VOL. IX.—PART VIII.

No. 523.—High Court of Justice (King's Bench Division).—18th and 19th June, 1923.

Court of Appeal.—21st, 22nd and 23rd May, and 5th June, 1924.

House of Lords.—14th, 15th and 18th May, 1925.

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(1) Attorney-General *v.* Aramayo and others.[1]

(2) Avelino Aramayo and Company *v.* Ogston (Surveyor of Taxes).[1]

(3) Eccott (H.M. Inspector of Taxes) *v.* Aramayo Francke Mines, Limited (in Liquidation).[1]

Income Tax, Schedule D—English Company controlled abroad carrying on trade in the United Kingdom—Information—Income Tax Act, 1853 (16 & 17 *Vict.*, *c.* 34), *Section* 2, *Schedule D—Taxes Management Act*, 1880 (43 & 44 *Vict.*, *c.* 19), *Section* 59 (4).

An English Company was formed to carry on the business of general merchants and mine-owners in Bolivia. As from 1st *April*, 1917, *the control and management of its Bolivian business was transferred to a Local Board in that country, the duties of the directors in London being confined to the declaration of dividends and the formal business necessary for its continuance as a company.*

The greater part of the produce of the mines was shipped to the United Kingdom, and the manager of the Local Board instructed a London firm, who had up to the date in question been the Company's sole general, commercial and financial agents, to sell as brokers on commission all material consigned to them. In fact, however, the London firm continued the course of business previously followed by them, and did not themselves sell the mining produce as brokers, but employed brokers to do so, the brokers accounting for the proceeds to the London firm who in turn accounted to the Local Board after deducting, inter alia, *payments made on bills of exchange drawn on the firm by the Local Board at the time of shipment, commission, and the cost of goods required by the Local Board in Bolivia purchased by the firm on the instructions of the manager of the Company itself.*

The English Company, while denying liability to Income Tax for 1917–18, *made a return for that year requesting that it might be assessed by the Special Commissioners. The Special Commissioners,*

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(1) Reported C.A., [1925] 1 K.B. 86.

however, made an assessment under Case I *of Schedule D on the Local Board in the name of the London firm as agents. On appeal against the assessment the Special Commissioners decided that a trade was being carried on in the United Kingdom by the Local Board through the London firm who must be regarded as its duly authorised agents, and confirmed the assessment.*

As the tax due under the assessment so confirmed remained unpaid, proceedings for its recovery were commenced by way of Information against the individual members of the London firm, who then took the objection, not previously raised, that, as no requirement had been made either by the firm or by the Local Board that the Special Commissioners should assess them, the assessment was invalid as being ultra vires.

Meanwhile, as a precautionary measure before the time limit expired, the Special Commissioners made an alternative assessment for 1917–18 *(under Case* I *of Schedule D) on the Company itself in the same amount as that previously made on the Local Board. On appeal, the Company contended that this was a double assessment, and the Special Commissioners discharged the assessment on the ground that there was no reason for assuming that the previous assessment was not a valid one and sufficient to tax the profits charged by the second assessment.*

Held,

(i) *that, having regard to the correspondence and other facts in the case, the London firm must be taken to have acquiesced in the jurisdiction of the Special Commissioners to make the assessment upon the Local Board in their name; but*

(ii) *that that assessment was bad, since it was the Company itself that carried on the business, the Local Board acting throughout merely as servants of the Company and on its behalf;*

(iii) *that, by virtue of Section* 59 (4) *of the Taxes Management Act,* 1880, *the duty charged under that assessment should have been paid, but that, as the Crown had only brought the Information to trial at the same time as the hearing of the appeal against the assessment upon which it was based and that assessment was then held to be bad, the Information must be dismissed;*

(iv) *that the assessment under Case* I *of Schedule D upon the Company itself was rightly made, inasmuch as* (a) *the Company was resident in this country, and* (b), *the produce of its mines being marketed and dealt with in London, the Company's business could not be held to be carried on wholly outside the United Kingdom in spite of the existence of the Local Board in Bolivia.*

CASES.

(1)

AVELINO ARAMAYO AND COMPANY *v.* OGSTON.

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.

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1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 15th November, 1918, at Windsor House, Kingsway, for the purpose of hearing appeals, Messrs. Avelino Aramayo and Company of 148½, Fenchurch Street, London, E.C., appealed against an assessment to Income Tax (Schedule D) in the sum of £99,733 for the year ending 5th April, 1918, made upon the "Local Board of Aramayo Francke Mines Limited, Bolivia, in the name of Avelino Aramayo and Company Agents" by the Commissioners for the Special Purposes of the Income Tax Acts under the provisions of those Acts, upon a return made by the Secretary of Aramayo Francke Mines Limited

2. Aramayo Francke Mines Limited (hereinafter called the Company) was registered in England under the Companies Acts in the year 1906 as a private limited company under the name "Aramayo Francke and Company Limited." In 1909 it became a public limited company with new regulations and in 1912 it changed its name to "Aramayo Francke Mines Limited." The main object of the Company was the taking over as a going concern of the business of General Merchants and Mine-owners theretofore carried on by the Firm of Aramayo Francke and Company in Bolivia, and with other objects more fully set out in the Memorandum and Articles of Association of the Company. In 1906 the partners in the Firm of Aramayo Francke and Company (hereafter called the Bolivian Firm) were Mr. Felix Avelino Aramayo (the chief partner) and seven other persons. The said Mr. Felix Avelino Aramayo was the original Managing Director of the Company and has continued his office as such down to the end of the year of the assessment in question. The Bolivian Firm were the owners of certain mines in Bolivia from which the following ores were obtained—bismuth, wolfram, tin, silver, copper and antimony.

3. The Firm of Avelino Aramayo and Company (hereinafter called the Appellant Firm) was established by the said Mr. Felix Avelino Aramayo in 1901 to carry on the business of general merchants, agents, etc., in London. From the commencement of the business until 17th December, 1906, the Appellant Firm acted as the sole general, commercial and financial agents of the Bolivian Firm. The Appellant Firm during the year of the assessment in question consisted of the said Mr. Felix Avelino Aramayo and two other persons, all three of whom had been partners in the Bolivian Firm in 1906 when the business of that Firm had been taken over as set out in the last paragraph. The Registered Office of the Company is at 148½ Fenchurch Street which is also the address of the Appellant Firm. The three partners were the principal shareholders in the Company; they were all resident outside the United Kingdom in the year of assessment, Mr. Felix Aramayo having had a residence in the United Kingdom from the year 1906 to the year 1916, but in that year having left the United Kingdom and ceased to reside there.

4. By an Agreement of 17th December, 1906, entered into between the Company and the Appellant Firm wherein it is recited that the Appellant Firm had previously for a considerable time past been the sole general, commercial and financial agents in London of the Bolivian Firm and that it was contemplated upon the incorporation of the Company that it should continue such agency, it was agreed that the Appellant Firm should be the first sole financial, commercial and general agents of the Company in the United Kingdom, the United States of America and the continent of Europe and as such agents should perform the duties and exercise the powers they had been accustomed to perform and exercise for the Bolivian Firm before the incorporation of that Firm into the Company. The Agreement was to be in force for ten years with power for the Appellant Firm (but not for the Company) to determine it at any time by a six months' notice and the Appellant Firm was to be entitled to receive and the Company agreed to pay the commissions on sales and purchases and other benefits, interests and emoluments, as set forth in a Schedule to the Agreement, being the commissions, benefits, interests and emoluments which it had been accustomed to receive from Aramayo Francke and Company.

5. For the ten years from 1906 to 1916 the business of the Company was carried on in accordance with its Memorandum and Articles of Association and under the Agreement above referred to. The mines and business in Bolivia were pursuant to Articles 79–105 managed by the Directors of the Company, the said Mr. Felix Aramayo being Managing Director, and the Appellant Firm acted as agents for the Company in selling the produce of the mines, making such purchases of goods, machinery

and stores as it was necessary to send out to Bolivia, and acting generally as agents for the Company in financial and other matters. The larger part of the produce of the mines was prior to the War always sold in the United Kingdom, the sales being made by brokers acting on instructions of the Appellant Firm, but it was necessary to send certain bismuth ores received in a raw state to Germany to be refined and dealt with in that country and the conditions of the market also from time to time make it desirable to sell other ores elsewhere. After the outbreak of the War the whole of the produce of the mines was disposed of in the United Kingdom in order that it might be available for the use of the Allies. The market was a very favourable one. The Appellant Firm also having agreed with the Company in consideration of a rate per pound weight to get the bismuth ores refined in the United Kingdom succeeded in getting the work so done (having established a factory in England for that purpose) and received payment therefor from the Company in addition to the other commissions and benefits to which it was entitled under the Agreement of 17th December, 1906, and was assessed to and paid United Kingdom Income Tax in respect of the profits so earned by it. Later on during the War the whole produce of the mines was held at the disposal of the War Office, who had requisitioned it, and the Company only actually sold in the open market so much as was not required by that Department.

6. Upon the 6th July, 1916, the Agreement of 17th December, 1906, being then due to expire in December, it was agreed between the Company and the Appellant Firm by an Agreement of that date endorsed on the said Agreement of 17th December, 1906, that it should be continued upon its expiration subject to certain modifications as to the payments to be received by the Firm. No fixed term was agreed to for the duration of the continued agreement.

7. By Special Resolutions passed 8th March, 1917, and confirmed 26th March, 1917, the Company amended its Articles of Association by repealing certain clauses therein and substituting for such clauses new clauses which provided that the Bolivian business of the Company should be carried on and managed by a Local Board, the first members of which were thereby appointed and empowered to act on and from 1st April, 1917. The said Mr. Felix Avelino Aramayo, the chief partner in the Appellant Firm, was one of the appointed members of the Local Board, being also appointed Manager thereof. It is agreed for the purpose of this Case that the amended Articles are in all respects similar to the Articles under which a Local Board was established by the Egyptian Hotels, Limited, as referred to in the case *Egyptian Hotels, Limited* v. *Mitchell* (6 T.C. 542).

8. The following is a copy of a minute taken at a meeting of the Directors of the Company held on March 26th, 1917 :—

"The following letter dated March 26th from Messrs. "Avelino Aramayo and Company was submitted :—'In "'view of the Resolutions which were passed at an extra- "'ordinary General Meeting vesting the management of "'the Company's Bolivian Business in a Local Board, we "'think it right to say that in the interests of the Company "'we are prepared to cancel our Agreement with you dated "'the 17th December, 1906, and indorsement thereon "'dated the 6th July, 1916, and accordingly you are at "'liberty to treat this letter as an offer to that effect.

"'Yours faithfully,

"'pp. Avelino Aramayo and Company.

"'L. A. KENSINGTON.'

"Resolved that the offer contained in the said letter be and "is hereby accepted to the intent that from henceforth the "mutual rights and obligations under the said Agreement "be cancelled and extinguished."

9. By letter dated 31st March, 1917, from Biarritz in France where he was residing the said Mr. Felix Avelino Aramayo as Manager of the Local Board instructed the Appellant Firm to sell as brokers on commission all material consigned to them. The letter was in the following terms :—

"As Manager of the Local Board of Aramayo Francke "Mines Limited, Bolivia, I beg to instruct you from now "onwards to sell as brokers on commission all the material "which may be consigned to you from time to time including "that which you now have in hand belonging to my Company, "your commissions to be those which have previously ruled "for the various classes of ores and materials."

10. During the year for which the assessment appealed against was made (from 6th April, 1917, to 5th April, 1918) the business of the Company was carried on under the arrangements above set out except that there was no substantial alteration in the duties performed and the powers exercised by the Appellant Firm from those which the Appellant Firm previously performed and exercised. The Appellant Firm did not, in fact, itself sell the ores and produce of the mines as brokers but continued to instruct brokers to sell them. The Appellant Firm also continued to refine the bismuth ore before sale and they have been assessed to and have paid Income Tax in the United Kingdom in respect of the profits of the business so carried on by them. The Appellant Firm also, acting under instructions given by Mr. F. A. Aramayo

as Manager of the Company, made arrangements for the purchase of goods in the United Kingdom required by the Local Board in Bolivia and for the financial transactions of the Local Board in the United Kingdom, but they had no power or authority to receive or deal with nor did they in fact receive or deal with any profits derived from the business carried on by the Bolivian Board. These profits were not ascertained until the proceeds of the sales of ore were received in Bolivia and brought into account by the Local Board there and the Bolivian Local Board assumed the full responsibility for the business of the Company in Bolivia, and the duties of the Directors of the Company in London were confined to the declaration of dividends and the formal business necessary under its amended Articles for its continuance as a Company.

