NO. 817.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—4TH AND 5TH MARCH, 1931.

COURT OF APPEAL.—8TH MAY, 1931.

HOUSE OF LORDS.—4TH MARCH AND 19TH APRIL, 1932.

(1) THE BRITISH MEXICAN PETROLEUM COMPANY, LIMITED *v.* JACKSON (H.M. INSPECTOR OF TAXES).

(2) THE BRITISH MEXICAN PETROLEUM COMPANY, LIMITED *v.* THE COMMISSIONERS OF INLAND REVENUE.

Income Tax, Schedule D—Corporation Profits Tax—Profits of trade—Debt remitted by creditor.

In 1919 *the Appellant Company entered into a contract with an oil-producing company for the purchase of petroleum for a minimum period of twenty years.*

The Appellant Company was adversely affected by the slump in the petroleum business in 1921 *and was unable to meet its liability under the contract for oil supplied, etc.*

Accounts of the Appellant Company's business were made up for the year ended the 30*th June,* 1921, *and for the eighteen months ended the* 31*st December,* 1922. *At the* 30*th June,* 1921, *the agreed amount owing to the oil-producing company under the contract was* £1,073,281; *at the* 30*th September,* 1921, *the amount was* £1,270,232.

Under the terms of an agreement dated the 25*th November,* 1921, *the Appellant Company paid to the producing company the sum of* £325,000 *and was released by the producing company from its liability to pay the balance remaining due, viz.,* £945,232. *The amount so released was carried direct to the Appellant Company's balance sheet and was shown as a separate item under the head "Reserve" at the* 31*st December,* 1922.

The Crown contended that the amount released should be brought into account in computing the Appellant Company's profits for purposes of Income Tax and Corporation Profits Tax, either in the account for the eighteen months to the 31*st December,* 1922, *or, alternatively, in the account for the year to the* 30*th June,* 1921, *that account being re-opened for the purpose.*

The Special Commissioners held that the amount released should be brought into the profit and loss account of the Company for the eighteen months to the 31*st December,* 1922.

Held, *that the amount remitted should not be included as a receipt in the account for the eighteen months to the* 31*st December,* 1922, *and that the account for the year to the* 30*th June,* 1921, *should not be reopened and adjusted by reference to the remission.*

CASES.

(1) *The British Mexican Petroleum Company, Limited* v. *Jackson (H.M. Inspector of Taxes).*

CASE

Stated under the Income Tax Act, 1918, Section 149, 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.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on the 26th February, 1930, The British Mexican Petroleum Co., Limited, hereinafter called " the Appellant " Company ", appealed against assessments to Income Tax made upon it for the three years ended the 5th April, 1923, the 5th April, 1924, and the 5th April, 1925, under Case I of Schedule D, in respect of the profits of its business.

2. The Appellant Company was incorporated on the 15th July, 1919. It was formed for the purpose (*inter alia*) of entering into an agreement with the Huasteca Petroleum Co. (hereinafter called " The Huasteca Company "), an American company in possession of large sources of oil in Mexico, which it worked. The further objects of the Appellant Company included the buying, selling, refining and dealing in oil, and carrying on the business of shippers of oil.

3. The original authorised capital of the Appellant Company was £2,000,000, divided into 1,000,000 ordinary A shares of £1 each, and 1,000,000 ordinary B shares of £1 each. This was subsequently increased to £5,000,000, divided into 4,000,000 A shares and 1,000,000 B shares.

At the material dates, 1,900,000 odd A shares had been issued and 1,000,000 B shares. The whole of the B shares were held directly or indirectly in equal parts, as to one part, by Messrs. Andrew Weir & Co. (a British partnership firm), hereinafter referred to as " Weir & Co.", or a company in which they were interested, and as to the other part, by the Huasteca Company or the proprietors of that Company. Under article 110 *et seq.* of the articles of association the voting power was in the hands of the holders of the B shares alone. A copy, marked " A ", of the memorandum and articles of association of the Appellant Company is annexed hereto and forms part of this Case.(1)

4. Shortly after the formation of the Appellant Company the agreement referred to in clause 3 (1) of the memorandum of association was entered into by the Appellant Company (therein called " the buyer ") with the Huasteca Company (therein called " the seller ").

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(1) Not included in the present print.

The agreement, which is dated the 1st August, 1919, recites that it is entered into for the purpose of developing the use and distribution of petroleum and petroleum products of the Huasteca Company and for other purposes.

The following are the material portions of the agreement :—

CLAUSE I. FIRM PURCHASE OF FUEL PETROLEUM.—The seller agrees to sell and deliver to the buyer and the buyer agrees to purchase and receive from the seller the following quantities of fuel petroleum, *viz.*—

During the first contract year ...	...	2,500,000 barrels
,, ,, second ,, ,, ...	...	5,000,000 ,,
,, ,, third ,, ,, ...	...	7,500,000 ,,

CLAUSE II. PRICE.—The price of the fuel petroleum for the first contract year shall be sixty cents, United States currency, per barrel delivered f.o.b., ships to be furnished by the buyer at the seller's loading wharves near Tampico, Mexico, or at the seller's other approved delivery stations on the Gulf of Mexico.

CLAUSE V deals with the purchase of fuel petroleum after the third year.

CLAUSE VII. DETERMINATION OF PRICES FOR SUBSEQUENT YEARS.—The price of fuel petroleum for each contract year subsequent to the first shall be the lowest wholesale market price at which substantial quantities of fuel petroleum of the same grade are sold at Mexican Gulf delivery ports under contracts for cargo shipments during approximately the same period. Commencing at least three months prior to the beginning of each contract year, the parties shall negotiate as to the price for the quantity which the buyer desires to take during the succeeding year and in case such price is not agreed upon in accordance with the terms hereof at least two months before the commencement of the succeeding year, then arbitration shall be immediately resorted to, pursuant to the provisions of the arbitration clause of this contract.

CLAUSE VIII. TRANSPORTATION.—The seller shall cause to be supplied the tonnage needed by the buyer for transporting the 2,500,000 barrels of fuel petroleum, and the gallons of gasoline which the buyer is to take at Tampico or New Orleans and transport to the eastern hemisphere pursuant hereto during the first contract year.

The charter rate for the tonnage so supplied by the seller shall be a flat rate of five dollars, U.S. currency, per English deadweight ton per month, subject to a possible reduction as hereinafter specified and the form of charter party shall be in conformity with the printed copy hereto annexed.

