

The chief argument addressed to the Court by Mr. Armour on behalf of the respondent was that this undertaking was a partnership and that under the rule applicable to the taking of accounts in such a case, the advance should be deducted from the gross receipts and the difference divided as profits. It is open to doubt whether the agreement entered into between the parties constituted a partnership.

Stroud, 2nd ed., p. 1415, under the heading "Partnership" II, (2) points out that "the sharing of gross returns does not, in itself, create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived." This question is more fully discussed in Lindley, 7th ed., pp. 38, 39, 55, and 56; 30 Cyc. V. VII; *Heap v. Dobson*, 15 C. B. N. S. 460; *Andrews v. Pugh*, 24 L. J. Ch. 58.

But whether the agreement amounts to a partnership or not the terms are too clear to leave doubt as to the intention. If the construction claimed for the respondent be the true one, the result will be that instead of the plaintiff advancing and paying one-half of the expenses incident to placing the property upon the market, he would in fact be paying only one-fourth of the expenses. This arises from the fact that if the expenses are paid out of the proceeds of the sales, the defendant is paying three-fourths of the expenses, because under the terms of the agreement he is entitled to three-fourths of the fund out of which such payment is made.

From this fact has arisen, I think, a misapprehension of the plaintiff's case.

Thus: Sales, \$30,000, quarter of which is \$7,500, is plaintiff's share; deduct plaintiff's share of expenses \$6,000, which was paid out of sales, leaves a balance of \$1,500, plaintiff's share of profits.

On the other hand, if from quarter of the sales \$7,500, there is deducted quarter of the expenses, viz., \$3,000, this leaves \$4,500, as plaintiff's share, having paid \$3,000 instead of \$6,000 towards the expenses.

The effect is the same if, as the plaintiff contends, \$12,000 expenses should be deducted from sales, \$30,000, leaving \$18,000 and then one-quarter interest allotted to plaintiff, he would receive \$4,500; thus contributing to the expense one-quarter instead of one-half, his one-half having been paid out of a fund of which he is entitled to one-