BETWEEN:

GEORGIA GULF ESTATES LTD. APPELLANT;

AND

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

Vancouver 1967 Dec. 18

1968 Jan. 15

Income tax—Capital gain or business profit—Company acquires hotel, improves operations and sells—Whether adventure in nature of trade —Tests for determining.

Appellant, which was controlled by two men, was incorporated with the object of acquiring and operating hotels. Another company controlled by the same two men had previously bought a hotel, effected improvements with the object of increasing the hotel's profits and its value, and then sold it in August 1959 through a real estate broker at a profit. In January 1960 the last-mentioned company purchased a hotel for $330,000, transferred it in November 1960 to appellant, effected improvements in its operation, listed it with real estate brokers in 1961 at a sale price of $440,000, and eventually sold it in January 1962 for $426,000

Held, the profit on the sale was from an adventure in the nature of trade, and therefore taxable, because (1) appellant bought the hotel with the intention of selling it at a profit (*Campbell v. M.N.R.* [1953] 1 S.C.R. 3, *Regal Heights v M.N.R.* [1960] S.C.R. 902, *DeToro v. M.N.R.* [1965] 2 Ex C R 715, *Willumsen v M.N.R.* [1967] 2

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Ex. C.R. 257); (2) the listing of the hotel with real estate brokers and the various dealings with the brokers were operations of the same kind and carried on in the same way as those which were characteristic of ordinary trading in the line of business in which the venture was made (*Irrigation Industries Ltd. v. M.N.R.* [1962] S.C.R. 346); and (3) the sale of the hotel following active steps to improve its operation indicated that the transaction was that of an ordinary trader or dealer in hotels (*M.N.R. v. Taylor* [1956-1960] Ex. C.R. 3).

INCOME TAX APPEAL.

P. N. Thorsteinsson and *M. J. O'Keefe* for appellant.

S. A. Hynes for respondent.

SHEPPARD D.J.:—This appeal is by Georgia Gulf Estates Ltd. against an assessment of the 17th June, 1966, by the Minister holding that the taxable income for the taxation year 1962 included the profit on the resale of the Marine Hotel at Westview, adjoining Powell River, B.C., which the appellant contends was in error in that such profit was capital gain realized from the sale of an investment. The facts follow.

On the 19th July, 1955, Tudor Holdings Ltd. bought Tudor House in Esquimalt for $100,000 and on the 1st August, 1959 sold it for $265,000. The Tudor Holdings Ltd. had three shareholders, but the third was bought out so that thereafter the issued shares in Tudor Holdings Ltd. and in the appellant when subsequently incorporated were held by Hutchinson 200 shares and by Higbie 100 shares.

In January, 1960, Tudor Holdings Ltd. purchased the Marine Hotel at Westview, B.C. for $330,000 and on the 22nd November, 1960, Tudor Holdings Ltd. transferred to the appellant that day incorporated, and thereupon the Tudor company was wound up. On the 1st January, 1962, the appellant sold the Marine Hotel for $426,000; that is the transaction in question. On the 11th June, 1962, the appellant bought Westholme Hotel, Victoria, B.C. for $335,000 which it renovated and has since operated as the Century Inn. On the 17th June, 1966, the appellant was assessed by the Minister on its profit on the sale of the Marine Hotel at Westview.

Upon notice of objection the Minister on the 20th July, 1966, confirmed the assessment and the appellant brought

this appeal on the ground that the profit was not income but capital derived from the realization of a capital asset. The issue raises the problem whether the appellant was engaged at the appropriate time in the business of buying and selling hotels so that the transaction in question comes within the *Income Tax Act*, sections 3 and 4, particularly as extended by section 139(1)(*e*) to include "an adventure or concern in the nature of trade", the contention of the Minister; or whether the transaction was the realizing of a capital asset as contended by the appellant.

