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BETWEEN:

THE MINISTER OF NATIONAL REVENUE ..... APPELLANT;

AND

CORINNE M. THIBAULT .....RESPONDENT.

Revenue—Income Tax—Income Tax Act, R.S.C. 1952, c. 148, ss. 3, 4 and 139(1)(e)—Civil Code of Quebec, Article 1851—Sale of real estate—Partnership formed to subdivide vacant land and build houses thereon —Respondent virtually a silent partner—Intent of taxpayer—No intention to sell vacant lots at profit—Partnership had only conditional right to acquire land purchased and owned by respondent—Land not stock-in-trade or inventory of partnership—Not an extraordinary occurrence for taxpayer to be engaged in business in one year but not the next—Profit from sale a capital accretion.

In 1954 the respondent entered into an equal partnership with one Vézina, who claimed wide experience in house building and the ability to secure the funds required to finance the construction of houses. He showed the respondent a tract of some thirteen acres of vacant land in the Parish of Pointe-aux-Trembles on the Island of Montreal which could be purchased for $31,000. The respondent raised the required money, in part by mortgaging her rooming house for $25,000, and purchased the said lands, which, by the terms of the partnership agreement she entered into with Vézina, she agreed to conditionally transfer to the partnership and to sell to it progressively a few lots at a time at cost, when Vézina had carried out his obligations under the agreement which included managing the undertaking, subdividing the property, procuring the necessary credit and finances including building mortgages, constructing the houses and selling them. Vézina was unable to secure building mortgage loans due to his poor credit rating and no houses were built although a total of nine lots were sold by the respondent in 1954 and 1955. In 1955 Vézina sued the respondent in Superior Court, claiming dissolution of the partnership, and accounting and damages. The respondent counterclaimed for annulment of the partnership agreement and other relief. Vézina's

action was dismissed but the partnership agreement was declared to be null and void. In 1956 the respondent sold practically all the remainder of the land, consisting of nearly ten acres, to Coté & Lavigueur Construction Ltée, thereby realizing a profit which, the parties hereto have agreed, amounted to $18,000. The appellant reassessed the respondent's income to include this amount as being profit from a business but the Tax Appeal Board upheld the respondent's appeal against the reassessment.

Held: That although the respondent took no part in the management of the partnership and was little if anything more than a silent partner, Vézina was actively managing the business with her knowledge and consent and under the rules of partnership of the Civil Code of Quebec she is presumed to have given him a mandate for the management of the business and his acts are binding on her.

2. That the respondent, on joining the partnership, had no notion of selling vacant lots as such at a profit and indeed she did everything she could do to prevent such an occurrence.

3. That at no time could the land, as it existed in 1956, be regarded as stock-in-trade or inventory of the partnership because the partnership had nothing more than a conditional right to acquire it, and in 1956 the conditions were no longer capable of being performed.

4. That it is no extraordinary occurrence for a taxpayer to be engaged in business in one taxation year and cease to be so engaged in the next, and indeed it would be rather surprising if the respondent did not desire to completely withdraw from business activities, in the face of the reverses which beset her prior to 1956.

5. That the evidence establishes that the respondent had ceased to be engaged in business, within the meaning of the *Income Tax Act*, six months prior to the date of sale of the residue of the property and the profit therefrom had the attributes of a capital accretion and did not constitute income from a business.

6. That the appeal is dismissed.

APPEAL from a decision of the Tax Appeal Board.

The appeal was heard by the Honourable Mr. Justice Kearney at Montreal.

Paul Boivin, Q.C. and *R. Boudreau* for appellant.

Thomas Calder for respondent.

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

KEARNEY J. now (August 4, 1964) delivered the following judgment:

This is an appeal by the Minister from a decision of the Tax Appeal Board[1] dated January 9, 1962, which maintained to the extent hereinafter mentioned appeals taken by the respondent concerning the income tax reassessments levied upon her for the taxation years 1954, 1955 and 1956.