The aforesaid flat rate is fixed as a fair time charter rate for modern tanker tonnage with a speed according to builders rating of approximately ten and one-half knots per hour (such vessel being hereinafter referred to as a standard vessel). At the expiration of the contract year the average cost per barrel of oil delivered by each of the tank steamers furnished by the seller pursuant hereto shall be determined and, in case the cost of such deliveries per barrel by any vessel so employed shall be greater than the average cost per barrel of deliveries by standard vessels so employed, then said rate of five dollars per ton per month in respect of such other vessels shall be reduced so that the cost of delivery by them shall respectively be the same as the cost of delivery by such standard vessels.

Whenever in any contract year subsequent to the first, the buyer shall desire to transport any petroleum or gasoline purchased pursuant to this contract in vessels other than those owned by it, it shall offer the seller reasonable opportunity, at its election, to supply such tonnage either on time charter or voyage charter on the same terms upon which the buyer can obtain like charters elsewhere.

CLAUSE IX. RECIPROCAL OBLIGATIONS AND PRIVILEGES.—(*a*) The buyer shall use its best endeavours to find markets of the nature hereinafter specified for the sale of the largest possible quantity of fuel petroleum and/or other petroleum products available for sale and delivery as herein provided by the seller and will give the seller at all times the right and opportunity to furnish the buyer in addition to the definite quantities herein provided with the fuel petroleum and/or other petroleum products with which to enable it to fill any such market at the prices which shall be fixed from time to time as herein provided. The buyer will not purchase, acquire, sell, handle or distribute, as principal or agent, any fuel petroleum and/or petroleum products acquired from other sources without first having given the seller a reasonable and fair opportunity dependent upon the seller's customers requirements to supply the same on the basis herein specified.

(*b*) Subject to the proviso at the end of this clause (*b*) the buyer shall, during the contract period, be and remain the sole channel and instrument for the sale of the seller's fuel petroleum and/or other petroleum products to all customers in the eastern hemisphere and to all European owned or controlled companies operating in any part of the world whose purchases of fuel and/or other petroleum products as the case may be are usually and customarily made at their offices in the United Kingdom or elsewhere in Europe. There shall be excepted from the operation of this clause (*b*) any American owned or controlled companies whose purchases of fuel and/or other petroleum products as the case may be are usually and customarily made

at their offices in the western hemisphere although for consumption in the eastern hemisphere and also all particular instances in which a Government or a European owned or controlled company (other than a British company) opens negotiations in the western hemisphere in all of which cases the seller shall have the right to make contracts for its own account. Provided, however, that should the buyer fail for each of three consecutive years after the first two years to purchase from the seller pursuant to this contract seven and one-half million barrels of fuel petroleum then the buyer's exclusive privilege to market the seller's fuel petroleum in the eastern hemisphere may be terminated by the seller for the entire balance of the contract period, it being understood that the failure or inability of the seller to furnish the entire seven and one-half million barrels in any year in which the buyer has agreed to purchase that amount shall in no wise prejudice the exclusive rights of the buyer hereunder.

Provision is made in clause IX (*c*) that the buyer shall not sell in the western hemisphere.

CLAUSE XI. DURATION OF CONTRACT, ETC.—The duration of this contract shall be twenty years from the date hereof and until terminated at the end of the said twenty years or at the end of any subsequent contract year by at least five years' previous notice in writing given by either party to the other.

The term " contract year " as employed herein shall mean a period of one year commencing on the anniversary of the date hereof in any one year, and ending on the corresponding date in the succeeding year.

In the event that the buyer, despite the exercise of all due diligence, shall encounter unusual delays in securing sites, erecting tanks and establishing facilities, and if, as a result thereof it shall prove impracticable or inequitable to require it to take in one year from the date hereof the amount of fuel petroleum and gasoline stipulated for the first contract year then the time within which it may take such stipulated quantities shall be correspondingly extended, but without change in the date of the contract years or change in its obligations as to the takings for the second and third contract years.

CLAUSE XIV. PAYMENT.—Payment shall be made to the seller at the office of the Mexican Petroleum Corporation in New York City and in New York funds not later than the twentieth day of each calendar month for all petroleum fuel delivered or which, in pursuance of the terms of this contract, ought but for any default by the buyer to have been received by the buyer during the preceding calendar month.

CLAUSE XIX provides for termination of the agreement in case of default.

CLAUSE XXIII. INTERPRETATION.—This contract shall be deemed to be made and to be performed under and shall be construed in accordance with the laws of the State of New York, U.S.A., even though it may be signed by either or both parties in another state or country.

It is recognised by both parties that this document contains the entire contract between them and that no oral or other written terms, promises, representations or warranties exist which in any way affect the validity or intent thereof.

A copy, marked " B ", of the agreement is annexed hereto and forms part of this Case(1).

5. By letters dated 4th September, 1919, from the Huasteca Company to Weir & Co., 4th September, 1919, from Weir & Co. to the Huasteca Company, and 8th September, 1919, from the Appellant Company to Weir & Co., it was agreed that Weir & Co. in the first year should apply and in subsequent years should be afforded the opportunity to supply one-half of the tonnage referred to in clause VIII of the said agreement of the 1st August, 1919, on the terms mentioned in the said agreement.

6. Subsequently, certain fresh arrangements were made between the two Companies and these were recorded in a letter of the 4th December, 1920, the material portions of which are as follows :—

" CONTRACT YEAR. We acknowledge your letter of " November 9th, and agree that the Huasteca British Mex. " contract shall be deemed amended so that the first contract " year shall correspond with the calendar year 1920 and that " succeeding contract years shall likewise correspond with " calendar years.

" CHARTERS. This Company is to enter into time charter " parties in the usual form with your company for four tankers " of an aggregate total of upwards of 35,000 tons at $8.00 per " deadweight ton per month. In order to fix definitely the " time when the $8.00 rate will commence, we wish to refer to " the provision of the Huasteca British Mex. contract, by " which this Company contracted to transport your quota for " the first contract year.

" As you are aware, we arranged with Messrs. Andrew " Weir and Company to assume half of that obligation. The " transportation of your 1920 quota of 2,500,000 barrels of fuel " oil and 12,600,000 gallons of gasoline to the points designated " by your Company has almost been completed, and a steamer " lay-out has already been substantially agreed upon between " Messrs. Andrew Weir & Company and ourselves as to trans- " portation of the balance. We therefore wish it understood " that as each steamer of ours now engaged in transporting your

(1) Not included in the present print.

