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JOINT ADVENTURE--RIGHT OF CO-ADVENTURERS TO SUE EACH OTHER AT LAW

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JOINT ADVENTURE—RIGHT OF CO-ADVENTURERS TO SUE EACH OTHER AT LAW—Plaintiff and defendants, joint adventurers, entered into an agreement whereby plaintiff was allegedly entitled to a cash payment from the funds of the joint undertaking. Plaintiff brought an action against defendants to recover the amount claimed. Neither party requested termination of the business. The trial court ordered a reference for accounting and then, without terminating the joint adventure, found that plaintiff was entitled to be paid out of the assets of the joint adventure as agreed. On appeal, *held*, reversed. As plaintiff and defendants were joint venturers it was necessary to have a termination of the joint adventure and an accounting of all transactions thereof before plaintiff could bring suit to recover the amount due him under the agreement. *Cunningham v. De Mordaigle*, (Cal. App. 1947) 186 P. (2d) 423.

The California court applied the partnership rule that one partner may not sue another partner at law for a breach of the partnership agreement, but rather must sue in equity for dissolution and accounting. As none of the adventurers sought a termination and final accounting the court was unable to determine the respective rights and liabilities of the parties.[1] The decision of the court flatly contradicts the frequent assertion that, as a general rule, joint adventurers may sue each other at law while partners must bring their actions in equity.[2] An examination of cases reveals that the right of a joint adventurer to sue his fellow adventurer at law without seeking a dissolution of the joint adventure is by no means unrestricted, nor is it clear that joint adventurers are permitted to sue at law in situations where partners are not.[3] Usually, when the action is permitted at law, the adventure has been closed and a party thereto is entitled to a sum certain as his share of the adventure,[4] or the business is of a limited scope, embracing only very simple transactions.[5] However, when the

[1] Principal case at 424.

[2] Davidor v. Bradford, 129 Wis. 524, 109 N.W. 576 (1906); Brudvick v. Frosaker Blaisdell Co., 56 N.D. 215, 216 N.W. 891 (1927); 30 AM. JUR., Joint Adventures, p. 708; 95 A.L.R. 1242 at 1245 (1935).

[3] McKee v. Capitol Dairies, 164 Ore. 1 at 9, 99 P. (2d) 1013 (1940); Mechem, "The Law of Joint Adventures," 15 MINN. L. REV. 644 (1931).

[4] 2 ROWLEY, PARTNERSHIP, § 990 (1916); Barton v. Coulson, 196 Ill. App. 212 (1916) (action at law by one adventurer against the other for a share of the profits, as provided by contract, it appearing that the adventure was terminated and the affairs liquidated); Annon v. Brown, 65 W. Va. 34, 63 S.E. 691 (1909) (private liquidation prior to the bringing of the action, which was in equity for dissolution of the partnership, and the court held that there was an adequate remedy at law under the circumstances, treating the association as a joint venture rather than a partnership).

[5] Ledford v. Emerson, 140 N.C. 288, 52 S.E. 641 (1905); Joring v. Harriss, (C.C.A. 2d, 1923) 292 F. 974 (the parties owned cotton and agreed to sell jointly

undertakings of the venture are of a complex nature and are unliquidated, the courts uniformly demand that plaintiff's action be brought in equity for termination of the business, dissolution and accounting, inasmuch as the rights of the parties are usually too involved for an adequate adjustment by a court of law.[6] The principal case clearly falls within this latter category, and by its requirement of a termination and accounting as a prerequisite to an action by the plaintiff, avoids the confusion caused by frequent loose expressions in cases concerning the right of joint adventurers to sue each other at law.

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and divide the profits: the court permitted an action at law by *P* to recover his share of the profits because of the simplicity of the subject matter); Shefts Supply, Inc. v. Fischer, 171 Okla. 72, 41 P. (2d) 902 (1935) (no unpaid bills outstanding).

[6] Consolidated Machinery & Wrecking Co. v. Harper Machinery Co., 190 App. Div. 283, 180 N.Y.S. 135 (1920); McKee v. Capitol Dairies, 164 Ore. 1 at 9, 99 P. (2d) 1013 (1940); Elledge v. Hotchkiss, 222 Ala. 129, 130 S. 893 (1930); Josias v. Sugar Products Co., (N.Y. S.Ct. 1918) 169 N.Y.S. 887, affd., 187 App. Div. 905, 174 N.Y.S. 908 (1919); Berwin v. Cable, 313 Mass. 431, 47 N.E. (2d) 951 (1943). In Johanik v. Des Moines Drug Co., 235 Iowa 679, 17 N.W. (2d) 385 (1945), *P* sued *D*, his fellow adventurer, for recovery of unascertained profits over an extended period, without asking for termination and accounting of the adventurer's affairs. The court said, at p. 687, ". . . until the transaction has been closed or a balance struck, there can be no recovery of unascertained profits between joint adventurers in an action at law, and if the member whose duty to account will not do so, the only remedy is in equity. . . . This rule is applicable here."