HIGH COURT OF JUSTICE (CHANCERY DIVISION) — 2, 3 AND 12 MARCH 1981

COURT OF APPEAL — 13 AND 14 DECEMBER 1982

HOUSE OF LORDS — 30 JUNE AND 27 JULY 1983

Mallalieu *v.* Drummond (H.M. Inspector of Taxes)[1]

Income tax—Schedule D Case II—Barrister—Income and Corporation Taxes Act 1970, *s* 130(*a*)—*Whether lady barrister entitled to deduct expenditure on replacement and laundering of professional clothes—Whether dual purpose in expenditure—Whether decision justifiable on facts.*

The taxpayer, a lady barrister with a busy court practice, consistently with Bar requirements on court dress, acquired and wore in court and Chambers, on her way there and usually when leaving there, black dresses, suits, tights and shoes, and white shirts or blouses. They were such as might be used for other ordinary civilian purposes. She preferred, however, to wear coloured clothes of a more adventurous style of which she had an ample supply. The wearing of her court clothes necessarily spared her private wardrobe from wear and tear but this was not a consideration in her mind when she bought the court clothes, any more than was the preservation of her warmth and decency. She bought the court clothes only because she would not have been permitted to appear in court if she had not worn them.

On appeal to the General Commissioners against the Inspector's disallowance under s 130(*a*) of the Income and Corporation Taxes Act 1970 of her expenditure on, and the laundry expenses of, such clothes, it was contended on her behalf that the test whether her expenditure was "wholly and exclusively" incurred "for the purpose of her profession" was subjective and that her expenditure did not cease to be wholly and exclusively incurred for such purposes simply because in addition to achieving a professional purpose it achieved an additional incidental effect.

The General Commissioners dismissed the appeal. They considered that when the taxpayer laid out money on clothes for wearing in court her purpose in making that expenditure was to enable her to earn profits in her profession and also to enable her to be properly clothed during the time she was on her

(1) Reported (Ch) [1981] 1 WLR 908; [1981] STC 391; 125 SJ 205; (CA) [1983] 1 WLR 252; [1983] 1 All ER 801; [1983] STC 124; 127 SJ 37; (HL) [1983] 2 AC 861; [1983] 3 WLR 409; [1983] 2 All ER 1095; [1983] STC 665; 127 SJ 538.

A way to Chambers or to court and while she was thereafter engaged in her professional activity and in certain other circumstances. The fact that her sole motive in choosing the particular clothes was to satisfy the requirements of her profession or that if she had been free to do so she would have worn clothes of a different style on such occasions had not altered the purpose of purchasing clothes that would keep her warm and clad during the part of the day when she
B was pursuing her career as well as the purpose of helping her to earn profits in that career. The Commissioners concluded that the expenditure had a dual purpose, one professional and one non-professional. The taxpayer appealed.

The High Court reversed the decision of the Commissioners and its decision was affirmed by the Court of Appeal, which held that the only proper and reasonable conclusion on the findings of fact made was that the taxpayer's
C sole purpose in incurring the expenditure was to satisfy the requirements of her profession. The Crown appealed.

Held, in the House of Lords, by a majority, allowing the Crown's appeal, that: (1) the object of a taxpayer in incurring expenditure is not inevitably limited to the particular conscious motive in mind at the moment of such expenditure; (2) it was inescapable that one object of the taxpayer was the
D provision of clothes that she needed as a human being; (3) accordingly the only proper conclusion was that her object was both to serve the purposes of her profession and also to serve her personal purposes.

Meaning of "expended for the purposes of the trade profession or vocation" in s 130(*a*), ICTA 1970 explained.

Observations of Goulding J. in *Hillyer* v. *Leeke* 51 TC 90, at page 93
E relative to s 189(1) of the Income and Corporation Taxes Act 1970 (the Schedule E expense rule) approved and applied.

CASE

Stated under the Taxes Management Act 1970, s 56, by the Commissioners for the General Purposes of the Income Tax for the Division of the Middle
F Temple in the City of London, for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax for the Division of the Middle Temple held on 14 April 1980 the taxpayer appealed against an assessment made on her under Case II of Schedule D for the year of assessment 1977–78, in the sum of £6,000 in respect
G of the profits of her profession of barrister.

2. Shortly stated the question for our decision was whether the taxpayer was entitled, in computing the profits of her profession of barrister for the year of assessment 1977–78, to deduct £564.38 representing expenditure on the replacement and laundry of professional clothes.

3. The taxpayer gave evidence before us and a proof of evidence of Brian
H Godbold, executive head of design employed by Marks & Spencer Ltd., was put before us by the Inspector of Taxes the taxpayer having agreed the facts stated therein. A copy of this proof is at exhibit A.

4. We found the following facts admitted or proved: A

(a) The taxpayer is a practising barrister having been called to the Bar by the Inner Temple in 1970. She commenced practice in October 1970 and became a member of the South Eastern Circuit. At all material times her practice was a mixed common law practice of which about 60 per cent. of the work was criminal and most of the rest was personal injury work.

(b) During the year with which we are concerned her practice had become B such that it was a rare day when she was not in court somewhere. The majority of her court appearances were in courts in and around London. On days when she went to her chambers in the morning because she was not then retained to go into court that day it often happened that before the day was out she found herself required to go to court later in the day as the result of some emergency or situation that had arisen at short notice. C

(c) Notes for guidance on dress in court were issued by the Bar Council in its annual statement for 1973–74. A copy of the relevant paragraph is at exhibit B. Though the rules laid down in the notes for guidance were issued by the Bar Council, the sanction which ensures that they are complied with is that they are enforced by the judiciary. A barrister who is improperly dressed may be told by the judge that he cannot be heard or may receive a message from the D judge's clerk or may receive a reprimand from a more senior member of the profession. The rules for guidance are thus normally complied with and it would be virtually impossible for a lady barrister to practice unless she complied with the rules laid down.

(d) In the accounting period for the year of assessment 1977–78 the taxpayer spent a total of £564.38 on the following items of expenditure: E

	£
Black tights	50.00
Black shoes	65.97
Black suits	133.79
Black dresses	73.44
Shirts	134.18 F
Replacement collar	7.00
Laundry and cleaning	100.00
	564.38.

A more detailed breakdown of this expenditure is at exhibit C.

(e) The taxpayer prefers to wear coloured clothes rather than black ones G and prefers clothes of a more adventurous design and style than is compatible with the notes of guidance which require that the dress should be unobtrusive. She considers that black clothes are ageing and do not suit her blonde colouring. None of the disputed items of clothing was of the sort that she would wear for going out in the evening or for other social occasions.

(f) At all material times the taxpayer had a private wardrobe of clothes H and shoes which was amply sufficient to keep her clothed and shod in comfort and decency, without having to resort to any of the disputed items. She would not have purchased any of the disputed items had it not been for the requirement of her profession that she should comply with the notes for guidance when appearing in court.

(g) The taxpayer normally drives when going to and from court or her I chambers. On such journeys she wears her court clothes even on those

A occasions when she is going to her chambers and is not already booked to go to court on that day, as she has always to be ready to go to court at short notice. On the relatively rare occasions when she wishes to spend the day in chambers reading papers and has asked her clerk not to arrange for her to go to court she would normally wear clothes such as she wore at the hearing before us, i.e. smart clothes from her non court wardrobe not suitable for wearing in court.

B *(h)* The taxpayer prefers to wear high heeled shoes but finds that in court they are not suitable as she may have to stand for long periods. She therefore wears black court shoes with lower heels in court. Such shoes are suitable to wear when driving her car while high heeled shoes are not suitable for that purpose. The nature of her practice takes her to courts in many places away from her chambers, and she has to drive considerable distances in the course of C a year for that reason.

(i) When in the evening the taxpayer goes direct from the chambers to a social engagement she normally changes from her court clothes into the coloured and more stylish type of clothes that she prefers.

(j) Though it must be the case, and she agreed, that by wearing her court clothes for a large part of her working lifetime she saves the clothes of her D private wardrobe from wear and tear, we accept that this fact was not a consideration in her mind when she bought the disputed items. She bought such items only because she would not have been permitted to appear in court if she did not wear, when in court, them or other clothes like them. Similarly the preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items.

E *(k)* The white blouses and black clothing bought by the taxpayer were items of ordinary civilian clothing readily available for purchase by anyone at many clothing stores.

(l) Over the last five years the average percentage of garments stocked by Marks & Spencers Ltd. in its ladies wear departments which are black were: skirt department 15 per cent; dress department 10 per cent; suit department 10 F per cent. Black clothing is always very acceptable whether it is in fashion or not because it is a good colour with which to team other colours or white. Black velvet jackets is one of the most successful lines and is a perennial favourite. The standard basic colours for ladies blouses are white and cream and these represent between 15 per cent. and 25 per cent. of the range in stock at Marks & Spencers Ltd.

G 5. It was contended on behalf of the Appellant that:

(a) the test of whether the disputed sum was money wholly and exclusively laid out or expended for the purposes of the Appellant's profession was a subjective test depending on the Appellant's state of mind at the time the expenditure was incurred;

(b) expenditure did not cease to be wholly and exclusively for the H purposes of her profession simply because in addition to achieving a professional purpose it achieved some additional incidental effect;

(c) on the evidence the expenditure was laid out wholly for the purposes of the Appellant's profession;

(d) the appeal should be allowed. A

6. It was contended on behalf of the Inspector of Taxes that:

(a) where expenditure is incurred partly for professional and partly for non-professional purposes, and the second purpose is not merely incidental to the other, such expenditure is not "wholly and exclusively" for professional purposes and is not deductible;

(b) expenditure incurred in satisfying ordinary basic human needs can B never be incurred "wholly and exclusively" for professional purposes even though the particular way in which those needs are met may be dictated by the requirements of the profession;

(c) expenditure on ordinary clothing such as is freely worn by persons not engaged in the profession cannot be laid out "wholly and exclusively" for the purposes of the profession: a main and not merely incidental object of that C expenditure is the advantage to the taxpayer as a living human being in meeting the needs of warmth and decency;

(d) on the evidence the expenditure in question was not laid out wholly and exclusively for the purposes of the Appellant's profession and the appeal should, therefore, be dismissed.

7. The following cases were cited to us in argument: *Bentleys, Stokes & D Lowless* v. *Beeson* 33 TC 491; [1952] 1 All ER 82; *Prince* v. *Mapp* 46 TC 169; [1970] 1 WLR 260; *Caillebotte* v. *Quinn* 50 TC 222; *Hillyer* v. *Leeke* 51 TC 90; *Woodcock* v. *Commissioners of Inland Revenue* 51 TC 698; *Ward* v. *Dunn* 52 TC 517; Hill v. *Luton Corporation* [1951] 2 KB 387.

8. We, the Commissioners, who heard the appeal, gave our decision in principle in writing on 24 April 1980. It was in the following terms:— E

(1) This appeal by Miss A. Mallalieu against an assessment to income tax for the year 1977–78 in respect of her earnings as a barrister was heard by us on 14 April 1980. Miss Mallaleiu was represented by Mr. Andrew Park Q.C. and the Inspector of Taxes was represented by Miss A. Wyman of the office of the Solicitor of Inland Revenue.

(2) Miss Mallalieu is an attractive blonde barrister. She considers that the F type of clothing that she is required to wear when she appears in court does not suit her colouring and her inclination is to wear, when not in court, clothes that are less formal and more stylish and colourful. We accept that she had during the accounting period with which this appeal is concerned (the year to 5 April 1977) ample clothing of the type that conformed to her natural taste and that there was no need for her to, and she virtually never did, wear the G clothes that she bought for wearing in court when she was not in court except when in chambers when applying herself to paper work or conferences and when travelling to and from her work and on other occasions when she did not find it necessary or desirable that she should change out of her court clothes. When she wished to go straight from chambers to some function or party at which she would prefer more becoming clothes she would change before going H there. The nature of her practice was such that she expected to be in court on most days and, even on those days on which she was not booked to appear in court, there was a considerable likelihood of her being required before the day was out to attend in court at short notice so that, for that reason, if for no other, she normally arrived in chambers in such clothes.

(3) We were satisfied by Miss Mallalieu's evidence (except in relation to the requirement as to black shoes,) that the clothes that she would otherwise choose to wear would not comply with those requirements. She produced at the hearing a specimen of black low heeled court shoes such as she would wear in court and a more fashionable black high-heeled shoe which she preferred to wear on other occasions. This latter shoe would have satisfied the requirements of the notes for guidance but was not considered by Miss Mallalieu satisfactory for use in court because of the long periods for which she might be required to be on her feet. She said also that they were not satisfactory for driving a car and that she sometimes drove as much as 800 miles per week.

(4) There was produced on behalf of the Inspector of Taxes a written statement (the accuracy of which was accepted on behalf of Miss Mallalieu) by the executive head of design of Marks & Spencer Ltd. The main points made in this statement were (i) that it is important for a major retail outlet to design garments likely to have a broad popular appeal, (ii) that the colours in which garments are produced must necessarily be what are called "safe" colours, including black (iii) that a black velvet jacket is a perennial favourite, and (iv) that black clothing is always acceptable whether it is a fashion colour or not and always represents a proportion (which he put at over 10 per cent.) of sales in ladies' outerwear.

(5) The question raised by the appeal is whether Miss Mallalieu is entitled to deduct for the purpose of computing the profits of her profession in her accounting year 1976–77 (which forms the basis of her assessment for the year 1977–78) the cost of certain items of clothing purchased by her in the relevant period and of laundering or cleaning in that period. The clothing in question that was purchased was all purchased to replace clothing that had become worn out. The various items of expenditure totalled £564.38. The fact that the expenditure was actually incurred is not disputed.

(6) Miss Mallalieu is entitled to deduct only so much of this sum as she can show is not excluded by s 130 of the Income and Corporation Taxes Act 1970, which is well known. In particular sums are not deductible unless they represent "money wholly and exclusively laid out or expended for the purposes of the...profession".

