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## JOINT ADVENTURE-EXTENT TO WHICH PARTNERSHIP LAW APPLIES

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JOINT ADVENTURE—EXTENT TO WHICH PARTNERSHIP LAW APPLIES — The recent case of *Chisholm v. Gilmer*,<sup>1</sup> in holding joint adventurers jointly liable on an obligation incurred by all the members thereof through a trustee who acted as agent for all the members, again opened up the problem of the nature of the joint adventure and the rights and liabilities of its members.<sup>2</sup> When, in joint adventure cases, the relationship of the parties is not clearly determined by their contract, the courts have consistently looked to the law of partnership for aid in reaching a result. It is the purpose of this article to indicate the degree to which this reliance on partnership law has gone.

I.

There are numerous definitions of joint adventure,<sup>3</sup> but perhaps the most illuminating of them is that which describes a joint adventure

<sup>1</sup> (C. C. A. 4th, 1936) 81 F. (2d) 120.

<sup>2</sup> The principal case, though holding there was a joint adventure, found the defendants liable on the basis of a joint contract, stating that such liability would attach even though no joint adventure were involved. The problem of joint adventure liability, however, is still an important question in many cases where the parties do not expressly make a joint contract.

<sup>3</sup> A joint adventure has been defined as "a special combination of two or more

as a special or limited partnership or partnership for a special purpose.<sup>4</sup> This definition suggests the analogy between the two forms of association without ignoring the basic difference, which is that a joint adventure is an association for a particular transaction while a partnership contemplates a continuing business.<sup>5</sup> While the partnership is vastly more complex than the joint adventure,<sup>6</sup> the courts have constantly repeated the formula that a joint adventure is governed by the same rules as the partnership, and the result in many cases is the failure to determine the precise nature of the relationship before the court,<sup>7</sup> unless the result of the case depends on it.<sup>8</sup>

The joint adventure, being, like the partnership,<sup>9</sup> a contractual re-

persons in a specific venture without actual partnership or corporate designation." SCHOUER, *PERSONAL PROPERTY*, 5th ed., § 167a (1918). It has also been defined as a "special combination of two or more persons where, in some specific adventure, a profit is jointly sought without any actual partnership designation." *Bedwell Coal Co. v. State Industrial Comm.*, 157 Okla. 227, 11 P. (2d) 527 (1932).

<sup>4</sup> *Bond v. O'Donnell*, 205 Iowa 902, 218 N. W. 898 (1928). *McDaniel v. State Fair of Texas*, (Tex. Civ. App. 1926) 286 S. W. 513, in which the court says, as dictum (at p. 516):

"for, as we view the law, a 'joint adventure' which would create a liability to third parties on account of the relationship existing between the parties thus jointly interested is no more than a limited partnership, the only difference being that under the same environments the relationship, if between individuals, would be properly designated a limited partnership, while, on the other hand, where one of the parties happened to be a corporation, the appellation would be changed from that of a limited partnership to a joint adventure."

<sup>5</sup> *Tufts v. Mann*, 116 Cal. App. 170, 2 P. (2d) 500 (1931).

<sup>6</sup> This complexity arises from the differences in duration and purposes of a partnership as compared with a joint adventure, and causes the partnership to offer many more opportunities for legal questions to arise.

<sup>7</sup> *Ingram v. Johnston*, 38 Cal. App. 234, 176 P. 54 (1918); *Croft State Bank v. Girardy*, 117 Kan. 585, 232 P. 1076 (1925); *Neville v. D'Oench*, 327 Mo. 34, 34 S. W. (2d) 491 (1930). For cases where the court had difficulty in determining whether the relationship was a joint adventure or partnership, see 2 ROWLEY, *PARTNERSHIP*, § 977 (1916).

In a number of cases, pleadings alleging a partnership have been held good where the evidence showed a joint adventure relationship. *Butler v. Union Trust Co.*, 178 Cal. 195, 172 P. 601 (1918); *Peardon v. White*, 65 Cal. App. 463, 224 P. 263 (1924).

<sup>8</sup> Where the available actions depend on the nature of the relationship, it is important to determine whether the relationship is a joint adventure or partnership. In *Binder v. Kessler*, 200 App. Div. 40, 192 N. Y. S. 653 (1922), where one party to the agreement sued the other for return of the investment, the court held that there was a joint adventure and that an action at law would lie for return of the investment where defendant failed to carry out his agreement. The lower court had held that the relationship was a partnership and that plaintiff's only remedy was in equity for an accounting. See cases cited in 2 ROWLEY, *PARTNERSHIP*, § 977 (1916).

