1960 Sept. 29, 30
1962 May 8

BETWEEN:

CADILLAC CONTRACTING AND DEVELOPMENTS (TORONTO) LIMITED .... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... RESPONDENT.

Revenue—Income—Income tax—Land purchased in part for investment purposes later sold en bloc—Whether profit on part purchased for investment subject to tax—The Income Tax Act, R.S.C. 1952, c. 148, ss. 3, 4, 139(1)(e).

The appellant company was incorporated in September 1953 with objects which included dealing in land and holding land for investment purposes. In May 1954 it acquired title to fifty acres of land in North York Township which the syndicate of persons at whose instance the appellant was incorporated had agreed to buy in April 1953 for $250,000. The intention of the syndicate when purchasing the property was to erect apartment buildings on 35 acres of the land to be held as an investment and subdivide the remainder for single family dwelling lots. Difficulties were encountered in carrying out these plans because of the absence of water and sewer facilities and some time after the appellant company acquired title to the property it was decided to subdivide and sell as single family dwelling lots all but ten acres of land, later reduced to five acres, which was reserved by the appellant for the apartment house project.

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In December the Township advised the appellant's plan of subdivision would be recommended for approval provided the appellant conveyed 11 lots to the Township and entered into a contract with it for the construction of roads and sewers, the installation of services and the payment of taxes. In February 1955 the appellant proceeded through real estate agents to sell all the lots in the proposed subdivision other than those required by the Township and those it had reserved for the apartment project. Most of the agreements provided that the sale would be null and void if the plan was not registered by a particular date. In July the appellant received an offer of $840,000 for the whole of the property. At this stage the agreement with the Township had not been signed nor the plan approved. There was a small flaw in title to part of the land that had to be eliminated before the plan could be registered, and the Township required a bond guaranteeing due performance by the appellant of its contract. In addition a firm estimate of the ultimate costs of the required installations could not be had. In view of these factors the appellant, after attempting without success to have the five acres reserved for the apartment building project excluded from the sale, accepted the offer. Most of the agreements for sale had become void because the plan had not been registered within the time specified. Those not so affected were repurchased by the appellant which permitted the closing of the sale in August 1955.

In assessing the appellant for the year 1956 the Minister treated the whole of the profit realized from the sale of the 50 acres as income from its business. In an appeal from the assessment the appellant contended that a portion of the land so sold had been acquired and held as an investment and that the profit on that portion should be treated as a capital gain.

Held: That at the material time the appellant was engaged in a business of dealing in land and in the course of that business sold a property which though originally in part acquired for an investment purpose had for trading purposes rather than for the purpose of mere realization been dealt with in its entirety as the subject matter of a trading transaction.

2. That in these circumstances the whole of the money received for the property was a trading receipt and the profit thereon a gain made in the operation of the appellant's business in carrying out its scheme for profit making.

3. That the profit was accordingly income within the meaning of the *Income Tax Act* and was properly assessed.

APPEAL under the *Income Tax Act*.

The appeal was heard before the Honourable Mr. Justice Thurlow at Toronto.

E. A. Goodman, Q.C. and *L. A. Schipper* for appellant.

P. M. Troop for respondent.

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THURLOW J. now (May 8, 1962) delivered the following judgment:

This is an appeal from an assessment of income tax for the year 1956. In its fiscal period which ended in that year the appellant realized a substantial profit on the sale of a parcel of land which it owned and in making the assessment the Minister treated the whole of such profit as income from the appellant's business. The appellant's case is that a portion of the land so sold had been acquire and held only as an investment and that the sale of this portion of the land was a mere realization of the investment and the profit attributable thereto not income for the purposes of the *Income Tax Act* but a capital gain.

The appellant was incorporated in September 1953 and obtained title to the land in question in May 1954 under the circumstances to be related. The purchase price was $250,000. The land was sold in a single transaction in July 1955 for $840,000 and the appellant's submission is that of the profit so realized $89,453.05 was attributable to the sale of a particular part of the property which it had acquired and at all material times held for the purpose of erecting apartment buildings thereon to be held for investment purposes rather than for purposes of development and sale.

The lot in question consisted of 50 acres of land in the Township of North York situate about 1,000 feet south of highway 401. It had a frontage of 660 feet on the eastern side of Dufferin Street and extended easterly therefrom for some 3,200 feet. At all material times the land was undeveloped but in January of 1953 when the events to be related began the eastern portion of the lot consisting of about 15 acres lying to the eastward of a proposed extension northwardly of Spadina Road was zoned for single family dwellings while the remaining portion was zoned for multiple family dwellings.

