No. 717.—Court of Session, Scotland (First Division).—21st June, 1928.

House of Lords.—1st and 18th March, 1929.

The Commissioners of Inland Revenue *v.* Hagart and Burn-Murdoch.[2]

Income Tax, Schedule D—Deduction from profits of business—Loss of money lent by solicitor to client.

The Respondents, a firm of Writers to the Signet, were consulted in 1923 *by clients who intended to form a company for the experimental manufacture of a new alloy. It was proposed if the experiments were successful to form a large public company to market the metal. The experimental company was incorporated and the Respondents carried through the legal business and became the company's law agents.*

During 1923 *and* 1924 *the Respondents lent to the company sums totalling* £2,615 *without security and without written obligation to repay. In* 1924 *it became evident that the project had failed and that the loan was irrecoverable. The Respondents wrote off the loss in their profit and loss account for* 1924, *and contended that it should be allowed as a deduction in computing their profits for Income Tax purposes.*

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(1) 3 T.C. 53.
(2) Reported (C. of S.) 1928 S.C. 745; and (H.L.) [1929] A.C. 386.

One of the partners held one share in the company in order to qualify as a director, and another partner held 250 shares as an investment, but the only relations between the Respondents, as a firm, and the company were those of solicitor and client. It was shown that the Respondents had made similar advances to other clients in similar circumstances.

For the Crown it was argued that deduction of the loss was prohibited by Rule 3 (a), (e), or (f) of the Rules applicable to Cases I and II of Schedule D, Income Tax Act, 1918.

The General Commissioners, on appeal, found in favour of the Respondents.

Held, *that on the facts stated the loss was not a legitimate deduction in arriving at the profits and gains of the Respondents' business.*

CASE.

At a meeting of the Commissioners for the General Purposes of the Income Tax Acts for the County of Edinburgh, held at Edinburgh on the 12th May, 1927, Messrs. Hagart & Burn-Murdoch, W.S., (hereinafter referred to as the Respondents) appealed against an estimated assessment made upon them under Case I, Schedule D of the Income Tax Act, 1918, for the year 1925–26, and claimed a deduction of £2,615 in respect of a loss sustained in connection with advances to a limited company (hereinafter referred to as " X, Limited ").

I. The following facts were admitted or proved :—

1. The Respondents are a firm of Writers to the Signet and carry on business at 10, Atholl Crescent, Edinburgh. Early in 1923 they were consulted by clients who were interested in promoting a company for the manufacture of a new metal alloy which had been discovered and which would have been for many purposes (*e.g.*, motor wheel rims) a vast improvement upon metals at present used. The company was to be an experimental one, and upon the successful manufacture being established, a large public company was intended to be promoted for the marketing of the metal, and a large amount of legal business was anticipated.

2. An experimental company called X, Limited, was incorporated on 2nd May, 1923, with a nominal capital of £10,000, and the Respondents carried through the legal business of the incorporation and became the company's law agents. They held no other office in connection with it.

3. During the years 1923 and 1924 they made advances to the company to a total amount of £2,615. The advances were made without security and without any written obligation to repay. They were made from time to time in varying sums as required by the company for temporary purposes.

4. The new metal was manufactured, tested and enthusiastically reported upon by several metal experts, and there was every prospect of success. In practice, however, it was found impossible to attain a uniform standard of the metal, and in consequence it had become evident by the end of 1924 that the project had failed and the experiments were discontinued.

5. The said advances of £2,615 are irrecoverable and the Respondents have written off the loss in their profit and loss account for the year 1924.

6. The Respondents as a firm held no shares in the company. At the time the said advances of £2,615 were made, one of the partners, Mr. Matthew, held one share of £1 in order to qualify as a director, and another partner, Mr. Urmston, held 250 shares of £1 each as an investment. The Respondents did not pay for these shares, and the sole relations between them and the company were those of solicitor and client, in the course of which they also became creditors for the advances above mentioned. The advances were not made to protect investments made by Respondents' clients in the company, and there was no agreement by which shares were to be allotted in return for the advances.

