1958
Mar. 17
1959
Mar. 10

BETWEEN:

TUXEDO HOLDING COMPANY LIMITED .... APPELLANT;

AND

THE MINISTER OF NATIONAL REVENUE .... RESPONDENT.

Revenue—Income—Value of real estate acquired by company for issue of its capital stock—Lots held in capacity of trustee not to be considered in fixing value of other lots—Total par value of shares issued deemed to be cost of lots—Appeal allowed in part.

Messrs. H and F entered into an agreement on their own behalf and that of others to donate 160 acres of land as a site for a university in Winnipeg, Manitoba. It was expected that if the university were built the value of other lands held by them in the vicinity of the site would greatly increase in value. These land holders obtained the incorporation of the appellant real estate company in 1914, the authorized capital of which was 2,000 shares of $100 par value. The 160 acre university site was transferred to the company to be held by it for the university. One thousand shares of the company's stock were issued by it to the group who had transferred the university site to the company and later other lots valued at $355,000 were transferred by the group to the company which issued to them the remaining 1,000 shares of its capital stock. In 1951 some of the lots were sold and in determining the profits on such sale for income tax purposes the Minister of National Revenue assessed them on the basis that the cost at which they had been acquired in 1914 was $100,000. An appeal to the Income Tax Appeal Board was dismissed. The company appealed to this Court contending that the lots had been purchased at a cost of $355,000.

Held: That the lots were acquired for the issue of all the company's shares after the university site had been acquired, such site having been received by the company as a trustee for the purpose of transferring it to the university authorities and could not be considered part of the company's trading stock.

2. That the issue of all the appellant's shares for the lots was referable only to those lots and no part of such issue was attributable to the university site.

3. That the price paid by appellant for the lots was the par value of the 2,000 shares of capital stock, namely $200,000 which sum correctly represents the cost of the lots to appellant.

4. That stock acquired by a trader must be brought in at the price paid for it in order to calculate the profit made on its sale.

APPEAL from a decision of the Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice Cameron at Winnipeg.

Sir Charles Tupper, Q.C. and *J. J. Robinette, Q.C.* for appellant.

A. W. Scarth and *A. J. Irving* for respondent.

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

CAMERON J. now (March 10, 1959) delivered the following judgment:

This is an appeal from a decision of the Income Tax Appeal Board, dated May 8, 1957 (17 Tax A.B.C. 166) dismissing the appellant's appeals from re-assessments made upon it for the taxation years ending November 30, 1951, and 1952. The appellant company was incorporated on August 20, 1914, under the *Companies Act* of the Province of Manitoba with an authorized capital of $200,000.00 divided into 2,000 shares of a value of $100.00 each. Included in the purposes and objects of the company was that of acquiring, dealing in, and selling lands in the Province of Manitoba. It is conceded—and rightly so—that profits realized from the acquisition and sale of such property constitute taxable income of the appellant.

In 1951, the appellant sold 1½ lots. The question for determination is the amount of the profit so realized, the single item in dispute being the cost to the appellant of the lots so sold. As I understand the evidence, no lots were sold in 1952, but an appeal was taken from the re-assessment made in that year merely because the respondent had credited part of the overpayment of $424.53 in that year on the outstanding balance claimed in the re-assessment for 1951.

Before considering the various submissions as to the proper method of computing the cost of the lots sold in 1951, I shall set out as concisely as I can the manner in which the appellant acquired title to the property. The story commences nearly fifty years ago. In 1910, certain individuals and companies, owning lands in Tuxedo, adjacent to the boundary of the City of Winnipeg, decided to negotiate with the University of Manitoba (hereinafter

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called the "University") for the location of the University in the said area. An agreement dated October 6, 1910, forming part of Exhibit 4, was entered into between Messrs. Heubach and Finkelstein and the University, by the terms of which the former agreed to provide the University with a free site of 160 acres conditional on the University spending certain amounts in laying out and improving the lands and expending certain amounts in erecting University buildings thereon. The lands intended to be conveyed to the University were owned by Heubach and Finkelstein and Tuxedo Estates Ltd., but it is common ground that in executing that agreement, Messrs. Heubach and Finkelstein were acting not only on their own behalf, but also on behalf of Tuxedo Estates Ltd. and other land companies. The purpose of the owners in agreeing to provide a site for the University was the expectation that if the University were built on that site, the values of the remaining lands would be greatly enhanced. It is recited in that agreement that the University had accepted the offer so made on the terms and conditions therein stated. Clause 7 gave the University the option to acquire further lands at a fixed price, but that option was never exercised.