(7) The problem with which we are faced is, therefore, whether when Miss Mallalieu bought the clothes in question or had them cleaned or laundered the expenditure of so doing was laid out wholly and exclusively for the purposes of her profession as a barrister. The decision of the Court of Appeal in *Bentleys, Stokes and Lowless* v. *Beeson*[1] 33 TC 491 is, in our view, authority for the proposition that in determining the purpose of expenditure we must consider, as a subjective matter, the state of Miss Mallalieu's mind and decide as a question of fact what her purpose was.

(8) We consider that the evidence shows that when she bought the clothes she bought them to wear in court and that she would not have bought them but for the exigencies of her profession. She had no intention of wearing them except when in court or chambers or in the other circumstances mentioned in para 2 above.

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[1] [1952] 2 All ER 82.

(9) Does that mean that she laid out the money spent in purchasing them wholly and exclusively for the purposes of her profession? It is clear from the reasoning of Romer L.J. in *Bentleys Stokes and Lowless* v. *Beeson*[1] that the purpose for which a particular sum has been laid out does not necessarily cease to be the purpose of the profession simply because some incidental effect is achieved by the payment which may be said to be non-professional and which it was no part of the purpose of the taxpayer to achieve. In *Bentleys'* case the incidental effect which the court held, on the facts of that case, did not deprive the expenditure of its character of expenditure for professional purposes was the fact that the payment for the clients' lunch not only helped to earn profits for the firm of solicitors but also inevitably provided hospitality for the clients. It was no part of the purpose of the solicitors when incurring that expenditure that it should achieve that latter effect which was an inevitable result of the expenditure. We consider, in the present case, that when Miss Mallalieu laid out money on clothes for wearing in court her purpose in making that expenditure was to enable her to earn profits in her profession and also to enable her to be properly clothed during the time she was on her way to chambers or to court and while she was thereafter engaged in her professional activity, and in the other circumstances indicated in para 2. We do not consider that the fact that her sole motive in choosing the particular clothes was to satisfy the requirements of her profession or that if she had been free to do so she would have worn clothes of a different style on such occasions altered the purpose of the expenditure which remained the purpose of purchasing clothes that would keep her warm and clad during the part of the day when she was pursuing her career as well as the purpose of helping her to earn profits in that career. We think, therefore, that the expenditure had a dual purpose, one professional and one non-professional, and we, therefore, hold that, subject to one matter which we mention hereafter, she is not entitled to deduct the sums claimed.

(10) The exception to what we have said above is the cost of a replacement collar of a special sort which enable bands to be worn conveniently. The Crown concedes that the cost of this is deductible and we think it is right to take that view. This, like the wig and gown that barristers are required to wear, is more in the nature of a badge of the profession and it serves no purpose of clothing and is not intended to be worn out of court. The money expended on its purchase was laid out for no purpose other than the purpose of Miss Mallalieu's profession. It seems to us that the purpose of the expenditure on items of this sort is to show that the wearer is a qualified barrister and just as the expenditure on a licence to practice, were such a thing necessary, would be deductible so the expenditure of this particular item is deductible.

(11) We have reached the above conclusion without alluding to the fact that the notes for guidance on court dress show that much of the expenditure in question was necessarily incurred for the purpose of Miss Mallalieu's profession. This because, as was held in *Bentleys Stokes and Lowless* v. *Beeson* and as is clear from the relevant statutory provisions, it is not a condition of deductibility that the expenditure should be necessarily incurred. Indeed it appears to us that if the expenditure were deductible it would be equally deductible if it were shown merely to be expedient for the purposes of the profession, as for instance if convention or some other factor than the demands of the notes for guidance made the wearing of the clothes in question

(1) 33 TC 491.

A appropriate. This might be the case if Miss Mallalieu's practice consisted largely of advising in chambers and indeed may be the case in relation to the expenditure on shoes.

(12) In this connection we have noted that Romer L.J. in the above case (33 TC 491, at page 506) in the course of pointing out that expenditure to be deductible need not be necessarily incurred alluded to the converse proposition
B in the following terms: "If any particular expenditure is necessary for the purposes of a profession it presumably satisfies the test laid down by the Rule, but there is no warrant for saying that the absence of necessity automatically prevents it from doing so." The first part of that sentence was no part of the decision and is expressed in somewhat tentative terms. We were not pressed with it by Mr. Park, possibly because he did not, as we do not, consider that it
C represents the law. We think it likely that if reliance had been placed on it Miss Wyman would have referred us to authority (such as *Sargent* v. *Barnes*[1] [1978] STC 322).

(13) For the reasons that we have given we consider that the expenditure in question (other than that mentioned in para 10) is not deductible. The full figures involved in the assessment have yet to be determined by the General
D Commissioners if not agreed. This will be done in the light of our decision.

9. The parties having reached agreement on the figures we finally determined the appeal and confirmed the assessment on 25 June 1980, as follows: year of assessment 1977–78, £4,605.

10. Immediately after the determination of the appeal the Appellant declared to us her dissatisfaction therewith as being erroneous in point of law
E and required us to state a case for the opinion of the High Court pursuant to s 56, Taxes Management Act 1970, which case we have stated and do sign accordingly.

11. The question of law for the opinion of the Court is whether, on the facts found by us and set out in para 4 hereof and in our written decision, our decision was correct.

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22 October 1980

The case was heard in the Chancery Division before Slade J. on 2 and 3 March 1981 when judgment was reserved. On 12 March 1981 judgment was given against the Crown, with costs.

G *A. Park Q.C.* and *D. Milne* for the taxpayer.

Robert Carnwath for the Crown.

The following cases were cited in argument in addition to those referred to in the judgment:—*Baker* v. *Longhurst* [1933] 2 KB 461; *Morris* v. *Luton Corporation* [1946] KB 114; *Harrods* v. *Taylor-Gooby* 41 TC 450; *Meredith* v.

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(1) 52 TC 335.

Roberts 44 TC 559; *Woodcock* v. *Commissioners of Inland Revenue* 51 TC 698; [1977] STC 405; *Strong & Co. Ltd.* v. *Woodfield* 5 TC 215; [1906] AC 448; *Sargent* v. *Barnes* 52 TC 335; [1978] 1 WLR 823.

Slade J. — This is an appeal by way of Case Stated against a decision of the Commissioners for the General Purposes of the Income Tax for the Division of the Middle Temple. The Appellant, Miss Mallalieu, is a practising barrister. During her accounting year 1976–77 she expended a total sum of £564.38 on the replacement, cleaning and laundering of certain items of clothing. She claims that this expenditure was incurred wholly and exclusively for the purposes of her profession. An assessment was made on her for income tax under Case II of Schedule D for the year of assessment 1977–78 in respect of her profits of her profession as a barrister. She appealed against this assessment to the General Commissioners. She contended that in computing the profits of her profession for this year of assessment (which were based on the profits for her accounting year 1976–77) she was entitled to deduct the sum of £564.38. The Commissioners disallowed her claim in a written decision delivered on 24 April 1980. On her requirement, they subsequently stated a Case for the opinion of this Court pursuant to s 56 of the Taxes Management Act 1970. In para 4 of the Case Stated, the Commissioners set out the follwing facts, which they found admitted or proved:

> "(*a*) The Appellant is a practising barrister having been called to the Bar by the Inner Temple in 1970. She commenced practice in October 1970 and became a member of the South Eastern Circuit. At all material times her practice was a mixed common law practice of which about 60 per cent. of the work was criminal and most of the rest was personal injury work. (*b*) During the year with which we are concerned her practice had become such that it was a rare day when she was not in court somewhere. The majority of her court appearances were in courts in and around London. On days when she went to her Chambers in the morning because she was not then retained to go into court that day it often happened that before the day was out she found herself required to go to court later in the day as the result of some emergency or situation that had arisen at short notice. (*c*) Notes for guidance on dress in court were issued by the Bar Council in its Annual Statement for 1973–74. A copy of the relevant paragraph is at exhibit B(1). Though the rules laid down in the notes for guidance were issued by the Bar Council, the sanction which ensures that they are complied with is that they are enforced by the judiciary. A barrister who is improperly dressed may be told by the judge that he cannot be heard or may receive a message from the judge's clerk or may receive a reprimand from a more senior member of the profession. The rules for guidance are thus normally complied with and it would be virtually impossible for a lady barrister to practise unless she complied with the rules laid down. (*d*) In the accounting period for the year of assessment 1977–78 the Appellant spent a total of £564.38 on the following items of expenditure: black tights, £50.00; black shoes, £65.97; black suits, £133.79; black dresses, £73.44; shirts, £134.18; replacement collar, £7.00; laundry and cleaning £100.00, (making a total of) £564.38. A more detailed breakdown of this expenditure is at exhibit C(1). (*e*) The Appellant prefers to wear coloured clothes rather than black ones and

(1) Not included in present print.

prefers clothes of a more adventurous design and style than is compatible with the notes of guidance which require that the dress should be unobtrusive. She considers that black clothes are ageing and do not suit her blond colouring. None of the disputed items of clothing was of the sort that she would wear for going out in the evening or for other social occasions. (*f*) At all material times the Appellant had a private wardrobe of clothes and shoes which was amply sufficient to keep her clothed and shod in comfort and decency, without having to resort to any of the disputed items. She would not have purchased any of the disputed items had it not been for the requirement of her profession that she should comply with the notes for guidance when appearing in court.(*g*) The Appellant normally drives when going to and from court or her Chambers. On such journeys she wears her court clothes even on those occasions when she is going to her Chambers and is not already booked to go to court on that day, as she has always to be ready to go to court at short notice. On the relatively rare occasions when she wishes to spend the day in Chambers reading papers and has asked her clerk not to arrange for her to go to court she would normally wear clothes such as she wore at the hearing before us, that is to say smart clothes from her non-court wardrobe not suitable for wearing in court. (*h*) The Appellant prefers to wear high-heeled shoes but finds that in court they are not suitable as she may have to stand for long periods. She therefore wears black court shoes with lower heels in court. Such shoes are suitable to wear when driving her car while high-heeled shoes are not suitable for that purpose. The nature of her practice takes her to courts in many places away from her Chambers, and she has to drive considerable distances in the course of a year for that reason. (*i*) When in the evening the Appellant goes direct from her Chambers to a social engagement she normally changes from her court clothes into the coloured and more stylish type of clothes that she prefers. (*j*) Though it must be the case, and she agreed, that by wearing her court clothes for a large part of her working lifetime she saves the clothes of her private wardrobe from wear and tear, we accept that this fact was not a consideration in her mind when she bought the disputed items. She bought such items only because she would not have been permitted to appear in court if she did not wear, when in court, them or other clothes like them. Similarly the preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items. (*k*) The white blouses and black clothing bought by the Appellant were items of ordinary civilian clothing readily available for purchase by anyone at many clothing stores. (*l*) Over the last five years the average percentage of garments stocked by Marks & Spencers Ltd. in its ladies' wear departments which are black were: skirt department, 15 per cent.; dress department, 10 per cent.; suit department, 10 per cent. Black clothing is always very acceptable whether it is in fashion or not because it is a good colour with which to team other colours or white. Black velvet jackets is one of the most successful lines and is a perennial favourite. The standard basic colours for ladies' blouses are white and cream and these represent between 15 per cent. and 25 per cent. of the range in stock at Marks & Spencers."

The notes for guidance on dress in court issued by the Bar Council which are referred to in the Case Stated read as follows:

"1. The dress of barristers appearing in Court should be unobtrusive and compatible with the wearing of robes. 2. Suits and dresses should be

of dark colour. Dresses or blouses should be long-sleeved and high to the neck. Men should wear waistcoats. Shirts and blouses should be predominantly white or of other unemphatic appearance. Collars should be white and shoes black. 3. Wigs should, as far as possible, cover the hair, which should be drawn back from the face and forehead, and if long enough should be put up. 4. No conspicuous jewellery or ornaments should be worn."

At least five points have been common ground before me, as I think they were before the Commissioners. First, with one possible trivial exception relating to collars, no distinction falls to be drawn between the relevant expenses incurred by Miss Mallalieu in replacement of clothes and those incurred by her in laundering and cleaning. With that possible exception, all of them stand or fall together. Secondly, since the clothes were purchased by way of replacement of existing clothes, all the expenses are of a revenue rather than a capital nature. Thirdly, if they are to be allowable as deductions, they must fall outside the ambit of s 130(*a*) and (*b*) of the Income and Corporation Taxes Act 1970, by virtue of which no sum falls to be deducted in respect of:

> "(*a*) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation, (*b*) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation."

Fourthly, all the relevant expenses either fall within both subsections or fall outside both of them. In the event, therefore, the argument has centred wholly on s 130(*a*). Fifthly, it is common ground that, in determining whether these expenses have been wholly and exclusively laid out or expended for the purpose of Miss Mallalieu's profession of a barrister, it is necessary to ascertain what purpose or purposes was or were in her mind at the date when they were incurred: (see *Bentleys, Stokes & Lowless* v. *Beeson*[1], 33 TC 491, at pages 503–504 *per* Romer L.J.). Walton J. in *Robinson* v. *Scott Bader Co. Ltd.*[2], 1980 STC 241, having reviewed this and earlier authorities relating to the predecessors of s 130(*a*) of the Taxes Act 1970, said (at page 249):

> "It follows from all this that (i) the test is a subjective, not an objective one: i.e. the relevant question is: what was the object of the person making the disbursement in making it? not: what was the effect of the disbursement when made? and (ii) that this is, in all cases, a pure question of fact."

The correctness of this statement of the law, with its reaffirmation of the subjective test of intention and of the critically important distinction between the purpose and the incidental results of expenditure, has not been challenged before me.

Not even every *foreseeable* result of expenditure necessarily amounts to its purpose. In the context of s 130(*a*), a crucial distinction falls to be drawn between (*a*) expenditure incurred solely for the purpose of a taxpayer's profession which happens to produce benefits to him in his personal capacity, and (*b*) expenditure incurred partly for the purpose of the taxpayer's

(1) [1952] 2 All ER 82. (2) 54 TC 757, at p 767.

