No. 363.—COURT OF APPEAL.—3rd and 6th April, 1914.

HOUSE OF LORDS.—6th and 7th May and 9th July, 1915.

THE EGYPTIAN HOTELS, LTD. v. MITCHELL (Surveyor of Taxes).[1]

Income Tax (Schedule D).—Business abroad.

The statement in the Case and the judgment of Mr. Justice Horridge are printed in an earlier part of the present volume of Tax Cases (Part III., pp. 152-162 q.v.). The Company having given Notice of Appeal, the Case was heard in the Court of Appeal on the 3rd and 6th April, 1914, by Cozens-Hardy, M.R., Buckley, L.J., and Channell, J. On the latter date judgment was given against the Crown with costs, the decision of the Court below being reversed.

JUDGMENT.

Cozens-Hardy, M.R.—We will not trouble you, Mr. Danckwerts. This is an appeal from a decision of Mr. Justice Horridge, and it raises a question of whether within the meaning of the Income Tax Acts, the Company, which is an English Company and resident in London, with registered offices here, is chargeable in respect of annual profits arising from carrying on a trade. In my view this question is really a very simple one, and does not involve any elaborate consideration of facts. The Company at one time admittedly were carrying on a business in London, not because the Hotels, which are their only assets, were in the United Kingdom, for they were in Egypt, but because the control of the Company was in the hands of the London Board of Directors. The brain and management and control was there, and the authorities have plainly settled that if you find that, it does not in the least matter where the actual selling of the goods and buying of the goods takes place. Many an English Company with offices in London, with a Board of Directors in London, carries on a business in a remote part of the world; nevertheless it has its trade carried on in London, because the management and brain of the undertaking are at the head office in London.

But in August, 1908, the Articles were altered, not colourably altered, but altered, and they have been acted upon ever since. The original Articles provided as follows: Article 116 provided that the management of the business and affairs of the Company should be vested in the Directors, but they went on to say that the Directors might in pursuance of the Articles delegate certain powers. Article 118 of the original articles is quite express—"The Directors may from time to time provide for the manage-"ment and transaction of the affairs of the Company in any

(1) Reported, C.A. in [1914] 3 K.B. 118; and H.L. in 31 T.L.R. 546.

"specified locality, whether at home or abroad, in such manner "as they think fit, and the provisions contained in the three "next following clauses shall be without prejudice to the general "powers conferred by this clause." Then Article 118 and the subsequent ones were altered and provision was made, the precise terms of which I must read in a minute, for not merely having a Local Board in Egypt, but for entrusting that Egyptian Board with the exclusive management and control of the Egyptian business, as to which the London Board after that had, as I understand it, no part of the carrying on of the trade, which trade was in Egypt.

Now the new Articles, so far as they are material, are these. "The Egyptian Business of the Company (which expression in "these Articles means and includes all the Company's affairs and "business whatsoever in Egypt and the Soudan inclusive amongst "other things of the business of carrying on the Company's "Hotels in Egypt and the Soudan and everything connected "therewith including the incurring of debts and liabilities "buying selling and supplying goods the hiring using and "supplying labour paying of debts and the doing of all things "necessary or in any way incidental to such business) shall be "carried on and managed by a Local Board and that to the "exclusion of any Board of Directors of the Company, other "than the Local Board, and such Local Board shall be wholly "independent of any other Directors and Board of the Company "and of General Meetings of the Company (not being General "Meetings of the Company held in Egypt) and in no way under "the control thereof. Only General Meetings of the Company "held in Egypt shall (to the exclusion of General Meetings held "elsewhere) be competent to pass any resolution binding on the "Local Board or having any binding force upon or in regard to "the Egyptian Business of the Company." Then Article 121 again repeats that "The Egyptian Business shall be under the "control of the Local Board (to the exclusion of any other Board "of Directors of the Company) who may in relation thereto "exercise all such powers of the Company as the Local Board "in their opinion think requisite for the purpose of working "developing and dealing with the Egyptian Business." And then 122D says that "The eight last preceding clauses shall be "taken to override all the other regulations of the Company not "consistent therewith." The Special Case finds that these were not mere forms, but the trade has since been carried on in accordance with those amended Articles.

