

NO 339.—IN THE HOUSE OF LORDS.—3rd and 6th February,
1913.

THE AMERICAN THREAD COMPANY v. JOYCE (Surveyor of Taxes).⁽¹⁾

The statement of this case and the Judgments of the Divisional Court and of the Court of Appeal are printed in an earlier portion of the present volume of *Tax Cases* (see page 1). The Appeal to the House of Lords came on for hearing on the 3rd February, 1913, when the case was argued for the Appellant Company. Counsel for the Crown were not called upon, and Judgment was given on the 6th February, 1913, affirming the decision of the Courts below.

JUDGMENT.

The Lord Chancellor.—My Lords, if I entertained any doubt about this case, either on the point of law or on the point of fact, I would have suggested that the House should take time to consider its Judgment. But the principle of law applicable seems to me to be one that is not only firmly established but clear, and the facts of the case do not seem to me capable of being regarded in any other light than that in which they were regarded in the admirable Judgment of Mr. Justice Hamilton.

My Lords, the Company is a Company incorporated under the law of the State of New Jersey, and having one of its offices there. By its constitution, it may have several offices, and in point of fact it has an office in Manchester in the building of another Company, which originally exercised great influence over its coming into existence, which holds a large part of its capital, and whose Directors form a majority of the Directors of the Appellant Company. At the Manchester Office, which is the office where under the Constitution the Extraordinary Meetings of the Board of Directors are held, that is to say, the meetings where certain business which is reserved by the By-laws or Articles for Extraordinary Session of the Directors is transacted, much of the direction of the affairs of the Company takes place. It is not for us to enter into the question how on the materials which came before the Inland Revenue Commissioners we should have dealt with the question of fact. In saying that, I am far from wishing to indicate that I dissent in any way from the conclusion that the Inland Revenue Commissioners arrived at when they stated a case containing a conclusion on the question of fact which arises. What I mean is that the Taxes Management Act of 1880 precludes us from looking at the finding of the Commissioners except in so far as it is necessary to see whether there was any evidence which could have supported it.

⁽¹⁾ Reported [1913] A.C., 29 T.L.R. 266.

My Lords, it appears to me, for the reasons set out by Mr. Justice Hamilton, that there was abundant evidence on which the Commissioners could come to a finding and to the finding that they have come to. That finding is set out in paragraph 17 of the case which they have stated, and it is this: "Having taken into consideration the documents and the evidence of witnesses adduced before them they came to the conclusion that the control of the management of the affairs of the Appellant Company was intended to rest and did rest with the Directors of the Appellant Company resident in England in Extraordinary Session who constituted a majority of the Board and who are also Directors of the English Sewing Cotton Company, Limited, which owns the entire Common Stock or Ordinary Shares of the Appellant Company, and, further that such control was constantly exercised at Meetings of the Board of the Appellant Company in Extraordinary Session held in England."

Now that finding is not ambiguous, and if it be unchallengable by reason of there having been evidence to support it, then the only question which remains is the question of law. Is this Company brought within the scope of the Income Tax Acts as being a Company resident in this country?

My Lords, that question was elaborately considered in the *De Beers* case which was before this House in 1906, and the test which was there laid down was this, that a Company resides for the purposes of the Income Tax Acts where its real business is carried on and that the real business is carried on where the control and management of the Company abide. Now, in this case, I cannot entertain any doubt that the real control and management of the affairs of the Company were with the Directors in Manchester. No doubt it is true, as Mr. Danckwerts in his very able argument has pointed out to us, that with the details of the trade their Directors did not ordinarily interfere. There was an Executive Committee who were the agents of the Directors, and there was a minority of the Directors in New York who held weekly meetings and took an active part. But it is clear that the Directorate in Manchester was a Directorate of paramount authority, as is shown not only by the fact that the reserved subjects are kept for them in Extraordinary Session, but by this, that, as the Commissioners found, they were constantly supervising and guiding the policy of the Company, even as regards matters which belonged to manufacture and trading.

Under those circumstances, My Lords, I am unable to come to any other conclusion than that the Judgments in the Courts below were right and that this Appeal must fail, and I move your Lordships accordingly.

Earl of Halsbury.—My Lords, I am entirely of the same opinion. I confess I am somewhat surprised that after the findings of the Commissioners one has had so long to come to the conclusion which was very manifest I think at first. The truth is, one is betrayed into discussing a question of fact without remembering that we have no jurisdiction over the question of fact. The question only by a side wind has been

brought into a question of appeal upon points of law, namely, whether there was any evidence to justify what the Commissioners found.

My Lords, to my mind it is absolutely unarguable. The facts set out by the Commissioners are found by them under circumstances when we have no authority to review the finding if it was wrong; but as a matter of fact I feel bound to say that I should have come to the same conclusion that the Commissioners did, although that is not necessary to state here. It is enough to say that they have found it, and that there was evidence upon which they might find it, and if they did find it, and if there was evidence upon which they might find it, there is no question of appeal here at all.

It seems to me to be absolutely unarguable, and I must say for myself that I recognise the fact that Mr. Justice Hamilton, as he then was, found it with a precision of language and logic which is peculiarly his own, and I should have been contented absolutely to say that I entirely agree with every word of Mr. Justice Hamilton's Judgment. At all events I think now that it is clear. I myself have taken the same view of this, I think, some years before the De Beers case, and that view has been since, I think, adopted in this House more than once, that the real test, which, after all, is only a question of analogy—you cannot talk about a Company residing anywhere—and that which has been accepted as a test, is where what we should call the head office in popular language is, and where the business of the Company is really directed and carried on in that sense. It appears to me abundantly clear that is established in this case.

I am of opinion, therefore, that, of course, this Appeal ought to be dismissed.

Lord Atkinson.—My Lords, I concur. I wish to say that I concur in the conclusions at which Mr. Justice Hamilton, as he then was, has arrived, and I am absolutely convinced by the reasoning by which he has arrived at it.

Lord Kinnear.—My Lords, I am entirely of the same opinion.

Lord Mersey.—My Lords, I agree.

Questions put.

That the Judgment of the Court below be reversed.

The Not Contents have it.

That the Judgment of the Court below be affirmed and the Appeal be dismissed with costs.

The Contents have it.
