

Tuesday, May 22

FIRST DIVISION.

[Exchequer Cause.]

SAXONE SHOE COMPANY (FRANCE)
LIMITED v. INLAND REVENUE.*Revenue—Corporation Profits Tax—British Company Controlled Abroad—Profits Earned Abroad—Finance Act 1920 (10 and 11 Geo. V, cap. 18), sec. 52 (1), (2) (a), and (3).*

A company registered in Britain was controlled and carried on the whole of its profit-earning business abroad. It was not, in respect of its being exclusively controlled abroad, assessed to income tax and excess profits duty. *Held* that as the company was a British company within the meaning of the Finance Act 1920, sec. 52 (3), its profits were assessable to corporation profits tax.

The Finance Act 1920 (10 and 11 Geo. V, cap. 18) enacts—Section 52—“(1) Subject as provided in this Act there shall be charged, levied, and paid on all profits being profits to which this part of this Act applies, and which arise in an accounting period ending after the thirty-first day of December nineteen hundred and nineteen, a duty (in this Act referred to as ‘corporation profits tax’) of an amount equal to five per cent. of those profits. . . . (2) The profits to which this part of this Act applies are, subject as hereinafter provided, the following:—That is to say, (a) the profits of a British company carrying on any trade or business or any undertaking of a similar character, including the holding of investments; (b) the profits of a foreign company carrying on in the United Kingdom any trade or business or any undertaking of a similar character, so far as those profits arise in the United Kingdom. . . . (3) In this part of this Act— . . . The expression ‘British company’ means any company incorporated by or under the laws of the United Kingdom.” Section 53—“(1) For the purpose of this part of this Act profits shall be taken to be the actual profits arising in the accounting period, and shall not be computed by reference to the income tax year or on the average of any years. (2) Subject to the provisions of this Act, profits shall be the profits and gains determined on the same principles as those on which the profits and gains of a trade would be determined for the purposes of Schedule D set out in the First Schedule to the Income Tax Act 1918, as amended by any subsequent enactment, whether the profits are assessable to income tax under that schedule or not.”

The Saxone Shoe Company (France) Limited, *appellants*, being dissatisfied with a decision of the Commissioners for the Special Purposes of the Income Tax Acts refusing an appeal against an assessment to corporation profits tax in the sum of £537, 7s. for the accounting period ending 30th June 1920, obtained a Case for appeal.

The Case stated, *inter alia*—“1. The following *facts* were admitted or proved in

evidence at the hearing:—(a) The company was incorporated under the Companies Acts 1862 to 1900 on 14th April 1908 with its registered office at Kilmarnock. (b) The company is a British company within the meaning of the Finance Act 1920, secs. 52 (2) (a) and 52 (3). (c) The company was incorporated as a subsidiary company of the Saxone Shoe Company, Limited. The latter company was incorporated under the Companies Acts 1862 to 1900 with its registered office also at Kilmarnock, and it carries on in Kilmarnock the business of boot and shoe manufacturers. Subsequently it was agreed that the company (which although in its formation subsidiary to is independent of the Saxone Shoe Company, Limited) should act as the selling agent in France of the Saxone Shoe Company, Limited. The control of the company is abroad, and the company has on this ground not been charged to income tax and excess profits duty. . . . 5. There is no dispute as to the figures. 6. It was contended on behalf of the company (1) that as it is exempt from assessment to income tax and excess profits duty it is not assessable to corporation profits tax. . . . 7. It was contended on behalf of the respondents (1) that as the company was a British company it was within the charge to corporation profits tax, and that for the purposes of that tax the fact that the control of the company was abroad was immaterial. . . . 8. Having considered the evidence and arguments addressed to us, we held that on the construction of section 52 (2) and (3) and section 53 (2) of the Finance Act 1920 the appeal failed on both points, and the figures having been agreed in accordance with our decision we reduced the assessment to £512, 2s.”

The first *question of law* for the opinion of the Court was—“Whether the company, being exempt from assessment to income tax and excess profits duty is assessable to corporation profits tax?”

Argued for the appellants—The terms of section 52 (2) (b) of the Finance Act 1920 indicated that the Legislature did not intend that a company controlled abroad was to be liable to corporation profits tax. Further, the machinery provided for the assessment—Schedule D of the Income Tax Act 1918, Case V—did not apply to the profits of such a company except so far as remitted to Britain—*Colquhoun v. Brooks*, (1889) 14 App. Cas. 493; *Mitchell v. Egyptian Hotels*, [1915] A.C. 1022; *Dowell's Income Tax Law*, pp. 413, 414, and 545. The scheme of the Act was that the incidence of corporation profits duty should be the same as that of income tax and excess profits duty.

