BETWEEN:

1962 Mar. 27 — Nov. 20

VICTORY HOTELS LIMITED ....APPELLANT;

AND

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

Revenue—Income tax—Income Tax Act, R.S.C. 1952, c. 148, s. 20(1), (5) (b) (c)—Sale of hotel business—Disposition of depreciable property—Time of disposition—"Disposition"—"Sale"—Recapture of capital cost allowance—Appeal allowed.

Appellant, an Alberta company, conducted during the year 1954 a hotel business in the Town of Peace River, in the Province of Alberta, and in December, 1954 accepted an offer for the sale of its hotel business with occupancy to be taken over on January 3, 1955. Matters of insurance, taxes and inventories would be settled in 1955 and the liquor licence was not to be transferred until January 3, 1955. Before the end of 1954 all documents required to effect the transfer of land, buildings and chattels had been signed and the bulk sale declaration completed. However, the affidavits or declarations accompanying the conveyancing documents had not been completed and the registration of the bill of sale, the chattel mortgage and the mortgage had not been made. Appellant claimed in 1954 depreciation on the depre-

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ciable assets sold. The Minister contended that the sale took place in 1954 and assessed appellant accordingly. From that assessment the appellant appealed to this Court.

Held: That the words "disposed of" in s.20(1) of the Act mean the disposal of the assets of the business in a manner such that the business is no longer being carried on by the person who has disposed of it.

2. That the words "disposed of" in the Act should be given their widest ordinary meaning and in that broad sense the business was not disposed of in 1954 because it was not parted with, and control over it was not passed over until 1955.

3. That the passage of title was contingent upon the happening of certain events or the possibility of such happenings before January 3, 1955 and the property therefore was not disposed of until 1955.

APPEAL under the *Income Tax Act.*

The appeal was heard before the Honourable Mr. Justice Noël at Edmonton.

A. F. Moir, Q.C. and *C. C. Curlett* for appellant.

W. G. Morrow, Q.C. and *D. F. Coate* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

NOËL J. now (November 20, 1962) delivered the following judgment:

This is an appeal from an assessment to income tax for the taxation year 1954 wherein a tax in the sum of $7,300.87 was levied by reason of the Minister's findings, namely that a sale of the taxpayer's land, furniture and fixtures and building took place in the year 1954 and not in the year 1955 and that recaptured depreciation on buildings and terminal loss on furniture and fixtures is determined on a disposal price allocated as follows:

Land	$ 1,000
Furniture and fixtures	44,500
Building	204,500
	$250,000

The Minister, therefore, added on to the taxable revised income of the taxpayer in an amount of $4,067.47 the following:

Depreciation claimed on furniture and fixtures		$ 1,019.56
Depreciation on building		17,219.92
		$22,306.95
and subtracted		
Terminal loss on furniture and fixtures	$6,478.52	
1955 loss	454.13	6,932.65
		$15,374.30

thus establishing the revised taxable income in the amount of $15,374.30 on which a tax of $3,074.86 should be paid. To this, the Minister added an amount of $4,226 as the amount taxable under s. 43 on recaptured depreciation on the building on a basis of $13,313.12, thus forming a total tax of $7,387.

The sole issue here, therefore, turns on the question as to when or in what year, 1954 or 1955, the properties of the appellant were disposed of. If this Court decided that the disposal took place in the year 1955, the appeal should be allowed, if not, then it should be denied. Such is the agreement arrived at between the parties and expressed by counsel at the opening of the hearing of this case. They also agreed that the depreciation aspect shall be reduced from $13,313.12 to $10,566.90 and of course if the appeal is successful the terminal loss on furniture and fixtures shall no longer be deductible.