<sup>9</sup> See 1 ROWLEY, *PARTNERSHIP*, § 210 (1916).

lationship,<sup>10</sup> the provisions of the contract control in so far as they are ascertainable. Where the contract does not control, the law of partnership will furnish the answer to many of the problems in joint adventure,<sup>11</sup> including those arising from the fiduciary nature<sup>12</sup> of the relationship. Partnership law thus furnishes ample authority for the holding of a joint adventurer to account for secret profits<sup>13</sup> or for profits made in unfair competition between joint adventurers<sup>14</sup> or for profits resulting from the wrongful exclusion of a joint adventurer from an interest in the common property.<sup>15</sup>

## 2.

One of the strong similarities between the joint adventure and the partnership lies in the duration of the venture. The duration of both forms of association is governed by contract where provision is made,<sup>16</sup> but in the absence of specific provision the partnership is considered to be at will,<sup>17</sup> while the joint adventure may be terminated either at the

<sup>10</sup> *Campbell v. Smith*, 106 Okla. 26, 232 P. 844 (1924); *Neville v. D'Oench*, 327 Mo. 34, 34 S. W. (2d) 491 (1930).

<sup>11</sup> "The rights of the parties, inter sese, are to be inferred from the contract and their acts and conduct in relation to the arrangement, under the law of partnership." *McKeel v. Mercer*, 118 Okla. 66 at 68, 246 P. 619 (1926).

In a case involving an oral agreement that one member of a joint adventure should buy a mine option, the Statute of Frauds was avoided by applying the law of partnership so as to enable the court to find that there had been sufficient performance by acts under the joint adventure or partnership agreement to make the procurement of the option an act of a partner for the benefit of the firm. *Kent v. Costin*, 130 Minn. 450, 153 N. W. 874 (1915).

<sup>12</sup> A joint adventure creates a fiduciary relationship between the members thereof. *Botsford v. Van Riper*, 33 Nev. 156, 110 P. 705 (1910); *Menefee v. Oxnam*, 42 Cal. App. 81, 183 P. 379 (1919); *Ingram v. Johnston*, 38 Cal. App. 234, 176 P. 54 (1918).

<sup>13</sup> *Church v. Odell*, 100 Minn. 98, 110 N. W. 346 (1907); *Lane v. Wood*, 259 Mich. 266, 242 N. W. 909 (1932); *Thimson v. Reigard*, 95 Ore. 45, 186 P. 559 (1920). See also 2 ROWLEY, PARTNERSHIP, § 978 (1916).

A joint adventurer who wrongfully abandons the enterprise and continues it by himself must account for profits. *Brown v. Leach*, 189 App. Div. 158, 178 N. Y. S. 319 (1919).

<sup>14</sup> *Underhill v. Schenck*, 238 N. Y. 7, 143 N. E. 773 (1924).

<sup>15</sup> *Hardin v. Robinson*, 178 App. Div. 724, 162 N. Y. S. 531 (1916); *McKeel v. Mercer*, 118 Okla. 66, 246 P. 619 (1926).

<sup>16</sup> Contract provisions control the duration of a joint adventure. *Hoyt v. Smith*, 23 Conn. 177, 60 Am. Dec. 632 (1854); *Braddock v. Hinchman*, 78 N. J. Eq. 270, 79 A. 419 (1911). Duration of a partnership is likewise controlled. *Morrill v. Weeks*, 70 N. H. 178, 46 A. 32 (1900); MECHEM, PARTNERSHIP, 2d ed., § 353' (1920).

<sup>17</sup> *McCauley v. Eyraud*, 87 Cal. App. 121, 261 P. 760 (1927); *Fooks v. Williams*, 120 Md. 436, 87 A. 692 (1913); *Fletcher v. Reed*, 131 Mass. 312 (1881).

