

22, 1955

Nos. 21 and 22 of 1954.

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL OF THE FEDERATION OF MALAYA.

BETWEEN

PL. RM. FAMILY . . . . . *Appellant*

AND

THE COMPTROLLER OF INCOME TAX . . . . . *Respondent*

AND BETWEEN

P. V. FAMILY . . . . . *Appellant*

AND

THE COMPTROLLER OF INCOME TAX . . . . . *Respondent.*

(Consolidated Appeals)

RECORD OF PROCEEDINGS

BULCRAIG & DAVIS,  
AMBERLEY HOUSE,  
NORFOLK STREET,  
STRAND, W.C.2,  
*Solicitors for the Appellant.*

CHARLES RUSSELL & CO.,  
37 NORFOLK STREET,  
STRAND, W.C.2,  
*Solicitors for the Respondent.*

**INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.**

-4 JUL 1956

Nos. 21 and 22 of 1954.

*In the Privy Council.*INSTITUTES OF  
LEGAL STUDIES**ON APPEAL***FROM THE COURT OF APPEAL OF THE FEDERATION OF MALAYA*

BETWEEN

PL. RM. FAMILY . . . . . *Appellant*

AND

THE COMPTROLLER OF INCOME TAX . . . . . *Respondent*

AND BETWEEN

P. V. FAMILY . . . . . *Appellant*

AND

THE COMPTROLLER OF INCOME TAX . . . . . *Respondent.*

(Consolidated Appeals)

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# In the Privy Council.

## ON APPEAL

FROM THE COURT OF APPEAL OF THE FEDERATION OF MALAYA.

BETWEEN

PL. RM. FAMILY . . . . . *Appellant*

AND

10 THE COMPTROLLER OF INCOME TAX . . . . . *Respondent*

AND BETWEEN

P. V. FAMILY . . . . . *Appellant*

AND

THE COMPTROLLER OF INCOME TAX . . . . . *Respondent.*

(Consolidated Appeals)

# RECORD OF PROCEEDINGS

No. 1.

NOTICE OF APPEAL by PL. RM. Family against assessment.

IN THE MATTER of Section 75 of the Income Tax Ordinance,  
1947

AND IN THE MATTER of Income Tax Assessment No. J.73.

Between THE KARTA, PL. RM. FAMILY, MALACCA Appellant

and

THE COMPTROLLER OF INCOME TAX,  
KUALA LUMPUR . . . . . Respondent.

TAKE NOTICE that the above-named Appellant PL. RM. Family hereby appeals against the assessment in respect of the year of Assessment 1951 made by the Comptroller of Income Tax, Kuala Lumpur upon it in

*In the Board of Review.*

No. 1.  
Notice of Appeal by PL. RM. Family against assessment, 27th May 1952.

20

*In the  
Board of  
Review.*

so far as the Comptroller of Income Tax, Kuala Lumpur has refused to allow a sum of \$58,929-05 to be deducted in arriving at the net profit of its business as bad debts.

No. 1.  
Notice of  
Appeal by  
P.L. RM.  
Family  
against  
assessment,  
27th May  
1952,  
*continued.*

Dated the 27th of May, 1952.

Accountants for the Appellant.

To The Clerk to the Income Tax Board of Review,  
P.O. Box No. 1044,  
Kuala Lumpur.

The address for service of the Appellant is at the office of M/S.  
NATARAJAN & SWAMINATHAN, Chartered Accountants (India), No. 27 The 10  
Arcade, Raffles Place, Singapore, 1.

No. 2.  
Notice of  
Appeal by  
P. V.  
Family  
against  
assessment,  
27th May  
1952.

**No. 2.**

**NOTICE OF APPEAL by P. V. Family against assessment.**

**IN THE MATTER of Section 75 of the Income Tax Ordinance,  
1947**

**AND IN THE MATTER of Income Tax Assessment No. J.69.**

Between **THE KARTA, P. V. FAMILY, MALACCA** . Appellant  
and

**THE COMPTROLLER OF INCOME TAX,  
KUALA LUMPUR** . . . . . Respondent. 20

TAKE NOTICE that the above-named Appellant P. V. Family hereby appeals against the assessment in respect of the year of Assessment 1951 made by the Comptroller of Income Tax, Kuala Lumpur, upon it in so far as the Comptroller of Income Tax, Kuala Lumpur, has refused to allow a sum of \$344,465-90 to be deducted in arriving at the net profits of its business as bad debts.

Dated the 27th day of May, 1952.

(Sgd.)

Accountants for the Appellant.

To The Clerk to the Income Tax Board of Review,  
P.O. Box No. 1044,  
Kuala Lumpur.

30

The address for service of the Appellant is at the office of M/S.  
NATARAJAN & SWAMINATHAN, Chartered Accountants (India), No. 27 The  
Arcade, Raffles Place, Singapore, 1.

No. 3.

PETITION OF APPEAL by PL. RM. Family.

IN THE MATTER of Section 75 of the Income Tax Ordinance,  
1947

AND IN THE MATTER of Income Tax Assessment No. J.73.

Between THE KARTA, PL. RM. FAMILY, MALACCA Appellant  
and

THE COMPTROLLER OF INCOME TAX,  
KUALA LUMPUR . . . . . Respondent.

*In the  
Board of  
Review.*

No. 3.  
Petition of  
Appeal by  
PL. RM.  
Family,  
26th June  
1952.

10 The Appellant above-named appeals to the Board of Review against the decision of the Comptroller of Income Tax refusing to allow certain sums of money to be deducted in arriving at the net profits of the Appellant's business in respect of the year of Assessment 1951, on the following grounds :—

1. In ascertaining the income of the Appellant for the year 1950, there ought to have been deducted under section 14 (i) (d) of the Income Tax Ordinance the bad debts amounting to the sum of \$58,929.05 incurred in the business of the Appellant during the year 1950.

20 Alternatively, in ascertaining the assessable income of the Appellant chargeable with tax, there ought to have been deducted under section 33 of the Income Tax Ordinance, the loss amounting to the sum of \$58,929.05 incurred by the Appellant in his business during the year 1950.

Dated this 26th day of June, 1952.

Solicitor for Appellant.

To The Clerk to the Income Tax Board of Review,  
P.O. Box No. 1044,  
Kuala Lumpur.

No. 4.

PETITION OF APPEAL by P. V. Family.

IN THE MATTER of Section 75 of the Income Tax Ordinance,  
1947

AND IN THE MATTER of Income Tax Assessment No. J. 69.

Between THE KARTA, P. V. FAMILY, MALACCA . Appellant  
and

THE COMPTROLLER OF INCOME TAX,  
KUALA LUMPUR . . . . . Respondent.

No. 4.  
Petition of  
Appeal  
by P. V.  
Family,  
26th June  
1952.

30

The Appellant above-named appeals to the Board of Review against the decision of the Comptroller of Income Tax refusing to allow certain



*In the  
Board of  
Review.*

sums of money to be deducted in arriving at the net profits of the Appellant's business in respect of the year of Assessment 1951, on the following grounds :—

No. 4.  
Petition of  
Appeal  
by P. V.  
Family,  
26th June  
1952,  
*continued.*

1. In ascertaining the income of the Appellant for the year 1950, there ought to have been deducted under section 14 (i) (d) of the Income Tax Ordinance the bad debts amounting to the sum of \$344,465·90 incurred in the business of the Appellant during the year 1950.

2. Alternatively, in ascertaining the assessable income of the Appellant chargeable with tax, there ought to have been deducted under section 33 of the Income Tax Ordinance, the loss amounting to the sum 10 of \$344,465·90 incurred by the Appellant in his business during the year 1950.

Dated this 26th day of June, 1952.

(Sgd.) M. N. CUMARASAMI,  
Solicitor for Appellant.

To The Clerk to the Income Tax Board of Review,  
P.O. Box No. 1044,  
Kuala Lumpur.

No. 5.  
Additional  
Grounds of  
Appeal by  
PL. RM.  
Family,  
7th August  
1952.

No. 5.

**ADDITIONAL GROUNDS OF APPEAL by PL. RM. Family.**

20

M. N. CUMARASANI.

64, Klyne Street,  
Kuala Lumpur.  
7th August, 1952.

The Clerk to the Board of Review,  
Income Tax,  
Kuala Lumpur.

Sir,

PL. RM. Family

We have decided to put the following further ground of appeal in 30 the above appeal as follows :—

“ 3. Alternatively, in ascertaining the assessable income of the Appellant chargeable with tax there ought to have been deducted under section 10 (1) (a) read with section 15 (b) of the Income Tax Ordinance as an outgoing and expense the sum of \$58,929·05 which was wholly and exclusively incurred in the production of income.”

May I request you to be good enough to place the further ground of appeal before the Board of Review.

I am, sir,

40

Your obedient servant,

## No. 6.

## ADDITIONAL GROUNDS OF APPEAL by P. V. Family

M. N. CUMARASAMI,  
Advocate & Solicitor.

64 Klyne Street,  
Kuala Lumpur.

The Clerk to the Board of Review,  
Income Tax,  
Kuala Lumpur.

7th August, 1952.

*In the  
Board of  
Review.*

No. 6.  
Additional  
Grounds  
of Appeal  
by P. V.  
Family,  
7th August  
1952.

Sir,

10

P. V. Family

We have decided to put the following further ground of appeal in the above appeal as follows :—

“ 3. Alternatively, in ascertaining the assessable income of the Appellant chargeable with tax there ought to have been deducted under section 10 (1) (a) read with section 15 (b) of the Income Tax Ordinance as an outgoing and expense the sum of \$344,465·90 which was wholly and exclusively incurred in the production of income.”

May I request you to be good enough to place the further ground of 20 appeal before the Board of Review.

I am, Sir,

Your obedient servant

(Sgd.) M. N. CUMARASAMI.

## No. 7.

## ADDITIONAL GROUNDS OF APPEAL by P. V. Family.

M. N. CUMARASAMI,  
Advocate & Solicitor,  
Tel No. 3937.  
P.O. Box 259.

64 Klyne St.,  
Kuala Lumpur.

7th October, 1952.

No. 7.  
Additional  
Grounds  
of Appeal  
by P. V.  
Family,  
7th October  
1952.

30 The Clerk,  
Income Tax Board of Review,  
Kuala Lumpur.

Dear Sir,

P. V. Family.

Please note that leave will be asked at the hearing to argue an additional ground of appeal namely :—

4. That the loss sustained being a loss of stock in trade is an admissible deduction.

A Tamil interpreter will be required at the hearing of the appeal.

40

Yours faithfully,

(Sgd.) CUMARASAMI.

*In the  
Board of  
Review.*

No. 8.  
Minutes  
of the 11th  
Meeting  
of Board  
of Review,  
7th August  
1952.

No. 8.

MINUTES of the 11th Meeting of Board of Review.

IN THE COMMITTEE ROOM OF THE FEDERAL LEGISLATIVE COUNCIL,  
KUALA LUMPUR, ON THURSDAY THE 7TH AUGUST 1952.

The Committee of the Board consisted of the following members :—  
The Hon'ble Mr. Yong Shook Lin, C.B.E., J.P.  
Mr. W. M. Macleod  
Mr. N. S. Beaton  
Mr. P. G. Clark

*Clerks to the Board*

Mr. C. E. Howe, M.B.E., M.C.S.  
Mr. B. Lee Tian Huat.

10

The Committee duly met at 8.45 a.m.

1. *Chairman*

The Hon'ble Mr. Yong Shook Lin was elected Chairman for the meeting and assumed office. Copies of the relevant petitions having been sent to members on the 2nd August the Committee proceeded to hear the first case.