The appellant, an Alberta company, conducted during the year 1954 a hotel business in the Town of Peace River, in the Province of Alberta, under the managership of one H. G. Curlett. On or about December 1, 1954, Nick Radomsky, John Tanasichuk and M. N. Gorynuk (hereinafter referred to as the purchasers), submitted to Maber Ltd., a real estate firm, an offer to purchase the business, real property and chattels of the Victory Hotels Ltd., the appellant (hereinafter sometimes called the taxpayer), for the sum of $250,000. This offer to purchase, produced as Exhibit 2, contained no date of sale and was open for acceptance to the taxpayer up to midnight on December 3, 1954, and was signed by the parties, Mr. H. G. Curlett signing on behalf of the taxpayer. Maber Ltd. then caused an agreement to purchase to be drawn, dated December 6, 1954, produced as Exhibit 3, which was also signed by the parties thereto, including once again Mr. Curlett on behalf of Victory Hotels Ltd. The clauses of some significance for the disposition of the present appeal in this document are the following:

TWENTY-FIVE THOUSAND DOLLARS .... in cash to be held in trust by MABER'S LTD., paid upon the execution of this Agreement to Purchase from the SIXTH (6) DAY OF DECEMBER, 1954, to and including the SIXTH (6) DAY OF FEBRUARY, 1955.

IT IS FURTHER UNDERSTOOD AND AGREED BY THE PURCHASERS that they cannot have possession of the above mentioned Hotel before the THIRD (3) DAY OF JANUARY, 1955.

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BEFORE POSSESSION IS GIVEN an additional sum of SEVENTY-FIVE THOUSAND DOLLARS .... shall be paid into MABER'S, LTD.

(6) IT IS FURTHER AGREED the Purchasers shall advertise not later than the TWENTY-THIRD (23) DAY OF DECEMBER, 1954, in the proper newspaper to secure such license within the time herein limited. Upon license being granted THE VENDOR will immediately grant possession of the said described premises, PROVIDED the date of possession is not before the THIRD (3) DAY OF JANUARY, 1955.

(7) If the Purchasers are refused a license to sell beer on the said premises, their deposit of TWENTY-FIVE THOUSAND DOLLARS, ($25,000) shall be returned to them and this Agreement shall become null and void.

(8) Upon possession being given, all taxes and insurance premiums shall be adjusted as to the date of possession, and all stock of goods in trade, and all supplies on hand shall be invoiced to the Purchasers at cost price, and they shall pay for same.

(11) Upon the above monies having been paid into the offices of MABER'S LTD., we will immediately execute the necessary TRANSFER, and BILL OF SALE, and other documents required in deals of this nature, and deliver same to MABER'S LTD., to be delivered to the Purchasers upon payment of the purchase monies to ourselves.

(12) In the event that the property or any part thereof, shall be destroyed by fire, or damaged greatly and not repaired satisfactorily, as the case may be, subsequently to the execution of this Agreement, and prior to the date we take possession of the premises at the time herein limited, we shall have the privilege of withdrawing from this Agreement and be released from any obligation contained herein and agreed to be done by us, and shall have the return of all our monies we have paid under the terms of this Agreement.

TIME SHALL BE OF THE ESSENCE OF THIS AGREEMENT.

The purchasers then incorporated an Alberta company under the name of the Valleyview Hotel Company Ltd. and the taxpayer caused to be drawn a transfer of land document (Exhibit 6) dated December 22, 1954, in favour of the Valleyview Hotel Company Ltd.; the affidavits accompanying this document were completed on January 7, 1955, and the document was registered in the Land Titles Office for the North Alberta Land Registration District as instruments #6879 J. T. on January 11, 1955.

A bill of sale, (Exhibit 4), of the chattels of the taxpayer to the Valleyview Hotel Company Ltd., dated December 22, 1954, was registered in the Peace River Registration District as instrument #1231 on January 14, 1955. This bill of sale was completed as to the affidavit of the grantee by Nick Radomsky on January 12, 1955.

On December 22, 1954, a chattel mortgage (Exhibit 5), was drawn up between Valleyview Hotel Company Ltd. and Victory Hotels Ltd. as collateral security to a real

estate mortgage in favour of the latter to secure payment of the sum of $150,000, the first payment to become due and payable on March 1, 1955, under the affidavit of Mr. Curlett, the main shareholder of the taxpayer and its manager, who stated therein that the amount set forth in the chattel mortgage is justly due. The only clauses of some significance here are the following:

> The said sum together with interest as hereinafter provided by equal consecutive monthly payments of two thousand dollars, on the first day of each and every month until fully paid and satisfied, the first of above payments to become due and payable on the first day of March, nineteen hundred and fifty five. (March 1, 1955, A.D.).
> all of which said goods, chattels, livestock, implements, farming implements, tools and appliances, furniture, household stuff, personal property and effects set forth in the schedule hereto annexed. (comprising all of the unexpendable chattels of the taxpayer) are now owned by and in the possession of the mortgagor . . .