7. The Respondents are in the habit of making advances to clients when required, without security. In addition to the advances now in question, they have within recent years made advances to other clients, of which the following are examples :—

Case 1.	Advance of	£879—No security.	
Case 2.	do.	£3,472— do.	
Case 3.	do.	£2,400—Security partly over heritage and partly over reversion.	
Case 4.	do.	£317—No security.	
Case 5.	do.	£327— do.	
Case 6.	do.	£7,883— do.	To enable a landowner to purchase sheep.

Some of these advances were made to commercial firms for whom the Respondents act, and they have made advances to clients other than X, Limited, in circumstances and for purposes similar to the said advances of £2,615. No more detailed information as to these advances was submitted, and the Commissioners asked whether further inquiry as to the firm's practice in regard to advances to clients, and as to the nature and circumstances of the advances to other clients was desired, but the Inspector of Taxes stated that he did not desire such inquiry.

II. It was contended by **Mr. Candlish Henderson, K.C.**, on behalf of the Respondents :—

1. That the said loss of £2,615 was properly debited to the Respondents' profit and loss revenue account for the year 1924; and

2. That the Respondents were entitled to deduct the said sum in estimating their profits in that year for the purpose of Income Tax.

III. H.M. Inspector of Taxes (Mr. S. H. Francis) contended on behalf of the Crown :—

1. That the loss could not be allowed as a deduction, as it did not represent moneys wholly and exclusively laid out or expended for the purposes of the Respondents' profession within the meaning of Rule 3 (*a*) of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918; and

2. That the deduction was prohibited by Rule 3 (*e*) and (*f*) of said Rules.

Reference was made to the cases of *Stott* v. *Hoddinott*, 7 T.C. 85; and *English Crown Spelter Company, Ltd.* v. *Baker*, 99 L.T.R. 353; 5 T.C. 327.

IV. The Commissioners, after due consideration of the facts and arguments submitted to them, allowed the appeal.

V. Whereupon the Inspector of Taxes expressed his dissatisfaction with the determination of the Commissioners as being erroneous in point of law, and having duly requested a Case to be stated for the opinion of the Court of Session as the Court of Exchequer in Scotland, this Case is stated and signed accordingly.

VI. The question of law for the opinion of the Court is whether the Respondents are entitled to deduction of the said sum of £2,615.

JAMES WATT,
W. B. BELL,
THOMAS W. TOD, } Commissioners.

LESLIE M. BALFOUR MELVILLE,
Clerk to Commissioners.

Edinburgh, 5th April, 1928.

The case came before the First Division of the Court of Session (the Lord President and Lords Sands, Blackburn and Morison) on the 21st June, 1928, when judgment was given unanimously in favour of the Crown, with expenses.

The Solicitor-General (Mr. A. M. MacRobert, K.C.) and Mr. A. N. Skelton appeared as Counsel for the Crown, and Mr. R. Candlish Henderson, K.C., and Mr. J. S. C. Reid for the Respondents.

I.—INTERLOCUTOR.

Edinburgh, 21st June, 1928. The Lords having considered the Stated Case and heard Counsel for the parties, Answer the Question of Law in the Case in the Negative; Sustain the Appeal; Reverse the determination of the Commissioners and Decern; Find the Respondents liable to the Appellants in the expenses of the Stated Case, and remit the Account thereof when lodged to the Auditor to tax and to report.

(*Signed*) J. A. CLYDE, I.P.D.

II.—OPINIONS.

The Lord President (Clyde).—The Respondents claim to deduct a sum of £2,615 from their profits and gains as Writers to the Signet in Edinburgh as returned by them for the purposes of assessment under Case I of Schedule D of the Income Tax Act, 1918, for the year ending April, 1926. The question is whether they are entitled to make this deduction.

The sum in question was lent by the Respondents to a company in the formation of which they had acted as law agents, and whose regular law agents they became after the company was incorporated on 2nd May, 1923. The purposes of the company were connected with the exploitation of the merits of an (as yet) little tested form of metal during the experimental period, and the amount of the loan was advanced in the years 1923 and 1924 as required by the company from time to time. The project failed, the company desisted from further experiment, and the loan of £2,615 became irrecoverable. The Respondents wrote it off in their profit and loss account for the year 1924.

It will be observed in the first place that the indebtedness of the company to the Respondents is not said to have arisen, and plainly did not arise, on anything in the nature of a factorial account between the Respondents acting as law agents or factors for the company and the company itself. It is familiar that law agents are frequently employed as factors in the management of their clients' affairs; indeed, it often happens that the employment of a law agent unavoidably carries with it an element—more or less pronounced—of factorial agency, depending on the character of the business which the law agent is instructed to perform. In such cases it follows that the law agent may have to incur charges and outlays which may be unrepresented for the time being by any assets of the principal in the law agent's hands. The law agent, in short, may have to advance such charges and outlays on his client's behalf. It is for that reason, if not for that reason alone, that the possession of some capital, or at any rate of some credit (which is the same thing) by most firms of law agents is an essential condition of carrying on their business. I do not doubt that if advances of this kind made by a law agent on behalf of his client

(The Lord President (Clyde).)

became irrecoverable and were lost in consequence of some misfortune occurring to the client, they would form legitimate deductions in ascertaining the law agent's profits and gains. But it is plain on the facts of this case that this £2,615 was not a debt incurred by the company in consequence of the Respondents having acted as its factors; it was a sum which the Respondents chose to advance on loan to their client, the company.

It was argued, however, that the making of this loan was truly a part of the business of the Respondents as law agents, or at any rate was an incident so closely associated with the conduct of that business as to entitle the loss of it to be treated as " money wholly " and exclusively laid out or expended for the purposes of " their business, within the meaning of head (*a*) of Rule 3 of Cases I and II of Schedule D, or as a " loss . . . connected with or arising " out of " their business within the meaning of head (*e*) of the said Rule, rather than as a " sum employed or intended to " be employed as capital in " the business within the meaning of head (*f*) of the said Rule. Putting the argument in a more general form, the contention was that the loss of the £2,615 was a revenue loss and not a capital one.

In my opinion there is no foundation whatever in the case for arguments of this kind. It was no part of the employment of the Respondents that they should act as bankers or financial agents for their client. If they chose to lend money to the company they did so as ordinary lenders and not in the discharge of any duty owed to the company by them either as law agents or as factors. We are told there was no security for this loan of £2,615, but it appears to have been made in circumstances similar to those in which in other years the Respondents had advanced to other clients money on heritable security. It appears to me to be clear that what happened was that the Respondents simply advanced to the company on loan £2,615 out of the capital of the firm. If banking or financial agency had been a part of the Respondents' profession or business it might have been easy to show that the capital employed in making the loan was circulating capital and that the loss of it was incurred in the course of the Respondents' business as financial agents, and in this way the loss might have formed a legitimate deduction from the account of the balance of their profits and gains. But, as I have said, it cannot be held that they were engaged in the business of financial agents at all.

Again, the Respondents say that the making of the loan was closely connected with their business as law agents. It is suggested that if a person employed as law agent is willing to promote the convenience of his clients by lending money to them when they are in need of it, he is in a better position to attract clients and to induce clients to remain with him. In this connection we were referred to the group of cases beginning with *Smith* v. *Incorporated*

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Society of Law Reporting(1), [1914] 3 K.B. 674, in which gratuities and pensions to employees were held to form legitimate deductions from gross profits. But these cases seem to me remote from the *species facti* presented to us in the present case. They turned very largely on the particular facts found proved. In this case the Commissioners have found no facts proved upon which the conclusion that this loan of £2,615 was " wholly and exclusively laid " out or expended for the purposes of " the Respondents' business as law agents could be justified. All that we are told is that the Respondents are " in the habit of " lending money to clients. I think it is really out of the question to say that because a law agent finds it helps his business or the extension of his business to give loans to some of his clients, therefore a loss arising in consequence of one or more of such loans becoming irrecoverable is converted from a loss of capital into a charge upon revenue. The money which has been lost in the present case was never anything else than capital of the Respondents' firm.

That being so, and the Respondents' business not being that of financial agents, the loss is not, in my opinion, a legitimate deduction from the account of their profits and gains, and I think the question put to us must therefore be answered in the negative.

Lord Sands.—I have had more difficulty than your Lordship in the Chair. It may be that I am unduly influenced by my knowledge as to the extent of the financing of one kind or another associated with the practice of the legal profession in Edinburgh. I do not know that it extends so far elsewhere. The Commissioners have found that it is the custom of the Respondents to make advances to their clients in connection with the conduct of their legal business. Unfortunately they have made no finding as to the generality and extent of this practice as an ordinary incident of a lawyer's business. In these circumstances we cannot go beyond common knowledge, which does not enable us to affirm that such a transaction as that here in question is an ordinary incident of legal business. We have nothing before us to show that it was not a peculiar and isolated transaction. The company came to Edinburgh as a stranger; it had not begun business; the Respondents had not acted for it as law agents for a term. There was no current account, no receipts on the one hand and disbursements on the other. The loans were bald advances to a speculative company. I cannot conclude that this was a transaction in the ordinary course of their business by a firm of lawyers. The money might all have been advanced at once, and it seems to make no difference that it was advanced in separate sums. A loan to a company in order to purchase a new agency seems to savour more of the nature of a capital advance than of a routine incident in the conduct of legal business.

(1) 6 T.C. 477.

Lord Blackburn.—I agree that the facts in this case are not so fully stated as they might have been, and perhaps it would have been more satisfactory if we had known more about them. So far as our information goes, this appears to me to be simply a case of a loan granted out of the capital of the law agents' firm for the purpose of financing what is described as an experimental company with a nominal capital of £10,000. It was hoped that the experiments would be successful and that thereafter a public company would be called into existence, and the purpose of financing the experimental company was to secure what would prove to be a lucrative client to the firm of law agents. I am unable to hold that a loan made in such circumstances is a kind of loan which falls within the ordinary ambit of the business carried on by a firm of Writers to the Signet, and accordingly in my opinion the loan does not form a good deduction from the ordinary profits which they earned in carrying on that business.

Lord Morison.—The business of the Respondents is that of Writers to the Signet—that is to say they carry on the profession of law agents. It is found as a fact that the Respondents made advances of certain sums to certain of their clients. Now I have no doubt that these advances were investments of the firm's money which were made in the course, and, as Mr. Reid said, within the scope, of the Respondents' business. But they were advances which directly if not mainly promoted the business or affairs of the clients to whom the advances were made. The loss of these advances did not therefore represent moneys " wholly and exclu- " sively laid out " for the purposes of the Respondents' professional business and are not losses which, in my view, are allowed as deductions by Rule 3 (*a*) of the Schedule from the profits of the Respondents' professional business. I think the question of law should be answered in the negative. I wish to add that I respectfully agree with the observations which your Lordship in the Chair has made in regard to head (*f*).

An appeal having been entered against the decision of the Court of Session, the case came before the House of Lords (Lords Buckmaster, Shaw of Dunfermline and Warrington of Clyffe) on the 1st March, 1929, when judgment was reserved. On the 18th March, 1929, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. J. Condie S. Sandeman, K.C., and Mr. J. S. C. Reid appeared as Counsel for Messrs. Hagart and Burn-Murdoch, and the Lord Advocate (the Hon. W. Watson, K.C.), the Attorney-General (Sir T. Inskip, K.C.), the Solicitor-General for Scotland (Mr. A. M. MacRobert, K.C.), Mr. R. P. Hills and Mr. A. N. Skelton for the Crown.

JUDGMENT.

Lord Buckmaster.—My Lords, the Appellants are a firm of Writers to the Signet at Edinburgh. In 1923 certain of their clients were interested in the development and manufacture of a new metal alloy, and having decided to promote a company to experiment with this invention they instructed the Appellants to undertake the necessary legal business. This the Appellants did, and the company was duly incorporated on May 2nd, 1923, with a nominal capital of £10,000 in £1 shares. The Appellants became law agents of the company. One of the partners held a £1 share which qualified him as a director, and another acquired as a private investment 250 further shares, but the Appellant firm held no office or shares and their relationship to the company was professional.

During the years 1923 and 1924 the Appellants advanced to the company sums amounting in all to £2,615, without security and without written acknowledgment. There can be no doubt that the Appellants believed that there would be future extensive developments of the company's operations and they may well have regarded the assistance they gave as likely to secure for them future profitable business. These hopes were unfortunately doomed to disappointment ; the company failed, and the monies are wholly irrecoverable.

In these circumstances the Appellants sought in their Income Tax returns for the year 1925–26, to bring the sum of £2,615 into account as a loss to be properly debited on ascertaining their profits and gains under Schedule D of the Act of 1918. They were, however, assessed at a figure excluding this deduction ; they successfully appealed against the assessment to the General Commissioners, but their finding was reversed by the Court of Session, against whose judgment this appeal has been brought.

The principles to be relied on in determining how the assessment is to be made under Schedule D have often been discussed. The profits and gains have to be determined in the manner proper to the particular business or profession under review, but apart from any general principles applicable to such determination the following negative provisions are to apply : " Rules applicable to Cases I and " II. 1.—(1). The tax shall be charged without any other deduction " than is by this Act allowed. . . . . 3. In computing the amount " of the profits or gains to be charged, no sum shall be deducted " in respect of—(*a*) any disbursements or expenses, not being " money wholly and exclusively laid out or expended for the purposes " of the trade, profession, employment, or vocation : . . . . (*e*) any " loss not connected with or arising out of the trade, profession, " employment or vocation : (*f*) any capital withdrawn from, or any " sum employed or intended to be employed as capital in such trade, " profession, employment or vocation ".

(Lord Buckmaster)

The question, therefore, is, ought this sum to be deducted in ascertaining the profits and gains of the business as carried on by the Appellants as Writers to the Signet, and if this were so, apart from statutory prohibition, is the allowance excluded by the restrictions already quoted ?

Now it appears that the loans under consideration are not isolated instances of such transactions. The Commissioners have found that the Appellants are " in the habit of making advances to clients " when required, without security," and certain instances are given.

The facts and circumstances in which the loans were made are not analysed ; it is not even stated whether they bore interest or not, and except in one case where the loan was to purchase sheep, the object of the loan is not disclosed. It must, therefore, be taken that in the present case there was no question of advances being made in the strict and usual course of professional work as, for example, in making payments to defray expenses in connection with a law suit or the purchase of property. The present position is strictly limited by the words of the finding, " the sole relations " between them and the company were those of solicitor and client, " in the course of which they also became creditors for the advances " above mentioned."

In my opinion the loss of money so advanced cannot be treated as a loss in ascertaining the profits and gains of the profession of Writer to the Signet and if it could be so regarded without the restrictions of the rules I think it is excluded by Rule 3 (*a*) or (*e*). It was, in fact, a separate venture from that of Writers to the Signet and even if undertaken in the hope and expectation that it would help their business, it was none the less no part of their true profession.

I agree with the criticism of the Dean of Faculty that in the present case to consider whether the source from which the monies came was capital or income is not to apply the true test. In this instance it is the application of the monies and not their origin that provides the real criterion.

No decided case lends much aid to this decision. The nearest is that of *Reid's Brewery Company, Ltd.* v. *Male*(1), [1891] 2 Q.B. 1, where monies advanced by a brewery to tenants were held to be properly deducted, but in that case the Commissioners found as a fact that " the loans and advances were essentially necessary " and without them the business could not be carried on at a profit. It was held that as the result the brewery and money lending business was one and that the money was laid out exclusively for the purposes of the brewery trade. The findings in the present case do not approach even remotely such a situation. The case of *Morley* v. *Lawford*(2), where monies paid under a guarantee given for the

(1) 3 T.C. 279. (2) 14 T.C. 229.

(Lord Buckmaster)

express purposes of obtaining trade were held properly deducted, depended largely upon the very express findings of fact of the Commissioners that the monies were expended " wholly and " exclusively for the purposes " of the trade, and the present case, though quoted in support of the Crown, was distinguished on sound grounds by Lord Justice Greer. It is unnecessary, therefore, to express any opinion as to the correctness of that decision.

In the present case the findings are confined to the bare statement that the advances were made " in the course of " the relation of solicitor and client, and that this was in accordance with a habit. This to my mind is insufficient. Lending money to clients may often be done by Writers to the Signet, but it is no essential and necessary part of their profession, and if a case ever arose in which it could be held that moneylending and the profession had become one and the same business it would require a special finding of facts to that effect before the position could approach that of the cases quoted. Apart from this it is also true that as factors of an estate or for special purposes money may be advanced by Writers to the Signet under such conditions that its loss would be a proper element in determining the balance of profits and gains, but the facts as found here do not establish any of the special conditions necessary to blend these payments with that of the profession in which the Appellants were engaged.

For these reasons I am of opinion that this appeal should fail.

Lord Shaw of Dunfermline.—My Lords, as recorded by the Case Stated by the Commissioners, the Respondents are a firm of Writers to the Signet in Edinburgh, that is to say, their business is that of solicitors. In 1923 they were consulted by clients interested in promoting a company for the manufacture of a new metal alloy. The Case also states that " a large amount of legal business was " anticipated." In point of fact: " An experimental company " called X, Limited, was incorporated on 2nd May, 1923, with a " nominal capital of £10,000, and the Respondents carried through " the legal business of the incorporation and became the company's " law agents. They held no other office in connection with it. " During the years 1923 and 1924 they made advances to the " company to a total amount of £2,615. The advances were made " without security and without any written obligation to repay. " They were made from time to time in varying sums as required " by the company for temporary purposes."

In the end the project collapsed. The sums advanced are irrecoverable. The question of law submitted by the Commissioners for the opinion of the Court is " whether the Respondents are " entitled to deduction of the said sum of £2,615."

(Lord Shaw of Dunfermline)

I am of opinion that it cannot be so allowed as a deduction for the reason maintained by the Inspector of Taxes before the Commissioners and recorded thus: "That the loss could not be "allowed as a deduction, as it did not represent moneys wholly and "exclusively laid out or expended for the purposes of the "Respondents' profession within the meaning of Rule 3 (*a*) of the "Rules applicable to Cases I and II of Schedule D of the Income "Tax Act, 1918".

If necessary I should also hold that the loss could not be allowed as a deduction within the meaning of Rule 3 (*e*) as it was not a loss connected with or arising out of the Appellants' profession.

It was admitted by the learned Dean of Faculty that the transaction was not an ordinary incident of legal business.

It was however maintained that the deduction in the present case was legitimate, first on the ground of custom, and second on the ground of law approved especially in *Usher's Wiltshire Brewery, Limited* v. *Bruce*(1).

Section 209 (1) of the Income Tax Act, 1918, provides that: "In arriving at the amount of profits or gains for the purpose "of income tax—(*a*) no other deductions shall be made than "such as are expressly enumerated in this Act; . . . . ." The following are extracts from the Rules of Schedule D: "Rule "applicable to Case II. The tax . . . . shall be computed "on the full amount of the balance of the profits, gains and "emoluments of the professions, employments or vocations . . . . "Rules applicable to Cases I and II. 1.—(1) The tax shall be charged "without any other deduction than is by this Act allowed . . . 3. In "computing the amount of the profits or gains to be charged, no "sum shall be deducted in respect of—(*a*) any disbursements or "expenses, not being money wholly and exclusively laid "out or expended for the purposes of the trade, profession, "employment, or vocation: . . . . (*e*) any loss not connected with "or arising out of the trade, profession, employment or vocation: "(*f*) any capital withdrawn from, or any sum employed or intended "to be employed as capital in such trade, profession, employment or "vocation . . . ."

In these cases it is desirable if possible not to extend the ground of judgment. In my opinion one ground is sufficient and is very clear in the present case. I do not think that the advance of £2,615 was wholly or exclusively laid out for the purposes of the Appellants' profession of solicitors. Accordingly it is illegitimate in computing the amount of profits or gains to be charged to deduct the sums stated, as Rule 1 (3) (*a*) expressly forbids such a deduction being

(1) 6 T.C. 399.

(Lord Shaw of Dunfermline)

made. The same result, reached from the point of view of loss, would have been reached under Sub-head (*e*) ; but it is sufficient to decide the case on the former ground, as taken by the Inspector of Taxes.

As to custom, while it was admitted that loans or advances of such a kind were not an ordinary expenditure of a solicitor's business, it was maintained in argument that they became so in the case of the Appellants because they were themselves in the habit at times of lending money to their clients with or without security. Several instances in which they did so are cited, and are, of course, quite truthfully set down. A Court is not concerned with the motives for such transactions which may spring from personal interest or from generosity or from a sense of favours to come, but it is in the highest degree doubtful whether any custom could avail to bring banking or moneylending within the scope of a solicitor's business, and it is beyond all doubt that no custom can rest upon what an individual solicitor himself did.

Nor do I think it advisable to express any opinion upon the case alluded to, of a solicitor's business being mixed up with a factorial agency. That would in the individual case require separate investigation and the present is not a case of that kind. I make the same observation upon a point raised and referred to in the judgment below as to capital withdrawn or presumably withdrawn from or intended to be employed as capital in the Appellant's profession. That would introduce a consideration of Sub-head (*f*) already quoted. Whether it was so withdrawn or from what source it came has in truth nothing to do with the question which arises in this case which rests upon Rule 3 (*a*), namely, whether the advances were made wholly and exclusively for the purposes of the solicitor's business.

There remains only reference to the case law, and particularly to the case of *Usher*. For the reason stated above the decisions on the " capital " cases as such and referable to (*f*) are not in point.

The case of *Usher* has already been referred to. On the facts it was an instance of an ordinary tied house transaction, and it was held that where advances were made by a landlord who was a brewer and allowed by him to the tenant of a tied house as an incident of the profitable working of the brewery business, the deduction could be made. As Lord Atkinson said [1] : " The publican's trade " is the vending of the landlord's beer and none other. The house " is the market place for that beer and none other. The brewer " takes the house, ties it to his brewery, and puts the publican into " it as tenant for the very purpose of having his beer sold in that " market through the efforts of this salesman, the tied tenant." I

[1] 6 T.C., at p. 427.

(Lord Shaw of Dunfermline)

quote Lord Atkinson's words to show how plainly the language of the Statute could be held to justify a deduction in such a case. These advances exactly fitted Sub-head (*a*). They were wholly and exclusively laid out or expended for the purposes of the trade, and equally any loss on those advances would be connected with or would have arisen out of the trade.

It must be remembered that the duty chargeable is computed "on the full amount of the balance of the profits, gains and "emoluments" of the profession, employment or vocation, and as Lord Parker in an observation with which I most respectfully concur observed(1): "The expression 'balance of profits and gains' "implies, as has been often pointed out, something in the nature of "a credit and debit account, in which the receipts appear on the "one side and the costs and expenditure necessary for earning "these receipts appear on the other side." It is quite impossible to appeal to that case in an instance like the present, or to maintain that the advances made by way of unsecured loan to a client were items of expenditure or debit necessary for earning the receipts of a solicitor's business.

In my view the appeal to decisions fails, and the Statute is in substance clear. I agree that the appeal fails.

Lord Warrington of Clyffe (read by Viscount Dunedin).—My Lords, the Appellants, Messrs. Hagart and Burn-Murdoch, are a firm of Writers to the Signet carrying on business in Edinburgh. In the years 1923–24 they had amongst their clients a company, referred to in the proceedings as X, Limited. To this client they made from time to time advances in money without security amounting altogether to £2,615. The money was advanced as required by the company for temporary purposes.

The company had been formed for the purpose of experimenting in, and if possible perfecting, the manufacture of a new metal, which it was hoped would prove of great value, and with the intention in the event of success of promoting a large public company for marketing the metal. A large amount of legal business was anticipated from such promotion. The scheme however proved a failure; X, Limited collapsed; and the £2,615 was irrecoverable.