\* \* \* \* \*

4. *ITBR 153 P. V. Family*

Mr. N. A. Marjoribanks, Advocate & Solicitor, appears for the 20 Appellant, and asks for adjournment as he has not received certain books from India. The Comptroller-General of Income Tax does not think an adjournment is necessary. The Committee decides as follows :—

“Hearing to be adjourned for two months to a date in the second or third week of October next. An agreed statement of facts to be put in within 14 days from date.”

5. *ITBR 154 PL. RM. Family*

Mr. N. A. Marjoribanks, Advocate & Solicitor, appears for the Appellant, and asks for adjournment as he has not received certain books from India. The Comptroller-General of Income Tax does not think an 30 adjournment is necessary. The Committee decides as follows :—

“Hearing to be adjourned for two months to a date in the second or third week of October next. An agreed statement of facts to be put in within 14 days from date.”

6. *There being no further business the Board concludes at 1 p.m.*

Chairman.

Submitted.

(Sgd.) C. E. HOWE,  
Income Tax Board of Review,  
Federation of Malaya.

Approved,  
(Sgd.) YONG SHOOK LIN,  
Chairman,  
Committee of the Income Tax  
Board of Review.

40

## MINUTES of the 14th Meeting of Board of Review.

IN KUALA LUMPUR IN THE SUPREME COURT BUILDING ON  
TUESDAY THE 21ST OCTOBER, 1952.

*In the  
Board of  
Review.*

—  
No. 9.  
Minutes  
of the 14th  
Meeting  
of Board  
of Review,  
21st  
October  
1952.

The Committee of the Board consisted of the following :—

The Hon'ble Mr. Yong Shook Lin, C.B.E., J.P.  
W. M. Macleod, Esq.,  
P. G. Clark, Esq.,  
N. S. Beaton, Esq.

10 *Clerks to the Board*

Mr. C. E. Howe, M.B.E., M.C.S.  
Mr. B. Lee Tian Huat.

The Committee duly met at 9 a.m.

1. The Hon'ble Mr. Yong Shook Lin was elected Chairman for the meeting and assumed office. Copies of the petitions having been sent to members, the committee proceeded to hear the first case.

2. The Committee agreed to allow grounds 3 and 4 of the petition of appeal in Case ITBR 153 P. V. Family although these had not been lodged in time.

20 3. It was agreed that the decision in case ITBR 153 (P.V. Family) would apply to case ITBR 154 (PL. RM. Family).

4. *ITBR 153—P. V. Family*

Mr. W. A. T. Morton for the Comptroller of Income Tax (Respondent).

(A) *Appellant*: P. V. Family Address for service—M. N. Cumarasami, Esq., Advocate & Solicitor, P.O. Box 259, Kuala Lumpur.

Mr. N. Marjoribanks, Advocate & Solicitor of Messrs. Lovelace & Hastings, 62 Klyne Street, Kuala Lumpur appears for the Appellant, with M. N. Cumarsamy, Esq., Advocate & Solicitor, 64 Klyne Street, Kuala Lumpur in attendance.

30 (B) *Income Assessed*: Profits from Appellant's business.

(C) *Amount of Assessment*: Not stated.

(D) *Year of Assessment*: 1951.

(E) *Grounds of Appeal*:

(1) In ascertaining the income of the Appellant for the year 1950 there ought to have been deducted under section 14 (1) (d) of the Income Tax Ordinance the bad debts amounting to the sum of \$344,465·90 incurred in the business of the Appellant during the year 1950.

40 (2) Alternatively, in ascertaining the assessable income of the Appellant chargeable with tax there ought to have been deducted under section 33 of the Ordinance the loss amounting to the sum of \$344,465·90 incurred by the Appellant in his business during the year 1950.

*In the  
Board of  
Review.*

No. 9.  
Minutes  
of the 14th  
Meeting  
of Board  
of Review,  
21st  
October  
1952,  
*continued.*

(3) Alternatively, in ascertaining the assessable income of the Appellant chargeable with tax there ought to have been deducted under section 10 (1) (a) read with section 15 (b) of the Income Tax Ordinance as an outgoing and expense the sum of \$344,465.90 which was wholly and exclusively incurred in the production of income.

(4) That the loss sustained being a loss of stock in trade is an admissible deduction.

(F) *Decision*

The petition having been heard according to the Board of 10 Review (Procedure in Hearing Appeals) Regulations, 1949, the Committee decided as follows :—

The Committee holds that the amount claimed as a deduction is not allowable as it relates to a period before the commencement of the basis year for the first year of assessment (i.e. 1948) under the Income Tax Ordinance, 1947. The appeal is dismissed and the assessment is confirmed.

5. The decision of the Committee is signed by the Chairman and filed with the records of the petition. The Clerk is requested to convey the decision to the parties in the case. 20

6. During the hearing of case ITBR 153 the evidence of Ramasami Chettiar, son of Muthuvadugan Chettiar, is heard on oath in Tamil, the interpreter K. Subramaniam also having taken the oath. Mr. N. Marjoribanks for Appellant hands in a statement of agreed facts marked A1, and Mr. W. A. T. Morton for Respondent hands in a statement marked R1.

7. *ITBR 154. PL. RM. Family.*

This case is not heard separately, it being agreed that the decision in case ITBR 153 P. V. Family applies to this case.

8. There being no further business the meeting terminated at 30 11.30 a.m.

Chairman

Approved

Submitted  
(Sgd.) C. E. HOWE  
Income Tax Board of Review  
Federation of Malaya.

(Sgd.) YONG SHOOK LIN  
Chairman  
Committee of the Income Tax  
Board of Review.

No. 10.  
Notes of  
Evidence.

No. 10.  
NOTES OF EVIDENCE.

*Marjoribanks* and *M. N. Cumarasami* for Appellant. 40

*Morton* on behalf of Respondent.

*Marjoribanks.*

Applies for grounds 3 & 4 to be included in petition of appeal. Puts in agreed statement of Facts Marked A1.

*Morton.*

If Board thinks grounds 3 & 4 can be included, I am prepared to argue them.

*In the  
Board of  
Review.*

*Decision.*

Grounds 3 & 4 to be included in petition of appeal.

Marjoribanks calls Ramasamy Chettiar.

Marjoribanks says that there are numerous debts. He is taking one debt as an example. The decision in respect of that debt will apply to all other debts.

No. 10.  
Notes of  
Evidence,  
*continued.*

10 Morton agrees.

Marjoribanks and Morton agree that the decision in this appeal will apply also to ITBR 154.

Ramasamy Chettiar son of Muthuvadugam affirmed in Tamil.

*Xd. by Marjoribanks.*

20 Manager of P. V. Firm (Produce P/a 140/50. Malacca). I came to this country in December, 1941—One Andiappa Chettiar was then manager. He was manager during occupation period—I was then in Malaya—Andiappa Chettiar died in May, 1945. He died in General Hospital, Malacca—I took charge of business of P. V. Firm after liberation—I know when Debtor & Creditor Ordinance came into force—I consulted Solicitors regarding Ordinance. As to debts paid during occupation period, I was advised by Solicitors that evidence of Andiappa Chettiar would be required and that it would be better to settle claims amicably. As far as I could, I proceeded to settle claims—I did not force them unless the debtors came to some sort of settlement.

*Xd. by Morton.*

30 I consulted Solicitors some time in May, 1950—Balance sheet as at 31.12.49 showed revised values of debts—Debtor & Creditor Ordinance was passed in 1948—Notices to debtors were sent in October, 1949—originally I sent notices after liberation in 1946. The notices sent in 1946 were to the effect that payments during occupation period were invalid—other creditors issued notices and I followed suit.

No re-examination by Marjoribanks.

*Marjoribanks opens*

Money is the trading stock of a money lending firm.

*Ground 1*

40 I am not going to pursue this ground. It is not a bad debt within meaning of s. 14 (i) (d). Income of a money lending firm is interest on loans. Capital is the money which a money-lender brings into the venture. It is his stock in trade.

Hannon & Framsworth Income Tax—p. 415 and p. 427.

Trading stock of a money-lender is money and negotiable instruments. *Income Tax Commissioner v. Singh* [1942] 1 All E.R. (P.C.) p. 363—p. 365. P.C. Case from India.

“ Money is stock in trade of a money-lender.”

*In the  
Board of  
Review.*

No. 10.  
Notes of  
Evidence,  
*continued.*

*A.R.R.M. Arunasalam Chettiar v. Commissioner of Income Tax Madras* [1936] I.L. Reports (Indian appeals), p. 223 at p. 246. "Money is the stock in trade and circulating capital of a money-lender."

In this case, Appellant has lost circulating capital.

(On application of M.N.Cumarasami, he is released.)

If it is fixed capital, Appellant cannot claim loss.

If it is circulating capital, Appellant can claim loss.

(MacLeod to Morton—Do you agree that money is stock in trade?  
Morton—I cannot agree to that unreservedly.)

*Reid's Brewery v. Male* [1891] 2 Q.B. p. 1 at p. 8 and 10 at p. 8. 10  
(Capital used by Appellant—not invested in ordinary sense of the word.  
Capital outlay—not circulating capital—money used out of capital.)

If Appellant compromised, the onus was on him to prove no demand to debtors. In every case, Appellant would have lost his cases owing to inability to prove negative.

*Abdul Hamid & Co. v. Naismasah Co.* [1951] M.L.J. 103.

Appellant could never have succeeded.

#### *Morton*

Section 15 (b) does not apply. It refers to deductions not allowed.

Section 14 is the relevant section. 20

Appellant's solicitor contends that money is capital.

Hannon & Framsworth's book is not an authority on Income Tax.

In *Reid's Brewery's* case, the debts were bad debts.

In a money-lending business, money is not stock in trade. Money is lent over and over again—equivalent to a business which lets out harvesters—

Appellant's Solicitor has abandoned ground (1) because proviso (iii) to s. 14 (i) (d) debars him.

Any loss on advances made since 1.1.47 has been allowed for purpose of income tax. 30

Puts in statement marked R1.

Figure of 304,632.61 in R1 includes 294,389.10 for revalued moratorium debts.

Morton deals with figures in R1.

Appellant is claiming deduction of part of sum which has never been taxed.

If it is stock, it has never been taken into the a/c—all advances were made prior to 1.1.47.

Since 1.1.47 Appellant has not advanced any further money.

Appellant is not paying any tax on 306,000/- odd recovered but is 40 asking for a deduction of \$344,465.90 being difference.

#### *Beaton to Morton*

Was interest on loans advanced prior to 1.1.47 taxed ?

*Morton*

I cannot say.

No part of amount recovered was taxed.

*Marjoribanks in reply*

Amount recovered on compromise is not profit. It is return of stock in trade. It is not taxable.

*Decision*

The Committee holds that the amount claimed as a deduction is not allowable as it relates to a period before the commencement of the basis  
10 year for the first year of assessment (i.e., 1948) under the Income Tax Ordinance 1947. The appeal is dismissed and assessment is confirmed.

*In the  
Board of  
Review.*

No. 10.  
Notes of  
Evidence,  
*continued.*

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**No. 11.  
SUMMARY OF CASE.**

P.

*Facts :*

During the Japanese occupation of Malaya, P., a moneylender, received repayment, in Japanese currency, of loans which he had advanced before the occupation. Under the Debtor & Creditor (Occupation Period) Ordinance, 1948 (which came into force on 1st October, 1949), certain  
20 payment made during the occupation period in Japanese currency fell to be revalued ; the loan repayments received by P. in Japanese currency were revalued in this way, and P. thus became entitled on 1st October 1949, to receive further sums from the debtors in question. Owing to difficulties of proof, P. in 1950 compromised with these debtors and accepted sums less than the amounts due in full settlement. P. was assessed to income tax on the basis that, as the loans in question were advances made prior to the introduction of income tax, recoveries were not taxable income and losses were not admissible deduction. P. claimed that the difference  
30 between the amount which he was entitled to recover under the Debtor & Creditor Ordinance and the amount actually recovered should be deducted in arriving at his statutory income for the year of assessment, 1951, the basis year for which was the year ended 31st December, 1950.