11. The course of business above referred to between the Company and the Appellant Firm during the said year was approximately as follows :—

The Local Board in Bolivia despatched ores by steamer to the United Kingdom, most of the shipments being made from Antofagasta to Liverpool. The ores were consigned to the Appellant Firm and an advice was sent to the Appellant Firm before shipment. Upon shipment Bills of Lading were made out in favour of the Appellant Firm, one being sent with the goods, one being sent by post to the Appellant Firm and one being retained by the Local Board. Bills of Exchange were at the same time drawn by the Local Board on the Appellant Firm up to 70 per cent. of the value of the shipment payable 90 days after sight and negotiated by the Local Board in the usual way in Bolivia, the duplicates (or "second" Bills) being forwarded with the duplicate Bills of Lading to the Appellant Firm by post. The time usually required for the delivery of letters in London from Bolivia was 45 days and the steamers with the ore required a bout 90 days to reach the United Kingdom.

12. As soon as the Appellant Firm received the advice of the despatch of the ore except bismuth ore they issued instructions to brokers for its sale, at the same time canvassing or advertising the forthcoming sales. In most cases the ores had been sold by the brokers before their arrival in the United Kingdom and in some cases sales were made upon instructions given by the Appellant Firm in anticipation of future consignments, the sale in every case being at a price f.o.b. Antofagasta. The ores upon arrival were delivered to the purchasers against payment, the brokers accounting to the Appellant Firm for the proceeds after deduction of freight, warehousing and other charges including brokerage, and the Appellant Firm accounting to the Local Board after deduction of the payments made on the Bills of Exchange drawn upon them, insurances, any other expenses,

commission, and any additional remuneration for the refinement of bismuth or the purchase of goods to which they might be entitled. Where ores were not sold before arrival in the United Kingdom, they were dealt with in a similar manner after arrival.

13. The commission received by the Appellant Firm was the commission set out in the Schedule to the Agreement of 17th December, 1906, as amended by the Agreement of 6th July, 1916. The commission on tin, the ore of which the heaviest quantities were received (though not those of the greatest value) was 2½ per cent.

14. In years prior to the year ended 5th April, 1918, the Company was assessed to Income Tax (Schedule D) upon the whole of its profits as being a Company residing in the United Kingdom, and having the seat of control of its business in London. In or about August, 1916, the principal shareholders of the Company, who were also members of the Appellant Firm, not being themselves resident in the United Kingdom decided, having regard to the burden imposed by the Income Tax, to transfer the business of the Company to a Company formed for the purpose in Switzerland and arrangements to this end were accordingly made. The Board of Trade, however, intervened and upon motion made a Controller of the Company was appointed by Order of the Court dated 14th November, 1916, with a view to prevent such transfer becoming effective to the detriment of the United Kingdom during the war. The circumstances leading up to the appointment of the Controller were fully considered by Mr. Justice Younger in a judgment of the same day, reported in the Law Reports [1917] 1 Ch. 451. Upon the creation of the Local Board a further motion was made by the Board of Trade but by an Order dated 26th April, 1917, the matter was allowed to stand over upon an undertaking given by the Company as set out in the Order.

15. The following documents or copies thereof may be referred to for the purpose of this Case.

Letter dated 4th April, 1917, by the Company of desire to be assessed by the Special Commissioners and reply dated 5th April, 1917.

Return and Statement by the Company dated 19th May, 1917.

Notice of Assessment.

Notice of Appeal to Special Commissioners.

Memorandum and Articles of Association of the Company (New Regulations).(1)

Special Resolution of Company passed 8th March, 1917, and Resolution confirming same passed 26th March, 1917.(1)

(1) Omitted from the present print.

Agreement of 17th December, 1906, between the Appellant Firm and the Company.(1)
Agreement of 6th July, 1916, between the Appellant Firm and the Company.(1)
Order of 14th November, 1916.(1)
Order of 26th April, 1917.(1)
Accounts of the Appellant Firm for three years to 31st December, 1917.(1)
Accounts of the Company for the three years to 31st May, 1916.(1)

A copy marked A of documents showing the method employed in entering into a forward contract and completing the same, and a copy marked B of documents showing deliveries against a particular consignment and payment therefor are attached to and form part of this Case.

16. At the hearing of the appeal Mr. L. A. Kensington, Manager of the Appellant Firm, stated that it was not possible to ascertain in London the profits of the mines without the accounts from Bolivia ; that the Appellant Firm were not members of the Metal Exchange but that it is not necessary for a Metal Broker to be a Member of that Exchange ; that the Appellant Firm were Commission Agents and sold as brokers ; that they act as agents for other mine-owning concerns in Bolivia in which neither the Appellant Firm nor the partners have any interest or only a very small interest and that approximately one-third of the profits of the Appellant Firm excluding the profits of refining the bismuth ore were derived from such sources ; that the commission usually paid to brokers for selling tin was one-half per cent. ; that the Appellant Firm received in addition two and a half per cent. in respect of the same sales ; that the Local Board in Bolivia had power in his opinion to refuse to be bound by arrangements made by the Appellant Firm for the sale of ores, the contracts made here being submitted to Bolivia for approval ; that metals are usually sold by brokers, the principals remaining undisclosed ; that Mr. F. A. Aramayo was practically the sole owner of the Appellant Firm's business ; that the Appellant Firm specialised in the Bolivian trade but had formerly done business with other countries, for instance, Brazil ; that there were other mines in Bolivia larger than those for which the Appellant Firm acted ; and he admitted that the only change which had been in fact made in the course of business between the Company and the Appellant Firm by the termination of the Agreement between them was that moneys were no longer paid over to the Board of Directors in London for the purpose of distribution to shareholders outside the United Kingdom of dividends. Mr. Kensington's evidence was supported by Mr. Ribon, a Director of the Company.

(1) Omitted from the present print.

17. It was proved that, for the purpose of assessment to the Income Tax, the Appellant Firm had made returns describing their business as that of "Merchants."

18. In these circumstances Counsel on behalf of the Appellant Firm, while not objecting to the jurisdiction of the Special Commissioners or to the form in which the assessment was made, contended :—

(1) That the Appellant Firm were not assessable as Agents for Aramayo Francke Mines Limited.

(2) That the Company was not assessable as a Company having the seat of control of its trade in the United Kingdom.

(3) That neither the Local Board nor the Company were trading in the United Kingdom, but that the trade was carried on in Bolivia at the mines.

(4) That the Appellant Firm were brokers or general commission agents and exempt from Income Tax by reason of the Finance (No. 2) Act, 1915, Section 31 (6).

19. Counsel on behalf of the Surveyor of Taxes contended that the Local Board were trading in the United Kingdom, and that the relief given by the Sub-section referred to did not apply in the present case.

20. We, the Commissioners who heard the appeal, having considered the arguments submitted to us, decided that the Appellant Firm must be regarded as authorised to carry on the regular agency of the Local Board and we confirmed the assessment appealed against.

The Appellant Firm immediately upon the determination of the appeal declared to us their 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.

The only questions for the Court in this case are :—

(1) Whether there was any carrying on of the trade in question in the United Kingdom.

(2) Whether the Appellant Firm were exempt from Income Tax by reason of Sub-section (6) of Section 31 of the Finance (No. 2) Act, 1915.

W. J. BRAITHWAITE,
G. F. HOWE,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
8th April, 1921.

SPECIMEN DOCUMENTS "A."

Delivery against Forward Contract.

AVELINO ARAMAYO & Co. 148½, Fenchurch Street,
London, *9th May*, 1917.

We have canvassed and arranged for the sale on your Account 1,000 Tons Tin Ore. *On the following conditions.*

About 1,000 *Tons* to be delivered as nearly as possible in equal monthly quantities for 12 months from date of Contract at the rate of 100 tons per month.

About 250 tons of above quantity will be delivered from Stock in Liverpool and the balance will be shipped from the W.C.S. America as opportunity offers. Sellers to use every endeavour to complete Contract in the stipulated time but should the full quantity not be shipped in 12 months then the Contract to be extended until the 1,000 tons is completed.

Ores countermarked "Tasna" to be excluded from the Contract.

Tin Contents paid for at the average of Cash and 3 months' price of standard Tin during 7 market days following date of sampling.

Treatment Charges £14 10*s.* 0*d.* per ton of material basis 60 per cent. with 5*s.* per unit variation up or down proportionately.

Delivery—Weighing and *Sampling* in Warehouse, Liverpool.

Strikes. In the event of differences with workmen, accidents to machinery and interference caused directly or indirectly by war revolution insurrection or intervention of constituted authorities or other contingencies beyond control of buyers or sellers preventing sellers from delivering or buyers from receiving or smelting deliveries under this Contract shall be suspended during such time on written notice being given of such inability to deliver or receive by and to the contracting parties.

Per ton of 20 cwts. dry weight.

Moisture to be ascertained and deducted as usual at the time of weighing.

On Ores to arrive, vessel lost Contract void for such portion as is lost.

Brokerage ½ per cent.

Assays as usual.

Our Commission 2½ per cent.

MESSRS. ARAMAYO FRANCKE MINES, LTD.
Quechisla.

AVELINO ARAMAYO & Co. 148½, Fenchurch Street,
London, 17*th October*, 1917.

Book Keeping Note No. 216.

SENORES ARAMAYO FRANCKE MINES, LTD.
Quechisla.

DEAR SIRS,

By the present we beg to inform you that we have passed to your Account the following amounts which we hope you will find in order.

	Due Date.	Debit.	Credit.
Debit Note herewith	Octr. 11		
,,	,, ,,		
,,	July 18		
,,	,, 21		
,,	Octr. 11		
,,	,, ,,		
Account Sales herewith—			
No. 9576	Aug. 5		
9577	,, 25		14,647 12 10
8	Octr. 1		
9	,, 8		
80	,, 15		
2	Sep. 25		
3	,, 10		

[COPY.]

AVELINO ARAMAYO. 9577 Londres 12 *de Octubre de* 1917.
37/92

Account sales of 2,560 Bags Tin Ore per S.S. Benedict procedente de Antofagasta for A/c of Aramayo Francke Mines, Ltd., Quechisla.

A. F. & Co., 2560 Bags Advice No. 12/16 from Chocaya 128000 Kos.

			T.	C.								
Chocaya.	Sale.							125	19	2	5	
Lot.		T.	C.									
1111	300 Bags	14	17	0	21							
	Moisture 32 Grs.		1	1	12							
	Assay 60·65%	14	15	3	9	@ per ton	£133	18	9	£1,981	2	9
Lot.												
1112	300 Bags	14	15	2	8							
	Moisture 46 Grs.		1	3	22							
	Assay 60·34%	14	13	2	14	@ per ton	133	2	0	1,954	1	6
	Basis price of Standard £244 9*s.* 6*d.*											
Lot.												
1125	300 Bags	14	12	2	26							
	Moisture 39 Grs.		1	2	15							
	Assay 59·64%	14	11	0	11	@ per ton	130	11	2	1,900	5	4

Chocaya. Lot.	Sale.	T.	C.							
1124	300 Bags	14	14	0	13					
	Moisture 45 Grs.		1	0	6					
	Assay 60·06%	14	13	0	7	@ per ton	£131	13	9	£1,929 12 8
	Basic Standard £243 7*s.* 6*d.*									
Lot. 1211	230 Bags	11	8	0	5					
	Moisture 35 Grs.		1	0	16					
	Assay 60·37%	11	6	3	20	@ per ton	131	13	5	1,493 19 10
Lot. 1212	230 Bags	11	8	3	5					
	Moisture 38 Grs.		1	0	27					
	Assay 60·40%	11	7	2	6	@ per ton	131	15	1	1,499 1 2
Lot. 1213	225 Bags	10	19	1	16					
	Moisture 37 Grs.		1	0	18					
	Assay 60·10%	10	18	0	26	@ per ton	130	19	0	1428 17 6
	Basis Price of Standard £241 19*s.* 6*d.*									

			T.	C.					
Lot. 1326	225 Bags		10	18	2	2			
	Moisture 38 Grs.			1	0	21			
	Assay 60·17%		10	17	1	9	@ per ton	£130 19 0	£1422 19 5
Lot. 1327	225 Bags		10	18	3	20			
	Moisture 75 Grs.			2	1	11			
	Assay 60·45%		10	16	2	9	@ per ton	131 13 11	1426 2 9
	225 Bags		11	0	1	9			
	Moisture 43 Grs.			1	1	12			
	Assay 60·57%		10	18	3	25	@ per ton	132 0 4	1445 8 1
									£16481 11 0

Basis Price of Standard £241 13*s.* 6*d.*
Smelting charges £14 10*s.* 0*d.* per ton basis 60%

Charges.