In furtherance of the plan, an agreement was entered into by all the owners of the land in 1911 (Exhibit 3). Tuxedo Estates Ltd. was the party of the first part and Messrs. Heubach and Finkelstein parties of the second part, these three being the owners of the 160 acres selected as a site for the University. Three corporate land-owning bodies were the parties of the third, fourth and fifth parts, and the owners in certain proportions of lands adjoining the University lands.

It is recited in that agreement that Messrs. Heubach and Finkelstein had entered into the agreement with the University with the approval and at the request of the other parties and that it was understood that such lands as might be chosen for the University were to be conveyed by the respective owners and that all the parties thereto "should be assessed therefor in land" and further that it was desirable to execute a formal contract embodying the said agreement and the manner of carrying it into effect.

Provision was made for the incorporation of a "new

company" with an authorized capital of $200,000.00 with power to deal in real estate. The parties of the first and second parts agreed to convey to the new company the 160 acres representing "the University lands" in consideration of receiving one-half of the fully paid up shares in the new company. In clause 3 it is stated:

> The estimated value of said lands except the Chiswell property, is $354,977.70 of which $223,946.80 is made up of lands to be transferred by the First Party and the balance of the lands to be transferred by the Second Party. The said estimated value is arrived at by taking the retail prices for said property as shown in that part of the first schedule relating to the property of the first and second parties, and deducting therefrom forty-five per centum.

These agreed values are further explained by the opening recital which refers to all the lands in question:

> Whereas the parties hereto are respectively the owners of properties set forth in the first schedule hereto, which properties are for the purposes of this agreement taken to be of the values set forth opposite same in said schedule, and being the values at which said properties have been held for sale and as shown on the retail price lists prepared by the owners thereof respectively, less forty-five per centum which is taken to be a fair and reasonable amount to cover the cost of converting such property into cash in the usual course of business.

It was further agreed that the parties of the third, fourth and fifth parts in consideration of the issue to them of the remaining fifty per cent of the stock in the new company and in proportion to their respective contributions of land should, out of the lands owned by them, convey to the new company property to the like value of $354,977.70 to be made up in proportion to the value of their respective holdings in the first schedule. Then clause 9 provided:

> In the event of the University of Manitoba carrying out the said agreement, the new Company will transfer the property in accordance with the terms of such agreement, and shall pay off the aforesaid mortgage upon a portion of same as said mortgage matures using therefor funds obtained from the sales provided for in paragraph numbered 8 hereof or such other funds as to the directors may seem advisable; but in the event of the University of Manitoba not carrying out such agreement and the said property becoming freed from the terms thereof the directors of the new company will sell and dispose of such property in such manner as they may think best.

Attached to the agreement were various schedules showing the properties owned by each party, with the frontages, price per foot of frontage and the value of each parcel. For example, the values of the University land set aside

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by Tuxedo Estates Ltd. is given as $407,176.00. It was after allowing forty-five per cent thereof as "a fair and reasonable amount to cover the cost of converting such property into cash in the usual course of business," as above referred to that the contribution of Tuxedo Estates Ltd. was valued at $223,946.80.

The proposed "new company" was incorporated in 1914 as Tuxedo Holding Co. Ltd.—the appellant herein. By agreement dated December 14, 1914 (Exhibit 4) attached to and forming part of which are the earlier agreements of 1910 and 1911, the appellant agreed to carry out the provisions of the agreements of 1910 and 1911 upon receiving transfers of the University lands comprising 160 acres for which 1000 fully paid-up and non assessible shares would be issued to the owners thereof in proportion to the agreed value of their holdings therein; and, upon receiving a transfer of the remaining property comprising 905 lots, a similar number of like shares would be issued to the then owners in proportion to the agreed value of their holdings therein. The parties to that agreement were not precisely the same as those in the 1911 agreement due to death and transfers of interest in the lands but that matter is of no importance in this case. Pursuant to that agreement the lands comprising the University site of 160 acres, and 905 lots were transferred to the appellant and the appellant issued the whole of its capital in fully paid up and non assessible shares to the parties in the proportions set out in the agreement Exhibit 4.

