

receive one-quarter of the proceeds of the sales, whether of lots, timber, or mining rights.

Clauses 4 and 5 were referred to as supporting the plaintiff's contention. I think they are quite consistent with the earlier part of the instrument, as I have construed it. Clause 4 declares that proper books of account shall be kept of the receipts and expenditures in connection with the townsite, and an audit of the same shall be made at the expiration of every six months. What is here provided for was necessary, whether the construction contended for by the plaintiff or the defendant prevails. It was necessary to keep an account of the sales, and it was equally necessary to keep an account of the expenditures in connection with the townsite, and it was proper that these receipts and expenditures should be audited.

But it is said that the latter part of clause 3 refers to profits, and that profits mean the balance remaining after the expenses are deducted from the receipts. But "profits" is an apt word and quite properly used to represent the gain which each party would be entitled to arising from the joint venture.

The evidence shews that the sales commenced immediately, and that all expenses incident to the placing of the property upon the market, were paid out of the sales of the lots, so that neither the plaintiff nor the defendant had to pay any part of these expenses in the first instance. From the tenor of the agreement this was in whole or in part contemplated, and that being so, it was necessary that accounts should be kept, audits made, in order that what may fairly be called profits might be ascertained.

Clause 5 simply provides that whatever these profits were should be ascertained every six months until the whole of the interests of the parties are disposed of.

The learned trial Judge points out that under certain possible conditions arising out of the transaction, it might have resulted in the plaintiff being the loser. That may well be. The plaintiff did not own the land. It was a joint venture in which one party owned the property and the other agreed to pay half the expense 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.