No. 727.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—24TH, 25TH AND 28TH JANUARY, 1929.

COURT OF APPEAL.—14TH AND 17TH JUNE, 1929.

(1) C. L. DREYFUS *v.* THE COMMISSIONERS OF INLAND REVENUE.[1]
(2) L. L. DREYFUS *v.* THE COMMISSIONERS OF INLAND REVENUE.[1]

Super-tax—Société en nom collectif—Whether a partnership—Income Tax Act, 1918 (8 *&* 9 *Geo. V, c.* 40), *Section* 20 *and Schedule D, Cases* I *and* II, *Rule* 10.

The Appellants in these two cases were, for the years material in the present connection, the only persons interested in the profits of a "Société en nom collectif", a business organisation under French law in many respects similar to a partnership. The Société was directed and controlled in France but carried on business in various countries including the United Kingdom. It was assessed to Income Tax in respect of the profits of the trade carried on in the United Kingdom.

Super-tax assessments were made upon each of the Appellants upon the footing that they were in the position of partners in a partnership, the amounts of the assessments being arrived at by dividing the amounts of the Income Tax assessments in the same proportion as, it was understood, the total distributed profits of the Société were divisible between the Appellants.

The Appellants' main contentions were that the trade exercised in the United Kingdom from which the profits assessed arose was the trade of the Société, that the Société was an entity distinct from themselves, that they were not partners in a partnership exercising a trade in the United Kingdom and that no profits arose to themselves individually in the United Kingdom, and that there was therefore no liability to Super-tax.

Held, *that the Société was a legal person distinct from the individuals composing it and that the profits in question were not the profits of a partnership within the meaning of Section* 20 *of the Income Tax Act*, 1918.

(1) Not reported.

THE COMMISSIONERS OF INLAND REVENUE.

CASES.

(1) *C. L. Dreyfus* v. *The Commissioners of Inland Revenue.*

CASE

Stated under the Income Tax Act, 1918, Sections 7 (6) and 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 9th November, 1927, for the purpose of hearing appeals, Charles Louis Dreyfus (hereinafter called the Appellant) appealed against assessments to Super-tax in the sum of £16,412 for the year ending the 5th April, 1925, and in the sum of £9,309 for the year ending the 5th April, 1927, made upon him under the provisions of the Income Tax Acts.

2. The assessments under appeal were computed by taking forty-nine per cent. of the Schedule D assessments for the respective preceding years made upon Louis Dreyfus et Compagnie in respect of the profits of the trade carried on by them as grain merchants in the City of London. The assessments under appeal were made on the assumption that Louis Dreyfus et Compagnie was a partnership firm of which the Appellant was a partner entitled to forty-nine per cent. of the profits of the partnership. The Appellant has no other income liable to British Income Tax. No question arises as to figures.

3. The only other person who has an interest in the profits of Louis Dreyfus et Compagnie is Louis Louis Dreyfus, the Appellant's brother, their interests being 49 per cent. and 51 per cent. respectively. Both the Appellant and his brother reside in Paris, where the head office of Louis Dreyfus et Compagnie is situated, and neither of them resides in this country.

4. Louis Dreyfus et Compagnie was founded in 1883 as a " Société commerciale en commandite ", Leopold Louis Dreyfus being the " seul gérant ", and the only other member E. Hirtz being " simple commanditaire ". In 1904 Leopold Louis Dreyfus having acquired a banking business in addition to the grain business formerly carried on, and being desirous that his three sons should be associated with him in the business, arranged that as from the 1st January, 1905, Louis Dreyfus et Compagnie should be a " Société en nom collectif ", consisting of Leopold Louis Dreyfus, the said Louis Louis Dreyfus, the said Charles Louis Dreyfus, and Robert Louis Dreyfus, all of whom were " associés en nom

collectif " and E. Hirtz who remained " simple commanditaire ". In 1905, E. Hirtz assigned his rights to Leopold Louis Dreyfus; in 1907, Robert Louis Dreyfus died; and in 1915, Leopold Louis Dreyfus died.

5. The position at all times material to this appeal is that Louis Dreyfus et Compagnie has been a " Société en nom collectif " of which the Appellant and his brother Louis Louis Dreyfus are the only " associés en nom collectif " and " gérants ". The business of the Société is that of grain merchants and this business is carried on in France, Great Britain, the United States of America, and elsewhere. It is directed and controlled from Paris.

6. A copy of the " Statuts " of the Société dated the 21st December, 1904, and a copy of a translation thereof are attached marked A and B respectively and form part of this case(1). As regards this translation it was agreed between the parties that such words and expressions as " Company ", " Articles of Association ", etc. were to be treated as entirely without prejudice to any question as to the true meaning of the French words and expressions represented thereby. A short summary of the Articles to which attention is particularly drawn is given below :—

Article 1. From the 1st January, 1905, Louis Louis Dreyfus, Charles Louis Dreyfus and Robert Louis Dreyfus, sons of Leopold Louis Dreyfus are admitted in the capacity of " associés en nom collectif ". Consequently from that date the Société will continue between the four persons as " associés en nom collectif ", E. Hirtz remaining " simple commanditaire ".