In *Irrigation Industries Ltd. v. M.N.R.*[1], the appellant taxpayer abandoned its original purpose of incorporation and purchased 4,000 shares of 500,000 in another company which it later resold at a profit. It was held the purchase was an investment and the sale was the realizing of capital and not of taxable income. Martland J. stated the test and their application as follows:

at p. 352:

> The positive tests to which he refers as being derived from the decided cases as indicative of an adventure in the nature of trade are: (1) Whether the person dealt with the property purchased by him in the same way as a dealer would ordinarily do and (2) whether the nature and quantity of the subject-matter of the transaction may exclude the possibility that its sale was the realization of an investment, or otherwise of a capital nature, or that it could have been disposed of otherwise than as a trade transaction.
>
> I will deal first with the second of these tests, which, if applied to the circumstances of the present case, would not, in my opinion, indicate that there had been an adventure in the nature of trade.
>
> The nature of the property in question here is shares issued from the treasury of a corporation and we have not been referred to any reported case in which profit from one isolated purchase and sale of shares, by a person not engaged in the business of trading in securities, has been claimed to be taxable.
>
> Cases in which the nature and quantity of the property purchased and sold have indicated an adventure in the nature of trade include *The Commissioners of Inland Revenue v. Livingston* ((1926), 11 Tax Cas. 538) (a cargo vessel); *Rutledge v. The Commissioners of Inland Revenue* ((1929), 14 Tax Cas. 490) (a large quantity of toilet paper); *Lindsay v. The Commissioners of Inland Revenue* ((1932), 18 Tax Cas. 43) and *Commissioners of Inland Revenue v. Fraser* ((1942), 24 Tax Cas. 498) (a large quantity of whisky); *Edwards v. Bairstow* ([1960] A.C. 14) (a complete spinning plant) and *Regal Heights Ltd. v. Minister of National Revenue* ([1960] S.C.R. 902) (40 acres of vacant city land).
>
> Corporate shares are in a different position because they constitute something the purchase of which is, in itself, an investment.

[1] [1962] S.C.R. 346.

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> They are not, in themselves, articles of commerce, but represent an interest in a corporation which is itself created for the purpose of doing business. Their acquisition is a well-recognized method of investing capital in a business enterprise.

and at p. 353:

> Furthermore, the quantity of shares purchased by the appellant in the present case would not, in my opinion, be indicative of an adventure in the nature of trade, as it constituted only 4,000 out of a total issue of 500,000 shares.

In the second test, the emphasis is put on the subject-matter of the transaction, hence if the subject matter can be properly used only by resale, then the purchase and resale are presumed to have been "an adventure or concern in the nature of trade". To the judgments cited there may be mentioned *M.N.R. v. Taylor*[2], where 1,500 tons of lead requiring 22 carloads to carry, were bought and resold by the taxpayer to his company. Thorson P. at p. 30 said:

> The nature and quantity of the subject matter of the transaction were such as to exclude the possibility that it was other than a transaction of a trading nature. The respondent could not do anything with the lead except sell it and he bought it solely for the purpose of selling it to the Company. In my judgment, the words of Lord Carmond in the *Rheinhold* case (*supra*) that "the commodity itself stamps the transaction as a trading transaction" apply with singular force to the respondent's transaction.

In the first test the emphasis is put on the party to the transaction and his conduct. That test is elaborated as follows: *Irrigation Industries Ltd. v. M.N.R.*, (*supra*), by Martland J. at p. 354:

> "...whether a venture such as we are now considering is, or is not, 'in the nature of trade', is whether the operations involved in it are of the same kind, and carried on in the same way, as those which are characteristic of ordinary trading in the line of business in which the venture was made." That covers all the cases.

citing *Leeming v. Jones*[3] and continues at p. 354:

> Were the operations involved in the present case of the same kind and carried on in the same way as those which are characteristic of ordinary trading in the line of business in which the venture was made?

and later at p. 354:

> But it may be contended that persons may make a business merely of the buying and selling of securities, without being traders

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[2] [1956-60] Ex C.R. 3.

