

Books of account were to be kept to ascertain what profits were made. I think the plaintiff's contention as to how the profits are to be arrived at is correct. According to defendant's contention it might so happen that although defendant would make a large amount of money, in the transaction, the plaintiff would be a loser. For example suppose gross proceeds of sales to be \$10,000:

Plaintiff's one-quarter would be \$2,500

Defendant's expenses 5,000

If plaintiff was obliged to pay one-half of these his one-quarter would be absorbed. That might go on from time to time and plaintiff get nothing. That could not have been the intention of the parties. No such result was contemplated—and the agreement will not bear that construction.

The argument of counsel for defendant is that if the agreement was that Galbraith should pay \$6,000, and be entitled to one-quarter interest in the proceeds, no question could arise, as he would be liable for the \$6,000 as the purchase price of his interest, irrespective of what that interest amounted to. That is quite true, but the agreement did not end where counsel leaves it. If the agreement ended with payment—it would make no difference whether payment was of a definite sum—say \$6,000, or a sum to be ascertained as half of the expenses McDougall should incur in doing something.

The first agreement, the one of 11th February, 1911, was not as I have already stated, merely for the transfer to Galbraith of one-fourth the lot in question "with its surface, mineral and other rights," but it is a conditional agreement—the condition being that "the Temiskaming and Northern Ontario R. Commission, locating their station on said lot." This shews that a speculation was being entered upon. Then the agreement goes on to say that Galbraith should provide the funds for surveying, etc., etc., preparatory to offering said property for sale. These expenses to be equally shared by each, when the property is disposed of, or when a sufficient sum is realized. The plain meaning of that is that if by a sale of lots a sufficient sum is realized to pay expenses, expenses are to be paid out of the money so realized. Then coming to the more full and complete agreement of the 28th March, 1911, the recitals are full and consistent with what plaintiff contends was his real position in this transaction.

Galbraith agreed to advance, or become liable for one-half of all expenses incurred, etc., as above stated. The venture became a joint one—perhaps through the gener-