A profession and partly for the purpose of producing benefits to him in his personal capacity. It is obvious that expenditure falling within category (*b*) (often referred to as "dual purpose expenditure") is disqualified from deduction by s 130(*a*) because it is not exclusively laid out for the purposes of the profession. The distinction between dual purpose expenditure and expenditure falling within category (*a*) (which I will call "single purpose B professional expenditure") can be well illustrated by a reference to one case. In *Prince* v. *Mapp*[1], 46 TC 169, an engineering draughtsman played the guitar in his spare time, both as a hobby and for payment. As a result of an accident he suffered an injury to his left hand, which interfered with his guitar playing. He underwent an operation which restored partial flexibility to his hand. On an appeal against an assessment to income tax under Schedule D in respect of his C profits as a dance musician, he sought to deduct the costs of the operation as being wholly and exclusively expended for the purposes of his profession. The Special Commissioners disallowed the cost. In the course of the Case Stated by them, they said (see 46 TC 169, at page 171):

> "The operation to the Appellant's left hand hereinbefore referred to was undergone to enable the Appellant to continue to play the guitar not D solely so that he could make money by exploiting his skill professionally but equally to enable him to continue to enjoy and practise his hobby of playing that instrument."

On an appeal to the High Court, Pennycuick J. said in relation to this passage (at page 176):

> "That is a clear and express finding of a dual purpose, and, assuming E there was evidence to support that finding, it concludes the case against the Appellant. On that footing, s 137(*a*) is directly applicable because the expense of the operation would not be money wholly and exclusively expended for the purposes of his profession; it would be expended partly for the purposes of his profession and partly for the purposes of his hobby."

F Having found that there was material upon which the Commissioners could have reached their conclusion of fact, he dismissed the appeal. This was, therefore, a clear example of dual purpose expenditure failing to qualify for a deduction. In the course of his judgment, however, Pennycuick J. (at page 176) referred to a further finding of fact in the Case Stated, that:

> " . . . the operation was a complex one and he [the Appellant] would G not have undergone it had he not wished to continue to play the guitar."

He observed in this context (at page 176):

> "I would mention in passing that if the finding had included the word 'professionally' (i.e. if it had read 'He would not have undergone it had he not wished to continue to play the guitar professionally') the result would I think have been otherwise. However, that word 'professionally' is H not there."

Even if the taxpayer in that case had undergone the operation solely with the intention of enabling himself to exploit his skill professionally, it must still in addition have produced some incidental benefit to him in his personal, non-professional capacity. Yet, Pennycuick J.'s observation indicates that he

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(1) [1970] 1 WLR 260.

would not have regarded this readily foreseeable incidental benefit as necessarily disqualifying him from receiving tax relief, provided that it did not form part of the purpose itself. A

The distinction between dual purpose expenditure and single purpose professional expenditure is illustrated by many other decisions and is at the heart of the dispute in the present case. However, it is perhaps easier to state than to apply to the particular facts of individual cases, where the true intention of the taxpayer, viewed subjectively, may not always be easy to ascertain. Even on the application of a subjective test, its ascertainment may involve a degree of inference on the part of the tribunal of fact, as I think it plainly did in the present case. The ultimate question for my decision here will, I think, be whether having regard to their primary findings of fact as set out in para 4 of the Case Stated, there was evidence to support the inference ultimately drawn by the Commissioners that the expenditure was incurred by Miss Mallalieu with dual purposes in mind. B C

The process of thought which led the Commissioners to their final conclusion appears adequately from the following extracts from their decision. In para 2 they said (*inter alia*):

> "We accept that she had during the accounting period with which this appeal is concerned (the year to 5 April 1977) ample clothing of the type that conformed to her natural taste and that there was no need for her to, and she virtually never did, wear the clothes that she bought for wearing in court when she was not in court except when in Chambers when applying herself to paper work or conferences and when travelling to and from her work and on other occasions when she did not find it necessary or desirable that she should change out of her court clothes. When she visited to go straight from Chambers to some function or party at which she would prefer more becoming clothes she would change before going there." D E

I infer, however, from the findings in para 4(*e*) of the Case Stated that Miss Mallalieu would almost invariably change before going out in the evening or for other social occasions. Paragraphs 7, 8, 9 and 10 of the decision read as follows: F

> "7. The problem with which we are faced is, therefore, whether when Miss Mallalieu bought the clothes in question or had them cleaned or laundered the expenditure of so doing was laid out wholly and exclusively for the purposes of her profession as a barrister. The decision of the Court of Appeal in *Bentleys, Stokes & Lowless* v. *Beeson,* 33 TC 491 is, in our view, authority for the proposition that in determining the purpose of expenditure we must consider, as a subjective matter, the state of Miss Mallalieu's mind and decide as a question of fact what her purpose was. 8. We consider that the evidence shows that when she bought the clothes she bought them to wear in court and that she would not have bought them but for the exigencies of her profession. She had no intention of wearing them except when in court or Chambers or in the other circumstances mentioned in para 2 above. 9. Does that mean that she laid out the money spent in purchasing them wholly and exclusively for the purposes of her profession? It is clear from the reasoning of Romer L.J. in *Bentleys, Stokes & Lowless* v. *Beeson* that the purpose for which a particular sum has been laid out does not necessarily cease to be the purpose of the profession simply because some incidental effect is achieved by the payment which may be said to be non-professional and G H I

A which it was no part of the purpose of the taxpayer to achieve. In *Bentleys'* case the incidental effect which the court held, on the facts of that case, did not deprive the expenditure of its character of expenditure for professional purposes was the fact that the payment for the clients' lunch not only helped to earn profits for the firm of solicitors but also inevitably provided hospitality for the clients. It was no part of the B purpose of the solicitors when incurring that expenditure that it should achieve that latter effect which was an inevitable result of the expenditure. We consider, in the present case, that when Miss Mallalieu laid out money on clothes for wearing in court her purpose in making that expenditure was to enable her to earn profits in her profession and also to enable her to be properly clothed during the time she was on her way to Chambers or C to court and while she was thereafter engaged in her professional activity, and in the other circumstances indicated in para 2. We do not consider that the fact that her sole motive in choosing the particular clothes was to satisfy the requirements of her profession or that is she had been free to do so she would have worn clothes of a different style on such occasions altered the purpose of the expenditure which remained the purpose of D purchasing clothes that would keep her warm and clad during the part of the day when she was pursuing her career as well as the purpose of helping her to earn profits in that career. We think, therefore, that the expenditure had a dual purpose, one professional and one non-professional, and we, therefore, hold that, subject to one matter which we mention hereafter, she is not entitled to deduct the sums claimed. 10. The E exception to what we have said above is the cost of a replacement collar of a special sort which enable bands to be worn conveniently. The Revenue concedes that the cost of this is deductible and we think it is right to take that view. This, like the wig and gown that barristers are required to wear, is more in the nature of a badge of the profession and it serves no purpose of clothing and is not intended to be worn out of court. The money F expended on its purchases was laid out for no purpose other than the purpose of Miss Mallalieu's profession. It seems to us that the purpose of the expenditure on items of this sort is to show that the wearer is a qualified barrister and just as the expenditure on a licence to practice, were such a thing necessary, would be deductible so the expenditure of this particular item is deductible."

G This being the form of the Commissioners' decision and of the Case Stated, Mr. Carnwath, on behalf of the Crown, submitted that they applied the correct test on a question of fact which is not open to challenge. The crux of their decision, he contended, is to be found in the sentence in para 9 of their decision, in which they said:

> "We consider, in the present case, that when Miss Mallalieu laid out H money on clothes for wearing in court her purpose in making that expenditure was to enable her to earn profits in her profession and also to enable her to be properly clothed during the time she was on her way to Chambers or to court and while she was thereafter engaged in her professional activity, and in the other circumstances indicated in para 2."

This, Mr. Carnwath submitted, was a clear finding of fact by the I Commissioners that Miss Mallalieu, in incurring the relevant expenditure, had a dual purpose in mind, namely, (i) that of enabling her to earn profits in her profession, and (ii) that of enabling her to be properly clothed during the time she was on her way to Chambers or to court and while she was thereafter engaged in her professional activity, and in the other circumstances indicated

in para 2 of the decision, that is to say, the "other occasions when she did not find it necessary or desirable that she should change out of her court clothes". The Commissioners did not further particularise these "other occasions", but, in view of the findings in para 4(*e*) of the Case Stated, I think it clear that these did not include any social functions or parties, though they did include certain occasions in the evening, when she was not going to social functions or parties and did not think it necessary or desirable to change out of her court clothes. I accept that, as Romer L.J. said in *Bentleys, Stokes & Lowless* v. *Beeson,* 33 TC 491, at page 505:

> " . . . It is a firm rule in tax cases that if the tribunal of fact has found the fact, the Court will not disturb its conclusion unless it is clear either that the tribunal has misapplied the law to the facts found or that there was no evidence whatever to support the finding."

The ultimate conclusion as to Miss Mallalieu's purpose, expressed in para 9 of the Commissioners' decision, cannot therefore be lightly disturbed. For, though Mr. Park submitted to the contrary, I think this did amount to a finding of fact.

Nevertheless, no doubt bearing in mind the principles which govern appeals from their decisions, the Commissioners, in fairness to both sides, have, by the form of their decision and Case Stated, given the Court every opportunity to trace the process of thought which led them to their ultimate decision on the crucial question of intention. Thus paras 2, 3 and 4 of the decision and para 4 of the Case Stated set out the primary facts which, after having heard Miss Mallalieu give evidence on her own behalf, they regarded as admitted or proved by direct evidence. In contrast, paras 8, 9 and 10 of their decision, as I read them, set out the inferences of fact which they drew from those primary facts. I think, therefore, that I am at liberty, and indeed am bound, to consider whether there was sufficient evidence to justify these inferences, particularly in the face of their primary findings of fact, as set out in para 4 of the Case Stated.

I will now extract verbatim from para 4 certain of those primary findings of fact which I think particularly relevant in the present context:

> "1. 'At all material times the Appellant had a private wardrobe of clothes and shoes which was amply sufficient to keep her clothed and shod in comfort and decency, without having to resort to any of the disputed items.' 2. 'She would not have purchased any of the disputed items had it not been for the requirement of her profession that she should comply with the notes for guidance when appearing in court.' 3. 'None of the disputed items of clothing was of the sort that she would wear for going out in the evening or for other social occasions.' 4. 'It would be virtually impossible for a lady barrister to practice unless she complied with the rules laid down.' 5. 'Though . . . by wearing her court clothes for a large part of her working lifetime she saves the clothes of her private wardrobe from wear and tear, we accept that this fact was not a consideration in her mind when she bought the disputed items.' 6. 'Similarly the preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items.' 7. 'She bought such items only because she would not have been permitted to appear in court if she did not wear, when in court, them or other clothes like them.'"

I think it is a fair assumption that the Commissioners, in preparing their decision and Case Stated, would have referred to any evidence which

A they regarded as tending to support their ultimate decision as to Miss Mallalieu's intentions. In the light of all the evidence referred to by them, I ask myself three questions, which seem to me of crucial importance: (1) Was there any evidence at all to support the conclusion that part of the purpose of Miss Mallalieu's expenditure was to enable her to be properly clothed "*during the time she was on her way to her Chambers or to*
B *Court*"? My answer to that question must be No. She had, as the Commissioners found, an ample private wardrobe of clothes. She would not have worn any of them during these journeys, but for the requirements of her profession. The preservation of warmth and decency did not enter into her mind when she bought them. Considerations of convenience no doubt required that, after the clothes had been purchased,
C she would, as an incidental result, wear them during these journeys. In my view, however, to infer that she bought them partly for the purpose of keeping herself clothed during these journeys would be to confuse purpose and incidental effect. (2) Was there any evidence before the Commissioners to support the conclusion that part of the purpose of her expenditure was to enable her to be properly clothed "*while she was*
D *thereafter engaged in her professional activity*"? My answer to that question would be Yes, if "properly clothed" means "properly clothed in accordance with the particular requirements of her profession". This, however, would not, in my judgment, render the relevant expenditure dual purpose expenditure. If by "properly clothed" is meant "warm and decently clad", my answer must be No. Considerations of warmth and
E decency did not enter into her mind. (3) Was there evidence before the Commissioners to support the conclusion that part of the purpose of her expenditure was to enable her to be properly clothed "*in the other circumstances indicated in para 2*"? My answer to this question on the evidence must again be No. True it is that she did on occasions, as a matter of convenience, continue to wear her court clothes after court
F hours. However, to infer that she purchased them for the purpose of continuing to wear them after court hours would, I think, be wholly inconsistent with all of the seven findings of the Commissioners, which I have extracted from para 4 of the Case Stated. So to infer would once again be to confuse purpose and incidental effect.

The very experienced Commissioners were themselves clearly alive to
G the distinction between purpose and incidental effect, as appears from the first few sentences of para 9 of their decision. If my ultimate conclusion be correct and theirs be incorrect, it is relevant to consider what process of inference may have ultimately led them into error. As to this I can only speculate, but I think the answer to this question may be found in paras 6(*b*) and 6(*c*) of the Case Stated. From these sub-paras it would appear
H that, before the Commissioners, the Crown in effect was submitting the broad proposition that where a taxpayer incurs expenditure on any item, such as clothes, which supplies an ordinary basic human need, it can never, in any circumstances, be said to be incurred wholly and exclusively for the purpose of the taxpayer's profession, even if the particular manner in which that basic human need is to be met may be dictated by the
I requirements of the profession. If this contention had been correct, it would clearly have disqualified Miss Mallalieu from claiming the deductions now in question.

Some superficial support for this broad proposition might be found in a passage from the judgment of Lord Greene M. R., in *Norman* v.

Golder[1], 26 TC 293, at page 299. In that case a shorthand writer appealed against an assessment to income tax under Schedule D in respect of his professional earnings. He had suffered from a severe illness, which he stated was the direct result of working in unfavourable conditions. He incurred medical expenses, which he claimed should be deducted in computing his liability to tax in respect of his earnings, as being expenditure wholly and exclusively incurred in connection with his professional work. The Court of Appeal rejected his claim. Lord Greene M. R., said (at page 299):

> "It is quite impossible to argue that doctor's bills represent money wholly and exclusively laid out for the purposes of the trade, profession, employment or vocation of the patient. True it is that if you do not get yourself well and so incur expenses to doctors you cannot carry on your trade or profession, and if you do not carry on your trade or profession you will not earn an income, and if you do not earn an income the Revenue will not get any tax. The same thing applies to the food you eat and the clothes that you wear. But expenses of that kind are not wholly and exclusively laid out for the purposes of the trade, profession or vocation. They are laid out in part for the advantage and benefit of the taxpayer as a living human being."

