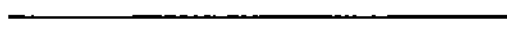

1964
Feb. 24, 25
Nov. 25

BETWEEN:

CHARLES SHAFTER ....APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE ....RESPONDENT.

At the start of the trial in the appeal of *Harry Hortick v. Minister of National Revenue, ante* p. 925 the parties agreed that the evidence adduced in the latter case should serve *mutatis mutandis* in the present instance.

I must note, however, that the financial position of the appellant completely differed from that of Harry Hortick whose relative impecuniosity had led him to borrow $160,000 for the purchase of the B.S.A. holdings.

Notwithstanding an advance by the two Shafter brothers of 91% of the purchase money, the appellant and Harry Shafter agreed that Harry Hortick should be regarded as half-owner of the newly acquired property.

Since the appellant was investing his personal funds, he evidently had no external pressure to apprehend and would become assessable for his share of the gain realized on the resale only if his participation to this deal fell in the category of undertakings foreseen by section 139(1)(*e*) of the

[1] [1959] Ex. C.R. 248. [2] [1960] S.C.R. 902.

Income Tax Act, "an adventure or concern in the nature of trade".

The Shafter brothers at the material time, December 14, 1956, operated two places of business in Montreal, one on Dorchester Boulevard and the other on Beaumont St. in the northern section. Their only interest resided in the B.S.A. lands and not at all in the buildings, which they readily would have disposed of as evidenced by the prohibitive rental of $3,000 monthly asked of Harry Hortick. At all events, the proven facts show that Charles Shafter was in complete agreement with Hortick in the latter's attempts to sell their joint and recent acquisition to Peacock Bros. Ltd. The irresistible notion arising from the appellant's actions is that his true incentive was the obtention of a quick profit of windfall proportions. This motivating factor surely existed when Charles Shafter consented to finance for a share the alluring bargain outlined to him by Hortick. I am unable to detect any appreciable difference between the issue at bar and the analogous cases of *Bay Ridge Estates v. Minister of National Revenue*[1], and *Regal Heights Ltd. v. Minister of National Revenue*[2], to which I refer the litigants.

In conclusion, the Court is of opinion that the appellant engaged into a venture in the nature of trade, and was therefore regularly and properly assessed by the respondent for his share of the accruing gain. The appeal should be dismissed and the respondent entitled to recover his costs after taxation.

Judgment accordingly.

[1] [1959] Ex C R 248. [2] [1960] S C.R. 902.