

no memory at all. It is a good deal worse than idle, for it is improper, to have a witness swear to the details of a conversation, and whether or not he sent a certain telegram in the summer of 1905, when it is known that as a matter of independent memory he cannot tell what route he took, either outward or homeward, on an extensive trip he took during that same summer, anything as to the time of his departure or return, who accompanied him, or even whether his wife accompanied him or not; who has no ideas as to the amount of profits he made out of either of the transactions in question in this action; and who, although he had received more than \$5,000 profit on the sale of the Brandon property, and had written and sent telegrams in connection with it, could not recall, even after the action was brought, that the property had been sold, the money divided, and the account closed, as shewn by exhibit 22.

On the other hand, there are discrepancies in the evidence of the plaintiff and Murray; they contradict each other in some particulars; and I believe they are both mistaken as to the date at which the telegram instructing Murray to invest was sent, if it was sent. But these differences do not at all go to the root of the matter. I was particularly impressed by the manner in which Murray gave his evidence, and I believe the evidence of this witness and the plaintiff was substantially accurate. I believe that the defendant Gorman sent a telegram to Murray authorising him to invest \$10,000, and speaking of a division of profits between the parties to this suit. I am satisfied from the references to Gorman in the correspondence, from Gorman's own telegram and letter from Kansas City, from Currie's evidence as to Murray's determination to have Gorman in the syndicate, and upon the testimony of the plaintiff and Murray, that, before Murray went out west, the defendant Gorman agreed to furnish as much as \$10,000 for profitable speculation, and agreed to divide the profits among himself and the plaintiff and Murray. The west was the main outlook, but the moving cause was profits, and the money was to be available for any proposition of which Gorman, when it was submitted, approved.

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 have no doubt at all that, at the time these transactions were going through, Gorman fully expected to have to share up with the plaintiff and Murray. It is very probable, too, that later on he told the plaintiff that there were