Article 3. The duration of the Société which was to have come to an end in 1908 is extended to the 31st December, 1929.

Article 4. The style of the Société remains unchanged.

Article 5. Either jointly or separately the four associés have the widest powers of management and administration of the affairs of the Société. In particular they may make or cancel contracts, accept bills, contract loans, and so forth, and do everything that is necessary or useful to the carrying on of the Société's business. All four of them can use the signature of the Société.

Article 6. Leopold Louis Dreyfus is to devote to the affairs of the Société such time as he thinks necessary and may take part in any other business. Louis, Charles and Robert must devote all their time to the business of the Société and may not take part in any other commercial, financial, or industrial operations except with the common consent of the associés.

(1) Not included in the present print.

Article 7. The capital of the Société is raised to twenty million francs divided as follows :—

	Francs.
Leopold Louis Dreyfus	14,900,000
E. Hirtz (the Commanditaire) ...	100,000
Louis Louis Dreyfus	2,500,000
Charles ,, ,, ...	1,500,000
Robert ,, ,, ...	1,000,000
	20,000,000

Each associé is to be credited in his capital account with his share of the capital, and five per cent. interest on capital is to be credited to the current account of each associé annually on the 31st of December.

Article 8. Each associé is to have a current account with the Société, to which is to be credited interest on capital as provided by Article 7, interest on the amount of the current account itself, and any sums which the associé may pay in or lend to the Société with the consent of the other associés.

Article 9. Separate accounts are to be opened for each category of fixed assets owned by the Société and a maximum rate of depreciation is provided for each class of such assets, to be written off annually at each inventory.

Article 11. An inventory is to be taken on the 31st December of each year of the Société's position showing the result of the year's trading. Provision is made for valuing stocks in hand, investments and debts. Each inventory is to be signed by the associés.

Article 12. After each annual inventory the net profits of the Société's business are to be distributed in certain proportions among the associés and the commanditaire. The losses, if any, are to be distributed in the same way with the proviso that in the case of the commanditaire his share in the losses is not to exceed the amount of his investment.

Article 13. The profits so allocated to the four associés are to be credited to their current accounts with the Société. Leopold Louis Dreyfus is allowed to draw out the whole of his share if he thinks fit, but the three other associés are limited in their power of drawing upon their shares of the profits.

Article 14. Leopold Louis Dreyfus shall have the right to cease to be a managing associé and become a " simple commanditaire ". If he does this he ceases to take part in the administration of the Société's business, and will be liable for the debts of the Société only to the amount of his investment.

Article 15. Leopold Louis Dreyfus reserves to himself personally the power of causing the Société to cease so far as regards all or any of his three sons, by giving notice to those associés with regard to whom he wishes the contract to cease, and by making certain payments. If he exercises this right he becomes owner of the share or shares of the outgoing associé or associés, even if he himself has meanwhile become " simple commanditaire " under Article 14. Unless Leopold Louis Dreyfus has exercised this right in the case of all the other associés the Société is to continue among the remaining associés.

Leopold Louis Dreyfus has also the right at any time to pay out E. Hirtz, the commanditaire, and to acquire his rights in the Société by paying him the amount of his investment. If Leopold Louis Dreyfus dies or ceases to be a member of the Société this right will belong to the three other associés. In any case this right will be exercised if E. Hirtz dies.

Article 17. If Leopold Louis Dreyfus dies leaving a widow, his widow will become a commanditaire and the Société will continue between her in that capacity and the three associés (the latter alone being managing associés); and her share in the Société is to be paid out in the manner provided by the managing associés who will thus become the sole proprietors of the assets of the Société.

If Leopold Louis Dreyfus dies having survived his wife, the Société will with regard to him be completely dissolved, but will continue between the remaining associés.

Article 18. Provision is made in case of the death of Louis, Charles or Robert. If children survive the children will become commanditaires. If a widow is left but no children, or neither widow nor children, the Société will be dissolved so far as regards the deceased but will continue between the surviving associés. If Leopold Louis Dreyfus and two of his sons die the sole surviving associé shall have the right either to apply for the immediate dissolution of the Société and its liquidation according to law or to carry on the Société for the remainder of its term.

Article 19. The share left free by the death of an associé is to be distributed among the surviving associés in proportion to their respective shares.

Article 22. In the case of loss in two successive years, or if as a result of losses the original capital of the Société is reduced by one fourth, any associé has the right to withdraw from the Société.

Article 23. Legal incapacity or permanent illness of an associé is to be dealt with in the same way as in the case of his death.