For obvious reasons, in any case where part of the effect of expenditure is to supply what may be regarded as a basic human need of the taxpayer (whether for clothes, food, medical attention or otherwise), the Commissioners or any other tribunal of fact will be slow to hold that at least part of the purpose of such expenditure is not to satisfy such need. The decisions of Goulding J. in *Hillyer* v. *Leeke*[2], 51 TC 90, and of Walton J. in *Ward* v. *Dunn*[3], [1979] STC 179, (both relating to tax under Schedule E) are examples of cases where the taxpayer's expenditure on clothes had an obvious dual purpose.

Mr. Carnwath relied strongly on *Murgatroyd* v. *Evans-Jackson*[4], 43 TC 581. In that case a trade mark agent suffered an accident for which he was advised to have treatment in hospital. He was offered a bed in a hospital under the National Health Service, but could not have carried on his business there owing to the lack of a telephone and restricted facilities for visiting. Instead, therefore, he entered a nursing home as a private patient, where he was provided with the necessary facilities for carrying on his business. On appeal against an assessment to income tax under Schedule D he contended that 60 per cent. of his total expenses at the nursing home should be allowed as a business expense in respect of the use of his room there as an office. Plowman J. rejected his claim, saying (at page 589):

> "It seems to me that the claim by Mr. Evans-Jackson for 60 per cent. of his expenses is really fatal to his case, because implicit in a claim for only 60 per cent. of the expenses must be an admission that the expenses involved a dual purpose, namely, as to 60 per cent. expenses of conducting an office and as to 40 per cent. something else."

Plowman J. then observed that the taxpayer's claim would have been more plausible had he claimed the whole of his expenses in the nursing home. However, he continued (at page 590):

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(1) [1945] 1 All ER 352. (2) [1976] STC 490. (3) 52 TC 517.
(4) [1967] 1 WLR 423.

A "But even had he claimed the whole of the expenses, it seems to me that it would not really be a rational view of the situation to conclude that the whole of his expenses in the nursing home were incurred wholly and exclusively for the purposes of his business. The whole object of going into the nursing home in the first place was to receive treatment for the injury which he had sustained, and it seems to me that it would offend
B common sense to say that at any rate one of his motives or purposes in going into the nursing home was not to receive treatment for that injury—treatment which would enure to his benefit, not merely during the time when he was carrying on his business, but, as Lord Greene, M.R., said in the passage I have already read from *Norman* v. *Golder*[1], 'as a living human being'."

C In my judgment, however, the decision of the Court of Appeal in *Bentleys, Stokes & Lowless* v. *Beeson,* 33 TC 491, (which was subsequent to that in *Norman* v. *Golder*) clearly shows that the broad propositions advanced before the Commissioners and set out in paras 6(*b*) and 6(*c*) of the Case Stated were too widely stated. In that case, in the Court of first instance, Roxburgh J. held that, on the facts as found in the Case Stated, the expenses incurred by a
D firm of solicitors in entertaining clients were expenses wholly and exclusively laid out or expended for the purpose of their profession within Schedule D. Significantly, for present purposes, however, the expenses claimed and allowed included not only the costs of the meals of the clients, but also the costs of the meals of the solicitors themselves, consumed during the course of this hospitality. Roxburgh J. (at page 499) accepted the submission that the
E transaction was one single transaction which was embarked upon for business or professional purposes solely and exclusively and in which the partners' lunches were essential ingredients. He pointed out (at page 499) that "the partner who actually attends the lunch gets a separate and personal benefit to the extent (and only to the extent) that he gets his mid-day sustenance without the obligation to pay for it". He concluded, however, that "the mere
F circumstance that the partner gets that degree of gratuitous sustenance cannot in my judgment be a sufficient reason for holding that a transaction which is from every other point of view a business transaction lacks that characteristic in any degree whatever".

The Court of Appeal affirmed the decision of Roxburgh J. Romer L.J., delivering the judgment of the Court, expressed the opinion (at page 503) that
G Roxburgh J.'s view on the question of the cost of the partners' own lunches was "clearly right". Furthermore, in that case both Roxburgh J. and the Court of Appeal were prepared to go behind the finding (in para 6 of the Case there stated) that 'the expenses claimed were primarily and principally, but not purely, for business purposes", and a similar finding in para 11.

In the present case the Commissioners, while referring to the *Bentleys*
H decision, did not refer at all to the cost of the partners' own lunches in that case. They only mentioned the cost of the clients' lunches. I am not therefore sure that they fully appreciated what I regard as the main significance of that decision of the Court of Appeal in the present context. In my judgment it illustrates decisively that there is no broad principle that one purpose of the purchase of food to be consumed by the purchaser, or of any other item such
I as clothes, which will in part meet a basic human need of the purchaser, must always be deemed to be the partial satisfaction of that need. No irrebuttable presumption of law arises to this effect. An incidental effect of a purchase may

(1) 26 TC 293, at p 298.

still constitute no more than an incidental effect, even though it consists of a readily foreseeable personal benefit to the spender.

Similarly, as to medical expenses, I have already referred to a passage from the judgment in *Prince* v. *Mapp* (46 TC 169, at page 176), in which Pennycuick J. accepted in principle that, in the special hypothetical circumstances referred to by him, medical expenses could have constituted deductible expenses for Schedule D purposes. In relation to clothes, an illuminating illustration of the relevant principles is to be found in the judgment of Templeman J. in *Caillebotte* v. *Quinn*[1], 50 TC 222. In that case a carpenter, who worked on sites some distance from his home and could not go home for lunch on a working day, purchased for himself more expensive lunches than he would have eaten at home. He attributed the additional cost to the need to eat a more substantial meal, in order to maintain the energy expended in carrying out physical work and to keep warm during the winter. The General Commissioners allowed that additional cost as a deduction from his profits under Schedule D. On appeal, it was held that the cost of the lunches could not be apportioned, and that no part of it was exclusively expended for the purposes of the respondent's trade as a carpenter. Templeman J., however, observed (at page 226): "The cost of tea consumed by an actor at the Mad Hatter's Tea Party is different, for in that case the quenching of a thirst is incidental to the playing of the part". In other words, he considered the purpose of the purchase of the tea in such circumstances would be to enable the actor to play the part, rather than to satisfy a human need. He went on to observe: "The cost of protective clothing worn in the course of carrying on a trade will be deductible, because warmth and decency are incidental to the protection necessary to the carrying on of the trade." In other words, the purpose of the purchase of protective clothing to be worn in the course of carrying on a trade is to be regarded as that of providing the protection necessary to carry it on, rather than to provide warmth and decency.

I put to Mr. Carnwath in the course of argument the hypothetical case of a repertory actress who found herself obliged to purchase black clothes so as adequately to play the part of a lady barrister in a theatrical production. He did not, as I understood him, dispute that the expense of such purchases, by way of replacement, would in principle be well capable of qualifying for deduction. Nor, as I understood him, did he advance such broad propositions on behalf of the Crown as are to be found summarised in paras 6(*b*) and 6(*c*) of the Case Stated. He did, however, submit that, notwithstanding their primary findings of fact set out in para 4 of the Case Stated, the Commissioners' ultimate findings as to Miss Mallalieu's intention could be justified on the basis that, upon the evidence, she needed the clothes as a human being and it made no difference that the choice of the particular clothes was governed by her professional requirements. He sought to draw an analogy with *Murgatroyd* v. *Evans-Jackson*[2] on the grounds that, just as the taxpayer in that case needed the medical attention as "a living human being", so did Miss Mallalieu need the clothes in the present case.

If the evidence had shown her to be a penniless barrister with an empty wardrobe, this submission and analogy would have been well founded. With all respect to Mr. Carnwath's excellent argument, however, the fallacy seems to me to lie in one short but fundamental point. On the facts as found by the

(1) [1975] 1 WLR 731. (2) 43 TC 581.

A Commissioners, Miss Mallalieu, as a human being, neither needed nor wanted the clothes in question. In incurring the expenditure on them, she had no thought of warmth and decency. As the Commissioners found, she bought them "only because she would not have been permitted to appear in court if she did not wear, when in court, them or other clothes like them". In the circumstances, I think that, with all respect to the Commissioners, there was B no evidence to support the inference which they finally drew to the effect that she had a dual purpose in mind. On the evidence, I am driven to the conclusion that the relevant expenditure in the present case was incurred by her solely for the purpose of carrying on her profession, and that the benefits of warmth and decency, which she would enjoy while wearing the clothes during the various times referred to by the Commissioners in para 9 of their decision, were purely C incidental to the carrying on of her profession. In these circumstances the expenses are, in my judgment, deductible.

I conclude by making a few general observations. One obvious distinction between the clothes under discussion in the present case (other than the replacement collars) and the wig and gown which Miss Mallalieu, like any other barrister, is required to wear, lies in the fact that the clothes in question D were perfectly suitable for wearing on social occasions and, on the evidence, were from time to time worn by her outside the strict course of her profession, though she would not ordinarily have chosen to do so. Factors such as these would, I conceive, be very relevant when any tribunal of fact such as the Commissioners had to ascertain the true intentions of the taxpayer at the date of purchase. In particular, they would be relevant in determining whether they E could accept a taxpayer's evidence that she bought the clothes solely because of the requirements of her profession, and not partly in order to keep herself properly clad outside ordinary working hours. In the present case, however, I think that the Commissioners' primary findings of fact, set out in para 4 of the Case Stated, show that they did accept her evidence to this effect.

I accordingly emphasise that this is a decision on the particular facts of F the present case. It is not intended to imply that all lady practising barristers (or, for that matter, all male practising barristers) who purchase black suits, dresses or shoes suitable for use in the course of their profession and by way of replacement should be entitled to deduct the expense of the purchase for Schedule D tax purposes. Everything must depend upon the available evidence as to the purpose of the particular taxpayer in effecting the particular G purchase. If, as must be the case in many instances, a lady barrister buys her black clothing, partly for the purpose of using it during the course of her profession and partly for the purpose of using it when she is not pursuing her profession, then the expenditure will be truly dual purpose expenditure and will not qualify for a deduction. Similar principles apply *mutatis mutandis* in relation to cleaning and laundry. I appreciate that this decision, if correct, may H give rise to some uncertainty in some individual cases, which may not be very satisfactory either for the Inland Revenue or for members of the Bar. This, however, seems to me the inevitable result of the wording of s 130(*a*) of the Taxes Act, 1970, coupled with the principle illustrated by *Bentleys'* case(1), that in applying the subsection the purpose of any expenditure must be determined subjectively. This principle inevitably makes the application of any I "rules of thumb" much more difficult, save in those cases where the purpose of the relevant expenditure is obvious (for example, the purchase by a practising barrister of a wig and gown). However, the particular facts as found

(1) 33 TC 491.

by the Commissioners in the present case, save for their ultimate inference, could hardly have been more favourable to the taxpayer. On the basis of these particular facts she has, in my judgment, brought herself outside the ambit of s 130(*a*) and (*b*). I must accordingly allow this appeal.

Appeal allowed, with costs.

The Crown's appeal was heard in the Court of Appeal (Sir John Donaldson M.R., Kerr L.J. and Sir Sebag Shaw) on 13 and 14 December 1982 when judgment was unanimously given against the Crown, with costs.

A. Park Q.C. and *D. Milne* for the taxpayer.

P. Millett Q.C. and *M. Hart* for the Crown.

The case cited in argument were referred to in the judgment.

Sir John Donaldson M.R.—Miss Ann Mallalieu ("the taxpayer") is a practising barrister. During her accounting year 1976–77 she expended £564.38 on the replacement, cleaning and laundering of certain items of clothing and she sought to deduct this sum when computing the profits of her profession for the year of assessment. The Inspector of Taxes disallowed this deduction and the taxpayer appealed. Subject to the minor item of the cost of collars, the General Commissioners upheld the Inspector's decision. The taxpayer again appealed, this time to Slade J., and this time she succeeded. His judgment which sets the scene and contains most of the relevant material is reported at [1981] 1 WLR 908([1]). The Crown now appeals.

It is now agreed that all costs relating to collars are deductible and that we need not pursue any possible distinction between shoes and any other form of clothing. It is also agreed that all the expenditure was of a revenue nature. Accordingly the issue is whether the cost of purchasing and cleaning or laundering black tights, black shoes, black suits, black dresses and white shirts is deductible.

It is common ground that if the taxpayer is to succeed she must show that the relevant expenditure was "wholly and exclusively laid out or expended for the purpose of the trade, profession or vocation" (s 130(*a*) of the Income and Corporation Taxes Act 1970).

The essence of the General Commissioners' decision is contained in the second part of para 9 of their reasons, which is in the following terms:

> "We consider, in the present case, that when Miss Mallalieu laid out money on clothes for wearing in court her purpose in making that expenditure was to enable her to earn profits in her profession and also to enable her to be properly clothed during the time she was on her way to chambers or to court and while she was thereafter engaged in her professional activity, and in the other circumstances indicated in para 2. We do not consider that the fact that her sole motive in choosing the

([1]) Page 338 *ante*.

A particular clothes was to satisfy the requirements of her profession or that if she had been free to do so she would have worn clothes of a different style on such occasions altered the purpose of the expenditure which remained the purpose of purchasing clothes that would keep her warm and clad during the part of the day when she was pursuing her career as well as the purpose of helping her to earn profits in that career. We think, B therefore, that the expenditure had a dual purpose, one professional and one non-professional, and we, therefore, hold that, subject to one matter which we mention hereafter, she is not entitled to deduct the sums claimed."