But see *Hubbell v. Buhler*, 43 Hun (50 N. Y. Sup. Ct.) 82 (1887), where the

will of the parties<sup>18</sup> or by accomplishment of the purpose.<sup>19</sup> Both forms of relationship are dissolved by the death of a member.<sup>20</sup>

The right to share in profits is an indispensable characteristic of the joint adventure<sup>21</sup> just as in the partnership.<sup>22</sup> The rules of both are alike as to the manner of dividing profits. In the absence of a contract provision,<sup>23</sup> the law implies an equal division, regardless of the amount invested,<sup>24</sup> and whether the investment be in capital or services.<sup>25</sup> As is the case in the partnership, the mere agreement to share profits does not create a joint adventure where the investment is to be returned anyhow.<sup>26</sup>

Where by statute partnership losses are presumed to be shared equally, the same rule has been applied to the joint adventure, on the theory that the statute merely announces the common-law rule.<sup>27</sup> An express provision in a joint adventure agreement for division of profits without mention of sharing of losses gives rise to a presumption that the losses will be shared in the same proportion as the profits.<sup>28</sup> Though

court held that a partnership for a particular transaction could not be ended at will even though duration was not fixed in the articles. It could only be ended by a cause recognized by the courts as sufficient to wind up the partnership. This rule is similar to that in the case of winding up a joint adventure at accomplishment of the purpose.

<sup>18</sup> *Pawley v. Glasscock*, 236 Ky. 821, 34 S. W. (2d) 729 (1931); *Daily States Publishing Co. v. Uhalt*, 169 La. 893, 126 So. 228 (1930); *Marston v. Gould*, 69 N. Y. 220 (1877).

<sup>19</sup> *Hardin v. Robinson*, 178 App. Div. 724, 162 N. Y. S. 531 (1916); *Goss v. Lanin*, 170 Iowa 57, 152 N. W. 43 (1915) (dictum).

Where it appears that more money is needed than was originally contemplated, either party to a joint adventure may withdraw. *Hart v. McDonald*, 52 La. Ann. 1686, 28 So. 169 (1900); *Gudebrod v. Ward's Admr.*, (Va. 1935) 182 S. E. 118.

<sup>20</sup> *In re Scott's Will*, (Sur. Ct. 1924) 204 N. Y. S. 478. See *MECHEM, PARTNERSHIP*, § 361 (1920).

<sup>21</sup> *Bank of Cedar Bluffs v. Le Grand*, 127 Neb. 183, 254 N. W. 892 (1934).

<sup>22</sup> *Westcott v. Gilman*, 170 Cal. 562, 150 P. 777 (1915). See *MECHEM, PARTNERSHIP*, 2d ed., §§ 75-77 (1920).

<sup>23</sup> A contract provision as to division of profits is controlling. *Thurston v. Hamblin*, 199 Mass. 151, 85 N. E. 82 (1908); *Bedwell Coal Co. v. State Industrial Comm.*, 157 Okla. 227, 11 P. (2d) 527 (1932).

<sup>24</sup> *Ford & McNamara v. Wilson*, 119 Cal. App. 475, 6 P. (2d) 996 (1931); *Hoge v. George*, 27 Wyo. 423, 200 P. 96 (1921).

<sup>25</sup> *Wetmore v. Crouch*, 150 Mo. 671, 51 S. W. 738 (1899); *Ingram v. Johnston*, 38 Cal. App. 234, 176 P. 54 (1918); *Lardizabal v. Valentine*, 185 App. Div. 124, 172 N. Y. S. 863 (1918).

<sup>26</sup> *Nat. Surety Co. v. Winslow*, 143 Minn. 66, 173 N. W. 181 (1919).

<sup>27</sup> *Irer v. Gawn*, 99 Cal. App. 17, 277 P. 1053 (1929).

<sup>28</sup> *Stettauer Bros. v. Carney & Stevens*, 20 Kan. 474 (1878); *Ford & McNamara v. Wilson*, 119 Cal. App. 475, 6 P. (2d) 996 (1931).

