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MINING PARTNERSHIPS IN WEST VIRGINIA*

A recent West Virginia case¹ bases the determination of the rights of the parties upon certain rules peculiar to the law of mining partnership, thereby supplementing a line of decisions which have been the subject of frequent citation by courts and text writers throughout the country. Those decisions paint a more or less complete picture when properly grouped, and it is the purpose of this note to effect that grouping.

A mining partnership is not based on a contract between the parties² as in the case of an ordinary partnership, but arises by operation of law³ when cotenants of mining lands unite and cooperate for the purpose of extracting minerals, whether coal, oil or gas from the land.⁴ Ordinarily, the parties as individuals own undivided interests in a mining lease, but the requirement of co-ownership is satisfied if the legal title is in one associate who holds in trust for the others.⁵ If these parties join in operation, normally by contributing capital in proportion to the amount of interest held, a mining partnership arises.

The coal, oil and gas industries have developed along lines which are directly responsible for this type of partnership. A premium is placed on rapid and continuous operation since the primary purpose of the association is the production of the greatest possible amount of a uniform product. This fact, together with the fact that the property rights involved are frequently distributed among several individuals, has so reduced the importance of the individual or personal element as to cause the courts to say

* See comment (1928) 34 W. VA. L. Q. 199, comparing a mining partnership with a tenancy in common and discussing ruling as to apparent authority of a managing partner in *Manufacturer's Light and Heat Co. v. Tenant, infra* n. 4.

¹ *Park v. Adams*, 173 S. E. 785 (W. Va. 1934).

² See collection of cases, *infra* n. 4. The fact that there is a contract between the parties does not prevent the existence of a mining partnership. *Lantz v. Tumlin*, 74 W. Va. 196, 81 S. E. 820 (1914).

³ It would seem that this is the theory of the court since the cases expressly state that an agreement is not required, and since the problem of whether or not the statute of frauds applies has only arisen in a case where the parties created the relation by oral contract. *Lantz v. Tumlin, supra* n. 2.

⁴ *Childers v. Neely*, 47 W. Va. 70, 34 S. E. 828, 49 L. R. A. 468 (1899); *Blackmarr v. Williamson*, 57 W. Va. 249, 50 S. E. 254 (1905); *Kirchner v. Smith*, 61 W. Va. 434, 58 S. E. 614 (1907); *Wetzel v. Jones*, 75 W. Va. 271, 84 S. E. 951 (1915); *Drake v. O'Brien*, 99 W. Va. 582, 130 S. E. 276 (1925); *Manufacturer's Light and Heat Co. v. Tenant*, 104 W. Va. 221, 139 S. E. 706 (1927).

⁵ *Kirchner v. Smith, supra* n. 4.

that the *delectus personae*⁶ of an ordinary partnership is absent, and that this partnership unlike the ordinary form is not terminated by the death, lunacy, or bankruptcy of a partner, nor by the transfer of his interest to a stranger.⁷ Efficiency of operation is further increased by the holding that the power of control over partnership affairs rests with the holder or holders of the majority interest.⁸ It is to be noted that continuity of existence and centralization of control are characteristics of a corporation rather than of a partnership, and that if the mining partnership is a hybrid form, it functions more like a corporation than a tenancy in common.⁹

The absence of the *delectus personae* tends to lessen the fiduciary nature of this association and to limit the implied authority of a partner in his dealings with third parties. Contracts thus formed bind the partnerships only when they involve the actual business of the partnerships.¹⁰ In dealings between the partners, however, one mining partner owes another the same duties of good faith and fair dealing owed by an ordinary partner to his associates,¹¹ although neither sale of interest and injection of a stranger into the firm nor purchase of a copartner's interest constitute breach of the relation of trust and confidence.¹²

Each partner is fully liable for any firm indebtedness,¹³ but one partner may obtain contribution from the other members to reimburse him for outlay in the firm's behalf over and above his

⁶ "Choice of person": Childers v. Neely, *supra* n. 4; Blackmarr v. Williamson, *supra* n. 4.