Pol.	3029	War Risk Insurance £12300 @ 21*s.*%	£129 3 0
,,	2959	Marine Insurance £12300 @ 10*s.* pol. and stamp	62 0 3
		Interest % pd. @ 5%	6 15 3
		Freight 126·4·1·23 @ £8 per ton	1009 15 8
		Master Porterage, &c.	11 18 8

Charges.

Customs Entry, &c.	£10	11	0		
Cartage T.126½ @ 2*s.* 6*d.*	15	15	8		
Telegrams and Petties in London	1	18	0		
,, ,, Liverpool	3	5	0		
10 Assays @ 15*s.* and 20%	9	0	0		
Men's Time Weighing, Sampling, &c.	3	3	6		
Sampling T.125·¾ @ 3*s.* 6*d.*×40%	30	16	2		
Warehouse Rent, &c.	18	13	6		
Interest of Freight @ 5%	26	13	8		
Brokerage ½% of £16481 11*s.* 0*d.*	82	8	1		
Our Commission 2½%	412	0	9		
				1833	18 2
				£14647	12 10

Due 25th August, 1917

E. & O. E.

Advice received 6/12/16 B/L received 22/1/17.
600 } Bags Tin Ore per "Benedict" S to Liverpool.
600 } Shipped by Barnett & Co. Antofagasta 4/12/16.
460 } On A/c of Aramayo Francke Mines Ltd., Quechisla.
450 }
450 }

					£	*s.*	*d.*
A. F. & Co. Chocaya.	600 Bags Tin Ore	30575 Kos.	Freight	..	240	14	11
	600 ,,	30353 ,,		..	238	19	6
	460 ,,	23325 ,,		..	183	13	3
	450 ,,	22875 ,,		..	180	2	4
	450 ,,	22925 ,,		..	180	10	2
	2560 ,,	130050 ,,			£1,024	0	2

Freight £8 per ton.

A. F. & Co. Chocaya.	Aviso	A. F. & Co.	Lacos.	Kilos.				
18 Oct. 1916	12	Chocaya ..	600	30000				
28 ,, ,,	13	,, ..	600	30000				
11 Nov. ,,	14	,, ..	460	23000				
17 ,, ,,	15	,, ..	450	22500				
27 ,, ,,	16	,, ..	450	22500	T	C		
			2560	128000	125	19	2	5

		£	*s.*	*d.*
Pol. 3029	War Insurance £12,300 @ 21*s.* ..	129	3	0
,, 2959	Marine Insurance £12,300 @ 10*s.* ..	62	0	3
12/10/17	Interest of @ 5*s.*	6	15	3
	Postages	1	18	0
	Commission 2½ per cent.	412	0	9
	A/C Sales No. 9577	14,647	12	10
		£15,259	10	1

B/L to W. 13/2/17.

13/8/17 600 Bags delivered against Contract 9th May, 1917 (1000 Tons) Lots 1101/2. Samples 26/7/17 about T 30.
600 Bags delivered against Contract 9th May, 1917 (1000 Tons) Lots 1124/5. Samples 2/8/17 about T 30.
460 Bags delivered against Contract 9th May, 1917 (1000 Tons) Lots 1211/2. Samples 9/8/17 about T 23.
225 Bags delivered against Contract 9th May, 1917 (1000 Tons) Lots 1213. Samples 9/8/17 about T 11.
13/9/17 225 Bags delivered against Contract 9th May, 1917 (1000 Tons) Lots 1326. Samples 23/8/17 about T 11.
450 Bags delivered against Contract 9th May, 1917 (1000 Tons) Lots 1327/8. Samples 23/8/17 about T 22.

				£	*s.*	*d.*
12/10/17	Proceeds	600	Bags	3,647	19	9
		600	,, ...	3,545	8	1
		685	,, ...	4,092	17	3
		675	,, ...	3,973	5	0
				£15,259	10	1

SPECIMEN DOCUMENTS "B."

Delivery against a Contract for a Particular Consignment.

AVELINO ARAMAYO & Co. 148½ Fenchurch Street,
Londres, 19*th Sep.*, 1917.

Book Keeping Note No. 212.

SENORES ARAMAYO FRANCKE MINES LTD.
Quechisla.

DEAR SIRS,

By the present we beg to inform you that we have passed to your Account the following sums which we hope you will find in order.

	Date due.	*Debit.*	*Credit.*
Monthly payment the Hawke receipt herewith	Sep. 12		
Debit Note herewith	Aug. 20		
,, ,, ...	,, ,,		
,, ,, ...	Sep. 14		
Drafts from Tupiza Nos. 15098/15100	Dec. 17		
A/c sales No. 9547 herewith ..	Sep. 24		
9548 ,, ..	,, 3		
9 ,, ..	,, 10		
50 ,, ..	Aug. 10		
1 ,, ..	,, 28		
2 ,, ..	Sep. 3		
3 ,, ..	,, 9		318 19 7
5 ,, ..	,, 17		

9553.
Londres, 12 *de Seprubre de* 1917.

37/183.

Account sale of 173 Bags Copper Cement per S.S. Orissa from Antofagasta for account of Aramayo Francke Mines Limited, Quechisla.

CP

			T	C		
A.F. & Co. Chocaya.	173 Bags de Chocaya	advice No. 11 Kilos 4844=	4	15	1	11

Sale

	T	C			
173 Bags	4	16	3	2	
Moisture 150 Gs.		2	0	8	
	4	14	2	22	= 4·7348 Tns.

	£	*s.*	*d.*	£	*s.*	*d.*
Assay Silver 66·75 ozs. = 316·047 @ 41*d.*				53	19	10
Copper 63·15% Wet Copper B/S	130	0	0			
Less 1·30 Treatment charges	7	8	6			
T.						
Dry 61·85%—2·9285 @ per ton	122	11	6	358	19	3
				412	19	1
C.						
Empty Bags 1 0 10 @ £13 ..	0	14	2			
Less charges ..	0	0	9	0	13	5
Charges				413	12	6
War Insurance £500 @ £5 5*s.* 0*d.*%	26	5	0			
Marine Insurance £500 @ 10*s.*% Pol. and Stamps	2	10	5			
Interest on do.	0	9	8			
T C						
Freight 4 17 3 13 @ £10 per ton	48	18	8			
Cartage 11*s.* 3*d.*, Assays 30*s.* 7*d.*, Attending 1*s.* 3*d.*, Weighing Sampling 23*s.* 4*d.*	3	6	5			
Telegrams and stamps in London	0	2	6			
Telegrams and stamps in Liverpool 1*s.* 6*d.*, Interest on freight, &c. @ 5% 10*s.* 7*d.*	0	12	1			
Brokerage ½% of £413 12*s.* 6*d.*	2	1	4			
Our Commission 2½%	10	6	10	94	12	11
Due 9th September, 1917 ..				£318	19	7

E. & O. E.

148½ Fenchurch Street,
London, 29*th June*, 1917.

37/183.

AVELINO ARAMAYO & Co.

We have canvassed and arranged for the sale for your Account 173 Bags about 5 Tons Argent. Copper precipitate on the following conditions.

A. F. & Co. Chocaya. 173 Bags as per Advice No. 11 CP. from Chocaya 4844 Kilos ex "Orissa."

Copper (wet assay less 1·3 units) to be paid for at the average Official Price of Standard, taking the two quotations preceding and the two following date of vessel reporting at the Custom House, Liverpool.

A. F. & Co. Chocaya—*cont.*

Silver. If over 2 ozs. per ton, all paid for at the average Official Price of Standard one month from date of sampling. If no quotation that day the next following to be taken.

Gold. If 05 ozs. and over to be paid for at 82*s.* per oz.

Treatment charges Cu—10% and under 15% £9 18*s.* 6*d.* per ton fine Cu.

Treatment charges Cu—15% and under 20% £9 8*s.* 6*d.* per ton fine Cu.

Treatment charges Cu—20% and under 25% £8 8*s.* 6*d.* per ton fine Cu.

Treatment charges Cu—25% and up £7 8*s.* 6*d.* per ton fine Cu.

Delivery C.I.F. Liverpool.

Weighing and Sampling in Ore Yard Liverpool at Sellers expense.

Brokerage ½%—other conditions as usual.

MESSRS. ARAMAYO FRANCKE MINES, LTD.
Quechisla.

37.

Advice reced 16/5/17.
173 Bags Copper Cement per " Orissa " S. to Liverpool.
Shipped by Barrett & Co., Antofa. 13/5/17.
On Account of Aramayo Francke Mines Ltd., Quechisla.

A. F. & Co. 173 Bags Copper Cement 4923 Kos.
Chocaya. Freight 200*s*.

Chocaya.	Aviso. CP.	A. F. & Co.	Bullos.	Kilos.	Cobre	Plate.
7 April, 1917	11	Chocaya	173	4844	55%	20 M P C

			£	*s*.	*d*.
Pol.	3126	War Insurance £500 @ 5 gs.	26	5	0
„	310	Marine Insurance £500 @ 10*s*. ..	2	10	5
		Interest of „	0	9	8
		Postages	0	2	6
		Commission 2½%	10	6	10
		A/c Sales No. 9553	318	19	7
			£358	14	0

B/L sent to W. 26/6/17.

20/6/17	Contract—173 Bags about 5 Tons ex Orissa.	
	Copper to be paid for at the average Official Price of Standard taking the two quotations preceding and the two following date of vessel reporting at the Custom House here.	
	Silver if over 2 oz. per ton all paid for at the average Official Price of Standard one month from date of sampling—if no quotations that day, the next following to be taken.	
	Gold if 05 ozs. and over all to be paid for at 82*s.* per oz.	
	Treatment charge Cu. 10% and under 15% £9 18*s.* 6*d.* per ton fine Cu.	
	Treatment charge Cu. 15% and under 20% £9 8*s.* 6*d.* per ton fine Cu.	
	Treatment charge Cu. 20% and under 25% £8 8*s.* 6*d.* per ton fine Cu.	
	Treatment charge Cu. 25% and up £7 8*s.* 6*d.* per ton fine Cu.	
	Assay by Clandit or Griffith.	
	C.i.f. Liverpool—Weighing and Sampling in Ore Yard at Sellers expense.	
	Brokerage ½%	
12/9/17	Proceeds	358 14 0
		£358 14 0

Letter dated 4th April, 1917, from DALE & Co. to C. D. HEWITT.

14, Queen Victoria Street, E.C.
4th April, 1917.

Dear Sir,

Re Aramayo Francke Mines, Ltd.

In anticipation of the usual form of return which our clients will be called upon to make under Schedule D of the Income Tax Act, 1842, we do on their behalf pursuant to Section 131 of the said Act require that all proceedings in order to an assessment upon the said Company in respect of profits or gains chargeable under the said Schedule in respect of the year commencing April 6th, 1917, shall be had and taken before the Commissioners for Special Purposes instead of the additional Commissioners or the Commissioners for General Purposes, and we hereby declare that the said Company did on the 26th day of March, 1917, confirm the Resolutions a copy whereof is enclosed herewith, and it is proposed by the said Company that during the year of assessment commencing on the 6th April, 1917, or so soon after the said 6th April, 1917, as conveniently may be, the trade of producing minerals from the Company's mines in Bolivia shall be managed exercised and carried on by the local board established pursuant to the said Resolutions, and shall not be managed exercised or carried on by the Board of Directors or from the Offices of the Company in the United Kingdom, and the profits derived from the production of minerals from the Company's mines shall be retained in Bolivia and used for the purpose of paying the expenses of carrying on the Company's trade there and such dividends as are payable to shareholders not resident in the United Kingdom and shall be remitted to the United Kingdom only to such amount as may be necessary to pay dividends to shareholders resident in the United Kingdom and the expenses incurred by the Board of Directors in London.

Yours faithfully,
DALE & Co.
Solicitors for the said Aramayo Francke Mines, Ltd.