Early in January 1953, A. E. Diamond, an engineer, who, with Joseph Berman was interested in and employed by Cadillac Contracting and Developments Limited, was approached by an agent seeking to sell the property in question which was then owned by Joseph Tanenbaum. Cadillac Contracting and Developments Limited (to which

I shall refer as Cadillac and thus distinguish it from the appellant) was engaged in constructing commercial and residential buildings on developed land. Until that time it had never been concerned in developing land itself, that is to say in subdividing it, providing or arranging for water, sewer and other services, constructing streets and generally making it suitable for building purposes. Nor had Mr. Diamond had experience in that kind of operation. As Cadillac was not in a position to purchase the Tanenbaum land, Mr. Diamond sought to interest several others in it and for that purpose arranged a meeting at which he, Berman, Jack Kamin, a dealer in electrical equipment, Milton Shier, a dealer in hotel and restaurant equipment, and Harold Gross, a machinery merchant, were present. At this meeting it was arranged that the group would try to purchase the land for the purpose of building apartments thereon and keeping them for investment. An agreement was reached regarding the shareholdings of the members of the group and Cadillac was instructed to proceed to take an option on the land on behalf of a new company which was to be incorporated.

By indenture dated January 28, 1953 Cadillac obtained from Tanenbaum for $2 an option exercisable up to April 15, 1953 to purchase the property for $250,000, payment of $225,000 of which was to be secured by a mortgage in favor of Tanenbaum payable two years from the date of closing of the purchase. In the indenture it was provided that when not in default under the mortgage Cadillac should be entitled to obtain partial discharges from the mortgage of portions of the land to the extent of one acre for each $4,500 which Cadillac might pay on account of the mortgage principal prior to maturity. There were however certain express limitations on this right which it is not necessary to set out but which to my mind indicate that the parties were contemplating that the land might during the two year period be or become partially or wholly developed and alienated to other parties whether by way of mortgage or sale or both. It was also provided that the vendor should consent to the registration of a plan or plans of subdivision of the property. The assignment clause at the end of the document was in somewhat unusual form and together

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with the other evidence satisfies me that it was contemplated that Cadillac would assign its rights or some part thereof to the company to be incorporated.

After obtaining the option Mr. Diamond investigated the scheme to build apartments more thoroughly. He checked on the market for this kind of housing and the availability of mortgage money to finance them, on the suitability of the area for multiple family dwellings and in a general way satisfied himself that sanitary sewers and water would become available in due course to enable the development of the land to proceed. He had, however, in reply to an enquiry, received from the Township Engineer of the Township of North York a letter indicating that the land could not be serviced by draining sewage into a sewer which had been constructed for a housing subdivision south of the land in question, and at that time there was no other convenient sewer connection available.

The option was exercised in April 1953 and the transaction was to be closed in May of that year but Tanenbaum refused to complete the transaction and litigation to obtain specific performance ensued. In fact the purchase was not completed until May 1954.

Prior to September 1953 the group met and despite the fact that title to the land had not yet been obtained, retained the services of Cadillac to look after all the work required to have the land ready for building apartments and an understanding was also reached that Cadillac was to build the apartments. Cadillac then retained the services of a firm of town planning consultants to plan the necessary subdivision and also retained an engineering firm to plan the water, sewer, hydro and other services which would be required as a prerequisite to the registration of a plan of subdivision. Without such a plan being registered none of the land could be sold or mortgaged in lots. The provision of storm sewers presented no great problem and it was expected that a water supply would be available in a matter of a few months but sewage disposal presented a major problem and with a view to solving it, various municipal authorities were contacted but without any immediate success. Early in December 1953 application was made in the name of Cadillac for approval of a plan of subdivision of the 15 acres lying to the eastward of the proposed