Might I parenthetically make a small plea that if General Commissioners are stating a case which includes the written reasons which they have previously C given to the parties the paragraphs in the case may be so numbered, or those of the written reasons so re-numbered, that there is no confusion between the paragraphs of the case and those of the written reasons.

The essence of Slade J.'s decision is to be found in the following passage from his judgment at page 921 of the report. He said(1):

"On the facts as found by the commissioners, the taxpayer, as a D human being, neither needed nor wanted the clothes in question. In incurring the expenditure on them, she had no thought of warmth and decency. As the commissioners found, she bought them 'only because she would not have been permitted to appear in court if she did not wear, when in court, them or other clothes like them.' In the circumstances, I think that, with all respect to the commissioners, there was no evidence to E support the inference which they finally drew to the effect that she had a dual purpose in mind. On the evidence, I am driven to the conclusion that the relevant expenditure in the present case was incurred by her solely for the purpose of carrying on her profession and that the benefits of warmth and decency, which she would enjoy while wearing the clothes during the various times referred to by the commissioners in paragraph 9 of their F decision, were purely incidental to the carrying on of her profession. In these circumstances the expenses are, in my judgment, deductible."

The starting point of the Crown's argument is that the General Commissioners' conclusion was one of fact and degree which it is impossible to characterise as being "erroneous in point of law". Accordingly it is unappealable under s 56(1) of the Taxes Management Act 1970. This G submission led, inevitably, to *Edwards* v. *Bairstow*(2) [1956] AC 14. That case establishes that where the facts warrant a determination either way, the issue is one of degree and is therefore a question of fact (Lord Radcliffe at page 33(3)), but that if the facts found are such that no person acting judicially, and properly instructed as to the relevant law, could have come to the determination under appeal, the Court must intervene and that it does so on H the basis that there is no evidence to support the determination or that the evidence is inconsistent with and contradictory of the determination or that the true and only reasonable conclusion contradicts the determination (Lord Radcliffe, page 36(4)). Lord Simonds at page 29 of the report dealt with the matter in somewhat more specific terms when he said(5):

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(1) Pages 348–9 *ante*. (2) 36 TC 207. (3) *Ibid*, at p 227.
(4) *Ibid*, at p 229. (5) *Ibid*, at p 224.

"The primary facts, as they are sometimes called, do not, in my opinion, justify the inference or conclusion which the commissioners have drawn: not only do they not justify it but they lead irresistibly to the opposite inference or conclusion. It is therefore a case in which, whether it be said of the commissioners that their finding is perverse or that they have misdirected themselves in law by a misunderstanding of the statutory language or otherwise, their determination cannot stand."

Without apology, I make one further reference to Lord Radcliffe's speech because, as it seems to me, it epitomises the relationship between the General Commissioners and the Courts. That passage is on page 38 where he said([1]):

"I think it possible that the English courts have been led to be rather over-ready to treat these questions as 'pure questions of fact' by some observations of Warrington and Atkin L.JJ. in *Cooper* v. *Stubbs*([2]). If so, I would say, with very great respect, that I think it a pity that such a tendency should persist. As I see it, the reason why the Courts do not interfere with commissioners' findings or determinations when they really do involve nothing but questions of fact is not any supposed advantage in the commissioners of greater experience in matters of business or any other matters. The reason is simply that by the system that has been set up the commissioners are the first tribunal to try an appeal, and in the interests of the efficient administration of justice their decisions can only be upset on appeal if they have been positively wrong in law. The court is not a second opinion, where there is reasonable ground for the first. But there is no reason to make a mystery about the subjects that commissioners deal with or to invite the courts to impose any exceptional restraints upon themselves because they are dealing with cases that arise out of facts found by commissioners. Their duty is no more than to examine those facts with a decent respect for the tribunal appealed from and if they think that the only reasonable conclusion on the facts found is inconsistent with the determination come to, to say so without more ado."

It follows that the judgment of Slade J. should only be upheld if on the primary facts found by the General Commissioners they could not properly have concluded that the expenditure was dual-purpose expenditure incurred partly for professional and partly for non-professional purposes, i.e. being warm and decently clad. If they could properly so find, it is nothing to the point that other commissioners or Slade J., or indeed this Court, would have reached a different conclusion.

Mr. Millett, for the Crown, accepted that the purpose referred to in the section is the purpose of the taxpayer. In other words, the test is subjective. But he submitted that purpose—"the end in view"—must not be confused with motive—"the reason why". But this distinction does not appear to have been present in the mind of Romer L.J. when giving the judgment of the Court of Appeal in *Bentleys, Stokes and Lowless* v. *Beeson*([3]) 33 TC 491, as indeed was pointed out by Walton J. in *Robinson* v. *Scott Bader Co. Ltd.*([4]) [1980] 1 WLR 755 at page 760, but in deference to Mr. Millett's argument I will eschew any other word or concept than "purpose" which is, after all, the word used by the Legislature.

([1]) 36 TC 207, at p 231. ([2]) 10 TC 29; [1925] 2 KB 753. ([3]) [1952] 2 All ER 82.
([4]) 54 TC 757.

What was the end in view? The General Commissioners had to look into the taxpayer's mind at the moment when the expenditure was incurred and not at the moment when the clothes were being donned. When the clothes were being donned, the taxpayer had to make two decisions. First, whether to wear clothes at all. In that decision, she would undoubtedly be influenced by considerations of warmth and decency. Secondly, having decided to wear clothes, she had to decide which clothes to wear. In that decision, questions of warmth and decency were quite irrelevant. The Commissioners' primary findings of fact on this are as follows. I quote from para 4 of their case:

> "(*f*) At all material times the Appellant had a private wardrobe of clothes and shoes which was amply sufficient to keep her clothed and shod in comfort and decency, without having to resort to any of the disputed items. She would not have purchased any of the disputed items had it not been for the requirement of her profession that she should comply with the notes for guidance when appearing in court. (*g*) The Appellant normally drives when going to and from court or her chambers. On such journeys she wears her court clothes even on those occasions when she is going to her chambers and is not already booked to go to court on that day, as she has always to be ready to go to court at short notice. On the relatively rare occasions when she wishes to spend the day in chambers reading papers and has asked her clerk not to arrange for her to go to court she would normally wear clothes such as she wore at the hearing before us, i.e. smart clothes from her non court wardrobe not suitable for wearing in court ... (*j*) Though it must be the case, and she agreed, that by wearing her court clothes for a large part of her working lifetime she saves the clothes of her private wardrobe from wear and tear, we accept that this fact was not a consideration in her mind when she bought the disputed items. She bought such items only because she would not have been permitted to appear in court if she did not wear, when in court, them or other clothes like them. Similarly the preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items."

Faced with these primary findings, Mr. Millett becomes remarkably less subjective in his approach. He submits that whatever a taxpayer may identify as the primary purpose of expenditure on clothes of a type which can be worn in everyday life, his or her secondary purpose must be to keep warm and to be decently clothed or, to put it at its lowest, this is a possible conclusion of fact.

In pursuit of this argument Mr. Millett referred us to *Hillyer* v. *Leeke*[1] 51 TC 90 which was, he submitted, quite indistinguishable. There the taxpayer bought ordinary suits which he used solely whilst at work, yet it was held that his purchases had a dual purpose. The Crown argued, and Goulding J. accepted, at page 93:

> " ... that where the clothing worn is not of a special character dictated by the occupation as a matter of physical necessity but is ordinary civilian clothing of a standard required for the occupation, you cannot say that the one purpose is merely incidental to the other."

This decision was followed in *Woodcock* v. *Commissioners of Inland Revenue*[2] 51 TC 698 and in *Ward* v. *Dunn*[3] [1979] STC 178.

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[1] [1976] STC 490. [2] 1977] STC 405. [3] 52 TC 517.

In my judgment the present appeal is distinguishable from those cases in that it is here found as a primary fact that the taxpayer had an ample supply of other clothes and shoes to keep her clothed in comfort and decency. Those decisions are all consistent with a state of fact in which the taxpayers had indeed sufficient clothes for this purpose but only if those used at work were included. Accordingly, on this supposition, they had to buy the work-clothes for warmth and decency and whilst their purpose was to acquire clothes suitable for work this was not the sole purpose.

Mr. Millett at one time was driven to submit that if expenditure is such as to meet the primary needs of a human being as such, which includes keeping warm and being decently attired, the taxpayer must be deemed to have incurred the relevant expenditure for this purpose. However, as Mr. Park for the taxpayer pointed out, there are other needs which superficially at least would appear to be in the same category, e.g. external warmth and shelter. Yet no one has ever suggested that the cost of providing an office or chambers as shelter and expenditure on heating is incurred for a dual purpose. It is true to say that Mr. Millett in reply said that this was different because you had shelter at home and you had heating at home, and what you were supplying was heat and shelter in duplicate elsewhere. Beyond recalling the argument, I do not think it is necessary to take the matter further since either it would involve embarking on an entirely different case or, still worse, it might inspire the Revenue to start disallowing the cost of renting and heating chambers.

I approach the matter on the same basis as did Oliver J. in *Sargent* v. *Barnes*[1] [1978] STC 322 in a passage at page 329. He said:

> "This is an area in which it is difficult and, I think, positively dangerous to seek to lay down any general proposition designed to serve as a touch-stone for all cases. The statute, by its very terms, directs the court to look at the purpose for which the expense was incurred in an individual case, and that necessarily involves a consideration of the intention governing or the reason behind a particular expenditure, which must depend in every case on its own individual facts. The stone which kills two birds may be aimed at one and kill another as a fortuitous or fortunate consequence; or it may be aimed at both. But it is only in the former case that the statute permits the taxpayer to deduct its cost."

Accordingly, I ask myself whether the taxpayer in incurring the expenditure was aiming at one bird or two, accepting fully that she hit two—professional propriety and her needs as a human being. If she aimed at two, the expenditure was not deductible. If she aimed at the professional bird and fortuitously, fortunately, accidentally or incidentally hit the non-professional bird, the expenditure was deductible. In answering that question I must and do accept the General Commissioners' primary findings of fact: (a) The taxpayer had ample other clothing for purposes of warmth and decency. (b) She would not have purchased any of the disputed items had it not been for the requirement of her profession that she should be so clothed. (c) When she wore court clothes travelling to chambers on a day when she was not booked to go to court, it was only because she has always to be ready to go to court at short notice. (d) She bought this clothing only because she would not have been permitted to appear in court if she did not, when in court, wear them or other clothes like them. (e) The preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items.

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(1) 52 TC 335, at p 343.

These statements by the General Commissioners do not record evidence or submissions by the taxpayer. They are findings of fact. From those findings of fact there is in my judgment only one reasonable conclusion to be drawn, namely that the taxpayer's sole purpose in incurring the expenditure was a professional purpose, any other benefit being purely incidental. If that is right, then the determination of the General Commissioners cannot stand since it is wholly inconsistent with it. In such circumstances Lord Radcliffe bids me to say so without more ado. I would be quite willing to do so, but in deference to the unique experience and expertise of these particular General Commissioners I would only add that I think they must have been over-persuaded by the advocacy of Miss Wyman of the office of the Solicitor of Inland Revenue who according to the case submitted at page 6 of the Case said:

> "That expenditure incurred in satisfying ordinary basic human needs can never be incurred 'wholly and exclusively' for professional purposes even though the particular way in which those needs are met may be dictated by the requirements of the profession. That expenditure on ordinary clothing such as is freely worn by persons not engaged in the profession cannot be laid out 'wholly and exclusively' for the purposes of the profession: a main and not merely incidental object of that expenditure is the advantage to the taxpayer as a living human being in meeting the needs of warmth and decency."

If the General Commissioners did accept these submissions—and they really must have done in order to reach their conclusion—they erred in law. It may be rare for expenditure on ordinary clothing to be "wholly and exclusively" incurred for the purposes of a profession, but it can happen and it did happen in this case.

Accordingly I would dismiss the appeal.

Kerr L.J.—On behalf of the Crown, Mr. Millett, Q.C. has argued two points on this appeal. First, that the conclusion of the Commissioners was right because, in effect, it was an inevitable conclusion, given the fact that the subject-matter of the expenditure was clothing, and that the taxpayer inevitably had to be clothed in public, for comfort, warmth and decency, whatever she might be doing. Secondly, he submitted that even if this went too far, the Commissioners' conclusion that this was a case of a "dual purpose" expenditure was one which it was open to them to reach; that it could not be shown to be "erroneous in point of law"; and that the learned Judge was therefore not entitled to substitute his conclusion for that of the Commissioners.

The first of these submissions is very clearly stated in paras 6(*b*) and (*c*) of the Case, setting out the contentions of the Inspector, which the Master of the Rolls has already quoted in full. In the same way as he, I would emphasise the words "can never" in (*b*) and the word "cannot" in (*c*).

In effect, this amounts to a submission that any disbursement or expense which serves the purpose of meeting "ordinary basic human needs" can by its nature never have been laid out wholly and exclusively for the purposes of anyone's trade, profession or vocation, because it must inevitably also have been laid out in order to meet such human need. I cannot accept this, and one can think of many examples which demonstrate the contrary. Thus, food and drink was not disqualified as such in *Bentleys, Stokes and Lowless* v. *Beeson*[1]

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[1] [1952] 2 All ER 82.

33 TC 491. The cost of heating a taxpayer's place of work would not be disqualified on the ground that warmth is a basic human need. And a requirement to wear something in the nature of a uniform, such as dress trousers and a tailcoat with all the trimmings, bought or hired by a free-lance waiter, which he would never consider acquiring otherwise than as his professional apparel, could not possibly be disqualified solely on the ground that onIe of his purposes in acquiring them was the avoidance of having to perform his duties in his underclothes.

However, when some expenditure is incurred which is required for professional purposes and which also meets an ordinary need, such as the need to be clothed in public, then the expenditure may, from the taxpayer's point of view, "kill two birds with one stone". He or she may be fortunate—subject to the views of the Inspector or thereafter the Commissioners—in being able to acquire something for more than one purpose. Whether or not this is so, or to what extent, is a question of fact and degree. This, I think, applies particularly to clothing, because everyone has to be clothed in public, apart from wholly exceptional circumstances, such as a theatrical performance in the nude. Accordingly, a taxpayer's expense of acquiring, hiring or replacing clothing of a particular kind, which is required for some professional purpose, may at the same time fulfil the ordinary purpose of enabling the taxpayer to be clothed as opposed to being unclothed or insufficiently clothed. This will be so, in particular, where the clothing in question is relatively ordinary; the more ordinary it is, the easier it must be to infer that the purpose of the taxpayer's expenditure was not exclusively for professional purposes but also in part for the everyday purposes for which people need clothes.