C. D. Hewitt, Esq.,
Clerk to the Commissioners for Taxes.

Letter dated 5th April, 1917, from C. D. HEWITT to DALE & Co.

The Guildhall Buildings,
London, E.C.
5th April, 1917.

Dear Sirs,

Aramayo Francke Mines, Limited.

I beg to acknowledge the receipt of your letter of the 4th instant informing me that the above Company desire to be

assessed by the Special Commissioners in respect of the years commencing April 6th, 1917.

Yours faithfully,
(Sgd.) COPLEY D. HEWITT.

Messrs. Dale & Company,
14, Queen Victoria Street, E.C.

INCOME TAX RETURN, 1917–18, AND EXPLANATORY NOTE, DATED 19TH MAY, 1917.

FORM No. 1 (FORMAL PARTS OMITTED).
INCOME TAX YEAR 1917–18.

Return for Assessment under Schedule D for the Year ending 5th April, 1918.

To Aramayo Francke Mines, Limited,
Of 148½, Fenchurch Street.

Dated this 15th day of May, 1917,
JOHN CROOME FERGUSSON, } Assessors
EDWARD SYMONS, } of Taxes.
60, Gracechurch Street,
E.C.3.

SECTION A.

Source of Income.	Amount.
From Trade, Profession, Employment or Vocation ..	None.
From Interest of Money and Annuities not taxed by deduction and from Discounts..	None.
From Colonial and Foreign Securities	None.
From Colonial and Foreign Possessions	None.
Income arising from other Colonial and Foreign Possessions (the particular source to be stated). See explanation annexed.	

GENERAL DECLARATION.

I declare that in the foregoing statement and explanation attached I have given a full and true Return of the whole of the Income chargeable upon the Company under Schedule D of the Income Tax Acts, estimated to the best of my judgment and belief according to the directions and rules of the said Acts. I desire the assessment to be made by the Special Commissioners.

Given under my hand this 19th day of May, 1917.

H. F. INGS, Secretary,
148½, Fenchurch Street, E.C.
As Secretary of
Aramayo Francke Mines, Ltd.

Re Aramayo Francke Mines, Ltd.

The Company claim that in the following circumstances they are not chargeable for the year ending 5th April, 1918 :—The Company on the 26th day of March, 1917, confirmed the Resolutions a copy whereof is enclosed herewith, and from the 5th April, 1917, the trade of producing minerals from the Company's mines in Bolivia has been and is being managed, exercised and carried on by the Local Board established pursuant to the said Resolutions, and has not been and will not be managed, exercised or carried on by the Board of Directors or from the Offices of the Company in the United Kingdom, and the profits derived from the production of minerals from the Company's mines is being retained in Bolivia and used for the purpose of paying the expenses of carrying on the Company's trade there and such dividends as are payable to shareholders not resident in the United Kingdom and will be remitted to the United Kingdom only to such amount as may be necessary to pay dividends to shareholders resident in the United Kingdom and the expenses incurred by the Board of Directors in London. The Company will in due course account to the Surveyor for the Income Tax deducted from those dividends which are entrusted to them for payment.

YEAR 1917–18.

Notice of Assessment under the Income Tax Acts, by the Special Commissioners.

SCHEDULE D.

County of London. Division : City 2.
Parish or Ward : Langbourn. Assessment Number 11.
To the Local Board of Aramayo Francke Mines, Ltd., Bolivia, in the name of Avelino Aramayo & Co., Agents.

TAKE Notice, That the Commissioners for the Special Purposes of the Income Tax Acts have, by Virtue of the Power and Authority vested in them by the said Acts, made an Assessment on you as follows, for the year ending the 5th of April, 1918, viz. :—

	£	*s.*	*d.*	£	*s.*	*d.*
On Profits	99733	0	0			
Net Amount of Assessment						
£99733 at 5*s.* 0*d.* in the £ ..				24933	5	0
Total Duty chargeable ..				24933	5	0
Less Deductions (if any)						
Net Duty Payable				24933	5	0

If you intend to appeal against the Assessment, you must give Notice of your objection in writing to the Surveyor of Taxes, at City 2nd District, within twenty-one days from the date hereof.

The Tax was payable on or before the 1st January, 1918, and, if you do not signify your intention to appeal, the Duty should be paid or remitted forthwith to the Accountant-General (Cashier) of Inland Revenue, Somerset House, London, W.C.2.

E. R. HARRISON,
Clerk to the Special Commissioners of the Income Tax.

Dated this 4th day of January, 1918.

York House, Kingsway,
London, W.C.2.

APPEALS.

On giving notice of objection you should state the grounds of your Appeal. Due intimation will be given you of the time and place fixed for hearing your Appeal.

NOTICE OF APPEAL TO SPECIAL COMMISSIONERS DATED 22ND JANUARY, 1918.

To The Surveyor of Taxes (City 2), Telegraph Street, E.C.2, and To the Special Commissioners.

TAKE NOTICE that it is our intention to appeal against an Assessment Number 11 in the Parish or Ward Langbourn, in the City of London, purporting to be made against the Local Board of Aramayo Francke Mines Limited in the name of Avelino Aramayo & Co. under Schedule D for the year ending April 5th, 1918, on a sum of £99,733 in an amount of £24,933 5*s.* 0*d.* on the following grounds :—

1. Messrs. Avelino Aramayo & Co. submit by way of protest against the jurisdiction of the Special Commissioners that there is no power or jurisdiction under the Income Tax Acts to make an assessment against them in respect of any trade carried on by the Aramayo Francke Mines Limited, Bolivia, or against the Aramayo Francke Mines Limited, Bolivia, in their name and they give this notice and will appear at the hearing of the Appeal subject to this protest.

2. Messrs. Avelino Aramayo & Co. are not factors agents receivers or managers for the Local Board of Aramayo Francke Mines Limited, Bolivia, nor do they carry on nor are they a branch thereof nor have they the receipt of any profits or gains thereof.

3. Messrs. Avelino Aramayo & Co. are general commission agents within the meaning of Section 31 (6) of the Finance (No. 2) Act, 1915, and have no authority to carry on any regular agency for the Local Board of Aramayo Francke Mines Limited, Bolivia.

4. The trade carried on by the Local Board of Aramayo Francke Mines Limited, Bolivia, is carried on in the Republic of Bolivia in South America and wholly outside the United Kingdom and is not managed directed or controlled within the United Kingdom and is not assessable to nor chargeable with Income Tax.

DATED this 22nd day of January, 1918.

DALE & Co.,
14, Queen Victoria Street, E.C.
Solicitors for the Appellants.

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(2)

ECCOTT *v.* ARAMAYO FRANCKE MINES, LIMITED.

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.

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1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 30th July, 1921, at York House, Kingsway, for the purpose of hearing appeals, the Aramayo Francke Mines Limited (hereinafter called the Appellant Company) of 148½ Fenchurch Street, London, E.C., appealed against an assessment to Income Tax, Schedule D, in the sum of £99,733 for the year ending 5th April, 1918, made upon them by the Commissioners for the Special Purposes of the Income Tax Acts under the provisions of those Acts.

2. The facts and circumstances as set forth in a Case stated and signed by the Commissioners for the Special Purposes of the Income Tax Acts upon an appeal by the firm of Avelino Aramayo and Company against an assessment made upon the "Local Board of Aramayo Francke Mines Limited Bolivia in the name of Avelino Aramayo and Company Agents" are to be taken to be facts and circumstances for the purposes of this Case. A copy of the said Case is annexed hereto.[1]

3. At the hearing of the present appeal it further appeared:

(*a*) That since the determination of the appeal made by the firm, no duty had been paid under the assessment then and there determined by the Commissioners.

(*b*) That upon proceedings commenced by the Crown for recovery of the duty the objection was taken that no requirement having been made under Section 131

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[1] *Vide* pages 447 to 454 *ante*.

of the Income Tax Act, 1842, by the said firm or by or on behalf of the Local Board, the Special Commissioners had no jurisdiction to make the assessment and that the assessment was, therefore, invalid. Copies of letters relating to the application to the Special Commissioners upon which the assessment referred to above in paragraph (2) was made (including the return made by the Company for the year of charge) and upon which the jurisdiction of the Special Commissioners under Section 131 of the Income Tax Act, 1842, to make the present assessment was based were annexed to the Case previously stated by the Special Commissioners, referred to in paragraph (2) above.(1) A copy of a letter of 15th May, 1917, not previously annexed, is annexed to and forms part of this Case.

(*c*) That the Agreement of the 4th August, 1916, referred to in the proceedings reported at [1917] 1 Ch. 451 as a provisional Agreement, was confirmed on the 4th August, 1916, by Mr. Aramayo acting on behalf of the Appellant Company at a Meeting of Directors constituting the whole Board of Directors of the Swiss Company. The said Agreement, the Notarial Act confirming the proceedings at the said Meeting and a verified translation of the Articles of Association of the Swiss Company are annexed to and form part of this Case.(2).

(*d*) That the control imposed on the 14th November, 1916, was removed on the 28th June, 1920, and that then and there all restraint on the operation of the Agreement of the 4th August, 1916, ceased to operate.

(*e*) That a liquidator was appointed and a voluntary winding up of the Appellant Company commenced in December, 1920, the first Meeting of Shareholders for the purpose having been held on the 16th December, 1920, the Confirmatory Meeting on the 31st December, 1920, and the first Meeting of Creditors on the 19th January, 1921.

(*f*) That on the 4th March, 1921, notice of the present assessment was served on Mr. Ings who had been Secretary to the Appellant Company prior to the liquidation and was from January 1st, 1921, Liquidator of the Company and no longer Secretary thereof.

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(1) *Vide* pages 470 to 472 *ante*. (2) Omitted from the present print.

4. Counsel on behalf of the Appellant Company contended :—

(*a*) That while the assessment against the Bolivian Board stands no other assessment in respect of the same profits can be made.

(*b*) That the present assessment was a double assessment and ought to be vacated under Section 171 of the Income Tax Act, 1842.

(*c*) That the said Agreement of 4th August, 1916, was a binding agreement which took effect on that date so that the Company became nothing more than unpaid vendors until the shares should be issued and that, therefore, the profits of the undertaking for the year ended 5th April, 1918, became, and were, the profits of a company which neither resided nor carried on trade in the United Kingdom.

(*d*) That the present assessment upon the Appellant Company was invalid because at the date thereof the Appellant Company had already entered into voluntary liquidation.

(*e*) That the trade from which the said profits were derived was carried on entirely outside the United Kingdom and that neither the Company nor the Bolivian Board was chargeable to Income Tax in respect thereof.

Counsel also stated with reference to the opening words of paragraph 18 of the Case annexed hereto[1] that he had objected in the Notice of Appeal annexed to that Case and at the hearing objected to the jurisdiction of the Special Commissioners as regards the liability generally although he had not raised the specific objection referred to above in paragraph 3 (*b*), and that that objection had not then occurred to him.

5. Counsel on behalf of the Inspector of Taxes supported the assessment. He contended (*inter alia*) as follows :—

(*a*) The Appellant Company was exercising a trade in the United Kingdom during the year of charge.

(*b*) The Appellant Company exercised this trade through Messrs. Avelino Aramayo and Company who received in this country from Bolivia ore belonging to the Company and sold it on behalf of the Company in this country through brokers employed by them for the purpose. The situation it was contended, was similar to that which would have arisen in the *Egyptian Hotels Co.* v. *Mitchell*[2], [1915] A.C. 1022,

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(1) Page 454 *ante*. (2) 6 T.C. 542.

if the local board of the Company in that case had established and carried on an hotel in London.

(*c*) The fact that the Appellant Company was in liquidation did not affect its liability to assessment.

(*d*) The profits to be charged were those derived from the sale of ore in this country.

(*e*) The Appellant Company having repudiated the previous assessment made by the Special Commissioners upon the Local Board in the name of their agents as null and void, it was not open to them to contend that the present assessment on the Company was null and void as a double assessment on the profits.

(*f*) The previous assessment which was made upon the Local Board was in any case an assessment upon a different person and did not in any way affect the validity of the present assessment.

(*g*) There was no intention on the part of the Crown to tax the profits in question twice, but in view of the declaration of the Appellant Company's Counsel that the Company would seek to avoid paying tax by every means in their power and in view of their objection to the validity of the previous assessment which was not taken until long after the hearing of the appeal against it, the Crown while not in any way admitting any want of validity in the previous assessment was entitled to safeguard its rights by the present assessment.

