forfeit rights acquired by length of service and regular contribution to the fund, on the ground that faults which his employers have condoned or overlooked are, in their judgment, so grave as to justify them in punishing him by inflicting the extreme penalty of forfeiture. The board of directors must bear in mind that they are judges, not inquisitors. So far the case seems to be simple enough. What remains is not so easy. Their Lordships have anxiously considered what order ought to be made now under the circumstances of the case. The action in substance, though not in form, is an action to administer the trusts of the pension fund and to compel the trustees—that is, the board of directors—to administer those trusts in Lapointe's case in a proper and legal manner. The board before whom Lapointe's case came have acted in a manner so grossly unfair and improper that their Lordships could not allow the case to go again before the same tribunal. Understanding, however, that the members of the tribunal will not be the same, as the board is now composed of new members, their Lordships think that so extreme a measure is not required. At the same time they think that the action ought to be retained in the Superior Court, and that the court ought to keep its hand over the future proceedings of the board of directors in Lapointe's case. Their Lordships think that the purposes of justice will be met by an order to the following effect—"Declare that in the events which happened the appellant Lapointe ought to be considered as having been obliged to resign within the meaning of rule 45. Declare that the proceedings of the board in Lapointe's case were not a due consideration and determination of the matter before them as required by rule 45, and that the said proceedings were null and void. Discharge the order of the King's Bench, and, except as to costs, the order of the Superior Court. Remit the action to the Superior Court. Order the respondents to pay the costs of the appeal to the Court of King's Bench. Declare that unless the board of directors forthwith or within such time as shall be allowed by the Superior Court proceed duly to consider and determine the claim of the appellant to a pension, the appellant will be entitled to have his name inscribed on the pension roll of the society. Liberty for the appellant and the respondents and the board of directors respectively to apply to the Superior Court as to the conduct of any proceedings which may be taken in reference to the consideration and determination of the appellant's claim to a pension, the composition of the board of directors summoned to consider and determine the question, and as to subsequent costs, and generally as to any matter incidental to or consequential upon this order." Their Lordships will humbly advise His Majesty that an order ought to be made to the effect of the above minutes. Their Lordships regret that the costs of the appellant will fall upon the fund, and that they have no means of throwing these costs on the persons who are really to blame. The respondents will pay the costs of the appeal.

Appeal allowed.

Counsel for the Appellant—Lafleur, K.C. —Beaudin, K.C.—H. J. Elliott (all of the Colonial Bar) and J. W. F. Beaumont. Agents—Blake & Redden, Solicitors.

Counsel for the Respondents—Macmaster, K.C.—Leblanc, K.C.—G. A. Campbell (all of the Colonial Bar). Agents—Lawrence Jones, & Co., Solicitors.

HOUSE OF LORDS.

Monday, July 30.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Davey, James of Hereford, Robertson, and Atkinson).

STRONG & COMPANY, LIMITED, *v.* WOODIFIELD.

Revenue—Income-Tax—Trade—Balance of Profits—Deductions—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D.*

A firm of brewers were owners of an inn. A defective chimney fell and injured a guest, and the firm were found, in an action, liable in damages.

Held that in estimating the balance of the profits of their business for the purposes of income-tax the firm were not entitled to deduct the amount of damages so paid.

This was an appeal from a judgment of the Court of Appeal (COLLINS, M.R., MATHEW and COZENS-HARDY, L.JJ.), who had reversed a judgment of PHILLIMORE, J., in favour of the appellants upon a case stated by the Commissioners for the General Purposes of the Income Tax Acts for the division of Romsey, in the county of Southampton.

The question was whether the appellants, who carried on the business of brewers, maltsters, wine and spirit merchants, and manufacturers of mineral waters, were entitled, in computing the profits of their trade for income-tax purposes, to deduct a sum of £1490 which they had paid as damages to a person who had been accidentally injured by the fall of a defective chimney while a guest in a licensed inn owned and managed by the appellants.

The enactments applicable are the Income Tax Act 1842 sec. 100, Sched. D, case 1, being the case relating to trades, manufactures, adventures, or concerns in the nature of trade.