In November 1919, the appellant with the consent of the University of Manitoba transferred to His Majesty the King in the right of the Province of Manitoba 37.98 acres, being a portion of the University site, to be used for educational purposes. On the same date the appellant company transferred to the University of Manitoba the balance of the University site, subject to the terms and conditions therein provided. In 1930 following certain litigation, an agreement was entered into between the appellant company, the University of Manitoba and the Province of Manitoba by which it was agreed that the University should be relieved of its responsibility to establish the University on the University site in Tuxedo

and the appellant would be relieved of its responsibility to provide lands therefor; the University would re-convey to the appellant the lands conveyed to it in 1919 and the appellant would be paid $65,000.00. These provisions were duly carried out.

In 1951 the appellant sold one and one-half lots for $1875.00. In re-assessing the appellant the Minister fixed the cost thereof at $305.90 and added to the declared income of the appellant the difference of $1569.10 as profit on the sales. The amount involved in the re-assessment for 1951 is relatively small but the principle involved is of importance to the appellant because of the very large number of lots remaining unsold. It should be stated here that a few lots were sold in earlier years and a very substantial number were lost through tax sales.

The method by which the Minister arrived at the cost of $305.90 for the one and one-half lots sold is shown on the statement attached to the re-assessment entitled "Evaluation of land costs." It was first assumed that the cost of the University site of 160 acres was the face value of the 1000 shares having a par value of $100.00 each issued in payment therefor—a total of $100,000.00. Of the total acreage 118.53 remained in the possession of the appellant on November 30, 1950, the end of its previous taxation year, representing on a percentage basis, $74,080.00 of the original cost; to that amount was added $4671.97, an adjustment made to bring the land account in line with the balance sheet at November 30, 1950, a total of $78,751.97.

Similarly it was assumed that the 905 lots were acquired at a cost equivalent to the face value of the 1000 shares having a par value of $100.00 each issued in payment therefor—a total of $100,000.00. As of November 30, 1948, only 185 lots remained or 39.22 per cent of the total number, the cost of such lots being, therefore, $39,220.00. This amount was reduced by $1,900.00 representing the proceeds of the sale of two lots thereafter but before 1951, leaving a total cost of $37,320.00 for the lots on hand at November 30, 1950, or an average of $203.93 per lot for each of the 183 lots then unsold. The one and one-half lots sold in 1951 were from these lots and accordingly the cost thereof

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was fixed at $305.90. The computation also shows that on this basis the revised cost of all the land retained by the appellant on November 30, 1951—whether of acreage or lots—was $114,196.97, a figure which corresponds precisely with the value of "unsold property" listed in the balance sheet attached to the appellant's 1951 tax return and approved by its directors and auditor.

It will be seen therefore that the Minister's assessment was based on the assumption that the cost of all land to the company was an amount equal to the par value of all its shares which it had issued to the vendors in payment, namely $200,000.00. The Income Tax Appeal Board agreed that such was the case and dismissed the appellant's appeal.

For the appellant it is submitted that the cost of the lands to the appellant is not fixed or ascertained by the face value of the shares issued in consideration of the transfer of the land. It is contended that while the cost of the lands cannot be fixed at less than such face value ($200,000.00), such cost may be in excess of the face value of the shares. It is first submitted that the cost here is fixed by the agreement of November 14, 1914 (the only agreement in which the appellant is a party) by which it agreed to "abide by, carry out and perform" the agreement of 1911 between the various landowners, and the 1910 agreement with the University. In the 1911 agreement, it was provided that the land to be contributed by the owners of the University site had an estimated value of $354,977.70, which was arrived at by taking the retail prices for such property as shown in the schedules thereto and deducting therefrom forty-five per cent, said to be the normal cost of selling. It is also provided that the property to be conveyed by the other landowners to a total value of $354,977.70 should be made up by them in proportion to the value of their respective holdings as set out in the schedule. In the result, these other landowners contributed 905 lots. It is contended, therefore, that the cost of all the property to the appellant should be taken as $709,955.40, being the sum of the estimated value of the University sites and of the 905 lots as fixed by the 1911 agreement.

