

Galbraith was bound to make had actually been made. Having made the advance, he is entitled to receive one-fourth of the whole of the proceeds, which is \$7,500; but, as this would be the total amount which he would have received had he advanced the \$6,000, the \$6,000 must be deducted from this amount, making his profits in the transaction \$1,500.

It ought not to be forgotten that, under the peculiar terms of the agreement, the defendant puts in his land without receiving any special advantage therefrom except his three-fourths of the proceeds of the sales. In a word, the plaintiff ought not to be permitted, not having made his advances, to have them paid out of a fund of which he is entitled to only one-fourth and the defendant to three-fourths.

With deference, I think the judgment of the trial Judge should be varied to conform to the construction put upon the agreement as contended for by McDougall. He is entitled to costs in the Court below and of this appeal.

As under the amendment, full relief can be given in the first action, the second action is dismissed without costs.

MULOCK, C.J., SUTHERLAND and LEITCH, JJ., concurred.

RIDDELL, J. (after setting out the facts):—Much argument was advanced to us upon the question whether the two documents should be read together, or whether the latter entirely superseded the former. It does not seem to me that, for the purposes of this case, it makes any difference which view is taken; and I do not enter into the inquiry; but I am not to be taken as assenting to the conclusion in that regard of my brother Britton.

Much, too, was said as to whether a partnership was formed or not. That, it seems to me, is also immaterial—a mere matter of terminology. Whether in this case one calls the relations between the two a partnership or a joint enterprise or a common venture, their rights and duties inter se are governed by the document they have signed—and these are the only rights and duties we here consider.

The main reliance of the respondent was upon the use of the words "advance" and "profits"—and, if "advance" always meant "to pay out money which is to be later repaid," and "profits" always meant "gain made on any business when both receipts and disbursements are taken into consideration," there would be foundation for his contention. But "advance" often means "pay" (Words and Phrases Judicially Defined, sub