This document was registered on January 20, 1955.

On December 22, 1954, Valleyview Hotel Company Ltd. granted to Victory Hotels Ltd. a mortgage (Exhibit 7) on the property purchased from the latter in the amount of $150,000 payable with interest by equal consecutive monthly payments of $2,000 on the first day of each and every month until fully paid and satisfied. It also carried the clause to the effect that "the first of the above payments to become due and payable on the first day of March, 1955" as well as the following one:

> It is understood and agreed that the interest payable under the terms of this mortgage shall be computed from the 3rd day of January 1955.

This document was registered in the Land Titles Office under #6880 on January 4, 1955.

On December 22, 1954, Mr. Curlett, a director of Victory Hotels Ltd., signed under oath a statement (Exhibit 8) showing the names and addresses of all the creditors of Victory Hotels Ltd. as required under the *Bulk Sales Act*. In a letter dated the week prior to December 28, 1954, Mr. Curlett, on behalf of the taxpayer, surrendered the existing beer licence of the taxpayer.

Mr. Bryant D. Richards, C. A., an accountant for Valleyview Hotel Company Ltd. stated that in a return prepared by him upon information obtained from the shareholders of the company and its solicitor and filed for the company for the year 1954 the assets of the former Victory Hotels Ltd. showed as part of the fixed assets of the Valleyview Hotel Company Ltd. on hand as at December 31, 1954.

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Mr. H. G. Curlett, the manager and main shareholder of the taxpayer, stated that the above documents and particularly Exhibit 3, the agreement to purchase, were drawn up and signed in the following circumstances. He met the prospective purchasers, Messrs. Nick Radomsky, M. N. Gorynuk and John Tanasichuk, accompanied by Mr. Maber, on December 6, 1954, in his office. He stated that it was here that he came down to a price of $250,000 from $300,000, set the rate of interest to be charged at 5%, the cash payment at $100,000 and the balance payable at the rate of $2,000 a month.

He adds that the sale was to be made on January 3, 1955 because (cf. p. 12 of the transcript):

> A. Because I had earnings of just on $25,000 or thereabouts which was the maximum, we could have 21% or 20% it was I believe at that time and I wouldn't make the sale in 1954 and have to regain my depreciation in 1955 at 51% and I explained that to them in taking down the price of $50,000 I didn't want to lose a further $10,000 which I would have to pay in depreciation, regained depreciation and that was very thoroughly understood by all the parties at that meeting.

This is corroborated by the real estate agent, Mr. Maber, who at p. 40 of the transcript states:

> A. Oh, there was quite a bit of discussion and he 'phone his accountant and he agreed to take the $50,000 loss provided I got the deposit raised and that the deal would not be completed before 1955. He couldn't sell it in 1954.

And at p. 41:

> Q. And what was said about the sale as you recall it?
>
> A. Well, the $50,000 cut in price was discussed to quite an extent, the boost in the deposit to $25,000 was discussed, and the date of sale, or the date that the sale was to become effective was discussed, to quite some length.
>
> Q. And what was the arrangement about the sale, what was said about that?
>
> A. That the sale would be consummated or completed on the 3rd day of January, 1955 and not before.
>
> Q. Why was that?
>
> A. Mr. Curlett was having an income tax problem, he was, it meant he would have to lose, I think, approximately around about another $10,000 off of the price, he had already taken a $50,000 reduction and he didn't feel like taking any more.
>
> Q. What did the purchasers say to that?
>
> A. Well I don't remember what they said but they agreed to it anyway because we signed the agreement that way.

And in connection with Exhibit 3 he was asked:

Q. Why did you word it in the manner in which it is worded? The part about the sale and possession and so on?

A. Well so as the date of possession and the sale of the hotel would be in 1955 and not in 1954.

This is also corroborated by Mike Gorynuk, one of the purchasers, at p. 61 of the transcript. This gentleman is, however, no longer interested in the Valleyview Hotel Company Ltd.

