

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 plaintiff's claim without rendering himself liable for costs if it failed. At the trial, he sought 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, 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; *Copland v. Toulmin*, 7 Cl. & Fin. 349; and see in the case of a bequest *Peat v. Chapman*, 1 Ves. Sr. 542; *Ackerman v. Burrows*, 3 V. & B. 54.

I can find no evidence to support any claim of the plaintiff or the defendant Murray to a share in the profits of the Montreal transaction, unless it was looked upon by all parties as in continuance of a previously existing relation.

Murray says that the conversation in the first instance was about him placing "the money up there," and that the agreement was, that Gorman would advance the capital. When the transaction "up there" was completed, I do not see that there was any new arrangement made. Murray did not say anything, but left it to Bindon; while all that Bindon says is, that he brought it to Gorman's attention, and, after talking the matter over, Gorman made his investment. Bindon, however, tells us that he had advised Gorman in other transactions which realised for him a great deal of money—"supplied brains" as he puts it—and it does not appear that he was a partner or a gainer in these transactions. I am unable to see that the purchase of stock in a joint stock company in Montreal was a continuation of any relationship which may have existed between the parties or any two of them in connection with lands in the west. The judgment, so far as it refers to the profits on the Montreal transaction, must be set aside.