

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

A. McLean Macdonell, K.C., for the appellants.

A. Cohen, for the plaintiffs, respondents.

RIDDELL, J., who delivered the judgment of the Court, set out the facts at length. He explained the terms of the judgment at the trial, which directed a reference to the Official Referee to take an account: (1) of the assets, property, and effects, real and personal, of the Welland Industrial Reserve Syndicate, come to the hands of the defendants the Kenderdine Realty Company Limited, as trustees for the syndicate; (2) of the dealings of the defendant company with those assets, property, and effects; (3) of the property, moneys, and securities of the syndicate in the hands of the defendant company or now outstanding and unrealised. In his report the Referee disallowed the following amounts said by the defendant company to have been properly paid by them on account of the syndicate: on account of purchase-price of land \$28,500; an overriding commission to W. B. Kenderdine, \$5,226.66; office expenses, \$1,718.84; rent, \$1,259.67; salaries and fees, \$2,731.17: total, \$39,436.34. The appeal to LENNOX, J., was from the disallowance of these items, and the present appeal from his affirmance of the disallowance.

The ground of disallowance of the first item, \$28,500, paid as part of a purchase-price of \$40,000, was that the syndicate, being a partnership, of which Kemerer and his wife were members, was entitled to the benefit of their purchase (and option); and, consequently, the real purchase-price should not have been \$40,000, but the amount fixed by the option, \$11,500.

As to this RIDDELL, J., said that, conceding that the syndicate was a partnership and that Kemerer and his wife were members of it, he could not see that the partnership could insist on taking his or her property at the price paid for it. Cases such as *Gluckstein v. Barnes*, [1900] A.C. 240, were cases of plain fraud—lying—and had no application here; nor were cases of a member of a partnership buying for the partnership his own property applicable: *Bentley v. Craven* (1853), 18 Beav. 75; In re *Cape Breton Co.* (1885), 29 Ch.D. 795; *Burton v. Wookey* (1822), *Madd. & Geld.* 367, 368. Here the syndicate was formed to buy this specific land at a specific price; Kemerer had the right to have this price paid for the property—that was the basis of the contract between him and the other members of the syndicate; and there was no duty cast upon him to try to have the price reduced. The same remarks applied to Kemerer's wife