

NORMAN STUART ROBERTSON . . . . . APPELLANT;

AND

THE MINISTER OF NATIONAL }  
REVENUE . . . . . } RESPONDENT.

1967  
}  
\*Oct. 4  
—

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Taxation—Income Tax—Land purchased for proposed housing develop-  
ment—Proposed project later abandoned and land resold—Secondary  
intention of purchaser—Income or capital gain.*

In making the assessments for the 1955 and 1956 taxation years, the respondent added to the income of the appellant the appellant's share of the profit made by a syndicate known as the Mainshep Syndicate, which profit arose from the purchase and sale of certain land. The respondent also added to the income of the appellant for the 1955 and 1956 taxation years, as well as for the 1954 and 1957 taxation years, the appellant's share of the profit of another syndicate known as the New Sheppard Syndicate, the profit of which also arose from the purchase and sale of certain land. The purpose in forming the Mainshep Syndicate was to acquire a parcel of land and erect thereon duplexes or other multiple dwellings, or to otherwise deal with the said land. The New Sheppard Syndicate was formed for the purpose of acquiring land in the vicinity of the Mainshep property on which to develop a shopping centre to service the proposed housing development. Zoning difficulties having been encountered, the proposed housing project was abandoned and both the Mainshep and New Sheppard properties were later sold at a profit.

\*PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Hall JJ.

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The appellant appealed from the assessment for each of the years 1954, 1955, 1956 and 1957 to the Tax Appeal Board, claiming that the amounts added from the profit of the Mainshep Syndicate and the New Sheppard Syndicate were not income and the Tax Appeal Board allowed the appellant's appeal. An appeal by the respondent from the decision of the Tax Appeal Board was allowed by the Exchequer Court and the appellant then appealed to this Court. The appeal to this Court was limited to the issue as to whether the appellant's share of the profit of the Mainshep Syndicate in the years 1955 and 1956 was part of the appellant's income for each of the years or was a capital gain.

*Held:* The appeal should be dismissed.

APPEAL from a judgment of Noël J. of the Exchequer Court of Canada<sup>1</sup>, allowing an appeal by the Minister of National Revenue from a decision of the Tax Appeal Board. Appeal dismissed.

*W. Z. Estey, Q.C.*, for the appellant.

*F. J. Dubrule and J. M. Halley*, for the respondent.

At the conclusion of the argument of counsel for the appellant, the following judgment was delivered:

THE CHIEF JUSTICE (*orally*):—We are all of opinion that the inferences drawn by the learned trial judge from the evidence were correct. We agree with his reasons. Consequently, the appeal fails and is dismissed with costs.

*Appeal dismissed with costs.*

*Solicitors for the appellant: Robertson, Lane, Perrett, Frankish & Estey, Toronto.*

*Solicitor for the respondent: D. S. Maxwell, Ottawa.*

<sup>1</sup> [1964] Ex. C.R. 866, *sub nom. The Minister of National Revenue v. Clifton H. Lane*, [1964] C.T.C. 101, 64 D.T.C. 5059.