(*h*) He accordingly claimed that the present assessment should be confirmed and proposed, as the most convenient course, that the three proceedings, namely, the Information for the recovery of the amount of the tax, the appeal upon the Case stated from the previous assessment, and the appeal upon the Case to be stated from the present assessment should be brought before the Court together.

6. We, the Commissioners who heard the appeal, although of the same opinion as our colleagues that a trade was being carried on in the United Kingdom by the duly authorised agent of the Local Board of the Appellant Company, decided to discharge the present assessment, on the ground that there was no reason for assuming that the previous assessment was not a valid one and sufficient to tax the profits charged by the present assessment.

Counsel for the Inspector of Taxes immediately upon the determination of the appeal declared to us his dissatisfaction therewith as being erroneous in point of law and in due course

the Inspector 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.

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

York House,
23, Kingsway, London, W.C.2.
9th January, 1922.

Letter from DALE & Co. to W. OGSTON, May 15th, 1917.

14 Queen Victoria Street,
London, E.C.4.
May 15th, 1917.

Dear Sir,

In reference to your letter of the 8th instant to the Secretary, Aramayo Francke Mines, Limited, of 148½ Fenchurch Street, E.C., we beg to inform you that as from April 5th, 1917, the Aramayo Francke Mines, Ltd., have not been and are not carrying on the trade to which your letter and the figures contained therein relate.

On the 4th day of April last we on behalf of the above named Company addressed a letter, of which we enclose a copy, to Copley D. Hewitt, Esq., the Clerk to the Commissioners of Taxes for the City of London, and we handed this letter to one of his Clerks in his Office and understood that the Surveyor would be duly informed thereof and that in due course our Clients (the Coy.) would receive a request for a return as a preliminary to an assessment by the Special Commissioners.

The Company are anxious to have the question of their liability to be assessed in respect of the trade which is now being carried on by the Bolivian Board in Bolivia determined at the earliest possible date and we shall be obliged if you will assist us in obtaining an assessment by the Special Commissioners as soon as possible in order that if necessary we may at once take steps to have this question determined by Appeal and a Case Stated for the Opinion of the High Court.

Yours faithfully,
DALE & Co.

W. Ogston, Esq.,
Surveyor of Taxes,
Telegraph Street, E.C.

The Information and the two Stated Cases were heard together before Mr. Justice Rowlatt on the 18th and 19th June, 1923, when the Solicitor-General (Sir Thomas Inskip, K.C., M.P.), Sir

Ernest Pollock and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. G. M. Edwardes Jones and Mr. A. Hildesley for the Company and firm.

On the latter day judgment was given (*a*) on the Information in favour of the Crown for the duty, with costs, (*b*) in the *Ogston* case against the Crown, with costs, and (*c*) in the *Eccott* case in favour of the Crown, with costs.

JUDGMENT.

Rowlatt, J.—I think the time has now arrived, for which I am very thankful, when I can deliver my opinion in these three cases, and I shall endeavour to do it as shortly as I can, omitting reference to much of the history that has been gone through before me.

The first case is the case of the Information, to which the defence is that the proceedings upon which the Information is founded were wholly void because they were taken before people who had no jurisdiction, the Special Commissioners. This enterprise, consisting of valuable mines in Bolivia and of the trade that grew out of the disposal of the proceeds, was the property of an English limited company and they of course had been paying, on the principle of the *San Paulo* case (1), Income Tax upon the whole of their profits, whether brought to this country or not, under Case I. Now it occurred to them that it would be an advantage if they could so order their affairs that they were no longer taxable on all their profits in that way, and they remodelled the system under which they conducted their business and put their management upon the footing that was adopted by the Egyptian Hotels Company and which was the subject of decision in the case raised by that Company (2). The question of course at once arose whether, having regard to the difference in the nature of the two trades, the Hotel Company doing business with the persons who resorted to its hotels in Egypt in the one case, and a company owning mines and selling its produce in the United Kingdom in the other case, they were identical. The Aramayo Company and their advisers thought they were identical and wanted to get a decision, and they made an application to the City of London Commissioners to try and draw an opinion from them. It was an ingenuous step to take, but of course the Commissioners said they had no jurisdiction to express opinions upon cases before they arose and they could not do it. They were asked whether they could get the assessment made early so that the decision might be speedily reached in the ordinary course, and in answer to that it was said : " Well, the case will have to come on in its usual turn, " and the assessment made in its usual turn, and so on, and there

(1) San Paulo (Brazilian) Railway Company, Limited *v.* Carter, 3 T.C. 407.
(2) The Egyptian Hotels, Limited *v.* Mitchell, 6 T.C. 542.

" will be some delay," whereupon it is abundantly clear, nobody disputes it, that the Company, thinking they were going to be assessed, formed, under the advice of its advisers, the intention of having the matter raised before the Special Commissioners instead of the General Commissioners, thinking they would get on sooner, in which hope they seem to have been disappointed, but anyhow they did form that intention of going before the Special Commissioners. Nobody disputes it and the Company made a new return filling up the form and saying, " We are not liable but we " desire to be assessed by the Special Commissioners." That they did under Section 131 of the Act (1) which was then in force. That Section, which comes at the end of a Statute which had made all the provisions with which we are familiar for the assessment by the assessor of the General Commissioners and for subsequent appeals, and so on, provided this alternative method of going to the Special Commissioners ; it says : " It shall be lawful for any " person chargeable . . . . to require, if he shall think fit, that " all proceedings in order to an assessment upon him, in respect " of profits and gains chargeable under the said Schedule, shall be " had and taken before the commissioners for special purposes in " the manner hereinafter directed, instead of the additional com- " missioners or the commissioners for general purposes ; provided " he shall deliver a notice of such request, together with the list, " declaration and statement of such profits and gains "—now the list, declaration and statement mean no more nowadays than the yellow form which is filled up ; one can trace what is referred to by going back to the earlier Sections, but it is not necessary to do so for this purpose—" to the assessor of the parish or place, to be " by him transmitted to the inspector or surveyor of the district " in which the same shall be chargeable, within the time to be " limited by the general notice hereinbefore directed to be given " for delivery of all such lists and statements aforesaid ; and " thereupon the said inspector or surveyor shall examine the said " list and statement, and shall compute and assess the duties which " according to his judgment shall be chargeable upon the party " under the said Schedule (D.), and shall make a certificate of " such assessment, and deliver the same together with the list, " declaration, and statement, to the commissioners for special " purposes, who shall examine the same, and make or sign and " allow such assessment of the said duties as shall appear to them " to be just and proper, subject to an appeal by the party to be " charged, or by the inspector or surveyor objecting to such " assessment, in like manner and under the like rules and regu- " lations as in cases of appeal against assessments made by the " said additional commissioners ; and every such appeal shall be " heard and determined by the commissioners for special purposes."

(1) i.e., The Income Tax Act, 1842.

I think for the purpose of the present point I need not read that Section any further now. The provision that the subject if he wants to go to the Special Commissioners must deliver a notice of such request and so on, is a provision with which he must comply if he wants to insist upon it; he cannot complain that the Special Commissioners do not take his case unless he has done that, but of course that can be waived by the Commissioners or the officer who is going to represent the Crown if he likes, and if the taxpayer intimates to them however informally, "I want to "go to the Special Commissioners," and in words or by conduct or in any other way the Inspector or the Surveyor says to him, "Oh, certainly you need not trouble to give the notice, that is "quite understood," and they go, there is no sort of excess of jurisdiction that I can understand, none at all. These people have perfect authority to do it subject only to this, that nobody can insist upon their doing it unless there has been a request.

That is the construction of that Section and I now go back to the facts. The advisers of the Aramayo enterprise having decided to go before the Special Commissioners had a correspondence with the Inspector or Surveyor, as he then was, and they very openly laid all their facts before him, and I think whatever can be said about the proceedings of the Aramayo Company in this case it cannot be said that they have not been candid in supplying information so far as I can see. They supplied him with a good deal of information and answered his repeated requests for documents and kept on all the time saying, "This Company is not carrying on its "business, it is not being carried on from London, it is being "carried on by the Local Board in Bolivia." That was the ground upon which they were going to fight the appeal. But all the correspondence that the solicitors wrote for the Company and all the letters, I think, contemplate a fight over an assessment to be made on the Company, and I do not think that the correspondence supports the view that was put before me by Sir Ernest Pollock that they were asking for the Bolivian Board to be assessed. They are saying that the Bolivian Board carry it on and therefore the Company do not, but all the time they are corresponding with regard to a proposed assessment on the Company I think. Then the moment for assessment came and I think most inadvisedly the Income Tax authorities seeing this in the correspondence thought, "Now we can treat the Local Board in Bolivia as the "persons carrying on this trade and assess their agent in this "country," and so they assessed the firm of Aramayo as representing the Board of Directors of the Company in Bolivia and they sent that assessment to Messrs. Dale & Company, the Solicitors. Following up what I have already said, my conclusion at that moment is that if Messrs. Dale & Company had written back and said, "This will not "do, you are not now assessing the Company at all; it is true that

" we agreed for the Company that we would go before the Special " Commissioners and ask for it, but that does not mean that we " have made such an agreement on behalf of a firm who now find " themselves personally liable ; we shall get into difficulties ; we " shall have to take instructions ; they have never authorised us " to go before the Special Commissioners ; very likely they may " but we shall have to take instructions—it is a nullity," if they had said that, I think they would have been right but they did not. What they did was this—they first of all sent back the assessment unopened, and then they sent it back or rather Avelino Aramayo did on the 9th January and said, " You will see " the firm are not agents of the Local Board." They took that point, not that they were nothing to do with the Special Commissioners, but that the firm were not agents. Then the Surveyor wrote, " I suppose that means you want to appeal." That was the right way to deal with it. That is the letter the Surveyor sent on the 11th January. Then they write back again saying that no assessment has been made, and there is no one here to be assessed for the reasons already stated, again taking the point that " there " is not any agent, you cannot make this assessment." Then the Surveyor wrote back and said, " The Special Commissioners have " informed me that an assessment has been made by them, and " the notice of such assessment appears to have duly reached you. " The notice is returned to you with this letter and on perusing it " you will see that above statements are correct "—that is to say there is an assessment. Then further on he says, " After the above " explanation I do not see what more can be stated by me, but " any objection that you may raise to the assessment on points " of fact or law will be immediately forwarded to the Special " Commissioners on hearing from you." Finally on the 22nd January, Messrs. Dale and Company sent in a notice of appeal. They head it, " Aramayo Francke Mines, Limited," but their appeal was against an assessment made on the firm as agents of the Bolivian Board and made by the Special Commissioners, and they were appealing under Section 131 to the Special Commissioners. The appeal came on and was heard and it was lost. It seems to me that the Aramayo Company cannot, after the correspondence which took place subsequent to the assessment before the appeal and upon which the appeal was heard by the Special Commissioners, any longer object that the Special Commissioners were not the tribunal. Let us test it in this way. Suppose they had won the appeal before the Special Commissioners, could the Crown have said, " You have won this appeal ; that is very good " as far as it goes, but let us point out to you that the Special " Commissioners have been the wrong tribunal throughout and it " all comes to nothing, and now we are going to assess you as you " ought to have been assessed and take it before the General " Commissioners in the City of London " ? The thing would be

laughed at really. You cannot do that; it would be said, we have both gone before the Special Commissioners and we have carried the appeal to the Special Commissioners on the footing that they are the tribunal which is desired even in spite of the difference of name in which they have made the assessment. The thing would not have been listened to for a moment and I think it is the same when the point is raised by the other side. The thing has gone on and been settled before a tribunal in which the parties had mutually acquiesced, so that I think that point fails.

Now a year after the appeal the subpœna is issued upon which the Information has proceeded, and a second point is taken, Mr. Edwardes Jones contending that no Information lies upon the assessment so confirmed. In the latter part of Section 131 it provides that " the assessment which shall have been the subject " of appeal "—that is after the appeal—" shall be altered or con- " firmed, and the decision of the commissioners of stamps and " taxes shall be final and conclusive in the matter; and in every " case in which an assessment shall be made by the said com- " missioners for special purposes, they shall notify the amount " thereof to the party assessed "—that was done—" who shall " cause the same to be paid to the receiver general of stamps and " taxes, or the proper officer for receipt in England or Scotland, " at such time or times and in such manner as the said com- " missioners shall direct; and in default of such payment the " said commissioners shall make a duplicate of such assessment, " and deliver the same, together with their warrant for levying " the amount thereof, to the collector " and so on.