⁷ Childers v. Neely, *supra* n. 4; Blackmarr v. Williamson, *supra* n. 4; Wetzel v. Jones, *supra* n. 4; Park v. Adams, *supra* n. 1.

⁸ Childers v. Neely, *supra* n. 4; Blackmarr v. Williamson, *supra* n. 4; Bartlett and Stancliff v. Boyles, 66 W. Va. 327, 66 S. E. 474 (1909); Edlinger v. Southern Oil Co., 69 W. Va. 34, 71 S. E. 266 (1910). But the partner holding the majority interest may not sell the property, Edlinger v. Southern Oil Co., *supra*; and may be liable in an accounting for culpable negligence. Bartlett and Stancliff v. Boyles, *supra*.

⁹ *Contra*: Childers v. Neely, *supra* n. 4; Blackmarr v. Williamson, *supra* n. 4; Comment (1928) 34 W. VA. L. Q. 199.

¹⁰ Childers v. Neely, *supra* n. 4; Blackmarr v. Williamson, *supra* n. 4; Edlinger v. Southern Oil Co., *supra* n. 8; Manufacturer's Light and Heat Co. v. Tenant, *supra* n. 4.

¹¹ Wetzel v. Jones, *supra* n. 4; The acts of the owner of the majority interest must adhere strictly to this standard. Edlinger v. Southern Oil Co., *supra* n. 8.

¹² Blackmarr v. Williamson, *supra* n. 4; Wetzel v. Jones, *supra* n. 4.

¹³ Childers v. Neely, *supra* n. 4. Since the partnership may be created by contract, Lantz v. Tumlin, *supra* n. 2, it would seem that a limited mining partnership would be possible if the statutory provisions were satisfied. W. VA. REV. CODE (1931) c. 49, art. 9, §§ 1-12.

share.¹⁴ He may enforce his claims against the firm for such outlay by a lien on the social property, but not on the product if it has been divided by division orders giving to each member his share.¹⁵ He may obtain an accounting in equity as to the partnership's business, and his bill for an accounting need no longer ask for a dissolution of the partnership.¹⁶

Cessation of the firm's business will return the parties to the status of tenants in common.¹⁷ A court of equity will entertain a bill for dissolution and will dissolve the partnership if proper cause, such as total absence of harmony, is shown.¹⁸ The West Virginia court, however, has indicated a tendency to regard a new partner's request for dissolution with disfavor.¹⁹

A mining partnership is a form of business association well adapted to the conduct of the business for which it is designed. It is fundamentally a partnership, and except in those instances where the absence of the personal element effects a change, it is governed by the general law applicable to the more usual form.²⁰

—STEPHEN AILES.

¹⁴ *Kirchner v. Smith*, *supra* n. 4.

¹⁵ *Childers v. Neely*, *supra* n. 4; *Greenlee v. Steelsmith*, 64 W. Va. 353, 62 S. E. 459 (1908); *Bartlett and Stancliff v. Boyles*, *supra* n. 8.

¹⁶ This statute, for reasons not readily apparent, is included under the heading of Limited Partnership. W. VA. REV. CODE (1931) c. 47, art. 9, § 13. Originally a bill for accounting had to be accompanied by dissolution. *Childers v. Neely*, *supra* n. 4.

¹⁷ There is no express authority in West Virginia in support of this statement, yet it is doubtless fairly inferable in view of the manner in which the partnership is normally created.

¹⁸ *Childers v. Neely*, *supra* n. 4; *Blackmarr v. Williamson*, *supra* n. 4; *Kirchner v. Smith*, *supra* n. 4; *Bartlett and Stancliff v. Boyles*, *supra* n. 8; *Park v. Adams*, *supra* n. 1.

¹⁹ *Blackmarr v. Williamson*, *supra* n. 4.

²⁰ *Bartlett and Stancliff v. Boyles*, *supra* n. 8; *Manufacturer's Light and Heat Co. v. Tenant*, *supra* n. 4.