shall be respectively " carried on in the United Kingdom or elsewhere. . . . ." The persons here sought to be charged with Income Tax are the New Zealand Shipping Company, and the question raised before the Commissioners was whether the New Zealand Company were, within that provision of the Act of 1853, persons liable to be charged with Income Tax. The Commissioners have found that they were. Hence this appeal.

Now I do not propose to add anything to what the Master of the Rolls has said with regard to the duty of the Commissioners in these matters. They have, in my opinion, in the present case, properly performed that which is the duty of a judge of fact; that is to say, they have stated in their case a number of circumstances which are, in their view, the result of the evidence laid before them, and they have then inserted paragraphs 13 and 14 of the Case which I propose to read because it is those paragraphs which express their conclusions.

Paragraph 13 is this: " It was contended on behalf of the Crown that the " evidence before the Commissioners established . . . ."

Now I do not propose to read the whole of the paragraph. I will only state this, that that which it was contended that the evidence established were five separate propositions of fact. The Commissioners then in paragraph 14 say this: " We, the Commissioners who heard the appeal, were of opinion " that the contentions of the Crown as stated in the preceding paragraph were " correct and we accordingly confirmed the assessment." Now what is the meaning of that? I think, quite clearly, that the meaning of that is that they found that the evidence, a summary of which they have stated in the preceding paragraph of the case, did establish the five propositions of fact which the Crown contended had been so established. In other words, the Commissioners, as the judges of fact, found that those propositions of fact were correct.

Now amongst those propositions of fact were two and it is enough for the present purpose to refer to those two. They were first, that the Company was resident in the United Kingdom and secondly, that the local management in New Zealand did not constitute a separate trade or business. If those two findings are correct, then the conclusion which is drawn from them, namely, that the Company are liable to be assessed to Income Tax, is correct. The duty of the Court when it is called upon to consider the findings of a tribunal of fact, is to say whether the circumstances proved before that tribunal were, in law, sufficient to justify the conclusion of fact at which they have arrived; in other words, as is so very often said, whether there was evidence on which a reasonable tribunal of fact could come to the conclusion at which it did arrive.

In examining the question from that point of view, I turn to the *De Beers* case(1) to see what has been said, in the case of a Company registered abroad,

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

would constitute its residence for the purpose of the Income Tax Acts. I will just read one or two short passages from the speech of Lord Loreburn addressing the House of Lords in that case, in 1906 A.C., p. 458. He says(1): "A Company cannot eat or sleep, but it can keep house and do business. We "ought, therefore, to see where it really keeps house and does business. An "individual may be of foreign nationality, and yet reside in the United King-"dom. So may a Company. Otherwise, it might have its chief seat of manage-"ment and its centre of trading in England under the protection of English "law, and yet escape the appropriate taxation by the simple expedient of being "registered abroad and distributing its dividends abroad. The decision of "Chief Baron Kelly and Baron Huddleston in the *Calcutta Jute Mills* v. "*Nicholson*(2) and the *Cesena Sulphur Company* v. *Nicholson*,(3) now thirty "years ago, involves the principle that a Company resides for the purposes of "Income Tax where its real business is carried on. Those decisions have been "acted upon ever since. . I regard that as the true rule, and the real business "is carried on where the central management and control actually abides."

Now that being the principle or the test on which such a question has to be decided, are the facts found by the Commissioners sufficient in law to justify the conclusion of fact at which they have arrived? In my opinion they clearly are. I do not propose to go through the whole of the statement in the case. That has been done by the Master of the Rolls and I should only be repeating what he has said; but the conclusion that I should have drawn from those facts myself would, I think, have been that the business of this Company, the real business of this Company, was carried on, and the central management and control abides, in this country. I will only refer to one matter. It is said that the New Zealand Board are acting independently of the London Board and conducting an independent business in New Zeland. In my opinion that is not the correct view of the present case. Both Boards are under the control of the Company in general meeting. If a difference of opinion were to arise between the two Boards on some matter of commercial policy, it might be necessary to resort to a general meeting of the Company to solve that difficulty and to give directions one way or the other. If that had to be done, it would have to be done in England because, quite plainly, any such matter would be the business of an extraordinary meeting and an extraordinary meeting can only on the constitution of this Company be held in England. It seems to me that points most strongly to the central control and management being in this country and not in New Zealand. Moreover this was a shipping company. All contracts for the purchase and building of ships were made by the London Board. All contracts relating to the engagement and remuneration of the officers of their fleet were made by the London Board. The London Board even with regard to that portion of their business which had necessarily to be conducted by the New Zealand Board upon the spot, had to perform in this country some functions in that matter, because some of the meat companies with whom they transacted business were in this country and some of the shipping companies with which they were connected were also in this country. Therefore even as regards the details of the business and the New Zealand business the London Board had to do a great deal of the business connected with that matter. The real fact is that the New Zealand Board were the delegated authority to perform certain functions on the other side of the world which could only be performed by persons residing there, but the real home of this Company and the real central control and management of the business was also in this country.