Now it is said that no action lies upon the obligation of the Statute conveyed in the words, " who shall cause the same to " be paid to the receiver," but that the remedy of the Crown is to have a duplicate prepared and a warrant issued and a distress made and then the whole question has to be raised I suppose on an action of trespass or something of that sort. I do not think that is either necessary or the reasonable construction. It is far better that the matter should be tried out as to whether the money is due or not rather than that there should be a distress and the waste of time and the loss of temper involved. In my opinion the Information properly lies upon the assessment, at any rate after it has been confirmed upon the appeal.

Now in those circumstances the Crown are entitled to succeed on that Information, and they are entitled to succeed on the Information whether or not the assessment upon which it is based is or is not reversed upon the Case which is stated for the opinion of this Court, which has also been argued before me. If they lose that of course, having got the money, they would have at once to pay it back. That is how the position stands.

Now I pass from that Information to the two Cases Stated; they arise out of these facts: When the matter had been dragging on for nearly two years more, just before the time ran out, the Revenue to make sure of their ground caused an assessment to be made upon the Company (which undoubtedly, at any rate so far as the Special Commissioners were concerned, always wanted to go before them) as resident in London and not upon the Bolivian Board by its agent here. So that the case comes before me alternatively; is this business liable to Income Tax either by way of assessment upon the firm as representing the Bolivian Board, or by way of assessment upon the Company? If it is resident in London, of course it is assessed directly in its own name. Now it looks at first sight that one or the other must be right if these profits are assessable at all. There cannot be any difficulty about the person to be assessed now, as you have them both alternatively before the Court. But Mr. Edwardes Jones does not agree with that. He says, "No, because you have had one "assessment which may be on the wrong man, that prevents you "having another assessment on the right man". That seems to me a hard saying, and I am perfectly satisfied it is not well founded. Of course there are provisions in the Act which say you shall not have two assessments for the same property on the same person; if one has gone wrong you cannot have another. If it is thought that we have assessed this business in the name of Robinson and it is really carried on by Smith, if it is Smith now and it was Smith or Robinson before, I cannot see the slightest objection to it in common sense, and I cannot see any from the point of view of the Statute; so that that difficulty goes and the next thing I have to consider is who is the right person to be assessed. I do not know that that is very well raised in the Cases but I am most certainly going to deal with it. Nothing can be gained by sending the case back further, and I am clearly of opinion that the assessment upon the firm as representing the Bolivian Board was wrong and that the assessment of the Company was right, as regards the personnel I mean. What is it? The English Company rather than let its Directors in London do the business constitutes a Board of Directors to do the business in Bolivia, and then the Bolivian Board employ a firm in London to do this that or the other, but the Board in Bolivia are merely the Board, they are only the servants of the Company, their actions are the actions of the Company, and anybody they choose to employ they do not employ, but they employ them on behalf of the Company. I equally fail to see how it can be put that the Bolivian Board are exercising a trade save as a Board of Directors, or carrying on a trade save as a Board of Directors, nor in fairness do I think that Messrs. Dale and Company ever suggested that they were. They say in their letters, "The trade of producing the ore is carried "on by the Bolivian Board and not by the Board of Directors

"here," meaning of course that the Bolivian Board are the people who are doing it for the Company and not the Board of Directors doing it here for the Company—in every case for the Company. Therefore I think this Case which stated this first assessment cannot be supported and the real point for decision arises upon the third case.

Now after a disquisition which must have appeared long I approach the point which is whether this enterprise or this trade, which is the trade undoubtedly of this Company, can be assessed, that is to say, whether the Company can be assessed in respect of all its profits under Case I, or is it to be assessed under Case V. The Company's scheme has been to adopt the machinery of the *Egyptian Hotel* case.(1) The Egyptian Hotel Company was held to be a concern assessable under Case V and they say that they ought to be assessed in the same way. What I want to try and make clear in my judgment before I go any further is that this is not a problem which arises under the line of cases of which *Grainger* v. *Gough*(2) is the leading one and which has been exemplified by two cases quite recently which have not been cited to me but which came before me and one of which has gone further only the other day, *Greenwood* v. *Smidth*(3) and the *Pinto* case(4). That is not the line of cases under which this arises. In those cases the question was whether a foreign resident exercised trade within the United Kingdom. These cases now before me are not that at all. It has to be remembered how this matter arises. Under the Schedule a person resident in this country is assessable amongst other things upon a trade carried on by him—"annual profits accruing to any person residing in "the United Kingdom from any trade whether the same shall "be carried on in the United Kingdom or elsewhere". That is the case of a resident. In the case of a non-resident his trade must be a trade exercised within the United Kingdom. That is another part of the Schedule. But under the first limb the subordinate question arises whether the trade exercised by him, which may be, so far as that is concerned, either here or elsewhere, is to be a foreign possession or is to be an English possession or is not to be a foreign possession. That is a totally different question. It was held in *Colquhoun* v. *Brooks*(5) that where a trade was carried on wholly abroad and there was only a sleeping partner in this country, as an investment, that was a foreign possession although he was the principal in the trade and not a shareholder in the company, it being a partnership. That was

(1) The Egyptian Hotels, Limited, *v.* Mitchell, 6 T.C. 542.
(2) Grainger & Son *v.* Gough, 3 T.C. 462.
(3) Smidth & Co. *v.* Greenwood, 8 T.C. 193.
(4) Wilcock *v.* Pinto & Co., 9 T.C. 111.
(5) 2 T.C. 490.

a foreign possession because it was wholly abroad, but in the *San Paulo*(1) case it was held that that does not apply unless it is wholly carried on abroad. If any part of it is carried on in this country then it ceases to be a foreign possession and just drops into Case I. It was held in the *San Paulo* case that it is quite enough if you have the brains that direct the trade in England; it does not follow if you have the brains directing it abroad, and everything else is done in this country, that it would be wholly carried on abroad. Therefore the question in this case arises under the *San Paulo* line of decisions: Is the trade wholly carried on abroad, because the Company is a resident here like the Egyptian Hotel Company? Mr. Edwardes Jones has repeatedly said that he has a finding of the Commissioners in his favour which I literally cannot understand unless he has a "not" in his Case which I have not in mine because it seems to me that they find the exact contrary. In the Case upon which I am now adjudicating against the Company they say this. They incorporate all the facts found in the other Case and they say this, "We, the Commissioners who heard the appeal, although "of the same opinion as our colleagues"—that is the other two Special Commissioners who heard it before—"that a trade was "being carried on in the United Kingdom by the duly authorised "agent of the Local Board of the Appellant Company, decided "to discharge the present assessment on the ground that there "was no reason for assuming that the previous assessment was "not a valid one"—that ground I take it was bad, but the finding remains that "the trade was being carried on in the "United Kingdom by the duly authorised agent of the Local "Board of the Appellant Company." Looking at the other Case to which they refer, the finding is this,—first of all in the early days this firm were the general financial agents of the Bolivian firm and so they remained for the Company when it was incorporated. Then, when what I call the "Egyptian Hotel" re-organisation was effected, they resigned that appointment and received instructions to sell as brokers on a commission, but the Commissioners held that the business of the Company during the year of assessment was carried on in fact so that in spite of that new arrangement above set out there was no substantial alteration in the duties performed and the powers exercised by the Appellant firm from those which the Appellant firm previously performed and exercised. Then they go on and point out that this firm in this country had the goods sent to them and that they did the best they could with the goods when they got them here, employing brokers, and they sometimes bought goods to send out again rather than remit. Of course they could see that Mr. Aramayo, now living at Biarritz, but who has an office

(1) San Paulo (Brazilian) Railway Company, Limited *v.* Carter, 3 T.C. 407.

n London, was the mind of this business, he was the Director (I think he is a Director in Bolivia), he was in this firm, he was the largest shareholder, he was this business, and they could see perfectly well that, although they had got the Bolivian Board actually sitting as a Board of Directors and not a Board here in London, the marketing of the goods and the dealing with the goods were all being done in London, and therefore they held and I think they could not avoid holding that you could not say that this business, in spite of the Board being in Bolivia and the mine being in Bolivia, was carried on wholly outside the United Kingdom. That is how I read their decision and I do not think that they could decide otherwise under the present authorities because the *Egyptian Hotels* case(1) which involves the hotel being in Egypt is as different from this as possible. I rather sympathise with the way the learned Counsel put it before the Commissioners when he said that this case would be very like the *Egyptian Hotels* case if the Egyptian Hotel Company had carried on a hotel in London.

Therefore in the circumstances I think that the Crown succeeds upon the third case. Now then there comes the question of costs. Does anybody want to argue the question of costs ?

The Solicitor-General.—My Lord, I do not want to argue it but I want to ask for them in the first case in the Information; and in the second case, inasmuch as the decision has now been given upon a point that was not taken below, I ask your Lordship not to give any costs in that case, and I ask for the costs in the appeal upon which we have succeeded.

Rowlatt, J.—What do you say, Mr. Edwardes Jones ?

Mr. Edwardes Jones.—My Lord, I submit that the Crown ought not to have the costs of the Information because there was absolutely no ground for starting this Information.

Rowlatt, J.—Because in substance they have lost duty as upon that assessment.

Mr. Edwardes Jones.—Yes, my Lord, and the whole point is that they were not agents for the Company and of course could not be assessed when the Company was resident here. I submit that we are entitled to the costs in the first Case Stated and that there ought to be no costs on the Information; that we are entitled to the costs of the *Ogston* Case, and that the Crown are entitled to the costs on the other Case as things now stand.

The Solicitor-General.—My Lord, in answer to my learned friend's suggestion about the Information, it is of vital importance to the Revenue that the plea for the Information should be defeated. It was not a mere technical case at all upon which

(1) 6 T.C. 542.

we ought to have given way, and had the case argued; it was a case of the gravest substance between these parties and the Crown.

Rowlatt, J.—Although I asked learned Counsel to help me by telling me anything that occurred to them, I had thought the matter of costs over beforehand and my decision has not been altered by anything that has been said. As regards the Information it may seem technical but I think that the Crown are clearly entitled to the costs although they cannot get the duty, at least they get it and have to give it back. The scheme of the Act, which I have no authority to whittle down, is that this duty ought to have been paid and it would have had to be given back if it turned out that the assessment was reversed on the Case Stated, as it has been. It ought to have been paid and the Crown would have been right in bringing the Information to have it paid. So far as the methods of trying the issue on the Information are concerned, they have been wholly occasioned by the attitude, which I think is not justified—I cannot help expressing my opinion—which was taken by the Respondents, and I think that the Crown are entitled to those costs, but I think I must give the firm the costs of the case in which they succeed, the second one. I do not think they ought to be deprived of that; I think possibly more strictly I ought to have sent it back again, and it would have come back, but I have taken I hope not wrongly a short cut and said, "I do not think it can possibly succeed "and I think that the Crown ought to pay their costs of that "case." Of course the Crown are entitled to the costs of the third case.

The Solicitor-General.—If your Lordship pleases.

Notices of appeal having been given in all three cases the cases came before the Court of Appeal (Bankes, Scrutton and Atkin, *L. JJ.*) on the 21st, 22nd and 23rd May, 1924, when judgment was reserved.

The Attorney-General (Sir Patrick Hastings, K.C., M.P.), Sir Thomas Inskip, K.C., M.P., and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. G. M. Edwardes Jones and Mr. A. Hildesley for the Company and firm.

On the 5th June, 1924, judgment was given unanimously (*a*) on the Information against the Crown, with costs of the appeal but without costs in the Court below, (*b*) in the *Ogston* case against the Crown, with costs, and (*c*) in the *Eccott* case in favour of the Crown, with costs, thus confirming the decision of the Court below, except as regards the Information.

JUDGMENT.