Counsel for the respondents was not called upon.

LORD PRESIDENT—The company which presents this appeal has been assessed to corporation profits tax in a sum of £512, 2s. The company is registered in Scotland. It acts as a selling agent in France for another company, and does not actually carry on any profit-earning business in this country. Moreover, the control of the company is in France, no part of its profit-earning busi-

ness being conducted or directed in this country.

Corporation profits tax has been imposed upon it under section 52 of the Finance Act 1920, which by sub-section 2 (a) charges all profits of a British company carrying on any trade or business or any undertaking of a similar character. That description applies in terms to the profits of the appellant company, which is a British company within the meaning of the Finance Act 1920, and particularly of section 52 (3).

It appears from the case that in respect of the exclusively foreign control of the appellant company it has not been assessed to British income tax or to excess profits duty. The argument for the company is that by analogy it ought not to be liable in corporation profits tax. One can see reasons (which have been very well presented by Mr Patrick) upon which it might have been regarded as reasonable to make the incidence of income tax, excess profits duty, and corporation profits tax identical. We are not, however, at liberty to speculate upon the matter, but are bound to take the terms of the taxing Act just as they stand. It seems to me indisputable that the profits which have been subjected to corporation profits tax in this case are within the definition of chargeable profits under the Finance Act of 1920. The word "determined" in sub-section (2) of section 53 was said to point to a limitation of the incidence of the tax, and its use in that sub-section was contrasted with the word "computed" in sub-section (1) of the same section. But the last words of sub-section (2), viz., "whether the profits are assessable to income tax under that schedule or not," seem to me to deprive the contrast of any significance for the present purpose.

The case raised a second point with regard to depreciation, but the question which was directed to elicit an answer upon it has been withdrawn, and it is therefore unnecessary to answer it. With regard to the first question, I am for answering it in the affirmative.

LORD SKERRINGTON—I concur.

LORD CULLEN—I concur.

LORD SANDS—I concur.

The Court answered the first question of law in the affirmative.

Counsel for the Appellants—Robertson, K.C.—Patrick. Agents—Croft-Gray & Company, S.S.C.

Counsel for the Respondents—Leadbetter, K.C.—Skelton. Agents—Stair A. Gillon, Solicitor of Inland Revenue.

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SECOND DIVISION.

[Lord Ashmore, Ordinary.]

RICHARDSON v. BEATTIE.

Reparation—Negligence—Restive Horse Placed in Charge of Boy Incapable of Managing it—Liability of Owner for Accident—Averments—Relevancy.

In an action of damages by a father, as tutor of his pupil son, for injury alleged to have been sustained by the latter, the pursuer averred that his son, when employed by the defender in delivering milk cans, was thrown from a cart driven by one of the defender's servants, owing to the horse, which belonged to the defender, bolting; that the horse was a powerful and spirited animal; that it was restive and difficult to control, and unsuitable for traffic in a city and near a railway; and that the defender, who was aware of these defects, had put it in the charge of a boy of fifteen, who was quite incapable of managing it. *Held* that these averments were relevant to infer fault against the defender.

Reparation—Negligence—Illegal Contract—Employment of Children under Twelve—Injury to Child while in Defender's Employment—Whether Claim on Child's behalf against Employer Excluded.

In an action of damages by a father, as tutor of his pupil son, a boy of eleven, for injury sustained by the latter while in the defender's employment, owing to alleged fault on his (the defender's) part, the defender founded on a bye-law of the Education Authority of Glasgow prohibiting the employment of children under twelve years of age, and maintained that as he (the defender) was in breach of that bye-law the pursuer was disabled from suing him for damages. *Held* that the fact that the employment of the pursuer's son was illegal did not exclude a claim on his behalf against the defender, the claim being founded not on a contract but on delict.

William Richardson, locomotive fireman, Glasgow, as tutor of his pupil son Robert Richardson, *pursuer*, brought an action against James Beattie, dairyman, Glasgow, *defender*, for payment of £250 in name of damages for injuries sustained by his son through the latter being thrown from a milk cart belonging to the defender, in consequence of the bolting of the horse.

The pursuer's averments sufficiently appear from the opinion of the Lord Ordinary.

The defender pleaded, *inter alia*—"1. The pursuer's averments being irrelevant, the action should be dismissed. 3. The pursuer's son not being at the time of said accident in the execution of any employment by or any duty owed to the defender, and the defender having no duty towards him in the matter, the defender should be absolved."