

# Partnership--Joint Ventures--Fiduciaries--Leases-- Trusts (Meinhard v. Salmon, 250 N.Y. \_\_\_\_ (1929))

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The questions as to previous acts unproved were erroneously allowed since they were mere charges and there was no proof of guilt.<sup>2</sup> Though the cross-examiner is bound by the answers in such case, the denial does not render the question harmless.<sup>3</sup> The prosecutor cannot lawfully create a false impression by questions containing no element of misconduct and by parading witnesses as a challenge to the defendants.<sup>4</sup> It was not only error to show defendant's expulsion from the A. F. of L.<sup>5</sup> but such error was aggravated by suggesting that the action was motivated by defendants' acts of violence. Defendants had no opportunity to controvert and such alleged finding was not made by a court of justice.

Limitation upon the mode of questioning is ordinarily within the discretion of the trial court, but when the obvious purpose of questions is to create the impression that the witnesses are lying, then permissive rulings made over objections constitute errors of law, not judgment.<sup>6</sup>

PARTNERSHIP — JOINT VENTURES — FIDUCIARIES — LEASES — TRUSTS.—Plaintiff and defendant were joint adventurers in the exploitation of a lease obtained by the latter for a period of twenty-two years. Plaintiff by virtue of his moneyed contribution was to share the losses and participate in the profits, but sole management and control were to be exercised by defendant. Shortly before the expiration of the term defendant, without communicating with his co-adventurer, secured in the name of a company owned by him, a new lease of a large tract of land including the property originally leased. In an action to impress the lease with a trust, *Held*, for the plaintiff, *Meinhard v. Salmon*, 250 N. Y. (1929).

Co-adventurers are held to the same high degree of honesty and loyalty as partners.<sup>1</sup> A partner cannot take a renewal of a lease for his own benefit,<sup>2</sup> though a purchase, in good faith, of the reversion is allowed.<sup>3</sup> *Salmon*, being in control, occupied a position of trust and confidence and could not, despite the utmost good faith, gain any advantage not shared by *Meinhard*.<sup>4</sup> Extensions and renewals were

<sup>2</sup> *People v. Irving*, 95 N. Y. 541 (1884); *People v. Crapo*, 76 N. Y. 288 (1879).

<sup>3</sup> *People v. Slover*, 232 N. Y. 264, 133 N. E. 633 (1921).

<sup>4</sup> *People v. Freeman*, 203 N. Y. 267, 96 N. E. 413 (1911).

<sup>5</sup> *Nolan v. Brooklyn City & N. R. Co.*, 87 N. Y. 63, 68 (1881).

<sup>6</sup> *Supra* Note 4.

<sup>1</sup> *King v. Barnes*, 109 N. Y. 267 (1888).

<sup>2</sup> *Mitchell v. Reed*, 61 N. Y. 123 (1874).

<sup>3</sup> See *Anderson v. Lemon*, 8 N. Y. 236, 237 (1853). Cf. *Mitchell v. Reed*, *supra* Note 2.

<sup>4</sup> *Lindley*, *Partnership*, 495; *Comstock v. Buchanan*, 57 Barb. 127, 140 (1864).

matters requiring his attention and while this new contract was in a sense not a renewal, it came to him through administration of the business conducted for their joint benefit. Every advantage which he could obtain in the business must enure to the benefit of both.<sup>5</sup> His position makes him a trustee and the law disables him from acting in self-interest.<sup>6</sup> It is of no consequence that the new lease is upon different terms, nor is it material that the duration of the partnership is fixed and definite<sup>7</sup> and that the new lease is to commence at a time after that fixed for its termination.<sup>8</sup>

TRUSTS—STOCK DIVIDENDS—ACCUMULATIONS.—A deed of trust made in 1917 gave the net income of shares of stock to stated beneficiaries with remainder over. The trustee exercised the privilege given to him by the terms of the trust of allocating stock dividends received to capital, rather than income. The validity of this allocation was contested as being an unlawful accumulation of income. *Held*, such allocation is not in contravention of the statute prohibiting accumulations for other than the benefit of minors.<sup>1</sup> *Equitable Trust Co. v. Prentice*, 250 N. Y. 1 (1928).

Under the Federal, Massachusetts and English rule stock dividends are held to be increments to capital.<sup>2</sup> In New York, until 1926<sup>3</sup> it was settled that a stock dividend was regarded as either income or capital, depending upon whether the surplus out of which it was declared was earned prior to or after the creation of the trust.<sup>4</sup> However, a cash dividend by a going concern is income even though paid out of surplus earned prior to the creation of the trust.<sup>5</sup> In respect of taxation, a stock dividend is deemed capital.<sup>6</sup> "A stock dividend does not distribute property but simply dilutes the shares

<sup>5</sup> *Leach v. Leach*, 18 Pick. (Mass.) 68, 76 (1836); *Armour v. Alexander*, 10 Paige 571 (1844).

<sup>6</sup> *Terwilliger v. Brown*, 44 N. Y. 237 (1870).

<sup>7</sup> *Supra* Note 2 at 139.

<sup>8</sup> *Ibid.*

<sup>1</sup> Personal Property Law, Sec. 16.

<sup>2</sup> *Gibbons v. Mahon*, 136 U. S. 549 (1890); *Minot v. Paine*, 99 Mass. 101 (1868); *Barton's Trust*, L. R. 5 Eq. 238, 243 (1868).

<sup>3</sup> Laws of 1826 Ch. 843 amending Personal Property Law, Sec. 17A, providing that in the absence of provision to the contrary in the terms of a trust, stock dividends shall be principal and not income of such trust.

<sup>4</sup> *Matter of Osborne*, 209 N. Y. 450, 103 N. E. 823 (1913); *U. S. Trust Co. v. Heye*, 224 N. Y. 242, 120 N. E. 645 (1918); *Macy v. Ladd*, 227 N. Y. 670, 125 N. E. 829 (1920); *Bourne v. Bourne*, 240 N. Y. 172, 148 N. E. 180 (1925); *Matter of Byrd*, 241 N. Y. 184, 149 N. E. 827 (1925); *Sturgis v. Roche*, 247 N. Y. 585, 161 N. E. 192 (1928).

<sup>5</sup> *Matter of Kernochan*, 104 N. Y. 618, 11 N. E. 149 (1887).

<sup>6</sup> *People ex rel. Clark v. Gilchrist*, 243 N. Y. 173, 178, 153 N. E. 39 (1926).