Spadina Road extension into single family dwelling building lots, these being laid off large enough to permit the use of septic tanks for sewage disposal. The group at that time planned to sell the eastern portion of the property in lots and to develop the western portion for multiple family dwellings. The application for approval of the plan was refused or deferred early in April 1954 on the ground that an adequate supply of water was not yet available in the area. In the meantime the town planning consultants on Cadillac's instructions had prepared 3 alternative tentative subdivision plans for multiple family development of the whole of the area lying between Dufferin Street and the proposed Spadina Road extension but no application was ever made for approval of any of these plans as the problem of obtaining sewer connections had not been solved. Nor was the plan of subdivision of the 15 acre portion resubmitted as it was considered that by the time that water would become available an answer to the sewer problem for the entire property would have been found and in that event, the single family dwelling lots on the 15 acre eastern portion of the property could be smaller in size. Some time later in 1954 an understanding was reached with the Township Engineer under which a connection to a sewer to be constructed northward of the property would be approved if the land or the major portion of it were rezoned to single family dwellings, and in order to get started with their plans it was decided to have most of the land so rezoned, to subdivide the portion so rezoned into single family dwelling lots and to sell the lots if and when the plan was registered but to retain the portion not rezoned and a number of the lots adjacent thereto comprising in the whole about 10 acres fronting on Dufferin Street to await a time when these lots might be rezoned for multiple family dwellings in order to construct apartment buildings thereon. A plan of such a subdivision of all but 1.42 acres of the land was accordingly prepared and submitted for approval in October 1954 and in December 1954 Cadillac was informed that the plan would be recommended for approval by the Minister of Planning and Development subject to compliance with certain alterations and conditions. These included among others a requirement that the appellant convey 11 of the lots to the township and a further requirement that the appellant enter into a contract with

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the township for the construction of the roads and sewers, the installation of services and payment of taxes. A by-law of the township was subsequently passed rezoning most of the property for single family dwellings but the 1.42 acres remained zoned for multiple family dwellings and upon registration of the plan and installation of the sewer and water services it would have been possible to get started with the construction of apartment buildings on it.

At a meeting of the shareholders of the company held on January 29, 1955 it was decided to attempt to repurchase from the township the 11 lots which they would require providing that the price set by the township was below market price, but that if the negotiation of the repurchase of these lots would hold up the sale of the land unduly, the sale of the other lots should proceed without waiting for settlement of a price on the township lots. At the same meeting it was decided that the 1.42 acre lot and lots 152 to 169 which together with the 1.42 acres made up about 5 acres of the land fronting on Dufferin Street would not be put up for sale.

In February 1955 the appellant through several real estate agents proceeded to sell to various purchasers all the lots in the subdivision except the 11 required to be conveyed to the township and those which it had decided would not be sold. The agreements of sale or most of them provided that the sale should be null and void if the plan were not registered by a particular date.

At this stage there were still details to be worked out before the subdivision would be approved, correspondence was still going on with respect to the sewer connection and in view of the proposed construction of a new trunk sewer in the vicinity in a matter of 2 or 3 years arrangements were made for a temporary connection for the appellant's subdivision with the sewer of the subdivision south of the property, but the agreement with the township for the construction of streets and sewers and installation of services etc. had not yet been signed nor had the plan been finally approved or registered when early in July 1955 the appellant received through an agent an offer of $840,000 for the whole of the property. This offer was large enough to yield a profit approximately equal to what the appellant

could expect to realize from the sale of the lots of the subdivision together with a substantial profit as well in respect of the lots which they had not intended to sell. The proposal was considered at a meeting of the directors of the appellant and several factors entered into their decision. There was some flaw in the title to a narrow strip of the land bordering on Dufferin Street which would have to be eliminated before the plan could be registered. Secondly, the township besides requiring the appellant's agreement to construct the streets, sewers etc. required a bond as well guaranteeing due performance by the appellant of its contract. These were difficulties which could be overcome but providing the bond was considered to be something of a burden. In addition the directors were concerned about the ultimate cost of the required installations. Cadillac which was to do the work was prepared only to assure them that its estimates of the costs were realistic but they might fluctuate widely and Cadillac was not prepared to guarantee that the estimates would not be exceeded. These considerations indicated that the subdivision should be abandoned and the offer accepted. On the other hand sale of the whole parcel involved the abandonment as well of their plan to build multiple family dwellings on the land to be held for investment. It was thereupon decided that an effort should be made to see if the purchaser would not buy the property without the 5 acres fronting on Dufferin Street but that if the purchaser required the whole of the property the offer should be accepted provided arrangements could be made for releases from the several purchasers of lots. The prospective purchaser insisted on obtaining the whole 50 acres except the portion required by the municipality for the Spadina Road extension and the property was accordingly sold on July 21, 1955 for $840,000. Most of the agreements of sale of lots had expired or become void because the plan had not been registered in the time limited but it was necessary for the appellant to purchase releases from 2 of the purchasers. This was done at a cost of $7,500 and the sale was completed in August 1955.

