

On the same day the plaintiff and defendant entered into a contract which contained recitals of the plaintiff's claim, the agreement with the company, and continued:—

“And whereas one of the considerations of the said option is that the said Kennedy shall release his caution and all his claims on the said lands, it being agreed that he shall be a partner with Harris in obtaining the said option and entitled to a one-half of all the profits, benefits, and advantages derived or to be derived by the said Harris, under and by reason of the said option or by reason of acquiring, selling or dealing with the said lands.

And as a further consideration for the said Kennedy this day releasing the said lands from his caution and his other rights in an action now pending . . . which action shall be dismissed without costs, Harris is to agree with Kennedy that he shall in case the annexed option is not carried out and completed, that he will on or before the first day of June, 1912, pay to Kennedy the sum of five thousand dollars.” The contract then provides that (1) the parties shall be partners; (2) the defendant should be the selling agent while not in default “but no sale . . . is to be had or made by Harris without Kennedy's written consent, unless Kennedy's share of the profits shall equal \$7,500, which shall be guaranteed by Harris in the ultimate result of the transaction.”

“3. Harris is to furnish all the moneys required for the purpose of carrying out the said option, and in case he fails to carry out the said option and complete the purchase, he is then, within one month after default, on or before the first day of June, 1912, to pay to Kennedy the sum of five thousand dollars. 4. Harris shall make the election and make each of the payments called for by the annexed option, at least one month prior to the date named for such payment, work, or notice or election, and shall at once notify Kennedy in writing, where and when such payment was made. If Harris fails in carrying out the said option or in doing the work or making the election, or in making the payments called for thereby or thereunder as herein set out, Kennedy shall thereupon be entitled to exercise the said option for his own benefit, as to him seems best, and Harris shall have no rights or interest in said option or thereunder.” 5. Kennedy agreed to release his caution and dismiss his action. “6. If it becomes necessary in carrying out this proposed purchase, and the parties shall mutually consent to any