Q. Now can you tell His Lordship if there was any discussion about the date you were to purchase the Victory Hotel?

A. Well, I remember I remember talking over the date that was set for taking over possession, January 4, 1954, in '55.

Q. Yes, and did Mr. Curlett say anything?

A. No, he just, that was the arrangement.

Q. But what did he say about the arrangement?

A. Well, he couldn't release it during the year '54 due to some of his tax problems.

Q. And he told you that?

A. He told us.

Q. Did you agree to that?

A. Yes.

And later at p. 62:

Q. And at the time, or at some time during these proceedings Mr. Curlett had mentioned to you that as far as he was concerned it had to be possession in 1955 because of his tax problem?

A. That is right.

Mr. Maber then went back to his office, drew up Exhibit 3 himself and brought it back to Mr. Curlett's office where it was signed.

Mr. Curlett adds that his intention was that he was to own and operate the hotel until January 3, 1955, and, in effect, the taxpayer did operate the hotel until that date and retained and reported the income that came from the hotel up until January 3, 1955.

It is necessary in the Province of Alberta, in order to obtain or maintain a liquor licence, to show undisputed occupancy for the period of the licence and the taxpayer here held the licence for the month of December 1954 until January 3, 1955, when it was surrendered.

Indeed, two licences are not permitted for the same hotel and, therefore, the Victory Hotels Ltd.'s licence was effective until the close of business on January 3, 1955, and

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the Valleyview Hotel Company Ltd.'s licence when obtained would be effective as from the opening, on January 4, 1955. This last licence, although dated January 4, 1955, had been released by the Liquor Board on December 31, 1954.

The clause in Exhibit 3 dealing with the agreement to purchase from the 6th day of December 1954 to and including the 6th day of February 1955 was for the purpose, according to both Mr. Curlett and Mr. Maber, of covering the purchasers or purchaser with the Alberta Liquor Board; indeed they had to advertise for four consecutive weeks in the local newspapers and sufficient time had to be provided so that if they missed one issue they would still have sufficient time to publish in four consecutive issues; this was confirmed by Mr. Maber who explained the signification of the date of February 6, 1955, in Exhibit 3, at p. 42 of the transcript:

> A. Yes, these agreements here had to go through the Liquor Control Board and they demanded that they be in such a way and such wording, now at that time they had to advertise four consecutive weeks before, to give people a chance to protest the new licensee coming in, that was part of the Act. Now if they missed a week, if the newspaper made a mistake which they have done, there has been instances of it, they had to start all over again with their advertising and go for four more consecutive weeks, so you had to allow two months on your agreement, or sixty days, in case of some mistake or something like that in regard to the advertising.

And at p. 58 of the transcript:

> A. . . . you see there is 30 days, 22 days in these deals that you cannot do anything with, people are just sitting waiting for this advertising and for the license and it is quite a usual thing in that period we always drew up the documents about a week ahead of time, sometimes two weeks ahead of time and they were all held in trust until the deal was completed, until we got the license. These people were not going to buy the hotel if they did not get the license, but we did draw up the papers before hand, dozens and dozens of times, and they just laid around until the deal was completed.

Mr. Curlett went to Peace River for the takeover on January 3, 1955, where he took stock in the beverage room, the coffee shop, the basement of merchandise used in the coffee shop. He also took the room register office at midnight on January 3, 1955, and the necessary adjustments were made accordingly and up to midnight of January 3, 1955, Victory Hotels Ltd., the taxpayer, had the entire revenue.

The interest on the mortgage, as we have seen, was charged from January 3, 1955, and the insurance was adjusted as of January 3, 1955, also.

Mr. Curlett stated that the taxpayer did not pay any of the municipal taxes on the property in the year 1955 as he says the matter of taxes never came into discussion, they were not levied yet and he did not know what they would be.

However, Mr. Maber, the real estate agent, in connection with this matter of taxes, stated that on the date of the take-over, January 4, 1955, he went down to the town office, checked the taxes and obained the amount for 1954. He came back and worked out three days which did not amount to very much and adjusted the municipal taxes for the first three days of 1955.

With respect to the insurance coverage, Mr. Curlett states that the name of the insurance policy was not changed from that of the taxpayer to that of Valleyview Hotel Company Ltd. until after January 3, 1955.