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In May of 1955 the appellant had also bought a forty-five acre parcel of land in the Township of Scarboro which it resold a year later at a profit without subdividing the property. These were the only real estate transactions in which the appellant engaged, the profits of the transactions having since then been invested in other companies. The appellant has never had a place of business or employees of its own.

The objects of the appellant company as set out in the letters patent by which it was incorporated include:

> (c) To acquire by purchase, lease, exchange, concession or otherwise city lots, farm lands, mining or fruit lands, town sites, grazing and timber lands and any description of real estate and real property or any interest and rights therein, legal or equitable or otherwise, to take, build upon, hold, own, maintain, work, develop, sell, lease, exchange, improve or otherwise deal in and dispose of such lots, lands, sites, real estate, real property and any houses, apartments or buildings thereon or any interest therein, and to deal with any portion of the lands and property so acquired, subdividing the same into building lots and generally laying the same out into lots and streets and building sites for residential purposes or otherwise; and to construct streets thereon and the necessary sewerage and drainage systems and to build upon the same for residential purposes or otherwise and to supply buildings so erected with electric light, heat, gas, water or other requisites.

I may add that on the evidence I am satisfied that the plan to build apartments was within the financial capacity of the parties interested in the appellant company because of the remarkably small amount of equity capital required, and that the property in so far as it was zoned for multiple family dwellings was purchased for that purpose with intent to realize profits through letting the apartments to tenants, and while I would expect that at that stage each member of the group contemplated the possibilities and probably also assessed to his own satisfaction the prospects both of selling the apartments some day at a profit and of selling the land at a profit if the plan to erect apartments failed, I do not regard the situation as one in which it should be inferred that the group would have purchased or did purchase the property as a speculation looking to resale or that the group when purchasing the property intended to turn it to account for profit by any method that might be considered expedient including resale, though as events turned out that appears to me to describe what they did with it.

For the present purpose the relevant provisions of the *Income Tax Act* R.S.C. 1952, c. 148 are sections 3, 4 and 139(1)(*e*) which provide as follows:

3. The income of a taxpayer for a taxation year for the purposes of this Part is his income for the year from all sources inside or outside Canada and, without restricting the generality of the foregoing, includes income for the year from all

(*a*) businesses,

(*b*) property, and

(*c*) offices and employments.

4. Subject to the other provisions of this Part, income for a taxation year from a business or property is the profit therefrom for the year.

* * *

139. (1) In this Act,

(*e*) "business" includes a profession, calling, trade, manufacture or undertaking of any kind whatsoever and includes an adventure or concern in the nature of trade but does not include an office or employment.

The problem to be determined is whether for income tax purposes the whole of the profit realized by the appellant on the sale of the Tanenbaum property was income from its business within the meaning of these provisions, without any deduction therefrom being made in respect of such portion of the profit as could be regarded as attributable to the sale of the 5 acres fronting on Dufferin Street.

The test to be applied for resolving the question is that stated in *Californian Copper Syndicate v. Harris*[1] where the Lord Justice Clerk after speaking generally of the distinction between a gain which was not assessable to income tax and a gain from a trade which was assessable and after giving the buying and selling of lands or securities speculatively in order to make gain as the simplest example of what is trading said:

What is the line which separates the two classes of cases may be difficult to define, and each case must be considered according to its facts; the question to be determined being—Is the sum of gain that has been made a mere enhancement of value by realising a security, or is it a gain made in an operation of business in carrying out a scheme for profit-making?

In seeking an answer to this question it is I think necessary to have regard to the whole of the facts of the particular case and not merely to some of them though of course not all of them may be of equal importance. The present case for example is not to be regarded as one in

[1] (1904) 5 T.C. 159 at 166.

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which the only material facts are that a property was purchased, or purchased in part, for an investment purpose and subsequently sold for more than the appellant paid for it. There is much more to the picture than that and in reaching a conclusion the other features of the situation must be considered as well.