Losses may be shared by means of contribution between the parties. *McMillan v. Whitley*, 38 Utah 452, 113 P. 1026 (1911); *Stettauer Bros. v. Carney & Stevens*, 20 Kan. 474 (1878).

it has been held that the joint adventure need not involve a sharing of losses at all,<sup>29</sup> the predominating view is to the contrary and indicates that both the partnership and the joint adventure require more than merely sharing the profits.<sup>30</sup>

In the absence of special agreement, joint adventurers, like partners, have no right to compensation for services rendered in conducting the affairs of the venture.<sup>31</sup> And a statutory rule for responsibility for losses in partnerships has been applied to the joint adventure.<sup>32</sup>

One of the foremost distinctions between the joint adventure and the partnership lies in the rights and remedies of the members against each other. The traditional rule<sup>33</sup> is that partners may not sue each other at law, while joint adventurers may sue in equity or at law, even

<sup>29</sup> *Warwick v. Stockton*, 55 N. J. Eq. 61, 36 A. 488 (1897). In this case one of the joint adventurers was to get a salary, whether or not the business was successful. The other adventurer was the legal and equitable owner of the business, subject to a duty to account as to the manner of conducting the business, and as to the other's share in the profits. Accord: *Marston v. Gould*, 69 N. Y. 220 (1877).

<sup>30</sup> *Atlas Realty Co. v. Galt*, 153 Md. 586, 139 A. 285 (1927), in which the court says (at p. 590):

"While a joint adventure may be distinguished from a partnership, nevertheless they are both so much alike that it is often very difficult to differentiate them, and to establish either it is necessary to do more than show that the persons said to be so associated are to share in the profits of a transaction. But it is essential to show that they have a joint proprietary interest, or that they are to share losses as well as profits, or that they have a joint control over the subject-matter of the adventure or of the manner in which it is to be carried out."

Accord: *Darling v. Buddy*, 318 Mo. 784, 1 S. W. (2d) 163 (1927); *Pierce v. McDonald*, 168 App. Div. 47, 153 N. Y. S. 810 (1915); *Nat. Surety Co. v. Winslow*, 143 Minn. 66, 173 N. W. 181 (1919).

It has been held that net profits in a joint adventure are computed differently from those in a partnership. See *Bane v. Dow*, 80 Wash. 631 at 635, 142 P. 23 (1914), in which the rule is laid down that in a partnership the entire cost of the business is to be reckoned before determining the profits, while in a joint adventure the rule is that "no part of the expenses incurred by one party in the execution of his part of the common enterprise can be charged against the other parties, but should be deducted from his share of the profit." Accord: *Zech v. Bell*, 94 Wash. 344, 162 P. 363 (1917).

<sup>31</sup> "In the absence of special agreement to the contrary, a partner is not entitled to compensation for services rendered in conducting the partnership affairs, no matter how much more time he may have given than the other, or how much more valuable and effective his service may have been. . . . The rule is the same as between joint adventurers." In re *Week's Estate*, 204 Wis. 178 at 181, 235 N. W. 448 (1931). See also *Levy v. Leavitt*, 257 N. Y. 461, 178 N. E. 758 (1931).

<sup>32</sup> *Ludeau v. Avoyelles Cotton Co.*, 164 La. 275, 113 So. 846 (1927).

<sup>33</sup> 2 ROWLEY, PARTNERSHIP, § 743 (1916). But in an executory partnership, the breach of agreement by one member entitles the other to sue at law for damages. *Crowninshield Trading Corp. v. Earle*, 200 App. Div. 10, 192 N. Y. S. 304 (1922). See also 2 ROWLEY, PARTNERSHIP, § 769 (1916).

for a share of the profits,<sup>34</sup> the additional remedy being given despite the fact that a joint adventure is ordinarily a simpler relationship than a partnership. However, it is the complexity of the partnership which deprives its members of the right to use a law action,<sup>35</sup> and requires resort to equity for an accounting and for dissolution, because the proof requirements are too complex for a jury trial. The matters arising in a joint adventure are for the most part less difficult of proof and can be handled at law. On that ground, equity has, in at least one case, refused an accounting between joint adventurers.<sup>36</sup> However, a partnership for a single transaction, which comes close to being, and may in some cases be, a joint adventure, may resort to a law action to straighten out partnership accounts.<sup>37</sup> There is a tendency now to allow actions at law between partners in cases where the transaction is simple enough to avoid the necessity of an accounting.<sup>38</sup>

Where formerly the difference in the actions available to joint adventurers and to partners was a convenient distinction between the two

<sup>34</sup> See 2 ROWLEY, PARTNERSHIP, § 990 (1916). See also *Hurley v. Walton*, Admr., 63 Ill. 260 (1872); *Joring v. Harriss*, (C. C. A. 2d, 1923) 292 F. 974; *Botsford v. Van Riper*, 33 Nev. 156, 110 P. 705 (1910).