Now the whole question is this, not whether the trade has been carried on in this country in the sense of contracts being made here, but whether, although the buying and selling was out of the jurisdiction, there has been such control and direction of the London Board, the General Board of the Company, as brings the profits earned by the trade in Egypt subject to the Income Tax Acts.

The Solicitor-General has said that the London Board can starve out the Egyptian Directors, because their remuneration is entirely dependent upon the London Board; they can alter that.

That does not make it carrying on the business in London. It is said, "Oh, but the London Board are the people who have, "and who alone have, the power to raise fresh capital, to exercise "the financial control of the Company and all that sort of thing." Well, I agree that is so; but the point remains, is that carrying on trade or exercising control over the trade which produces those profits within the meaning of the Acts? In my opinion, quite apart from decisions, for I do not think any decision really touches this case, the view taken by the learned Judge was wrong, and there was no justification here for saying this Company is taxable upon the whole of the profits earned by the trading in Egypt, and the only profits which are taxable are such profits as are remitted from Egypt to this country. It makes no difference, I think, that the London Board are the persons to recommend the amount of the dividend which is payable as the result of trading. That is not the control or the brain of the Company in the sense in which those words are used.

On these grounds I think the Appeal must be allowed. The profits up to the 28th August, or whatever the date is, are admitted to be properly taxable here; since that date no such profits are taxable here, and the Appeal ought to be allowed.

Buckley, L.J.—This Company is incorporated in the United Kingdom; it is therefore resident here. It follows that under Schedule D. of the Income Tax Act it is taxable for and in respect of the annual profits or gains arising or accruing to it from any trade carried on or exercised within the United Kingdom. The question to be answered is, does this Company carry on or exercise a trade in the United Kingdom? In my opinion it does not. It was, down to the date of 1908, governed by Articles under which that no doubt was the case; it was exercising a trade in the sense that it was controlling the trade here, managing the trade from here; but in that year alterations were made in the Articles by special agreement, and no doubt with the express object, which is a legitimate object, of relieving the Company from the payment of income tax on profits earned, in the way which I am going to state.

Now the business of the Company consists wholly, solely and exclusively of carrying on two hotels in Egypt, both, I think, at Cairo. In this country it is, as I said, registered, and it has certain Directors here, and under the Articles as they stood, it was provided by Section 116 that "the management of the "business and affairs of the Company shall be vested in the "Directors," and down to 1908 those were persons exercising their office in this country. In 1908 they passed special resolutions, and those special resolutions provided that certain clauses, of which Article 118 is one, should be taken to override all other regulations of the Company not consistent therewith. They override therefore Article 116, if they are not consistent therewith.

Now Article 118 provided that "all the Company's affairs and "business, whatsoever, in Egypt and the Soudan . . . shall "be carried on and managed by a Local Board, and that to the "exclusion of any Board of Directors of the Company other than "the Local Board," with certain ancillary provisions. That is

the substance of it. The result of those Articles, in my judgment, is this, that as regards the Company's affairs and business whatsoever in Egypt, the carrying on and management of those was confided to persons out of the United Kingdom, and there was no power of control whatever in what is called the Company's affairs and business in Egypt and the Soudan exercised in this country. If one were to stop there, one might say that the result of that is, first, that management, control, administration is not in this country but elsewhere; and, secondly, if it were relevant, which it is not, upon the facts, that there is no trade of any sort or kind here in the sense that there were any orders given here or goods sold here or anything of that kind. Such cases as *Grainger & Son* v. *Gough*(1), I do not think apply here. In this case we are not troubled about there being any soliciting for orders or anything of that sort; nothing whatever is done in this country in the way of trading. The whole question is whether the control and management of the trade is here, in which case it might be that they would be taxed. The result so far, I say, is that all management and carrying on is remitted by the new Articles to persons who are not here. But then the Solicitor-General has argued, as is perfectly true, that there are certain powers still remaining here; there is the Board of Directors still here, and they have certain powers. I do not know that I need travel through all of them. The most substantial, I think, are the provisions relating to accounts, and the provisions relating to dividends. It is provided by Article 135 onwards that the Directors, that is to say the London Directors, are to cause true accounts to be kept, and they are to lay them before the Company in General Meeting, and so on. Then, under Article 123 onwards, it is still left to the London Directors to recommend what the dividends shall be. It is said that that in some way is some portion of carrying on or exercising the trade. To my mind that is not so. The purpose of the accounts is to show what is the result of the trade that has been carried on; the clauses as to dividends are clauses relating to the disposition of the profits arising from the trade that has been carried on. Then it is said that if they do not in their recommendation as to dividends exhaust the fund, there will be a surplus which will be left in the business. That is quite true, but that is not to my mind anything whatever done in carrying on the trade; it is simply that the profits which in the past have been earned in carrying on the trade, are dealt with by dividing so much amongst the shareholders and leaving so much of them alone.