This deed was executed and—in accordance with the requirements of French law—was registered and made public in Paris

7. The evidence which was given before us and accepted by us, as to the position and characteristics of a "société en nom collectif" in French law, was to the following effect:—

(*a*) A "société en nom collectif" owes its existence not to the combination of the parties, but to a written document which must be (i) deposited with the Registrar of the Commercial Court and with the Civil Court and (ii) published in a paper of legal publications.

(*b*) When these formalities have been complied with the société becomes a legal person as from the date of the deed, distinct from the individuals of which it is composed. No certificate of incorporation or other similar document is issued.

(*c*) The name of the société must contain the name of one of its associés; and if the associé whose name is in the société's name ceases to be an associé and the name of the société remains unaltered that associé remains liable to third parties as though he were still an associé.

(*d*) The ownership of the assets of the société is in the société alone and not in the individuals who compose it.

(*e*) The debts of the société are its own debts and not the debts of the members, and a judgment obtained against a société is not a judgment against the members; but if the société admits a debt and does not pay it on demand, proceedings can be taken against the associés. In practice proceedings are always taken against both the société and the associés at the same time.

(*f*) Only the managing associés (gérants) can bind the société, but if the Statuts are silent on the point all the associés are managing associés. A société cannot enter into contracts without binding the associés.

(*g*) Till the annual inventory is approved by the associés no associé has any right to any part of the profits of the société.

(*h*) One associé is not agent for the others in carrying out the business of the société.

(*i*) The liability of the associés is unlimited.

(*j*) If the Statuts of the société are silent on the point the death of an associé dissolves the société but the Statuts may and very often do stipulate that in spite of the death the société shall continue.

(*k*) If the Statuts are silent the bankruptcy of an associé dissolves the société but it is generally stipulated that the société shall continue notwithstanding the bankruptcy of an associé. The bankruptcy of the société brings about the bankruptcy of the associés.

(*l*) If the Statuts are silent an associé cannot transfer his share in the société. But if the Statuts allow it an associé can assign his share to another person; in such a case the assignment must be registered and published and when this is done the assignee is put into the place of the assignor even as regards third parties so that except in case of fraud (e.g. transfer to a man of straw made with the intention of defrauding creditors) the assignor is freed from any liability in respect of the debts of the société even if those debts were contracted before the assignment.

(*m*) If the Statuts are silent a retiring associé who registers and publishes the fact of his retirement is not liable for debts incurred by the société after the date of his retirement, but remains liable for debts incurred before that date.

(*n*) A husband and his wife cannot both be members of a "société en nom collectif."

8. The inventory of the Société Louis Dreyfus et Compagnie was duly made at the end of each year material to this case, and the net profits of the whole business of the Société distributed in accordance with Articles 11 and 12 of the Statuts between the Appellant and his brother Louis, the only two associés of the Société. Resolutions were passed for each material year in a form of which a translation follows:—

"The associés of the société Louis Dreyfus et Cie have met "this day in order to examine the balance sheet and accounts "of profit and loss for the year . . . .which were submitted to "them by the Chief Accountant of the Société.

"Having heard his report and explanations the Société "takes the following resolutions:—

"(1) The depreciations and the reserves which have already "been the object of separate resolutions are definitely "adopted as they appear in the said Balance Sheet.

"(2) The Balance Sheet proposed by the Chief Accountant "is entirely approved.

"(3) The Société decides to fix the net profit of the Société "for the financial year . . . at the sum of ..... "francs.

"(4) This amount will be distributed to the Associés in the "proportion of ..... to Mr. Louis Louis Dreyfus "and of ..... to Mr. Charles Louis Dreyfus.

(*Signed*) Louis Louis Dreyfus.
Charles Louis Dreyfus."

9. It was contended by Counsel for the Appellant :—

(*a*) that no profits arose to the Appellant in the United Kingdom.

(*b*) that the trade exercised in Great Britain from which the profits assessed arose was the property of and was carried on by the Société as an entity separate and distinct from the Appellant who neither owned nor exercised any trade in Great Britain.

(*c*) that the Appellant was not a partner in any partnership exercising a trade in Great Britain.

(*d*) that the Appellant was entitled merely to a share in such profits of the whole business of Louis Dreyfus et Compagnie as should be declared for each year;

(*e*) Alternatively, that he was not entitled to a share in any "partnership profits ..... estimated according to "the several rules and directions of this Act" within the meaning of Section 20 of the Income Tax Act, 1918;

(*f*) that the assessments should be discharged.

10. On behalf of the Crown it was contended :—

(*a*) that the relations between the Appellant and his brother were the relations existing between partners as defined in Sub-section 1 of Section 1 of the Partnership Act, 1890, and that the Société, Louis Dreyfus et Compagnie, was not one of the bodies excepted by, or by analogy with Sub-section 2 of the same Section.