*Arguments :*

For the Appellant it was submitted that the deduction claimed was not a deduction for bad debts. Accordingly the deduction was not precluded by the third proviso to section 14 (1) (d) of the Ordinance. In a money-lender's business money was stock-in-trade (*Income Tax Commissioners v. Singh*, 1 A.E.R. (Privy Council) page 363 ; *AR. RM. Arunasalam Chettiar v. Commissioner of Income Tax, Madras* [1936]  
40 L.R. (Indian Appeals) page 233, and *Reid's Brewery, Ltd. v. Male*, 3 T.C. 279 cited). The loss was therefore a loss of stock, and, as such, was an admissible deduction.

It was contended on behalf of the Comptroller that if the loss in 1950 was regarded as a loss of stock the deduction claimed might be admissible. In this case, however, the value of stock had increased during 1949 as the

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*In the  
Board of  
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result of the coming into force of the Debtor and Creditor Ordinance, and this increase would have to be taken into account for income tax purposes. On the other hand, if the loss was to be treated as arising on a series of bad debts, any deduction therefor was clearly precluded by the third proviso to section 14 (1) (d). So far as the debts in question were concerned the Appellant had suffered no loss during 1950. Indeed, over the whole period since the beginning of the Appellant's first basis period for income tax the Appellant had laid out nothing on these advances and had recovered a very large sum. No part of this sum had been taxed in the Appellant's hands, the Comptroller holding that it represented a partial 10  
recoupment of losses incurred before the introduction of income tax. It was, therefore, submitted that the assessment under appeal had been correctly computed, and that the deduction claimed was not admissible.

*Decision :*

The Board held that the amount claimed as a deduction related to a pre-income tax period, and was therefore not an admissible deduction in arriving at the Appellant's statutory income for the year of assessment 1951.

No. 12.  
Grounds of  
Decision.

No. 12.  
**GROUND OF DECISION.**

In the notice of appeal, the Appellant appealed against the assessment 20  
for the year of assessment 1951 in so far as the Respondent refused to allow the sum of \$344,465·90 to be deducted as bad debts.

2. At the hearing of the appeal, Solicitor for the Appellant puts in, as evidence, agreed statement of facts marked A1.

3. It is agreed between the solicitor for the Appellant and the Respondent that there are numerous debts and that one of such debts shall be taken as an example and that the decision in respect of one of such debts shall apply to all the other debts.

4. The facts relating to one of such debts are set out in exhibit A1.

5. It is also agreed between the Solicitor for the Appellant and the 30  
Respondent that the decision in this appeal shall apply to the appeal in ITBR.154.

6. The Committee holds that the debt, particulars whereof are set out in Exhibit A1, was a debt incurred before the commencement of the basis period (which is the 1st day of January, 1947) for the first year of assessment (which is 1948) and that no deduction shall be allowed in respect of such debt as the third proviso to section 14 (1) (d) of the Income Tax Ordinance 1947 provides that no deduction shall be allowed in respect of any debt incurred before the commencement of the basis period for the 40  
first year of assessment.

7. In respect of ground 2 of the grounds of appeal, the Committee holds that the sum of \$344,465·90 was not a loss within the meaning of section 33 (2) (a) of the Income Tax Ordinance 1947 and that the sum of \$344,465·90 cannot be deducted by reason of the third proviso to

section 33 (2) (b) which provides that no deduction shall be made in respect of a loss incurred prior to the commencement of the year (1st January, 1947) preceding the first year of assessment (1948).

*In the Board of Review.*

8. In respect of ground 3 of the grounds of appeal, no argument was adduced by solicitor for the Appellant in support of this ground.

No. 12. Grounds of Decision, continued.

9. In respect of ground 4 of the grounds of appeal, the advances were made by the Appellant prior to the 1st day of January, 1947, which is the date of commencement of the basis year for the first year of assessment (1948). The Appellant has not been assessed for tax on the amount recovered but is asking for the deduction of the difference between the amount of advances so made and the amount so recovered. The difference must be regarded as a bad debt which cannot be deducted by reason of the third proviso to section 14 (1) (d).

10. For the reasons above set out, the appeal is dismissed and the assessment is confirmed.

(Sgd.) YONG SHOOK LIN,  
Chairman,  
Income Tax Board of Review,  
Federation of Malaya.

20

No. 13.

NOTICE OF APPEAL by P. V. Family.

TAKE NOTICE that the above-named P. V. Family being dissatisfied with the decision of the Income Tax Board Review at Kuala Lumpur given on the 21st day of October, 1952, appeals to the High Court against the whole of the said decision.

*In the High Court, Kuala Lumpur (Appeal).*

Dated this 3rd day of November, 1952.

(Sgd.)

Appellant.

No. 13. Notice of Appeal by P. V. Family, 3rd November 1952.

To  
30 The Clerk to the Income Tax Board of Review,  
Kuala Lumpur.

And to  
The Comptroller of Income Tax,  
Federation of Malaya,  
Kuala Lumpur.

No. 14.

NOTICE OF APPEAL by PL. RM. Family,  
3rd November, 1952.

[Not printed—same as previous document.]

No. 14.

In the  
High  
Court,  
Kuala  
Lumpur  
(Appeal).

No. 15.  
Notes of  
Evidence of  
Briggs, J.,  
in P. V.  
Family  
appeal,  
13th  
February  
1953.

No. 15.

## NOTES OF EVIDENCE of Briggs, J., in P. V. Family Appeal.

Marjoribanks &amp; Cumarasami for Appt.

13th Feb. 1953.

Farrell, S-G., for Respt.

Marjoribanks.

A single item only was considered.  
Grounds given in decision itself.  
Preoccupation debt.  
I.T ord. s. 10.

Tax payable on "gains or profits" of a business are not defined. 10

Konstam says "gains" are the same as "profits."

What were the "profits?"

*Gresham Life v. Styles* [1892] A.C. 309, 316, 322.

*Russell v. Town & County Bank*, 13 A.C. 418, 424.

Necessity for deductions either to ascertain profits or as notional disbursements.

*Usher's Wiltshire Brewery v. Bruce* [1915] A.C. 433 at 458.

*Ct.* Is not the real point here, "When was the loss incurred"?

*M.* Yes.

Here the loss was during the year of account. 20

The debts had been paid in Jap. currency. The D. & C. legislation said part must be paid again.

The loss occurred when the Appellants found they were unable to collect owing to lack of evidence.

What we lost was the opportunity, through Andiappa's death, of recovering some money by litigation.

*Ct.* How could you lose what you never had?

*M.* These were capital sums, but circulating capital.

Money, to a moneylender, is stock-in-trade.

*S-G.* I concede that if this was a loss, it was an "income loss" for I.T. purposes, although in another sense a loss of capital. 30

*M.* They were not bad debts within 14 (1).

*Curtis v. Oldfield*, 41 T.L.R. 373.

*Reid's Brewery v. Male* [1891] 2 Q.B. 1.

The principle of s. 15 (b) was applied.

We have lost a balance of the capital sum which we put out at interest pre-war. We lost it only when we found that we could not fully exercise our rights to revaluation, but had to compromise for part.

The loss occurred on the day when the settlement was arrived at, i.e., in the year of account. It was right to show the whole sums in our accounts. 40

It must be assumed, in view of the agreed statement of facts, that I was entitled in law to recover the whole, though I did not do so owing to a legal obstacle.

*S-G.* s. 4 of D. & C. (o.p.) ord. '48. The effect is to revalue the first payment. The original debt stands, and only part of the payment is effective.

The old debt is revived by statute ; but it is still the old debt and not a new one.

This cannot be written off as a bad debt, because of proviso (iii) to s. 14 (1) (d), and it is either a bad debt or nothing.

I accept that floating capital of a moneylender may be stock in trade and that the loss occurred at the time of the settlement.

10 *Ct.* If so, was not the loss of stock in trade from an adventitious cause an expense ?

*S-G.* No, as although it is stock-in-trade, it was lost by means of a bad debt and not otherwise. That is the only way it *can* be lost. Seems with other stock.

*Reid's Brewery case.*

Agreed that, when loans were made, they were made for the purpose of earning profits of the business.

Appellants must bring themselves within section 14. They cannot pray in aid s. 15, which is restrictive, not permissive. No other section  
20 applies.

We have applied proviso (1) and they must apply (iii).

S. 15 (b) is directly related to the beginning of s. 14.

In s. 14 paras. (a) to (i) are not exclusive, but see words " wholly and exclusively incurred " in 1950. Para. (d) must be the one.

The asset was a claim on a debt. Bad debt.

The case of rent free property is very different.

*Wm. Dickinson v. Bristow* [1946] 1 A.E.R. 448.

Konstam, 10th ed. 103 foot.

*Curtis v. Oldfield* turned on the loss not being a commercial loss.  
30 There was no loss of the business.

Board was right.

*M.* : No answer to the argument that this should be treated as a loss of stock in trade and so chargeable before the profit is first ascertained, and without reference to s. 14.

There can be no " profit " from the business if the capital is lost.

*Reid's case.*

5 & 6 Vict. c. 35 s. 100 schd. D.

Circulating capital in use, if lost, becomes an outgoing at the moment of loss.

40 Tax payable if I succeed is \$5,000 ; if I fail \$73,000.

*S-G.* : Those figures approximately are right.

(intld.) F. A. B.

C.A.V.

*In the High Court, Kuala Lumpur (Appeal).*

No. 15.  
Notes of Evidence of Briggs, J., in P. V. Family appeal, 13th February 1953, *continued.*

*In the  
High  
Court,  
Kuala  
Lumpur  
(Appeal).*

**REASONS FOR JUDGMENT of Briggs, J., in P. V. Family appeal.**

No. 16.  
Reasons  
for  
Judgment  
of  
Briggs, J.,  
in P. V.  
Family  
appeal.

This is an appeal by the taxpayer from a decision of the Income Tax Board of Review of the Federation upholding the decision of the Comptroller of Income Tax that a sum of \$344,465·90 was not an allowable deduction for purposes of income tax. Even if the deduction were allowed, the taxpayer would still be liable to some income tax for the year in question, and the amount actually in issue in this appeal is almost \$70,000.

The facts of the case appear fully from the record as also do the arguments adduced before the Board of Review and their decision. Before 10 me the matter was argued on somewhat similar lines, although certain points previously contested were conceded before me. It was agreed that it must be assumed that the taxpayer was, after the coming into force of the Debtor and Creditor (Occupation Period) Ordinance, 1948, absolutely entitled in law to recover the sums of \$294,389·10 and \$356,854·44 shown in the notes to Exhibit R.1 and that this must still be taken to be the case although he could never have succeeded in recovering them by legal proceedings owing to the death of the essential witness Andiappa. Had this not been the position, it might be difficult to find that a loss occurred 20 in the year 1950 ; but it is agreed that, after making as favourable settlements as he could, the taxpayer was then obliged to write off from the total of those two sums the sum of \$344,465·90 above referred to as irrecoverable and lost, and it is further agreed that the loss of that sum took place in 1950. The Board of Review held, first, that the taxpayer's claim was barred, since the third proviso to section 14 (1) (d) of the Ordinance provides that " no deduction shall be allowed," etc. I comment at this stage that the proviso is a proviso only to paragraph (d) ; it does not in form govern the whole section. The Board next held that section 33 (2) (a) did not apply, and that section 33 (2) (b) might have applied, but did not, since the loss had been incurred prior to 1947 and 30 the third proviso operated. I think the date of the loss is a mixed question of law and fact. On the admissions made to me, and on the view I take of the law, I think the loss occurred in 1950 ; but I do not, as will appear, base my judgment on section 33. The fourth ground of appeal was " that the loss sustained, being a loss of stock in trade, is an admissible deduction," and on this the Board held that, the advances having been made prior to 1947, the loss was a bad debt and was not deductible by reason of the third proviso to section 14 (1) (d). This assumes that no bad debt can ever be deductible otherwise than under paragraph (d) of section 14 (1), which in my view is the substantial question on this 40 appeal.

