

stock, together with certain bonds, not otherwise described, constituted on March 1, 1913, the entire available assets remaining of the original "Segal matters." There seems to have been no difficulty in ascertaining the value of the stock in 1920; and it is hard to see why its value, as well as the value of the bonds, could not have been, at least approximately, determined as of March 1, 1913, and, consequently, the approximate value of the contingent interest of each of the subscribers to the fund ascertained as of that date. No reason is suggested by the record or otherwise, and none occurs to us, for not seeking light on the subject from those who had been in charge of the liquidation of the "Segal matters." We cannot assume that such an effort would have been fruitless. Respondent was bound to produce the best available evidence of value which the circumstances and nature of the transaction permitted. It does not appear that he made any attempt to do so.

Judgment reversed.

BURNET, COMMISSIONER OF INTERNAL REVENUE, v. HENRY.

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

No. 202. Argued March 12, 1931.—Decided April 13, 1931.

Decided upon the authority of *Burnet v. Houston*, *ante*, p. 223.

39 F. (2d) 358, reversed.

CERTIORARI, 282 U. S. 820, to review a judgment which reversed a decision of the Board of Tax Appeals, 13 B. T. A. 279, sustaining disallowance of a deduction for a loss, in an income tax return.

Assistant Attorney General Youngquist, with whom *Solicitor General Thacher* and *Messrs. Sewall Key* and *A.*

H. Conner, Special Assistants to the Attorney General, *Erwin N. Griswold*, and *Clarence M. Charest*, General Counsel, and *Allin H. Pierce*, Special Attorney, Bureau of Internal Revenue, were on the brief, for petitioner.

Mr. William Clarke Mason, with whom *Mr. John Russell, Jr.*, was on the brief, for respondent.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The question in this case is the same as that which has been determined against the respondent in *Burnet v. Houston*, *ante*, p. 223. The subscription to the fund described in our opinion in that case was not made by respondent direct, but by her brother, Samuel F. Houston, acting as her agent. Otherwise the facts are the same; and upon the authority of the *Houston* case the judgment of the court below, 39 F. (2d) 358, is

Reversed.

BURNET, COMMISSIONER OF INTERNAL REVENUE, *v.* PORTER ET AL., EXECUTORS.

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

No. 203. Argued March 12, 1931.—Decided April 13, 1931.

1. The Commissioner of Internal Revenue, after approving a deduction for loss in an income tax return and allowing a claim for refund of the proportional part of the tax, had authority to reopen the case later, disallow the deduction and redetermine the tax.
2. Decided, as respects proof of deductible loss, upon the authority of *Burnet v. Houston*, *ante*, p. 223.
39 F. (2d) 360, reversed.

CERTIORARI, 282 U. S. 821, to review a judgment which reversed a decision of the Board of Tax Appeals, 13 B. T. A. 279, sustaining disallowance of a deduction for a loss, in an income tax return.