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

I think therefore that there was ample evidence on which the Commissioners could arrive, and I think they have arrived, at the conclusion of fact that the Company was resident in the United Kingdom and that the local management in New Zealand did not constitute a separate trade or business.

I only desire to add a word or two about the *Egyptian Hotels* case.(1) In the *Egyptian Hotels* case the real business of the Company was carried on in Egypt, that is to say, the business of earning the profits was carried on in Egypt and wholly in Egypt. No business at all was done in London with reference to that. All that was done in London was the division of the profits when made by the exertions of the Company; and the House of Lords there came to the conclusion that the Company was for the purposes of the business of earning profits resident in Egypt. But that case, when one really looks at the facts, has really no application to the present.

Then it is suggested that since the Companies Act of 1908 some difference has been made with regard to the position of companies registered abroad who start business in this country. Well, a difference has been made, that is to say, they are obliged to publish it in this country by filing a copy of the memorandum and articles of association; but I cannot see how that can have any possible effect upon the question whether or not the real business of the company, when it is started in this country, is carried on here. It is merely one of the conditions which must be fulfilled before they can lawfully do so. When that condition is fulfilled, then they can lawfully carry on the business; and if the circumstances are such as to bring them within the principle to which I have referred, they are just as much carrying on the business in this country as if they had not been compelled to file and had not filed their articles.

The result is, in my opinion, that the decision of Mr. Justice Rowlatt affirming the decision of the Commissioners was correct and that this appeal must be dismissed.

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Notice of Appeal having been given against the decision in the Court of Appeal, the case was heard before Lords Buckmaster, Atkinson, Sumner, Wrenbury and Carson on the 20th February, 1922.

Sir John Simon, K.C., Mr. Edwardes Jones and Mr. G. St. G. Pilcher appeared as Counsel for the Appellant Company and the Attorney-General (Sir Gordon Hewart, K.C., M.P.) and Mr. R. P. Hills as Counsel for the Respondent.

Judgment was delivered on that day in favour of the Crown, with costs, confirming the decision of the Court below, Counsel for the Crown not being called on.

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JUDGMENT.

*Lord Buckmaster.*—My Lords, this Appeal affords an illustration, if illustration were needed, of the heavy burdens that have to be carried by industrial enterprises engaged in business on both sides of the sea. The Appellants are a shipping company whose registered office is in New Zealand. Their business largely consists in shipping from New Zealand to this country frozen meat, and in carrying back from this country to New Zealand commodities for which a market may be found over there. They are subject to Income Tax in New Zealand, and the question that this Appeal raises is whether they are also subject to Income Tax here either upon the whole of the profits or upon such portion as may be regarded as arising from that part of the business transacted in England.

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(1) *The Egyptian Hotels, Ltd.*, v. *Mitchell*, 6 T.C. 542.

