the property and the profits for the three it may be an action would lie against him—but he could not do any better than he did. If Murray and Gorman had conspired to defraud Bindon out of his share and took this way of doing it, an action might have laid against them. But the fact seems to be that a joint deal for purchasing real estate for three in the profits of which the three were to share because one was to furnish the money, another the work and the third the brains, fell through from nobody's fault and a new deal was made whereby five shared the expense and the profits. This is in my view not a partnership transaction of the three parties to this action.

If Bindon has any claim upon Gorman as a member f a partnership he must have the same claim against Murray; and that he repudiates.

While the right should be reserved to both Bindon and Murray to bring any other action they may be advised, I am of opinion that this action wholly fails and that the appeal should be allowed with costs payable by both the plaintiff and the defendant Murray—and in view of the position taken at the trial the action should be dismissed with costs payable also by these parties.

HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH, agreed.

SUPREME COURT OF ONTARIO.

2ND APPELLATE DIVISION. JUNE 25TH, 1913.

DIXON v. DUNMORE.

4 O. W. N. 1501.

Vendor and Purchaser—Specific Performance—Objections by Purchaser—Right to Rescind—Outstanding Mortgage—Not Matter of Title—Statute of Frauds—Memorandum to Satisfy—Amendment of Pleadings—Deficiency in Area—Right of Purchaser to Accept—Appeal—Allowance of.

SUP. CT. ONT. (2nd App. Div.) gave judgment for plaintiff in an action for specific performance, holding that there was a sufficient memorandum in writing to satisfy the Statute of Frauds and that where there is a deficiency in the property agreed to be sold the purchaser has a right to take what the vendor has.

McLaughlin v. *Mayhew*, 6 O. L. R. 174, referred to.

Judgment of WINCHESTER, Co.C.J., reversed.