EXHIBIT 5

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sideration and an important fact. On the other hand, an equally important fact is the consideration whether there has been any change in the position of the mortgagee or anyone claiming under him, so as to make it neither just nor convenient nor, indeed, possible to restore the parties to the original position. Again, the recognized legal exceptions contained in the statute which prevent time from running must be taken into consideration. Beyond that there is the fact, in the present case, that, for some years during the period in question, a war was going on, during which some people did not insist upon or put forward their rights. In the present case the sole question, in my view, is whether the delay of the mortgagors in applying to redeem is such that it ought to bar their right. Here there has been no such change in the position of the parties as to make it impossible to restore them to their original position. To that position they can be remitted without difficulty, without inconvenience, and without injustice to themselves or prejudice to third parties. That there has been delay must be conceded. If the period is taken, as the learned Judge in the Court below took it, from the date when the debt was satisfied, in 1921, it is clear that the subsequent delay is not sufficient to bar; but I do not think that the Court ought to adopt the period of 12 years contended for by the appellants, and even if the delay has to be reckoned from June, 1908, I see nothing to compel us, having regard to all the circumstances, to say that it is so long that it ought to bar the plaintiffs' claim.

In my opinion the appeal should be dismissed.

Upon the cross-appeal I wish to say nothing except that I agree with what has been said by the other members of the Court.

[Solicitors.—Messrs. William A. Crump and Son; Messrs. Gregory, Rowcliffe and Co., for Messrs. Weld and Weld, Liverpool.

K.B. Div. (Salter, J.) } 1928. July 25.

LITTAUER GLOVE CORPORATION v. F. W. MILLINGTON (1920), LIMITED.*

Company—Residence—Foreign State—Jurisdiction of State Courts—Test of residence.

To constitute residence by a British company in a foreign State so as to render the company subject to the jurisdiction of the Courts of that State, the company must to some extent carry on business in that State at a definite and reasonably permanent place.

His LORDSHIP gave judgment for the defendants in this action, which raised the question whether under international law, a judgment of the Supreme Court of the State of New York was enforceable in the English Courts when the defendants were a corporation and were only present in that State by means of a director doing business there.

The action was brought by the Littauer Glove Corporation, an American company, of 235, Fourth-avenue, New York, who claimed (*inter alia*) from Fred W. Millington (1920), Limited, of Industry House, 57, Dale-street, Manchester, £5,369 16s. 9d., being the equivalent of $23,868, alleged to be due from the defendants under a judgment of the Supreme Court of the State of New York, dated May 9, 1922. Interest was claimed from that date.

The defendants denied that the American Court in question had any jurisdiction over them.

Mr. C. T. Le Quesne, K.C., and Mr. Frank Gahan appeared for the plaintiffs; Mr. Singleton, K.C., and Mr. E. Stewart-Brown for the defendants.

Mr. SINGLETON said that the defendants' contention was that, if the plaintiffs ever began an action against them in the State of New York, and if the Court there adjudged that the plaintiffs should recover the amount sued for—neither of which matters was admitted—that Court had no jurisdiction over the subject matter of the action. They (the defendants) were not subjects of, or resident, or present, or domiciled in, and owed no allegiance to, the State of New York, and were not subject to the jurisdiction of the Court. They did not appear in the action and were never served with any process.

To succeed, the plaintiffs must prove that the defendants had a fixed place of business in the State of New York, so as to make them resident and liable to the jurisdiction of the Court there. He cited *Emanuel v. Symon* (24 *The Times* L.R., 85; [1908] 1 K.B., 302); *Turnbull v. Walker* (9 *The Times* L.R., 99); *Schibsby v. Westerholz* (L.R., 6 Q.B., 155); *Carrick v. Hancock* (12 *The Times* L.R., 59); *Dunlop Pneumatic Tyre Company, Ltd. v. Actien-Gesellschaft für Motor und Motorfahrzeugbau vorm. Cudell and Company* (18 *The Times* L.R., 229; [1902] 1 K.B., 342); *La Bourgogne* (15 *The Times* L.R., 28; [1899] P. 1; affirmed 15 *The Times* L.R., 424; [1899] A.C., 431); *Haggin v. Comptoir d'Escompte de Paris* (5 *The Times* L.R., 606; 23 Q.B.D., 519); *Actiesselskabet Dampskib "Hercules" v. Grand Trunk Pacific Railway Company* (28 *The Times* L.R., 28; [1912] 1 K.B., 222); *Saccharin Corporation, Limited v. Chemische Fabrik von Heyden Aktiengesellschaft* ([1911] 2 K.B., 516); *Allison v. Independent Press Cable Association of Australasia, Limited* (28 *The Times* L.R., 128); *Okura and Co., Limited v. Forsbacka Jernwerks Aktiebolag* (30 *The Times* L.R., 242; [1914] 1 K.B., 715); *Egyptian Delta Land and Investment Company, Limited v. Todd* (44 *The Times* L.R., 747).

Mr. Richard H. Millington, managing director of the defendant company, said that he went to the United States in 1922. He was in New York four or five nights, and stayed at an hotel. He did business for his company in New York and various other places which he visited. He was served personally with the writ in the American action in the office of the Union Mills, New York, to which address some of his letters had been sent. His company owned no property of any kind in the United States. They took no part in the proceedings against them, and entered no appearance.

In cross-examination by Mr. LE QUESNE, the witness said that at one time it was his and his brother's custom to be in New York in the early part of the year. They went to buy, not to sell, goods.

That concluded the case for the defendants.

Mr. W. H. WILSON, called on behalf of the plaintiffs, said that on March 30, 1922, he served Mr. R. H. Millington with the writ in the New York action.