" 1920 quota completes its final voyage in that service, the new " chartering arrangement at the $8.00 rate for such steamer, or " a similar one, shall at once come into effect and that charter " parties shall thereafter be promptly executed and delivered.

" FUEL OIL PRICE FOR 1921. The price of your quota of " fuel oil for 1921 under the Huasteca British Mex. contract is " to be $1.55 United States currency per barrel f.o.b. Tampico, " plus one-half the amount of any taxes or charges as defined in " article 13 of that contract, now existing or hereafter imposed, " the equal sharing of all such taxes (exclusive of bar dues) to " be in lieu of the arrangement regarding taxes specified in said " article 13.

" We suggest that, in order to avoid confusion, it be under- " stood that the taxes to be equally shared between the " Companies in respect of any particular shipment shall be " those taxes existing when such shipment is made from " Tampico, except that where deliveries are made from storage " of this Company or affiliated companies at its shore stations " in the United States, the taxes shall be shared on the basis " existing thirty days prior to date of such delivery."

A copy marked " C " of this letter is annexed hereto and forms part of this Case(1).

7. The business of the Appellant Company prospered until some time during the first half of 1921, its profits for the eleven months ending 30th June, 1920, being £99,021, and its profits for the year ending 30th June, 1921, being £141,425, so that its balance sheet at the latter date showed a credit balance in the profit and loss account of £240,447. About June, 1921, however, the Appellant Company became seriously affected by the great slump in the petroleum business.

At the 30th June, 1921, the amount owing by the Appellant Company to sundry creditors was £1,443,638, of which £1,073,281 was due to the Huasteca Company for oil supplied, freights, etc.

By the 30th September, 1921, the amount owing by the Appellant Company to the Huasteca Company had increased to £1,270,232. Moreover, the Appellant Company had entered into a contract with Harland & Wolff, Ltd., for the construction of ten tank steamers, and there was a large sum owing to Harland & Wolff, Ltd., under this contract.

In addition, there was a substantial amount owing to Weir & Co. for charter hire.

8. The before-mentioned sums of £1,073,281 and £1,270,232 due and owing by the Appellant Company to the Huasteca Co. at 30th June, 1921, and 30th September, 1921, respectively, were the agreed and admitted liability of the Appellant Company to the Huasteca Company at these dates, and the amount of that liability was never disputed by the Appellant Company.

(1) Not included in the present print.

9. It was realised by August, 1921, by all the parties concerned, that steps would have to be taken to assist the Appellant Company in its difficulties, either by a partial remission of the amounts due or in some other way.

The course that was adopted was a partial remission by all the parties concerned of their claims against the Appellant Company and this remission was carried out by an agreement dated the 25th November, 1921, of which the material portion was as follows :—

MEMORANDUM OF AGREEMENT entered into this 25th day of November, 1921, BETWEEN THE BRITISH MEXICAN PETROLEUM COMPANY, LIMITED, a corporation registered under the Companies Acts of the United Kingdom of Great Britain and Ireland hereinafter called the " Petroleum Company " party of the first part HARLAND & WOLFF, LIMITED, a corporation registered under the Companies Acts of the United Kingdom of Great Britain and Ireland hereinafter called the " shipbuilders " party of the second part The Honourable A. Morton Weir, W. Weir, J. B. R. Morton, W. R. Brown, D. Weir, J. R. Brown, A. L. Weir, and J. Niven, carrying on business under the firm name and style of ANDREW WEIR & Co., hereinafter called " Weir & Co.," party or parties of the third part and HUASTECA PETROLEUM COMPANY a corporation organised and existing under the laws of the State of Maine in the United States of America, hereinafter called the " Huasteca Company," party of the fourth part.

WHEREAS the Petroleum Company heretofore contracted with the shipbuilders on a basis of cost plus a commission for the construction of ten tank steamers of which one steamer has already been delivered by the shipbuilders and two of the remaining steamships are now under construction by John Brown and Company of Atlas Works, Savile Street, East Sheffield, and William Denny Sons & Company of Dumbarton, Scotland, pursuant to sub-contracts made with the two concerns last abovenamed, respectively, by the shipbuilders; and

WHEREAS the total number of tank steamers delivered and to be delivered by the shipbuilders, including the two sub-contracted for as aforesaid, will be seven in number; and

WHEREAS on the basis of the above recited contracts there is now due from the Petroleum Company to the shipbuilders on account of the construction of the said seven steamers, the sum of upwards of £800,000; and

WHEREAS the Petroleum Company did heretofore contract with Weir & Co. for the chartering of four certain tank steamships for a period ending 31st December, 1925, at eight dollars ($8.00) U.S. currency per deadweight ton per month; and

WHEREAS the Petroleum Company entered into a contract substantially identical in terms for the chartering of four other tank steamers for the Huasteca Company; and

WHEREAS the Petroleum Company heretofore contracted with the Huasteca Company for the purchase during 1921 of five million (5,000,000) barrels of fuel petroleum at one dollar and fifty-five cents ($1.55) U.S. currency per barrel f.o.b. Tampico, Mexico, plus one-half Mexican taxes and also contracted for approximately thirty-six million (36,000,000) gallons of gasoline at twenty-four cents (24c) per gallon U.S. currency f.o.b. Destreham, Louisiana, U.S.A.; and

WHEREAS on the basis of the above recited contracts on 1st October, 1921, there was due from the Petroleum Company to the Huasteca Company for fuel oil and gasoline already delivered and for charter hire, upwards of five million dollars ($5,119,000) and on said date and basis there was due to Weir & Co. for charter hire upwards of £379,992; and

WHEREAS the Petroleum Company has proved to the satisfaction of the other parties hereto that in view of the world-wide business and economic disturbances of the past year it cannot continue to perform its obligations under the aforesaid shipbuilding contract chartering contracts or fuel oil and gasoline contracts according to their terms; and that the realisable value of its assets is not sufficient to meet the claim which such parties would be in a position to establish against the Petroleum Company by reason of its failure to carry out such contracts; and

WHEREAS the payments to be made by the Petroleum Company under the said contracts are based upon rates which (though approximating to the market rates current at the time when such contracts were entered into) are largely in excess of the rates now current for similar services and supplies; and

WHEREAS the Petroleum Company has represented to the other parties hereto that if its present obligations to them are satisfied and discharged in manner hereinafter appearing and replaced by the new obligations hereinafter set forth it will be in a position to carry on its business and to perform such new obligations in due course; and

WHEREAS it is to the interest of the said parties that the Petroleum Company should be in a position to carry on its business

NOW THEREFORE the shipbuilders, Weir & Co., and the Huasteca Company do each severally agree with the Petroleum Company and with each other and the Petroleum

Company does hereby agree with each of them respectively as hereinafter stated, the respective agreements of said parties with the Petroleum Company being for a good and valuable consideration, and in consideration of the agreements herein set forth of each of the other parties with the Petroleum Company :

FIRST : The shipbuilders hereby agree with the Petroleum Company that the total number of ships to be constructed by them shall be reduced to seven.

