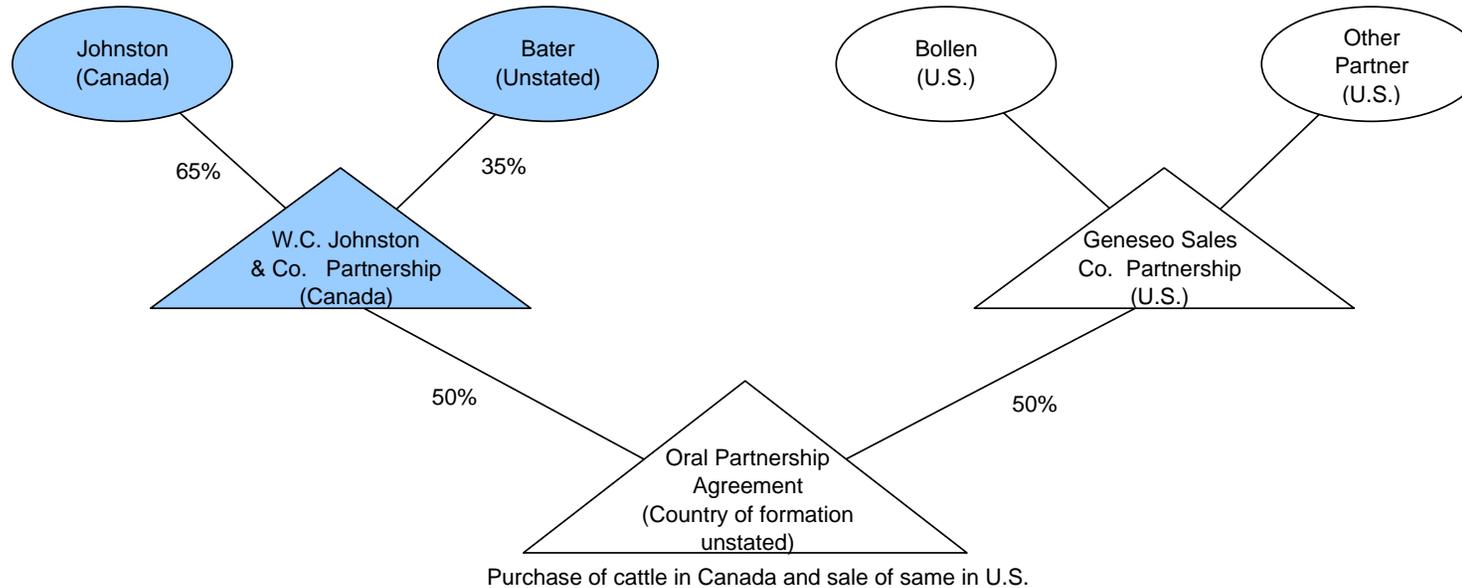


**Johnston v. Commissioner
24 T.C. 920 (1955)**

**Nonresident Alien Member of
Partnership Which Is Engaged
In A U.S. Trade or Business**

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Johnston was a Canadian citizen and a resident of Manitoba, Canada. He filed no United States income tax returns during 1948 and 1949. On October 11, 1946, Johnston and one George B. G. Bater entered into a partnership agreement to conduct a livestock dealership in Manitoba, Canada. Johnston was entitled to 65% of the profits of such partnership; Bater was entitled to 35%. The partnership continued in existence until December 1, 1949. Geneseo Sales Company was a partnership whose principal place of business was in Geneseo, Illinois. During the years in issue, it was also engaged in the livestock business. The entire capital interest in such partnership was owned by one R. S. Bollen; the other partner participated in profits because of labor contributed.

Sometime during the year 1948, Johnston and Bollen entered into an oral agreement in behalf of their respective partnerships. They agreed that Johnston would purchase cattle in Canada at the lowest possible price and would then ship such cattle to Bollen to be sold in the United States at the highest available price. After Johnston purchased the cattle in Canada, he was empowered by the agreement to draw a draft on Bollen for the purchase price. The cattle were to be shipped in Bollen's name. The agreement, however, provided that any loss on the cattle, whether en route or after delivery, was to be shared equally by Johnston and Bollen. Profit or loss from the sales of the cattle was to be equally divided between Johnston and Bollen.

Section 219, predecessor to Sec. 875, provides that a nonresident alien shall be considered as being engaged in trade or business within the United States if a partnership of which he is a member is so engaged. Johnston and Bollen in behalf of their firms joined together their money, labor, and skill for the purpose of carrying on the business of buying and selling livestock with a full community of interest in the profits and losses from such business. Commissioner v. Culbertson, 337 U. S. 733 (1949); Commissioner v. Tower, 327 U. S. 280 (1946). The court held that a partnership did, in fact, exist. Therefore, under the provisions of section 219, predecessor to Sec. 875, Johnston by virtue of his membership in the partnership is deemed to have been doing business in the United States.