

"I am not sure that it was stated that the profits would be divided equally, and after some hesitation, I have come to the conclusion that division of profits simply does not necessarily mean an equal division. . . . I am of the opinion that the defendant Gorman should pay to the plaintiff and Murray  $\frac{1}{3}$  of the profit of the Brandon transaction, say \$1,700—of which \$1,200 will belong to the plaintiff—and he should pay \$500 to each of these parties in respect of the Montreal park realty stock transaction and interest from the date of suit. There will be judgment for the plaintiff against the defendant Gorman for \$1,700 with interest from the 12th of August, 1911, and costs; and for the defendant Murray against the defendant Gorman for \$1,000 with interest from the 12th of August aforesaid and Murray's costs of defence."

The defendant Gorman now appeals.

The pleadings are in rather a curious state. The plaintiff sues both defendants claiming a partnership with them for the purpose of dealing in real estate in Brandon and elsewhere, receipt of profits by Gorman and saying that Murray is a member of the partnership and entitled to participate in the profits; the pleader asks for a dissolution of the partnership and a taking of the partnership accounts; Gorman denies everything and pleads the Statute of Frauds. Murray admits everything and "submits his rights under said partnership agreement to the consideration of this honourable Court." It is fairly manifest that Murray desired the advantage of a favourable issue of the plaintiffs' claim without rendering himself liable for costs if it failed. At the trial he asked to amend by asking for a share in the profits and the case was thereafter treated as though the amendment had been made.

I am unable to agree with the learned trial Judge in his view of division of profits. He has either overlooked or discredited the evidence of the plaintiff that the profits were to be divided equally between the three. But even if this be wholly eliminated, an agreement that the profits are to be divided, in the absence of other evidence, means that they are to be equally divided.

*Robinson v. Anderson*, 20 Beav. 98, S. C. 7 D. M. & G. 239; *Peacock v. Peacock*, 16 Ves. 49; *Webster v. Bray*, 7 Ha. 159; *Farrar v. Beswick*, 1, M. Rob. 527; *Stewart v. Forbes*, 1 Man. & G. 137; *Webster v. Bray*, 7 Hare 159; *Copland v. Toulmin*, 7 Cl. & Fin. 349; and see in the case of a bequest