Until such time as the mortgage was returned from the registry office, which was in 1955, the insurance was carried in the name of Victory Hotels Ltd. and when the mortgage was returned, a transfer of the insurance was made and the premium was adjusted back to January 3, 1955.

According to Mr. Curlett, he tried to get the insurance policy but it is no longer available in the Victory Hotels Ltd.'s file. He recalls receiving a letter from Mr. O'Brien, the solicitor for the purchasers, dated December 24, 1954, requesting him to attend to having the existing insurance policy changed in the name of Valleyview Hotel Company Ltd. with the loss payable to the taxpayer but persists in saying that the solicitor would just assume he would do that, but that this was not done until the end of January 1955.

He admitted that he paid Maber Ltd., the real estate agent, a commission.

Mr. Curlett knew that $25,000 deposit money had been paid over to Mr. Maber for the account of the taxpayer, and when asked whether he thought he was bound by Exhibit 3 when it was signed on December 6, 1954, he replied: "If there was no castastrophe happening and they put up the balance of $75,000, I certainly would . . .".

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A further question as to whether once the amount of $75,000 was paid up, he would then consider himself bound by the document (Exhibit 3), he replied:

A. No, there were two clauses in there, one that they were to receive a licence or the deposit was to be refunded and the other one was that if there was a fire in the hotel that they had the privilege of backing out.

Q. But they had the privilege, not you, is that right?

A. Well—

Q. If there was a fire?

A. That is the way that document reads and undoubtedly it would have been my fire if a fire had occurred before the 3rd day of January, there would have been no argument then as to whose it was.

An inventory of the nonexpendables was taken in December 1954 and of the expendables on January 3, 1955. Mr. Curlett states that he is not familiar with the certification on Exhibit 5, which is the chattel mortgage, to the effect that Valleyview Hotel Company Ltd. is the owner of the property as of December 22, 1954.

The taxpayer, through Mr. Curlett, admitted that on December 22, 1954, he had all the security he asked for, chattel and land mortgages, and that all that was left to be done was to register the mortgages.

He added, however, "that until the mortgage was registered and that he had the abstract to show that his security was the first on the title, had Valleyview Hotel Company Ltd. got into difficulties, or a judgment or a lien made against it, it would have been prior to his mortgage."

He also admitted signing Exhibit 8 on December 22, 1954, to the effect that there was no creditors of Victory Hotels Ltd, a document required under the Alberta *Bulk Sales Act*.

Asked as to whether the idea of signing the document was to satisfy the requirements of the *Bulk Sales Act* because there had been a bulk sale on December 22, 1954, he replied: "No this would be to complete the deal at the third day of January, you cannot make a deal of this nature and put the documents all through and register them and search them and take stock of the hotel and transfer a licence, you cannot do all of these things in one day."

Mr. Maber stated that on December 6, 1954, he deposited in his trust account at the bank a certified cheque in the amount of $5,000, one of $25,000 on December 8, 1954, and one of $75,000 on December 23, 1954.

On January 10, 1955, he issued a certified cheque for $25,000 and another one for $75,000 on January 12, 1955.

Mr. Maber states that if the liquor licence had not been issued to the purchasers, they would have received their money back and the deal would have been cancelled in accordance with a clause in the agreement (Exhibit 3). He interprets the clause to the effect that the purchasers cannot have possession of the hotel before January 3, 1955, as meaning that ownership shall not pass until that date.

Mr. Maber admitted that the purchasers wanted the transaction to be completed in 1954 for the same reason that Mr. Curlett wanted it in 1955 but he told them it would have to be 1955 and he added that they agreed after discussion that they would take possession and the sale would be completed in 1955.

At p. 54 of the transcript he was asked:

Q. Isn't it correct then, Mr. Maber, that because each side wanted a different year you left the agreement at the word "possession" and did not put in language that would have made it clear?

A. Well, it is clear enough to me but I am not a lawyer you see.

The sole question to be resolved here is where the properties of the taxpayer disposed of in 1954 or in 1955.