(*b*) that the fact that the Société is a separate entity and a legal person under French Law does not, having regard to its other characteristics as set forth above, prevent it from being a partnership;

(*c*) that the profits of the English branch of the Société were earned in this country by the Appellant and his brother in partnership and the fact that those profits were put by the Appellant and his brother into a common fund with profits earned elsewhere was immaterial;

(*d*) that the assessments should be confirmed.

11. We, the Commissioners who heard the appeal, held that the relations existing between the Appellant and his fellow associé in connection with Louis Dreyfus et Compagnie ("Société en nom collectif") were the relations of partners in a partnership within the meaning of the Partnership Act, 1890; and that, within the meaning of Proviso (ii) of Section 20 of the Income Tax Act, 1918, the profits of the English branch of Louis Dreyfus et Compagnie (being the only profits of that concern of which the United

profits " and that the Appellant was during the material years entitled to 49/100ths of those profits. We therefore confirmed the assessment appealed against.

12. The Appellant 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 Income Tax Act, 1918, Sections 7 (6) and 149, which Case we have stated and do sign accordingly.

H. M. SANDERS,
J. JACOB,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
10th September, 1928.

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2. *L. L. Dreyfus* v. *The Commissioners of Inland Revenue.*

This case related to Super-tax assessments made upon Mr. Louis Louis Dreyfus for the years ending the 5th April, 1925, and the 5th April, 1927, respectively and was stated in similar terms, *mutatis mutandis.*

The case came before Rowlatt, *J.*, in the King's Bench Division on the 24th, 25th and 28th January, 1929, and on the last date judgment was given against the Crown, with costs.

Mr. A. M. Latter, K.C., and Mr. C. King appeared as Counsel for the Appellants and the Solicitor-General (Sir F. Boyd Merriman, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—The Appellants in these two cases, who reside in Paris, are the sole members of the " société en nom collectif " under the style of Louis Dreyfus et Compagnie, established in Paris and carrying on from there a world-wide trade as grain merchants.

(Rowlatt, J.)

In respect of their exercise of trade within the United Kingdom Louis Dreyfus et Compagnie have been assessed to Income Tax under Schedule D, probably in the name of an agent.

The question now is as to assessments to Super-tax which have been made upon the individual members, on proportions of the total Schedule D assessments of the Society corresponding to the proportions in which they are respectively interested therein. Those assessments are on the footing that they are partners within Section 20, proviso (ii), Income Tax Act, 1918, and they are made under that provision.

The statutes or articles governing the Society were before the Commissioners and are appended. The Commissioners also state the position under French law as proved upon the hearing. Upon this they find that the Appellants are partners within the Partnership Act and the profits of the Society are partnership profits within Section 20, proviso (ii), Income Tax Act, 1918. As to the position under French law, the finding of the Commissioners is upon the footing of a finding of fact and is binding upon me. As to whether that position brings the members of the Society or their profits within the sections of English Acts of Parliament, the question is one of law.

Mr. Latter contended that even if they are partners nevertheless the profits now in question, namely, the English profits, were not within Section 20, proviso (ii), because the individual members have no interest in those profits specifically, but only a right to have them brought along with the results of all the other trading into the partnership account and after all deductions required by the statutes or articles governing the taking of that account, to have their share of such profits as would then, and not before, be shown. He argued further that it also follows that the Appellants' incomes as individuals were not from a source in the United Kingdom but from one in Paris where the Society is situated, and so are not within the scope of the Super-tax.

Now on this it is to be observed that in the case of English partnerships also the partners have no individual interest in the specific profits, but only a right to their shares of the profits divisible after the accounts have been taken, and those profits may under their articles be more or less than the amount in which the firm has been assessed under Schedule D, because the deductions for the two purposes may not be the same. Yet it is clear that Section 20 provides that the individual incomes of the partners for this purpose are to be their proportions of the sum in the assessment, neither more nor less. The purpose of Section 20 is to resolve the Income Tax burden of the firm into proportionate burdens on the individuals, and for this purpose it deals with the exact figure that is found in the firm's assessment.

(Rowlatt, J.)

I think, therefore, that if the Appellants are partners for this purpose, that Section applies immediately to the figure in the assessment representing profits made in this country and has no concern with anything except the proportionate interests of the individuals in the firm.