It is common ground that in the case of a professional moneylender the capital which he lends to his customers is to be treated as the stock-in-trade of his business for the purpose of assessing his profits. See *Income Tax Commissioners v. Singh* [1942] 1 A.E.R. 362 and *Reid's Brewery Co. v. Male* [1891] 2 Q.B. 1. From this it seems to me *prima facie* to follow that, if any of that capital is irrecoverably lost in the course of a normal business transaction, the effect is the same as if uninsured goods were lost at sea, or destroyed by fire and the lost capital or goods must be recouped out of gross takings before the business as a whole 50 has made any working profit.

Income tax is payable under section 10 (1) (a) on the "gains or profits" from any business, and on the authority of Konstam (10th ed., p. 98) the word "gains" has no different meaning from the word "profits," but is mere tautology, and it is always necessary to ascertain "the net profits of the trade or business computed by reasonable business methods subject to any specific directions contained" in the Ordinance. The question is whether one of those "specific directions" applies in this case. Section 14 (1) (b) (as it applies to this case) provides that for the purpose of ascertaining the income from any business of any person

10 for any period, bad debts incurred in that business may, on certain terms and conditions, be deducted. The case for the Comptroller is that the losses here involved were bad debts, and that the only way in which they can be taken into account for the purpose of ascertaining the net profits of the business is under the provisions of section 14 (1) (d). If this is so, the Comptroller must succeed, for proviso (iii) to paragraph (d) provides that no deduction shall be allowed in respect of any debt incurred before the commencement of the basis period for the first year of assessment under the Ordinance and these debts arose prior to such period. The taxpayer, on the other hand, contends that a loss of this kind can be

20 taken into account without applying the provisions of section 14 (1) (d) at all. He says that there is no express provision in the Ordinance for taking into account the adventitious loss of stock-in-trade, and in the event which I have postulated, namely, that uninsured goods were lost at sea, the deduction of their value from gross takings would be under the general commercial principle that stocks must be maintained before a profit arises at all. The taxpayer further contends that section 14 (1) (d) refers only to debts having the character of profit-making revenue debts, and that here the lost sum of \$344,465.90 represents a loss of part of the circulating capital, which is the stock-in-trade of the business and must

30 be replaced out of gross takings before any profit can arise. The debts are therefore not within the scope of the paragraph. I think there is great force in this argument; but it may be necessary to distinguish between the elements of capital and interest in the loss in question. This arises from the dual nature of a debt to a moneylender, as representing in part a portion of his stock-in-trade, and in part his unrealised charges for its use. He may be regarded as in the position of the hirer of a chattel, who has lost both the chattel and the hire due to him. It appears possible that the chattel must be replaced before a profit is made at all, but the loss of the hire is a true bad debt within the meaning of section 14 (1) (d),

40 and the provisions of that paragraph must be applied to the loss of the hire in order that the taxable profit can be ascertained. There is no material on the record to show me how the sum of \$344,465.90 is divisible as between capital and interest; but in so far as any of it represents loss of capital which had the nature of stock-in-trade, then I think it ought *prima facie* to be deducted before any profit can be said to have been made by the business at all. I think that section 14 (1) (d) was intended to apply to commercial book debts of an ordinary business, and that these differ in their nature from the capital debts representing a moneylender's loans. Although the method of accounting is different, the

50 distinction between capital and income in Chettiar accounts is just as clear as in English ones, and I think there should be no great difficulty in ascertaining how much was due on each debt for principal and how

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much for interest at any time. It is to be noted that any interest accrued due before the occupation period is treated for the purpose of revaluation as "capital debt" and repayment of it may have to be revalued. See Debtor and Creditor (Occupation Period) Ordinance, section 4 (3). I think that proviso (ii) to section 14 (1) (d) of the Income Tax Ordinance is of some importance in this connection. In speaking of the debts having been "included as a trading receipt in the income of the year within which they were incurred," it suggests to me that the special position of capital debts which represent, not the income, but the profit-making assets, of the business was not considered. 10

Before passing to the authorities cited to me, I would refer shortly to sections 10, 14 and 15 of the Ordinance. Section 10 (1) (a) seems to me to indicate an intention that normal commercial methods of ascertaining profits shall ordinarily be adopted. Section 14 (1) provides for the deduction of all "outgoings and expenses wholly and exclusively incurred during that period by such person in the production of the income." This is a perfectly general provision and is not in terms restricted by paragraphs (a) to (i) which follow it. It corresponds to section 15 (b), which forbids deduction of "disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income." If the taxpayer is to be allowed the deduction here claimed, it must be made under the provision of section 14 (1) above set out. In view of the special nature of a moneylender's circulating capital, I see no reason why this should not be done. The words "incurred during that period" are no obstacle. It is not the original advance which forms the "outgoing," but the loss which arises when it becomes necessary to write off the asset as no longer of value. 20

In *Curtis v. Oldfield*, 41 T.L.R. 373, Rowlatt, J., held that a capital loss representing the discovery of defalcations over a long period by a former manager would not be deducted before ascertainment of profits. The reason for this was that the loss was a loss of the Company, but not a loss on the trading of the Company. The case is clearly distinguishable from this. *Russell v. Town and County Bank Limited* 13 A.C. 418 is in point as showing that the words "disbursements or expenses" in the English Act must be widely construed and may include a loss of potential receipts. The words "outgoings and expenses" must, I think, be even wider than those used in the English Act. I take this case as some authority that a loss by a debt becoming bad may be an "outgoing" or an "expense" without any necessity to invoke paragraph (d) of section 14 (1). In *Arunachalam Chettiar v. Income Tax Commissioners*, 63 I.A. 233 at p. 246, Sir George Rankin, delivering the judgment of the Privy Council, said, "The basis of the right to deduct irrecoverable loans before arriving at the profits of money-lending is that to the money-lender, as to the banker, money is his stock-in-trade or circulating capital; he is dealing in money." The underlining is mine. I think these words go far to show that, since replacement of losses of circulating capital is a necessary expense of conducting the moneylender's business, the deduction may be made under the general provision of section 14 (1) and without invoking the special provisions of paragraph (d). 30 40

It seems clear that, part of the normal business of a moneylender being to sell to others debts due to him, and to buy from other money-lenders debts due to them by third parties, if the taxpayer here had sold 50

his debts at a discount instead of settling them directly, the loss on realisation would have been an "income loss" and deductible as an outgoing or expense. See *Royal Insurance Co. Ltd. v. Stephen* (1928), 44 T.L.R. 630. That being so, it would be quite illogical not to allow the loss on direct settlement to be deducted on the same footing.

10 Proviso (iii) to section 14 (1) (d) is in any event a transitional provision. It was designed partly to avoid the difficulty of investigating old debts which might, or might not, ever have been recoverable in law. It would be undesirable that taxable profits should be diminished by a late write-off of something which, if it had ever been an asset, had ceased to be so in a commercial sense years previously. The transactions with which I am concerned are outside the mischief of the proviso.

20 Against these, as I think, weighty arguments the Comptroller can only urge that these were bad debts, which is obviously and literally true, and that in this country bad debts are only deductible under the provisions of section 14 (1) (d). This latter proposition is open to attack. In the first place, the Ordinance does not say so. Contrast the wording used in England (Rule 3, Case II, Sch. D), "In computing the profits . . . no sum shall be deducted in respect of . . . (i) any debts, except . . ." No similar provision appears, as it well might, in section 15. *Gresham Life Assurance Society v. Styles* [1892] A.C. 309, seems to me valuable as emphasising the intention of the legislature that all businesses should be assessed on the same footing. I think that, before one would hold that in a certain class of businesses stock-in-trade adventitiously lost may not be replaced before arriving at the profits, very clear words would be required in the statute. I cannot find them here. I am prepared to concede that it may have been *expected* that no debts would be deducted as bad otherwise than under section 14 (1) (d); but it by no means follows that the legislature has said that they cannot be so deducted. In the absence of an express prohibition, I think normal principles must be applied, and the loss of capital is deductible.

30 I felt at one time some doubt as to the date at which the loss of capital occurred, but I think the Solicitor-General, for the Comptroller, was right in conceding that the loss took place in 1950 as alleged by the taxpayer. It having been conceded that the taxpayer must be deemed to have been entitled to the sum of \$344,465.90 at the beginning of 1950, and to have been justified in writing it off as lost during 1950, I hold that he was entitled to charge the loss of such part thereto as represented a loss of capital as an outgoing to be met before any profit of his business could be made.

40 I think that this appeal must be allowed, and the case must be remitted to the Comptroller of Income Tax to re-assess the taxpayer on the footing that he is entitled to an allowance for principal monies lost in consequence of the facts which have arisen, but not to an allowance for interest similarly lost. I think also that, in making his calculations on this basis, he must be entitled to proceed on the footing that the settlements which the taxpayer was able to make must be deemed to have been recoveries of capital in each case in the first place, and recoveries of income only as regards any balance recovered in excess of the total capital involved in each transaction. As regards the portion of the loss representing loss of interest, I think the provisions of proviso (iii) to section 14 (1) (d) apply, since that income, when due, would be taken into account as a trading

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receipt, and its loss relates to a debt incurred before the commencement of the basis period, but which remained unpaid, and became bad during the period for which the income is being ascertained.

As regards costs, it appears that in view of the provisions of section 77 of the Income Tax Ordinance, until the Rule Committee makes special provision for costs of appeals to the High Court under subsection (6), costs are, by virtue of subsection (3), such costs as would be payable on an appeal to the High Court from a Sessions Court. Those costs are governed by 1947 Rule No. 3, which provides that costs "shall ordinarily be a sum equal to thirty per centum of the value of the subject matter of the appeal." This rule was drawn on the assumption that the value of the subject matter would not exceed one thousand dollars, and is obviously inappropriate in a case of this kind. The rule, however, gives power to order "in cases of special importance or difficulty" that costs be taxed on the normal High Court scale. The power arises only on request by a party, but that request was made on my invitation by both parties before hearing this judgment. I shall so order in this case, in spite of the fact that my order will have the unexpected effect of diminishing, not increasing, the costs to be paid. I further order, since the appeal has only partly succeeded, that the Respondent do pay to the Appellant only two-thirds of the costs so taxed. 10

(Sgd.) F. A. BRIGGS,  
Judge,  
Supreme Court,  
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No. 17.

**JUDGMENT of Briggs, J., in PL. RM. Family appeal.**

THIS APPEAL is in all relevant respects similar to Kuala Lumpur Civil Appeal No. 35 of 1952, between P. V. Family and the Comptroller of Income Tax, and by agreement of the parties falls to be decided in accordance with the decision made thereon. The appeal will accordingly be allowed and an order will be made in accordance with the terms of my judgment in that appeal, a copy of which is annexed to this Judgment and must be treated as forming part of it. The agreement to which I refer does not, of course, render the order a consent order. 30

(Sgd.) F. A. BRIGGS,  
Judge,  
Supreme Court,  
Federation of Malaya.

No. 18.

ORDER in P. V. Family appeal.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
In the High Court at Kuala Lumpur.

Civil Appeal No. 35 of 1952.

Between P. V. FAMILY . . . . . Appellant  
and  
COMPTROLLER OF INCOME TAX . . . . . Respondent.

Before :

10 THE HONOURABLE MR. JUSTICE BRIGGS, Judge, Federation of Malaya.

In Open Court.