Those are substantially the matters which have been referred to. I do not say that that is the whole of them. Another matter which was observed upon is this, that suppose there had been some provision as to increasing the capital or anything of that kind, that of course is not remitted to the Local Board in Egypt, but that is a matter which is to be dealt with by the Company in General Meeting. Of course, the Company in General Meeting

(1) 3 T.C. 462.

still retain the power of control in this sense, that they can by exercising their powers in General Meeting alter the existing state of affairs; but what we have to consider, I think, is, what is the state of affairs now. Is there a carrying on or exercising of the trade in the United Kingdom? To my mind there is none; and under those circumstances it appears to me that as from the date when these special resolutions were confirmed, which, I think, is August, 1908, the Company was not taxable in respect of these profits, and the Appeal must be allowed.

Channell, J.—I am of the same opinion. I think the case may be put very shortly. I think it is obvious that the spending of the profits, if any, of a business is not a carrying on of the business, nor is any other way of dealing with the profits, other than spending, any more a mode of carrying on the business. I have heard what the Master of the Rolls and Lord Justice Buckley have said, and I entirely agree with it.

Danckwerts, K.C.—My Lord, with respect to the exact Order, you will allow the Appeal with costs here and below. Then, my Lord, we admit liability to tax down to the 28th August, and we also admit liability to pay tax on the profits remitted over the rest of the period. Of course, that must not happen twice over. If we do not agree about those, we shall have to go back.

Buckley, L.J.—I should have thought there would be a declaration that as from the date the Company was not exercising or carrying on a trade with the result that the profits or gains arising therefrom were taxable.

Danckwerts, K.C.—If we cannot agree about the amount——

The Solicitor-General.—There cannot be any trouble about that.

Danckwerts, K.C.—Then, my Lord, as will be seen on page 608 of *Dowell*, I have to ask you for a consequential Order. As a condition precedent to appeal in Income Tax Cases the subject has to pay the tax; consequently, you see at the foot of page 608, if the Court alters the decision of the Commissioners, it must order the repayment of the tax and also with interest.

Cozens-Hardy, M.R.—Have you paid?

Danckwerts, K.C.—Oh, yes; it is a condition precedent to appeal.

The Solicitor-General.—I am instructed upon this, and I have no doubt this is so, that interest is allowed. The question is a question of rate. Your Lordship will see at page 609 of *Dowell* exactly what the rates are. The latest appears to be 3½ per cent. It seems to have varied from 3 per cent. to 4 per cent.

The Master of the Rolls.—3½ per cent. is the last?

The Solicitor-General.—Yes.

Danckwerts, K.C.—Most of them are 4 per cent.

Buckley, L.J.—I should have thought a trading concern which was kept out of money for a period of time ought to have more than 3½ per cent. 4 per cent. was allowed, I see.

Danckwerts, K.C.—The House of Lords, your Lordship will see, gave 4 per cent.

Buckley, L.J.—Yes.

The Solicitor-General.—It has varied from 3 per cent. to 4 per cent., and 3½ per cent. is the last. You will find interest at 3 per cent. was allowed by the House of Lords in 1902.

Danckwerts, K.C.—That is so.

The Solicitor-General.—I merely say the rates have varied from 3 to 4 per cent., and that the last allowance of interest, by Lord Sumner as he now is, was 3½ per cent.

