

THE  
ONTARIO WEEKLY REPORTER

VOL. 24

TORONTO, APRIL 3, 1913.

No. 5

APPELLATE DIVISION.

MARCH 13TH, 1913.

GALBRAITH v. McDOUGALL.

4 O. W. N. 919.

*Partnership—Dealing in Land—Method of Accounting—Construction of Agreement—“Advance” and “Profits”—Meaning of.*

An agreement provided (in substance) that plaintiff should advance one-half the cost of placing certain town lots belonging to defendant upon the market and that in return therefor he should receive one-quarter of the profits arising from the sale of such lots. The lots were readily sold and as a matter of fact neither party had to advance any moneys, the cost of placing such lots upon the market being borne by the payments made thereon.

BRITTON, J., *held*, 22 O. W. R. 928, that the gross expenses should be deducted from the gross receipts and that plaintiff was entitled to receive one-quarter of the balance.

SUP. CT. ONT. (2nd App. Div.) *held*, that plaintiff was only entitled to one-quarter of the gross receipts less one-half of the expenses, as by the method of accounting contended for by the plaintiff the latter would only bear one-quarter of the expenses instead of one-half.

Meaning of terms “advance” and “profits” discussed.  
Appeal allowed with costs.

An appeal from the judgment of Britton, J. (22 O. W. R. 928), in favour of plaintiff in an action for a declaration that plaintiff was entitled to one-quarter of the profits arising from the sales of parts of lot 12, 2nd concession of the township of Whitney, and to an undivided quarter interest in the part not sold, and for an account under a certain partnership agreement between plaintiff and defendant, and cross-action by defendant, consolidated by order of the Master-in-Chambers for payment by plaintiff of one-half the cost of surveying, developing, marketing and selling the said lands.

The Appeal to the Supreme Court of Ontario, Second Appellate Division, was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE