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VOL. XXIII—PART IV

No. 1138—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—
24TH AND 25TH MARCH, 1938

COURT OF APPEAL—23RD AND 24TH MAY AND 21ST, 22ND AND
23RD NOVEMBER, 1938

HOUSE OF LORDS—27TH AND 28TH FEBRUARY AND 8TH MAY, 1940

ODHAMS PRESS, LTD. v. COOK (H.M. INSPECTOR OF TAXES)⁽¹⁾

Income Tax, Schedule D—Profits of trade—Deduction—Debt due from subsidiary company written off—Income Tax Act, 1918 (8 & 9 Geo. V, c. 40), Schedule D, Cases I and II, Rule 3.

The Appellant Company executed work for a subsidiary company in which it owned all the shares, and charged the cost at full trade prices to the subsidiary company. During the year ended 31st December, 1933, the subsidiary company made a loss, and the Appellant Company wrote off an equivalent amount of the sum owing to it on trading account.

On appeal against assessments to Income Tax under Schedule D the Appellant Company contended that the amount so written off was an admissible deduction in computing its profits for Income Tax purposes as being a reduction in the charges made by it to the subsidiary company or a bad debt or the extent to which a doubtful debt ought to be treated as bad. The Special Commissioners found that the sum written off by the Appellant Company was not written off wholly and exclusively for the purpose of the Company's trade or business and was inadmissible as a deduction for Income Tax purposes.

Held, that the question was one of fact for the Commissioners and that there was evidence upon which they could reach their conclusions.

⁽¹⁾ Reported (K.B.) [1938] 2 All E.R. 312; (C.A.) [1938] 4 All E.R. 545; (H.L.) 56 T.L.R. 704.

CASE

Stated by the Commissioners for the Special Purposes of the Income Tax Acts under the Income Tax Act, 1918, Section 149, 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 at York House, Kingsway, London, on 7th June, 1937, for the purpose of hearing appeals, Odhams Press, Ltd., hereinafter called "the Company", appealed against an additional assessment in the sum of £11,470 for the year 1930-31 and an estimated assessment in the sum of £500,000 for the year 1934-35 made upon it under Schedule D of the Income Tax Act, 1918. The facts relating to the year 1934-35 only were placed before us, but it was agreed that the principle involved was the same for both years under appeal.

2. The Company was incorporated on the 15th April, 1920, for the purpose of acquiring and amalgamating as from the 1st January, 1920, the businesses of Odhams, Ltd., and John Bull, Ltd. The business carried on by the Company includes that of newspaper and periodical proprietors, printers, publishers, engravers, advertising agents, etc.

The following publications, amongst others, are owned or controlled by Odhams Press, Ltd. :—

"Debrett's Peerage, Baronetage, &c."	"Daily Herald"
"Sporting Life and Sportsman"	"The People"
"Passing Show"	"Picturegoer"
"Ideal Home"	"Paper Makers Directory of all Nations"
"John Bull"	"Broadcaster"
"Dean's Toy Books"	"20 Story Magazine"
"Kinematograph Weekly"	"Melody Maker"
"Electrical Trading and Electricity"	"Weekly Illustrated"
"Everywoman's", incorporating "Coming Fashions".	

The Company are official printers to the London County Council.

The following businesses are owned by Odhams Press, Ltd. :—

- Borough Billposting Co. (the largest outdoor publicity business in the United Kingdom).
- Gosnay Advertising Co. (1919), Ltd.
- Dean & Son, Ltd.
- Coming Fashions, Ltd.
- The Elm Press.
- Press Printers, Ltd.
- Wondersigns.
- Wymans London Printing Co., Ltd.

3. The whole of the shareholding in Coming Fashions, Ltd., one of the businesses above referred to, was owned by the Company and up to 31st December, 1933, the Company had made advances to Coming Fashions totalling £36,050 and was also owed £7,191 by that Company on trading account, as shown by the following account :—

Coming Fashions, Ltd.—Current Account.

	Advances £	Trading £	Total £
<i>To</i> Additions		3,916	3,916
		<hr/>	<hr/>
<i>By</i> Cash		3,916	3,916
		<hr/>	<hr/>
<i>By</i> Balance, 31st December, 1923 ...		99	99
<i>To</i> Additions	14,621	5,201	19,822
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	14,621	5,102	19,723
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1924 ...	14,621	536	15,157
<i>To</i> Additions	3,572	7,088	10,660
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	18,193	7,624	25,817
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1925 ...	18,193	1,941	20,134
<i>To</i> Additions	3,571	4,506	8,077
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	21,764	6,447	28,211
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1926 ...	21,764	3,250	25,014
<i>To</i> Additions	3,572	3,099	6,671
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	25,336	6,349	31,685
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1927 ...	25,336	4,336	29,672
<i>To</i> Additions	3,571	4,525	8,096
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	28,907	8,861	37,768
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash		5,253	5,253
	<hr/>	<hr/>	<hr/>

	Advances	Trading	Total
	£	£	£
<i>To</i> Balance, 31st December, 1928 ...	28,907	3,608	32,515
<i>To</i> Additions	3,537	10,864	14,401
	<hr/>	<hr/>	<hr/>
<i>By</i> Amount written off	32,444	14,472	46,916
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1929 ...	32,444	8,220	40,664
<i>To</i> Additions	3,606	7,204	10,810
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	36,050	15,424	51,474
	<hr/>	<hr/>	<hr/>
<i>By</i> Amount written off	36,050	2,062	2,062
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1930 ...	36,050	13,362	49,412
<i>To</i> Additions		6,449	6,449
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	36,050	6,913	42,963
<i>To</i> Additions		5,100	5,100
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	36,050	12,013	48,063
	<hr/>	<hr/>	<hr/>
<i>By</i> Amount written off	36,050	1,434	1,434
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1931 ...	36,050	10,579	46,629
<i>To</i> Additions		177	177
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1931 ...	36,050	10,402	46,452
<i>To</i> Additions		4,715	4,715
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	36,050	15,117	51,167
	<hr/>	<hr/>	<hr/>
<i>By</i> Amount written off	36,050	7,265	7,265
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1932 ...	36,050	7,852	43,902
<i>To</i> Additions		7,916	7,916
	<hr/>	<hr/>	<hr/>
<i>By</i> Cash	36,050	15,768	51,818
	<hr/>	<hr/>	<hr/>
<i>By</i> Amount written off	36,050	5,650	5,650
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1933 ...	36,050	10,118	46,168
	<hr/>	<hr/>	<hr/>
<i>By</i> Amount written off	36,050	2,927	2,927
	<hr/>	<hr/>	<hr/>
<i>To</i> Balance, 31st December, 1933 ...	£36,050	£7,191	£43,241

In the above account the trading additions represent charges for printing, engraving, publishing and other work done by the Company for Coming Fashions, Ltd., at full trade prices.

4. Coming Fashions, Ltd., made a net loss in the year to 31st December, 1933, of £2,927 5s. 8d. (before making the adjustment hereinafter referred to) as shown by its accounts. An amount equal to the amount of this loss was written off in the accounts of the Company from the amounts due to it by Coming Fashions, Ltd., on trading account and this amount is claimed in the present appeal as a deduction in arriving at the assessment on the Company for 1934-35. Coming Fashions, Ltd., was informed of the said writing off and the balance sheet of Coming Fashions, Ltd., as at 31st December, 1933, a copy of which is annexed to and forms part of this Case⁽¹⁾, showed the amount of £2,927 5s. 8d. as "transferred to "Odhams Press, Ltd." and showed no balance of profit or loss for the year ended 31st December, 1933, and contained a note as follows:—

"CONTINGENT LIABILITY.

"The voluntary reduction by Odhams Press, Ltd., of their "credit balance by the amount of £15,805 12s. 5d. is liable "at any time to revocation".

The sum of £15,805 12s. 5d., referred to in this note, represents the amount equal to trading losses incurred by Coming Fashions, Ltd., written off in the accounts of the Company from time to time in the same manner as the said amount of £2,927 5s. 8d., and includes the said amount of £2,927 5s. 8d.

5. Mr. J. E. Ward, Director of the Company, stated that the sum of £2,927 5s. 8d. was written off for business reasons in accordance with the Company's practice in the case of subsidiaries which make trading losses; that the accounts of the Company would not have been correct if it had been treated as a profit; that although there had been no formal release of the amount it would never be claimed from Coming Fashions, Ltd.; that the Company had sixteen subsidiary companies which were charged by the Company proper trade prices for work done for them; that the Company could not for business reasons allow any one of its subsidiary companies to fall into such a position that it could not pay debts due to other persons; and that it was compelled by business reasons to write off losses sustained by its subsidiaries and did so by reducing the amounts which had been charged by it against the said subsidiaries for work done on trading account.

6. Mr. A. C. Duncan, Secretary of the Company, confirmed the above evidence; explained that the trade charges against Coming Fashions, Ltd., were in the first instance scientifically fixed in the costing department of the Company in accordance with the method adopted for fixing all other trade charges made by the Company; that Coming Fashions, Ltd., had made profits in the years before 1928, that it had been hit by the slump in the franc, but it was hoped that it would again become a paying concern; that it was the

(1) Not included in the present print.

practice of the Company to write off losses in trade incurred by its subsidiaries by reducing the amounts which had been charged by it against the said subsidiaries for work done on trading account, (although it had not always been possible to write off amounts equal to the losses in trade incurred by its subsidiaries by reason of the fact that in some cases the accounting periods of the subsidiary companies did not coincide with that of the Company); and that the deduction of £2,927 5s. 8d. would never be claimed as a debt from Coming Fashions, Ltd.

7. On behalf of the Company it was contended (*inter alia*):—

- (a) that the writing off or adjustment of £2,927 5s. 8d. being a reduction in the charges made by the Company against Coming Fashions, Ltd., for work done reduced the amount received or to be received by the Company on trading account;
- (b) that in computing the amount of the Company's profits and gains to be charged to Income Tax the amount to be included as trading receipts in respect of work done for Coming Fashions, Ltd., ought to be arrived at after deducting (or without including) the said sum of £2,927 5s. 8d.;
- (c) that the said writing off or adjustment of £2,927 5s. 8d. was made in the course of the Company's trade and was a trading transaction affecting the Company's income and was not a loss of capital withdrawn from or employed in the Company's trade;
- (d) that the said sum of £2,927 5s. 8d. represented money wholly and exclusively laid out or expended for the purposes of the Company's trade or a loss connected with or arising out of the Company's trade (within the meaning of Rule 3 (a) or (e) of Schedule D, Cases I and II, Income Tax Act, 1918) and ought to be deducted in computing the amount of the Company's profits and gains chargeable to Income Tax;
- (e) alternatively, that the said sum of £2,927 5s. 8d. represented a bad debt or the extent to which a doubtful debt ought to be treated as bad, and ought to be deducted in computing the amount of the Company's profits and gains chargeable to Income Tax.

8. H.M. Inspector of Taxes contended (*inter alia*):—

- (a) that the said sum of £2,927 5s. 8d. did not represent money wholly and exclusively laid out or expended for the purposes of the trade of the Company within the meaning of Rule 3 (a), Schedule D, Cases I and II, Income Tax Act, 1918;
- (b) that the said sum did not represent a loss connected with or arising out of the trade of the Company within the meaning of sub-section (e) of the said Rule 3;

- (c) that the said sum did not represent a debt proved to be bad within the meaning of sub-section (i) of the said Rule 3 ;
- (d) that the said sum did in fact represent a loss of capital withdrawn from or employed in the trade of the Company within the meaning of sub-section (f) of the said Rule 3 ;
- (e) that the said sum was not, therefore, allowable as a deduction in computing the amount of the profits or gains to be charged.

9. We, the Commissioners who heard the appeal, held that the loss claimed was not an admissible deduction for Income Tax purposes.

10. Immediately upon our so determining the appeal dissatisfaction on behalf of the Company was expressed as being erroneous in point of law and in due course the Company required us to state a Case for the opinion of the High Court pursuant to the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

C. C. GALLAGHER,
Commissioner for the Special Purposes of the
Income Tax Acts.

(Mr. W. J. Braithwaite, the other Commissioner who heard the appeal, has now retired from the public service.)

Turnstile House,
94/99, High Holborn,
London, W.C.1.
6th December, 1937.

The case came before Lawrence, J., in the King's Bench Division on the 24th and 25th March, 1938, and on the latter date judgment was given in favour of the Crown, with costs.

Mr. J. Millard Tucker, K.C., and Mr. Frederick Grant appeared as Counsel for the Appellant Company, and the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Lawrence, J.—In this case the Appellant Company is a company which carries on the business of printing and publishing a number of papers and periodicals, and it has a number of wholly controlled subsidiaries, and one of those subsidiary companies is a company called Coming Fashions, Ltd. The Appellant Company does printing work for Coming Fashions, Ltd., and charges Coming Fashions, Ltd., the ordinary trade prices for that work, as it does

(Lawrence, J.)

to its other subsidiary companies. Coming Fashions, Ltd., has, during recent years and during the year in question, 1933-34, made a loss on its trading operations, and the amount of that loss in the year 1933 to the 31st December, 1933, was £2,927. The amount charged by the Appellant Company to Coming Fashions, Ltd., for the work done by the Appellant Company was £10,118. In the Appellant Company's accounts the amount of the loss of Coming Fashions, Ltd., namely, £2,927, was written off, and the question is whether that sum of £2,927 is admissible as a deduction from the profits of the Appellant Company for the year in question for Income Tax purposes.

It was contended on behalf of the Appellant Company that it was deductible because it was in truth and in fact a reduction made by the Appellant Company to Coming Fashions, Ltd., of the sum of £10,118 charged to it, and that therefore the receipt which the Appellant Company had from Coming Fashions, Ltd., was not £10,118, but was £10,118 less £2,927. It was therefore contended that the sum of £2,927 was not a loss of capital withdrawn from the Appellant Company's trade, that it was wholly and exclusively laid out for the purposes of the Appellant Company's trade in so far as it could properly be said to be a disbursement, and, lastly, that if the debt of Coming Fashions, Ltd., was to be regarded as a debt, it was a bad debt to the extent of £2,927. The primary argument which was presented on behalf of the Appellant Company by Mr. Tucker was that the £2,927 was a reduction of the amount charged by the Appellant Company, and that therefore the whole amount of the original charge, *viz.*, £10,118, was not a receipt for the purpose of arriving at the Appellant Company's income.

On behalf of the Crown it was contended that it was not a rebate, or a release, or a reduction, because that was not in fact what was done; that the original charge of £10,118 created a perfectly good debt, and the sum of £2,927 was not a reduction which had any specific relation to that debt, and that in truth and in fact, upon the evidence which was before the Commissioners, the reality of the transaction was that the Appellant Company was really putting money into its subsidiary company for the purpose of supporting that subsidiary company; secondly, it was contended for the Crown that another way of looking at the matter was that the sum of £2,927 was not wholly and exclusively laid out for the purpose of the Appellant Company's business, but was laid out substantially for the purpose of the business of Coming Fashions, Ltd., and for the support of that business; and on both of these aspects of the argument for the Crown my attention was drawn to evidence given by Mr. Ward, a director of the Appellant Company, who said that the Appellant Company could not, for business reasons, allow any one of its subsidiary companies to fall

(Lawrence, J.)

into such a position that it could not pay debts due to other persons, and that the Appellant Company was compelled, for business reasons, to write off losses sustained by its subsidiaries, and did so by reducing the amounts which had been charged by it against the subsidiaries for work done on trading account, and it was contended that that evidence showed quite clearly that the expenditure was not wholly and exclusively for the purposes of the Appellant Company's business, but was partly for the purpose of Coming Fashions' business. Lastly, it was contended that the only way in which the sum could properly be deductible would be if it were a sum written off as a bad debt or a doubtful debt, and that had not been done; it had never been treated as a bad or doubtful debt, and the fact that it was the amount of Coming Fashions' loss for the whole year shows that it was not being valued as a bad or doubtful debt.

It was agreed on both sides that if the sum was a sum of money which was put into a subsidiary company as an advance or as capital, it could not be deducted, and my attention was drawn by Mr. Tucker to a number of cases, *Noble v. Mitchell*, 11 T.C. 372, the *Crown Spelter* case, 5 T.C. 327, the *Marsden* case, 12 T.C. 217, and the *Huntley & Palmers* case, 12 T.C. 1209. The *Huntley & Palmers* case was relied upon by the Attorney-General as being in point in the present case, and what Rowlatt, J., held there was that although the form of the transaction was a purchase by Huntley & Palmers from its subsidiary company of tin boxes and tinplates at the figure which had been paid for the goods by the subsidiary company, and a subsequent writing-off by Huntley & Palmers of the difference between that figure and the market value at that date of the goods, the reality of the transaction was that Huntley & Palmers had put that difference into the subsidiary company for the purpose of supporting it; and the Attorney-General contended that that case was closely analogous to the present, and that the Commissioners were perfectly entitled to decide that in this case the reality of the transaction was that the £2,927 was a sum of money which was paid by the Appellant Company for the purpose of supporting the subsidiary company, Coming Fashions, Ltd.

I am of opinion that the contentions of the Crown are correct, and that the decision of the Commissioners in this case was correct, that this was money which was put into the subsidiary company for the purpose of supporting the subsidiary company, and was not wholly and exclusively laid out and expended for the purposes of the Company's trade, but was in part laid out for the purpose of Coming Fashions' trade, and it falls within the prohibitions of Rule 3 (a) of the Rules applicable to Cases I and II of Schedule D, Rule 3 (e), Rule 3 (f) and Rule 3 (i).

I therefore dismiss the appeal with costs.

An appeal having been entered against the decision in the King's Bench Division, the case came before the Court of Appeal (Sir Wilfrid Greene, M.R., and Scott and Clauson, L.J.J.) on the 23rd and 24th May, 1938, when it was remitted to the Special Commissioners for further findings. One of the Commissioners who heard the original appeal having since retired from the public service the case was re-heard, by agreement between the parties, by the remaining Commissioner. The further facts found by the Commissioner and his conclusions were stated in a supplemental Case.

SUPPLEMENTAL CASE

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

Pursuant to the Order of the Court of the 24th May, 1938, I heard further evidence and argument on the 28th June, 1938.

1. I find the following facts :—

- (a) The Appellants carry on a general business as printers, publishers and publicity agents, and as part of their business, compile, print and publish a certain number of "periodicals".
- (b) The Appellants have from time to time acquired controlling interests in other companies, called subsidiary companies, whose business is the compilation and selling of "periodicals". A list of these subsidiary companies is annexed to and forms part of this supplementary Case⁽¹⁾.
- (c) One of the considerations which influence Appellants in acquiring control of these subsidiary companies is that the latter become "tied" to the Appellants for the printing and other services necessary to put their periodicals in saleable form.
- (d) Coming Fashions, Ltd., is a company in which the Appellants hold a controlling interest. The business of Coming Fashions, Ltd., is to compile and issue for sale a periodical entitled "Everywoman's" incorporating "Coming Fashions". For some years Appellants printed and published this paper, but they later gave up the printing, which is now done by another subsidiary company of Appellants. Appellants continued to publish the paper and have always been described on the paper as the responsible publishers.
- (e) The collection of material for, and the editing and selling of the paper are in the hands of Coming Fashions, Ltd.
- (f) The commercial community who have dealings with Appellants do not generally distinguish between Appellants and any of its subsidiaries, and they would so far regard

⁽¹⁾ Not included in the present print.

Coming Fashions, Ltd., as being a part of Appellants' business as to attribute to Appellants any discredit resulting if Coming Fashions, Ltd., were to default to its creditors.

- (g) If the accounts of Coming Fashions, Ltd., for any year showed a deficit, Appellants would come to the relief of the subsidiary company by making such adjustment in the accounts between the two as would enable the subsidiary to balance its accounts for the year.
- (h) In deciding what relief Coming Fashions, Ltd., was to have, Appellants had regard solely to the amount of the deficit and not to the amount which stood nominally debited to Coming Fashions, Ltd., for work done in the year.

2. On these facts I am of opinion that Odhams Press, Ltd., in writing the sum of £2,927 off the trading account between themselves and Coming Fashions, Ltd., did so to enable Coming Fashions, Ltd., to continue to carry on its business as compiler and vendor of the periodical "Everywoman's", and that, therefore, the sum written off was not so written off wholly and exclusively for the purpose of the trade or business of the Appellants.

3. In view of the facts (a) that the amount written off was not related to the cost of services rendered during the year but was determined solely by reference to the amount of the deficit in the accounts of Coming Fashions, Ltd., and (b) of the statement made with every circumstance of deliberation and with the assent of the shareholders (the Appellants) in the Balance Sheet of Coming Fashions, Ltd., that "the voluntary reduction by Odhams Press, Ltd., of their credit balance by the amount of £15,805 12s. 5d. "is liable at any time to revocation", I am of opinion that the sum of £2,927, which forms part of that £15,805 12s. 5d., represents capital withdrawn from or employed in the trade of the Appellants.

C. C. GALLAGHER,

Commissioner
for the
Special Purposes
of the
Income Tax Acts.

Turnstile House,
94-99, High Holborn,
London, W.C.1.
12th July, 1938.

The case came again before the Court of Appeal (Sir Wilfrid Greene, M.R., and Scott and Clauson, L.JJ.) on the 21st, 22nd and 23rd November, 1938, and on the last named date judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. J. Millard Tucker, K.C., and Mr. Frederick Grant appeared as Counsel for the Company, and the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Sir Wilfrid Greene, M.R.—This is an appeal from a decision of Lawrence, J., on an appeal by Case Stated from the Special Commissioners. The question is concerned with a certain sum of £2,927 5s. 8d., the nature of which I shall presently explain. The question, broadly stated, which arose for consideration was whether or not, in computing the profits of the Appellants, Odhams Press, Ltd., for the year 1934-35, the measure of such profits being the profits of the previous year, that particular sum of £2,927 5s. 8d. ought to be deducted or ought not to be included.

When the matter first came before this Court, it appeared, after the argument had proceeded some way, that two main questions were involved, one being whether or not this sum could be said to be a sum wholly and exclusively laid out or expended for the purposes of the Appellants' trade, the other being whether, assuming that to be the case, it represented a loss of capital withdrawn from or employed in the trade, or perhaps I should say more accurately, whether it represented capital withdrawn from or employed in the trade. Those two questions emerged as the leading questions in the case, and we found ourselves confronted with this difficulty, that the finding of the Commissioners did not specify what their conclusions were on those two questions, but was what I may describe as a rolled-up finding in which those two matters were not differentiated. The finding was this: "We, the Commissioners who heard the appeal, held that the loss claimed was "not an admissible deduction for Income Tax purposes". That finding was consistent with the view that the Commissioners, while holding that the money was wholly and exclusively laid out for the purposes of the trade, nevertheless considered the sum in question to be of a capital nature. It was also consistent with the view that, while holding it to be not of a capital but of a revenue nature, they considered that it was not wholly and exclusively laid out for the purposes of the trade. In the course of the argument, it became manifest that this Court was in a great difficulty in the absence of specific findings on those two matters, one of which, at any rate (that of "wholly and exclusively"), has been treated always as a question of fact for the Commissioners, the other one (the question of capital) being perhaps a mixed question of fact and law. Accordingly, we took a course which I think commended itself to both sides, and we sent the matter back to the Commissioners with instructions to add further findings by way of answers to two questions stated

(Sir Wilfrid Greene, M.R.)

in the Order as follows: "(a) whether the sum written off was " so written off wholly and exclusively for the purposes of the trade " or business of the Appellants (Odhams Press Limited); "(b) whether the said sum represented, in the opinion of the Commissioners, a loss of capital withdrawn from or employed in the " trade of the Appellants (Odhams Press Limited)". The Order then directed that the Commissioners should in each case state the facts on which they based their findings, and both parties were to be entitled to call further evidence. Of the two Commissioners who heard the original appeal, one had retired from the public service before the original Case was stated, and the parties before us agreed that the matter when remitted to the Commissioners should be heard by the one remaining Commissioner who had signed the Case, and that was done. The matter was argued, fresh evidence was called, and we have now the Supplemental Case signed by the Special Commissioner in question. I will state the answers here because I think it is convenient to do so even before I have gone more deeply into the facts.

The answers to the two questions put to the Commissioner were, as to the first question, that " the sum written off was not so " written off wholly and exclusively for the purpose of the trade or " business of the Appellants ", and the answer to the second question was that the sum in question " represents capital with- " drawn from or employed in the trade of the Appellants ". If either of those findings is capable of being supported, the appeal must necessarily fail. It was said on behalf of the Appellants by Mr. Tucker in his very able argument that the facts as stated in the Supplemental Case, coupled with those stated in the original Case, were insufficient to support those findings. Indeed he said, and certainly with regard to the first finding I think he was bound to say, in order to succeed, that the facts found compelled the Commissioner to find the opposite and to find that the sum was written off wholly and exclusively for the purposes of the trade. I think that he similarly argued that in the matter of the second question the Commissioner was bound, on the facts found, to hold that this was not capital withdrawn from or employed in the trade.

I will now state as briefly as I can the essential facts for the understanding of this judgment. The facts, of course, are set out in full in the two Cases. The Appellants are well-known printers and publishers, and they own all the shares of or hold controlling interests in a number of subsidiary companies who are largely connected with the newspaper trade. One of those subsidiary companies, being one in which the Appellants own all the shares, is a company called Coming Fashions, Ltd. The business of Coming Fashions, Ltd., is the business of compiling and issuing for sale a periodical entitled " Everywoman's ", incorporating

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"Coming Fashions". The production of that paper, of course, requires printing and publishing, and for some years those two operations were carried out by the Appellants. They have now given up the printing and transferred it to another subsidiary company in which they are interested, but they still continue to publish, although this case, I think, relates to the period when they were actually printing. As the result of the Appellants performing those services for Coming Fashions, Ltd., which were performed upon a commercial basis, Coming Fashions, Ltd., incurred liabilities to the Appellants on trading account. In addition to those liabilities, the Appellants from time to time made large advances to Coming Fashions, Ltd. There is set out in the Case an account differentiating between those classes of debt. On the 31st December, 1933, the advances total £36,050, while the trading debt of Coming Fashions, Ltd., to the Appellants is shown at a net figure of £7,191. That net figure was arrived at after taking the then outstanding figure of £10,118 and writing off it a sum of £2,927, which is the sum in question on this appeal. That sum, in point of fact (ignoring the odd shillings and pence), represented exactly the debit balance upon the profit and loss account for the year ending 31st December, 1933, of Coming Fashions, Ltd. The balance sheet of that company shows the loss for the year, after certain adjustments, at that figure, and then that figure is annulled by the same figure being written in under the head: "Amount transferred to Odhams Press Ltd." Similar transactions had occurred in previous years, and the balance sheet contains this note on the liability side: "Contingent Liability. The voluntary reduction by Odhams Press, Ltd., of their credit balance by the amount of £15,805 12s. 5d. is liable at any time to revocation".

The argument before us was conducted on the basis that, from the side of Odhams, that reduction in the amount of the trading account was regarded as permanent; in other words, Odhams had no intention of ever calling upon their subsidiary to pay that amount. It was not conducted, and indeed could not, I think, have been conducted, on the footing that there had been any legal extinction of that amount of indebtedness, because there was no contract to that effect, there was no consideration, and it was not suggested that there was such a legal extinction. Nevertheless, for business purposes, from the point of view of Odhams, the sum was regarded as a sum to be permanently written off. It appears that this was a practice of the Appellants in dealing with their subsidiaries, namely, when the subsidiaries made a loss in their accounts, to make such an adjustment of the inter-company accounts as would enable that loss to be written out of the subsidiary companies' accounts.

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There are other matters in the Stated Cases which will require more particular examination, but what I have said is, I think, sufficient to enable the nature of the arguments to be understood.

By way of preface, it is, I think, important to bear in mind in dealing with Income Tax cases what is, of course, elementary, but nevertheless sometimes seems to recede into the background, that limited companies who carry on businesses are separate taxable persons, and the profits of their respective businesses are separate taxable profits. Companies who, if I may use a convenient expression, choose to carry on their businesses with the assistance of subsidiaries not infrequently find that for taxation purposes certain inconveniences result, owing to the fact that their subsidiary is a separate taxable entity from themselves. For instance, if the holding company, the parent company, is carrying on a business and makes a profit, and the subsidiary is carrying on a business which perhaps originally formed part of the parent company's business but which for convenience has been transferred to the subsidiary, and in that business the subsidiary makes a loss, obvious difficulties appear in the way of treating the loss made by the subsidiary as a trading loss of the parent company. One result of the present claim, if it were successful, would be to transfer into the accounts of the holding company a trading loss of the subsidiary. I am not suggesting for a moment that this particular method of accountancy has been adopted with Income Tax in view. Indeed, if it had been, there would have been nothing wrong about it. What has been done, as it appears, was done for good commercial reasons, but that does not alter the fact that the result of the present claim, if it be correct, would be to transfer for Income Tax purposes into the accounts of the holding company a loss suffered by the subsidiary company.

I will now refer to the particular matters on which great reliance is placed. First of all, it is pointed out that, in the Supplemental Case, there is the following finding: "One of the considerations which influence Appellants in acquiring control of these subsidiary companies is that the latter become 'tied' to the Appellants for the printing and other services necessary to put their periodicals in saleable form". Reliance is placed upon that in order to bring the case within the principles of *Usher's case* (¹), to which I shall refer in a moment. But in passing I ought to point out that the fact there found is not that the only consideration which influenced the Appellants was that of getting a customer for their printing business; that is only one of the considerations; and, as appears from the rest of the Case, the Appellants own all the shares in a company whose business is that of compiling and issuing for sale a periodical,

(¹) *Usher's Wiltshire Brewery, Ltd. v. Bruce*, 6 T.C. 399.

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a business which had passed through bad times, but which, as the secretary to the Company had stated, as set out in the previous Case, it was hoped would again become a paying concern. The relationship of the Appellants to that company was, upon the facts as found and of necessity, clearly a double relationship. On the one hand, they were the owners of all the shares in a commercial concern carrying on a business which it was hoped would earn profits, and of those profits the Appellants would, in one form or another, reap the benefit. If dividends were declared, they would obtain the dividends. If dividends were not declared, but the company merely built up reserves and then went into liquidation, they would profit in that way, of course. That one of the relationships was that of the holder of all the shares in a profit-making concern is unquestionable. It appears on the face of the Case. The other relationship is that of tradesman and customer. As tradesmen the Appellants print for the subsidiary, which is their customer, and by that means they hope to obtain profits. Indeed, as appears in the paragraph I have just read, one of the considerations which influence them in obtaining control of such a company is to enable them to make such trading profits. But I am quite unable to read this Case as meaning that that is the only consideration. Indeed, so to read it would be to fly in the face of what is manifest and apparent, namely, the existence of that other relationship.

The next matter in the Supplemental Case which is particularly relied upon is that: "The commercial community who have dealings with Appellants do not generally distinguish between Appellants and any of its subsidiaries, and they would so far regard Coming Fashions, Ltd., as being a part of Appellants' business as to attribute to Appellants any discredit resulting if Coming Fashions, Ltd., were to default to its creditors". That, no doubt, is good business sense, but it is worth observing that there is no finding that the payment in question was made for the purpose of preventing Coming Fashions, Ltd., defaulting to its creditors. There is no finding to that effect, and, therefore, I myself do not see that very much comfort is to be gained by the Appellants from that paragraph.

The next paragraph relied upon is this: "If the accounts of Coming Fashions, Ltd., for any year showed a deficit, Appellants would come to the relief of the subsidiary company by making such adjustment in the accounts between the two as would enable the subsidiary to balance its accounts for the year".

On those facts, coupled with those found in the original Case, it is said that there was no evidence upon which the Commissioner could come to the finding to which he did come, that the sum in question was not written off wholly and exclusively for the purpose

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of the trade or business of the Appellants. That finding is embodied in a paragraph which I think I ought to read at length. It is as follows: "On these facts I am of opinion that Odhams Press, Ltd., in writing the sum of £2,927 off the trading account between themselves and Coming Fashions, Ltd., did so to enable Coming Fashions, Ltd., to continue to carry on its business as compiler and vendor of the periodical 'Everywoman's', and that, therefore, the sum written off was not so written off wholly and exclusively for the purpose of the trade or business of the Appellants". I must confess that I think the criticisms which have been made against that paragraph are a little bit hard upon the Special Commissioner. It seems to me to be reasonably clear. Reading the paragraph as a whole (and I think that the form of the conclusion and the nature of the conclusion throw light on the meaning of the language in the premises) it seems to me that what it means is this: that the business, to enable the carrying on of which the payment was made, was the business of Coming Fashions. That does not, I think, exclude the view that there may have been also an interest in the carrying on of that business consisting of the interest of Odhams in obtaining printing orders for the future; but the one thing the finding does not mean, in my judgment, is that the purpose of obtaining such printing orders was the only purpose for which the payment was made. The question as to whose business the payment was intended to benefit was a question which, of course, stood out from the very beginning in this case, and it was argued, and I have no doubt presented with the greatest clarity by Counsel for the Appellants to the Commissioner. He has, I think, as clearly as anything can be put, not accepted the argument that the business for the benefit of which the payment was made was the business exclusively of Odhams. If that be the true construction of the finding (and, in my opinion, it is the true construction), the only question that remains is: are there to be found in the two Cases facts sufficient to justify that conclusion? That conclusion is, of course, itself a conclusion of fact, but it is based, as the Commissioner himself says, on other facts which I may call primary facts, and, therefore, it is legitimate to examine those facts and to see whether they are sufficient to support that conclusion. I may say in passing that the phrase: "On these facts" at the beginning of paragraph 2 cannot be construed as confining the material used by the Commissioner to those actually stated in the Case, but must, I think, be read as including the facts found in the original Case, and indeed Mr. Tucker very properly acceded to that view.

When one looks at the facts as stated in the two Cases (and I do not propose to go through them again), it emerges, in my view, quite clearly that, there being these two relationships between the

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Appellants and their subsidiary, it is from that circumstance alone impossible to say that there was no evidence on which the Commissioner could find as he did find. That, to my mind, is an end of the case. The Appellants have not succeeded in obtaining the finding of fact on this matter which is essential for them if they wish to claim this deduction. The Rule, of course, is Rule 3 of Cases I and II of Schedule D: "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". So far from showing that the Commissioner, on the facts found, was bound to find that this sum was wholly and exclusively laid out for the purposes of the trade, the Appellants, in my judgment, fail to show that there was no evidence on which he could come to the finding to which he did, in fact, come.

I do not leave the case without saying a word about the authority which was, as one would have expected, the sheet-anchor of the Appellants' case. A number of other authorities were referred to in the argument, but I do not think it necessary to examine them in detail. The case in question is *Usher's Wiltshire Brewery, Ltd. v. Bruce*, 6 T.C. 399. The facts of that case are so familiar that I will not pause to state them here, but it is very important to appreciate the precise nature of the finding of fact in that case by the Commissioners. Speaking of the tied houses in question there, the Commissioners found that⁽¹⁾: "The said premises have been acquired by the Appellants and are held by them solely in the course of and for the purpose of their said business and as a necessary incident to the more profitably carrying on of their said business". Pausing there for a moment, there is no such finding in this case with regard to the acquisition of the shares in the subsidiary company. On the contrary, the business consideration, from the point of view of obtaining printing orders, was only one of the considerations, and, therefore, there is that radical difference between the facts in *Usher's* case and the facts in the present case at the very outset. Then the finding goes on: "The possession and employment of the said premises as aforesaid are necessary to enable them to earn the profits upon which they pay income tax, and without the said premises and their use as aforesaid, the Appellants' profits if there were any at all would be less in amount". I am not sure whether I am right in saying all, but certainly some of the opinions delivered in the House of Lords—I have not been through them all—place essential reliance upon the fact that the premises were acquired really as a business asset of the company, and for

(1) 6 T.C. 399, at p. 401.

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that purpose alone. I observe, for instance, that Lord Parker, at page 431, says: "It is clear that not only were the tied houses acquired and let solely for the purposes of the trade, but that the repairs were necessary to maintain the houses in such a condition that they could be used for the purposes for which they were acquired and let". It seems to me that really at the outset *Usher's* case is ruled out as an authority which assists the Appellants. They are unable to show that they acquired the shares in question for the sole purpose of obtaining printing orders; in fact, the Case makes it clear that that was not so. That that was one of their purposes is unquestioned. It may be that they made this payment partly with a view to that particular purpose, but it is impossible to say on the facts as found that they did so exclusively for that purpose.

Mr. Tucker then meets that argument in this way. He says: "Assume that there was a composite purpose: (1) the purpose of obtaining orders, and (2) the purpose of maintaining in existence an investment which they hoped would be profitable; nevertheless the payment, in so far as it is referable to the second of those two purposes, is a payment which can properly be deducted, for the reason that it is a payment made to conserve a business asset". He stated the proposition that any payment made to preserve a business asset is a revenue payment. I do not think that he can quite have meant it in such wide terms; in fact, he agreed that payments of that kind may be in themselves in the nature of investments; but the difficulty in the way of accepting even a modified form of Mr. Tucker's proposition as bearing on the present case is this, that he fails to show that this item was a business asset in that sense. It is the same difficulty once again: *qua* potential custom, the holding of these shares was beneficial to the business, but in other respects, *qua* investment, it had nothing to do with the business at all; it was merely an investment, and, therefore, he is unable to show that a sum paid for the purpose of maintaining that asset in the sense in which he uses the term is a sum which is expended for the purpose of maintaining what was simply and solely a business asset and nothing more.

I have said that that really disposes of the case, and, in the view I take, it is not necessary to consider the question whether or not this sum was in the nature of a capital sum. I, therefore, say nothing about the finding of the Commissioner upon that point.

There is just one point that I think I ought to have mentioned. The sum from which this amount was written off was, of course, a book debt, and as such it fell to be brought into the computation for the purpose of ascertaining profits and gains for Income Tax purposes. The amount written off it cannot be treated as an

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amount written off in respect of a bad debt, because the debt has never been extinguished in law, and it still remains. Indeed, in view of the note on the balance sheet of Coming Fashions, Ltd., it would have been impossible to treat this as a bad debt for the purpose of the Rule which deals with deductions for bad debts. It, therefore, stands as *prima facie* a good book debt, and the only way of getting an allowance against it is by writing it off on some such grounds as are here suggested to be available. I only mention the matter of book debts in order that it may not be thought that I had forgotten it.

In the result, the appeal is dismissed with costs.

Scott, L.J.—I agree.

Clauson, L.J.—I agree.

Mr. Tucker.—My Lord, I am conscious, of course, that, to a large extent, questions of fact arise here, but I none the less do ask your Lordships to give us leave to take this matter to the House of Lords, for these reasons, which I will try to state quite shortly. The first is that it is quite obvious that this is an important question, not only for the Appellants, but for all those large companies which nowadays operate so largely through subsidiary companies. There must be frequent cases in which the parent company and the subsidiary company do have dealings together, and circumstances such as these arise—not merely writings-off, but other payments made to the subsidiary for other purposes which might be capable of being related to the parent company's share interest in it.

Sir Wilfrid Greene, M.R.—Mr. Attorney-General, do you wish to oppose this application?

The Attorney-General.—My Lord, I do not wish to oppose it, of course. I would just like to make this observation, that, after a very full hearing in which issues which might have arisen were considered, your Lordships have come to the conclusion that this is a case which falls to be decided on the special ground peculiar to this case, that there is evidence which would support a finding of fact. I only just make that observation as one which appeared to me to be possibly relevant in considering whether the case is a proper one to go to the House of Lords, but naturally, if your Lordships think it a proper case, I do not urge any opposition.

Sir Wilfrid Greene, M.R.—It has a general bearing on the relationship between subsidiaries and parent companies and what must be shown before a deduction of this kind can be allowed.

The Attorney-General.—I am not pressing the opposition.

Sir Wilfrid Greene, M.R.—I was thinking that in some ways it might be convenient for the Revenue to have that decided.

The Attorney-General.—It may be, my Lord. It is entirely a matter for your Lordship, but I just made that observation.

Sir Wilfrid Greene, M.R.—I am much obliged.

Mr. Tucker.—Fortunately, there is no poor litigant on the other side in this case.

Sir Wilfrid Greene, M.R.—Very well, you may take leave.

Mr. Tucker.—If your Lordship pleases.

An appeal having been entered against the decision in the Court of Appeal, the case came before the House of Lords (Viscount Caldecote, L.C., Viscount Maugham, Lords Russell of Killowen, Wright and Romer) on the 27th and 28th February, 1940, when judgment was reserved. On the 8th May, 1940, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. J. Millard Tucker, K.C., and Mr. Frederick Grant appeared as Counsel for the Company, and the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Viscount Caldecote, L.C.—My Lords, this seems to me to be a hopeless appeal. The Special Commissioner, to whom, by agreement of the parties, the matter was remitted by the Court of Appeal for further findings, arrived at a finding of fact which must be fatal to the Appellants unless they can show that there was no evidence to support it. After hearing a very clear argument by Mr. Tucker, on behalf of the Appellants, I can find no ground for any such suggestion.

The Appellants claim to deduct, in making up an account of their profits for the year of assessment, a sum of £2,927 5s. 8d., either by way of an adjustment reducing the amount received or to be received by the Appellants on trading account, or as money laid out or expended for the purposes of their trade. The finding of fact by the Special Commissioner was that this amount, which was written off in an account with another company, "was not so written off wholly and exclusively for the purpose of the trade or business of the Appellants". The facts stated either in the original Case or in the Supplemental Case, in my opinion, abundantly justify this finding. The company, whose indebtedness to the

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Appellants the sum in question was written off, was a subsidiary company of the Appellants in the sense that the Appellants held a controlling interest in it. The Appellants, who are printers and publishers, had acquired all the shares in the company, partly in order to secure work for themselves in printing a periodical issued by the company. The original Case stated by the Special Commissioners contained a note of evidence given by the secretary of the Appellants that the subsidiary company had formerly made profits, but in recent years had incurred losses. It was hoped that it would again become a going concern. The Appellants were, therefore, interested in the subsidiary company both as shareholders who hoped to receive dividends from it to swell their own profits, and as printers who did work for it at full trade prices. A director of the Appellants said that they were compelled, by business reasons, to write off losses sustained by their subsidiary companies, and they did this by reducing the amounts which had been charged by the Appellants against the subsidiaries for work done on trading account. The amount of the sum written off in the year of assessment in this case was the exact amount of the trading loss of the subsidiary company for the material year.

Now these facts seem to me to be evidence upon which the Special Commissioner might reasonably arrive at the conclusion that the sum written off was not so written off wholly and exclusively for the trade or business of the Appellants. No doubt it was better for the Appellants that their subsidiary companies, and this one amongst them, should prosper, and not be weighed down with debts. The same would be equally true of any company holding shares in another company and having trading relations with it. It is tempting to treat what I have called the subsidiary company as if it was part and parcel of the Appellants, but, as the Master of the Rolls points out⁽¹⁾, the two companies are separate taxable persons. The trade or business of one company, even though it may affect very closely the trade or business of another, is not the same as that other's trade or business. Rule 3(a) of the Rules applicable to Cases I and II of Schedule D prohibits the deduction of "any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade", that is to say, the trade of the person whose profits or gains are being computed. The Appellants were computing their profits and gains, and it is their trade which is to be regarded. The Special Commissioner finds, on evidence of which there is abundance, that the "sum written off was not so written off wholly and exclusively for the purpose of the trade or business of the Appellants". That is enough to shut out the Appellants' right to deduct the amount.

(¹) See page 247 ante.

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It was suggested, though I think not very strenuously, by the Appellants' Counsel that Rule 3(a) was not germane to the facts of this case, because the writing off of the sum in question was not a disbursement or expense, but was in the nature of a tradesman's discount or rebate. That is not the view taken by the Special Commissioners of the facts, nor do I think it is the right view. The sum of £2,927 5s. 8d. was the exact amount of the trading loss of the subsidiary company for the year in question, and bore no relation whatever to the prices charged by the Appellants for the work they had done.

I agree entirely with the judgment of the Master of the Rolls and, in my opinion, this appeal should be dismissed with costs.

Viscount Maugham.—My Lords, in the view of Lawrence, J., of the Court of Appeal (Sir Wilfrid Greene, M.R., and Scott and Clauson, L.JJ.), and I think of all your Lordships, this appeal turns upon a question of fact. The decision of this question by the Commissioners for the Special Purposes of the Income Tax Acts must stand if there was evidence upon which they could come to the conclusion at which they arrived. Your Lordships, I think, have had no difficulty in agreeing with the learned Judge and the Lords Justices that there was such evidence. In these circumstances, I think it will be sufficient to state the facts as briefly as possible.

The precise question is whether, upon the facts set out in the Case stated by the Special Commissioners, and in the Case supplemental thereto, there was evidence upon which the Commissioners could hold, as they did, that an amount of £2,927 5s. 8d. written off by the Appellants in an account as between themselves and a certain subsidiary company, Coming Fashions, Ltd., was not money wholly and exclusively laid out or expended for the purpose of the Appellants' trade, or in the alternative (in so far as expended for the purpose of that trade at all) was capital withdrawn from or employed in that trade and, therefore, in either event, could not be deducted in computing the profits of the Appellants' trade.

The Court of Appeal did not think it necessary to deal with the second alternative, and as your Lordships are content to take the same course, I shall deal only with the first alternative.

The Appellants are printers and publishers, and they hold controlling interests in some sixteen subsidiary companies, which own newspapers or other publications, or are printers, publishers, advertising agents, or carry on similar businesses. In particular, the Appellants hold all the shares in Coming Fashions, Ltd., which compiles and issues for sale a periodical called "Everywoman's". The Appellants publish this periodical for Coming Fashions, Ltd., upon a commercial basis, and from time to time have advanced on

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loan large sums to that company. In addition to the amounts advanced, the Appellants were owed by the company at the 31st December, 1933, a sum of £10,118 on trading accounts representing charges for work done at full trade prices. For the trading year ending the 31st December, 1933, Coming Fashions, Ltd., made a net trading loss of £2,927 5s. 8d. The Appellants wrote off in their own accounts an amount equal to this loss from the amounts due to them by Coming Fashions, Ltd., on trading account. It is this sum so written off that the Appellants allege that they are entitled to deduct in computing the profits and gains of their trade for the year ending the 31st December, 1933. They rely on Case I, Schedule D, of the Income Tax Act, 1918. It may be mentioned that a similar question arises under another year of assessment.

It is necessary, at this point, to state that in the course of the first hearing before the Court of Appeal, the Court made an Order remitting the matter to the Special Commissioners for further findings with liberty to the parties to call further evidence. In particular, the Special Commissioners were asked to answer two questions, of which the material one was as follows: "Whether the sum written off was so written off wholly and exclusively for the purposes of the trade or business of the Appellants". The Order directed also that the Commissioners should, in each case, state the facts on which they based their findings. That was done in a Supplemental Case stated (by consent) by one of the Commissioners and your Lordships have had to consider that document as well as the original Special Case.

It emerges from the earlier document that the sum of £2,927 5s. 8d. was written off for business reasons; that the debt was not released but would never be claimed from Coming Fashions, Ltd.; that the Appellants could not, for business reasons, allow any of their subsidiaries to fall into such a position that it could not pay debts due to other persons; and that they were compelled by business reasons to write off losses sustained by their subsidiaries.

In the Supplemental Case there are to be found some findings which I think do little more than confirm the above. The following are the most material for the present purpose: "The commercial community who have dealings with Appellants do not generally distinguish between Appellants and any of its subsidiaries, and they would so far regard Coming Fashions, Ltd., as being a part of Appellants' business as to attribute to Appellants any discredit resulting if Coming Fashions, Ltd., were to default to its creditors. If the accounts of Coming Fashions, Ltd., for any year showed a deficit, Appellants would come to the relief of the subsidiary company by making such adjustment in the accounts between the two as would enable the subsidiary to

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“ balance its accounts for the year. In deciding what relief Coming Fashions Ltd., was to have, Appellants had regard solely to the amount of the deficit and not to the amount which stood nominally debited to Coming Fashions, Ltd., for work done in the year ”. The Commissioner then proceeded as follows: “ On these facts I am of opinion that Odhams Press, Ltd., in writing the sum of £2,927 off the trading account between themselves and Coming Fashions, Ltd., did so to enable Coming Fashions, Ltd., to continue to carry on its business as compiler and vendor of the periodical ‘ Everywoman’s ’, and that, therefore, the sum written off was not so written off wholly and exclusively for the purpose of the trade or business of the Appellants ”.

My Lords, there can be no doubt that limited companies who carry on business are separate taxable persons, and the profits and gains of their several businesses are separate profits and gains for the purposes of the Income Tax Acts. This is none the less true if one of the companies should be the parent company, and the other or others may be its subsidiaries of which the shares are held or owned by the parent company.

It is equally plain that the Appellants stood towards Coming Fashions, Ltd., in a two-fold relationship. They were, in a sense, proprietors of that concern, in so far as they held all the shares in it. Its dividends, if any, came to the Appellants, and on a winding-up of Coming Fashions, Ltd., its assets after payment of debts, liabilities, and costs would be the property of the Appellants. On the other hand, there was also another and a quite different relationship between the two companies, that of tradesman and customer. It should be added that there is no suggestion that the sum of £2,927 was written off as a bad debt.

My Lords, for my part, I am unable to detect any ambiguity in the finding of the Commissioner in the Supplemental Case which I have above quoted. It seems to me that he was exactly answering the first of the two questions which he was asked by the Order of the Court of Appeal to answer, and he was giving his reason for the answer. Plainly he did not intend to say that the Appellants wrote off the £2,927 without any regard to their own interests. It was sufficient for his purpose to find that the sum was not written off wholly and exclusively for the purpose of the Appellants’ trade. Is there any real ground for contending on the evidence that one reason for writing off the sum was not to enable Coming Fashions, Ltd., to continue to carry on its business as compiler and vendor of “ Everywoman’s ”?

My Lords, the question thus put answers itself. There were, beyond dispute, the two relationships between the Company and Coming Fashions, Ltd., already referred to. The allowance of the

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£2,927 5s. 8d. to Coming Fashions, Ltd., might have been "laid out or expended for the purposes of the trade" of the Company or for the purposes of the trade of Coming Fashions, Ltd., or to some extent for both purposes, and it is plain that these facts alone were sufficient to show that there was evidence to justify the conclusion of the Commissioner that the sum written off was not written off wholly and exclusively for the purpose of the trade or business of the Appellants.

In these circumstances, I am of opinion that this appeal should be dismissed with costs.

My Lords, I have been asked by my noble and learned friend **Lord Russell of Killowen** to say that he concurs in the motion proposed.

Lord Wright.—My Lords, I agree so fully with the speeches which have been delivered by my noble and learned friends the Lord Chancellor and Viscount Maugham that I have nothing to add.

Lord Romer.—My Lords, I concur in the motion before the House.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

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

The Contents have it.

[Solicitors:—Simmons & Simmons; Solicitor of Inland Revenue.]