Buckley, L.J.—When was that?

The Solicitor-General.—In 1912.

Danckwerts, K.C.—I submit the reason which Lord Justice Buckley gave is a good one.

The Solicitor-General.—Possibly, before your Lordship decides that, it might be as well to ascertain quite clearly that the money has been paid.

Danckwerts, K.C.—Oh! it has.

The Solicitor-General.—I am instructed there are doubts about it.

Bremner.—In the year under Appeal, not since.

The Solicitor-General.—I am told there is a doubt.

Danckwerts, K.C.—If you look at the beginning of subsection 4, you will see we are obliged to pay it.

Cozens-Hardy, M.R.—Was anything said by Mr. Justice Hamilton, as he then was, about the rate?

The Solicitor-General.—I am not in a position to tell your Lordships; it is not reported.

Cozens-Hardy, M.R.—That was somewhat of a new departure, and he probably may have said something about it.

The Solicitor-General.—We could ascertain from the shorthand notes, my Lord, but I have not the information before me. But let us see if we can clear up the question whether it has been paid. For what year does my friend say the tax was paid?

Danckwerts, K.C.—In the year under Appeal.

The Solicitor-General.—1908-9—that is the one?

Danckwerts, K.C.—Yes.

The Solicitor-General.—We sent down to the office this question: "Has any duty been paid for the year 1908-9 or any subsequent years?" and the answer is "No duty has been paid for 1908, nor any subsequent years."

Channell, J.—If that is right, you will be claiming interest upon it, will you not?

Danckwerts, K.C.—No, my Lord, they cannot get interest.

Channell, J.—Cannot they get interest on unpaid duty?

The Solicitor-General.—No, I do not think so, my Lord. There is no claim here, at any rate. But I should very much like to know what the facts are.

Bremner.—I only know what I am told—that we paid for the year of assessment, and not since. The solicitor told me so on Saturday.

The Solicitor-General.—He must be wrong, I think.

Cozens-Hardy, M.R.—That ought to be ascertained.

The Solicitor-General.—Yes. If my friend Mr. Bremner had paid himself, he would not have forgotten it, of course.

Danckwerts, K.C.—If we have not paid, of course we shall not ask for a return. I have got the exact sum, £2,163 16*s.* is what we paid. That is the tax for the year 1908-9.

Cozens-Hardy, M.R.—The matter is in our discretion—it is such rate of interest as the Court may allow. This being a trading company, we think it ought to be 4 per cent.

Danckwerts, *K.C.*—If you please, my Lord. Of course, I only ask for a return of the difference, which will be ascertained, and if nothing has been paid, of course my clients will not ask for it.

The Case was taken by the Crown, on Appeal, to the House of Lords, and was argued before their Lordships on the 6th and 7th May, 1915. The Attorney-General (Sir John Simon, K.C., M.P.), the Solicitor-General (Sir Stanley Buckmaster, K.C., M.P.), and Mr. William Finlay, K.C., appeared as Counsel for the Crown, and Sir Robert Finlay, K.C., M.P., and Mr. A. M. Bremner appeared as Counsel for the Respondent Company. On the 9th July, 1915, judgments were given by Earl Loreburn and Lord Parmoor in favour of the Crown, and by Lord Parker of Waddington and Lord Sumner in favour of the Company. The House being equally divided, the Appeal of the Crown was dismissed without costs, and the decision of the Court of Appeal in favour of the Company affirmed.

JUDGMENT.

Earl Loreburn.—My Lords, I have felt great difficult in this Case, and if any point of law had been involved, I should myself have desired a re-argument. But the law has been already laid down in two cases decided by this House, and the only question is whether or not this case comes within the principle. My own view, is, on the whole, in accordance with that of Lord Parmoor, which I have had the advantage of reading in print, and I have nothing to add. It is a question of fact, and I think it is very near the line.