SECOND : Weir & Co. hereby agree with the Petroleum Company that the existing agreement between the parties for the charter of vessels at eight dollars ($8.00) per deadweight ton as above recited shall be cancelled and that the Petroleum Company shall be released and forever discharged from all further payments on account of charter hire pursuant to the above contracts or on account of damages for the breach thereof when and so soon as the Petroleum Company shall enter into and become bound by a proper chartering agreement whereby Weir & Co. will charter to the Petroleum Company the undermentioned four tank steamers from the date set against the name of each steamer to the 31st December, 1925, at the rate per deadweight ton per month of $3.00 up to the 30th June, 1921, and $2.50 from the 1st July, 1921, to the 31st December, 1921, and from the 1st January, 1922, to the 31st December, 1925, at the market rate currently charged month by month for tank steamers of like tonnage which shall be fixed by agreement between Weir & Co. Huasteca Co. and the Petroleum Co. The terms of charter shall except as to the above rate be the same as those in force under the contract hereby agreed to be cancelled.

The tank steamers and the dates above referred to are :

Oyleric	...	...	13th February, 1921.
Gymeric	...	...	1st January, 1921.
Wyneric	...	...	29th January, 1921.
Caloric	...	...	19th January, 1921.

THIRD : Huasteca Company hereby agrees with the Petroleum Company that upon payment by the Petroleum Company to it of the sum of £325,000 being the equivalent at $4.00 to £1 sterling of $1,300,000 on or before the 25th day of November, 1921, it will consent to the cancellation of its contract with the Petroleum Company for the chartering of vessels at $8.00 per deadweight ton as above recited and to the cancellation of its contract with the Petroleum Company for the purchase in 1921 of five million (5,000,000) barrels of fuel petroleum and of approximately thirty-six million (36,000,000) gallons of gasoline and further agrees that upon payment of that amount prior to the said date the Petroleum Company shall be remised released and forever discharged from all further payments on

account of charter hire or on account of the purchase price of fuel petroleum and/or gasoline pursuant to either of the above contracts or on account of damages for the breach of either or both of said contracts.

The Petroleum Company agrees to make payment of the aforesaid amount on or before said date and both parties agree that contemporaneously with the making of said payment they will enter into chartering arrangements whereby the Huasteca Company will charter to the Petroleum Company four tank steamers of approximately equal tonnage to those chartered from Weir & Co. and at the same rates and upon the said terms in all respects as nearly as circumstances will admit.

It is further agreed that in case such payment is duly and promptly made, the Petroleum Company may purchase from the Huasteca Company during the balance of the calendar year 1921 fuel petroleum in monthly amounts comparable with its purchases hitherto in 1921 at the rate of $1.00 per barrel f.o.b. Tampico.

The Huasteca Company further agrees that upon payment to it by the Petroleum Company of the aforesaid sum of £325,000 on or before the said twenty-fifth day of November, 1921, the existing contract between the parties for the purchase and sale of fuel petroleum and gasoline during the calendar year 1921 as above recited shall be cancelled and upon payment of that amount prior to said date Huasteca Company agrees that the Petroleum Company shall be relieved from the further performance thereof and shall be remised released and forever discharged from all further payments on account of fuel oil and/or gasoline heretofore delivered and on account of damages for failure of the Petroleum Company fully to perform the said contract according to its terms.

FOURTH : In order that all adjustments hereunder may be made as of a fixed definite and convenient date it is agreed that this agreement shall speak of 1st October, 1921, and shall be construed as though it had been actually executed and delivered on that date to the end that all revised arrangements for the price of ship charters and petroleum shall be considered as effective on that date and that all releases shall be deemed to refer to the claims or demands as they existed on said date.

FIFTH : The Petroleum Company shall so far as lies in its power secure that the sums heretofore due by it to the other parties hereto and hereby waived and remitted by the said parties shall be applied by it in reducing the amount shown in its books in respect of vessels to a figure more nearly representing the present market value thereof.

A copy, marked " D ", of this agreement is annexed hereto and forms part of this Case(1).

(1) Not included in the present print.

The sum of £325,000 was duly paid by the Appellant Company to the Huasteca Company in November, 1921.

10. The effect of this agreement was that the Appellant Company was released from the debt owing for charter hire to Weir & Co. to the amount of £466,153, and was released from the debt owing to the Huasteca Company to the extent of £945,000 odd (the difference between the debt of £1,270,232 owing on the 1st October, 1921, and the sum of £325,000 payable under the agreement of the 25th November, 1921).

The debt of £466,153 released by Weir & Co. was brought into account in the profit and loss account of the Appellant Company as follows :—

Year ended 30th June, 1921	£249,705
18 months ended 31st December, 1922...	216,448
	£466,153

The debt of £945,232 released by the Huasteca Co. was carried direct to the balance sheet, and is shown as a separate item " Reserve £945,232 7*s*. 2*d*." in the balance sheet as at the 31st December, 1922.

No explanation could be given to us as to the reason for the different treatment in the accounts of the Appellant Company of the amounts remitted by Weir & Co. and the Huasteca Co.

A copy, marked " E ", of the balance sheets of the Appellant Company as at the 30th June, 1920, the 30th June, 1921, and the 30th December, 1922, is annexed hereto and forms part of this Case[1].

11. It was contended on behalf of the Appellant Company :

(1) That the release by the Huasteca Company of the sum of £945,232 owing to it was not a profit or gain of the Appellant Company or of the character of a receipt arising in the course of its trade.

(2) That the said release was of the nature of a gift and explicable by reference to the interest of the Huasteca Company in the capital of the Appellant Company.

(3) That the Appellant Company was entitled in arriving at its profits for any accounting period to set against the receipts from its sales its indebtedness for the cost of the goods purchased.

(4) That the said sum of £945,232 ought not in whole or in part to be brought into account in any way for the purpose of computing the profits of the Appellant Company either for the year to the 30th June, 1921, or for the eighteen months to the 31st December, 1922.

