

and to Kenderdine and his wife. Nor was it material that the deed of the land was not obtained till after the formation of the syndicate, and was then made out in favour of the Trusts and Guarantee Company.

As to this first item, the appeal should be allowed.

The other items stood on a different basis. The contention, broadly stated, was this: to make a sale of land a success, a sales agent should be employed; such a sales agent would have cost what is charged in the items which are disallowed; therefore, these sums should be allowed. The learned Judge said that that contention was unsound. The articles provided that Kenderdine should be manager, but did not provide a salary or allowance as such. The contract of partnership excluded any implied contract for payment for services rendered the firm by any of its members: *Thompson v. Williamson* (1831), 7 Bli. N.R. 432; *Holmes v. Higgins* (1822), 1 B. & C. 74. Moreover, the managing partner or "manager" stands in a different position in this respect from any other partner: *Hutcheson v. Smith* (1842), 5 Ir. Eq. R. 117; *Thornton v. Proctor* (1793), 1 Anst. 94; *East-India Co. v. Blake* (1673), Finch 117; *York and North Midland R.W. Co. v. Hudson* (1853), 16 Beav. 485, at pp. 499, 500.

It was said, however, that at a meeting of the syndicate, called under clause 9 of the articles, a majority ratified these payments. RIDDELL, J., said that he could not read an agreement that the meeting might "deliberate and decide on any of the affairs of the syndicate" as justifying such a meeting (by a majority) giving away the funds of the syndicate to one of its members—it would require much stronger language to justify such an interpretation of the powers of the majority.

As to these items, the appeal should be dismissed.

As success was divided, there should be no costs of the appeal to LENNOX, J., or of this appeal.

NOVEMBER 4TH, 1915.

*MERRIAM v. KENDERDINE REALTY CO. (No. 2).

Partnership—Syndicate—Trustee — Judgment Directing Payment of Moneys into Bank—Neglect to Comply with—Misunderstanding of Terms of Judgment—Motion for Appointment of Receiver—Locus Pœnitentiæ—Terms—Costs.

Appeal by the plaintiffs from the order of MIDDLETON, J., ante 35.