Case 1, rule 1, is as follows:—"The duty to be charged . . . shall be computed on a sum not less than the full amount of the balance of the profits or gains of such trade, manufacture, adventure, or concern upon a fair and just average . . . and shall be assessed, charged, and paid without other deduction than is hereinafter allowed . . ."

"Rule 3. In estimating the balance of profits and gains chargeable under Schedule D,

or for the purpose of assessing the duty thereon, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains on account of any sum expended for repairs of premises occupied for the purposes of such trade, manufacture, adventure, or concern . . . beyond the sum usually expended for such purposes according to an average of three years preceding the year in which such assessment shall be made, nor on account of loss not connected with or arising out of such trade, manufacture, adventure, or concern, nor on account of any capital withdrawn therefrom."

Rules applying to both cases 1 and 2—

"Rule 1. In estimating the balance of the profits or gains to be charged according to either of the first or second cases, no sum shall be set against or deducted from, or allowed to be set against or deducted from, such profits or gains for any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purposes of such trade, manufacture, adventure, or concern . . ."

The Commissioners disallowed the deduction.

This decision was reversed by PHILLIMORE, J., but was restored by the Court of Appeal.

At delivering judgment:—

LORD CHANCELLOR (LOREBURN)—In this case the appellants are a brewery company who owned an inn and conducted it through a manager. A customer sleeping in the inn was injured by the falling of a chimney upon him, and the appellants had to pay £1490 in costs and damages, because the fall of the chimney was due to the negligence of the appellants' servants, whose duty it was to see that the buildings were in proper condition. The appellants claim a right to deduct this sum of £1490 from the amount of their profits and gains assessable to income-tax, and the question is whether the Commissioners were right in disallowing the deduction. The Court of Appeal held that the Commissioners were right, and I am of the same opinion. It is unnecessary to recite the different sections of the Income Tax Act 1842, which govern the present appeal. They are section 100, Schedule D, case 1, rules 1 and 3, and rule 1 of the rules applying to both the cases 1 and 2. That which has to be assessed is the balance of the profits or gains of a trade—that is to say, the sum left after subtracting the proper deductions from the profits and gains. A deduction may be allowed on account of loss, and this is a loss. The Act does not affirmatively state what losses may be deducted. It furnishes merely negative information. A deduction cannot be allowed on account of loss not connected with or arising out of such trade. That is one indication. And no sum can be deducted unless it be money wholly and exclusively laid out or expended for the purposes of such trade. That is another indication. Beyond that the Act is silent. In my opinion, however, it does not follow that if a loss is in any sense connected with the trade it must always be allowed as a deduction; for it may be only remotely connected with the trade, or it may be connected with something else quite as much as or even more than with the trade. I think that only such losses can be deducted as are connected with it in the sense that they are really incidental to the trade itself. They cannot be deducted if they are mainly incidental to some other vocation, or fall on the trader in some character other than that of trader. The nature of the trade is to be considered. To give an illustration, losses sustained by a railway company in compensating passengers for accident in travelling might be deducted. On the other hand, if a man kept a grocer's shop, for keeping which a house is necessary, and one of the window shutters fell upon and injured a man walking in the street, the loss arising thereby to the grocer ought not to be deducted. Many cases might be put near the line, and no degree of ingenuity can frame a formula so precise and comprehensive as to solve at sight all the cases that may arise. In the present case I think that the loss sustained by the appellants was not really incidental to their trade as innkeepers, and fell upon them in their character not of traders but of householders. Accordingly I think that this appeal must be dismissed.

LORD MACNAGHTEN—I am of the same opinion.