[3] [1930] 1 K.B. 279 at p. 283.

in securities in the ordinary sense, and that the transactions involved in that kind of business are similar, except in number, to that which occurred here.

In *M.N.R. v. Taylor*, (*supra*), Thorson P. at p. 29 said:

> But there are some specific guides. One of these is that if the transaction is of the same kind and carried on in the same way as a transaction of an ordinary trader or dealer in property of the same kind as the subject matter of the transaction it may fairly be called an adventure in the nature of trade. The decision of the Lord President in the *Livingston* case (*supra*) and the *Rutledge* case (*supra*) support this view. Put more simply, it may be said that if a person deals with the commodity purchased by him in the same way as a dealer in it would ordinarily do such a dealing is a trading adventure: *vide* Lord Radcliffe's reasons for judgment in *Edwards v. Bairstow* (*supra*).

As to profits—in *Irrigation Industries Ltd. v. M.N.R.* (*supra*), Martland J. stated at p. 350:

> It is difficult to conceive of any case, in which securities are purchased, in which the purchaser does not have at least some intention of disposing of them if their value appreciates to the point where their sale appears to be financially desirable.

at p. 354:

> ... where the realization of securities is involved, the taxability of enhanced values depends on whether such realization was an act done in the carrying on of a business.

at p. 355:

> The only test which was applied in the present case was whether the appellant entered into the transaction with the intention of disposing of the shares at a profit so soon as there was a reasonable opportunity of so doing. Is that a sufficient test for determining whether or not this transaction constitutes an adventure in the nature of trade? I do not think that, standing alone, it is sufficient.

In *M.N.R. v. Taylor*, (*supra*), Thorson P. stated at p. 26:

> The intention to sell the purchased property at a profit is not of itself a test of whether the profit is subject to tax for the intention to make a profit may be just as much the purpose of an investment transaction as of a trading one.

and at p. 30:

> It is of no avail to the respondent that when he purchased the lead he did so without any intention of selling it to the Company at a profit. He did not pretend that his purchase was for an investment purpose. All his reasons were business reasons of a trading nature. His adventure was a speculative one. ... He saw advantages of a business nature in the transaction...

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It follows that purchasing with the intent to resell at a profit is not an exclusive nor absolute test as it does not prevent the transaction being the realization of an investment and not taxable income as in *Irrigation Industries Ltd. v. M.N.R.*, nor does the absence of such intent to resell at a profit preclude the transaction being an "adventure ... in the nature of trade" and the proceeds taxable income as in *M.N.R. v. Taylor*, (*supra*). But where the transaction falls within either of the two tests, buying with intent to resell at a profit may be applied, as for example, where a person who owns properties or commodities deals with them in the same way as a dealer, then he is engaged in an "adventure ... in the nature of trade" within section 139(1)(*e*) and any profit is taxable income. The test of purchase with intent to resell at a profit was applied in the following judgments: *Campbell v. M.N.R.*[4]; *Regal Heights Ltd. v. M.N.R.*[5]; *DeToro v. M.N.R.*[6]; *Willumsen v. M.N.R.*[7].

Those tests lead to the question whether the circumstances here are those required to bring the transaction in question within section 139(1)(*e*). That is essentially a question of fact: *Campbell v. M.N.R.*, (*supra*) per Locke J. at p. 6; *McIntosh v. M.N.R.*[8]. The appellant contends that it bought the Marine Hotel solely to be operated as a hotel and for no other reason; on the other hand, the Minister contends that the appellant bought the hotel to operate and by increasing the revenue thereby to increase the value and to sell at a profit. That question of fact is the ultimate issue.