This brings me to Mr. Millett's second submission. He points out that the clothes which are the subject-matter of the present case are ordinary, in the sense that they can be worn to fulfil the dual purpose of meeting the requirements of a member of the Bar appearing in Court and that at the same time they are also clothes of a kind which are not *outré* in the sense of something which is clearly only in the nature of a professional uniform. Therefore, he submits, they are clothes which fulfil a dual purpose, professional and non-professional, with the result that the expenditure necessary to acquire or replace them (as to which no distinction has been suggested for present purposes) is expenditure incurred for a dual purpose, which is therefore fatal to the taxpayer under s 130.

Viewed in the abstract and in the great majority of cases, a conclusion to this effect would clearly be unassailable if it were found as a fact by the Commissioners in any given case. It was so found, or at any rate the taxpayer did not succeed in establishing the contrary, in *Hillyer* v. *Leeke*[1] 51 TC 90 and *Woodcock* v. *Commissioners of Inland Revenue*[2] 51 TC 698; and Walton J. reached the same conclusion in *Ward* v. *Dunn*[3] [1979] STC 178. The issue in the present case, however, is whether the Commissioners' findings entitled them to arrive at the same conclusion on their own findings of primary fact.

Mr. Millett's second submission, that the Commissioners' conclusion to the same effect in the present case cannot be shown to have been erroneous in point of law, is the one on which my mind has wavered a great deal during the

(1) [1976] STC 490. (2) [1977] STC 405. (3) 52 TC 517.

A argument. However, two fundamental principles must be borne in mind in this connection. First, the decisive question is the taxpayer's subjective purpose at the time when the expenditure was incurred: see most recently the decision of this Court in *Robinson* v. *Scott Bader Co. Ltd.*(1) [1981] 1 WLR 1135. If that is found to have been for a single purpose which qualifies for tax relief, then this is conclusive, and it does not then matter if the effect of the expenditure is
B also, even perhaps inevitably, something which does not so qualify. Thus, once it was found in that case that the purpose of the taxpayer company was to further its trade in France by investing expenditure in a French subsidiary company, it was open to the Commissioners to disregard the inevitable effect that the expenditure would also constitute a benefit for the subsidiary.

The second principle is that, once the Commissioners have made their
C primary findings of fact, it is open to the courts to review as a matter of law the inferences which they have drawn from them, although the courts will only do so if, on the evidence or as a matter of law, the true or only reasonable conclusion contradicts the determination of the Commissioners: see *Edwards* v. *Bairstow*(2) [1956] AC 14 at page 36 in one of the tests propounded by Lord Radcliffe.

D In the present case, as it seems to me, the primary findings of fact are wholly exceptional in the sense that they are conclusive in the taxpayer's favour. In particular, paras 4 (f) and (j) of the Case and para 8 of the decision contain unqualified findings to the effect that the taxpayer's sole purpose in incurring the expenditure for the clothes in question was that she had to have them in order to exercise her profession and that she had no need for them, nor
E any other purpose, when she acquired them. True, they were clothes of a kind which also fulfilled the taxpayer's ordinary purposes while she was wearing them. In the result, therefore, the expenditure in question "killed two birds with one stone", to repeat the illustration given by Oliver J. in *Sargent* v. *Barnes*(3) [1978] STC 322 on which Mr. Millett relied. The Master of the Rolls has already quoted the passage which I also have in mind in this connection.

F In the present case I agree that the stone killed what may be described as a second non-professional bird by way of a fortuitous or fortunate consequence; but on the Commissioners' own findings the expenditure was aimed only at the professional bird. This may well be an exceptional conclusion of fact, but it is so found. The learned Judge said several times that the Commissioners' conclusion involved a confusion between purpose and incidental effect. The
G distinction between these must usually be entirely a matter for the Commissioners on which their decision would be unassailable, and this was the main consideration which has troubled me in the present case. But in this case they have, by their findings, themselves determined the taxpayer's sole and entire purpose as being professional. By these findings they have, in effect, stated themselves out of court so far as any ultimate conclusion to the contrary
H is concerned. All that remains can only be incidental effect; there is no room for a conclusion that there was a dual purpose. In my view the Commissioners' ultimate conclusion can only have been based, as the Master of the Rolls said, on their acceptance of the Crown's contentions in paras 6(*b*) and (*c*) of the Case, viz. that a dual purpose must inevitably follow in this case. However, for the reasons already stated, I consider that the acceptance of this as an
I inevitable consequence involves a fallacy, and I would accordingly dismiss this appeal.

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(1) 54 TC 757. (2) 36 TC 207, at p 229. (3) 52 TC 335.

Sir Sebag Shaw—I agree. I have little to add to the judgments which have already been given. The Commissioners fell into the error of stating their findings of fact as to the purpose for which the taxpayer bought the clothes, and then incongruously came to the conclusion that there was a dual purpose at the time of the purchase when of course there was not. There was a single purpose, as indeed the Commissioners said. There was a fortuitous and incidental benefit which arose from it which was inescapable so far as the taxpayer was concerned; it was not that she adopted it but that she could not avoid it.

In those circumstances, it was certainly open to Slade J. to review the findings of fact, and he was right in the conclusion he came to which was that, properly viewed, the fact that there was more than one purpose did not in any way preclude the taxpayer from being entitled to claim the relief which she sought in respect of her professional clothing.

I would dismiss the appeal.

Appeal dismissed with costs. Leave to appeal granted by House of Lords.

The Crown's appeal was heard in the House of Lords (Lords Diplock, Elwyn-Jones, Keith of Kinkel, Roskill and Brightman) on 30 June 1983 when judgment was reserved. On 27 July 1983 judgment was given in favour of the Crown, Lord Elwyn-Jones dissenting.

([1])*Peter Millett Q.C., Robert Carnwath* and *Michael Hart* for the Crown. The question raised by this appeal is whether the taxpayer was entitled, in computing the profits of her profession as a barrister, to deduct expenditure on the replacement and laundry of certain clothing. The relevant statutory provision is s 130 (*a*) and (*b*) of the Income and Corporation Taxes Act 1970. In applying that provision two questions arise. First, for what purpose or purposes was the expenditure in question in fact laid out, and second, is the expenditure for that purpose deductible for income tax purposes? The first question is one of fact: see *Morgan* v. *Tate & Lyle Ltd.*([2]) [1955] AC 21, 48. The commissioners concluded that the taxpayer's purpose in making the expenditure was also to use the clothes in "other circumstances", namely, "occasions when she did not find it necessary or desirable that she should change out of her court clothes". There was material before the commissioners to support that conclusion. The clothes were ordinary items of civilian clothing. The taxpayer, as a human being, required a wardrobe which enabled her to be suitably clothed during all the activities of the day. The fact that the choice of clothes was dictated by the professional purpose did not prevent it performing the general purpose of clothing her for the day, as well as the specific purpose of preparing her for a particular activity during the day. Was the professional purpose so overwhelming that everything else was an incidental side effect? There is a range from the extreme and the commissioners had to draw the line. The Crown's case is not based on the fact that the taxpayer wore the clothes when it was expedient to do so, but on the fact that the wearing of the clothes fulfilled the purpose of keeping her clothed. In all expenditure there is another possible private benefit or advantage but the commissioners had to ask themselves whether it was predominantly for

([1]) Argument reported by Shiram Herbert Esq., Barrister-at-Law. ([2]) 35 TC 367.

professional purposes or whether it was wholly and exclusively for professional purposes.

If the commissioners' conclusion as to the purpose of the expenditure is accepted, the answer to the second question follows, as indeed was implicitly accepted by the Court of Appeal. The purpose was not exclusively professional. It included the non-professional purpose of clothing the taxpayer as a human being. Deduction was therefore prohibited under s 130 (*a*) of the Act of 1970. The same conclusion could have been reached under s 130 (*b*). Expenditure on ordinary clothing in such circumstances remains "expenses of maintenance" even though the clothes in question conform to particular professional requirements.

The Court of Appeal held that on the commissioners' findings the taxpayer's object in incurring the expenditure was "aimed" at professional propriety and that therefore that was the exclusive purpose of the expendutire. It appears to be implicit in their decision that if the considerations of her needs as a human being had been actively in her mind at the time of the purchase, the commissioners' decision would be unassailable. The Court of Appeal erred in regarding the reasons or conscious motives of the taxpayer at the time of purchase as determinative. Purpose is not necessarily the same as motive. Purpose is the object or end in view. Motive is the reason why. In statutory language the difference is encapsulated in *Newton* v. *Commissioner of Taxation of the Commonwealth of Australia* [1958] AC 450, 465.

The evidence of a conscious professional purpose did not displace the inference that there was another subconscious non-professional purpose. When the expenditure is on an everyday item such as clothing, and the pattern of use is consistent and well-established, it is easy as a matter of common sense to infer the taxpayer's purpose without relying on any active mental process. The general purpose of clothing is taken for granted and no conscious thought is given to it. It did not cross the taxpayer's conscious mind that she was going to be warm, clothed and decent when she laid out money on those clothes.

In attaching importance to the conscious state of mind of the taxpayer at the time of the expenditure, the Court of Appeal, like Slade J., were strongly influenced by the reasoning and decision of the Court of Appeal in *Bentleys, Stokes & Lowless* v. *Beeson*[1] [1952] 2 All ER 82, 84, 85, where Romer J. formulated the question as "What was the motive or object in the mind of the two individuals responsible for the activities in question?" If the application of this test results in concentrating exclusively on the state of mind of the taxpayer at the time of the expenditure, it is inconsistent with the approach of the Court of Appeal in *Newson* v. *Robertson*[2] [1953] Ch 7 where the reasoning of Denning L.J. at page 16 and Romer L.J. at page 17 are indicative that the courts are prepared to recognise commonsense limits to the application of a completely subjective approach to the determination of the purpose of particular expenditure claimed to be deductible by a taxpayer.

Sometimes the taxpayer's evidence of what she thought would be highly relevant, and it may be possible that the advantages of buying the clothes were merely incidental to the professional purpose. Nevertheless, the commissioners can reject it.

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(1) 33 TC 491. (2) 33 TC 452.

Where the scheme has no other purpose but to create a tax loss the motive is relevant: see *W.T. Ramsay Ltd.* v. *Commissioners of Inland Revenue*(1) [1979] 1 WLR 974. In the normal case the motive is irrelevant. The question is whether the expenditure was incurred for the purposes of the profession and exclusively for the purposes of the profession.

Uniforms and protective clothing perform different functions and even though they are worn in part as everyday wear and also keep the taxpayer warm and clothed that effect is a wholly incidental one. A uniform serves as the badge of a profession and helps to identify the wearer as for example, a policeman. When the taxpayer says she found the black clothes distasteful but submitted to them for professional reasons, she was using personal taste to make a uniform for herself. Any taxpayer who is properly tutored by an accountant could produce the right answer to get a deduction. This case was a question of fact for the commissioners. All clothing at the Bar is ordinary clothing. Fashions change with the years and a wig which is no longer "ordinary" clothing is therefore deductible. It could be said that the taxpayer wore her black clothes at all times of the day when it was not possible to wear her other clothes.

The Crown's approach is supported by the decision of Goulding J. in *Hillyer* v. *Leeke* 51 TC 90 and followed in *Woodcock* v. *Commissioners of Inland Revenue* 51 TC 698 and *Ward* v. *Dunn* 52 TC 517. Sir John Donaldson M.R. distinguished the present case from *Hillyer* v. *Leeke* and the other cases in which it was followed, on the ground that here it was found as a primary fact that the taxpayer had an "ample" supply of other clothes to keep her clothed in comfort and decency. This was not a tenable basis of distinction. It was part of the taxpayer's case in *Hillyer* v. *Leeke* that he did not wear the suits in question except for the purposes of his work and there is nothing to suggest that Mr. Hillyer's wardrobe was anything less than "ample" or that the decision depended on such a consideration. The questions raised in this case are not special to female barristers or barristers generally; nor are they confined to top clothing. If the Court of Appeal's approach is correct, any Schedule D taxpayer can deduct the cost of clothing, including underclothing, which he chooses to reserve exclusively for wear during working hours, notwithstanding that even during working hours, such clothing serves an ordinary, non-business purpose.

The Crown submits that the commissioners were entitled to find that the purpose of the expenditure was to clothe the taxpayer during those times of the day when the exigencies of her profession prevented her from wearing the clothes she would have preferred to wear, and that is a dual non-allowable purpose.

Andrew Park Q.C. and *David Milne* for the taxpayer. There was no evidence upon which the commissioners could reasonably have reached the conclusion that the taxpayer incurred the expendutire not only for the purposes of her profession but also to enable her to be warmly and decently clothed during the part of the day when she was pursuing her career. They had expressly found that "the preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items".

(1) 54 TC 101.

A Similarly, they had expressly found that she already had a private wardrobe "amply sufficient to keep her clothed ... in comfort and decency". If their conclusion was one of fact, it was nevertheless an inferred conclusion of fact. The inference was flatly contrary to the primary facts and Slade J. and the Court of Appeal were justified in overruling it on the authority of *Edwards* v. *Bairstow*[1][1956] AC 14.