Bankes, L. J.—These three appeals all relate to the question of what Income Tax was payable by the Aramayo Francke Mines, Ltd., (hereinafter called the Limited Company) for the year ending April 5th, 1918. Of one thing I am quite certain, namely, that all parties in this dispute have at one time or another been entirely in the wrong. I wish that I could see my way as clearly in reference to what is the right course for this Court to take under all the circumstances. The Limited Company was registered in this country many years ago. Its main business consisted in working mines in Bolivia and in marketing the produce of the mines by its agents in this country. The *Egyptian Hotels* case (1) was decided by the House of Lords in July, 1915. As a result of that decision it occurred to the advisers of the Limited Company that they might so arrange matters as to bring the Company within the protection of that decision, and so escape the payment of Income Tax under Schedule D, Case I, and be liable to be assessed (if at all) under Case V only. In order to secure this result, the proposal was to establish a Local Board in Bolivia which should carry on the Bolivian business to the exclusion of the Board of Direction in England, and that the Limited Company's former agents, Messrs. Avelino Aramayo & Co. (hereinafter called the firm) should act as commission agents merely in disposing of the produce of the mines, and so bring themselves and the Limited Company within the scope of Section 31 (6) of the Finance (No. 2) Act, 1915. Special resolutions were passed and confirmed in March, 1917, making the necessary alterations in the Articles of Association. At once troubles began. On April 4th, 1917, the solicitors on behalf of the Limited Company, in anticipation that their clients would be called upon under Schedule D of the Act of 1842 to make the usual form of return, demanded that all proceedings in order to an assessment upon the Limited Company should be had and taken before the Commissioners for Special Purposes. Notice to this effect was given under Section 131 of the Act of 1842, which gives any person chargeable to the duties contained in Schedule D a right to make the demand. Counsel for the Limited Company and for the firm contends that this notice could only be given, and was only given, by the Limited Company as they were the only persons chargeable under the Statute, and they, according to their contention, were only chargeable under Case V. As a result of this requisition, the Secretary, on March 19th, 1917, made a nil return, explaining why he did so in an accompanying letter. This, in my opinion, upon the facts, was quite wrong. However, the Commissioners were apparently determined to go one better on the wrong path; so on January 4th, 1918, they caused notice to be given directed to "The Local Board of Aramayo

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

" Francke Mines, Ltd., Bolivia, in the name of Avelino Aramayo " & Co.," stating that the Commissioners had made an assessment without stating on whom, for the year ending April 5th, 1918, of £99,733, and that the duty payable was £24,933 5*s*. I pause here for a moment to see what the Special Commissioners had done. In reply to a demand by a party chargeable to be assessed by them they had apparently assessed not the party chargeable but the English agent of the foreign agent of the principal who was the only party claiming to be chargeable. It was strenuously argued before us that the Special Commissioners had no jurisdiction to make any such assessment, and if the point had been taken at a proper time and in a proper way it ought, in my opinion, to have succeeded. It was, however, apparently not desired at that stage of the litigation to have that question decided. What the Limited Company was anxious to have decided was whether the trading since the altered conditions was a trading wholly or partly in England or was only a trading with England. In response, therefore, to the invitation to appeal the firm appealed, which they were only justified in doing if they adopted the Limited Company's notice which alone clothed the Special Commissioners with any jurisdiction to hear and determine the matter. The appeal was heard, and the Special Commissioners decided against the Appellants, who thereupon demanded a Special Case, thereby again adopting the notice given by the Limited Company. A Case was stated in which the Commissioners set out all the relevant facts in reference to the carrying on of the Limited Company's trade during the year in question, but they did not in express terms decide the question of fact as to whether there was any carrying on of trade in the United Kingdom, but left that as a question to be decided by the Court. The second question left to the Court was whether the firm was exempt from Income Tax by reason of Sub-section (6) of Section 31 of the Finance (No. 2) Act, 1915. What the Commissioners did decide was that the firm must be regarded as authorised to carry on the regular agency of the Local Board. This would be an immaterial finding unless they also considered that the trade of the Local Board was being carried on in this country. This Case was stated on April 8th, 1921. The appeal had been heard on November 15th, 1918, and the Crown had commenced proceedings by way of Information on December 5th, 1919. Had this Information been brought to trial at any time before the hearing of the Special Case, the Crown would have been entitled to judgment, unless the firm could have made good their point that the Special Commissioners had no jurisdiction at all to assess them. This is the effect of the provision in Section 59 (4) of the Taxes Management Act, 1880. In my opinion, the firm could not have established, and cannot now establish, the plea of want of jurisdiction. This case is, in my opinion, essentially different from a case in which a tribunal has

under no circumstances jurisdiction to entertain a matter. I do not think that the cases cited by Mr. Edwardes Jones govern this case. Under Section 131 of the Act of 1842 the Special Commissioners have jurisdiction in every case where it is invoked by a party chargeable. It is quite true that the Limited Company invoked the exercise of the jurisdiction, and as a result of that invocation the Special Commissioners assessed the firm. If the firm, instead of taking the appropriate action to challenge the jurisdiction of the Special Commissioners, elect to appeal to them, and then require them to state a Special Case, they cannot, in my opinion, be heard to say that they did not either adopt the notice given by the Limited Company or waive the absence of a sufficient notice. The case appears to me to be analogous to the common case where a foreigner who is not amenable to the jurisdiction of the Courts of this Country is not allowed to object to the jurisdiction if he has voluntarily submitted to the jurisdiction by appearance without protest. In the events which happened, and by arrangement between all parties, the Information and the Special Case (the *Ogston* case) came on together. Under these circumstances it was no doubt open to the learned Judge to exercise a discretion as to the proper course to take upon the Information proceedings, if he was of opinion upon the Special Case that the assessment which was sought to be enforced ought never to have been made. The proceedings in the present case were complicated by the fact that on March 4th, 1921, whilst the firm's appeal and the Information were pending, the Special Commissioners made an assessment upon the Limited Company in respect of the same profits as had already been assessed by the assessment on the firm. In this case an appeal followed the assessment, and a Special Case followed the appeal. This Special Case (the *Eccott* case) was also before the learned Judge at the same time as the *Ogston* case and the Information, again by an arrangement between all parties. The *Eccott* case does not submit any question for the Court. The Commissioners' decision is set out in paragraph 6, which is as follows: "We, the Com-"missioners who heard the appeal, although of the same opinion "as our colleagues, that a trade was being carried on in the "United Kingdom by the duly authorised agent of the Local "Board of the Appellant Company, decided to discharge the "present assessment, on the ground that there was no reason for "assuming that the previous assessment was not a valid one and "sufficient to tax the profits charged by the present assessment." One of the Commissioners who joined in this statement was also one of those who heard the firm's appeal, and this finding confirms my view already expressed, that the Commissioners in the *Ogston* case must have intended their finding to include a finding that the Limited Company by its agents was carrying on business in this country. This was the real question which the Limited

Company was raising. As the parties desired both Cases to come on together, I think that the learned Judge was justified upon the materials contained in the two Special Cases in treating the findings on this material question as findings against the contention of the Limited Company. There was, in my opinion, undoubtedly evidence before the Commissioners and before the learned Judge which justified this finding. What the Limited Company asked the learned Judge to do was to dismiss the Information on the ground of want of jurisdiction. This he refused to do, and I think rightly. The Limited Company also asked the Judge to reverse the decision in the *Ogston* case. The Crown asked the learned Judge to reverse the decision in the *Eccott* case, while the Limited Company asked the learned Judge to remit this case to the Commissioners for rehearing. The learned Judge determined, if possible, to put an end to the dispute himself, and what he did was to enter judgment against the firm on the Information for the full amount of the duties claimed with costs. He held that the decision of the Commissioners on the *Ogston* case was erroneous and allowed the appeal with costs. He made a similar Order on the *Eccott* case. With submission to the learned Judge, I think that he has gone too far in his desire to take a short cut. He has in terms said in his judgment that the assessment upon the firm was wrong, and yet he has entered judgment on the Information against the firm. One may guess that the relations between the firm and the Limited Company are such that it really makes no matter whether a judgment is entered up against the firm or against the Limited Company, but I do not think that the Court can act upon any such assumption. If the assessment upon the firm was wrong, as I think it was, and Mr. Justice Rowlatt has held it was, then I consider that the result should be that no judgment should be entered for the Crown upon the Information. In saying this I do not in the least desire to encroach upon the rights of the Crown as conferred by Section 59(4) of the Taxes Management Act, 1880, but I think that if the Crown delay the hearing of an Information until the hearing of a Special Case in which the question as to whether the parties proceeded against were properly assessed or not is to be decided, no complaint can be made if the Court feels compelled to act logically and to refuse to enter a judgment against a party whom it holds, in a proceeding heard simultaneously with the Information, not to be liable. In my opinion, the right course to take is to decide in favour of the Crown upon the *Eccott* case and to declare that, upon the facts stated in that case and in the *Ogston* case, the Limited Company were properly assessed by the Special Commissioners in the sum of £99,733 for the year ending April 5th, 1919, and to allow the appeal on that case with costs in this Court and below and of the Special Case.

The appeal against the judgment on the Information succeeds, and the judgment must be set aside, and the Information dismissed, but without costs, except the costs of the appeal which the Appellants must have.

The appeal in the *Ogston* case is dismissed with costs.

Scrutton, L.J.—The question whether English Income Tax should be paid directly or indirectly by an English Company named Aramayo Francke Mines, Ltd., in respect of the year of assessment, April, 1917–April, 1918, has, after over six years of correspondence and litigation, got into a state of great confusion. There are two Special Cases assessing two different persons for the same profits. The Judge below has allowed one assessment and quashed the other. Each side appeals against his decision. One side suggests that both Cases should be sent back to the Commissioners. The Crown uphold a judgment in an Information demanding payment of a sum under an assessment which the Judge who gave the judgment has quashed There are a good many irregularities on both sides, and, if strict technical forms are observed, another six years may easily be taken before the 1917–1918 assessment is disposed of, and the parties proceed to litigate about the assessments for subsequent years. Under these circumstances, Mr. Justice Rowlatt has endeavoured to decide the questions really in dispute without undue regard to technicalities, and I propose to do the same.

The real question is whether Aramayo Francke Mines, Ltd., whom I will call the English Company, carry on part of their trade in England. If they do not, as the governing body of their trade is in Bolivia in the form of a Bolivian Local Board, they are entitled to have their assessment limited to the profits they receive in England, if any, as from foreign possessions under Case V. If the English Company do carry on part of their trade in England, though under the direction of the Bolivian Local Board, they are in the position of an English resident receiving profits from a trade partly carried on in England, and are to be assessed under Case I. This is the result of the *Egyptian Hotels* case(1), [1915] A.C. 1022, as explained by Lord Parker (at pp. 1036, 1037). In the first Special Case (*Ogston's*), the Special Commissioners have asked the question: "Whether there was any carrying on of the trade in question in the United Kingdom?" They have not in terms stated their own finding on the point, but I think they must be taken to have found it was. In the second Special Case (*Eccott's*), (one of the Special Commissioners in this case being one of the two hearing *Ogston's* case), the two Commissioners use the words "although of the same opinion "as our colleagues that a trade was being carried on in the United

(1) The Egyptian Hotels, Limited *v.* Mitchell, 6 T.C. 542, at pp. 548-9.

"Kingdom." In the first Case they state a number of relevant facts; in the second they take them as repeated. It seems to me clear from those facts that the minerals produced by the Company's mines are in fact sold and delivered in England under contracts made in England, where the price is received, on behalf of the English Company, though under the orders of the Bolivian Local Board. It is the same as if all the products of a manufacture abroad, owned by an English Company, but controlled by a Local Board abroad, were in fact sold in a shop in England belonging to the English Company, but controlled by the same Local Board. I agree that the position is very similar to that which would arise if the Egyptian Hotel Company opened an hotel in England, but a stronger position, for here all the products on the Company's mines are sold in England. In the substantial position which the English Company started to fight, namely, that they are only liable to be taxed under Case V on those profits of their trade carried on and controlled abroad which are received in England, they fail; and they should, as an English Company resident here and carrying on through agents part of their trade in England, be liable under Case I of Schedule D. So much for the merits.