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Evidence was given by Mr. George Donaldson, a chartered accountant and resident partner in Vancouver of the well-known accounting firm of Clarkson, Gordon and Company. He says that he was consulted by the directors of the appellant in January 1952, that he reconstituted the accounts of the appellant on a proper accounting basis (prior to that date the accounts had not been prepared by a chartered accountant) from the books and records of the appellant since its formation, and, after considering the various agreements to which I have referred, he reconstituted the accounts from 1914 and set up annual balance sheets commencing with 1948, all as shown in Exhibit 8. These accounts and statements, he stated, were prepared in accordance with sound accounting practice. In his opinion, it was proper to take $354,187.00 as the cost of the University site, and a like amount for the 905 lots—a total of $708,374.00. (In his statement, the University site is referred to as "the golf course property" as apparently it has been operated as such by the appellant for many years since it was returned by the University to the appellant in 1930.) No explanation was given as to why the values were put at $354,187.00 in each case instead of $354,977.70—the estimated values stated in the 1911 agreement.

An examination of Exhibit 8 will assist in explaining Mr. Donaldson's evidence. His first balance sheet is for November 30, 1948. Under "Liabilities", he lists the shareholders' equity as follows:

Capital stock—authorized and issued—	
2,000 shares of $85 each	$170,000.00
Contributed surplus	508,374.00
Capital surplus	65,000.00

The capital surplus refers to the payment of $65,000.00 received by the appellant in 1930 at the time of the settlement with the University and when the University site was reconveyed. The "Contributed surplus" he defines as the excess of the consideration paid ($708,374.00) over the par value of the shares issued ($200,000.00). The stock is put at $85 per share, as $15 per share appears to have been distributed to the shareholders at an earlier date. In his view, it is in accordance with sound accounting practice

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to call the difference between the par value of the shares and the value of what the appellant received, a "Contributed surplus", and show it as a liability to the shareholders.

His opinion was corroborated by the evidence of Mr. J. C. Thompson, a chartered accountant of Montreal and senior partner in Canada of another well-known accounting firm, Peat, Marwick & Company. In his view, also, it would be proper for a company issuing shares in payment of property to show the difference between the par value of the stock issued and the larger value of the assets received as a premium or as a "Contributed surplus".

The accountants' evidence is uncontradicted, but in the circumstances of this case I am unable to accept the principle which they have stated as applicable to the facts before me. It seems to me that they have treated the matter as if the landowners who conveyed the lands to the appellant were in fact selling it at an agreed figure and that the purchaser of the land—the appellant—had become the owner of the lands free to dispose of it as it wished and without any conditions being attached thereto. The situation here, however, is quite otherwise.

While it is true that the appellant upon receiving the transfer of all the property became the registered owner of lands which the transferors for purposes of their own had valued at $709,955.40, I think that it cannot be said from any practical point of view that that amount represented the cost of the lands to the appellant. The agreement of 1914 which was the only relevant agreement in which the appellant was a party, is not, in my opinion, an agreement of sale and purchase for that consideration. It speaks only of "transferring" the lands and the same term was used in the 1911 agreement. As I understand the various agreements, the real purposes in forming the "new company" were (1) to vest the ownership of the University site in one company; (2) to also vest in the same company lands of an equivalent value and which lands it would hope would be enhanced in value by the construction of the University; and (3) that all those who contributed lands either for the University site or as part of the 905

lots should have apportioned to them, in proportion to their contributions in land,. all the shares of the new company.

Further, it seems to me that it was never in the contemplation of the parties that the appellant, in issuing all its shares, should attribute any portion thereof as the *cost* of the University site. In the absence of any evidence to the contrary—and none of the original parties or their officers gave evidence—it seems reasonable to suppose that the appellant company in accepting the transfer of the University site, did so as a trustee and merely for the purpose of carrying out the agreement of 1910. By that agreement, which the University had accepted, it was entitled to a transfer upon performing the conditions laid down and without payment of any sort. There was, of course, a possibility—and nothing more than a bare possibility—that the University might not comply with the conditions, in which case the University site would remain the property of the appellant which would then have full ownership free of any trust and with powers of disposal. There is no evidence as to what value was attributed to the possibility that such a right might be acquired and the actions of the appellant's directors seem to indicate that they regarded it as of no value, and that they merely held such lands in trust.