A joint adventurer may sue a co-adventurer at law for recovery of an advancement in excess of plaintiff's proper share and get a lien on the co-adventurer's share to the extent of such advancements. *Wertzberger v. McJunkin*, 171 Okla. 528, 43 P. (2d) 729 (1935).

But see *Voegtlin v. Bowdoin*, 54 Misc. 254, 104 N. Y. S. 394 (1907), denying a law action between joint adventurers for recovery of profits in the absence of a balance arrived at in an accounting.

<sup>35</sup> MECHEM, PARTNERSHIP, 2d ed., § 204 (1920).

<sup>36</sup> *Pine Bldg. Co. v. Grossman*, 102 N. J. Eq. 189, 140 A. 251 (1928).

There are, however, many situations in which an accounting has been necessary and has been granted on various grounds, as where there is fraud or bad faith between the parties, resulting in secret profits. *Brown v. Leach*, 189 App. Div. 158, 178 N. Y. S. 319 (1919); *Church v. Odell*, 100 Minn. 98, 110 N. W. 346 (1907); *Lane v. Wood*, 259 Mich. 266, 242 N. W. 909 (1932). An accounting is granted where the complainant also seeks the appointment of a receiver. *Barry v. Kern*, 184 Wis. 266, 199 N. W. 77 (1924). However, one case, at least, although granting an accounting, denied the appointment of a receiver where no fraud between the parties was shown. *Warwick v. Stockton*, 55 N. J. Eq. 61, 36 A. 488 (1897). An accounting has also been granted on the grounds that the complexity of the relationship required it. *Butler v. Union Trust Co.*, 178 Cal. 195, 172 P. 601 (1918).

An accounting has been refused in an executory joint adventure, leaving the parties to a remedy at law for damages for breach of contract. *Wilson v. Maryland*, 152 Minn. 506, 189 N. W. 437 (1922); *Lorden v. Snell*, 39 Ariz. 128, 4 P. (2d) 392 (1931), holding a joint adventurer liable in a law action for breach of contract. A law action for return of the investment on defendant's breach of the joint adventure agreement has been sustained. *Binder v. Kessler*, 200 App. Div. 40, 192 N. Y. S. 653 (1922).

<sup>37</sup> MECHEM, PARTNERSHIP, 2d ed., § 205 (1920).

<sup>38</sup> 2 ROWLEY, PARTNERSHIP, § 745 (1916).

forms of association, it seems to be gradually vanishing as courts begin to make the availability of any form of action depend on the complexity of the questions involved in the cases before them, rather than on the name given to the particular association of which the litigants are members. Here again the similarity between the joint adventure and the partnership is increasing, with a consequent wider application of the same rules of law to both.

This trend is not so clear in the matter of agency. The general rule is that a joint adventurer may bind his associates in matters within the scope of the business by contracts for the benefit of the business<sup>39</sup> and that they are liable for his negligence in matters within the scope of the business.<sup>40</sup> The rule that a partner may effectively bind his co-partner by acts within his apparent authority implied from the nature of the business<sup>41</sup> has been carried over into the joint adventure field,<sup>42</sup> although the cases imply that actual limitation on authority to dispose of common property is binding on the third party, even in the absence of notice to the latter.<sup>43</sup> There is disagreement in the cases as to whether a joint adventurer can bind his associates in an indebtedness incurred in executing the venture, but the majority of the cases allow it.<sup>44</sup>

<sup>39</sup> *Nelson v. Lindsey*, 179 Iowa 862, 162 N. W. 3 (1917); *Bond v. O'Donnell*, 205 Iowa 902, 218 N. W. 898 (1928); *O. K. Boiler & Welding Co. v. Minnetonka Lumber Co.*, 103 Okla. 226, 229 P. 1045 (1924); *Stark v. McKenna*, 124 Ore. 332, 263 P. 391 (1928); *Drew v. Hobbs*, 104 Fla. 427, 140 So. 211 (1932). See *MECHEM, PARTNERSHIP*, 2d ed., § 274 and 275 on power of a partner to sell partnership property.

<sup>40</sup> *Keiswetter v. Rubenstein*, 235 Mich. 36, 209 N. W. 154 (1926).

<sup>41</sup> *MECHEM, PARTNERSHIP*, 2d ed., § 244 (1920).