The pertinent sections of the *Income Tax Act* are the following:

20(1) Where depreciable property of a taxpayer of a prescribed class has, in a taxation year, been *disposed of* and the proceeds of disposition exceed the undepreciated capital cost to him of depreciable property of that class immediately before the disposition, the lesser of

(*a*) the amount of the excess, or

(*b*) the amount that the excess would be if the property had been disposed of for the capital cost thereof to the taxpayer,

shall be included in computing his income for the year.

Disposition of property is partly defined by s. 20(5)(*b*) which reads as follows:

(*b*) "disposition of property" includes any transaction or event *entitling* a taxpayer to proceeds of disposition of property;

and under s. 20(5)(*c*):

(*c*) "proceeds of disposition" of property include

(i) the sale price of property that has been sold,

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There is no question, but that the intent of the parties was that the sale of the properties of the taxpayer be effective January 3, 1955. However, what Mr. Maber, the real estate agent, was trying to do and what he did do, appears to be something quite different. Indeed it would seem that we have here in 1954:

(*a*) a valid contract of sale;

(*b*) an arrangement whereby an amount of $100,000 is in the hands of Mr. Maber, the real estate agent;

(*c*) all of the conveyancing documents including the mortgage and the chattel mortgage are signed but not registered;

(*d*) the bulk sale declaration is completed;

(*e*) the liquor licence is issued at the end of 1954, but is effective only on January 4, 1955;

(*f*) and also the right of the purchasers to get out of this contract if one or two or both of the following things happened:

(1) if there was a fire before possession and then only if the purchasers so elect;

(2) if the liquor licence was not available.

The only matters, therefore, to be completed were (*a*) the taking of possession of the properties and hotel business at midnight on January 3, 1955; (*b*) the matter of insurance; (*c*) the adjustment of municipal taxes; (*d*) the inventory of expendables; (*e*) the taking of the room registry; (*f*) the completion of the affidavits or declarations which accompanied the conveyancing documents and, finally (*g*) the registration of the bill of sale, the chattel mortgage and the mortgage.

The only evidence on behalf of the contention of the Minister to the effect that the intent of the parties was to have this transaction take place in 1954 is that of Mr. Bryan D. Richards, C.A., who drew up some books and a return indicating that the assets of the taxpayer were, in 1954, the property of the Valleyview Hotel Company Ltd., the purchaser, after talking to the shareholders of this company and its solicitor. This, in my opinion, cannot override the preponderance of the evidence which is to the effect that the parties intended this sale to take place in the year 1955.

There is no question also that the taxpayer undeniably had the use and the control of the properties and business and was entitled to its proceeds up until January 3, 1955, and the interest on the mortgage was computed as of that date.

The explanation given by the taxpayer as to why, if the intent was that the sale be effective on January 3, 1955, all the conveyancing documents with the exception of the registration and the completion of the necessary affidavits had been signed and completed before the year 1955, that one "cannot make a deal of this nature and put the documents all through and register them and search them and take stock of the hotel and transfer licence in one day," although plausible, is not entirely satisfactory. However, coupled with the fact that in order to obtain a liquor licence for a hotel in Alberta it is necessary to establish occupancy, and four weeks prior thereto, publish a notice in the newspapers on four consecutive weeks, it does become more persuasive, particularly, may I add, when the issuance of the liquor licence is a *sine qua non* condition without which the purchase would not stand. I believe that this transaction was dealt with in this manner because of the necessity of obtaining the liquor licence as the main incentive here, undoubtedly was not the buildings and land, but the hotel business.

Would, however, the completion of a valid contract of sale in 1954 prevent the taxpayer from contending that he *disposed of* these properties on January 3, 1955, the date upon which he turned over to the purchasers the physical possession of the properties?

The words "disposed of" in s. 20 of the *Income Tax Act* are of the widest meaning and should, in my opinion, be given their widest ordinary or popular meaning bearing in mind, however, that they are being used in a taxation statute, in a matter where the properties which are to be "*disposed of*" are the assets used to earn the very income from which, according to certain specified rates, depreciation can be charged off. Let me add that they may even be given in an appropriate context a wider meaning than their normal meaning, unless of course, the *Income Tax Act* itself has restricted this meaning.

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Indeed, in the context of s. 20 of the *Income Tax Act* it is not unreasonable to give the words "disposed of" their widest meaning which would be "to part with", "to pass over the control of the thing to someone else" so that the person disposing no longer has the use of the property. Indeed, Bell in the South African Legal Dictionary, at p. 182, defines "disposed of" as follows:

"to part with; to pass over the control of a thing to someone else."

