

Under the former Galbraith is to provide all the funds required for laying out the townsite, and other expenses preparatory to offering the property for sale, which expenses are to be equally shared by each, when the property is disposed of, or when a sufficient sum is realized.

Under the second document Galbraith agrees to advance and pay half of the total cost. The plaintiff contends that the agreement amounts to a partnership, and that an account should be taken, deducting the expenses from the sales and dividing the balance in the proportion of one-quarter to the plaintiff, and three-quarters to defendant. Thus, assuming the sales to amount to \$30,000, and the expenses to \$12,000, that would leave \$18,000, profits of which the plaintiff would be entitled to \$4,500, and the defendant to \$13,500.

The defendant contends that the specific terms of the agreement should be complied with; that is, that the defendant was bound to advance and pay half the expenses, \$6,000, and he was entitled to receive one-quarter share of the proceeds, namely, \$7,500, which would leave him \$1,500 profits.

Under the first agreement a one-fourth interest in the lot, is to be transferred to Galbraith. Under the second agreement there is no mention of a conveyance of the land. The recital declares that Galbraith is "to advance and pay half of the total cost. . . . In consideration of an undivided one-quarter interest, or share in the proceeds of the sale, or disposition in the said lots, mining rights or otherwise." This is set forth in clauses 1 and 3. Clause one declares that Galbraith is to advance from time to time, as may be necessary, or become liable for one-half of all expenses, etc., and clause three declares that in consideration thereof McDougall grants, assigns and gives to Galbraith "an undivided one-quarter share or interest in the proceeds arising from the sale of the said townsite, in lots or otherwise, the timber and mining rights thereon, and in all profits, or benefits arising therefrom in any respect whatsoever."

I think it perfectly clear that unless there is something in the subsequent part of the agreement to detract from the effect of this recital and these clauses, the meaning is precisely what it states, that is, that it is a joint venture, in which McDougall owns the land, and that Galbraith shall advance or become liable for half the expenses, and shall