[1] Not included in the present print.

12. It was contended on behalf of the Crown :

(1) That the remission of the sum of £945,000 was a trading transaction and must be brought into account in computing the profits of the Appellant Company.

(2) That this sum should be brought into the profit and loss account of the Appellant Company for the eighteen months to the 31st December, 1922, or, alternatively, that it should be brought into the account for the year to the 30th June, 1921, that account being re-opened for the purpose.

13. We held that the release of the sum of £945,232 was not a gift by the Huasteca Co. to the Appellant Company but was a trading transaction in the course of the Appellant Company's business, not dissimilar except in its magnitude to the numerous other transactions by which at that period traders had been relieved from their liabilities.

We further held that the amount should be brought into the profit and loss account of the Company for the eighteen months to the 31st December, 1922.

14. The representative of the Appellant Company, immediately after the determination of the appeal, declared to us his 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 Finance Act, 1920, Section 56, and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

15. The question for the opinion of the Court is whether the debt of £945,232 released by the Huasteca Company should be brought into the profit and loss account of the Appellant Company in the computation of its profits for the purpose of taxation.

J. JACOB,
MARK STURGIS, } Commissioners for the Special Purposes of the Income Tax Acts.

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

24th September, 1930.

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(2) *The British Mexican Petroleum Company, Limited* v. *The Commissioners of Inland Revenue.*

This Case related to assessments to Corporation Profits Tax for the three accounting periods ending the 30th June, 1920, the 30th June, 1921, and the 31st December, 1922, the material point being the same as in the Income Tax Case. The Case was stated in similar terms, *mutatis mutandis.*

The cases came before Rowlatt, *J.*, in the King's Bench Division on the 4th and 5th March, 1931, and on the latter date judgment was given against the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. J. S. Scrimgeour appeared as Counsel for the Company and the Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—I need not trouble you, Mr. Latter. I do not think this is a difficult case; I say it with a certain amount of diffidence, because I cannot agree with the decision of the Commissioners.

The story is a very short one. The Appellant Company had entered into a contract with an oil producing company in America by which they bound themselves to buy from that company f.o.b. in America a certain amount of oil over a certain period at certain prices. I am putting it shortly. That meant that this Company undertook the business of buying and paying for oil and selling it over here at a profit, and it also undertook the obligation of finding ships to receive it f.o.b. and carry it. That arrangement was made in the time of high prices immediately following the War. All went well until a year which I will call the year 1921, and the subsequent year, 1922—the periods are not exact, but I will call the first of the two years we have to deal with 1921, and the next year 1922.

In the year 1921 this Company, as a result of the year, found itself enormously in debt for oil supplied by the American oil company—the company with the long Mexican name. It also was indebted to a firm of Weir and Company, whose ships it was to charter, and also to a shipbuilding company who were building ships for it. In that year, therefore, their accounts showed this enormous debt due to the American oil company. Now that debt was unquestioned. It simply was a matter of arithmetic on the books, they had had the oil, so far as I understand it, and it was perfectly unquestioned. There is not a suggestion about it. There is no finding and no suggestion that the amount was inflated or bogus and did not represent the true business and was a book-keeping method to diminish their revenue or anything of that kind. That is not suggested. It was actual money which they actually owed. There is no question about it; nor was there any suggestion that there was any sort of germ of a dispute about it in point of liability—none. Up to this moment there has emerged no sort of ground, no sort of colourable ground, upon which anybody could have said this money was not absolutely due and owing; nor has any fact emerged since, up to the moment at which I am speaking, upon which it could have been said " You

(Rowlatt, J.)

" have overcharged for these goods " or that there was anything the matter with these goods. What has emerged, and what does emerge quite clearly, is that undoubtedly a very bad bargain had been made, that too much had been charged, and in that sense a very bad bargain had been made; the goods had been contracted to be bought at too high a price. But that is all there is in it. That is what happened at the end of the year; there was that debit against the revenue of the Company of this big debt.

The next year comes and then the American Company and the shipbuilding company and the ship-owning company could have taken several courses. They could have wound up this Company, the Appellant Company, and then this question would never have arisen; certainly no profit would have been made in the winding-up. In the winding-up this debt would disappear, and it could not possibly have been argued: We can throw you back on the previous year's account and say: "You have charged in this account " a debt which you have escaped paying by winding up, and, " therefore, it was not a debt at all, and, therefore, you showed a " profit on last year's trading and you must pay Income Tax on " that." That could not have been said for a moment. Or they might have done another thing. They might have shrugged their shoulders and said: " We will still let you have the goods " and gone on and left this amount outstanding without saying anything about it, and left the Appellant Company to arrange with their auditors as to the proper way in which it should appear in their accounts. They could have done that and then this question would not have arisen. But the course they took was a different one. All these companies are very closely connected—at any rate, two of them are, the oil company and the ship-owning company; the oil company and the ship-owning company are very closely connected with this Company in that they own all the shares, or something of that sort. What they said was: " We will release " this debt or a very large part of it—we will absolutely release it " and write it off and you can go on trading on that footing." They could have wound up the Company and reconstructed it; but they did not do that. They simply carried on releasing the debt. That is what they have done. Under those circumstances the Commissioners have held what Mr. Hills himself finds it difficult to support—on broad business lines it cannot be supported; I do not understand it myself in the least—that in the year of release, when the business entered into a new lease of life and a new bargain was struck, the amount released must be brought into the revenue account. Apparently they did it in the case of the ship-owners and no question has arisen upon that; it was only an *argumentum ad hominem*. They resisted it in the other case, and I have to decide whether or not that is right. I literally cannot understand why they should be entitled to do that. What is

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chargeable to Income Tax under either the First or Second Case of Schedule D, I forget which it is—the trading case—is the profit which is made by comparing the amount which you receive from selling goods or rendering services, or whatever it is, with the amount which you pay out in putting yourself in a position to do that by buying goods and equipping yourself, finding the expenses for rendering the services or whatever it is—with the necessary adjustments in the account to allow for the stock which is carried over from year to year in the way Mr. Hills drew my attention to—that is what it is, the difference which you enjoy between what you receive and what you have to pay out in the year's trading. How on earth the forgiveness in that year of a past indebtedness can add to those profits I cannot understand. It is not a matter depending upon the form in which the accounts are kept. It is a matter of substance, looking at the thing as it happened, as a man who knows nothing of scientific accountancy might look at it—it is the receipts against payments in trading.