The question, therefore, is whether these profits are to be treated as partnership profits for this purpose. Now Section 20, proviso (ii), is, so far as it deals with partners, the complement of Rule 10 of the Rules applicable to Cases I and II of Schedule D. That Rule provides that where a trade is carried on by two or more persons jointly, the tax shall be in one sum and a joint assessment shall be made in the partnership name. This one sum and this joint assessment it is the function of Section 20 to disintegrate for the purpose of allowances, and indirectly of Super-tax, into individual incomes. There can be no question but that a small number of persons being members of an English private company, carrying on business with articles of association however much reproducing in their provisions the usual features of partnership articles (as certainly the statutes or articles in this case do), could not be charged with Super-tax under Section 20, proviso (ii), by reason of the substantial character of their association. Indeed, elaborate machinery has recently been incorporated into the Income Tax law to defeat evasion taking this form. Section 20, proviso (ii), it seems to me, can only be applied to partnership profits as understood in this country; at any rate to this extent, that they must be the profits of individuals aggregated together by a partnership agreement and trading and earning profits as such aggregate, the partnership name, if any, meaning merely all the individuals as so trading together. Does, therefore, the name Louis Dreyfus et Compagnie merely mean the two Appellants together, and is it the business of the two Appellants and are the profits their profits?

Now here, according to the French law, the Society owes its existence not to the combination of the two Appellants but to a written document deposited and published. In other words, the legal formality is distinguishable from the *consensus* of the parties which led to and is evidenced by the document. It is a legal person distinct from the individuals of which it is composed and the ownership of the assets is in the Society alone and not in the individuals who compose it. But if the business here is the business of the Society as a distinct legal person and not of the Appellants, how is it possible to say that they are carrying it on either jointly within Rule 10 or as partners, or altogether within Section 20? In my judgment it is plainly impossible. Partners carry on their own business.

The appeal therefore must be allowed with costs

Mr. Latter.—The second case will follow your Lordship's decision?

Rowlatt, J.—Yes. I have given judgment in the two cases.

The Crown having appealed against this decision, the cases came before the Court of Appeal on the 14th and 17th June, 1929, and on the latter date judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Solicitor-General (Sir F. Boyd Merriman, K.C.), Mr. J. H. Stamp and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C. and Mr. C. King for Messrs. Charles and Louis Dreyfus.

JUDGMENT.

Lord Hanworth, M.R.—In this case we are of opinion that Mr. Justice Rowlatt was plainly right. The first appeal is an appeal by Charles Dreyfus and the second appeal is by his brother, Louis Dreyfus, against two assessments to Super-tax in two years ending the 5th April, 1925, and the 5th April, 1927.

Now these two gentlemen are persons who carry on business under the name of Louis Dreyfus et Compagnie. The one is entitled, we learn, to 49 per cent. of those profits if and when ascertained, and the other is entitled to 51 per cent. of those profits. Now the company—this body I call them—are a " société en nom collectif " and these two brothers, the Appellants, are the only " associés en nom collectif " and are " gérants," that is to say they are managers. The business of the " société " is that of grain merchants, and this business is carried on in France, in Great Britain, in the United States of America and elsewhere. It is directed and controlled in Paris and neither of these two Appellants has any residence over here; they both reside in Paris. Now so far as the business is carried on the trading is carried on over here, and that trade would be liable to pay Income Tax and it has paid Income Tax. That tax is charged upon, assessed upon and collected from the agent of Louis Dreyfus & Company in London. So far therefore as that trading is carried on, let it be quite plainly understood that that trade has paid Income Tax.

Now these appeals are against assessments made upon those two non-resident persons in respect of the income which it is said they derive from the business carried on over here and in respect of which it is said that they are liable to Super-tax. I repeat that,

(Lord Hanworth, M.R.)

because this is not an Income Tax case at all. The trade has paid Income Tax. The question is whether these persons resident in Paris, the owners of a business directed and controlled in Paris, can be made liable to Super-tax charged upon them in respect of the same business. Now Super-tax differs from Income Tax. Super-tax is not paid by companies. Super-tax is an additional charge which is imposed upon individuals by Section 4 of the Act of 1918: "In addition to the income tax charged . . . . there "shall be charged, levied, and paid . . . . in respect of the income "of any individual . . . ." It is not therefore chargeable or recoverable from companies, and that is admitted on the part of those who argue this appeal; and for the purpose of estimating Super-tax, by Section 5 the "total income of any individual from "all sources shall be taken to be the total income of that indi- "vidual from all sources for the previous year, estimated in the "same manner as the total income from all sources is required "to be estimated in a return made in connection with any claim "for a deduction from assessable income". Reference is then made to Section 20 which deals with the claims which are to be made by partners for relief, and under Section 20, Proviso (ii), "The income of a partner from a partnership carrying on any "trade, profession . . . . shall be deemed to be the share to "which he is entitled during the year to which the claim relates, "in the partnership profits, such profits being estimated according "to the several rules and directions of this Act." So using that Section, which is an exemption Section, it is said that what is attempted to be taxed here is the share to which these two gentlemen are entitled in the partnership profits. The Rules under which the tax is imposed are Rules 10 and 12 of the Rules in Cases I and II. Rule 10 says: "Where a trade or profession is carried "on by two or more persons jointly, the tax in respect thereof "shall be computed and stated jointly and in one sum, and shall be "separate and distinct from any other tax chargeable on those "persons or any of them, and a joint assessment shall be made "in the partnership name"; and under Sub-head (3) "Where "no partner is resident in the United Kingdom the statement "shall be made and delivered by the agent, manager, or factor "of the firm resident in the United Kingdom." Then Rule 12 provides for the cases where there is a part of a trade or business of a firm whose management and control is situated abroad, and then the firm shall be charged in respect of the profits, and the proviso is "that for the purpose of charging any such firm in "respect of the profits . . . . an assessment may be made on the "said firm in respect of the said profits in the name of any "partner resident in the United Kingdom." Now I have referred