The appellant is a corporation the objects of which are broad enough to include among others carrying on business for profit both by acquiring and holding investments in real estate and by dealing in real estate and, as I view the evidence, from the time of its acquisition of the Tanenbaum property in May 1954, if not earlier, the appellant had property, consisting of the eastern 15 acres of the property, which it had acquired for the purpose of development and sale and was engaged in a business which at least included developing and dealing in land. I am also of the opinion that the sale of the property made in July 1955 was a sale in the course of that business. Insofar as the transaction involved the sale of the forty-five acres or thereabouts which had been subdivided into lots for the purpose of sale, the fact that the agreements of sale to purchasers were abandoned and the property sold in a single transaction—in which all the effort which had been put into the subdivision of the land came to naught—would not in my opinion make such sale any the less a sale in the course of the appellant's business of dealing in land and more particularly do I think this is so in view of the fact that the decision to accept the offer was based on considerations relating to the trading activities of the appellant and that in order to take advantage of the offer the appellant took steps to obtain releases from two purchasers and thus "matured" the property for the purpose of carrying out the particular transaction. The only feature which has given me any doubt on this aspect of the matter is the question of whether the inclusion in the transaction of the 5 acres which were not formerly for sale could (assuming these to have been at that time an asset of a capital as opposed to one of a trading nature) on the principle of *Doughty v. Commissioner of Taxes*[1] stamp the whole transaction as one outside the scope of the appellant's business. I do not however think, even on that assumption, that such is the

[1] [1927] AC. 327.

effect of including the 5 acres in the transaction for the completion of the transaction did not put the appellant out of the business of dealing in real estate since it then had on hand the Scarboro property which so far as appears was not acquired for any purpose other than that to sell it for a profit—which was what was ultimately done with it—and the transaction itself in which the Tanenbaum property was sold was in no sense a slump sale of an undertaking but simply a sale of land which was a kind of transaction characteristic of a business of dealing in land.

But finding as I do that the sale of the Tanenbaum property was a transaction in the course of the appellant's business of dealing in land appears to me still to leave not satisfactorily answered the question why any profit attributable to the 5 acre portion of the property which had not previously been for sale should be regarded as profit from the business since I do not think it necessarily follows as a matter of course that because the 5 acres (assuming still that they were in a different category from the rest of the property) were sold in a transaction of the appellant's business, the sum received therefor could not be regarded as a mere realization of the value of the 5 acres. The answer however in my opinion appears from the transaction itself and the circumstances surrounding it and in particular the reasons why the property was sold.

It can I think be regarded as established as a general proposition that the mere fact that a property has been purchased without any intention of making profit by reselling it will not necessarily result in any sale subsequently made being a mere realization rather than a sale in an operation of business in carrying out a scheme for profit making. Thus in *Cooksey and Bibbey v. Rednall*[1] where the appellants had bought a farm for farming purposes and sold it 14 years later and had been assessed on the profit realized on the sale, the appellants having in the meantime been engaged in trading in land, Croom-Johnson J. in the course of a judgment allowing the appeal said at page 519:

> I have no doubt that if there had been evidence here that at some time after the original purchases of a lot of this property these two gentlemen together had gone in for a system of land development with regard to that or part of it, it would have been open to the Commissioners to find that they had turned what had been an investment into

[1] (1949) 30 T.C. 514.

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the subject-matter of a trading in land. It does not follow necessarily that they would so find, because it may be that the Commissioners would come to the conclusion that the partnership had not traded but was merely realising a capital asset. Everything must depend on the exact circumstance.

Again in *Dunn Trust Limited v. Williams*[1] Vaisey J. in a judgment reversing the Commissioners' finding that the profits from certain sales of shares arose from the company's trading in shares said at page 273:

First of all, we have the definite finding that these shares were purchased in 1940, not with the intention of dealing in those stocks and shares, but with the object of finding a permanent investment—or at least, the word "permanent" is not used, but an investment of a portion of the company's reserves. Now, that finding of the General Commissioners undoubtedly involves this, that that object and that intention must have been departed from; but there was no evidence to show how or when or by whom it was departed from, and I have the greatest difficulty in discovering how or when or by whom the General Commissioners decided that that change of object, and that change of intention, had been effected. That is the first thing.

The finding that these stocks or shares had been purchased with that object seems to me to be a finding which, in order to justify the conclusions of the General Commissioners, must have been followed by a further finding that at some time, in some manner, by some operation or other, the object had been reversed and the intention fundamentally altered.

So far, I have found it very difficult to discover upon what the General Commissioners can have based the decision that the realisation of these shares produced profits out of the trading of the company. Then, when I look at the statement of the sales which resulted in producing the profits which have been held to be the subject of tax, I find, as I have already stated in passing, explanations given as to why and how and for what purpose these shares were sold: and I find that the purposes indicated are quite inconsistent with the purposes which should animate those who direct the fortunes of a trading company when they are effecting sales of that company's stock-in-trade, be it investments or be it any other kind of property; because I find that the General Commissioners go out of their way to state, not that the securities were disposed of in the ordinary course of business or because they thought that that would produce a desirable profit, or because they thought that it was a trading operation which was financially beneficial to the company, but I find the statement that they were disposed of under the circumstances which are set out in the stated case.