B This is a case in which the taxpayer kept two wardrobes, her private wardrobe and her professional wardrobe. There was nothing objectionable about tax relief in those circumstances. This was not a young man who preferred jeans and a t-shirt to a city suit and this case does not open the door to that category of person. A taxpayer with two wardrobes would be spending more on clothes. This case should be decided in favour of the taxpayer even if C the warmth and decency effects had crossed her mind. She had plenty of clothes to keep her warm and decent and was buying the disputed items for the purposes of her profession. If questioned by the officious bystander she would say that she was buying those items because as a barrister she had to have them. She would not have bought any of them had it not been for her profession because she already had an ample wardrobe of other clothes. This is D the contrast between the "one suit barrister" and the "two suit barrister". The latter would be spending more money. The incidental effect that the taxpayer's private wardrobe would not wear out so quickly was not of significance to the commissioners. The "one suit barrister" would get no tax relief because he used his suit for private purposes as well, but the "two suit barrister" is still more out of pocket. There is a practical sanction in the case of barristers which E prevents them from wearing any other sort of clothes. They are therefore distinguishable from other professions. The buying of clothes inevitably assumes that they are to be worn and if that in itself stamps the clothes with a private purpose, then all clothing would be disallowed, even uniforms. Anyone who buys clothes knows they will keep him warm and clothed. The only difference between this taxpayer's black clothes and a nurse's uniforms is F that the latter were not suitable for everyday wear but the former were. However, suitability is not the test. If it were, many items such as office telephones and stationery, restaurant crockery and company cars would be disallowed as expenses. The suitability of the item for general use can go to the credibility of the taxpayer's evidence. This taxpayer gave evidence which was accepted. Suitability is an inference or presumption which is rebuttable. The G difference between a barrister and a nurse is that the latter does not have to prove that the clothes were for her profession—*res ipsa loquitur* would apply. A barrister needs to prove it, but once proved, the case is no different from that of the nurse. This was not intended to diminish the distinction between the uniform and ordinary clothing. Here the taxpayer has proved everything she needs to prove. The inference that ordinary clothes are *prima facie* for private H as well as professional purposes can be displaced. If that inference was not displaced in this case, then it never can be displaced. The taxpayer does not rely on the fact that she does not like black clothes.

There is a critical distinction between Schedule E and Schedule D cases. Some Schedule D taxpayers spend lavishly on their professional expenses while others operate on a shoestring. But the former are entitled to the I deductions. The test of "necessarily" is not required by Schedule D and therefore the taxpayer can deduct expenses which, wisely or not, he chooses to incur. The test is therefore a subjective and not an objective one.

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(1) 36 TC 207.

The only Schedule D case in which clothing as a basic human need is referred to is *Caillebotte* v. *Quinn*[1] [1975] 1 WLR 731, 733F, where it is clear that a self-employed nurse would be allowed to deduct the cost of her uniform, even though it incidentally keeps her warm and decent while performing her duties, and a freelance watier would similarly be allowed to deduct the cost of his dress trousers and tail coat. The taxpayer's case falls within the same category. It is not sufficient to say that when the taxpayer bought the clothes she intended to wear them. One needs to go further and ask for what she intended to wear them. The answer would be that she intended to wear them for her profession. The use of the clothes for her non-professional purposes was not an end in itself. It was the same as asking a barrister what he intended to occupy his chambers for. The answer would be, for his profession, although it also gave him shelter from the elements. The commissioner's conclusion flies in the teeth of the findings of fact. On the facts proved before the commissioners only one conclusion was possible and the commissioners found against it.

Millett Q.C. replied.

Their Lordships took time for consideration.

The following cases were cited in the House of Lords in addition to those referred to in the speeches:—*Newton* v. *Commissioner of Taxation of the Commonwealth of Australia* [1958] AC 450; *Newsom* v. *Robertson* 33 TC 452; [1953] 1 Ch 7; *Edwards* v. *Bairstow* 36 TC 207; [1956] AC 14; *Garforth* v. *Tankard Carpets* 53 TC 342; [1980] STC 251; *Woodcock* v. *Commissioners of Inland Revenue* 51 TC 698; [1977] STC 405; *Ward* v. *Dunn* 52 TC 517; [1979] STC 178.

Lord Diplock—My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Brightman. I agree with it, and for the reasons he gives I would allow this appeal.

Lord Elwyn-Jones—My Lords, the issue in this appeal is whether the disbursements of the Appellant taxpayer in the relevant years on replacements, laundering and cleaning the clothes she wore during the practice of her profession of barrister were "wholly and exclusively laid out or expended for the purposes of her profession": see s 130 of the Income and Corporation Taxes Act 1970.

As stated in para 4 of the Case Stated, the Commissioners found, after hearing oral testimony from the Appellant which their findings indicate they accepted, that: 1. the Appellant would not have incurred any of the expenditure on the items of clothing in question had it not been for the requirement of her profession that she should comply when appearing in Court with the Notes for Guidance of the Bar Council (which are quoted in the speech of my noble and learned friend Lord Brightman); 2. at all material times she had a private wardrobe of clothes and shoes which were amply

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(1) 50 TC 222.

A sufficient to keep her clothed and shod in comfort and decency; 3. the preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items; 4. she bought the items only because she would not have been permitted to appear in Court if she did not wear them when in Court, or other clothes like them.

It was common ground that the relevant time for determining what were
B the Appellant's purposes and what was in her mind when the expediture was incurred was at the moment the expenditure was made.

The Commissioners did look into the Appellant's mind (as far as humans can look into the minds of others) and found that

> "when Miss Mallalieu laid out money on clothes for wearing in court her purpose in making that expenditure was to enable her to earn profits in
> C her profession and also to enable her to be properly clothed during the time she was on her way to chambers or to court and while she was thereafter engaged in her professional activity."

This apparently is in fact what she said and their findings of fact indicate that they believed her.

The test as to why the expenditure was incurred is subjective. As Romer
D L.J. stated in *Bentleys, Stokes & Lowless* v. *Beeson*[1] [1952] 2 All ER 82, page 84 "The sole question is . . . what was the motive or object in the mind of the (individual) . . . in question."

This proposition was affirmed by Walton J. in *Robinson* v. *Scott Bader Co. Ltd.*[2] [1980] 1 WLR 755 and by the Court of Appeal [1981] 1 WLR 1135.

Applying that test I respectfully agree with the conclusions of Slade J. and
E the Court of Appeal that the Commissioners' findings of fact in this case led inevitably to the conclusion that the Appellant's expenditure was expended wholly and exclusively for the purposes of her profession.

It was in my view not open to the Commissioners in view of their findings of fact as to the Appellant's purposes to conclude that as in this case the clothing was suitable for private as well as for professional use, one of her
F purposes must have been to spend money on the clothing for her private use. This in my view was to disregard the evidence which they accepted as to her actual motive and purpose. This they have found was to enable her to carry on her profession. Other benefits derived from the expenditure, namely that the clothing also provided her with warmth and decency, were purely incidental to the carrying on of her profession in the compulsory clothing she had to wear.

G I am naturally diffident in disagreeing with my noble and learned brethren but I find the conclusions arrived at by Slade J. and the Court of Appeal inescapable in view of the Commissioners' findings of the primary facts in this case.

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(1) 33 TC 491, at p 503. (2) 54 TC 757.

I would dismiss the appeal. A

Lord Keith of Kinkel—My Lords, for the reasons given in the speech to be delivered by my noble and learned friend, Lord Brightman, which I have had the opportunity of reading in draft and with which I agree, I too would allow the appeal.

Lord Roskill—My Lords, I have had the advantage of reading in draft the speech to be delivered by my noble and learned friend, Lord Brightman. For B the reasons he gives I too would allow this appeal.

Lord Brightman—My Lords, the immediate issue in this appeal concerns the right of a female barrister, in computing the profits of her profession, to deduct the cost of upkeep of a wardrobe of clothes of a design and colour suitable to be worn under her gown during court appearances. But during the course of the argument this issue was found to resolve itself into a far more C general and fundamental question: whether any person carrying on a trade, profession or vocation on his own account is entitled to a similar deduction if he chooses to set apart clothes, underclothes and footwear for use only at his place of work, and when proceeding to and from his place of work.

The taxpayer is a member of the junior Bar with a busy court practice. When appearing in open court she is obliged, with a few exceptions, to wear a D gown over her ordinary clothing, and a wig. When not in open court but in the chambers of a judge, master or registrar, she would (or could) appear in her ordinary clothes without wig or gown. What sort of clothes a barrister should wear in court (I include chambers) is a matter of good taste and common sense, the criterion being that they should be appropriate to the dignity of the occasion. However in recent years some brief rules have been laid down or E authoritative guidance given as to what is the appropriate clothing to be worn by barristers appearing in court. So far as I am aware no official guidance was ever thought necessary until about 60 years ago. A barrister conformed as a matter of course to the sartorial standards of his colleagues. By 1922 the ranks of the Bar began to be enriched by the entry of women barristers, who had no precedents or comparisons to draw upon. Rules were accordingly issued by the F Lord Chief Justice, and amended in 1968. The 1968 rules have now been replaced by brief "Notes for Guidance on Dress in Court", which apply to barristers of both sexes. These notes were formally approved by the Bar Council and received the assent of the Lord Chief Justice. The notes for the most part reflect the requirements of common sense. They are short, and so far as relevant for present purposes provided as follows: G

> "1. The dress of barristers appearing in court should be unobtrusive and compatible with the wearing of robes. 2. Suits and dresses should be of dark colour. Dresses or blouses should be long-sleeved and high to the neck . . . Shirts and blouses should be predominantly white or of other unemphatic appearance. Collars should be white and shoes black."

There are no other rules relating to the clothes to be worn by a female barrister H under her court gown.

The taxpayer bought clothes in conformity with those requirements. The initial cost of purchase was a capital expense, and therefore not material for present purposes. However, she needed to clean and renew them from time to time and in the accounting period for the 1977–78 year of assessment she spent some £500 on replacements, laundering and cleaning. This sum is I claimed as a deduction in computing the profits of her practice chargeable

under Schedule D. To qualify as a deduction, the expenditure must fall outside the prohibition contained in s 130 of the Income and Corporation Taxes Act 1970. The relevant paragraph of the section is para (*a*) but para (*b*) should perhaps be read with it as it was referred to in argument:

> "130. Subject to the provisions of the Tax Acts, in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of—(*a*) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation, (*b*) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of the trade, profession or vocation."

The effect of para (*a*) is to exclude, as a deduction, the money spent by Miss Mallalieu unless she can establish that such money was spent exclusively for the purposes of her profession. The words in the paragraph "expended *for the purposes* of the trade, profession or vocation" mean in my opinion "expended *to serve the purposes* of the trade, profession or vocation"; or as elaborated by Lord Davey in *Strong and Co. of Romsey, Ltd.* v. *Woodifield*(1) [1906] AC 448, 453 "for the purpose of enabling a person to carry on and earn profits in the trade etc". The particular words emphasised do not refer to "the purposes" of the taxpayer as some of the cases appear to suggest; (as an example see the report of this case in [1983] 1 WLR 256 F(2).). They refer to "the purposes" of the business which is a different concept although the "purposes" (i.e. the intentions or objects) of the taxpayer are fundamental to the application of the paragraph.

The effect of the word "exclusively" is to preclude a deduction if it appears that the expenditure was not only to serve the purposes of the trade, profession or vocation of the taxpayer but also to serve some other purposes. Such other purposes, if found to exist, will usually be the private purposes of the taxpayer. See for example *Prince* v. *Mapp*(3) [1970] 1 WLR 260.

To ascertain whether the money was expended to serve the purposes of the taxpayer's business it is necessary to discover the taxpayer's "object" in making the expenditure. See *Morgan* v. *Tate & Lyle, Ltd.*(4) [1955] AC 21 at pages 37 and 47. As the taxpayer's "object" in making the expenditure has to be found, it inevitably follows that (save in obvious cases which speak for themselves) the Commissioners need to look into the taxpayer's mind at the moment when the expenditure is made. After events are irrelevant to the application of s 130 except as a reflection of the taxpayer's state of mind at the time of the expenditure.

If it appears that the object of the taxpayer at the time of the expenditure was to serve two purposes, the purposes of his business and other purposes, it is immaterial to the application of s 130(*a*) that the business purposes are the predominant purposes intended to be served.

The object of the taxpayer in making the expenditure must be distinguished from the effect of the expenditure. An expenditure may be made exclusively to serve the purposes of the business, but it may have a private advantage. The existence of that private advantage does not necessarily

(1) 5 TC 215. (2) Page 352 *ante*. (3) 46 TC 169. (4) 35 TC 367.

preclude the exclusivity of the business purposes. For example a medical consultant has a friend in the South of France who is also his patient. He flies to the South of France for a week, staying in the home of his friend and attending professionally upon him. He seeks to recover the cost of his air fare. The question of fact will be whether the journey was undertaken solely to serve the purposes of the medical practice. This will be judged in the light of the taxpayer's object in making the journey. The question will be answered by considering whether the stay in the South of France was *a* reason, however subordinate, for undertaking the journey, or was not a reason but only the effect. If a week's stay on the Riviera was not an object of the consultant, if the consultant's only object was to attend upon his patient, his stay on the Riviera was an unavoidable effect of the expenditure on the journey and the expenditure lies outside the prohibition in s 130.

There is no dispute between the parties as to the true meaning of s 130(*a*), and it is common ground that the principles which I have outlined are those which fall to be applied. The appeal before your Lordships is basically concerned with the distinction between object and effect. The Inspector of Taxes disallowed the deduction claimed by the taxpayer, with the result that she appealed to the General Commissioners against the assessment made upon her. The General Commissioners, who had themselves been in practice at the Bar, confirmed the assessment subject to a small adjustment on which there was agreement. The taxpayer successfully appealed to the High Court, and the decision of the Chancery Judge was upheld on appeal. The Inspector of Taxes now appeals to this House with the leave of your Lordships.

The primary facts found by the Commissioners are contained in para 4 of the printed case and para 8 of the decision, and are set out in full in the report at first instance: ([1981] 1 WLR at pages 910 *et seq.*([1])). The clothes which the taxpayer maintained for professional purposes were, broadly speaking, worn by her only in connection with her work. That is to say, she travelled in them to her chambers or directly to court, wore them throughout the day and changed out of them when she arrived home at the end of her working day. There were odd occasions on which the taxpayer might find it convenient to remain in her working clothes after her work was done. But no point is taken by the Revenue in relation to such occassions nor is any point taken that the clothes were worn not only at work but also when travelling to and from work.