As to the facts of this case, the memorandum of association (Ex. A-1) of the appellant company has the objects of acquiring and operating hotels and of operating the particular parts thereof, which objects also imply the power to sell so as to make a profit: *The Companies Act*, R.S.B.C. 1960, c. 67, sec. 22(1) empowers the company to carry on any business capable of being conveniently carried on or to enhance the value or render profitable any of the proper-

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[4] [1953] 1 S.C.R. 3 per Locke J. at pp. 6, 7.

[5] [1960] S.C.R. 902 per Judson J. at p. 905.

[6] [1965] 2 Ex. C.R. 715 per Cattanach J. at p. 728.

[7] [1967] 2 Ex. C.R. 257; 67 DTC 5022 per Cattanach J. at p. 5028.

[8] [1958] S.C.R. 119 per Kerwin C.J.C. at p. 121.

ties and rights of the company, (p), to sell and deal with property and rights of the company (q), and to do all things incidental (x).

Further, there was throughout a system to buy a hotel, to improve and to sell at a profit. Hutchinson and Higbie were experienced in operating the Tudor House and Hutchinson had a cost accounting system which imposed a continuous check of each department to see if it were paying. Their purpose, in the Tudor Company and in the appellant, was to buy a hotel in which the management could be improved, and to increase the revenue and thereby increase the value.

(1) In each instance they bought a hotel which could be improved. The Tudor House was not operating successfully. Hutchinson told Marriette that they had renovated the hotel, doubled the area of the beer parlour, paved the parking lot, thereby making it a profitable operation. They listed with Enterprise Realty and sold at a profit.

(2) After the sale Hutchinson looked at hotels as he wanted an integrated hotel operation and eventually chose the Marine Hotel as the management could be improved, it was not of the best. Hutchinson reviewed the operating profits of the hotel by departments and introduced a cost accounting system. The appellant by Hutchinson and Higbie discharged all the kitchen help which had formerly been causing trouble by taking leave in a group, renovated the dining room at a cost of $30,000, and the food department alone developed a profit of $30,000. In March or April, 1961, Hutchinson told Marriette that his (Hutchinson's) cost accounting was responsible for making the hotel a desirable picture, and that he intended to put it up for sale.

(3) In the case of the Tudor House the Tudor Company, and in the case of the Marine Hotel the appellant, increased the operating profits and sold the hotel at a profit, and in the case of both companies Hutchinson and Higbie were shareholders with control.

Throughout there was the intention of increasing the profits so as to increase the value; that was stated by Hutchinson. But if the intention were only to operate the

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hotel as a capital asset, then it was no concern of the taxpayer or of the shareholders that there was an increase in value. The purpose of increasing the value could indicate the intent to sell as a primary purpose. In each case the company did sell at a profit.

As to listing—both the Tudor House and the Marine Hotel were listed with real estate agents for the purpose of sale. The Tudor House was listed with the Enterprise Realty Company and a commission paid on the sale. Early in 1961, not later than August 1961, the appellant listed the Marine Hotel with Gillanders Realty of Vancouver by an oral listing exclusive for sixty days for sale at $440,000 to realize a net sum of $425,000. Hutchinson on behalf of the appellant went to the office of Gillanders Realty in Vancouver to see what other hotels were for sale, and there gave the oral listing specifying the price. That listing indicates that at least that early the appellant, having acquired the hotel in November 1960, had decided not to profit by operating but by selling, and that the improvements then made and consequent operating profit had permitted a net asking price of $425,000. In August of 1961 Hutchinson made an oral arrangement with one Marriette, and Marriette produced Mantoani as the agent of the syndicate who ultimately purchased at $426,000. Further, some real estate agents specialize in selling hotels, and listing to them is a common method of selling hotels. Hence that listing would indicate dealing with the hotel in a way or "characteristic of ordinary trading" in hotels, within *Irrigation Industries Ltd. v. M.N.R.*, (*supra*), and dealing "as a dealer would ordinarily do" within *M.N.R. v. Taylor*, (*supra*).