[1] 28 Tax A.B.C. 248.

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By notices of reassessment dated March 12, 1959, the Minister added to the previously declared income of the respondent amounts of $4,467.61, $282.36 and $27,934.35 for the aforesaid taxation years respectively, on the ground that they constituted income realized by the respondent as a member of a partnership engaged in business within the meaning of ss. 3, 4 and 139(1)(*e*) of the *Income Tax Act*.

The respondent appealed the said reassessments to the Board, which dismissed them in respect of the years 1954 and 1955 because they represented profits arising out of sales of certain lots (seven in 1954 and two in 1955) which were realized before the partnership (Pointe-aux-Trembles Development Reg'd.) of which the respondent was a member, had been dissolved and at a time when she was still struggling to realize the purposes for which it had been formed.

The respondent's appeal in regard to 1956 was maintained because the Board held that the profit which the respondent realized in that year on a bulk sale of the remainder of her property to Côté & Lavigueur Construction Ltée, had occurred after the partnership had been dissolved and that it did not constitute income from a business but was in the nature of a capital gain and therefore not taxable.

No appeal was taken by the respondent in respect of the reassessments from that part of the judgment of the Board which dismissed her appeal concerning the years 1954 and 1955, and it follows that the present appeal relates to the taxation year 1956 alone.

Although the amount of the 1956 profit was contested before the Board, it is no longer in issue because counsel for the parties, at the opening of this case, stated they had agreed that the figure of $27,934.35, as claimed, should be reduced, in round figures, to $18,000.

Counsel also declared that they had no additional evidence to offer and that the proof contained in the record transmitted by the Board in accordance with s. 89(4) of the Act, including a transcript of the evidence, would make up the case before this Court, and it might be said that only in a technical sense did the present appeal constitute a trial *de novo*.

The instant issue reduces itself to the not unfamiliar one of whether the profit of $18,000 realized by the respondent

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on the sale on May 15, 1956 of certain lots to Côté & Lavigueur Construction Ltée is, as claimed by the appellant, taxable income from a business within the meaning of the relevant sections of the Act or a capital accretion arising from a non-commercial transaction as submitted by the respondent.

As appears by the transmitted record, the proof consists of the testimony given by the respondent and Henri Lavigueur, an officer of Côté & Lavigueur Construction Ltée, together with the documentary evidence, including a copy of a judgment of the Superior Court for the Province of Quebec, which I will have occasion to refer to later.

There is no dispute as to the facts, which are substantially set out in the decision of the Board. It is well established, however, that in endeavouring to resolve an issue such as arises herein each case must be judged on its own facts and circumstances, and I propose, before dealing with the submission of counsel, to examine the relevant events as I see them.

Early in 1954, the respondent, who owned and operated a rooming house for tourists, was approached by one J. A. Vézina, a civil engineer, who represented to her that he had an immediate opportunity to put to use the wide experience which he had acquired in the construction of residential property, on the sale of which he had been accustomed to make a profit of $1,500 to $1,800 per house; that he was able to procure the necessary finances to meet the cost of construction; that he knew of some desirable building lots which were for sale; and that he was anxious to become associated on a 50-50 basis with somebody who had the wherewithal to buy the above-mentioned land upon which it should be feasible to construct about twenty houses per annum.

Mr. Vézina brought her to see the property, which consisted of nearly six hundred thousand square feet of unsubdivided vacant land located in the Parish of Pointe-aux-Trembles on the island of Montreal, the sale price of which amounted to $31,000. The respondent was favourably impressed by the aforesaid proposal. She had $5,000 to $6,000 in liquid funds and on making enquiries she ascertained that by giving a mortgage on her rooming house as collateral security she would be able to procure a bank-loan of $25,000, repayable by instalments together with interest.

