

As to the Brandon transaction, the case is not so clear. The transaction was to be "to invest amounts in the west," "Brandon or elsewhere," "in real estate" (so far, Bindon in direct examination), "invest in real estate in the west," "for Murray to go out to the west and invest in real estate," "investments in the west," "for Murray to go out to the west and to make a selection of lands for this new partnership," for Gorman "to put up money if suitable investments were got;" and the final arrangement was to invest \$10,000 in those lands in Brandon—"there was no syndicate formed at the time he agreed to put up the \$10,000 or when he sent the telegram to put up \$10,000" (Bindon on cross-examination). Murray's account is not materially different.

What happened was, that Murray procured an option on certain lands and wrote Bindon. Bindon saw Gorman, and Gorman sent a telegram authorising Murray "to invest \$10,000 in real estate." This, I think, meant, at the time, "invest \$10,000 in real estate, obtaining the fee in the land," in other words, "invest \$10,000 in buying land," not "in buying an interest in land." Had it not been for Gorman's not sending forward money promptly, it seems that the transaction would have gone through in the manner contemplated. But there was danger of the deal falling through, and Mr. Curry was appealed to, and he sent the money. Curry was insistent that other friends he had should come in; and, says Murray: "I insisted on Gorman coming in, as he had made this offer, and that he was a good capitalist in that way, and that we might want him for other deals, so Curry let him in." And "he was let in on a fifth of this deal." "He came in on the ground floor . . . but not getting the whole space." At this stage, there can be no doubt that Gorman might have withdrawn when he was informed of the arrangement: but he did not do so; on the contrary, he went into the syndicate of five who were to share equally in the profits.

The proposed transaction was an investment by Gorman of all the capital, with an agreement that he should have one-third of the profits, and Bindon and Murray each one-third: what did take effect was an investment by Gorman of part of the capital, with an agreement that he should have one-fifth of the profits, and Murray another fifth. This is so entirely different a scheme from that proposed that, unless Gorman and Murray were bound not to enter into any deal in real estate to the exclusion of Bindon, I do not see that Bindon can claim any share of the profit. It has not been argued that they could not have trans-