(Lord Hanworth, M.R.)

to those Rules. They are appropriate and quite easy to work in the case of a trade which is carried on in this country, and the facility which is given by those Rules has already been exercised in the matter of the collection of Income Tax upon the trade. But it is said that, in addition to that, these individual Frenchmen residing in Paris are to be charged in respect of the partnership, or their profits of what is called a partnership, to Super-tax. I find some difficulty in seeing by what proper mode of assessment that would be charged and collected; but let me pass that as not a serious difficulty. That brings one then to see whether or not upon the Case it is possible to find that these persons are engaged in carrying on a partnership business. We have to take the facts as they are found for us in the Case. We know that Louis Dreyfus et Compagnie is a " société en nom collectif." What that is in French law is a matter of fact. Foreign law has to be proved as a matter of fact over here. Now we are told in the Case that this entity was constituted in accordance with French law. Of course, the persons who are going to engage in this enterprise agreed with one another to do so, and they entered into a deed no doubt by having agreed previously so to do, and the deed was executed and, in accordance with the requirements of French law, was registered and made public in Paris. Now the mere fact of agreement does not carry us very far. It only carries us so far that the entry into the document and the agreement was because of their own volition they were ready to do so; but when we get the document registered and made public in Paris, then we have to determine what has been the effect of that agreement and that execution of the deed. The Commissioners properly received evidence of the French law, and they say this in paragraph 7 : " The evidence which was given " before us and accepted by us as to the position and characteristics " of a ' société en nom collectif ' in French law, was to the following " effect ". I will not set them all out, but I will set out some of them : " (*a*) A ' société en nom collectif ' owes its existence not " to the combination of the parties, but to a written document " which must be (i) deposited with the Registrar of the Commer- " cial Court and with the Civil Court and (ii) published in a paper " of legal publications." Now as we are proceeding to investigate the question whether or not the result of the execution of this deed was to constitute a partnership according to English law, it is perhaps material to note this in Lord Lindley's book on Partnership : " Partnership, though often called a contract, is a relation " resulting from a contract." Now here we are told that this " société " owes its existence not to the combination of the parties at all but to a written document, and it is there and there only that you will find what is the nature of the embodiment of these persons. I read on : " When these formalities have been complied

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" with the société becomes a legal person as from the date of the " deed, distinct from the individuals of which it is composed." That is in the facts found. " The ownership of the assets of the " société is in the société alone and not in the individuals who " compose it. The debts of the société are its own debts and not " the debts of the members. . . . Only the managing associés " (gérants) can bind the société." Then " Till the annual inven- " tory is approved by the associés no associé has any right to " any part of the profits of the société." Then " One associé is " not agent for the others in carrying out the business of the " société." Plainly enough, therefore, it is indicated that the execution and registration of this document has brought into being a legal person as distinct from the individuals of which it is composed. That legal person who has the ownership of the assets, who alone has an interest in the profits, and those persons who carry on an entity or legal person are not agents for each other. They can only combine through the instrumentality of the legal person so constituted and this legal person alone owns the assets, and not only is it so stated affirmatively, but negatively, that the ownership of the assets is not in the individuals who own it and that there are no profits until the inventory has been approved. Now I pause for a moment just to see if there is an analogy or contrast between this and an English partnership. I have already dealt with the reference or the statement made in Lindley on Partnership; and one very common characteristic act of a partnership and one which is looked for to see whether or not there is a partnership, is the right of one partner to appoint another acting as an agent for his partners. Section 5 of the Partnership Act says that every partner is an agent of the firm and his other partners for the purposes of the business of the partnership. I may expand those words. One partner by virtue of that relation is constituted general agent for another as to all matters within the scope of the partnership dealings and has communicated to him by virtue of that relation all authority necessary for carrying on the partnership. Now these powers are expressly not existing in the present entity. It is the entity alone which has the title to the profits, the liability for the debts, the ownership of the assets, and through that entity alone can one partner reach the liability of another.