Lord Parker of Waddington (read by Lord Sumner).—My Lords, the effect of the decision of this House in *Colquhoun* v. *Brooks* (14 A.C., p. 493) (1) may be stated as follows: Where a person resident in the United Kingdom is interested in a trade or business wholly carried on abroad, such trade or business for the purposes of the Income Tax Acts falls under the head of "Possessions in any part of Her Majesty's Dominions out of "Great Britain or Foreign Possessions" within the meaning of Case V. of Schedule D, and accordingly no part of the profits or gains of such trade or business is assessable to tax under Schedule D unless and until it be transmitted to and received in the United Kingdom. Where, however, the trade or business is carried on wholly or in part within the United Kingdom, the profits and gains thereof are assessable to tax under Case I. of the Schedule. It is to be observed that in *Colquhoun* v. *Brooks*(1)

(1) 2 T.C. 490.

the person alleged to be chargeable under Case I. though resident in England, was a partner in a trade or business carried on in Australia. He is called a sleeping partner, but this term is obviously used not in the sense of a partner who by the terms of the partnership contract had no power to interfere with or take part in the trade or business in Australia, but in the sense of a partner who, from one reason or another, had not interfered or taken part in such trade or business. In fact, though asleep for all the purposes of the trade or business during the whole period for which the profits and gains of the trade or business were said to be assessable under Case I., he might at any moment have shaken off his slumbers and joined with his Australian partners in the active management of the partnership affairs. The important point, therefore, was not whether he had power to interfere with the trade or business, but whether he had so in fact interfered during the period for which the Crown alleged that he was assessable under Case I.

My Lords, in considering whether the principle of *Colquhoun* v. *Brooks*(1) applies to any particular circumstances it is also necessary to bear in mind your Lordships' decision in the case of *The San Paulo (Brazilian) Railway Company, Limited,* v. *Carter* (1896), A.C., p. 31,(2) to the effect that a trade or business cannot be said to be wholly carried on abroad if it be under the control and management of persons resident in the United Kingdom although such persons act wholly through agents and managers resident abroad. Where the brain which controls the operations from which the profits and gains arise, is in this country, the trade or business is, at any rate partly, carried on in this country.

I will now invite your Lordships' attention to the facts in this case. Since the 28th August, 1908, the affairs of the Company have been regulated by the Articles as altered by the Special Resolutions confirmed on the 27th August, 1908. According to these Articles all the Company's affairs and business whatsoever in Egypt and the Sudan are under the control of a Local Board, to the exclusion of the Board of Directors of the Company and of all General Meetings of the Company not held in Egypt. The Local Board holds its meetings in Egypt and not elsewhere. It is found by the Special Case that the business carried on by the Company during the year of assessment was the carrying on of two hotels in Egypt, these hotels being under the direct management of servants of the Company under the orders of the Local Board, and the profits of the Company being derived wholly from such hotels. All the members of the Local Board resided in Egypt. Since the 27th August, 1908, the Board of Directors of the Company have met once only. At this meeting a day was fixed for the annual meeting of shareholders, it was decided to recommend a dividend of 5 per cent., a draft of the Directors' Report and the Accounts for the year ending 30th April, 1909, was submitted and approved, and the Secretary was authorised to obtain a loan from the Company's bankers to enable the dividend to be paid. The annual meeting of the shareholders

(1) 2 T.C. 490. (2) 3 T.C. 407.

was held on the 29th June, 1909, when the Directors' Report and the accounts for the year ending 30th April, 1909, were adopted and the dividend recommended by the Directors declared.

Under these circumstances it appears to me indisputable that no single act has been done in or directed from this country by way of participation in or furtherance of the trade or business of the Company from which the profits or gains said to be chargeable to Income Tax since the 28th August, 1908, have arisen. It was argued that a company can only have one business and that such business necessarily includes the passing of annual accounts, the declaration of a dividend if circumstances admit, and the financial arrangements necessary to enable such dividend to be paid. I cannot accept this argument. The trade or business we have to consider is a trade or business from which profits or gains can arise and not the business of disposing of and dividing such profits and gains when they have arisen, and I can see no reason why a corporation any less than an individual should not be engaged in more than one trade or business at the same time.