I am bound to say I adhere to what I said in *Bernhard v. Gahan*(1). It was not the point in that case, but I said it as a self-obvious proposition and I still think it is a self-obvious proposition, and there is no way of justifying the decision of the Commissioners.

There is another way of putting it, and they are entitled to put it here as the Crown argued it before the Commissioners. They put it in this way. They say: "You ought to re-open accounts "of the past year and cancel this debt of the year 1921 to the "extent of the amount that the debt has been released because it "was not an effective debt." Now I think I am quite clearly precluded by authority from agreeing to that, the authority—not of my own judgment—but of the judges in the Court of Appeal in *Bernhard* v. *Gahan*. In that case there was a debt to the bank which all the judges said was a debt which was subsequently reduced by reason of circumstances which were implicit in the transaction at the time, to put it at its lowest. The goods were sold and then it was discovered that there was something curious about the way in which the bank had not protested the bills or had dealt with the bills, and, therefore, it could be said that that amount could be attacked with some claim of merits and a compromise was arrived at. There is absolutely nothing of that kind in this case. In this case the debt was absolutely fixed at the time and has not been diminished by any sort of consideration owing to the validity or the disputability of the debt or anything of that kind. It has been diminished purely, for this purpose I must regard it, as an act of grace although business motives were behind it. But it has simply been forgiven and nothing else—for

(1) 13 T.C. 723.

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no reason and for no point connected with the transaction or the debt itself. It is purely for collateral business reasons that they do not want this Company to founder under the debts of past years. That is what that is. It seems to me that all the learned judges in *Bernhard's* case decided that case precisely, but the facts which I find in this case did not exist in that case, namely, a settled fixed debt which was not afterwards displaced.

Now in *Lambert's* case(1) a fact was found out afterwards which displaced the fact upon which the accounts had been made up before. There was more coal on the wharf than there had been thought to be, or there was more money in the till than there had been thought to be at the time. Therefore, they went back and said: "We find that the coal you have on hand was wrongly "estimated at the time. It was simply a mistake." It comes to that. In *Ford's* case(2) I am not certain that I did not say one or two things, which were not necessary to my decision, which did not go a little too far. In *Ford's* case there was an argument—it is not the ground of my decision—and it may have been a sound legal argument but it was a telling argument against the maintenance of the claim itself at the time. It was not a question of a gratuitous—that is what it comes to—*post facto* release of the debt as this is.

Therefore my conclusion is—and I am bound to say it is one I come to without much hesitation—that this appeal must be allowed and both ways of putting it on behalf of the Crown fail. The appeals must be allowed with costs in both cases.

Mr. Latter.—Would your Lordship make an Order for repayment of tax with interest, as in the last case?

Rowlatt, J.—Yes.

The Crown having appealed against the decision in the King's Bench Division, the cases came before the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Romer, *L.JJ.*) on the 8th May, 1931, when judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., and Mr. J. S. Scrimgeour for the Company.

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(1) Lambert Bros., Ltd. *v.* Commissioners of Inland Revenue, 12 T.C. 1053.
(2) H. Ford & Co., Ltd *v.* Commissioners of Inland Revenue, 12 T.C. 997.

JUDGMENT.

Lord Hanworth, M.R.—We need not trouble you, Mr. Latter. This case, and our decision in it, I think can be put quite shortly. This Huasteca Company and the Mexican Company were dealing in close connection. The learned Judge points out they(1) "are "very closely connected—at any rate, two of them are, the oil "company and the ship-owning company; the oil company and "the ship-owning company are very closely connected with this "Company, in that they own all the shares, or something of that "sort." We have not gone into that, but there is a close connection. The position of the Mexican Company was this. They owed a very large amount to the Huasteca Company and they could not pay it, and they also owed a very large sum in respect of the ships which they had ordered and which were building and for which there were liabilities in what I may call the shipping department, also to a very large sum. The position really of the Mexican Company was that they could not get on. As Mr. Justice Rowlatt puts it, in order to give them another chance and to give them an opportunity of entering into a new lease of life, a new bargain was struck. The bargain was this. In terms the Mexican Company were released of two sums, the total of which amounted to £945,232, but the terms on which this release was granted by the Huasteca Company were explicit. As Mr. Justice Rowlatt says, it was under a new bargain. Paragraph 5 of the agreement says this: "The Petroleum Company shall so far as lies in its "power secure that the sums heretofore due by it to the other "parties hereto and hereby waived and remitted by the said "parties shall be applied by it in reducing the amount shown in its "books in respect of vessels to a figure more nearly representing "the present market value thereof." To our minds, that is to be treated, as you may call it, as a trading matter, but it excludes the possibility of it being a return of the money laid out or expended or contracted to be laid out in previous years in the purchase of oil. It was quite unlike the *Milk Dairy* case(2), where, if you like, gratuitously, a sum was repaid to the till of the dairy company which ought never to have been taken out; or the *Newcastle Brewery* case(3) where there was a payment for the rum which had been taken in a particular year on terms, made in that particular year, that a sum as and when ascertained should be paid for that rum sold in that particular year. This case is quite different. There was this definite condition attached to the terms on which this new lease of life was given or this new bargain was struck, and that was that it was to be applied by the Company receiving an advantage in reducing the amount shown in its books in respect of the vessels. The basis of the Crown's claim

(1) See p. 584 *ante*.
(2) English Dairies, Ltd. *v.* Phillips, 11 T.C. 597.
(3) The Commissioners of Inland Revenue *v.* Newcastle Breweries, Ltd., 12 T.C. 927.

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is, first of all, that it is a trading transaction. Be it so. But they say it ought to be brought into the account—that is the profit and loss account for the year ending 30th June, 1921—and because it has not been so brought into the account, it ought to be deemed to have been brought into that account, with the consequent result that there would have attached to it a liability for Income Tax.