After the sale was completed the appellant refused to pay any commission beyond the $1,000. There was an action for commission, initially by Marriette Agencies Ltd. and later amended to Hopper & Jamieson Limited, of which action there were put in as exhibits an examination for discovery of Hutchinson (Ex. R-3), the proceedings at trial (Ex. R-4) and the reasons for judgment of Wootton J. (Ex. A-5). At that trial (Ex. R-4, p. 3) Hutchinson testified that he gave a listing to Gillanders Realty at $440,000 and testified, "Yes, I told him that I wanted $425,000 net to Georgia Gulf Estates and that we wanted cash to the mortgage".

In the reasons for judgment (Ex. A-5) Wootton J. held:

> I find upon the facts that the witness Marriette was the instrument of introduction of the purchaser to the defendant...(p. 2)
>
> It was the witness Marriette, an unlicensed person, who "found the purchaser" and he secured the purchaser. As I indicated above, these acts he could not perform as the basis for the claim of commission. (p. 6)
>
> Apparently there were some visits by Hutchinson to the office of the plaintiff and some casual talk between Creamer and Hutchinson over the telephone and once at the airport...
>
> ... Very little was done beyond naming the person interested in the purchase of the hotel and the delivery of one or two statements.
>
> Upon the whole of the evidence and after considering the law and the arguments raised I am of the opinion that the plaintiff has failed to prove its case in any part and I therefore dismiss the action with costs. (pp. 7-8)

Here the question is not whether there was a valid listing within the *Real Estate Act,* R.S.B.C. 1960, c. 330, Sec. 4, but in this action the question is whether there were such conduct of the appellant through Hutchinson as would indicate, in relation to the Marine Hotel, an "adventure or concern in the nature of trade" within Section 139 (1)(*e*)—that is, whether such conduct was "characteristic of ordinary trading" within *Irrigation Industries Ltd. v. M.N.R.*, (*supra*), or such "as a dealer would ordinarily do" such dealing within *M.N.R. v. Taylor*, (*supra*), and not whether there were a valid listing. In such purported listing in "fixing the price" and in resale, it cannot be said that the role of the appellant was passive or "the antithesis of what one would expect from a vendor under like circumstances": *M.N.R. v. Valclair Investment Company Ltd.*[9].

The onus is on the appellant to prove error in the assessment: *Dezura v. M.N.R.*[10]. The weight of the evidence of Hutchinson, the sole witness for the appellant, is affected by his answers on the examination for discovery in this action, wherein he said the appellant did not make any efforts to sell the Marine Hotel. In question 71 he stated:

> 71. Q. What efforts did the Appellant make to dispose of the Marine Hotel?
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> A. I did not make any efforts.

That answer may be contrasted with his evidence on examination for discovery in the action of *Hopper and*

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[9] [1964] Ex. C.R. 466, Kearney J. at p. 477.

[10] [1948] Ex. C.R. 10.

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Jamieson Limited v. Georgie Gulf Estates Limited (Ex. R-3) in which he stated he did grant a listing, as follows:

14. Q. Are you referring to an interim agreement dated December 5th, 1961?
A. Yes, I am.

15. Q. But presumably the decision to place the hotel for sale was reached prior to that date. Is that right?
A. Well, it would have been sold prior to that date if we had come to some agreement, yes.

16. Q. And prior to that date did you place the hotel for sale with anyone other than the plaintiff?
A. It was listed at one time, yes.

17. Q. And who did you list it with?
A. An outfit called Gillanders Realty, here in town.

18. Q. Here in Vancouver?
A. Yes.

19. Q. When was the hotel listed for sale with that company?
A. Oh, it would be in the early part of 1961. I can't recall just exactly when it was.

20. Q. Did the defendant company give that company an exclusive listing?
A. It was an oral exclusive listing. I had done business with this outfit before.

21. Q. What price if any did you instruct them to find a purchaser for?
A. We were asking for $425,000 00 net to Georgia Gulf Estates.