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Subsequently, on April 19, 1954, she entered into a partnership agreement with the aforesaid Vézina, which agreement was filed as Exhibit A-1 and reproduced verbatim in the decision of the Board. It was a loosely drawn agreement but particulars which were lacking in it are to be found in other exhibits, particularly Exhibits 3 and 5, and also in the transcript of the testimony and in a copy of the already mentioned judgment of the Superior Court for the district of Montreal.

As a result of the above-mentioned clarification in respect of Exhibit A-1 it is not disputed and it can be said with justification that the respondent's sole obligation to the partnership was first to acquire for $31,000 cash the lands described in Exhibit A-1 hereinafter referred to as "the property" and to conditionally transfer to the partnership the aforesaid property, in whole or in part, for $33,000, by progressively selling to it a few lots at a time at cost and when J. A. Vézina had carried out his obligations under the above-mentioned agreement. It is equally clear that Mr. Vézina was to manage the undertaking first by causing the property to be subdivided, then procuring necessary credit and finances, including a builder's loan, by way of mortgage, from Central Mortgage and Housing Corporation to carry out the construction and subsequent sale of bungalow-type houses as erected on the lots thus transferred.

I might here note that, while the agreement states that the respondent was to purchase the property for $31,000 and sell it to the partnership for $33,000, the difference of $2,000 was not profit but was intended to cover the interest charges which the respondent would have to pay on her bank-loan during the contemplated progressive sale period.

On May 19, 1954, the respondent purchased the property as agreed, which consisted of 572,453 sq. ft. of vacant unsubdivided land. See Exhibit I-3 which also contains particulars of sales of lots subsequently made by the respondent and which was filed by consent of counsel to serve as evidence thereof in lieu of filing copies of notarial deeds.

Soon after J. A. Vézina informed the respondent that he was having difficulties in procuring the necessary finances to commence construction and he suggested to her that it would assist him greatly if she would transfer into his name a couple of lots. She reminded him that she was in no way obliged under their agreement to do so, nevertheless she

would make him a present of them. Later he informed her that he was still unable to procure the required financing but that he was confident that a Mr. Gaston R. Miquelon would provide the necessary finances to build two houses if he were given a one-third interest in the existing partnership, and he requested the respondent to consent, like himself, to reduce their existing interest in the partnership from one-half to one-third each. He also suggested that if she would admit Mr. Miquelon into the partnership he would agree that, instead of her transferring two lots to him for nothing, as she had previously agreed, he would be willing to pay $1,200 for them, on the understanding that she would contribute the equivalent of $400 and Mr. Miquelon and himself would each pay her a like amount.

On the above representation, the respondent again gave her consent, and on June 22, 1954, she signed a deed transferring an undivided half-interest in lots 36, 37, 38 and 39 of part of original lot 148 to Mr. Vézina, in which the sale price is stated to be $1,200 (Ex. I-3).

A few days later, she received a promissory note for $800, signed by Mr. Vézina and dated June 25, 1954 (Ex. A-2).

On July 8, 1954, the two partners signed and registered a declaration under the *Partnership Declaration Act* of Quebec in the office of the Prothonotary of the Superior Court for the district of Montreal, in which they certified that they desired to carry on business under the name and style of "Pointe-aux-Trembles Development Reg'd." for the purpose of the construction, sale and exchange of immovables, with a place of business located in Montreal (Ex. A-4).

At some undetermined date (presumably after the registration of Exhibit A-4), Notary Jean R. Miquelon prepared a new 3-member deed of partnership in which the respondent and J. A. Vézina were both said to be doing business under the firm name and style of "Pointe-aux-Trembles Development Reg'd." and are described as party of the first part and Gaston R. Miquelon as party of the second part (Ex. A-3).

It is worth noting that the opening paragraphs of the deed contain the following declarations:

> The said partnership (Pointe-aux-Trembles Development Reg'd.) was formed to exploit lands situated in Pointe-aux-Trembles and the construction of houses thereon.