The Attorney-General further insisted on the various powers which even under the altered Articles, are still retained by the Board of Directors of the Company. He pointed out that the Board of Directors of the Company have power to determine the remuneration of the members of the Local Board, to decide when the Egyptian profit and loss account is to be made out, what is to be done with the available cash in Egypt, how cash is to be provided for the Egyptian business if none be available, and generally to determine all questions of finance. It may well be possible that the Board of Directors of the Company still retain powers by virtue of which they could, if occasion arises, so interfere with the Company's business in Egypt that such business would cease to be carried on wholly outside this country, but, as I have already pointed out, it is not what they have power to do, but what they have actually done, which is of importance for determining the question which now arises for decision. In the absence of any act done or directed by any person resident here in participation or furtherance of the business operations in Egypt from which the profits and gains in question arose, I think your Lordships are bound to come to the conclusion that this trade or business was carried on wholly outside the United Kingdom, and, therefore, is within Case V. rather than Case I. If this be so, the decision of the Court of Appeal must be confirmed and the Appeal dismissed with costs.

Lord Sumner.—My Lords, where a resident in the United Kingdom is proprietor of a profit-earning business wholly situate and carried on abroad he is chargeable to Income Tax under Case V. of Schedule D, if he takes no part in earning those profits, and if he takes any part is chargeable under Case I. This is true whether the proprietor is a natural or an incorporated person; whether he takes part in earning the profits in his own person or only by agents or servants. The question is whether the profits are wholly or partly earned from a business wholly or partly carried on in the United Kingdom. If he takes a part at home in earning the profits, its importance relatively to that

taken by his agents abroad does not matter, nor does the liability to be charged under Case I. depend on active interference. Control exercised here over business operations abroad, though they are far greater in volume or magnitude, will suffice for Case I, (*San Paulo (Brazilian) Railway Company* v. *Carter* (1896), A.C. 31)(1). So, too, will mere oversight regularly exercised, even though actual intervention never becomes necessary, everything abroad going smoothly without it, (*Ogilvie* v. *Kitton*, 5 T.C. 338). Some actual participation in carrying on the trade is necessary, though it may not go beyond passive oversight and tacit control. It is not enough that the proprietor merely has the legal right to intervene, otherwise *Colquhoun* v. *Brooks*, 14 A.C. 493,(2) would have been otherwise decided, for there the Respondent was entitled to intervene at any time, though in fact he never did so, but took his share of the profits just as they happened to be earned by those in control abroad.

In the present case I think that the Commissioners have intended to state all the facts which they found to be proved and material. Their express findings are exhaustive, and they do not intend to involve any unexpressed findings in the general terms of their conclusion in paragraph 14 in favour of the Inland Revenue.

It is important to note that the dispute turns upon the narrow question whether the profits attributable to a definite period, namely, that commencing August 27, 1908, fall under Case I. or Case V. It is found that "during the year of assessment the "Company's profits were derived from the said hotels" (namely hotels in Egypt) "and no other source." On August 27, 1908, certain alterations in the Articles, *bonâ fide* and properly made, came into operation, the object of which was to secure that the said profit-earning business should thenceforward be wholly carried on abroad and not at all in the United Kingdom, where the Company is admittedly resident. The question is whether this object was attained.

After the date above mentioned, the Board of Directors met only once during the year of assessment. At this meeting they authorised the assistant secretary to borrow £10,750 from a bank in this country. The Case finds that "the Local Board in Egypt "reported the results of the trading to the Board of Directors "for the purpose of being incorporated in the Company's accounts "and balance sheets, and acted upon for the declaration of "dividends," and therefore, as I read it, impliedly finds and certainly nowhere finds the contrary, that such results were adopted by the Board of Directors. This must have included adopting the remuneration payable to the Local Board, which the accounts showing these results must, if properly kept, have debited to the Egyptian trading. Under the amended Article it was for the Board of Directors to fix the remuneration of the Local Board in Egypt, but, on the facts found in the Case, in my opinion, they did not exercise their powers. Rightly or wrongly, they allowed the remuneration to be fixed in Egypt.

(1) 3 T.C. 407. (2) 2 T.C. 490.