This 20th day of February, 1953.

THIS APPEAL coming on for hearing on the 13th day of February, 1953, before this Court in the presence of Mr. N. A. Marjoribanks and Mr. M. N. Cumarasami of Counsel for the Appellant and Mr. A. D. Farrell, Solicitor-General, for the Respondent, and UPON READING the Record of Appeal and UPON HEARING Counsel for the Appellant and the Respondent IT WAS ORDERED that the appeal should stand for judgment AND THIS APPEAL coming on for judgment this day IT IS ORDERED  
20 that the appeal be allowed AND IT IS ORDERED that the case be remitted to the Respondent to re-assess the Appellant on the footing that he is entitled to an allowance for principal monies lost in consequence of the facts which have arisen but not to an allowance for interest similarly lost AND IT IS FURTHER ORDERED that in making his calculations on this basis the Respondent be entitled to proceed on the footing that the settlements which the Appellant was able to make must be deemed to have been recoveries of capital in each case in the first place and recoveries of income only as regards any balance recovered in excess of the total capital involved in each transaction AND IT IS FURTHER ORDERED  
30 that the provisions of proviso (iii) to section 14 (1) (d) of the Income Tax Ordinance apply to the portion of the loss representing loss of interest AND LASTLY IT IS ORDERED that the Respondent do pay to the Appellant two-thirds of the costs of the appeal to be taxed in accordance with the scale of costs applicable to proceedings in the High Court.

Given under my hand and the seal of the Court this 20th day of February, 1953.

(Sgd.) J. W. D. AMBROSE,  
Senior Asst. Registrar,  
Supreme Court, Kuala Lumpur.

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[Not printed—same as previous document.]

No. 19.

No. 20.

*In the Court of Appeal, Federation of Malaya.*

**NOTICE OF APPEAL by P. V. Family.**

**IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.**  
In the Court of Appeal at Kuala Lumpur.

No. 20.  
Notice of Appeal by P. V. Family, 13th March 1953.

Civil Appeal No. . . . . of 1953.  
Between THE COMPTROLLER OF INCOME TAX . Appellant  
and  
P. V. FAMILY . . . . . Respondent.

(In the matter of Income Tax Appeal No. 35 of 1952  
Between P. V. FAMILY . . . . . Appellant 10  
and  
THE COMPTROLLER OF INCOME TAX . Respondent.)

TAKE NOTICE that the Comptroller of Income Tax being dissatisfied with the decision of the Honourable Mr. Justice Briggs given at Kuala Lumpur on the 20th day of February, 1953, appeals to the Court of Appeal against the whole of the said decision.

Dated this 13th day of March, 1953.

(Sgd.) A. D. FARRELL  
(A. D. FARRELL)  
Ag. Solicitor-General, 20  
For the Appellant.

To  
The Assistant Registrar,  
Supreme Court,  
Kuala Lumpur.

And to  
Mr. M. N. Cumarasami,  
Solicitor for the Respondent,  
Kuala Lumpur.

The address for service of the Appellant is :— 30  
c/o Attorney-General's Chambers,  
Kuala Lumpur.

No. 21.

No. 21.

**NOTICE OF APPEAL by PL. RM. Family,  
13th March, 1953.**

[Not printed—same as previous document.]

No. 22.

## MEMORANDUM OF APPEAL by P. V. Family.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
In the Court of Appeal at Kuala Lumpur.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

Civil Appeal No. of 1953.

Between THE COMPTROLLER OF INCOME TAX . Appellant  
and  
P. V. FAMILY . . . . . Respondent.

No. 22.  
Memo-  
randum  
of Appeal  
by P. V.  
Family,  
20th  
March  
1953.

(In the matter of Income Tax Appeal No. 35 of 1952

10 Between P. V. FAMILY . . . . . Appellant  
and  
THE COMPTROLLER OF INCOME TAX . Respondent.)

The Comptroller of Income Tax, the Appellant above-named, appeals to the Court of Appeal, against the whole of the decision of the Honourable Mr. Justice Briggs given at Kuala Lumpur on the 20th day of February, 1953, on the following grounds :—

1. The learned Judge was wrong in law in holding that any deduction is permissible under the Income Tax Ordinance, 1947, in respect of bad debts otherwise than under paragraph (d) of subsection (1) of section 14.

20 2. Alternatively, the learned Judge was wrong in law in holding that a deduction could properly be made, in respect of the sum sought to be deducted, under the general words of section 14 (1) in such a way as to exclude the application thereto of proviso (iii) to paragraph (d) of the said subsection.

3. The learned Judge was wrong in law in holding that bad debts incurred in the course of a money-lending business are to be treated on any different principle from bad debts incurred in the course of any other trade or business.

Dated this 20th day of March, 1953.

30 (Sgd.) A. D. FARRELL,  
Ag. Solicitor-General,  
Solicitor for the Appellant.

To  
The Assistant Registrar,  
Court of Appeal,  
Supreme Court,  
Kuala Lumpur.

And to  
Mr. M. N. Cumarasami,  
Solicitor for the Respondent,  
Kuala Lumpur.

40 The Address for service of the Appellant is :—  
c/o Attorney-General's Chambers,  
Federation of Malaya,  
Kuala Lumpur.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 23.

No. 23.

MEMORANDUM OF APPEAL by PL. RM. Family,  
20th March, 1953.

[*Not printed—same as previous document.*]

No. 24.  
Judges'  
Notes of  
arguments,  
14th  
April 1953.

(a) Chief  
Justice of  
Malaya.

No. 24.

JUDGES' NOTES OF ARGUMENTS.

(A) CHIEF JUSTICE OF MALAYA.

14th April, 1953.

*Good* (Sol.-Gen.) for Appellant.

*Marjoribanks* and *Cumarasami* for Respondents.

10

*Good* :

Respondents, moneylenders Malacca & Muar.

During Japanese occupation they received repayments of certain sums advanced to certain people.

1948 Debtor & Creditor Ord. 1st October, 1949.

These repayments fell to be re-valued.

Respondents entitled to recover considerably more.

Legally entitled to recover \$651,000.

They actually recovered all except \$345,000.

No question of tax on \$306,000 Comptroller treated as windfall. 20  
Respondents claimed to be entitled under 14 (1) Income Tax Ord. in respect of \$345,000 not recovered.

Not permissible deduction.

14 (1) (d) (iii). Year of Assessment 1951. Trading profits 1950.

Agreed that \$345,000 written off in 1950. Treated as an outgoing for that year.

Board of Review upheld Comptroller's decision.

In 1948 paid tax on 1947 income.

Debtor & Creditor 1.10.49.

Judgment pp. 18 & 19. The whole crux of the case is stated. (Reads 30 grounds of appeal.)

Section 14 (a)-(h) outgoings and expenses. Conditions under which deductions could be made. (c) money spent on permanent structure. I am claiming under 14 (1). Can never apply any proviso. But for proviso (iii) he would have regarded loss as permissible deduction.

*Marjoribanks* :

Section 14 (1) (d). Notes of provisoes (i) & (ii).

Distinguish between loans and interest.

Interest is a receipt. Losses on loans.

*Reid's Brewery Co. v. Male* [1891] 2 Q.B. 1-2.

40

Hailsham, vol. 17, p. 161, sec. 3.

Debtor & Creditor Ord., 1948.

Taxpayer says loss of capital.

Loss must be treated as such and not as a bad debt.

Section only refers to profits.  
Tax only paid on income.  
No prohibition against this deduction.

(Sgd.) CHARLES MATHEW.

C.A.V.

(B) CHIEF JUSTICE, SINGAPORE.

14.4.53.

*Good* for Appellant.

*Marjoribanks* and *Cumarasami* for Respondents.

10 *Good* :

Facts :

Debtor & Creditor (Occupation Period) Ordinance, 1948, from 1.10.49.  
Payments revalued.

Plaintiff entitled to \$650,000.

They actually received \$305,000. \$345,000 unrecovered. No tax demanded on what they received under revaluation—claim to reduction under 14 (1) (d).

Assessment for 1951 in respect of 1950.

20 It is agreed that \$45,000 was written off in 1950—treated as an outgoing for that year.

Debt incurred before 1st year of assessment i.e. 1947—payable in 1948.

Judgment appealed against—  
pp. 7, 10.

Grounds i and ii of appeal—

Section 14 bad debts deductible otherwise than under (d)

“ there shall be deducted ” general

(a) and (b) particular.

Particulars under which deductions can be made in specified cases—

30 e.g. (c).

Is this a bad debt ? a revenue loss ?

but for proviso (iii) they would be a permissible deduction.

*Marjoribanks* :

19 (1) (d).

Provisoes i and ii—

distinguish principal and interest—  
interest a bad debt.

*Reid's Brewery* [1891] 2 Q.B. 1.

17 Hailsham, 161, art. 328.

40 Is this caught by 3rd proviso  
incurred.

Loss of circulating capital ?

not a bad debt—

difference of profits and cost of earning.

C.A.V.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

—  
No. 24.  
Judges'  
Notes of  
arguments,  
14th  
April 1953,  
*continued.*

—  
(a) Chief  
Justice of  
Malaya,  
*continued.*

—  
(b) Chief  
Justice,  
Singapore.

(C) TAYLOR, J.

Tuesday, 14th April, 1953.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

*Good* (Ag. Sol. Gen.) for Appellant.

No. 24.  
Judges'  
Notes of  
arguments,  
14th April  
1953,  
*continued.*

*Marjoribanks & Cumarasami* for Respondents.

*Good :*

Two appeals—more convenient to take Appeal No. 11/53 because record more complete.

Moneylenders.

Loans pre-war.

Repaid during occupation.

10

Debtor Creditor Ordinance 1.10.49.

Legally entitled to an additional \$651,000.

Actually received—\$306,000.

Did not recover—\$345,000.

Not asked to pay any tax on the \$306,000—treated as windfall, and not liable. Respondents claimed under Section 14 (1) relief in respect of the \$345,000.

Prov. III to 14 (1) (*d*).

Year of assessment 1951 on the profits of 1950 trading.

Agreed that \$345,000 was written off as irrecoverable in 1950.

20

Treated as an outgoing for 1950.

Comptroller said no deduction because debt incurred long before.

Board of Review upheld the Comptroller.

1948 was first year of taxation.

1947 was the first year to be assessed.

The Comptroller appealed to High Court.

Judgment of Briggs, J.,—parts relevant to Appellant—p. 18, p. 19—“ I think these words . . . ” (and lower) “ Against these . . . I am prepared to concede . . . ”

In these four passages the issue is stated.

30

First 2 Grounds of Appeal are alternative ways of putting the argument against these four.

Rely on these two paras.

May not go on to Ground of Appeal 3.

As to deductions without recourse to Section 14 (1) (*d*).

24 Outgoings—perfectly general.

All the specified (*a*) to (*h*) are included in the general words—in order to specify the conditions under which the particular outgoings could be deducted.

e.g. 1. Suppose the taxpayer spent money on building—he claims 40 reduction—if disallowed—could he rely on the general words to escape the proviso ?

e.g. 2. Suppose payment of a religious tithe not required by law.

(The argument is that the principle of the judgment would defeat the statute. Everyone has a condition or proviso.)

Express intention is to control the allowance of deduction by making them conditional.

Assuming that it is a bad debt.

(c)  
Taylor, J.

But for Prov. III the Comptroller would have regarded this loss as a permissible deduction.

Inescapable construction is that the proviso must apply to this case.

*Marjoribanks* :

Section 14 (1) (d) Provisoes 1 and 2. You must distinguish between principal and interest.

The interest . . .

“Bad debt” means only the interest. You could never include the principal of a moneylenders debt.