Mr. LE QUESNE said that the question was whether the defendant company were resident in the State of New York so as to come within the jurisdiction of the Court there. He submitted that it was not necessary for him to show that the defendants were carrying on their business at a fixed place. It was not disputed that it was not necessary to show that the

* Reported by W. E. HURT, Esq., Barrister-at-Law.

company were carrying on the whole of their business where the debt was incurred, and he contended that the defendants were carrying on business wherever they were buying goods.

His LORDSHIP.—Do you say that a company resides wherever its commercial travellers put up?

Mr. LE QUESNE.—Yes ; I submit that the company is resident by its travellers, and would be subject to process of the country in which they happened to be. For income-tax purposes it has been held that a company can be resident in several places at once.

Counsel cited, in addition to cases referred to by Mr. SINGLETON, *Logan v. Bank of Scotland* (20 *The Times* L.R., 640 ; [1904] 2 K.B., 495) ; and *New York Life Insurance Co. v. Public Trustee* (40 *The Times* L.R., 430 ; [1924] 2 Ch., 101, at p. 120).

His LORDSHIP, in giving judgment, said that the action was partly brought on a judgment of the Supreme Court of the State of New York in respect of goods sold and delivered.

The plaintiffs were manufacturers in the State of New York ; the defendants were an English limited liability company. The defendants' registered office and principal place of business were in Manchester, and they had branches in London and elsewhere. They were clothiers' merchants, buying from manufacturers in various parts of the world and selling to wholesalers.

The chairman of the defendant company was Mr. Fred Millington, and the managing director was his brother, Mr. Richard Millington, who had given evidence.

It had been the practice for one of them to visit the United States on purely business visits, the object being that they should see samples and make purchases.

In 1922 Mr. Millington arrived in New York on March 17, and left on that day for St. Johnsville, about eight hours distant. The principal suppliers of the defendant company in the United States were the Union Mills Corporation at St. Johnsville. That corporation had a sales office in New York at 377, Broadway. Mr. Millington stayed at St. Johnsville two days. After that he returned to New York, and then visited Tennessee, Georgia, and Philadelphia, and in each of these States he placed orders.

On March 28 he returned to New York and stayed at an hotel. While in New York he made some use of the office of the Union Mills Corporation. He said that he transacted no business there except what he did with that corporation, seeing samples and buying goods.

On March 30 he was served at that office with some process of the Supreme Court of the State of New York, and on March 31 he went to St. Johnsville for the week-end.

On April 1 the plaintiffs took out a summons against the defendants. On April 3 Mr. Millington returned to New York, and on that day, while he was in the office of the Union Mills, he was served with process in the present matter. He entered no appearance, took no step in the proceedings, and did not submit to the jurisdiction of the American Court. On April 4 he sailed for England. The plaintiffs proceeded with their action and obtained judgment in default of appearance.

He (his Lordship) had to decide whether at the time of the beginning of the action—namely, April 1, 1922—the defendant company were resident in the State of New York so as to have the benefit and be under the protection of the laws of that State.

What was meant by saying that a business corporation was resident in a foreign jurisdiction for that purpose? That depended on whether, on the day in question, it was carrying on business in the foreign State so that it could fairly and properly be said to be then resident in that State. If the defendant company were resident in the State of New York on April 1, 1922, where in that State were they resident? Mr. Le Quesne said that they were resident in Broadway, New York, but there must be some place of residence on which one could put a finger. There was no suggestion that the name of the defendant company was in any way displayed at the address in Broadway, or that any letter-paper of the company was used there, or that any business was done there except what the company did with firms in other parts of the United States. If the defendant company were resident in Broadway, it would follow that they were resident wherever Mr. Millington did business. He was, however, nothing more than a commercial traveller on that tour.

If the company had 40 or 50 travellers ranging all over the world, was it to be said that the company were resident wherever the travellers put up at an hotel and took orders ? He (his Lordship) did not rely on the expression "fixed place," but on what was the fair meaning of "residence." The inference which he drew from the cases cited was that there must be some carrying on of business at a definite and, to some reasonable extent, permanent place. There was no residence within the jurisdiction on the part of the defendant company, and the action on that point must fail.

There would be judgment for the defendant company, with costs, so far as this was an action on a foreign judgment, and the rest of the case would go to the Official Referee.

[Solicitors—Messrs. Morris, Ward-Jones, Kennett and Co. ; Messrs. Gregory, Rowcliffe, and Co., for Messrs. Hill, Dickinson, and Co., Liverpool.]

House of Lords.
(Viscount Sumner, Lord Atkinson, Lord Buckmaster, and Lord Warrington of Clyffe.)

1928.
July 23.

1929. 1 KB. 347

EGYPTIAN DELTA LAND AND INVESTMENT COMPANY, LIMITED v. TODD.*

Revenue—Income - tax—Company—Residence—Real business abroad—Whether resident in this country—Income Tax Act, 1918 (8 and 9 Geo. V., c. 40), Sched. D, Cases IV. and V.

A company which is registered in this country but carries on its real business abroad does not necessarily reside in this country, so as to be liable to income-tax, because it is obliged by law to perform in this country certain duties which cannot be performed abroad, such as having a registered office and keeping a register of shareholders. For income-tax purposes a company resides where its real business is carried on.

Decision of the Court of Appeal (43 *The Times* L.R., 275 ; [1928] 1 K.B., 152) reversed.

This was an appeal from an order of the Court of Appeal (43 *The Times* L.R., 275 ; [1928] 1 K.B., 152), affirming an order of Mr. Justice Rowlatt (43 *The Times* L.R., 70), on a case stated by the Commissioners for the General Purposes of the Income Tax Acts for the City of London.

* Reported by H. B. HEMMING, Esq., Barrister-at-Law.