The very great disparity between the par value of the shares and the accrued value of all the lands affords some indication that such was the case. Moreover, it is in evidence that in the opening entry in the appellant's journal, dated January 1, 1915, the property account was shown as a debit of $354,187.00, capital account being credited with $200,000.00, and $154,187.00 being shown as a reserve. The entry in the ledger account under the heading "Property" is to the same effect. The University site, while subject to the trust, could not in any sense be considered as part of the trading stock of the company, as the 905 lots undoubtedly were. The mere fact that 1,000 shares of the appellant company were allotted to and distributed among the original owners of the University site, does not mean that the appellant was purchasing the land from them or that it intended to issue one-half of its

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shares in payment of the cost thereof. A trustee normally does not pay the value of the property to be held in trust to the donors of the trust. In my opinion, the cost of the acquisition of the property—and by "cost" I mean the issue of all its shares—was referable only to the acquisition of the 905 lots. That was the view adopted by the company itself and I think in the circumstances it was the correct one.

In reaching this conclusion, I have not overlooked the submission of Mr. Robinette, counsel for the appellant, that to some extent the probability that the appellant would be required to convey the University site to the University without cash compensation was balanced out by the possibility that the remaining lands might thereafter be enhanced in value by the construction of the University in Tuxedo. I am, however, unable to attach any importance to this matter for, while it was reasonably certain that the University would take over the site—as it actually did in 1919—any resulting benefit to the rest of the property was entirely uncertain and problematical. In any event, while any such enhancement in value of the 905 lots might increase the value of the shares in the appellant company in the future, the possibility that it might do so could not affect the question as to the cost of the lots to the appellant company which was fixed by the agreements of 1910 and 1914.

The remaining question is that of determining the principle on which the opening figures for the 905 lots acquired by the appellant company as its trading stock ought to be ascertained. I think it is well established, as a general rule, that stock acquired by a trader must be brought in at the price which he paid for it in order to calculate the profit which he made by its sale. In view of my finding that the price paid by the appellant was referable only to the 905 lots, the question now is whether such cost was $200,000.00, the par value of the issued shares, or $354,977.70, the value of the lots as agreed upon by the incorporators of the appellant company.

In support of his contention that the costs should be fixed at the larger figure, Mr. Robinette submits two propositions. He says first that the price paid by the company for the assets must be taken to be at least the par value

of the shares. Reference is made to *Osborne v. Steel Barrel Co. Ltd.*[1], where Lord Greene, M. R., delivering the judgment for the Court, said: "Accordingly, when fully-paid shares are properly issued for a consideration other than cash, the consideration moving from the company must be at the least equal in value to the par value of the shares and must be based on an honest estimate by the directors of the value of the assets acquired."

The second submission is that the cost in this case is the full amount of the liability to the shareholders as a result of the transaction and that that liability is the par value of the shares ($200,000.00), plus the amount of the contributed surplus, which is the amount by which the estimated value of the 905 lots exceeds the par value of the shares—or $154,977.70. This submission is founded on a decision of the House of Lords in 1946 in *Craddock (H. M. Inspector of Taxes) v. Zevo Finance Co. Ltd.*[2]. In that case the respondent company was formed for the purpose of taking over certain speculative investments forming part of the holdings of another company. These investments originally cost £1,029,958, but at the time of acquisition by the respondent had greatly depreciated in value, being worth on the market about one-third of the original cost. In consideration of receiving the shares, the company agreed to discharge the liability of the former company in respect to its debentures of £409,928 and to issue fully paid shares to the nominal value of £620,030. It was held that the cost of investments to the company was £1,029,958, being the total amount of the debenture liability assumed, plus the nominal value of the shares issued, and that this amount had been properly entered in the books of the company. The contention of the Crown that the cost to the company was the market value of the shares at the time of acquisition by the respondent was rejected.

Mr. Robinette further says that as each shareholder would be entitled on the winding up of the company to an *aliquot* portion of all the assets, the liability of the appellant to its shareholders is measured by the total value of all its assets, including the "Contributed surplus".

[1] [1942] All E.R. 634 at 638. [2] 27 T.C. 267 at 284.

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Now it seems to me that there is a clear distinction between the *Zevo* case and the instant case on this point. In the former, the liability assumed by the company and which was found to be part of the consideration paid, was the liability to indemnify the former company in respect of its debentures and interest thereon. That liability was in the nature of a debt assumed and had nothing to do with any liability of the company to its shareholders for a "Contributed surplus" as in the instant case. Whatever the liability of the appellant company to its shareholders may be in respect of a "Contributed surplus", that liability, in my opinion, forms no part of the consideration paid in respect of the acquisition of the lands. That consideration, which is the cost to the appellant, was the issue of the $200,000.00 par value of the shares.