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The said land was the property of dame Corinne Roy and would be transferred by her in whole or in part to the Pointe-aux-Trembles Development Reg'd.

The said property would be subdivided in whole or in part so that lots could be sold individually with a house erected on each of the said lots.

It goes on to say:

These declarations having been made, the parties agree as follows:

The party of the second part undertakes to finance the construction of two bungalow-type houses which will be constructed entirely by the Party of the First Part.

It is useless to set out the remaining clauses of the deed because, although both J. A. Vézina and the respondent signed the agreement, Gaston R. Miquelon declined to do so because he entertained doubts as to whether the respondent, on account of her marital status, was legally entitled to sign the deed.

It transpired that at no time did Mr. Miquelon sign the new partnership agreement, neither did Mr. Vézina ever honour his note and the undivided half of four lots remained registered in his name.

During the next few months Mr. Vézina continued his efforts to obtain from various sources, including Central Mortgage and Housing Corporation, The Canadian Bank of Commerce and The Prudential Life Insurance Company, loans for construction purposes but due to his poor credit rating he was unsuccessful.

Next, in the expectation or hope that the respondent would use the proceeds to finance house construction he sought purchasers for some of the respondent's lots and including the sale to Mr. Vézina she sold seven lots in the last half of 1954 for $7,925, resulting in taxable profits of $4,467.61 (Ex. I-3).

Mr. Vézina was unable to persuade the respondent to use for house construction the proceeds from the above-mentioned sales. She reminded him of his own obligations in this regard and informed him that she intended to apply them against interest and capital on her bank-loan.

Mr. Vézina then adopted a new attitude and commenced to blame the respondent for his inability to secure a mortgage on the four half-lots which would have enabled him to proceed with house construction. On March 25, 1955, he instituted an action in the Superior Court for the district of Montreal, province of Quebec, in which he claimed that

the respondent had failed to fulfil her obligations under the partnership Exhibit A-1 and sought a dissolution of the partnership, an order requiring her to make a rendition of accounts and a condemnation in damages against her for $25,000.

Notwithstanding the above-mentioned proceedings, the respondent came to some sort of understanding with Mr. Vézina about the liquidation of outstanding debts, more particularly an architect's bill for $900 which he had failed to pay. He found one purchaser who bought a lot for $900 on September 15 and a second purchaser who on November 25, 1955 bought another for $950 (Ex. I-3). The profits realized on these sales were sufficient to pay off the debts and leave a surplus of $282.36 as claimed in the appellant's reassessment for 1955.

The two above-mentioned transactions of September and November 1955 were the last in which Mr. Vézina had been instrumental in finding a purchaser and thereafter the partners ceased to have any dealings with each other and the partnership's activities came to an end.

The proof also shows that the respondent had no contact with the purchasers of the lots which she sold in 1954 and 1955 and the only time she met them was when she signed the deeds of sale at the notary's office.

In respect of the Vézina action, as appears by copy of a judgment rendered on October 30, 1961 by the Honourable Mr. Justice C. A. Sylvestre (Ex. A-5), in her defence to the said action and by a cross-demand the respondent, apart from denying the aforesaid allegations, pleaded, *inter alia,* that she was induced to enter into partnership with the said Vézina by his false representations respecting his financial status and qualifications and but for the aforesaid deception she would never have entered into the said partnership; that the said Vézina had failed to fulfil his obligations under the said partnership agreement and she asked for annulment of Exhibit A-1 as well as of the previously mentioned deed of sale of a half interest in four lots for $1,200 (Ex. I-3).

The learned trial judge found that Vézina's aforesaid claim was entirely unfounded in fact and that the respondent's defence was well founded. He dismissed the Vézina action and declared the partnership agreement exhibit A-1 null and void. As to the resiliation of the sale to Vézina

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referred to in Exhibit I-3, the learned judge found that he could not annul it because the widow of the late J. A. Vézina had not been made a party to the action, but he reserved the respondent's rights in respect thereof.