The critical findings of fact as set out in paras 4 and 8 of the Case are these:

> "4.(c) . . . The rules for guidance are . . . normally complied with and it would be virtually impossible for a lady barrister to practice unless she complied with the rules laid down. . . (f) At all material times the taxpayer had a private wardrobe of clothes and shoes which was amply sufficient to keep her clothed and shod in comfort and decency, without having to resort to any of the disputed items. She would not have purchased any of the disputed items had it not been for the requirement of her profession that she should comply with the Notes for Guidance when appearing in court. . . (j) . . . She bought such items only because she would not have been permitted to appear in court if she did not wear, when in court, them or other clothes like them. Similarly the preservation of warmth and decency was not a consideration which crossed her mind when she bought the disputed items. (k) The white blouses and black

([1]) Page 338 *ante*.

A clothing bought by the taxpayer were items of ordinary civilian clothing readily available for purchase by anyone at many clothing stores. . . 8. We consider that the evidence shows that when she bought the clothes she bought them to wear in court and that she would not have bought them but for the exigencies of her profession."

In addition there are certain statements in a proof of evidence of a senior B executive of Marks and Spencer Ltd. These were accepted by the taxpayer as accurate statements of fact. They are summarised in the Commissioners' decision in the following terms:

"(i) That it is important for a major retail outlet to design garments likely to have a broad popular appeal; (ii) That the colours in which garments are produced must necessarily be what are called safe colours, including C black; (iii) That a black velvet jacket is a perennial favourite, and (iv) That black clothing is always acceptable whether it is a fashion colour or not and always represents a proportion (which he put at over 10%) of sales in ladies' outer wear."

I refer to this evidence only to emphasise the point that the clothing in question consists of perfectly ordinary articles of apparel which many ladies D wear from choice. On the basis of those findings of fact the Commissioners had to draw an inference and decide whether or not the taxpayer had expended money on her professional wardrobe exclusively to serve the purposes of her business, or alternatively to serve both the purposes of her business and her own private purposes. The inference drawn by the Commissioners and the determination reached by them are contained in the second part of para 9 of E their written decision, which reads as follows:

"We consider, in the present case, that when Miss Mallalieu laid out money on clothes for wearing in court her purpose in making that expenditure was to enable her to earn profits in her profession and also to enable her to be properly clothed during the time she was on her way to chambers or to court and while she was thereafter engaged in her F professional activity, and in the other circumstances indicated in para 2 we do not consider that the fact that her sole motive in choosing the particular clothes was to satisfy the requirements of her profession or that if she had been free to do so she would have worn clothes of a different style on such occasions altered the purpose of the expenditure which remained the purpose of purchasing clothes that would keep her warm G and clad during the part of the day when she was pursuing her career as well as the purpose of helping her to earn profits in that career. We think, therefore, that the expenditure had a dual purpose, one professional and one non- professional . . ."

The Commissioners accordingly concluded that the taxpayer had two objects in making the expenditure, to serve the purposes of her business, and to serve H her own purposes by enabling her properly to be clothed. Since there is no appeal from the Commissioners on a question of fact, the only question before your Lordships is whether the findings of primary fact were such as to entitle them to draw that inference.

It is, I think, clear that Slade J. was, to use his own words (921 F[1]), "driven to the conclusion that the relevant expenditure in the present case was I incurred by her solely for the purpose of carrying on her profession" because

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[1] [1981] 1 WLR 910; Page 349 *ante*.

he took the view that the so-called subjective approach to the application of s 130(*a*) led inexorably to the conclusion that the conscious objects or reasons of the taxpayer making the expenditure were decisive. All that mattered was what was actually in her conscious mind when the expenditure was made; see page 912 G(1),

> ". . . it was common ground that, in determining whether these expenses have been wholly and exclusively laid out or expended for the purpose of the taxpayer's profession of a barrister, it is necessary to ascertain what purpose or purposes was or were in her mind at the date when they were incurred;" and again at page 914 D(2), "The ultimate question for my decision here will, I think, be whether, having regard to their primary findings of fact as set out in paragraph 4 of the case stated, there was evidence to support the inference ultimately drawn by the Commissioners that the expenditure was incurred by the taxpayer with dual purposes *in mind*."

As the taxpayer according to the undisputed evidence had nothing in her mind except the etiquette of her profession on the several occasions when she spent money on the upkeep of her wardrobe of working clothes, and "had no thought of warmth and decency", it inevitably followed that the money was spent exclusively to serve the purpose of her business. The provision of clothing as such, it was held, was nothing more than an incidental, although no doubt welcome, effect of her one and only object. The approach of the Court of Appeal was similar. After summarising the General Commissioners' findings of fact, the learned Master of the rolls continued (258 H)(3), "From those findings of fact there is in my judgment only one reasonable conclusion to be drawn, namely, that the taxpayer's sole purpose in incurring the expenditure was a professional purpose, any other benefit being purely incidental." Kerr L.J. reasoned along the same lines (261 B)(4).

> "In the present case, as it seems to me, the primary findings of fact are wholly exceptional in the sense that they are conclusive in the taxpayer's favour. In particular, paragraph 4(f) and (j) of the case stated and paragraph 8 of the general commissioners' decision contain unqualified findings to the effect that the taxpayer's sole purpose in incurring the expenditure for the clothes in question was that she had to have them in order to exercise her profession and that she had no [other] need for them, nor any other purpose, when she acquired them . . .. By these findings they have, in effect, stated themselves out of court so far as any ultimate conclusion to the contrary is concerned. All that remains can only be incidental effect; there is no room for a conclusion that there was a dual purpose."

The brief judgment of the late Sir Sebag Shaw was to the same effect.

I think, with respect, that Kerr L.J.'s paraphrase of paras 4(f) and (j) and 8 goes further than the findings warrant. The sense of the Commissioners' findings of fact is that the taxpayer did not have any object *in her mind,* that is to say, any *conscious* motive, when she incurred the expenditure, except that she needed the clothes in order to exercise her profession.

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(1) Page 340 *ante*. (2) Page 342 *ante*. (3) [1983] 1 WLR 252; Page 355 *ante*.
(4) Page 357 *ante*.

Before I seek to examine the conclusions reached by the High Court and the Court of Appeal, I return to my opening observations that the issue involved in this appeal has inevitably opened up a far wider and more fundamental point, namely the right of any self-employed person to maintain, at the expense of his gross income and therefore partly at the expense of the general body of taxpayers, a wardrobe of every-day clothes which are reserved for work. I find myself at odds with Slade J. when he says (page 922 A[1]), "I accordingly emphasise that this is a decision on the particular facts of the present case", a remark which, although accurate, implies that there is something exceptional about the case. In the first place, Counsel for the taxpayer disclaimed any reliance on the fact that his client disliked dark clothing, never purchased it for private use, and therefore was not in a position to resort to her private wardrobe to answer the requirements of her profession. This disclaimer was rightly made. It would be absurd to suppose that there exists one law for the blonde barrister who lacks a wardrobe of dark clothes, and another law for the brunette barrister whose wardrobe of every-day clothes contains many dresses suitable for court appearances. It therefore inevitably followed, as Counsel conceded, that the taxpayer was arguing that if a barrister, male or female, chose to establish a wardrobe of clothes exclusively for working purposes, he or she would be entitled to deduct the cost of its upkeep. The question then arose whether this beneficient state of affairs would apply to other professional persons, such as solicitors, accountants, medical practitioners, trades people and persons in all other walks of self-employed life, and if not why not. The only distinction that could be drawn was that a barrister who wore unacceptable clothes would find himself barred from pleading in court, as well as risking the loss of the goodwill of his clients, while other professional persons might be subject only to the latter sanction. It did not seem logical that the right of deduction should depend on the degree of the sanction which induced the professional person to equip himself with subdued clothing. Furthermore, "necessity" is not part of the formula in s 130(a), and therefore the existence of a sanction was wholly immaterial. So there was no reason for concluding that the tradesman would be debarred from maintaining his own wardrobe of clothes for working days if the taxpayer's argument were correct. Finally, there could be no distinction between top clothes and underclothes and other articles of wearing apparel. The position was ultimately reached that there was no distinction to be drawn between the position of male and female barristers, or between the position of barristers and practitioners of every other trade, profession and vocation, or between top clothes, underwear and footwear. So, at the end of the day, if the argument for the taxpayer is right, it will be open to every self-employed person to set against his gross income the cost of the upkeep of a complete wardrobe of clothes, so long as he reserves such clothes strictly for use only at work, or when proceeding to and from his work. Counsel for the taxpayer did not shrink from this conclusion. I mention this wider aspect of the problem only to emphasise once again that there is nothing exceptional about the facts of this case.

I return to the question for your Lordships' decision whether there was evidence which entitled the Commissioners to reach the conclusion that the object of the taxpayer in spending this money was exclusively to serve the purposes of her profession, or was also to serve her private purposes of providing apparel with which to clothe herself. Slade J. felt driven to answer the question in favour of the taxpayer because he felt constrained by the

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[1] [1981] 1 WLR 908; Page 349 *ante*.

Commissioners' finding that, in effect, the only object present in the mind of the taxpayer was the requirements of her profession. The conscious motive of the taxpayer was decisive. The reasoning of the Court of Appeal was the same. What was present in the taxpayer's mind at the time of the expenditure concluded the case.

My Lords, I find myself totally unable to accept this narrow approach. Of course Miss Mallalieu thought only of the requirements of her profession when she first bought (as a capital expense) her wardrobe of subdued clothing and, no doubt, as and when she replaced items or sent them to the launderers or the cleaners she would, if asked, have repeated that she was maintaining her wardrobe because of those requirements. It is the natural way that anyone incurring such expenditure would think and speak. But she needed clothes to travel to work and clothes to wear at work, and I think it is inescapable that one object, though not a conscious motive, was the provision of the clothing that she needed as a human being. I reject the notion that the object of a taxpayer is inevitably limited to the particular conscious motive in mind at the moment of expenditure. Of course the motive of which the taxpayer is conscious is of a vital significance, but it is not inevitably the only object which the Commissioners are entitled to find to exist. In my opinion the Commissioners were not only entitled to reach the conclusion that the taxpayer's object was both to serve the purposes of her profession and also to serve her personal purposes, but I myself would have found it impossible to reach any other conclusion.

It was inevitable in this sort of case that analogies would be canvassed; for example, the self-employed nurse who equips herself with what is conveniently called a nurse's uniform. Such cases are matters of fact and degree. In the case of the nurse, I am disposed to think, without inviting your Lordships to decide, that the material and design of the uniform may be dictated by the practical requirements of the art of nursing and the maintenance of hygiene. There may be other cases where it is essential that the self-employed person should provide himself with and maintain a particular design of clothing in order to obtain any engagements at all in the business that he conducts. An example is the self-employed waiter, mentioned by Kerr L.J., who needs to wear "tails". In his case the "tails" are an essential part of the equipment of his trade, and it clearly would be open to the Commissioners to allow the expense of their upkeep on the basis that the money was spent exclusively to serve the purposes of the business. I do not think that the decision which I urge upon your Lordships should raise any problems in the "uniform" type of case that was so much discussed in argument. As I have said, it is a matter of degree.

The case before your Lordships is indistinguishable in principle from *Hillyer* v. *Leeke*[1] 51 TC 90. That case arose under Schdule E, but the ratio of the first ground of decision is equally applicable to Schedule D. The taxpayer was a computer engineer. His work involved travelling to the establishments of his firm's customers. His employers required him to wear a suit. When present on a customer's premises he might be called upon to assist the customer's engineer at short notice without an opportunity to change into overalls or a boiler suit. The taxpayer therefore maintained two working suits which he wore only for the purposes of his work. He claimed a deduction of £50 for their upkeep. This was disallowed by the Inspector. The Commissioners

(1) [1976] STC 490.

A confirmed the assessment. I read the following passages from the judgment of Goulding J. which seem to me to be correct and in point(1):

> "The truth is that the employee has to wear something, and the nature of his job dictates what that something will be. It cannot be said that the expense of his clothing is wholly or exclusively incurred in the performance of the duties of the employment . . . In the case of clothing
B the individual is wearing clothing for his own purposes of cover and comfort concurrently with wearing it in order to have the appearance which the job requires . . . Does it make any difference if the taxpayer chooses, as apparently Mr. Hillyer did, to keep a suit or suits exclusively for wear when he is at work? Is it possible to say, as Templeman J. said about protective clothing in the case of *Caillebotte* v. *Quinn*(2) 50 TC 222,
C that the cost of the clothing is deductible because warmth and decency are merely incidental to what is necessary for the carrying on of the occupation? That, of course, was a Schedule D and not a Schedule E case, but the problem arises in a similar way. The answer that the Crown makes is that where the clothing worn is not of a special character dictated by the occupation as a matter of physical necessity but is ordinary civilian
D clothing of a standard required for the occupation, you cannot say that the one purpose is merely incidental to the other. Reference is made to what Lord Greene M.R. said in *Norman* v. *Golder* 26 TC 293, at page 299. That was another case under Schedule D, but again, in my judgment, applicable to Schedule E cases, where the learned Master of the Rolls said, referring to the food you eat and the clothes that you wear: 'But expenses
E of that kind are not wholly and exclusively laid out for the purposes of the trade, profession or vocation. They are laid out in part for the advantage and benefit of the taxpayer as a living human being.' In my judgment, that argument is conclusive of the present case, and the expenditure in question, although on suits that were only worn while at work, had two purposes inextricably intermingled and not severable by any appor-
F tionment that the Court could undertake."

The learned Judge then founded on a second argument turning on the word "necessarily", to which I need not refer as that reqirement only exists in the case of a Schedule E computation.

I find myself in complete agreement with Goulding J. and I regard his observations as appropriate in their entirety to the case before your Lordships.

G So, my Lords, I respectfully differ from the conclusion reached by Slade J. and by the members of the Court of Appeal. I would allow this appeal.

Appeal allowed.

[Solictors:—Solicitor of Inland Revenue; Messrs. Penningtons.]

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(1) 51 TC 90, at p 93. (2) [1975] 1 WLR 731.

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