22. Q. And did you discuss with that company what commission if any would be paid if a purchaser would be found at that price?
A. No. Gillanders Realty decided to list the hotel at the price of $440,000.00.

23. Q. Were they successful in selling the hotel?
A. No, they weren't.

24. Q. Did you subsequently ask anyone else to attempt to sell the hotel?
A. No, I did not.

* * *

88. Q. Well, do you recall what you did say?
A. The hotel was always for sale but it wasn't really on the market. I'll put it that way.

89. Q. But did you not express concern to Mr. Marriette or Mr. Creamer at the delay in the Mantoani syndicate coming up with a firm offer?
A. Well, there was no firm offer. There never was a firm offer until—

Hutchinson's answers on discovery in *Hopper and Jamieson Limited v. Georgia Gulf Estates Limited* offer dif-

ficulty to saying that his evidence alone in this present action in the light of the unexplained absence of Higbie is of sufficient weight to shift the onus of proof.

In January 1960, Hutchinson and family went to Powell River and, according to Hutchinson, "They were very unhappy after a very short time" because of the isolation and small size of the community. In November 1960, Tudor Company conveyed to the appellant. On that evidence there would have been an intention to sell before the appellant acquired the hotel, but in any event, assuming such dissatisfaction with Powell River and Westview, that does not necessarily exclude the prior intention to make a subsequent sale as an adventure in the nature of trade within section 139(1)(*e*).

The appellant has cited the following judgments. The appellant contended that the proceeds of the Marine Hotel should be regarded as capital for the reasons in *Irrigation Industries Ltd. v. M.N.R.*, (*supra*). There the appellant bought 4,000 shares in a company out of the 500,000 shares which were issued, and resold at a profit. Martland J. at p. 352 stated:

> Corporate shares are in a different position because they constitute something the purchase of which is, in itself, an investment. They are not, in themselves, articles of commerce, but represent an interest in a corporation which is itself created for the purpose of doing business. Their acquisition is a well-recognized method of investing capital in a business enterprise.

and at p. 355:

> In my opinion, the transaction in question here does not fall within either of the positive tests which the authorities have suggested should be applied.

That judgment is distinguishable in the subject matter; there "corporate shares", here a hotel.

Sterling Paper Mills Inc. v. M.N.R.[11] is also distinguishable on the facts. There the appellant bought a paper mill admittedly intending to operate it as a capital investment but the vendor refused to sell the mill without selling with it a timber limit. It was held that the timber limit became a capital asset, and the sale at a profit was the realizing of a capital asset. That judgment is distinguishable on the

[11] [1960] Ex. C.R. 401.

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facts as the purchaser was there required to purchase by the vendor, and there was here a voluntary purchase by the appellant with a view to resale at a profit.

The appellant cited *Hazeldean Farm Company Limited v. M.N.R.*[12] as authority for the principle that to bring the transaction within section 139(1)(*e*) there must be at the time of purchase an intent to resell at a profit. The judgment establishes no such principle for the following reasons:

(1) That principle contended for did not arise as the only question raised was the intent at the time of purchase. Noël J. at p. 617 states:

> ... was the appellant's intention as far as the balance of the land was concerned, exclusively to farm it, or had it a dual intent as suggested by counsel for the respondent of holding this land and developing it until it became ripe for profitable disposition and in the interim deriving some income from some farming activities and rental of the property.

It was not necessary to consider a later intent as that point was not raised.

(2) The principle contended for by the appellant is not the law. It is open to an owner to convert at any time a capital asset into a business inventory so as to make the resale an "adventure or concern in the nature of trade" within section 139(1)(*e*).

In *Irrigation Industries Ltd. v. M.N.R.* (*supra*), Martland J. stated at p. 354:

> ... where the realization of securities is involved, the taxability of enhanced values depends on whether such realization was an act done in the carrying on of a business.