The only sale effected in 1956 occurred on May 25, when Madame Thibeault sold to Côté & Lavigueur Construction Ltée practically all the remainder of the property, amounting to 426,781 sq. ft., for a reported price of $55,000, and, on the profit, was originally reassessed by the Minister at $27,394.35 (Ex. I-3—Annex 2), but, as previously stated, it was reduced to approximately $18,000 by agreement between counsel for the parties.

I might here add that the aforesaid deduction of about $9,000 came about because, as appears by Exhibits I-1 and A-6 and the evidence of Henri Lavigueur, in lieu of receiving $55,000 in cash the respondent received $10,000 cash and 450 preferred shares of the par value of $100 each of Côté & Lavigueur Construction Ltée, which—the parties agreed—had a market value of $80 per share.

The issue concerning the validity of Exhibit A-1 was pending before the Court and the evidence shows that the respondent, during the six months preceding the bulk sale, made no attempt, personally or through real estate agents or otherwise, to sell all or any part of the property. According to the evidence of the respondent, she was informed by Notary Roy that the said company was willing to take all the remainder of the property off her hands and advised her to sell it. Henri Lavigueur, an officer of Côté & Lavigueur Construction Ltée, testified that his company, for a long time, had been looking for a suitable land on which to build and that the instant property was found as a result of his company's efforts.

The question to be resolved is whether in the light of the foregoing facts and circumstances it can be said that the profit of $18,000 made by the respondent in respect of the bulk sale in 1956 can properly be termed "profit from a business", as claimed by the appellant, or was of a capital nature realized at a time when the respondent had ceased to carry on business.

Counsel for the appellant submitted that the evidence clearly indicates that the respondent launched into the world of commerce in partnership with J. A. Vézina. With this statement I wholly agree.

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The certificate of registration Exhibit A-4, which the respondent signed, certifies that such is the case and I do not think it matters that she took no part in the management of the partnership and that her only obligation to it was to transfer all or a portion of the property which she had acquired if, as and when her partner carried out his part of the bargain. It may be said that her position in the partnership amounted to little if anything more than a silent partner, but as indicated by counsel for the appellant, J. A. Vézina was actively managing the business with the knowledge and consent of the respondent and under the rules of partnership of the Civil Code of Quebec she is presumed to have given him a mandate for the management of the business and his acts are binding on her. The relevant portion of Art. 1851 C.C. provides:

1851. If there be no stipulation as to the managing of the business of the partnership the following rules apply:

1. The partners are presumed to have mutually given to each other a mandate for the management, and whatever is done by one of them binds the others; saving the right of the latter, together or separately, to object to any act before it is concluded;

Counsel for the appellant, in support of his submission that the $18,000 in issue constituted taxable income relied particularly on the following cases: *Regal Heights Ltd. v. Minister of National Revenue*[1]; *Glen J. Day v. Minister of National Revenue*[2]; *McIntosh v. Minister of National Revenue*[3].

The *Regal Heights* case concerned an incorporated company which acquired property for the purpose of establishing upon it a regional shopping centre. Its promoters and directors were experienced businessmen who, before effecting the purchase, were aware that their scheme, in order to be successful, apart from financing, which would run into several millions of dollars, was dependent on the procurement of a lease from a major departmental store and concerning which they had no previous assurance.

The Court held that it was reasonable to assume that the promoters and directors of the venture, with their knowledge and experience, would not neglect to weigh and consider alternative uses, including resale of the property in an undeveloped state, should their original intention fail to materialize, and I believe it was but natural under the cir-

[1] [1960] S.C.R. 902.

[2] [1958] S.C.R. 119.

[3] [1958] Ex. C.R. 44.

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cumstances that in the above case little or no weight was given to any contrary declaration made on the part of the said promoters and directors.