Once one has stated the facts, one turns to see whether or not there could be any ground for the finding as reached by the Commissioners in paragraph 13. " We held that the release of " the sum of £945,232 was not a gift by the Huasteca Co. to the " Appellant Company, but was a trading transaction . . . . "—be it so—" not dissimilar except in its magnitude to the numerous " other transactions by which at that period traders had been " relieved from their liabilities." Let us take that to mean that it was a sum given or a trading matter in which some generosity was shown to the Company. But then they go on to say : " We " further held that the amount should be brought into the profit " and loss account of the Company for the eighteen months to the " 31st December, 1922." The Commissioners seem in that case entirely to have overlooked the fifth clause of the agreement under which this money was paid, and to have failed to observe that it had a distinct purpose, a purpose, namely, to give the Company relief by in effect giving them new capital. In those circumstances it seems to me that the Commissioners were wrong in law and there were no materials on which they could reach the decision that they did. If in so far as this view differs from Mr. Justice Rowlatt's decision, it is based upon a matter which leaps to the eye when one looks at the terms of the Case. With regard to the decisions which have been cited to us by Mr. Hills, they really all follow a line originating in the *Newcastle Brewery* case, followed out in a number of other cases, but those cases do not cover a case in which there has been such an arrangement as this made and this release given, not by way of return of something which had been taken out from the Company in a previous accounting period, but which was, by a new bargain made, to afford new capital and was under the terms of that bargain to be placed to the relief of the depreciation account and not otherwise. It cannot be brought into the profit and loss account of either 1921 or 1922. For these reasons, the appeal must be dismissed with costs.

Lawrence, L.J.—I agree, and have nothing to add.

Romer, L.J.—I agree.

Mr. Scrimgeour.—My Lord, in the next case I think my friend will agree that the same result follows.

Mr. Hills.—Yes, the same result follows.

Lawrence, L.J.—It is governed.

The Crown having appealed against the decision in the Court of Appeal, the cases came before the House of Lords (Viscount Dunedin, Lords Warrington of Clyffe, Macmillan, Thankerton and Atkin) on the 4th March, 1932, when judgment was reserved. On the 19th April, 1932, judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir T. W. Inskip, K.C.), the Solicitor-General (Sir Boyd Merriman, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., and Mr. J. S. Scrimgeour for the Company.

JUDGMENT.

Lord Warrington of Clyffe.—My Lords, I have had the advantage of reading the opinions about to be expressed and I concur in them.

Lord Thankerton.—My Lords, the Respondents were incorporated in 1919 for the purpose of entering into an agreement with the Huasteca Petroleum Company, an American company in possession of large sources of oil in Mexico, and for the purpose of buying, selling, refining and dealing in oil and carrying on the business of shippers of oil. The whole voting power of the Respondents was in the hands of Messrs. Andrew Weir and Company and the Huasteca Company, who each held one-half of the "B" shares in the Respondent Company.

Shortly thereafter, the agreement with the Huasteca Company was concluded, and its provisions, so far as material, are set out in the Stated Case. It provided for purchase by the Respondents, from the Huasteca Company, of certain quantities of fuel petroleum at certain prices and subject to certain conditions over a period of twenty years and for the provision of tonnage for transport by the Huasteca Company for the deliveries of the first contract year. By subsequent agreements, Andrew Weir and Company became interested in the provision of tonnage.

The Respondents' business was prosperous at first, but about June, 1921, it became seriously affected by the great slump in the petroleum business, their profits for the eleven months ending 30th June, 1920, being £99,021 and for the year ending 30th June, 1921, being £141,425.

At 30th June, 1921, the amount owing by the Respondents to sundry creditors was £1,443,638, of which £1,073,281 was due to the Huasteca Company for oil supplied, freights, etc. By 30th September, 1921, the amount owing by the Respondents to the Huasteca Company had increased to £1,270,232 and, further, they had entered into a contract with Harland and Wolff, Limited, for the construction of ten tank steamers and there was a large sum owing to that company under this contract.

(Lord Thankerton.)

It is found by the Special Commissioners that these sums of £1,073,281 and £1,270,232 due to the Huasteca Company at 30th June, 1921, and 30th September, 1921, respectively, were the agreed and admitted liability of the Respondents to the Huasteca Company and that the amount of that liability was never disputed by the Respondents.

It being realised by all the parties concerned that steps would have to be taken to assist the Respondents in their difficulties, an agreement dated 25th November, 1921, was entered into between the Respondents, Harland and Wolff, Limited, Andrew Weir and Company and the Huasteca Company, which is fully set out in the Stated Case. Under this agreement, it was provided that the number of tankers to be constructed by Harland and Wolff was to be reduced to seven; the existing contractual arrangements between the Respondents and Andrew Weir and Company and as between the Respondents and the Huasteca Company were modified as from 1st October, 1921, mainly as regarded freights and prices, and provision was made for the release of the Respondents from some of their indebtedness to these parties as it stood at 1st October, 1921.

The effect of this agreement was that the Respondents were released from the debt owing for charter hire to Andrew Weir and Company to the amount of £466,153, and were released from the debt owing to the Huasteca Company to the extent of £945,232, on payment to that company of the sum of £325,000—which was duly paid.

The debt of £466,153 released by Andrew Weir and Company was brought into account in the profit and loss account of the Respondents as follows:—

	£
Year ended 30th June, 1921	249,705
18 months ended 31st December, 1922 ...	216,448
	£466,153

The debt of £945,232 released by the Huasteca Company was carried direct to the balance sheet and is entered as a separate item "Reserve, £945,232 7*s*. 2*d*." in the balance sheet as at 31st December, 1922.

The question in this appeal is whether this sum of £945,232 falls to be brought into account for the purpose of computing the profits and gains of the Respondents under Schedule D of the Income Tax Act, 1918, either by reducing by that amount the debit item in the trading account to 30th June, 1921, or by crediting it as a trading receipt in the trading account to 31st December, 1922.

(Lord Thankerton.)

The Special Commissioners held that the release of the sum of £945,232 was a trading transaction in the course of the Respondents' business and should be brought into the profit and loss account for the eighteen months to 31st December, 1922. The Respondents appealed to the King's Bench Division (Mr. Justice Rowlatt) which reversed the decision of the Commissioners and, on appeal by the Crown, the Court of Appeal affirmed the order of the King's Bench Division. The Crown now appeals from the order of the Court of Appeal.

The main argument for the Appellant was that the amount of £1,073,281 owing to the Huasteca Company had been treated as an expense of the trade deductible from gross receipts in the trading account to 30th June, 1921, but that, to the extent to which it was subsequently released, it was in fact never expended; that the original price for the goods having been reduced by agreement, the price actually paid and not the original price was the amount of the deduction allowable for Income Tax purposes; and that the account to 30th June, 1921, should be opened up and the deduction should be brought into conformity with the amount actually paid. Alternatively, he maintained that the amount of the sum released ought to be brought into the profit and loss account as a credit item in the period in which the release was granted.

The Appellant cited a series of cases in support of his main argument, but, in my opinion, these cases are all distinguishable from the present case, in which the Appellant seeks to reopen an earlier account in order to alter the amount at which a liability was stated, although, as found by the Commissioners, that amount was the agreed and admitted liability of the Respondents to Huasteca Company, and the amount of that liability was never disputed by the Respondents.