The expressions "disposed of", "lost" or "destroyed" were dealt with in the Australian case of *Hentey Howe P.T.V. Ltd.* v. *Federal Commissioner of Taxation*[1] and from that decision it will be seen that the words "disposed of" are given a very wide meaning. May I add that the section of the Australian *Income Tax Act* in which these expressions were found is very similar to our s. 20. It was therein stated that:

The entitled expression "disposed of", "lost" or "destroyed" is apt to embrace every event by which property ceases to be available to the taxpayer for use in producing assessable income, either because it ceases to be his, or because it ceases to be physically accessible to him, or because it ceases to exist.

and at p. 156 of this same decision (*supra*) it is stated:

the idea of ordering, managing, controlling, arranging, the idea of the exercise of an existing power over a thing is generally inherent in the word "disposed" itself and that essential idea is not lost when the word is used with a preposition to denote an act of alienation or creation of a new interest in property.

The evidence also discloses here that the taxpayer was not only selling land and chattels and buildings, but what he was doing mainly was selling a business as a going concern. There is no doubt that had this hotel not been a going concern, the sale would not have taken place, at least not for the price that was paid. Indeed, the importance attached to the transfer of the liquor licence for instance making it a *sine qua non* condition to the deal establishes without doubt that the purchaser was buying a business.

If such is the case here, and I believe that this is so, the words "disposed of" mean the disposal of the assets of the business in a manner such that the business is no longer being carried on by the person who has disposed of it.

[1] 88 C.L.R. 151.

The question, therefore, is had these assets, the properties of the taxpayer, been disposed of as a business or were they still available to the taxpayer during the whole of the year 1954 to earn income? The answer, of course, is obvious, all the revenue including that from the rooms, the meals, the coffee shop, etc., were the property of the taxpayer up to and including January 3, 1955.

The interpretation of the words "disposed of" in the above manner with the very wide meaning I have given them as including the use and/or control of the subject matter of the disposals should and can, in my opinion, be given that meaning providing, however, that the *Income Tax Act* has not otherwise restricted their meaning.

We have seen that s. 20(5)(*b*) of the *Income Tax Act* states that " 'disposition of property' includes any transaction or event entitling a taxpayer to proceeds of disposition of property" and 20(5)(*c*) states that " 'proceeds of disposition' of property include (i) the sale price of property that has been sold,". These sections do not define but merely include as a disposition of property a transaction (a sale for instance) entitling a taxpayer to proceeds of disposition of property, i.e. to the sale price of the property sold. It would indeed appear that the meaning of "disposition of property" has been somewhat restricted by the Act when a disposal of property takes place by means of a sale; in such a case there is a disposal of property as soon as a taxpayer is entitled to the sale price of the property sold.

The verb "entitled" according to the Shorter Oxford English Dictionary means "to give a rightful claim to something". The French text of the Act uses the words "donnant droit" which of course mean to give a right to.

Was the taxpayer here *entitled* to the sale price of the property sold? In the present instance the agreement carried two conditions which, if not fulfilled, would prevent the transaction from being complete: (*a*) a liquor licence, and (*b*) if there was a fire before possession.

We have seen that the deposit money in an amount of $100,000 was held in escrow or in trust by the real estate agent until possession was given in 1955 and that no money was to be paid out or was paid out to the vendor until after the take-over on January 4, 1955.

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Indeed, Exhibit 3, the agreement to purchase, indicates clearly that Maber Ltd. was chosen by both parties to hold the deposit money until such time as the conditions were fulfilled and the purchaser had obtained possession of the properties which possession could not occur earlier than January 3, 1955. It cannot, therefore, be said that the taxpayer was entitled to the monies or the "proceeds of disposition" until January 3, 1955, or such time after that date that all the conditions of the agreement had been fulfilled.

I, therefore, find that the properties of the appellant were not disposed of in the year 1954, but only in the year 1955. The Minister was, therefore, wrong in assessing the appellant as he did in the year 1954 and its appeal against the assessment must be allowed with costs.

Judgment accordingly.