10 Trading receipt. Where losses have . . .

*Reids Brewery v. Male* [1891] 2 Q.B. p. 1.

At p. 2 “Bad debts” deducted.

The deduction was not allowed as a bad debt—it was allowed as a loss.

17 Hailsham—p. 161, Section 328 para. 3.

Section 15 (b). Principal money.

You can only claim relief in the year of the loss.

Before you are assessed you must deduct the cost of earning the income.

20 *Russell v. T. & C. Bank.*

Under Debtor Creditor Ordinance is this caught by Proviso III.

Taxpayer says—“Loss of circulating capital. Must be treated as such and Not as a bad debt under Sec. 14 (1) (d), because—

Under Sec. 10—tax only on gains—therefore expenses in earning them must be deducted. No prohibition against deducting them.

Section 15 (b) does not apply.

Reply not called for.

As to Costs—

*M* Assume they follow the event.

30

C.a.v.

(Intd.) E. N. T.

(Judgment delivered on 2.7.53)

No. 25.

**REASONS FOR JUDGMENT.**

(A) CHIEF JUSTICE OF MALAYA.

40 The taxpayer is a moneylending firm which, prior to the occupation of Malaya by the Japanese, had lent out money on the security of land. During the occupation, these loans were paid off and the securities concerned released. On the 1st of October, 1949, the Debtor and Creditor (Occupation Period) Ordinance, 1948, came into force, under which creditors were enabled, subject to certain conditions, to have their securities reinstated and to claim the difference between the face value and the real value of the occupation repayments which had been made in occupation currency which steadily, and at the end of the occupation rapidly, decreased in real value.

*In the Court of Appeal, Federation of Malaya.*

No. 24. Judges' Notes of arguments, 14th April 1953, continued.

(c) Taylor, J., continued.

No. 25. Reasons for Judgment.

(a) Chief Justice of Malaya.



*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 25.

Reasons  
for  
Judgment,  
*continued.*

(a) Chief  
Justice of  
Malaya,  
*continued.*

The Respondents in this appeal had claims amounting to a total of about \$600,000 when the Debtor and Creditor (Occupation Period) Ordinance came into force. The fact that their manager during the occupation period had died decreased the likelihood of their being able to prosecute their claims to a successful conclusion. The Respondents resorted to negotiation and recovered in all \$306,000 during the year 1950.

The Respondents, when completing their return of income for 1950, claimed to deduct the amount of \$345,000 which they had written off in their books as either a bad debt or a trading loss. The Comptroller of Income Tax disallowed this deduction. On appeal to the Board of Review 10 the Respondents were unsuccessful but on appeal from them to the High Court they were successful in part, the learned trial judge ordering the Comptroller of Income Tax to re-assess the taxpayer on the footing that he is entitled to an allowance for principal monies lost in consequence of the facts which have arisen, but not to an allowance for interest similarly lost. It is against this decision that the Comptroller of Income Tax is now appealing.

In my view, the appeal in the High Court was argued on a wrong view of the facts, and some confusion was caused by the Solicitor-General conceding that the loss of \$345,000 took place in 1950. In October, 1949, 20 the Respondents found, as a result of the coming into force of the Debtor and Creditor (Occupation Period) Ordinance, that they were enabled to reinstate certain securities and this they did. If thereafter they were 100 per cent. successful in establishing their claims under the Ordinance, they would have been in a position to recover approximately \$600,000.

In December, 1949, they raised the assets side of their balance sheet and showed their sundry debtors at a figure which was based on their recovering in full their claims under the Debtor and Creditor Ordinance. In 1950 they negotiated and recovered by settlement \$306,000 (approx.) 30 of the \$600,000 (approx.) that they had hoped to recover. In the balance sheet for 1950 they wrote off \$345,000 (approx.) which they had failed to recover as a result of their having settled all their claims for sums less than the full amount claimed. Even assuming that their manager during the occupation period had been alive and able to give evidence, it is doubtful whether they would have been successful in all their claims, for there are a number of factors, apart from demand, which have to be considered when establishing a claim to revaluation under the Ordinance. In my view, it is unnecessary to decide whether the Ordinance has the effect of reviving portions of old debts or creating new debts. If the Ordinance revives an old debt, the debts with which we are concerned are covered by proviso (iii) 40 to section 14 of the Income Tax Ordinance and cannot be deducted.

It is difficult to see how the Debtor and Creditor (Occupation Period) Ordinance creates a new debt, for it is clear that the Ordinance only provides machinery for enabling creditors in certain cases to have pre-occupation debts revalued and to recover a sum calculated in accordance with the provisions of the Ordinance. Until judgment on a claim has been given, no debt can arise. I regard the \$306,000 recovered by the Respondents when they settled their claims under the special provisions of the Debtor and Creditor (Occupation Period) Ordinance as a gain which cannot for the purposes of income tax be related back to the concluded 50 transactions which took place during the occupation.

In my view, the only question is whether the sum actually recovered is liable to tax or not, but this question we have not been asked to decide. I would allow the appeal with costs, and order that the deposit (if any) be paid out to the Appellant.

(Sgd.) CHARLES MATHEW,  
 Chief Justice,  
 Federation of Malaya.

Kuala Lumpur.  
 12th June, 1953.

*In the  
 Court of  
 Appeal,  
 Federation  
 of Malaya.*

—  
 No. 25.  
 Reasons  
 for  
 Judgment,  
*continued.*

10 (B) CHIEF JUSTICE, SINGAPORE.

These appeals are concerned with income tax for the year 1951 assessed on trading results for the year 1950, and raise the question of the proper method of dealing with loans made before the Japanese occupation part of which proved to be irrecoverable. The facts are as follows :

20 Certain loans were made before the occupation period. During the occupation period they were paid off. By the Debtor and Creditor (Occupation Period) Ordinance (No. 42 of 1948) the Respondents became entitled to certain sums on these debts. This Ordinance came into force on 1st October, 1949. The Respondents were, apparently owing to the fact that after the death of the agent one Andiappa which took place before the coming into force of the Ordinance, unable to recover the whole of the face value of the revalued debts. They settled in the course of the year 1950 for various sums and they claim to set off the balance against their trading profits of the year 1950 in fixing their assessable income for that year.

30 It was conceded that losses of this kind might be treated as income losses, as distinct from capital losses, within the ruling of *Reid's Brewery Co. v. Male* [1891] 2 Q.B., p. 1. In order to bring them into the accounts for the year 1950 they must be attributable to that year. This can be done by invoking section 14 (d) of the Ordinance. But in that case they are not a permissible deduction because they were incurred before the commencement of the basis period for the first year of assessment under the Ordinance, proviso (iii). The local Ordinance differs from the Imperial Statute in that it does not expressly state that this subsection provides the sole method of dealing with bad debts. My view of the construction of the Ordinance is that the effect of the Ordinance and the Act is the same and section 14 is the only method by which a debt incurred in one year and found to be bad in another can be treated as a trading loss for the latter year. If I am wrong on this point of construction, it is necessary to consider whether as a matter of fact the loss can be said to have occurred 40 in the year 1950. For this we must ignore section 14 (d). Section 14 (d) provides an artificial but convenient method of dealing with bad debts for taxation purposes. Apart from this I think that the only method would be to value all debts at the end of each year. If they were to produce more than the valuation the difference would be a trading gain for the year. If they produced less that would be a trading loss.

For the Respondents to succeed along this line of approach they would have to show that these debts were worth their face value on 1st January. I do not think that they can do this. Up to 1st October, 1949, the

—  
 (a) Chief  
 Justice of  
 Malaya,  
*continued.*

—  
 (b) Chief  
 Justice,  
 Singapore.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 25.  
Reasons  
for  
Judgment,  
*continued.*

(b) Chief  
Justice,  
Singapore,  
*continued.*

Respondents were not entitled to recover anything. On that date they became entitled to recover something but I do not think that there is any reason to suppose that the debts were worth more than the amounts for which they were ultimately compromised. The principal reason why they were compromised was the death of the agent that had taken place many years before. Nothing as far as the record is concerned indicates that anything happened after 1.10.49 to diminish the value of the debts. Incidentally, if the contention of the Respondents is correct, they should have shown the full value of the debts as part of the 1949 income.

I think that the fallacy behind the contention of the Respondents is that really they have been invoking section 14 (d) in order to make the loss occur in 1950, whilst they have tried to evade provisoes (ii) and (iii). I think that the purpose of these provisoes has been misunderstood. They are really essential to 14 (d). The system adopted by section 14 (d) is that a debt is treated as an income receipt for the year in which it is incurred. Thus a transaction by which a thing was bought for \$100 and sold on credit for \$110 would show a profit of \$10 on which tax would be payable. If ultimately only \$100 was recovered the trader would be entitled to write back the \$10 as a loss against the income for the year in which the \$10 was written off. The only reason why this is allowed is because the \$10 has already paid tax. As I have said, this is quite an artificial method. I think that the Comptroller is entitled to succeed in both cases and that the appeals should be allowed with costs.

(Sgd.) C. M. MURRAY-AYNSLEY,  
Chief Justice,  
Singapore.

(c)  
Taylor, J.

(c) TAYLOR, J.

These two Income Tax appeals turn on the same question and can be treated as one.

The facts are unusual. The taxpayer in each case is an undivided Hindu family carrying on business as a money lending firm. In and before the year 1941 they lent money to various borrowers on the security of land. During the enemy occupation the borrowers repaid these loans in Japanese currency which was progressively deteriorating in value. It was, however, then legal tender and a creditor was compelled to accept it at face value and release the security. On paper, and for accounting purposes, he had been paid in full but he had in fact incurred a substantial loss, in terms of real value, in exactly the same way as an Englishman who, having lent francs to a Frenchman in 1917, when the franc was worth 9d., was repaid with the same number of francs in 1921 when the franc was worth 2d.

Prior to the war there was no income tax in Malaya. In 1941 there was a war tax based on incomes but it was swept away by the enemy occupation. For practical purposes income tax was imposed *de novo* by Ordinance No. 48 of 1947 which, in the main, follows the English law. The earliest basis of assessment was the income for 1947; the tax assessed thereon was charged on the income for 1948, and so on in subsequent years.

On liberation, transactions in land which had been conveyed during the occupation were prohibited for the duration of the moratorium. In

1949 the Debtor-Creditor (Occupation Period) Ordinance authorised lender to require reinstatement of the released securities and to claim further payments representing the differences between the face value and the real value of the occupation repayments, calculated according to a statutory rate of exchange, subject to certain conditions, one of which was that the repayments had been made without demand. Unfortunately for this firm, the man who was their manager for part of the material period had died in 1945 so in many cases they could not prove the necessary facts. They had, however, their reinstated securities and during the year 1950 they were able to settle many of these claims out of court for a portion of the amount due. The aggregate of these claims exceeded \$600,000 of which about \$306,000 was recovered and \$345,000 written off.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 25.  
Reasons  
for  
Judgment,  
*continued.*

(c)  
Taylor, J.,  
*continued.*

In their return of income for 1950 for assessment of tax payable in 1951, the firm did not bring the amount recovered into account as a trading receipt but they claimed to deduct the amount written off, either as a trading loss or as a bad debt. The Comptroller of Income Tax disallowed this deduction but did not assess the amount recovered. The amount of tax in dispute is about \$70,000.

20 On appeal by the taxpayer against this assessment, the Board of Review regarded the amount written off as a bad debt, and held that it could not be deducted on the ground that the debts in question were incurred before 1947, which was the earliest basis period; they therefore confirmed the assessment.

