

actions with each other to the exclusion of Bindon, nor, as I conceive, can it be so argued. No doubt the admission of Gorman into the syndicate would not have taken place if he had not been expected previously to finance the whole deal; but it was not as carrying out in whole or in part the original scheme that he came in, but on a new and different scheme.

Of course, this is not the case of a real estate agent suing for commission, where the rules are very broad; but of one partner suing another for profit unduly made in what is alleged to be a partnership transaction. Nor is it the case of a partner attempting to secure for himself a benefit which it was his duty to obtain, if at all, for the firm. If Murray had acted in bad faith, and, after securing the property for the three, had wrongfully turned it over to the syndicate, an action might have lain against him; but he is blameless in that regard; he could not do otherwise. And, if Gorman had wrongfully permitted to be abandoned a contract which he was in a position to enforce, and which would have procured the property and the profits for the three, it may be that an action would lie against him—but he could not do any better than he did. If Murray and Gorman had conspired to defraud Bindon out of his share and took this way of doing it, an action might have lain against them. But the fact seems to be that a joint deal for purchasing real estate for three in the profits of which the three were to share, because one was to furnish the money, another the work, and the third the brains, fell through from nobody's fault, and a new deal was made whereby five shared the expense and the profits. This is, in my view, not a partnership transaction of the three parties to this action.

If Bindon has any claim upon Gorman as a member of a partnership, he must have the same claim against Murray: and that he repudiates.

While the right should be reserved to both Bindon and Murray to bring any other action that they may be advised to bring, I am of opinion that this action wholly fails, and that the appeal should be allowed with costs payable by both the plaintiff and the defendant Murray—and, in view of the position taken at the trial, the action should be dismissed with costs payable also by these parties.

*Appeal allowed.*