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JOINT ADVENTURE-ACTIONS AT LAW FOR SHARE OF PROFITS

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JOINT ADVENTURE — ACTIONS AT LAW FOR SHARE OF PROFITS — Action in assumpsit for money due under a contract whereby defendant leased plaintiff's entire clothing factory for the manufacture of 20,000 coats for which defendant held a government contract. By the terms of the agreement, plaintiff was to receive one-half of the net profits. The agreement expressly stated that they were not to be partners. The coats were manufactured pursuant to the agreement. *Held*, a mere agreement to share profits is, between the parties, insufficient to create a partnership, and assumpsit may be maintained by the members of a joint adventure inter sese for the agreed share of profits. *Kingsley Clothing Mfg. Co. v. Jacobs*, 344 Pa. 551, 26 A. (2d) 315 (1942).

The joint adventure would seem to be a device of purely American origin, having its roots in the common-law partnership.[1] It is generally defined as a special or limited partnership for a special purpose [2] or as an association of two or more persons to carry out a single business enterprise for profit.[3] Yet it is

[1] Powers v. State for the Use and Benefit of Reynolds, 178 Md. 23, 11 A. (2d) 909 (1940); 33 C. J. 841 (1924). It appears that the first cases in which the name was used were Hourquebie v. Girard, (C. C. Pa. 1808) 12 F. Cas. No. 6,732, and Lyles v. Styles, (C. C. Pa. 1808) 15 F. Cas. No. 8,625.

[2] McDaniel v. State Fair of Texas, (Tex. Civ. App. 1926) 286 S. W. 513; Goss v. Lanin, 170 Iowa 57, 152 N. W. 43 (1915).

[3] Fletcher v. Fletcher, 206 Mich. 153, 172 N. W. 436 (1919); McKee v. Capitol Dairies, 164 Ore. 1, 99 P. (2d) 1013 (1940); Hey v. Duncan, (C. C. A. 7th, 1926), 13 F. (2d) 794.

not necessarily limited to a single transaction and a period of several years may intervene before it is brought to a successful conclusion.[4] The courts constantly assert that it is governed by the law of partnership [5] and there would seem to be reason for saying that all the fundamental relationships of the traditional partnership are duplicated in the joint adventure.[6] Yet statements may be found to the effect that the formal procedural rules governing relations between partners have undergone relaxation when applied to the joint adventure. Thus it is said that while partners may not sue each other at law without a prior accounting in equity, joint adventurers may sue each other in equity or at law without a previous accounting [7] although equity is the proper court in which to bring such an action.[8] Yet it has been held that partners may sue at law on an account without a final balance [9] or when there is a partnership for a single transaction.[10] And there is much authority for the view that joint adventurers may sue at law without a prior accounting in equity only when the action is for a sum certain [11] or when there is no necessity for the settlement of joint debts or mutual accounts.[12] Further, many cases flatly deny the right of joint adven-

[4] Young v. Reed, (La. App. 1939) 192 So. 780; Ruby v. United Sugar Cos., 56 Ariz. 535, 109 P. (2d) 845 (1941); 33 C. J. 842 (1942).

[5] Tompkins v. Commr. of Internal Revenue, (C. C. A. 4th, 1938) 97 F. (2d) 396; Keyes v. Nims, 43 Cal. App. 1, 184 P. 695 (1919); 48 A. L. R. 1055 at 1060 (1927); 63 A. L. R. 909 (1929); 118 A. L. R. 1421 (1939). Other courts commonly say that the joint adventure is governed by rules analogous to those governing partnership. Rae v. Cameron, 112 Mont. 159, 114 P. (2d) 1060 (1941); 30 AM. JUR. 699 (1940). Implicit in both varieties of statement is the assumption that the joint adventure actually constitutes a distinct legal concept.

[6] Mechem, "The Law of Joint Adventures," 15 MINN. L. REV. 644 (1931); Bedwell Coal Co. v. State Industrial Comm., 157 Okla. 227, 11 P. (2d) 527 (1932); 41 MICH. L. REV. 336 (1942); Drew v. Hobbs, 104 Fla. 427, 140 So. 211, 141 So. 596 (1932); Lane v. Fenn, 65 Misc. 336, 120 N. Y. S. 237 (1909); Lind v. Webber, 36 Nev. 623, 134 P. 461, 135 P. 139, 141 P. 458 (1913). Cf. Keyes v. Nims, 43 Cal. App. 1, 184 P. 695 (1919), denying that mutual agency adheres in the joint adventure.

[7] See annotations 95 A. L. R. 1243 at 1245 (1935), 63 A. L. R. 909 at 913 (1929), 17 ANN. CAS. 1022 at 1027 (1910); and 3 DAK. L. REV. 49 at 54 (1930); 33 MICH. L. REV. 436 at 437 (1935).

[8] Dickson v. Patterson, 160 U. S. 584, 16 S. Ct. 373 (1895); Waldo Lumber Co. v. Metcalf, 132 Me. 374, 171 A. 395 (1934); 15 R. C. L. 507 (1917). The reason generally given for the distinction is that it is usually impossible to determine the rights and liabilities of partners inter sese without a full accounting and that the machinery of a law court is inadequate for such investigation. See MECHEM, PARTNERSHIP, 2d ed., § 204 (1920).

[9] Bigelow v. McMillan, 251 App. Div. 456, 296 N. Y. S. 533 (1937); PARSONS, PARTNERSHIP, 4th ed., 260 ff. (1893).

[10] MECHEM, PARTNERSHIP, 2d ed., § 205 (1920).

[11] Keyes v. Nims, 43 Cal. App. 1, 184 P. 695 (1919); Ledford v. Emerson, 140 N. C. 288, 52 S. E. 641 (1905); Williams v. Henshaw, 11 Pick. (28 Mass.) 79 (1831).

[12] Shefts Supply v. Fischer, 171 Okla. 72, 41 P. (2d) 902 (1935); Hoffman v. Mittlemann, 147 Misc. 442, 263 N. Y. S. 899 (1933).

turers inter sese to an action at law.[13] It would seem, therefore, that the distinction usually drawn does not proceed from the nature of the respective concepts[14] but is rather a recognition of the relative complexity of the relations before the court at any given time. In the principal case, the adventure had not been of long duration and apparently did not involve extremely complicated accounts, being limited to a single transaction. The decision may hence be taken as representative of the usual view and would appear to be correct on its facts.

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[13] ". . . the contract . . . being one of joint adventure, the amount to become due . . . thereunder could not be known in the absence of an accounting and the striking of a balance due. This is within the jurisdiction of a court of equity only." McKee v. Capitol Dairies, 164 Ore. 1 at 9, 99 P. (2d) 1013 (1940). See also Consolidated Machinery and Wrecking Co. v. Harper Machinery Co., 190 App. Div. 283, 180 N. Y. S. 135 (1920); Voegtlin v. Bowdoin, 54 Misc. 254, 104 N. Y. S. 394 (1907); Josias v. Sugar Products Co., 169 N. Y. S. 887 (S. Ct. 1918), affd. 187 App. Div. 905, 174 N. Y. S. 908 (1919).

[14] See Mechem, "The Law of Joint Adventures," 15 MINN. L. REV. 644 (1931), denying that there is any difference in legal consequence between the partnership and the joint adventure.

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