

for an order for a conveyance of the land to the plaintiff. Plaintiff alleged that he had bought and paid for the lands and taken deeds in defendant's name with his knowledge and consent. Defendant positively denied this and claimed that he had himself bought and paid for the lands. The trial judge held that the plaintiff had not satisfied the onus that lay on him to establish a clear case upon the evidence and gave judgment for defendant.

Held, 1. The plaintiff's case was clearly made out, especially in view of the letters written by defendant to plaintiff and upon undisputed facts and circumstances.

2. Notwithstanding s. 7 of the Statute of Frauds, an express verbal trust of land may be proved by oral testimony, whenever a strict reading of the statute would enable the trustee to commit a fraud: *Re Duke of Marlborough* (1894) 2 Ch. 141, and *Rochevoucault v. Boustead* (1897) 1 Ch. 196, followed.

3. When the trial judge's decision does not depend upon the credit to be given to conflicting testimony, but rather upon inferences drawn from the document, any evidence and the surrounding facts and circumstances, a Court of Appeal is free to reverse his decision upon questions of fact as well as of law: *McKercher v. Sanderson*, 15 S.C.R., at p. 301, and *Creighton v. Pacific Coast Lumber Co.*, 12 M.R. 546, followed.

Appeal allowed with costs.

Wilson and Laird, for plaintiff. *Aikins, K.C.*, and *Robson*, for defendant.

Full Court.]

BARLOW v. WILLIAMS.

[June 25.

Specific performance—Laches—Time to be the essence of the contract—Possession as excuse for delaying suit—Damages in lieu of specific performance.

By agreement dated July 2, 1897, the plaintiff agreed to purchase from the defendant the lot of land in question in this action for \$125, payable \$50 Sept. 1, 1897, and the balance June 1, 1898. There was a clause in the agreement stating that time was to be considered of the essence of it and that, unless the payments were punctually made, the vendor should be at liberty to re-sell the land. On 15th September, 1897, the plaintiff paid \$125 on account and, about 30th October following, an arrangement was made between the parties whereby the defendant conveyed to the plaintiff the north half of the lot, receiving at the