LORD DAVEY—The question in this appeal is whether a sum of £1490 which the appellants have had to pay for costs and damages occasioned to a person staying in their inn by the fall of a chimney is a proper deduction in arriving at the profits of the appellants' trade for the purpose of the income-tax. The answer to that question, in my opinion, depends on the answer to be given to another question, whether the deduction claimed was a disbursement or expense wholly and exclusively laid out or expended for the purpose of the appellants' trade within the meaning of rule 1 applying to both cases 1 and 2 of Sched. D in sec. 100 of the Income Tax Act 1842. It has been argued that the deduction claimed was a loss connected with or arising out of the appellants' trade within rule 3 applying to case 1 only. Case 1 relates to trades, manufactures, adventures, or concerns in the nature of trade, and I think that the word "loss" in rule 3 means what is usually known as a loss in trading or in speculation. It contemplates a case in which the result of the trading or adventure is a loss, wholly or partially, of the capital employed in it. I doubt whether the damages in the present case can properly be called a trading loss. I prefer to decide the case upon rule 1, which applies to profits of trades and also to professions, employments, or vocations. I think that the payment of these damages was not money expended "for the purpose of the trade." These words are used in other rules, and appear to me to mean "for the purpose of enabling a person to carry on and earn profits in the trade," &c. I think that the

disbursements permitted are such as are made for that purpose. It is not enough that the disbursement is made in the course of, or arises out of, or is connected with the trade, or is made out of the profits of the trade. It must be made for the purpose of earning the profits. In short, I agree with the judgment of Collins, M.R. I therefore think that the appeal should be dismissed with costs.

LORD JAMES OF HEREFORD—I confess that I did entertain some doubts during the discussion of this case at the Bar, but they are not doubts sufficient to cause me to differ from the judgments which have been delivered. In order to explain my position I may say that I agree entirely with the principle laid down by the Lord Chancellor. The only question is as to the application of that principle in one small matter to the facts of this case. If the fact were that the accident had occurred to a stranger walking in the street, then I should have no doubt at all. The doubt that was raised in my mind was caused by the fact that the accident happened to a person who was a customer in the house, and would not have been injured if the business of an innkeeper had not been carried on, and when it was in the course of the carrying on of a portion of that business that the customer who was injured was there. In that case I think that a different principle might be appealed to, and consequently my doubts existed. But they are not strong enough in relation to the application of this principle, about which there is no question, to cause me to dissent from the judgment proposed.

LORD ROBERTSON—I am clearly of opinion that the judgment is right.

LORD CHANCELLOR—I have been requested by LORD ATKINSON, who is unable to be present, to say that he concurs in the opinion which I have submitted to your Lordships.

Appeal dismissed.

Counsel for the Appellants—Danckwerts, K.C.—Bremner—P. G. Henriques. Agents—Metcalfe, Birkett, & Rowlatt, Solicitors.

Counsel for the Respondent—The Attorney-General (Sir J. Lawson Walton, K.C.)—Sir R. Finlay, K.C.—W. Finlay. Agent—Sir F. C. Gore, Solicitor of Inland Revenue.

HOUSE OF LORDS.

Monday, July 30.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Robertson, and Atkinson.)

DE BEERS CONSOLIDATED MINES, LIMITED *v.* HOWE.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue—Income-Tax—Company—Residence within the United Kingdom—Test—Income Tax Act 1853, *sec.* 2, *Schedule D.*

A company, for purposes of income-tax, resides in the country in which its real business is carried on, which means the country in which its central management and control are actually located.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., MATHEW and COZENS-HARDY, L.JJ.) who had affirmed a judgment of PHILLIMORE, J., upon a case stated for the opinion of the Court pursuant to section 59 of the Taxes Management Act 1880 by the Commissioners for the General Purposes of the Income Tax Acts for the City of London.

The facts appear from the judgment of the Lord Chancellor (Loreburn) *infra*, delivered after consideration.

LORD CHANCELLOR (LOREBURN) — The question in this appeal is whether the De Beers Consolidated Mines Limited ought to be assessed to income-tax on the footing that it is a company resident in the United Kingdom. Had the appellants prevailed upon that question an ulterior point would have demanded consideration. Your Lordships, however, being satisfied upon the first point, dispensed with further argument. Under the 2nd section of the Income Tax Act 1853, Schedule D, any person residing in the United Kingdom must pay on his annual profits or gains arising or accruing to him "from any kind of property whatever, whether situate in the United Kingdom or elsewhere," and also "from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere." Now, it is easy to ascertain where an individual resides, but when the inquiry relates to a company, which in a natural sense does not reside anywhere, some artificial test must be applied. Mr Cohen propounded a test which had the merits of simplicity and certitude. He 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 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,