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Joint Stock Companies: Joint Adventures: Limitation of Actions

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$7.00 per acre. Sheldon rescinded the contract and a new contract was made setting the price at $8.00 per acre. Afterwards Sheldon discovered the fraud and refuse to go on with the bargain. Kelly had made part payment and sued to compel Sheldon to perform the contract. It was held that Kelly could not compel specific performance of the contract but that the court would do complete equity and hence Sheldon must return the money he had received.

In *Wells* v. *Mitletk,* 23 Wis. 64, the circuit court refused specific performance of a contract to convey lands in exchange for a barge and a half interest in a steamboat. The owner of the steamboat made false representations regarding the financial responsibility of his partner and these were held sufficiently fraudulent to be a defense against specific performance.

Again in *Engberry* v. *Rousseau,* 117 Wis. 52, specific performance was refused and the opinion of Chief Justice Ryan in *Williams* v. *Williams,* 50 Wis. 311, is cited, "A court of equity must be satisfied that the claim for a deed is fair, just, and reasonable, and the contract equal in all its parts, and founded on an adequate consideration before it will interpose with this extraordinary assistance. If there be any well founded objection on any of these grounds, the practice of the court is to leave the party to his remedy at law for compensation in damages."

Hence, we can conclude that in Wisconsin "Specific performance of a contract will not be decreed in favor of a party who has been guilty of misconduct in making the contract and that the rule as stated by Chief Justice Marshall in *Cathcart* v. *Robinson*[8] is at present the law in Wisconsin. "Omission or mistake in the agreement or that it is unconscientious or unreasonable or that there has been concealment, misrepresentation, or any unfairness, are enumerated among the causes which will induce the court to refuse its aid.[9]

JOHN WALSH

Joint Stock Companies: Joint Adventures: Limitation of Actions.

Reinigethal v. *Nelson, et al.,* Wis., Sup. Ct., Oct., 1929, 227 N.W. 14 is an action on a note by trustees of the estate of the deceased against Nelson and others of a syndicate formed to purchase lands in Montana. The members of the syndicate signed an agreement by which two of them were designated trustees who were to take title to the land and were given power "to enter into all contracts necessary to carry this agreement into effect." The trustees were governed by the decision of

[8] 5 Pet. 264, 270, 82 Ed. 120, 124.

[9] Quotation taken from *Eaton on Equity* (2nd. Ed.) PP. 501.

a majority in interest of all the parties to the contract. The land was taken subject to $8,000 worth of mortgages. When these became due the trustees were directed to make, execute, and deliver the $8,000 note, that is here in suit, to replace the obligations when due. When that note became due the trustees gave three notes for one, two, and three years each, for the interest due. When due the first note was not paid; when the second came due, Handt, a trustee, borrowed on his personal note and placed that sum in the syndicate fund which was then used to pay the two interest notes then due. Plaintiff brought suit on the $8,000 note more than six years after it was due but in less than six years after the two notes were paid, making all syndicate members parties defendant. The trial court held that all signers were liable on the note when it was given but the six year statute of limitations protected them; that the payment of interest was made out of Handt's own funds and not by direction of the members of the syndicate, and therefore the statute of limitations protected them. However Handt and Supple are liable for the entire note; Handt, because of his payment of interest, and Supple, because he didn't plead the statute of limitations. The executrix of the estate of Handt appealed, and the Supreme Court of Wisconsin reversed and vacated the judgment, remanded the case, and directed that all of the signers be held liable on the note.

The court decided that a syndicate to purchase lands under an agreement granting powers to trustees and without a president or capital stock of fixed value was not a joint stock company.[1] That renders inapplicable section 286.04 of the statutes, requring one to exhaust remedies against a joint stock company before proceeding against individual members in view of section 286.06, providing that process should be served on the president thereof. In this case all of the signers of the note were served.

Parties to the syndicate to purchase lands appointing two members as trustees for all were held to be joint adventurers. "Essentially there is little difference between a partnership and a joint adventure; the latter as a rule being more limited and confined in its scope principally to a single transaction."[2] That being a case where one party owned lots and the other, being a builder, built houses on them, and they agreed to share equally in the balance of the net profits, such, involving both profit and loss, constitutes a joint adventure in the nature of a partnership.

Members of the syndicate formed to purchase lands under agree-

[1] Wis. Stat. 286.04-286.06.

