Commissioner v. *Ginsburg Co.*, 54 F. (2d) 238. Only one decision has been cited to us as favoring a different view. *National Slag Co.* v. *Commissioner*, 47 F. (2d) 846.

The judgment is

Affirmed.

PLANTERS COTTON OIL CO., INC., ET AL. *v.* HOPKINS, COLLECTOR OF INTERNAL REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 672. Argued April 20, 1932.—Decided May 16, 1932.

The owner of substantially all of the stock of two joint stock associations caused their assets to be transferred to three corporations which he formed for carrying on the business and of which he owned substantially all the shares. *Held* that in a consolidated income tax return of all the companies net losses suffered by the joint stock associations during the year preceding the affiliation were not deductible. *Woolford Realty Co.* v. *Rose, ante*, p. 319. P. 333.
53 F. (2d) 825, affirmed.

CERTIORARI, 285 U. S. 533, to review the affirmance of a judgment, 47 F. (2d) 659, dismissing the petition in an action to recover an alleged overpayment of income taxes.

Messrs. J. M. Burford and *Wm. A. Sutherland*, with whom *Messrs. Joe A. Worsham* and *J. L. Gammon* were on the brief, for petitioners.

Mr. Whitney North Seymour, with whom *Solicitor General Thacher*, *Assistant Attorney General Youngquist*, and *Messrs. Sewall Key*, *Norman D. Keller*, and *Wm. H. Riley, Jr.*, were on the brief, for respondent.

Messrs. Frederick H. Wood, *Hoyt A. Moore*, and *A. James Slater*, by leave of Court, filed a brief as *amici curiae*.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

Three corporations, Planters Cotton Oil Co., Inc., Waxahachie, Planters Cotton Oil Co., Inc., Ennis, and Farmers Gins, Inc., were organized under the laws of Texas in August and September, 1924. Two joint stock associations, Planters Cotton Oil Company, Waxahachie, and Planters Cotton Oil Company, Ennis, which had been organized in earlier years, retained their separate existence. One man, H. N. Chapman, was the owner of 98% of the shares of the unincorporated associations. He caused the assets of those associations, or substantially all of them, to be transferred to the newly organized corporations, and received in return substantially all the shares of stock.

For the fiscal year ending June 30, 1925, the three corporations and the two joint stock associations filed a consolidated income tax return wherein the corporations, which had earned a net income of $147,636.25, claimed a deduction of $78,399.25 for loss suffered by the associations during the year preceding the affiliation. The deduction was disallowed, and suit was brought by the corporation and the associations for the refund of the tax to the extent of the overpayment claimed. The District Court dismissed the petition, 47 F. (2d) 659; the Court of Appeals affirmed, 53 F. (2d) 825; and by certiorari the case is here.

The controversy is ruled by our judgment in *Woolford Realty Co.* v. *Rose, ante,* p. 319, unless the fact that in this case one shareholder, Chapman, was the owner of substantially all the shares of the five affiliated companies supplies an essential element of difference. We think it does not. Chapman was free, if he desired, to continue to do business in an unincorporated form. Preferring the

privileges of corporate organization, he brought into being three corporations and did business through them. These corporations are not identical with the unincorporated associations to whose principal assets they have succeeded, and the losses of the associations suffered in an earlier year are not the losses of the corporations that came into existence afterwards.

The judgment is

Affirmed.

MICHIGAN *v.* MICHIGAN TRUST CO., RECEIVER.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 598. Argued April 19, 1932.—Decided May 16, 1932.

1. The annual tax laid by § 4 of Act No. 233, Pub. Acts of Mich., 1923, upon every local corporation "for the privilege of exercising its franchise and of transacting its business within this State," has been held by the state supreme court to be a tax on the privilege to do business, not merely on the doing of it, and to be applicable where the business is being conducted by a receiver, appointed for the purpose of continuing it. *Held:*

   (1) The decision must be followed in a federal court receivership as a binding construction of the local law. P. 342.

   (2) A decision upholding the tax as applied to a receiver is necessarily a construction of the statute, although the statute does not mention receivers and its application to them was guided by general principles as to the effect of a receivership. P. 343.

   (3) The tax should be paid by the receiver as it accrues, as part of the expense of administration; and where this was deferred until the receivership developed from a merely protective into a winding up process, the accumulated taxes must be paid in preference to the claims of creditors. P. 344.

2. Receiverships for conservation should be watched with a jealous eye, to avoid inequitable results. P. 345.

3. *United States* v. *Whitridge,* 231 U. S. 144, distinguished. P. 346.

52 F. (2d) 842, reversed.

District Court, affirmed.