In the instant case, in my opinion, the respondent believed, not without justification, that Mr. Vézina, a professional man, was telling the truth when he informed her of the status which he possessed and the profits which he had realized in the house construction business. She herself had succeeded in borrowing $25,000 from a bank and undoubtedly considered that he would easily be able to raise $8,000 or $9,000, which was the cost of building single bungalows.

In dealing with intent, credibility I consider plays an important role. A perusal of the transcript clearly shows that the Board was of the opinion that the respondent was a forthright person worthy of belief, and when she stated under oath that on joining the partnership she had no notion of selling vacant lots as such at a profit she was speaking the truth.

I am of opinion that if the respondent had known as subsequent events proved (see Superior Court judgment Ex. A-5), that Mr. Vézina had a poor credit rating and that his testimony did not merit credence, she would never have entered into the partnership. It should also be emphasized that the respondent, in acquiring the property, intended to sell it to the partnership at cost.

Far from entertaining a purpose, will or design, within the usual meaning attributed to "intent", to sell vacant lands, the respondent did everything she could to prevent such an occurrence. In order to make good her partner's deficiency in carrying out his obligations and to assist him in doing so, she placed a one-half undivided interest in four lots in his name, and, when this proved insufficient or unavailing, agreed to admit a new partner and reduce her interest in the partnership from one-half to one-third, so that the original purpose of selling built-up units, instead of vacant lots, might be accomplished.

Apart from any question of intent, a further issue of primary importance must be borne in mind, namely, "Did the claim of $18,000 constitute income from a business which in turn depends upon not only what the respondent actually did in the taxable year 1956 but upon the manner in which she carried it out?". Stated a little differently, this reduces

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itself to a determination of whether the respondent had ceased to carry on business prior to January 1, 1956, and, if so, did she, in effecting the sale to Côté & Lavigueur Construction Ltée, on May 15, 1956, do so in such a manner as to constitute carrying on a business.

At no time could the instant property, as it existed in 1956, be regarded as stock-in-trade or inventory in the hands of the partnership, because the partnership had nothing more than a conditional right to acquire it, which was contingent on Mr. Vézina fulfilling obligations, which he failed to do. Moreover, during the taxation year 1956 with which we are concerned the implementation of the aforesaid obligations were no longer susceptible of being performed because, prior to January 1, 1956, the partnership had been dissolved by common consent when Mr. Vézina instituted proceedings seeking *inter alia* a dissolution in which the respondent concurred, and the partnership agreement (Ex. A-1) was also declared null and void by the judgment of the Superior Court *supra*.

The *McIntosh* case is closer to the case at bar in as much as, like the respondent, McIntosh, who had no experience in the business of house construction, was asked to enter into a partnership on a 50-50 basis with a person named Laidlaw, for the purpose of constructing houses on the property and, later, selling them and sharing the profits. Unlike the present case, however, it was Laidlaw who had experience in building and who bought the whole property consisting of 165 lots, whereupon, after some hesitation, McIntosh acquired a one-third interest in the partnership by purchasing 55 lots from his partner and obtained a promise of sale by paying $2,500 on account of the purchase price and became entitled to receive his title deed on paying the balance amounting to $1,872. The partners were to be associated in a house-building scheme but differences arose (the nature of which is not disclosed), but it would appear that McIntosh did not want to enter the construction business and Laidlaw did because Laidlaw offered to refund the $2,500 which his partner had paid on account and cancel the purchase. McIntosh refused the offer and took an action, for specific performance, in the Supreme Court of Ontario, which was ultimately settled out of Court. McIntosh paid the balance of the purchase price and took title to 55 lots,

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while Laidlaw kept the remaining 115 lots and the partners then went their respective ways.

McIntosh, apparently, did what he preferred to do and what he intended to do if it could be done, namely, sell his vacant lots, which he did in part, and was taxed on $12,000, representing his profits on the transaction. The Court found that no new situation arose insofar as McIntosh was concerned when he modified his original reluctant intention of sharing in a construction program and decided to sell vacant lots instead.