Again, the money was borrowed not for any purpose connected with earning the profits in question, but apparently for the purpose of raising funds with which to pay a 5 per cent. dividend on the ordinary shares, which could not be paid otherwise without depleting the working capital in Egypt. It is clear that this borrowed sum was not intended to feed the Egyptian business with further capital, still less had it played any part in earning the profits in question. Again, the Board's power of deciding when a balance of profit or loss should be struck, so as to lead to the declaration of a dividend, does not seem to have been exercised. Accounts were made up in Egypt to the end of the usual financial year in time to be ready for the annual general meeting of the Company, independently of any special exercise of its powers by the Board of Directors.

I am of opinion that what the Board of Directors actually did fell short of taking any part in or exercising any control over the carrying on of the business in Egypt, and that where the Directors forebore to exercise their powers, the bare possession of those powers was not equivalent to taking part in or controlling the trading. Upon the facts found, as I understand them, I think that the profits in question arise from foreign possessions and that the decision of the Court of Appeal was right.

Reference was made to the *Liverpool and London and Globe* Case (1911, 2 K.B. 577; 1912, 2 K.B. 41; 1913, A.C. 610)(1), but there the matter in debate was the effect of making investments abroad under the direction of the Company in this country, which it was part of the Company's business to make in order to enhance the total volume of its profits. I do not think that Case germane to the present Appeal. The differences there pointed out between the trade of a natural person and his other private activities on the one hand, and the totality of the activities of a trading company in carrying on its trade in all branches on the other, are not material to the present question. The mere declaration and payment of a dividend here out of profits earned in a business otherwise wholly carried on abroad, does not prevent the business in which the profits have already been earned from having been wholly carried on abroad. To say that part of a Company's business is to pay dividends, if it has earned them, seems to me to be a play upon words.

Lord Parmoor (read by Lord Sumner).—My Lords, the point for the decision in this Appeal is, whether the Respondents, whose registered office is situate in England, are liable to pay Income Tax under Case I. of Schedule D upon the whole of their profits, or under Case V. upon a sum not less than the full amount of actual sums remitted to Great Britain. The Commissioners for the General Purposes of Income Tax for the City of London held that, on the facts, the assessment was duly and properly made under Case I. This decision was upheld by Mr. Justice Horridge, but reversed in the Court of Appeal.

My Lords, in my opinion the principles to be applied in the decision of this Appeal have been settled in this House in the

(1) 6 T.C. 327.

two Cases of *Colquhoun* v. *Brooks* (14 A.C. 493)(1), and of *San Paulo (Brazilian) Railway Company* v. *Carter* (1896, A.C. p. 31)(2). In the latter Case, Lord Watson states succinctly the ambit of the decision in *Colquhoun* v. *Brooks*: "In my "opinion the decision in *Colquhoun* v. *Brooks* directly affirms "the rule that every interest in the profits of trade belonging "to a person who is within the meaning of the Act resident in "the United Kingdom, must be charged under the First Case "of Schedule D., if the trade is carried on either wholly or in "part within Great Britain or Ireland, and is chargeable under "the Fifth Case if the trade is exclusively carried on in "any of His Majesty's dominions outside the United King-"dom"(3). The question, therefore, to be determined in this Appeal is whether the trade, of which the profits are sought to be charged, is carried on either wholly or partly within the United Kingdom, or exclusively carried on outside the United Kingdom. This is a question of fact to be determined by the Commissioners if there is evidence before them from which their finding might, in reason, be drawn, or unless they have gone wrong on a point of law. I think there was such evidence before them in the present Case, and that their decision does not contravene any legal principle.

At an Extraordinary Meeting of the Company held in London on the 10th August, 1908, certain Special Resolutions were passed and subsequently confirmed at a Confirmatory Meeting held in London on the 27th August, 1908. These Special Resolutions are set out in the Case stated by the Commissioners. Their general effect is that the Egyptian business of the Respondents should be carried on and managed by a Local Board to the exclusion of the Board of Directors of the Company, and that such Local Board should be wholly independent of any other directors and board of the Company and of General Meetings of the Company (not being General Meetings held in Egypt) and in no way under the control thereof. The Egyptian business of the Company includes all the Company's affairs and business whatsoever in Egypt and the Soudan, including the business of carrying on the Company's hotels in Egypt and the Soudan, and everything connected therewith, including the incurring of debts and liabilities, buying, selling and supplying goods, the hiring, using and supplying labour, paying of debts, and the doing of all things necessary or in any way incidental to such business. The profits of the Company on which the Income Tax is sought to be charged are derived wholly from the Egyptian business. In the year of assessment the dividend was declared in June.

