

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.

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. Walter Lee Sheppard, with whom *Mr. William C. Alexander, Jr.*, was on the brief, for respondents.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

William W. Porter was a subscriber in the sum of \$75,000 to the fund described in our opinion handed down this day in *Burnet v. Houston*, ante, p. 223. The facts in the present case are the same except that the Commissioner of Internal Revenue first approved the deduction and allowed a claim for refund of the proportional part of the tax, and then some time later reopened the case, disallowed the deduction and redetermined the tax. The court of appeals sustained the power of the commissioner upon the authority of *McIlhenny v. Commissioner of Internal Revenue*, 39 F. (2d) 356; and was clearly right in doing so. That court, however, upon the main point, following its decision in the *Houston* case, reversed the determination of the Board of Tax Appeals in favor of the government. 39 F. (2d) 360. This is contrary to our decision in the *Houston* case, and upon that authority the judgment is

Reversed.

KLEIN, FORMER ADMINISTRATRIX, ET AL. v.
UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 387. Argued February 27, 1931.—Decided April 13, 1931.

1. One of two habendum clauses in a deed conveyed a life estate, reserving the fee, and declaring that it should remain vested in the