[2] 184 Wis. 266.

ment investing trustees with power are liable on a note executed by the trustees covering mortgages on land purchased. The trustees who signed were agents of all of their associates in the giving of the note. They were all liable unless such liability had been extinguished by the running of the statute of limitation.[3]

Generally, each joint adventurer may bind others in matters strictly within the scope of joint enterprise. "Where a party to a joint adventure acts fairly and in good faith he is not liable for the whole but only for his share of the losses of the adventure."[4] The protection of the property of the syndicate was strictly within the scope of the joint enterprise. The court felt that Handt should not be held liable for this entire debt because he used his own credit to protect the interests of the syndicate, instead of asking the members to raise the necessary funds.

The relationship between joint adventurers forming a syndicate to purchase lands has many of the essential elements of a partnership. The courts do not treat them as being identical, but they are governed by practically the same rules. ". . . . It is immaterial whether we treat the parties as coadventurers or as copartners. In either event each would be the agent of the other."[5]

Payments by one joint adventurer even after the joint adventure has ended, before the limitations have run, tolls the statute to all. Wisconsin adopted the rule that each partner is the agent of all his partners in making payments upon firm obligations and that part payments by one partner, even after the dissolution of the firm before the statute has run, "forms a new point from which the statute begins to run as to all of the partners."[6] In this regard the power of a joint adventurer is the same as that of a partner, this case falling clearly within the rule as to partners which prevails in Wisconsin. So, payment by one member of the syndicate of interest on the notes of the syndicate to protect the interests of all the members tolled the limitations as them all.

Section 330.44 of the statutes, which provides that a payment by one joint contractor shall not toll the running of the statute as to the other joint contractors who did not join in making such payment, has no application to this case. "There are incidents, rights, and liabilities, of a partnership which make the members of the firm in such case more than mere joint contractors."[7] "As to matters pertaining to the partnership business, the act of one of the members of a firm is the act of all,

[3] Wis. Stat. Chaps. 330, 190.
[4] 15 R. C. L. 505.
[5] 170 Iowa 57, 152 N.W. 43.
[6] *Clement* v. *Clement,* 69 Wis., 599.
[7] *Clement* v. *Clement* supra.

and a part payment of a partnership debt by one partner will have the same effect against the others as against the one who makes it.[8]

COSMAS B. YOUNG

Landlord and Tenant.

Lincoln Fireproof Warehouse Co. v. *Gruesel, et. al.*,[1] was an action by the Lincoln Fireproof Warehouse Company against Sylvester C. Gruesel and others, trustees of the Home Wiring Company. The facts are stated thus: on March 1, 1924, the plaintiff, a corporation, as lessor, leased to a corporation known as the Home Wiring Company premises in the City of Milwaukee known as No. 330-332 Third Street, for a term of three years, in consideration of certain stipulated rentals per annum, payable in monthly installments, in advance. After having occupied the premises up to February 6, 1925, the Home Wiring Company executed an assignment in writing to the defendants, as trustees, for the benefit of its creditors, of all its property, including its interest in the said lease. The defendants paid the rentals becoming due monthly, up to December 1, 1925; and some time between December 1 and December 11, 1925, the defendants abandoned and vacated the demised premises, and refused to abide by the provisions of the lease. Thereafter, the plaintiff took possession of the leased premises, and attempted to relet them in mitigation of damages, but without success.

Reargument was ordered in this case, because the appellant asserted that the rule adopted in *Selts Investment Co.* v. *Promoters*,[2] and *Strauss* v. *Lynch*[3] demanded a reconsideration of the facts presented. Those cases declared it to be the duty of the landlord to take possession of the premises abandoned by the tenant, and to use reasonable diligence in reletting the same, in order to minimize damages. The former rule set forth in a previous Wisconsin case[4] held that by resuming possession in order to perform his duty to the tenant, the landlord accepted surrender of the premises by the assignees, releasing them from further liability to pay rent.

Justice Stevens in his opinion said the court concluded that this result presented no ground for a modification of the former decision. While the assignees were in privity of estate, they were obligated to pay the rent as set forth in the lease. The original lessee was also liable, because he had contracted to pay to the end of the term. The assignees

[8] *Harding* v. *Butler*, 156 Mass., 34, 30 N.E. 168.
[1] 227 N. W. 6; — Wis. —.
[2] 197 Wis. 476, 485; 222 N.W. 812.
[3] 197 Wis. 586; 222 N.W. 811.
[4] 224 N.W. 98; — Wis. —.