The *McIntosh* case is also distinguishable because he owned a vested interest in the property belonging to the partnership, as he had already paid $2,500 on account and was able and willing to pay the balance of $1,800, while in the instant case at no time did the Pointe-aux-Trembles Development Reg'd. have anything but a right which was conditioned on J. A. Vézina fulfilling certain obligations, which he failed to do.

The evidence in the *Day* case is briefly to the effect that in June 1950 he purchased a block of land consisting of 125 acres for $105,000 with the idea of turning it into a subdivision and then selling it all in lots, but in May 1951 he gave up this idea because the cost of carrying it out was greater than he anticipated. In November 1951 he sold the property en bloc for $205,000 and was assessed on the resulting profits which he realized in the taxation years 1952, 1953 and 1954.

The offer of $205,000 for the whole property was promptly accepted by Mr. Day and he paid the broker who brought it to him a commission of $10,000, whereupon the new purchaser took over the plans previously prepared by Mr. Day and, with modifications, had them accepted by the Planning Board and proceeded to effectively complete the subdivision.

In the above-mentioned case no partnership existed. Mr. Day alone managed and controlled the property and, before his alleged abandonment of his original plan in May 1951, he had gone about the business of subdividing in the same manner as those ordinarily engaged in the real estate business would do, by causing a subdivision plan to be prepared and which he succeeded in having accepted, subject to some modifications, by the Scarboro Planning Board, and he had also succeeded in obtaining offers for lots or group of lots,

which he refused, as apparently they were not sufficiently attractive.

There was no finding in the *Day* case that at any given moment the taxpayer ceased to be engaged in the real estate business. The evidence afforded little or no scope to establish the existence of a split personality such as arose in the instant case, wherein the respondent, in her quality as member of a partnership, was engaged in business but ceased to be so engaged when Mr. Vézina's activities terminated and the partnership was dissolved and the agreement on which it was based was declared by Court decree to be null and void.

The efforts made by a woman who lacked business experience to carry out her original intention is in contrast to the "do little or nothing" attitude of the taxpayer in the *Day* case, wherein he had more skill, ability and freedom than the respondent to dispose of his property in a manner which best suited his purpose.

That a taxpayer should be engaged in business in one taxation year and cease to be so engaged in the next, in my opinion, is by no means an extraordinary occurrence. Indeed, in face of the reverses prior to 1956 which beset the respondent's efforts to develop the property, it would be rather surprising if she did not desire to completely withdraw from business activities.

At no time after the Pratte sale of November 25, 1955 did the respondent or Mr. Vézina offer any part of the residue for sale, nor seek to sell it through real estate agents, and insofar as the bulk sale which occurred on May 15, 1956, as appears by her own evidence and that of Mr. Henri Lavigueur *supra,* the respondent, figuratively, did not raise a finger to bring about the aforesaid sale.

Counsel for the appellant stressed points of similarity between the case at bar and the three cases upon which he relied and recalled—not without justification—that the extended meaning of "business" as defined in s. 139(1)(*e*) of the Act is couched in terms so broad as to embrace "an undertaking of any kind whatsoever and includes an adventure or concern in the nature of trade".

Although it may be said that the case at bar bears a resemblance in several respects to the aforesaid authorities which upheld the reassessments made by the Minister, nevertheless, as observed by counsel for the respondent, on

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closer examination of the facts some striking differences appear which I think afford sufficient grounds for holding that the sum in issue falls on the non-taxable side of the dividing line.

In my opinion, in the light of the exceptional circumstances disclosed in this case the weight of evidence adduced on behalf of the respondent is such as to reasonably establish that the respondent had ceased to be engaged in business, within the meaning of the Act, six months prior to May 15, 1956, when she effected the sale of the property in issue, and that the said profit had the attributes of a capital accretion and did not constitute income from a business.

For the above reasons, I consider that the appeal should be dismissed with costs.

Judgment accordingly.