The technicalities are very confusing. When the English Company altered their constitution in view of the *Egyptian Hotels* case to avoid English Income Tax, they desired a speedy decision as to whether their alterations had been successful. Accordingly their solicitors required, under Section 131 of the Act of 1842, that their assessment should be made by the Special Commissioners. Some ingenious person on behalf of the Inland Revenue conceived the idea that the *Egyptian Hotels* decision might be nullified by treating the Bolivian Local Board, who now controlled the trade of the Company, as a separate non-resident personality carrying on a trade in England through their agents, Avelino Aramayo & Co., who had been the English agents of the Company, and assessing the Bolivian Local Board in the name of the English agents under Section 41 of the Act of 1842. This was not at all what the English Company expected; and they urged that business was not being carried on in England, because the control was abroad, and that the English agents were only commission agents, and exempt under Section 31, Sub-section (6), of the Finance Act, 1915. These points the Commissioners appear to have decided against them, noting that the "Appellant Firm," meaning the agents, "did not object to the jurisdiction of the "Special Commissioners, or to the form in which the assessment "was made." There was, however, a much stronger ground of attack on the assessment. In my view it was quite wrong to assess the profits of an English Company by assessing its foreign controlling agent in the name of an English agent; the profits are not the profits of the foreign controlling agent, but of its

English principal. And if the foreign controlling agent were to be assessed as a separate person, neither that person nor the English agent had ever required the Special Commissioners to assess him or them. But, as Counsel for the Company frankly said, this line of attack never occurred to them till some years afterwards, and the proceedings went on the assumption that the English Company, the Local Board and the English agent were all the same person. The Appellants' solicitor continually described the proceedings in the name of the English Company. The first head of the notice of appeal against assessment describes it as an assessment on the English Company in the name of the Agents. I have considered the course of the proceedings, and have come to the conclusion that the Appellants are precluded by their conduct from raising the point that, as they had not required the Special Commissioners to make the assessment, it was therefore invalid. The point as to the persons assessed stands in rather a curious position. Mr. Justice Rowlatt has quashed the assessment on the ground that it was wrong that the Bolivian Local Board, a non-resident agent of the Company, should be assessed. This point is not expressly raised by the Special Case, though it stares one in the face. But, on the one hand, the Crown appeal against the Judge's decision is not pressed if they win on the second Case, as I think they should; and, on the other hand, if the English Company fail on the plea of no jurisdiction, it does not help them to have the assessment stand; they do not want that. Holding the view I do on the merits, I think the simplest thing is to leave alone Mr. Justice Rowlatt's decision quashing the first assessment, which assessment was indeed practically admitted by the Crown to be unsupportable, if the proper objections were taken to it.

Then came the second assessment which was made much later, though within the three years' limit. This was on the Company as an English resident carrying on part of its trade in England. We are bound to hold it an English resident, though its trade is controlled abroad, by the decision of this Court in the *Swedish Central Railway, Ltd.*(1) In view of my decision on the merits, I think it is also clear that it was carrying on part of its trade in England. The Special Commissioners quashed the assessment because they thought there was already a valid assessment, valid, I gather, in the sense that the proper objections were not, and could not be, taken to it, and that "there was no reason "for assuming that the previous assessment was not a valid "assessment." But in this Court the position is that the previous assessment has been quashed, and there is no effective appeal against its quashing; the Commissioners' reason for quashing the second assessment therefore disappears; their implied

(1) The Swedish Central Railway Company, Limited *v.* Thompson, 9 T.C. 342.

finding in the first assessment that there is a trade carried on in England supports the second assessment; and the point about commission agents does not arise in an assessment on a company resident in England. In my view, therefore, the second assessment should stand.

There remains the question as to the Information. I quite appreciate the view of the Crown that the assessed tax should be paid though there is an appeal; and it is important that this should be enforced promptly. But when, after great delay, the Information and appeal against the assessment on which the Information is based come on for trial practically simultaneously, and the assessment is quashed, it appears to me farcical to give judgment that the sum shall be paid when it must immediately be repaid, because the assessment on which it is based has been quashed. If the Crown want to enforce payment while appeal is pending, as they have a right to do, they should do so promptly. I think the Information should be dismissed, but that, as the substantial Appellants, the Company, should have paid or provided the money before, it should be dismissed without costs below, the Appellants having the costs of the appeal only. The appeal of the Crown against the quashing of the first assessment should be dismissed with costs, and the appeal of the Company against the affirming of the second assessment should share the same fate.

Atkin, L.J.—I agree, and inasmuch as I do not differ in any way from what has been said by my Lords I have not thought it necessary to write a separate judgment; but I should like merely to summarise the points that have arisen, in deference to the argument that was addressed to us by Mr. Edwardes Jones.

In respect of the first assessment, what I call the *Ogston* case, it appears to me that the point as to jurisdiction is a point which is not open to the firm. It appears to me impossible that, when the firm appealed to the Special Commissioners from the assessment and then required the Special Commissioners to state a Case as to their determination in point of law, it can then be open to those persons who so invoked the jurisdiction of the Commissioners to dispute afterwards that there was any jurisdiction at all. It is a case where the Commissioners had jurisdiction subject to certain formalities being complied with, and under those circumstances it appears to me that it is possible that there can be, and in this case there was, a waiver in respect of that point. Nevertheless upon the facts found by the Special Commissioners in the Case it seems to me apparent that their decision was wrong in point of law, and that is all that is necessary to enable this Court to give effect to the point of law. As I read the statutory procedure, which at that time depended on Section 59 of the Taxes Management Act, 1880, the Court is not limited

to particular questions raised by the Commissioners in the form of questions on the Case. All that the Section provides is that if the appellant is dissatisfied with the determination as being erroneous in point of law he may require the Commissioners to state and sign a Case, and the Case shall set forth the facts and the determination, and upon that being done the Court has to decide whether or nor the determination was or was not erroneous in point of law, and any point of law that can be raised properly upon the facts as found by the Commissioners the Court can decide upon. No doubt there may be a point of law in respect of which the facts have not been sufficiently found, and if that point of law was not raised below at all so as to require further facts on either side the Court may very well refuse to give effect to it, and either party may have precluded themselves by their conduct from raising in the Court of Appeal the point of law which they deliberately refrained from raising down below. Those questions, of course, have to be considered. But apart from that, if the point of law or the erroneous nature of the determination of the point of law is apparent upon the Case as stated and there are no further facts to be found, it appears to me that the Court can give effect to the law. In this case it seems to me to appear plain, for the reasons stated by my learned brethren, that an assessment on a Local Board which is controlling abroad a business in this country is wholly and entirely wrong. There is no kind of foundation for it in any Act of Parliament or in any case, and it appears to me that we must give effect to that view and we must hold that that assessment should be quashed, and, inasmuch as the learned Judge did quash it and quash it on that ground, I think the appeal of the Crown on that assessment in those circumstances should be dismissed.

On the *Eccott* case a further question arises. The Commissioners decided it on a different point, namely, that the *Ogston* assessment was sufficient and valid. In that they made a mistake, I think. They have found facts by reference to the *Ogston* case which indicate quite clearly that the Limited Company who were the party assessed in that case were in fact both resident in this country and were, in part at any rate, exercising their trade within this country, in respect of which profits accrued to them. In those circumstances it appears to me that they were assessable to Income Tax, and therefore I think that assessment should stand. The learned Judge took that view. I think the learned Judge was right, and I think that the appeal of the Company in that case should be dismissed. The other question is the question of the Information. Now when the Information was filed it was an Information based upon an assessment which at that time stood and in respect of which therefore the Defendants ought to have paid. But when the assessment is found to have been bad, and found to have been bad at the same time as the

time when the learned Judge is dealing with the Information, it appears to me that the foundation of the Information having gone the Information must necessarily be dismissed. For the reasons that I have stated and for the reasons given by my learned brethren, I think, therefore, in those circumstances, that the appeal by the Defendants in that case should be allowed, and allowed with costs. I think it is also right in the circumstances of the case, inasmuch as it was the duty of the then Defendants to pay, that the Information down below should be dismissed without costs.

There is only one other point that I want to mention, and that is in respect of Section 131. I do not propose to decide it, but it seems to me to be at least doubtful whether it is open to a person to invoke the jurisdiction of the Special Commissioners as a person chargeable with a view to being assessed by them merely for the purpose, when he is assessed by the Special Commissioners, of saying that he ought not to be assessed by the Special Commissioners or anyone else. I am inclined to think that the invocation of the jurisdiction of the Special Commissioners in those circumstances is an admission at any rate that the person so invoking their jurisdiction admits he is assessable for profits. That is a matter that one need not deal with at the present moment, in view of the other circumstances of the case.

Bankes, L.J.—A question has been raised as to whether or not a draft of the Special Case was put in in this Court. It was mentioned, but it was not handed up, and we do not think it was put in.

Mr. Edwardes Jones.—I only raised that because I did not want it to be thought that I had not put in a document. I make no point about it.

Notice of appeal having been given by the Company against the decision in the Court of Appeal in the *Eccott* case, the case came before the House of Lords (Viscount Cave, *L.C.*, and Lords Dunedin, Wrenbury, Phillimore and Carson) on the 14th, 15th and 18th May, 1925.

Mr. G. M. Edwardes Jones, K.C. and Mr. A. Hildesley appeared as Counsel for the Company, and the Attorney-General (Sir Douglas Hogg, K.C., M.P.), the Solicitor-General (Sir Thomas Inskip, K.C., M.P.), and Mr. R. P. Hills for the Crown.

On the last named day judgment was delivered in the *Eccott* case unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

JUDGMENT.

Cave, L.C.—My Lords, this appears to me to be a very plain case. The facts have been stated by Mr. Justice Rowlatt and by the Court of Appeal, and it will be sufficient for me to state the grounds on which I agree with the conclusions at which the Court of Appeal arrived.

The first assessment—the assessment associated with the name of Mr. Ogston, the Surveyor of Taxes who was responsible for it—was in my opinion clearly bad. It was an assessment made on the Local Board in Bolivia of the Appellant Company. The Local Board had, of course, no corporate existence and were merely the agents in Bolivia of this British Company. The assessment was served on the firm of Avelino Aramayo and Company, who were the agents in England, not of the Local Board, but of the principal of the Local Board, namely, the Appellant Company itself. The assessment also passed by the fact that, while for some purposes the Company had no doubt a residence in Bolivia, because by the special resolutions the general management of its affairs had been transferred to that country yet it also could have and, in fact, did have a residence in England. For these reasons—and apart from the circumstance that the request to be assessed by the Special Commissioners had been made, not by the Local Board or by the London agents, but by the Company itself—the first assessment was as bad as it could be; and I think that the Commissioners should have so held. That assessment, therefore, falls to the ground; and I agree with the Court of Appeal that the Information which was founded on that assessment falls with it.

I now come to the second assessment, which is associated with the name of Mr. Eccott, an Inspector of Taxes. In my opinion that second assessment was clearly good. It was made by the Special Commissioners upon the Company, which had elected for that method of assessment. The Company is a British Company, and, as has been admitted at the Bar, has a residence in this country. It has been found, in a manner which I will explain in a moment, that the trade of the Company was at all events partly carried on in this country during the period of assessment. That was found in this way: By the first Special Case, which was made evidence in the second Case, the facts were found, and those facts were to the effect that the London firm of Avelino Aramayo and Company were not mere commission agents but were the general agents of the Company in this country, that the produce of the Company was marketed by them here, and that they did here perform other services for the Appellant Company. That is a very concise statement of the findings—perhaps not a fully complete statement, but sufficient for the present purpose. On the hearing of the appeal against the second assessment by the Commissioners they referred to

that finding, and they referred to it in this way: They said, "We, the Commissioners who heard the appeal, although of "the same opinion as our colleagues that a trade was being "carried on in the United Kingdom by the duly authorised agent "of the Local Board of the Appellant Company," and then other findings follow. That appears to me to be a clear finding of fact, in the course of the appeal against the second assessment, that the trade of the Company was at all events partly carried on in this country. It is common ground that, if it was so carried on, it was carried on by the firm of Avelino Aramayo and Company; and there can be no doubt on the findings in the two Cases that that firm were the agents, not for agents of the Company, namely, the Local Board in Bolivia, but for the Company itself. The inference is perfectly clear that the Company itself did by its agents carry on its business partly in this country. Of course, if that is so, there is an end of the case, and it is quite plain that the Company were assessable under Case I of Schedule D. They have been assessed under that Case by the Commissioners whom they had chosen as the assessing body, and I can see no possible objection to that second assessment.

It is said that there was here an assessment which is void as a double assessment on the same persons. I do not think so. The first assessment was an assessment upon different persons altogether. It was an attempt to assess the Local Board in the name of the firm as agents of the Local Board. That assessment was invalid and void; and therefore the second assessment, which was made upon the Company itself and within the time allowed by the Statute for the purpose, was a good assessment, and in my opinion it must stand.

I agree on every point with the decision of the Court of Appeal, and I move your Lordships that this appeal be dismissed with costs.

Lord Dunedin.—My Lords, I concur.

Lord Wrenbury.—My Lords, I agree.

Lord Phillimore.—My Lords, I agree.

Lord Carson.—My Lords, I also concur.

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 with costs.

The Contents have it.