The Appeal met with some initial difficulty owing to the fact that it had only been heard in the Appeal Court by two Lords Justices. The circumstances which led to that course being adopted have been fully explained, and your Lordships are, I believe, satisfied that the consent which they are informed the parties signed and filed under the direction of the Court of Appeal may be regarded as having satisfied the conditions laid down by the Judicature Act, 1899, as those upon which an Appeal may be heard by less than the number of three. Your Lordships are, therefore, in a position to entertain this Appeal, which in its essence depends upon whether or no certain findings of fact which have been made by the Special Commissioners are findings which there was any evidence to support. The Commissioners have found that the Company really was resident in the United Kingdom, and unless that finding could not be justified or unless effect can be given to the argument as to the division of the business, the Company becomes responsible to the authorities here for Income Tax. Now it has long been held that in order to determine whether a company is resident in one place or in another the registered office of the company is only an incident in the evidence. In the *De Beers* case(1) (5 Tax Cases, 198) it was stated that you must find out what is the chief seat of management and the centre of trading of the company in order to ascertain what is its real residence; and again in the *Cesena Sulphur Company* v. *Nicholson*(2), Chief Baron Kelly said :—"the real business is carried on where the central "management and control actually abides." In this case the Court of Appeal regard the finding of the Special Commissioners as answering those propositions by saying that the chief seat of management and the centre of trading lies here, and that it is in this country where the real business is actually carried on. A consideration of the Articles will show that such a finding is at least consistent with what the Articles provide, because by Article 3 it is expressly stated that "Any branch or kind of business which by these "presents is either expressly, or by implication, authorised to be undertaken "by the Company, may, but without prejudice to the powers hereinafter "given to General Meetings, be undertaken by the London Board at such "time or times as they shall think fit, and, further, may be suffered by them to "be in abeyance." There is no such corresponding provision with regard to the Board which was established and set up in New Zealand. Again, by Article 19 it is provided that certain named people shall be the Directors of the Company and shall have the power of "making calls, exercising borrowing powers, and "all other financial, commercial, or administrative business of the Company, "not by these Regulations expressly entrusted to the Directors acting in "New Zealand, and shall be deemed to be the Directors acting in the United "Kingdom." There then follows Article 41, which established the New Zealand Board and defines their powers. It is a little difficult to make that Article fit in exactly with the previous Article, No. 40, but it appears that sensible effect may be given to its terms by reading it as providing that "The "New Zealand Board shall conduct and manage all the business affairs of the "Company in New Zealand, Australia, Tasmania, and the Islands of the "Pacific Ocean, except the special administrative matters that are referred "to in Article 19." What that therefore effects is this: the London Board has (as the Special Commissioners have found) the sole duty of constructing and acquiring ships; the discretion for that important branch of the business rests with them; it is they who man the ships, who appoint and who discharge the officers, and the real duty that is performed by the New Zealand Board is

(1) *De Beers Consolidated Mines* v. *Howe*, 5 T.C. 198.
(2) 1 T.C. 88 and 102.

the arrangement of the necessary cargoes and freights for commodities which are conveyed from New Zealand to this country. There is no doubt that the Special Commissioners find that that is a most important part of the business, and they state that two-thirds of the freight is earned in New Zealand and that the most important contracts are made with regard to this frozen meat. But it must be remembered that the rate of freight is two-thirds higher from New Zealand than from Great Britain, and therefore if the matter be looked at simply from the point of view of value or tonnage of commodities carried it might be that there was very little difference between the two. However that may be, it is that and that only which, so far as the facts in this Special Case are concerned, the New Zealand Board has to carry out, and in those circumstances it seems difficult to contend that the Commissioners had no material before them upon which to find that the real residence of the Company was here, where its chief seat of management had been established

The argument urged that, even were that conceded, it might be possible to divide the business into two branches, is, my Lords, as I understand it, misconceived. The business of this company is the business of carrying cargo from New Zealand to this country and from this country to New Zealand, and it is not two branches of a shipping business to fill your ship with cargo at both ends of the voyage: it is nothing but the two necessary operations for the one business; and although the Commissioners have found in fact that it would be possible to separate the profits which might be earned from one voyage from those which might be earned by the other, that does not by itself in any way establish that separate and distinct trades are being carried on. I do not think that it is necessary for this House to embark upon a speculation as to whether in a particular case of independent trades carried on by a company it would be possible to allocate and apportion the profits that are liable to English Income Tax by considering whether they are exclusively due to a trade only carried on here and leaving immune the profits of the business carried on elsewhere. That question is not to my mind presented by the case that is before your Lordships for consideration.

I have only to add that I think it would have been an advantage if the Special Commissioners had throughout framed their Special Case in a series of findings of fact instead of setting out and expressing approval of the contentions of the Crown. None the less, so far as those contentions did involve assertions of fact, in my opinion the finding of the Commissioners has affirmed that those contentions are established by the facts, are accurate, and must accordingly be acted upon.

For these reasons I think the Judgment of the Court of Appeal was right and I move your Lordships that this Appeal be dismissed with costs.

*Lord Atkinson.*—My Lords, I concur.

*Lord Sumner.*—My Lords, I concur.

*Lord Wrenbury.*—My Lords, I concur.

*Lord Carson.*—My Lords, I also concur.

*Questions put.*

That the Judgment appealed from be reversed.

*The Not-Contents have it.*

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

*The Contents have it.*