Now those being the facts on the law, our attention has been called to the 12th Article, which deals with net profits and their distribution. That sets out the aliquot shares which shall be enjoyed by the persons who are said to be partners; but Article 12 begins " After deduction of all general expenses, interests in " particular and all participations granted to employees interested,

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" the profits of the company's business constitute the net profits." It is plainly there set out that the profits are the profits of what is called the entity. If I use the word " company " it is only by mistake; I want to use a word which is a neutral term. They are the profits of the entity's business. When you ascertain the totality of them you then reach the distributable assets; and bearing in mind the fact of the wide range of this business, you will not get at the distributable profits by looking solely at the profits of the trade over here. Those profits, as I have said, pay their Income Tax, and what we have got to find is the precise and individual holding or share of that to which these persons are entitled in order to see whether upon them in respect of these individual shares Super-tax may be charged.

Now having gone through these findings, the Case tells me this: that the inventory of the " société," not of one particular part of its enterprise, was duly made at the end of each year and the net profits of the whole business of the " société " distributed, in accordance with Articles 11 and 12 of the statutes, between the Appellant and his brother and resolutions were passed in each material year in a form of which the translation is as follows: " The associés of the société Louis Dreyfus et Compagnie have " met this day in order to examine the balance sheet and accounts " of profit and loss for the year . . . . which were submitted to " them by the Chief Accountant of the société. Having heard his " report and explanations . . . ." Now who takes action? The " société " makes the following resolutions, and ultimately a distribution is taken at the instance of the " société," carrying out quite rightly the clear terms of the findings of fact that the assets of the business belong to the " société " and are only distributable after they have borne the liabilities of the " société " which, as I say, carries on what I might call a world-wide business.

Now that being so, the Commissioners held that the relations existing between the Appellant and his fellow " associé " in connection with the " société " were the relations of partners. That is the conclusion they came to upon the facts. The conclusion in law upon the facts is for us, and in my view the Commissioners were wrong upon the facts before them in holding that the relationship of these persons was the relationship of partners *inter se* between Charles and Louis Dreyfus. They were not so; they were the associates of this entity, but they were not partners *inter se* according to the law applicable to the case.

Now it is to be remembered that no company which is registered or incorporated in a foreign country can bring over its law and be for all purposes a company over here. By the comity of nations

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we do recognise the incorporation of other legal entities in other countries, but a company registered in a foreign country is of course a foreign company. It is only by that comity that we accept the conditions which are imposed by foreign law, and to take a simple illustration of that, it is well found in the case to which Sir Boyd Merriman called our attention this morning, that you may have a body to which recognition is given in the English Courts by reason of the status which it has reached in the foreign Courts. You may, on the other hand, have some indicia from a foreign country which are not recognised over here, because they are merely matters of the *lex fori*, and in our law matters of procedure are governed by our own *lex fori*.

Now in the case of *The General Steam Navigation Company* v. *Guillou* (1) it was pleaded that the defendant was not liable in respect of a tort for which the plaintiff sued on the ground that he was only a member of the body analogous under French law to an English Corporation, and that English Corporation owned a vessel which did the tort, and that Corporation was alone liable for the acts of the master of their vessel, who was the servant of the Corporation, and was not the servant of the individuals composing that body, the defendant being one of those individuals. Baron Parke says (2): "If such be the true construction of this plea, "we are all strongly inclined to think that there is a good defence "to this action"; that is to say, that the English law would recognise the incorporation of the foreign body, and by comity of trade its legal status as one which it brings over with it when it appears in the courts over here. "On the other hand", says Baron Parke (2), "the plaintiffs contend that the plea only means "that in the French Courts the mode of proceeding would be to "sue the defendant jointly with the other shareholders of the "Company under the name of their association; and if this be "the true construction of the plea, we all concur in the opinion "that the plea is bad". Now that case is very interesting, because it just shows this, that all that is established is something which deals with the *lex fori*, and this Court being governed by its own *lex fori* will not be hampered by any restrictions of the *lex fori* of another country. On the other hand, if there has been a body established by foreign law, the courts will recognise the juristic status of that body, and thus the Court says that the principle of the liability of members of a foreign corporation to third parties is to be referred to the law under which that corporation was established, and if the law does show that it was established as a separate entity, then effect should be given to it, and it is otherwise with matters which are merely matters of the *lex fori*.

(1) 11 M. & W. 877. (2) *Ibid.* at p. 895.