On appeal to the High Court this decision was varied. The Judge held that the original advances were in the nature of capital investments and that only the interest was assessable as income. He accordingly ordered the Comptroller to examine separately each one of the many transactions in question and to re-assess the tax on the footing that so much of the amount recovered as represented part of the principal of the original loan was a repayment of capital and that so much of the amount written off as represented the remainder of the principal was a deductible loss of capital; the interest written off was to be treated as a loss of income which was not deductible. These complicated calculations have not been made, so what the result would have been is not precisely known but since the aggregate of the amounts recovered was under one-half of the amounts claimed it is obvious that the amount written off included substantial portions of the principal of the original loans. The financial effect, therefore, would have been to give the taxpayer substantial relief, though probably less than that for which he contended, and on a different ground and by a very different method of assessment. Thus, on a test case, both sides were held to be in error; the court took a third view of the law.

40 The Comptroller now appeals to this Court. The questions are whether, on a true construction of the Ordinance, the amount written off, or part of it, is allowable as a deduction, either as a trading loss or as a bad debt.

In my view the decision complained of is based on fallacious assumptions of fact and at least one erroneous admission. The contention of the Respondents which was, in part, adopted by the Judge, is founded on the idea that the original capital of the firm is something fixed and sacrosanct but capital and income, principal and interest, are accounting terms and to some extent elastic. The Respondents ought to appreciate this since

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*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 25.  
Reasons  
for  
Judgment,  
*continued.*

(c)  
Taylor, J.,  
*continued.*

moneylenders often capitalise interest. The fund to be taxed is the separate income of each successive year, ascertained according to a set of detailed rules. The general idea is that of an ordinary commercial profit and loss account but provision for depreciation, replacements and the like is controlled and it may be necessary to prepare two accounts—one to show the proprietors the position of their business in relation to past history and future prospects and the other to show the statutory income for the year of assessment. Say for the sake of argument, that this firm started business in 1936 with a capital of two million and for five years distributed modest profits, keeping the capital unaltered; say that during the war half their assets were lost by enemy action but they continued in business with the remainder; in 1946 the nominal capital might still be two million but the real capital was only one million; as between themselves and their co-partners it is proper for them, if they so wish to curtail distributions and plough current profits back into the business but are they to be immune from taxation for twenty or thirty years while they gradually rebuild the lost million? 10

During the argument in the High Court, counsel for the Treasury admitted that the loss on settlement of the revaluation claims occurred in 1950, the year when it was written off, but this is not correct. It is true that it was only then that the exact amount was finally ascertained but that is another matter. It is not a question of mixed law and fact. There are two separate questions. First, a question of pure fact: When did the loss occur?; secondly, a question on the statute: "Is the amount written off in 1950 allowable as a deduction in the taxation account for that year?" The transaction was compared to a loss of physical goods but, with respect, the analogy was drawn at the wrong stage. Cargo is lost when the ship sinks—not when the underwriters dispute the policy or when the Court holds them partly liable or when they go into liquidation, and certainly not when the Official Receiver pays a final dividend on the claim. When goods are destroyed the correct way to account for them is to write them off forthwith as a proved total loss; if they are insured and liability under the policy is admitted, a contra entry may be made of the amount expected to be recovered, which is often less than the full amount of the loss; the difference between the actual loss and the estimated recovery is the loss for that year. This estimate may be revised, upwards or downwards, if necessary, in a subsequent year, and the balance of the profit and loss account will fluctuate accordingly until the transaction is finally closed, but in any event no loss can be incurred in a year in which the only thing that happens is a receipt of cash. No loss occurred in 1950. The question was whether an amount written off as a loss could be deducted from the taxable income. 20 30 40

The Judge also held that on the coming into force of the Debtor-Creditor Ordinance the firm became absolutely entitled to recover the full amount of their differences. This seems exaggerated. They did not become absolutely entitled; they became conditionally entitled, subject to proof of the necessary facts. In no circumstances could they have been justified in writing back the full amount as a recoverable asset. We have had hundreds of revaluation claims and though they conform to a general pattern, no two are identical. Demand is not the only factor; in some cases the security was much reduced by destruction of trees and the like and there are many other circumstances which led to settlement of such 50

- claims for reduced amounts. Even if the manager had survived it is highly unlikely that he could have proved the facts in every case. Quite apart from his death, it was imprudent to write back the whole amount theoretically recoverable on revaluation; over a large number of claims no more than 75 per cent. or 80 per cent. net could fairly have been expected. Moreover, the manager had died before the Debtor-Creditor legislation was even drafted. I agree that the Respondents could not be expected to appreciate accurately the practical effect of the Ordinance immediately on its passing, but that was a reason for caution. When they
- 10 wrote back the amount due on revaluation at face value they inflated their assets, first by ignoring the general factors, and, secondly, by ignoring the particular factor that in their case part of the necessary evidence was already lost. I do not mean that they had any intention to deceive but the so-called loss which eventually had to be written off was not a real loss. It was not the loss of anything which they had ever actually possessed or had sound reasons to expect. The writing off was the correction of a gross over-estimate. I mention this only to show that if they are entitled to deduct the loss, the deduction claimed is excessively large. It does not affect the question whether the deduction is allowable.
- 20 Even if they had written back the potential recoupment at 50 per cent., there would still have been a balance of some \$20,000/- to be written off and the same questions of law would have arisen as to that amount.

The gist of the case is that the Respondents deferred writing off their occupation currency loss until 1950 and claim to deduct the whole of it from their profits for that year, without setting off the amount recovered on revaluation. It is at least possible that in strict law the Comptroller could have insisted on bringing the amount recovered into account and, in effect, taxing it, but he has waived his right, if any, and we are not asked to consider that point.

- 30 In my opinion the case resolves itself into one short, but not simple, issue. Before and since the war the Malayan dollar was linked to sterling but during the occupation it was temporarily replaced by a "banana dollar" (an allusion to the graceful fronds in the design of the notes) which was not effectively linked, even to the yen. Before the war the firm granted a number of sterling loans; during the occupation these were extinguished by repayment in nominal dollars of small value, whereby the firm made profits on paper while sustaining losses in reality. After liberation, they recouped these losses on paper, by debiting the borrowers with the full amount of possibly recoverable differences. In 1950 they
- 40 recouped nearly half of these losses, in fact, by prudent settlements of these differences for agreed sums in sterling. They then adjusted their accounts by writing off the difference between the anticipated and the realised recoupment. This necessarily involved an accounting loss in 1950 but in truth it was the writing off in that year of the irrecoverable portion of a loss which was actually incurred before 1946. The third proviso to section 33 (2) (b) of the Ordinance forbids deduction from assessable income in respect of a loss incurred before 1947. On this view of the case the appeal must succeed.

- 50 There are, however, two other possible views. The amount of an outstanding loan may be regarded as a debt and the statute makes separate provision for bad debts. The High Court made a refinement by splitting each advance into elements of capital and income, corresponding to the

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 25.  
Reasons  
for  
Judgment,  
*continued.*

(c)  
Taylor, J.,  
*continued.*

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 25.  
Reasons  
for  
Judgment,  
*continued.*

(c)  
Taylor, J.,  
*continued.*

principal and interest of the loan, and treated the principal written off as a deductible capital loss but the interest, separately, as a debt which though bad, was not deductible in this instance. I do not think the severance can be supported. It amounts to treating each individual advance by a moneylender as a specific capital investment which, in the aggregate, would leave him no ordinary business. In my view the amount owed by each borrower in an ordinary moneylending transaction, though partly principal and partly interest, is an integral debt which, at any given moment, is good, doubtful or bad, according to the security and other circumstances. The sums here in question were never "bad debts" 10 in the ordinary meaning of the term. On the contrary, most of them were at all material times fully secured. The death of the manager occasioned a loss of evidence. The situation was comparable to that where a moneylender has lost his promissory note and therefore cannot prove the amount due, though he still holds the title deeds to show that something is due; he has a bad credit rather than a bad debt. No case similar in this respect has been cited and there may be a question whether a debt which, though fully secured, has become partially irrecoverable for lack of evidence of the amount, ranks as a "bad debt" for this purpose. Perhaps 20 it should in a normal case but these were not ordinary moneylending transactions. The original debts were paid in full and the amounts now in question were subsequent liabilities imposed by operation of law. They were found to be in part "bad" and that part was written off, but not everything which falls to be written off is a bad debt. The Income Tax Ordinance does not assist in deciding what classes of transaction give rise to "debts." It is therefore necessary to consider what the true effect of the Debtor-Creditor Ordinance was. During the argument before us, it was suggested that that Ordinance might be regarded either as reviving a portion of the original debt or as creating a new debt. Of 30 the two, the former is preferable but it is a loose expression. It would be more accurate to say that the Ordinance authorised the creditor to claim that a portion of the original debt was revived. A claim is distinguishable from a debt. There was a case in Penang where the creditor had not actually demanded payment during the occupation but he had appointed a receiver of the mortgaged property. The Court of Appeal held that this was a constructive demand and disallowed his claim with costs, whereupon his supposed asset was converted into an actual liability.

In my opinion, a mere right to make a claim, subject to all the hazards of litigation, does not crystallise into a debt until the amount payable 40 has been agreed or decided.

Assuming, however, contrary to my view, that a revaluation claim does rank for Income Tax purposes as a debt, it is necessary to consider when it was incurred. If the Debtor-Creditor Ordinance revived portions of the original debts, those debts were incurred many years ago, before the first basis year and the assessment was correct. If, on the other hand, the Ordinance created new debts they were incurred in 1949 and the amount written back on revaluation should have been brought into the taxation account for that year; the amount written off in 1950 would then have been deductible. On that basis the respondents would be 50 entitled to relief on the difference, which is about \$40,000.

Of the cases cited only two are close enough in their facts to need mention at this stage. In *Gleaner Co. v. Assessment Committee* [1922] 2 A.C. 169 it was held that a debt contracted prior to the first application of the corresponding statute of Jamaica, and written off later, could not be deducted. That statute is not available here but the Privy Council expressly state that it contained no relevant provisions other than those mentioned in the report which are clearly different from those of our Ordinance. I am therefore of opinion that that decision does not apply, but in any event it does not help the Respondents.

10 In *John Dickenson & Co., Ltd. v. Bristow* [1946] 1 A.E.R. 448, the question arose at a different phase. The Court of Appeal held, not that a sum written off was deductible but that a sum recovered was taxable. The reasoning, however, is instructive and I think my view is consistent with it.

20 I have considered it necessary to state my opinion at some length because there must be scores of moneylenders who have written off portions of their revaluation claims during the last year or two, so this case may be temporarily of some local importance and a brief judgment in a successful appeal is liable to make difficulties for those who have to deal with similar, though not identical, cases. Also, my great respect for the learned Judge with whom on this occasion, I am unable to agree constrains me to state as clearly as I can the reasons for taking a different view.

I think that this appeal should be allowed and the assessment restored with costs, here and below.

(Sgd.) E. N. TAYLOR,  
Judge,  
Supreme Court,  
Federation of Malaya.

Kuala Lumpur, 22nd June, 1953.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

—  
No. 25.  
Reasons  
for  
Judgment,  
*continued.*

—  
(c)  
Taylor, J.,  
*continued.*

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No. 26.

ORDER in P. V. Family appeal.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
In the Court of Appeal at Kuala Lumpur.

No. 26.  
Order  
in P. V.  
Family  
appeal,  
2nd July  
1953.

Federation of Malaya Civil Appeal No. 11 of 1953.  
(Kuala Lumpur High Court Civil Appeal No. 35/52).

Between THE COMPTROLLER OF INCOME TAX . Appellant

Against

P. V. FAMILY . . . . . Respondent.

Before :

10

THE HONOURABLE SIR CHARLES MATHEW,  
Chief Justice,  
Federation of Malaya ;

THE HONOURABLE SIR CHARLES MURRAY-AYNSLEY,  
Chief Justice,  
Singapore ;

THE HONOURABLE MR. JUSTICE TAYLOR.

In Open Court.

This 2nd day of July, 1953.