These circumstances were as follows. First, in one case, Mr. Kerman ceased to be associated with the management of the company whose shares were in question, and the control had changed,

"whereon it was decided [presumably by the board of directors, or by the managing director] not to continue to hold the shares of the company".

[1] [1950] T.R. 271.

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That seems to me to be a statement which is almost a direct negative of the ordinary and inevitable and common-form motive which actuates the mind of those who are dealing with the stock-in-trade of a trading company. Then, with regard to certain other investments, another block of these holdings, the stated case says:

> "After the death of Mr. Kerman, it was decided that these shares were not suitable investments [not that they could be productively sold, or turned to good account by being sold at a profit, but that they were not 'suitable investments', which I agree is an ambiguous expression] and these shares were *accordingly* sold"

—"accordingly". Finally, the last item was the small sum received on the liquidation of the Chosen Corporation, which was of no significance, because that was a sum which the company had no option to refuse, and which came to it, so to speak, without any active decision on the part of the company.

In that case it was apparent that the first two sales of the shares were made for simple realization motives alone and in the third case the company whose shares were held had gone into liquidation and the realization was brought about without any decision by the taxpayer.

The situation is different here. There was first of all no desire to realize the company's investment in the 5 acres and no occasion for doing so apart from the considerations which led to the decision to sell. Secondly, apart from the attractiveness of the offer those considerations, being concerned with the subdivision project, were all related to the trading aspect of the appellant's affairs and none, save the difficulty in the title, had any relation to the 5 acres or the plan to build apartments thereon. In my view the sale of the 5 acres in these circumstances cannot be dissociated from the trading considerations which prompted the sale of the whole property. (*Vide Atlantic Sugar Refineries v. M.N.R.*)[1].

Finally, whatever may have been the intention of the group with respect to the property at the time of its purchase, it is apparent that the intention with which it was bought was a flexible one and that it changed from time to time while the property was held. At the outset the plan was to subdivide and sell the eastern 15 acres and to develop the remaining 35 acres by building apartment buildings to be held for investment. When it turned out that this plan involved delay, the purpose changed and it was decided to subdivide and sell all but 10 acres of the land and to build apartments on 10 acres only. This alone was a

[1] [1948] Ex. C.R. 622; [1949] S.C.R. 706.

considerable change of the original scheme but the scheme was still further altered when the decision was made to retain only 5 acres for the investment purpose. The decision to subdivide into single family dwelling lots and sell 30 of the 35 acres originally intended for apartments was based simply on business considerations relating to the question of how best to turn the property to account for profit, for nothing prevented the group from waiting until sewer capacity became available to serve apartment buildings on the whole 35 acres except the practical considerations of the loss and expense attending the holding of the land for an uncertain period, and the uncertainty as to what the market for apartment space might be when that time came. When this decision had been reached, a new plan of subdivision was prepared and the scheme proceeded to the point where ultimately the lots were sold subject always to the registration of the plan. Had the plan been registered and these sales completed there would I think be no doubt that profit from them would have been income and yet the intention at the time of purchase with respect to the land so subdivided and sold had been the same as that which the group had for the 5 acres. I think that such profit would have been income because the land so subdivided and sold had become the subject matter of a trading in land. The next change of intention did not involve the preparation of yet another plan of subdivision but in effect involved simply the abandonment of all that had been done and the sale of the whole property but it too was dictated by practical considerations concerned in my view entirely with the trading activities of the company. Regardless of what had been intended earlier, when this decision was made and carried out the property in my opinion was being dealt with as a single trading asset with a single trading intention with respect to the whole of it and I can see nothing about the transaction or the circumstances in which it was carried out which establishes or even suggests that the appellant's investment in the property, insofar as it can be said to have related to the 5 acres, was merely being realized. By the time the offer was accepted that too had become part of the subject matter of a trading in land.

The situation as I view it is thus one in which at the material time the appellant was engaged in a business of dealing in land and in the course of that business sold a

property which though originally in part acquired for an investment purpose had for trading considerations rather than for the purpose of mere realization been dealt with in its entirety as the subject matter of a trading transaction. In these circumstances the whole of the money received for the property was in my opinion a trading receipt and the profit therefrom a gain made in the operation of the appellant's business in carrying out its scheme for profit making. The profit was accordingly income within the meaning of the *Income Tax Act* and was properly assessed.

The appeal therefore fails and it will be dismissed with costs.

Judgment accordingly.