

and Dr. Smith induced the defendant to enter into an agreement to purchase the land for \$30,000, the terms of payment being slightly modified at the instance of the defendant.

Just what the exact position of the plaintiff in relation to the Pratt Farm was at the time was not distinctly shown, for although an option was spoken of no writing between the syndicate and the plaintiff was produced at the trial, nor was it alleged, so far as I can recall, that there was a writing in fact, of any kind, or that the plaintiff had paid anything to the syndicate. The plaintiff is connected by marriage with one or more of the members of the syndicate, and it was shewn at the trial, though it was not disclosed at the time of the agreement for division of profits upon which this action is based, nor voluntarily disclosed by the plaintiff at all, that upon sale of the property by the time already mentioned and upon the syndicate's terms, the plaintiff would be paid or would retain \$1,000 as commission, or by way of abatement in the price. Nothing by way of option or agreement was assigned to the defendant when the defendant entered into an agreement with the syndicate for the purchase of the farm. The whole evidence, as I say, as to exactly how the plaintiff stood in connection with the matter is singularly hazy and inconclusive; and confronted by this situation I am inclined to believe that the proper inference to be drawn is that in fact the plaintiff had no option in the recognized or legal sense of the term, and when he speaks of an option he only means that the property was in his hands or listed for sale on specified terms, and the more so as at the very beginning of his evidence he says: "I was agent for the sale of the Pratt Farm at \$400 an acre, and on the 6th May they *notified me* that the price would be raised to \$500 after 6 o'clock that evening." It was only when the action of Bell and Coleridge was being tried, after the property had been parted with, and after the defendant had given his undertaking of the 31st May, 1913, that it was discovered that the plaintiff had received a secret commission of \$1,000.

Pending the plaintiff's agreement to purchase and afterwards, or after the agreement was closed, as the plaintiff puts it, it was arranged that plaintiff, defendant and Smith would each do what they could to sell the property, and would divide the profits equally. Neither Smith or the plaintiff