THIS APPEAL coming on for hearing on the 14th day of April, 1953, 20  
in the presence of Mr. D. B. W. Good, Acting Solicitor-General, for the  
Appellant and Mr. N. A. Marjoribanks and Mr. M. N. Cumarasami, Counsel  
for the Respondent, and UPON READING the record of appeal filed  
herein and UPON HEARING the argument of Counsel for both parties  
as aforesaid IT IS ORDERED that this appeal should stand for judgment  
and the same standing for judgment this day in the presence of Mr. Gerard  
C. Byrne, Federal Counsel, for the Appellant and Mr. H. E. P. P. Powell,  
Counsel for the Respondent IT IS ORDERED that the appeal be allowed  
and that the judgment herein of the Honourable Mr. Justice Briggs given  
on the 20th day of February, 1953, be set aside and that the assessment 30  
of the Comptroller of Income Tax be restored IT IS FURTHER  
ORDERED that the Respondent do pay the Appellant the costs of this  
appeal and in the Court below as taxed by the proper officer of this Court  
AND IT IS LASTLY ORDERED that the sum of Dollars five hundred  
(\$500) deposited by the Appellant as security for costs of this appeal be  
refunded to the Appellant.

Given under my hand and the seal of this Court this 2nd day of  
July, 1953.

(Sgd.) P. SAMUEL,

Assistant Registrar,  
Court of Appeal,  
Federation of Malaya.

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No. 27.

**ORDER in PL. RM. Family appeal,  
2nd July, 1953.**

[Not printed—same as previous document.]

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 27.

No. 28.

**ORDER granting conditional leave to appeal to Her Majesty in Council  
(P. V. Family appeal.)**

**IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.  
In the Court of Appeal at Kuala Lumpur.**

Civil Appeal No. 11 of 1953.

10 Between THE COMPTROLLER OF INCOME TAX . Appellant  
and  
P. V. FAMILY . . . . . Respondent.  
(IN THE MATTER of Income Tax Appeal No. 35 of 1952

Between P. V. FAMILY . . . . . Appellant (before the  
Privy Council)  
and  
THE COMPTROLLER OF INCOME  
TAX . . . . . Respondent.)

Before :

20 THE HONOURABLE SIR CHARLES MATHEW, Chief Justice, Federation  
of Malaya.

In Open Court.

This 14th day of September, 1953.

30 THIS MOTION for conditional leave to appeal to Her Majesty in  
Council coming on for hearing on the 14th day of September, 1953, in the  
presence of Mr. N. A. Marjoribanks Counsel for the Respondent and  
Mr. G. H. Summerfield, Federal Counsel for the Appellant and UPON  
READING the Notice of Motion dated the 8th day of September, 1953,  
and the affidavit of M. Natarajan Chettiar son of Muthukaruppan Chettiar  
affirmed on the 6th day of August, 1953, and UPON HEARING Counsel  
for the Appellant before the Privy Council and the Federal Counsel IT  
IS ORDERED that the Respondent do have leave to appeal against the  
Judgment of the Court of Appeal given at Kuala Lumpur on the 2nd day  
of July, 1953, UPON CONDITIONS THAT (A) he do before the 14th day  
of December, 1953, enter into good and sufficient security to the satisfaction  
of the Court in the sum of \$5,000.00 for the due prosecution of the appeal  
and the payment of all such costs as may become payable to the Appellant

No. 28.  
Order  
granting  
conditional  
leave to  
appeal to  
Her  
Majesty  
in Council  
(P. V.  
Family  
appeal),  
14th  
September  
1953.

*In the Court of Appeal, Federation of Malaya.*

No. 28.  
Order granting conditional leave to appeal to Her Majesty in Council (P. V. Family appeal), 14th September 1953, continued.

No. 29.

in the event of the Respondent not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution or Her Majesty in Council ordering the Respondent to pay the Appellant costs of the appeal, as the case may be (B) he do before the 14th day of December, 1953, take the necessary steps for the preparation of the record and the despatch thereof to England.

Given under my hand and the seal of the Court this 14th day of September, 1953.

(Sgd.) P. SAMUEL,  
Senior Asst. Registrar,  
Court of Appeal,  
Kuala Lumpur.

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No. 29.

**ORDER granting conditional leave to appeal to Her Majesty in Council (PL. RM. Family appeal), 14th September, 1953.**

*[Not printed—same as previous document.]*

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No. 30.  
Order granting final leave to appeal to Her Majesty in Council (P. V. Family appeal), 11th December 1953.

No. 30.

**ORDER granting final leave to appeal to Her Majesty in Council (P. V. Family appeal).**

**IN THE SUPREME COURT OF THE FEDERATION OF MALAYA. 20**  
In the Court of Appeal at Kuala Lumpur.

Civil Appeal No. 11 of 1953.

Between **THE COMPTROLLER OF INCOME TAX . Appellant**  
and  
**P. V. FAMILY . . . . . Respondent.**

(IN THE MATTER of Income Tax Appeal No. 35 of 1952

Between **P. V. FAMILY . . . . . Appellant**  
and  
**THE COMPTROLLER OF INCOME TAX . Respondent.)**

Before :

**THE HONOURABLE MR. JUSTICE WILSON, Judge, Federation of Malaya.**

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In Open Court.

This 11th day of December, 1953.

UPON MOTION made unto the Court this day by Mr. M. N. Cumarasami Counsel for the Applicant above named AND UPON READING the Notice of Motion dated the 3rd day of December, 1953, and the affidavit of M. Natarajan Chettiar son of Muthukaruppan Chettiar

affirmed on the 2nd day of December, 1953, and filed herein AND UPON HEARING Mr. Cumarasami Counsel for the Applicant and Mr. D. B. W. Good, Senior Federal Counsel for the Respondent IT IS ORDERED that final leave be and is hereby given to the Applicant above named to appeal to Her Majesty in Council against the judgment of the Court of Appeal herein dated 2nd July 1953.

Given under my hand and the seal of the Court this 11th day of December, 1953.

10

Senior Asst. Registrar,  
Court of Appeal,  
Kuala Lumpur.

*In the  
Court of  
Appeal,  
Federation  
of Malaya.*

No. 30.

Order  
granting  
final leave  
to appeal  
to Her  
Majesty in  
Council  
(P. V.  
Family  
appeal),  
11th  
December  
1953,  
*continued.*

No. 31.

**ORDER granting final leave to appeal to Her Majesty in Council  
(PL. RM. Family appeal),  
11th December, 1953.**

*[Not printed—same as previous document.]*

No. 31.

No. 32.

**ORDER FOR CONSOLIDATION.**

AT THE COUNCIL CHAMBER, WHITEHALL.

20

The 17th day of June, 1954.

By the Right Honourable the Lords of the Judicial Committee of the Privy Council.

*In the  
Privy  
Council.*

No. 32.  
Order for  
consolida-  
tion,  
17th June  
1954.

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WHEREAS by virtue of His Late Majesty King Edward the Seventh's Order in Council of the 18th day of October, 1909, there was referred unto this Committee the matter of an Appeal from the Court of Appeal Supreme Court of the Federation of Malaya in the High Court at Kuala Lumpur between PL. RM Family Appellant and The Comptroller of Income Tax Respondent (Privy Council Appeal No. 21 of 1954) And likewise the matter of an Appeal from the said Court of Appeal between P. V. Family Appellant and The Comptroller of Income Tax Respondent (Privy Council Appeal No. 22 of 1954):

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AND THE LORDS OF THE COMMITTEE having taken into consideration a humble Petition of PL. RM. Family and P. V. Family setting forth: that the above Appeals are pending before Her Majesty in Council: that the Appeals of the Petitioners relate to their respective assessments to Income Tax and involve the same questions of law and certain of the documents in the Record are common to both Appeals and all the Courts below have pronounced their decisions in one Judgment which determined both Suits: that it will be for the convenience of all Parties and will save considerable expense if an Order is made for the consolidation of the two Appeals: And humbly praying that they may be consolidated and heard together on one Printed Case on each side:

*In the  
Privy  
Council.*

No. 32.  
Order for  
consolidation,  
17th June  
1954,  
*continued.*

AND the Solicitors for the Respondent having signified in writing their consent to the prayer of the Petition :

THEIR LORDSHIPS do hereby order and direct that the said Appeals be and the same are hereby consolidated and that they be heard together on one Printed Case on each side.

WHEREOF all parties whom it may concern are to take notice and govern themselves accordingly.

J. D. WATERS,  
Registrar of the Privy Council.

*Exhibits.*

A.1.  
Agreed  
Statement  
of Facts.

EXHIBITS.

10

A.1.—AGREED STATEMENT OF FACTS.

On 21.10.41 Pana Vana Firm of Malacca, a firm carrying on the business of rubber estate owners and moneylenders, hereinafter referred to as "The Creditor" lent a sum of \$26,000 to Yow Cheng Luan of Malacca, hereinafter referred to as "The Debtor" on a promissory note secured by the deposit of Pahang Grant for land No. 1683.

2. During the occupation on 24.6.43 and 26.9.43 the Debtor repaid the sums of \$10,000 and \$6,000 respectively.

3. On 26.9.44 the Debtor repaid the sum of \$10,000 being the balance due on the loan.

4. Under the Debtor and Creditor Ordinance only the payment of \$10,000 falls to be revalued and on the coming into force of the Ordinance on 1.10.49 the Debtor became liable to pay to the Creditor the sum of \$9,285.71 being the difference between the sum of \$10,000 and its revaluation as provided by the Ordinance.

5. At the same time the Creditor entered a caveat against dealings with the land held under Pahang Grant for Land No. 1683 and made an entry in his books on 31.12.49 debiting the sum of \$9,285.71 against the Debtor.

6. The Creditor made demands to the Debtor from time to time for payment of the said amount of \$9,285.71 and on 22.8.51 an amicable settlement was arrived at between the Creditor and the Debtor whereby the Creditor agreed to accept and accepted of the sum of \$4,700 in full satisfaction of the debt of \$9,285.71.

R.1.  
Extract  
from assets  
side of  
balance  
sheet.

R.1.—EXTRACT FROM ASSETS SIDE OF BALANCE SHEET.

P. V. (PANA VANA).

| Balance Sheet at                            | 31.12.47 | 31.12.48 | 31.12.49       | 31.12.50      |
|---|----------|----------|----------------|---------------|
| Malacca "Sundry Debtor A/c (Inama" (sic) .. | 9,954.05 | 9,954.05 | 304,632.61 (A) | 81,581.92 (C) |
| Muar Enams A/c .. ..                        | 4,029.54 | 7,593.30 | 364,478.64 (B) | 80,197.00 (D) |

(A) includes \$294,389.10 for Revalued Moratorium Debts.

(B) includes \$356,854.44 for Revalued Moratorium Debts.

(C) \$131,222.51 written off, year ended 31.12.50.

(D) \$213,968.04 written off, year ended 31.12.50.

# In the Privy Council.

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## ON APPEAL FROM THE COURT OF APPEAL OF THE FEDERATION OF MALAYA.

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BETWEEN

PL. RM. FAMILY . . . . . *Appellant*

AND

THE COMPTROLLER OF INCOME TAX . . . . . *Respondent*

AND BETWEEN

P. V. FAMILY . . . . . *Appellant*

AND

THE COMPTROLLER OF INCOME TAX . . . . . *Respondent.*

(Consolidated Appeals)

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# RECORD OF PROCEEDINGS

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BULCRAIG & DAVIS,  
AMBERLEY HOUSE,  
NORFOLK STREET,  
STRAND, W.C.2,  
*Solicitors for the Appellant.*

CHARLES RUSSELL & CO.,  
37 NORFOLK STREET,  
STRAND, W.C.2,  
*Solicitors for the Respondent.*