

(3) In consideration thereof, the party of the first part agrees to and does hereby grant, assign, and give to the party of the second part an undivided one-quarter share or interest in the proceeds arising from the sale of the said town-site, in lots or otherwise, the timber, and mining rights thereon, and in all profits or benefits arising therefrom in any respects whatsoever.

"(4) Proper books of account shall be kept . . .

"(5) A division of the profits, if any, shall be made every six months, until the whole of the interests of the parties hereto are disposed of.

"(6) The party of the first part shall devote his time and attention to the requirements of the said town-site and act in conjunction with the party of the second part."

The land was divided into town lots, and these were rapidly sold, and such part of the proceeds as was thought necessary was used for expenses. The receipts were approximately \$30,000, and the expenses \$12,000.

Each party brought an action against the other. Of the \$18,000 surplus, McDougall claimed \$16,500, leaving Galbraith only \$1,500. Galbraith claimed \$4,500; and the trial Judge gave effect to Galbraith's claim.

McDougall appealed.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

A. G. Slaght, for McDougall.

E. D. Armour, K.C., for Galbraith.

CLUTE, J. (after setting out the facts at length):—It was a joint venture in which one party owned the property, and the other agreed to pay half the expenses of clearing the land, laying out the site, etc., in consideration of one-quarter of the proceeds of the sale. He took a certain risk for a possible gain.

It is open to doubt whether the agreement entered into between the parties constituted a partnership. . . .

[Reference to Stroud's Judicial Dictionary, 2nd ed., p. 1415, "Partnership," II. (2); Lindley on Partnership, 7th ed., pp. 38, 39, 55, 56; *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. . . . The transaction must be treated as if the advance which