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Opinion of the Court.

made an election that is binding upon it and the commissioner.*

Affirmed.

MR. JUSTICE CARDOZO and MR. JUSTICE REED took no part in the consideration or decision of this case.

UNITED STATES v. KAPLAN.

CERTIORARI TO THE COURT OF CLAIMS.

No. 667. Argued March 3, 4, 1938.—Decided May 2, 1938.

Decided upon the authority of *Pacific National Co. v. Welch*, ante, p. 191.

18 F. Supp. 965, reversed.

CERTIORARI, 303 U. S. 629, to review a judgment in favor of the taxpayer in a suit for refund of income taxes.

Mr. Edward J. Ennis, with whom *Acting Solicitor General Bell*, *Assistant Attorney General Morris*, and *Messrs. J. Louis Monarch* and *F. E. Youngman* were on the brief, for the United States.

Mr. Llewellyn A. Luce for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Respondent and his wife in a joint return of income tax for 1929 reported a profit of \$194,000 from the sale of 25

* *Commissioner v. Moore*, 48 F. (2d) 526, 528, certiorari denied 284 U. S. 620. *Marks v. United States*, 18 F. Supp. 911, 913. *Sylvia S. Strauss*, 33 B. T. A. 855, affirmed 87 F. (2d) 1018. *Max Viault*, 36 B. T. A. 430, 431. *Sarah Briarly*, 29 B. T. A. 256, 258. *Louis Werner Saw Mill Co.*, 26 B. T. A. 141, 144-145. *Liberty Realty Corp.*, 26 B. T. A. 1119. *Morgan Rundel*, 21 B. T. A. 1019. *Johnson Realty Trust*, 21 B. T. A. 1333. Cf. *United States v. Pettigrew*, 81 F. (2d) 666; *Rose v. Grant*, 39 F. (2d) 340; *Alameda Inv. Co. v. McLaughlin*, 33 F. (2d) 120; *Buttolph v. Commissioner*, 29 F. (2d)

shares of the stock of "No. 1100 Park Avenue," and disclosed tax of \$2,084.20, which was paid. The taxable income was less than the profit in question. It resulted from the sale by him, April 11, 1929, for a net price of \$240,000 of stock bought in 1928 for \$46,000. The buyer agreed to pay \$25,000 cash and the balance in installments of \$1,875 a month. For 1930, respondent and his wife filed a return showing no taxable income. For 1931 and 1932, respondent filed no returns. In 1932 he filed a claim for refund of the entire 1929 income tax. The ground for the claim was that he was entitled to report the sale on the installment basis. The findings indicate that the deferred payments were worth less than face value; after respondent and his wife (to whom he assigned the contract) had received \$55,000, they agreed to accept \$75,000 more as full payment. The commissioner rejected the claim and this suit followed. The Court of Claims gave respondent judgment. 18 F. Supp. 965. This Court granted a writ of certiorari because of conflict between the decision and that of the circuit court of appeals for the ninth circuit in *Pacific National Co. v. Welch*, 91 F. (2d) 590, this day affirmed, *ante*, p. 191. The question here presented is the same as the one decided in that case. The judgment of the court below must be

Reversed.

MR. JUSTICE CARDOZO and MR. JUSTICE REED took no part in the consideration or decision of this case.

695; *Safety Electric Products Co. v. Helvering*, 70 F. (2d) 439; *Dr. Pepper Bottling Co. v. Commissioner*, 69 F. (2d) 768; *Radiant Glass Co. v. Burnet*, 60 App. D. C. 351; 54 F. (2d) 718.