The cases of *Newcastle Breweries, Limited*, 12 T.C. 927, and *Lambert Brothers, Limited*, 12 T.C. 1053, were both cases of profits omitted from the earlier accounts and which the traders were held bound to bring into account in the period in which they were earned for the purposes of Excess Profits Duty. The former case related to a quantity of rum requisitioned by the Government, and the sum awarded by the War Compensation Court was held to be the purchase price of part of the traders' stock-in-trade. In the latter case, the traders' agreed share of the proceeds of the surplus coal was held to be proceeds of realisation of the stock-in-trade of the coal pool.

The remaining four cases related to the final adjustment of the amount at which receipts or liabilities had been entered in the earlier trading account, when the amount had not been finally

(Lord Thankerton.)

ascertained or admitted between the trader and his debtor or creditor. In *Isaac Holden and Sons, Limited*, 12 T.C. 768, the amount of the payment for woolcombing, originally entered for Excess Profits Duty purposes, was only a provisional settlement with the Government, the final settlement not being made until a year later. The case of *English Dairies, Limited*, 11 T.C. 597, related to Income Tax, Corporation Profits Tax and Excess Profits Duty; the sum in dispute was a repayment of a sum paid three years earlier in respect of a licence to purchase milk, which was found by subsequent decision of this House to have been illegally imposed by the Food Controller. The money therefore had never really ceased to belong to the trader. The sum in dispute in *H. Ford and Company, Limited*, 12 T.C. 997, an Excess Profits Duty case, was the amount of a liability in respect of demurrage, originally entered at the full amount of the claim as made against the trader. The claim was eventually abandoned; the trader had always contested the claim and it was held to have been entered in the original trading account as a contingent liability and not as an ascertained one. Lastly, in *Bernhard* v. *Gahan*, 13 T.C. 723, which related to Income Tax and Excess Profits Duty, the sum in dispute was the amount of a trader's liability to the bank through which he financed his trade in the East. In his accounts for the year to 31st March, 1921, the trader was allowed to deduct, as the estimated loss on Eastern goods sold, a sum which included the full amount of the bank's claim of £22,410. At the end of 1922, the bank accepted £8,000 in full settlement of their claim. It is clear from the judgments of the Court of Appeal that the ground on which they allowed the account to be reopened was one of fact, and they held that the facts found by the Commissioners established that the amount entered in the account was only provisional or estimated.

My Lords, I am of opinion in the present case, that the account to 30th June, 1921, cannot be reopened, as the amount of the liability there stated was correctly stated as the finally agreed amount of the liability and the subsequent release of the Respondents proceeds on the footing of the correctness of that statement.

The Appellant's alternative contention, which was not seriously pressed by the Attorney-General, is equally unsound, in my opinion. I am unable to see how the release from a liability, which liability has been finally dealt with in the preceding account, can form a trading receipt in the account for the year in which it is granted.

Accordingly, I agree with the unanimous decision of the Courts below, who disagreed with the decision of the Special Commissioners, and the appeal should be dismissed.

Lord Macmillan.—My Lords, my noble and learned friend Lord Thankerton, who has just preceded me, has so fully set forth the facts with which this appeal is concerned, that it would be superfluous for me to repeat them and, as I also find myself in entire agreement with his discussion of the relevant authorities, I have little to add.

If profit and loss accounts were compiled on the basis of entering only sums actually received and sums actually paid, then the debt of £1,270,232, incurred by the Appellant Company to the Huasteca Petroleum Company, would never have appeared in the accounts of the Appellant Company, for it was never in fact paid. But business men do not so prepare their accounts either for their own purposes or for the purposes of the Inland Revenue, and debts incurred by a trader as well as debts which have become due to him, though in neither case yet paid, are properly taken into account in ascertaining the profits of the year. It is accordingly not questioned that in the accounts of the Appellant Company for the year to 30th June, 1921, the agreed amount of the indebtedness it had by then incurred to the Huasteca Company was properly entered as a debit item. It was not entered as a sum paid, but as a trading debt admittedly incurred. That being so, the circumstance that the creditor subsequently forgave part of the debt and agreed not to exact the full amount of it affords no justification for reopening the account for the year to 30th June, 1921, and substituting for the amount then legally due the lesser amount which the creditor was subsequently content to accept. An account may be reopened where an item has been omitted or some other error has occurred, or an account may be kept open by describing entries in it as provisional, but here it is agreed on all hands that there was no error in the accounts of the Appellant Company for the year to 30th June, 1921, and that they were properly and finally drawn up so as to show the result of the year's trading.

If, then, the accounts for the year to 30th June, 1921, cannot now be gone back upon, still less in my opinion can the Appellant Company be required to enter as a credit item in its accounts for the eighteen months to 31st December, 1922, the sum of £945,232, being the extent to which the Huasteca Company agreed to release the Appellant Company's debt to it. I say so for the short and simple reason that the Appellant Company did not, in those eighteen months, either receive payment of that sum or acquire any right to receive payment of it. I cannot see how the extent to which a debt is forgiven can become a credit item in the trading account for the period within which the concession is made.

I observe that of the Appellant Company's total indebtedness to the Huasteca Company, £196,951 was incurred during the eighteen months covered by the accounts to 31st December, 1922, and that the date on which the Huasteca Company agreed to forgo

(Lord Macmillan.)

£945,232 of the Appellant Company's total indebtedness was 25th November, 1921, also within that period of eighteen months. Now it may be that where during the currency of an accounting period a trading debt is incurred, and the creditor agrees during the currency of the same period to accept less than the full amount of the debt due to him, it is only the balance of the debt as exacted, or agreed to be exacted, which ought to enter, as a debit, the debtor's accounts for the period. As to this I say nothing, for the present case has been argued by the Crown on the footing that the whole sum of £945,232 ought either to be dealt with in a reopened account for the year to 30th June, 1921, or credited in the eighteen months' account to 31st December, 1922, and as, in my opinion, neither of these contentions is admissible, I concur in the motion that the appeal be dismissed.

Lord Thankerton.—My Lords, I should have added that my noble and learned friends Viscount Dunedin and Lord Atkin have asked me to say that they concur in the opinion which I have delivered.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this appeal be dismissed with costs.

The Contents have it.

[Solicitors :—Solicitor of Inland Revenue; Linklaters and Paines.]

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