

the well-meaning ignorance and stupidity of this constable, who, it is said, was really playing the part of a peacemaker, I cannot interfere. That was a question for the magistrate; and I incline to the same view. The conduct of the defendant seems to me to have been high-handed, as well as stupid. That astute observer Bunyan long ago remarked that the Town of Stupidity was not far from the City of Destruction.

The motion is refused, and the prisoner is remanded.

LENNOX, J.

FEBRUARY 17TH, 1913.

BINDON v. GORMAN.

*Partnership—Establishment of—Oral Agreement to Divide Profits of Land Transactions—Validity—Evidence—Basis of Division.*

Action to establish a partnership and for an account and payment of a share of the profits to the plaintiff.

G. E. Kidd, K.C., for the plaintiff.

J. J. O'Meara, for the defendant Gorman.

M. J. O'Connor, K.C., for the defendant Murray.

LENNOX, J.:—I am asked to pronounce upon the rights, if any, of both the plaintiff and the defendant Murray against the defendant Gorman; and, if there is judgment against Gorman, to apportion the money between Bindon and Murray. I do not think that R.S.O. 1897 ch. 338 and the various cases referred to have any bearing upon this case. It is not a question of an interest in land; it is simply as to certain services and a division of profits; and a verbal agreement to divide profits of transactions in land is valid, at all events where no specific lands are referred to: *Gray v. Smith* (1889), 43 Ch.D. 208; *In re De Nicols*, *De Nicols v. Curlier*, [1900] 2 Ch. 110, and cases there referred to.

If the evidence of the plaintiff and his witnesses is true, the defendant Gorman should pay over a portion of the profits he received in certain transactions to the plaintiff and Murray; and he is keeping the whole of it. The only evidence is that called by the plaintiff and what is furnished from the exhibits; for, so far as Gorman is concerned, unfortunately, he has practically