In their return for the purposes of Income Tax under Schedule D, in respect of the profits and gains from their business as Writers to the Signet, the Appellants claimed to be allowed a deduction in respect of the loss of the £2,615. This claim having been rejected by the Commissioners for Inland Revenue, the Appellants appealed against the assessment to the Commissioners for General Purposes of Income Tax. The appeal was allowed and the Commissioners at

(1) 6 T.C. at p. 429.

(Lord Warrington of Clyffe)

the request of the Inspector of Taxes stated a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, the question submitted being whether the Appellants were entitled to deduction of the said £2,615.

On the 21st June, 1928, the case was heard by the Lords of the First Division, who answered the question in the negative. Hence the appeal to this House.

In the Case Stated the Commissioners found in detail the facts summarised above and in addition they found the following facts relating to the advances in question: Paragraph 6—" . . . . . " the sole relations between " the Appellants " and the company were " those of solicitor and client, in the course of which they also " became creditors for the advances above mentioned " ; Paragraph 7—The Appellants " are in the habit of making advances to clients " when required, without security." Six examples are then given of advances to other clients made " within recent years", one of them being on security " partly over heritage and partly " over reversion " and another (by far the largest) being " To enable " a landowner to purchase sheep." It is further stated as follows : " Some of these advances were made to commercial firms for " whom " the Appellants " act, and they have made advances to " clients other than X, Limited, in circumstances and for purposes " similar to the said advances of £2,615." It is stated that in answer to a question by the Commissioners the Inspector of Taxes stated that he did not desire any further inquiry as to the firm's practice in regard to advances to clients or as to the nature and circumstances of the advances to other clients.

It will be observed that there is no finding by the Commissioners that the Appellants carried on the business of moneylending in connection with or as a branch of their business as solicitors, nor is it stated that there is any general practice amongst solicitors in Edinburgh so to do. The absence of the latter statement distinguishes this case from *Reid's Brewery Company, Ltd.* v. *Male*(1), [1891] 2 Q.B. 1, one of the cases relied on by the Appellants.

It is not suggested that any part of the advances making up the £2,615 consisted of disbursements made in the course of the legal business transacted by the Appellants for the company, and nothing that I say must be treated as throwing any doubt on the right of solicitors to a deduction in respect of such disbursements not recovered from the client on whose behalf they were made.

In my opinion the advances in the present case come within Rule 3 (*a*) of the Rules applicable to Cases I and II under Schedule D, viz., " In computing the amount of the profits or gains to be charged,

(1) 3 T.C. 279.

(Lord Warrington of Clyffe)

"no sum shall be deducted in respect of—(*a*) any disbursements "or expenses, not being money wholly and exclusively laid out or "expended for the purposes of the trade, profession, employment, "or vocation."

The profession in respect of which the balance of profits and gains were to be assessed was that of Writers to the Signet. The finding of the Commissioners merely amounts to this, that these gentlemen had from time to time been willing under circumstances of which no particulars are given to oblige clients in need of money by making temporary advances. No doubt in so doing they were probably actuated by the feeling that it was good policy to keep on good terms with their clients and that to refuse to make advances of money might entail a loss of business, but I cannot think that on these findings there is any ground shown for holding that the advances in question were made for the purposes of the Appellants' profession of Writers to the Signet. I cannot hold that the business of moneylending was so far part of the profession of these gentlemen as carried on by them as to be one of the purposes thereof, and I should much regret on grounds of public interest if I were compelled so to hold.

I base my judgment on Rule 3 (*a*). I feel some doubt whether the loss in question could be said to be not connected with or arising out of the profession (Rule 3 (*e*)), and, with all respect to the Judges of the Court of Session who thought otherwise, I cannot find sufficient material in the facts found by the Commissioners for holding that the advances represented capital withdrawn from the profession.

But if the sum claimed to be deducted comes under any one of the heads comprised in Rule 3 the deduction cannot be made.

For the reasons above stated I think the appeal fails and should be dismissed with costs.

Questions put:

That the judgment appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

[Agents:—The Solicitor of Inland Revenue, England, for the Solicitor of Inland Revenue, Scotland; Messrs. Beveridge & Co., for Messrs. Hagart and Burn-Murdoch.]