<sup>42</sup> *Dobbins v. Texas Co.*, 136 Okla. 40, 275 P. 643 (1929).

<sup>43</sup> *Ibid.* Also see *Marston v. Gould*, 69 N. Y. 220 (1877), holding that evidence as to the authority of a joint adventurer to sell common property may be introduced in order to determine the question of whether the sale was binding on the co-adventurer, who, under the agreement, was to do the buying and selling of the stock, which was the property involved, although it was not stated in the agreement that this power was to reside exclusively in the co-adventurer.

<sup>44</sup> *Slater v. George M. Clark & Co.*, 68 Ill. App. 433 (1896); *In re Taub*, (C. C. A. 2d, 1924) 4 F. (2d) 993. See *Lane v. Fenn*, 65 Misc. 336, 120 N. Y. S. 237 (1909), holding members of a joint adventure liable for fraud by other members on the grounds of agency.

Contra, *Hansen v. Burford*, 212 Cal. 100, 297 P. 908 (1931), where the evidence showed lack of authority to bind co-adventurers.

It has been held that a joint adventurer can be held jointly liable to the full extent of an obligation incurred on behalf of the venture by another member of it who has authority to make the contract, even though the creditor has notice of the limitation of liability as between the adventurers. *Drew v. Hobbs*, 104 Fla. 427, 140 So. 211 (1932). The same rule of full liability has been applied where the creditor thought that the contracting party was acting for himself alone in taking title to land. *Proctor v. Hearne*, 100 Fla. 1180, 131 So. 173 (1930).



Members of a joint adventure are bound to the extent of their respective interests by a mortgage or pledge of common property by the one who held title for the benefit of the association, on the grounds that he is presumed to have authority to mortgage or pledge it to raise money for the enterprise or to secure indebtedness incurred in carrying it on.<sup>45</sup>

The fact that at common law a corporation could not be a member of a partnership<sup>46</sup> but could be a member of a joint adventure<sup>47</sup> throws light on the mutual agency question. The membership of a corporation in a partnership was thought to interfere with the policy of the state as to operation of corporations by directors,<sup>48</sup> which policy could not be carried out if corporate liability arose from acts of a partner without express consent of the directors of the corporation. If there is mutual agency in a joint adventure, it would seem that the same objection would apply to permitting corporations to enter into that form of association. However, it has been well established by the cases that a corporation may enter into a joint adventure,<sup>49</sup> the purposes of which are within the corporate powers, and may become bound thereby.<sup>50</sup>

By way of generalization, the most that can be safely said is that the degree of mutuality of agency in a joint adventure is still uncertain, but appears to be more limited than in the case of partnership.<sup>51</sup> This

<sup>45</sup> *Croft State Bank v. Girardy*, 117 Kan. 585, 232 P. 1076 (1925).

Where the property is held jointly, apparent authority to pledge does not follow as a matter of course, as in a partnership, but may be shown by circumstances. *Smith v. First Nat. Bank of Albany*, 151 App. Div. 317, 135 N. Y. S. 985 (1912).

<sup>46</sup> 6 FLETCHER, CORPORATIONS, § 2520 (1931). It is now established that a corporation may become a member of a partnership when authorized by statute or by its charter. *Ibid.*

<sup>47</sup> *Tusant & Son Co. v. Chas. Weitz Sons*, 195 Iowa 1386, 191 N. W. 884 (1923); *Dexter & Carpenter, Inc. v. Houston*, (C. C. A. 4th, 1927) 20 F. (2d) 647; *Wyoming-Indiana Oil & Gas Co. v. Weston*, 43 Wyo. 526, 7 P. (2d) 206 (1932).

<sup>48</sup> *Oscillating Carousal Co. v. McCool*, (N. J. Ch. 1896) 35 A. 585. See also, MECHEM, PARTNERSHIP, 2d ed., § 53 (1920); 6 FLETCHER, CORPORATIONS, § 2520 (1931).

<sup>49</sup> See cases cited in note 47, supra. Also see quotation from *McDaniel v. State Fair of Texas*, (Tex. Civ. App. 1926) 286 S. W. 513, in note 4, supra.

<sup>50</sup> *Salem-Fairfield Telephone Assn. v. McMahan*, 78 Ore. 477, 153 P. 788 (1915).

