

BETWEEN :

DON FINANCE COMPANY, LIMITED . . APPELLANT;

AND

THE MINISTER OF NATIONAL  
REVENUE .....

} RESPONDENT.

1964  
June 2-4  
June 19

*Revenue—Income Tax—Income Tax Act, R.S.C. 1952, c. 148, ss. 85E, 85F (4) and 139(1)(w)—Income or capital gain—Sale of chattel mortgages to another finance company—Inventory—Receivables—Right to receive a receivable not in itself a receivable.*

The appellant had been carrying on the business of lending money on the security of chattel mortgages, when, in 1958, it sold all its chattel mortgages to Industrial Acceptance Corporation Ltd for the total amount owing thereon at the date of sale plus \$8,000. The appellant then surrendered its small loan licence and took steps to surrender its charter but could not do so because it could not obtain an income tax clearance. The appellant later commenced business again for an entirely different purpose and with certain new shareholders and new financing.

The issue on appeal was whether the above mentioned sum of \$8,000 was capital profit or income of the appellant

*Held:* That the sale of chattel mortgages was not made for any other purpose than to enable the appellant to go out of the finance business

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2. That s. 85F(4) of the *Income Tax Act* is not applicable to the transaction in question because part of what was sold by the appellant was the right to receive a receivable, and the right to receive a receivable is not in itself a receivable.
3. That notwithstanding the definition contained in s. 139(1)(w) of the *Income Tax Act* the chattel mortgages sold by the appellant were not, for the purpose of the *Income Tax Act*, inventory.
4. That section 85E of the *Income Tax Act* has no application to the facts of this case.
5. That the sum of \$8,000 is capital profit and not income
6. That the appeal allowed

APPEAL under the *Income Tax Act*.

The appeal was heard by the Honourable Mr. Justice Gibson at Toronto.

*R. M. Sedgewick, Q.C.* for appellant.

*G. W. Ainslie* and *D. H. Ayles* for respondent.

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

GIBSON J. now (June 19, 1964) delivered the following judgment:

Don Finance Co. Ltd. was licensed under the *Small Loans Act*, R.S.C. 1952, c. 51, from 1956 to 1958 and carried on the business of loaning money on the security of chattel mortgages in the City of Toronto, Ontario.

The original investment in this company was \$50,000 and, by August 23, 1958, which is the material date, the total amount of loans outstanding was only about \$27,000.

On August 23, 1958, that company sold all its chattel mortgages to Industrial Acceptance Corporation, Ltd. for the total amount owing on the chattel mortgages as of that date, plus the sum of \$8,000. Exhibit A-3 is a copy of a letter from Industrial Acceptance Corporation, Ltd. to Don Finance Co. Ltd., and constitutes the only contract document.

After that time, Don Finance Co. Ltd. surrendered its small loans license and took steps to surrender its charter by requesting its solicitors to do so, but did not succeed in this endeavour because it could not get an income tax clearance.

Subsequent to this time, and for an entirely different purpose, the company commenced business again after certain new shareholders had acquired an interest in the company and substantial new financing was introduced in the company.

For the purpose of this appeal, however, what transpired after the transaction in 1958 with Industrial Acceptance Corporation, Ltd. and after the small loans license had been surrendered and steps taken to surrender its charter is irrelevant.

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Mr. Richard McDonald Parkinson, a chartered accountant with over 25 years' experience gave in evidence his accounting opinion that the outstanding loans of this company as of August 23, 1958, should not be categorized as inventory. He stated that the Company computed its income on a cash basis; that the sum of \$27,339.65 as of August 23, 1958, represented the balance of all monies owing from debtors of Don Finance Co. Ltd.; that as of that date there was no chattel mortgages in default; and that the \$8,000, over and above the balance owing by the debtors, paid by Industrial Acceptance Corporation Ltd., was credited directly to the surplus account of Don Finance Co. Ltd. and not to its profit and loss account. This was done, he said, because, in his opinion, the \$8,000 was an unusual gain outside the ordinary course of business and if it had been credited to the profit and loss account, it would have given an untrue and inaccurate picture of the normal operating profit of this company.

Ted Davy, President of Don Finance Co. Ltd., said in evidence that it was intended as of August 23, 1958, that this Company would go out of business because of the competition of other companies in this field of business and also because this company had never really developed a substantial business.

I am of opinion that the sale made to Industrial Acceptance Corporation, Ltd. by Don Finance Co. Ltd., on August 23, 1958, was not made for any purpose other than to go out of the finance business.

I am also of opinion that s. 85 F (4) of the *Income Tax Act* is not applicable to the transaction which took place here because, in my opinion, and I so find, part of what was sold by the appellant was the "right" to receive a receivable, and the right to receive a receivable is not in itself a receivable.

I am also of opinion that these chattel mortgages are not, for the purpose of the *Income Tax Act*, "inventory", notwithstanding the definition contained in s. 139(1)(w) of this Act. In this respect, I must respectively disagree with

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the learned opinions set out in *Kendon Finance Company Ltd. v. Minister of National Revenue*<sup>1</sup> and *Cosmopolitan v. Minister of National Revenue*<sup>2</sup>. I say this because if the broad interpretation urged as the meaning of inventory in this subsection is correct, then many of the other sections of the *Income Tax Act* and the Regulations under the Act are meaningless.

It is not necessary in this particular case to give a broad and all inclusive meaning to that definition of "inventory" and in refraining from doing so a common sense solution to this problem results.

I am further of opinion that in so restricting the definition of "inventory" a meaning is not being given to it so as to make it inconsistent with other sections of the Act which provide in themselves what is tantamount to a full code. To categorize these chattel mortgages as inventory in this case would have the effect of making it in conflict with other sections of the Act.

Section 85E of the *Income Tax Act*, it follows, has no application to the facts of this case.

I therefore find that the \$8,000 differential paid by Industrial Acceptance Corporation, Ltd. to Don Finance Co. Ltd., over and above the sum owing by the debtors to Don Finance Co. Ltd., as of August 23, 1958, is capital profit and does not have to be included in computing the appellant's income for the 1958 taxation year.

The appeal therefore is allowed with costs.

*Judgment accordingly.*