In the *Steel Barrel* case (*supra*), the Master of the Rolls considered an argument on behalf of the Crown that if a company acquired stock in consideration of the issue of fully paid up shares to the vendor, such stock for the purpose of ascertaining the company's profits should be treated as having been acquired for nothing, with the result that when the stock is sold the Revenue is entitled to treat the whole of the purchase money obtained on the sale as a profit. After rejecting this argument, which he referred to as a "remarkable contention", he stated at p. 306:

> The primary liability of an allottee of shares is to pay for them in cash; but when shares are alloted credited as fully paid, this primary liability is satisfied by a consideration other than cash passing from the allottee. A company, therefore, when in pursuance of such a transaction it agrees to credit the shares as fully paid, is giving up what it would otherwise have had, namely, the right to call on the allottee for payment of the par value in cash a company cannot issue £1,000 nominal worth of shares for stock of the market value of £500, since shares cannot be issued at a discount. Accordingly, when fully paid shares are properly issued for a consideration other than cash, the consideration moving from the company must be at the least equal in value to the par value of the shares and must be based on an honest estimate by the directors of the value of the assets acquired.

It should be noted that in that case the company had paid a substantial amount in cash as well as issuing a large number of fully paid shares to the vendor for all the assets, including stock in trade. The court found that the Special Commissioners, in fixing the value of the stock in trade as a proportion of both the cash payment and of the par value of the shares issued, had evidence to support their conclusions of fact and had made no error in law.

The principles to be followed in determining the cost of the stock in trade of a trader was discussed in the *Zevo Finance* case (*supra*), Viscount Simon stating at p. 287:

> To put the matter in its simplest form, the profit or loss to a trader in dealing with his stock-in-trade is arrived at for Income Tax purposes by comparing what his stock in fact cost him with what he in fact realised on resale. It is unsound to substitute alleged market values for what it in fact cost him. The deduction from gross receipts, which is not prohibited by Rule 3 of Cases I and II of Schedule D, is that of expenses "wholly and exclusively" laid out for the purposes of the trade, even though the outlay is unnecessarily large. The further test of necessity is, by contrast, imposed under Schedule E, Rules 9 and 10. See also Lord Chancellor Cave's observation on expenditure which goes beyond necessity in *British Insulated and Helsby Cables, Ltd. v. Atherton,* [1926] A.C. 205, at page 212 (10 T.C. 155, at page 191). The test is what was in fact the cost of the stock.
>
> I am well aware that this view makes it possible to attribute a different figure of cost to the same stock, according to the form which the reconstruction takes. In the present instance, for example, a different figure of profit or loss would be reached if the fully paid shares allotted under the agreement were halved, or doubled. But that is only because the cost of the investments would correspondingly vary. Leaving aside cases where the scheme is what the Master of the Rolls calls a "mere device"—and such cases are difficult to define—I can find nothing in our present Income Tax code which requires Commissioners to examine the price paid for assets acquired by a trading company merely because the price takes the form, in whole or in part, of fully paid shares allotted in a reconstruction. If such a duty is to be imposed on them it must be imposed by the Legislature.

In my opinion, the consideration paid by the appellant for the 905 lots was the par value of the shares issued and nothing more. What it gave up was the right to call upon

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the allottees of the shares for payment of the par value of each share. The sum of $200,000.00, therefore, correctly represents the cost of such lots to the appellant.

I was advised by counsel at the hearing that it was unnecessary for me to determine any matter other than the cost of the property acquired. I understood counsel to agree that once that matter was determined all subsidiary questions, such as the proper amount to be fixed as the cost of 1½ lots sold in 1951, would be arranged between the parties. If that cannot be done, the matter may be spoken to at any time.

In the result, the appeal for the taxation year 1951 will be allowed, the re-assessment made upon the appellant set aside and the matter referred back to the Minister for the purpose of re-assessing the appellant in accordance with my findings. The appeal in respect of the 1952 taxation year will also be allowed and the matter referred back to the Minister for the purpose only of making such corrections in the re-assessment for that year as relate to the application of the overpayment in that year to the outstanding balance claimed in the re-assessment for 1951.

The lots sold in 1951 formed a portion of the 905 lots above referred to. Inasmuch as the cost to be attributed to those lots has been substantially increased beyond that allowed in the 1951 re-assessment, the appellant has had substantial success in its appeal and will be entitled to costs after taxation.

Judgment accordingly.