Mr. Peat, a Director of the Respondents, gave evidence that the Special Resolutions which became operative on August 27, 1908, had been strictly observed and acted upon, and that the local management of the hotels was carried on exclusively by the Local Board in Egypt, who reported the financial trading results to the Board of Directors of the Company in England for the purpose of being incorporated in the Company's accounts

(1) 2 T.C. 490. (2) 3 T.C. 407. (3) 3 T.C. at p. 411.

and balance sheets and acted upon for the declaration of dividends. The Egyptian accounts were made up and audited in Egypt and subsequently forwarded to the Respondents' office in London and submitted to the General Meetings of the Respondents in London. The balance sheets and the profit and loss accounts of the Company were made out in London, and all the accounts of the Respondents, except so far as rendered unnecessary by the local audit in Egypt, were audited in England. As an instance of the extent to which the control of finance was exercised in England, the assistant secretary was authorised at a meeting of the Respondents, held in England on the 29th June, 1909, to obtain a loan of £10,750 from the Anglo-Egyptian Bank, and to transfer £2,692 6*s*. 4*d*. to debenture interest account, and £10,925 to dividend Number 5 account in Cairo and London, to meet the financial requirements as at June 30, 1909. Before and after August 27, 1908, all the meetings of the Directors of the Respondents have been held from time to time in England and not elsewhere.

In addition to parol evidence the Commissioners had in evidence before them the Memorandum and Articles of Association of the Respondents. The Respondents are an English Company having its Registered Office in England and, subject to the special provisions affecting the Egyptian business, the general management of the affairs of the Company is, in the ordinary way, entrusted to the Directors. The control of the share capital of the Company was left with the Directors, including the question of its increase or reduction. It was within the power of the Directors to say when the profit and loss of the Egyptian business should be made out and in what manner the available assets should be allocated. The Directors decided how much the Egyptian managers should be paid, and if the Egyptian business should be carried on at a loss in any particular year, the responsibility rested with them of making any necessary financial arrangements. On this evidence the Commissioners found that before and after August 27, 1908, the Directors of the Respondents were empowered to and did deal with general affairs of the Company, including all general financial arrangements of the Company.

In my opinion there was evidence before the Commissioners on which within reason they could come to the above finding. It was open to the Commissioners to find that a business is not exclusively carried on outside the United Kingdom when all the general financial arrangements are dealt with and controlled at meetings held from time to time at the Offices of the Company in England. The Commissioners further found that the head and seat and controlling power of the Company remained in England with the Board of Directors of the Company. How far, in any particular case, the power over finance gives controlling power, is a question for the Commissioners, but I find it difficult to appreciate how any trade or business can be exclusively carried on outside the United Kingdom by a Company which has its offices in England and whose Directors are empowered to and do deal with all the general financial arrangements of the Company. I agree with Mr. Justice Horridge that it is not possible to sever

the business of the Respondents in such a way as to hold that there is a cleaving line between general questions of finance and the local management in Egypt.

It was said in argument that although the Directors in England had general controlling powers in matters of finance, there was no evidence that they exercised this power in relation to the Egyptian business. For the reasons already stated, I think that there was evidence on which the Commissioners could find that the Directors of the Respondents had not only the power to deal with all general financial arrangements of the Company, but also exercised this power. It becomes, therefore, unnecessary to decide how far the reservation of a power of control which has not been exercised is in itself sufficient to negative a claim to be treated under Case V, but I do not desire to be understood as throwing any doubt on the decision in *Ogilvie* v. *Kitton* (5 Tax Cases 338).

My Lords, in my view the Appeal should be allowed.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed, but without costs.

The Contents have it.

Earl Loreburn.—My Lords, I ought to say that the case where the Opinion of the House is equally divided applies here, and the practice with regard to costs is that which I have stated.