In *Moluch v. M.N.R.*[13] the taxpayer bought land, used it as a home and farm and later subdivided and sold lots. Cattanach J. said at p. 718:

> There is no doubt whatsoever in my mind that when the appellant originally acquired the land in question he did not do so with an intent to turn it to account for profit by selling it. This fact was readily conceded by counsel for the Minister in presenting his argument. However, even if, at the time of acquisition, the intention of turning the lands to account by resale was not present, it does not necessarily follow that profits resulting from sales are not assessable to income tax. If, at some subsequent point in time, the appellant embarked upon a business using the lands as inventory in the

[12] [1967] 1 Ex. C.R. 245; [1966] C.T.C. 607.
[13] [1967] 2 Ex. C.R. 158; [1966] C.T.C. 712.

business of land subdividing for profit, then clearly the resultant profits would not be merely the realization of an enhancement in value, but rather profits from a business and so assessable to income tax in accordance with Sections 3 and 4 of the *Income Tax Act*, R.S.C. 1952, chapter 148.

In *M.N.R. v. Firestone Management Limited*[14] Jackett P. at pp. 774-5 approved the *Moluch* case in the following words:

> The appellant relies on the recent decision of my brother Cattanach in *Moluch v. M.N.R.*, [1966] C.T.C. 712, in which it was decided that the appellant had acquired land as a *capital asset* of a farming business and, after he ceased carrying on that business, used that land as the *inventory* of a new business in which the raw land was converted into building lots and made the subject matter of an operation of selling lots to individual builders. I entirely agree with that decision and I also agree with Cattanach J. that, in any particular case, "the matter is one of degree depending upon the business-like enterprise and activity displayed." I also agree that an "element of trade" would be introduced if a purchaser were, by himself or his own employees, or by a contractor, through an expenditure of effort and monies, to change the character of the property. Whether such "element of trade" is such as to constitute the particular operations the carrying on of a business remains, as Cattanach J. says, a question of degree "depending upon the business-like enterprise and activity displayed".

(3) In any event here the appellant did purchase with the intention of selling the hotel at a profit. Whether there is such an intent is a question of fact on which there may be diversity of opinion: *Scott v. M.N.R.*[15] and being a question of fact is outside the doctrine of *stare decisis*.

In conclusion, here there is an adventure in the nature of trade within section 139(1)(*e*) for the following reasons:

(1) The appellant purchased the Marine Hotel with the intention of selling at a profit: *Campbell v. M.N.R.*, (*supra*), Locke J. at pp. 6, 7; *Regal Heights Ltd. v. M.N.R.*, (*supra*), Judson J. at p. 905; *DeToro v. M.N.R.*[16]; *Willumsen v. M.N.R.*, (*supra*), Cattanach J. at p. 5028.

(2) The listing at a fixed price and various visits with Marriette are operations of the same kind and carried on in the same way as those which are characteristic of ordinary trading in the line of business in which the

[14] [1967] 1 Ex. C.R. 340; [1966] C.T.C. 771 at 774.
[15] [1963] S.C.R. 223, Judson J. at p. 225.
[16] [1965] 2 Ex. C.R. 715, Cattanach J. at p. 728.

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venture was made: *Irrigation Industries Ltd. v. M.N.R.*, (*supra*), at p. 354, namely, in the business of selling hotels.

(3) The sale of the hotel through the active efforts of Hutchinson, which included Hutchinson's assuming the office of general manager and his installing a system of cost accounting over all departments, the improvement in the hotel, in the operating profits and in the value of the hotel, the listing by the appellant with Gillanders Realty and fixing the sale price, the subsequent similar transactions with Marriette which resulted in the sale at $426,000, all these indicate the transaction as being of the same kind and carried on in the same way as a transaction of an ordinary trader or dealer in property of the same kind: *M.N.R. v. Taylor* (*supra*), at p. 29, that is, of an ordinary trader or dealer in hotels.

The appeal is therefore dismissed with costs.