

and they contended at the Court of Revision and on the appeal that such income was not assessable in the North-West Territories. The sections of the municipal ordinance that were in question are fully quoted in the judgment.

*S. S. Taylor*, Q.C., for appellants.

*N. D. Beck*, Q.C., for the municipality.

SCOTT, J.—Section 1 of part 1 of the Municipal Ordinance provides that “all municipal, local or direct taxes or rates shall, where no other express provision has been made in this respect,” be levied “equally upon the whole rateable property, real, personal and income, of the municipality, according to the assessed value of such property and income.” No other provision is made as to the assessment and taxation of income, except that the income of a farmer derived from his farm, and the income of merchants, mechanics and other persons, derived from property liable to taxation, is exempt. It is not shown how the amount of the income is to be ascertained, or upon what it is to be based. It is admitted that the appellants in these cases are practising advocates, and doubtless the assessment is based on what would be considered their income from their profession during the present year, but I can find no authority, such as there is in Ontario, to base it upon the income derived by them during the preceding year. The income of a professional man fluctuates, and because he may have obtained certain profits for a portion of the time, up to the time of the assessment, it cannot reasonably be inferred that he will continue to make the same profits at the same rate during the remainder of the year, or even that the profit made by him up to the time of the assessment may not be swallowed up by losses made in his practice during the remainder of the year.

In *Lawless v. Sullivan*, 6 Appeal Cases 373, it was held that the word “income” in the New Brunswick Assessment Act, when applied to a commercial business, meant the balance of gain over loss, and that when no such gain has been made during the year there is no income or funds capable of being assessed; but it was contended by Mr. Beck, on behalf of the town, that there is a distinction between the income of advocates derived from their profession, and that derived from trade and commerce. Truly there may be such a distinction in some respects, but I do not see any reason why the income of an advocate should not be held to be the balance of gain in his practice, over the losses therein. In view of the fact that it is impossible to ascertain the amount of appellant’s income for the year, I must hold that the assessment cannot stand. The assessment in respect of appellant’s income will, therefore, be struck out.