<sup>51</sup> *Braddock v. Hinchman*, 78 N. J. Eq. 270, 79 A. 419 (1911), in which the court says (at p. 272):

"It cannot be said that the agreement is sufficient to create a partnership between Braddock and Hinchman, since it is evident that neither of them intended to constitute the other the general agent for the management of the business, and neither intended to assume the liability for obligations incurred by the other."

In *Keyes v. Nims*, 43 Cal. App. 1, 184 P. 695 (1919), there is dictum (at p. 9)

is, perhaps, a desirable condition when we consider the fact that, although the parties are supposed to exercise extreme loyalty and good faith toward each other, they are, nevertheless, co-adventurers in a limited enterprise, and no one of them should have too much freedom to involve the others in liability.

Real estate held for the benefit of the venture may be taken in the joint names of the adventurers as joint owners, or may be taken in the name of one of them, who then holds in trust for the others,<sup>52</sup> and on his death his heirs take the property affected with the trust.<sup>53</sup> The rules of partnership realty in these matters are the same.<sup>54</sup>

The rules on assignability of the interest of a partner and of a joint adventurer seem to be the same.<sup>55</sup> Any party may dispose of his interest but cannot introduce the third party into the firm<sup>56</sup> unless all the other parties consent.<sup>57</sup>

Subject to a variety of rules, either common law or statutory, creditors of a partner can reach his interest in the firm.<sup>58</sup> *A fortiori*, then, a creditor can reach the interest of a joint adventurer, although little is known as to the exact application of partnership law to this problem. It may fairly be assumed that if courts apply partnership law in so many other respects, the law of partnership will furnish a safe guide to the rights of creditors of a joint adventurer in joint adventure property.

that: "In a joint adventure, no one of the parties thereto can bind the joint adventure."

But in *Bedwell Coal Co. v. State Industrial Comm.*, 157 Okla. 227, 11 P. (2d) 527 (1932), involving a joint adventure of two coal mining companies under an agreement whereby the coal produced by one company under the direction of the second company was marketed through the second company as selling agent on contracts made by the selling company, the proceeds to be divided in a prearranged proportion, each company paying its own expenses out of its share of the proceeds, the selling company was held liable for compensation to an employee of the producing company who was injured on the premises of the latter company. This extension of the agency doctrine seems to conflict with the rule in regard to computation of profits as provided for in the contract in the above case and as set forth in the quotation in note 30, *supra*, from *Bane v. Dow*, 80 Wash. 631, 142 P. 23 (1914).

<sup>52</sup> *Irvine v. Campbell*, 121 Minn. 192, 141 N. W. 108 (1913); *Lutz v. Billick*, 172 Iowa 543, 154 N. W. 884 (1915).

<sup>53</sup> *Irvine v. Campbell*, 121 Minn. 192, 141 N. W. 108 (1913).

<sup>54</sup> *MECHEM, PARTNERSHIP*, 2d ed., §§ 154, 163, 164 (1920).

<sup>55</sup> *Cascaden v. O'Connor*, (C. C. A. 9th, 1919) 257 F. 930; *Plews v. Burrage*, (D. C. Mass. 1927) 19 F. (2d) 412. These are both cases of joint adventure involving mining developments, and are to be distinguished from what is known as a mining partnership, discussed in 1 *ROWLEY, PARTNERSHIP*, §§ 152, 153 (1916).

<sup>56</sup> *Fried v. Guiberson*, 30 Wyo. 150, 217 P. 1087 (1923).

<sup>57</sup> *Keyes v. Nims*, 43 Cal. App. 1, 184 P. 695 (1919).

<sup>58</sup> *MECHEM, PARTNERSHIP*, 2d ed., §§ 148, 149 (1920).

## 3.

As stated earlier, the description of a joint adventure as a partnership for a special purpose comes closest to indicating the legal characteristics of the relationship, and the generalization that the law is the same for partnerships and joint adventures is a good working principle for most purposes. Since a joint adventure can logically be called a partnership for a special purpose, as much of partnership law as fits the case of a joint adventure can well be taken over into the joint adventure field.<sup>59</sup>

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<sup>59</sup> Additional information on some of the problem discussed herein may be found in 33 MICH. L. REV. 436 (1935); 33 HARV. L. REV. 852, 868 (1920); 3 DAK. L. REV. 49 (1930); 6 MINN. L. REV. 397, 415 (1922); 58 UNIV. PA. L. REV. 309 (1910).