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Now we have got here upon the facts, which I do not repeat, a clear finding that there was an entity apart from these partners constituted by French law, and we have to recognise that entity so established, and treat the body so set up as having had attributed to it the status which ought to be recognised over here. It does not avail to say that we have no such entity or means of establishing a separate entity over here, and as we have not, therefore we must tear down the status of the foreign entity. Not so; we must respect the foreign entity properly established, because it is not a mere matter of the *lex fori*; it is a matter of the status which an entity brings over here with it. Now this being the case, how can it be said that in respect of this trade, which I repeat again for the third time, has been properly taxed to Income Tax, it can be dealt with as the individual profits or individual trade of the two partners, when we are told in plain and clear words that the " société " does not owe its existence to the combination of the parties, that it is a legal person distinct from the individuals of which it is composed? Mr. Stamp said: Are those profits being earned for these men, or for the " société "? It seems to me quite plain upon what has been found that they are being earned for the " société " or the French entity, and not for these men, and that these men (I am quoting, I think, verbatim) " are not " entitled to, and would not know what was their interest in the " business over here unless and until that declaration had been " made ", according to the resolutions of which we have a translation in the case. I think it is upon the facts impossible to say that these two persons, Charles Dreyfus and Louis Dreyfus, are mere partners, and only clothed with an imaginary personality. Whether we could do this or not in England does not seem to me to matter. We have to recognise that it is not the business of these persons, they are not the persons who are carrying on the trade, and there is not merely an imaginary, but a legally constituted entity which is carrying on the business. Mr. Justice Rowlatt has put the matter quite plainly, I think, in his judgment, in which he puts it forward as part of the argument of Mr. Latter. He says: " He argued further that it also follows that the Appellants' " incomes as individuals were not from a source in the United " Kingdom but from one in Paris where the Society is situated "; and where, I would say, the distribution is made after the totality of the profits of the " société " have been taken into consideration; and he adds this: " It appears to me that Section 20, proviso (ii), " can only be applied to partnership profits as understood " in this country; at any rate to this extent, that they " must be the profits of individuals aggregated together by " a partnership agreement and trading and earning profits as " such aggregate, the partnership name, if any, meaning merely

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" all the individuals as so trading together ". Well, that is established not to be so, and that there is a different entity, and it is impossible to make use of the Section and Rules to which I have referred. Finally, Mr. Justice Rowlatt says: " It is a legal " person distinct from the individuals of which it is composed, " and the ownership of the assets is in the Society alone, and not " in the individuals who compose it. But if the business here is " the business of the Society as a distinct legal person, and not of " the Appellants, how is it possible to say that they are carrying " it on either jointly within Rule 10 or as partners, or altogether " within Section 20?" I agree that is a rhetorical question. It appears to me quite plain that Mr. Justice Rowlatt has reached the right conclusion, and that it must be held upon these facts that this is not a legal partnership, and that there is no means of imposing the liability to Super-tax upon these non-resident persons who are interested in this entity constituted by French law. I will only add this. The argument has ranged over a wide field. We have been invited to consider what is the position of a partnership in Scotland, and I think we had some cases which referred to the conditions of trading in Demerara, Australia, and possibly some other places. I attach no importance at all to those cases, nor do I find any analogy. My judgment is based upon the facts as found in this case, and those facts have told me plainly in a way I cannot at all set aside that there is for the present purposes, and in respect of the consideration of this subject, a different French entity which carries on its business, which alone earns the profits, alone has the assets, and which is independent of and apart from these persons whom it is sought to charge to Super-tax. For these reasons the appeal must be dismissed with costs.

Lawrence, L.J.—I agree, and would content myself with that statement, were it not for the forcible arguments which we have heard on the part of counsel for the Crown. Therefore I propose to add a very few words to what has been said by my Lord.

The Crown admits that the only ground upon which these two French gentlemen can be charged to Super-tax in this country is that they were partners in the business carried on by the French Society in this country within the meaning in which that term is understood in this country, and used in the Income Tax Acts. The crucial question, therefore, is whether the Crown have satisfied the Court that these two gentlemen were partners in the sense which I have indicated. If they were not, it is quite immaterial to consider what their exact position was. In my judgment the findings of the Commissioners contained in paragraph 7 of the Case are conclusive in showing that whatever may be the position of

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these two gentlemen, it was not that of partners as understood in this country. Without going through all the findings in the case, I would point out one or two which to my mind really decide this case, the first being this, that on complying with certain formalities, which, as I understand it, consisted of depositing a document with the Registrar of the Commercial and Civil Court and publishing a notice in the paper, an entity, to use a neutral term, springs into existence, and that entity is one which owns the property of the Society, and which incurs the liability in respect of the debts of the concern, and which has the sole right to receive the earnings of the concern, and has the control of the distribution of the profits. Added to that, it is plain on the findings that a member of that entity is not an agent for the others in carrying on the business of the concern. Without going into the other findings in the Case, those facts alone seem to me to be wholly inconsistent with the notion of a partnership as existing in this country, and that being the only question to be decided in the case, I think that is all that need be said. It is quite true that the position of persons who are members of such a Society as this may be likened more or less to that of shareholders in a limited company or unlimited company in England, and also more or less to the position of partners in a partnership firm. But whatever be their position, they are not, as I consider, partners within the meaning of the Income Tax Acts.

Slesser, L.J.—I agree.

Mr. Latter.—Does that apply to both appeals, my Lord?

Lord Hanworth, M.R.—Both appeals.

[Solicitors :—Messrs. Lindus & Hortin; the Solicitor of Inland Revenue.]