

The Commissioner was justified in concluding that upon the evidence adduced it would be very unsafe to find against the validity of Montgomery's claim. . . .

Appeal dismissed with costs.

OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A., concurred; MEREDITH, J.A., giving his views in writing.

OCTOBER 30TH, 1909.

### MCKINNON v. HARRIS.

*Trusts and Trustees—Land Alleged to have been Purchased by Defendant as Trustee for Plaintiff—Parol Evidence to Establish Contract—Insufficiency—Statute of Frauds—Failure of Proof—Findings of Trial Judge—Appeal.*

Appeal by the defendant from the judgment of the trial Judge in favour of the plaintiff in an action for a declaration that the defendant was a trustee of certain property for the plaintiff and for specific performance of an agreement to convey the property to the plaintiff. The facts in evidence were similar to those in *Goldstein v. Harris*, 12 O. W. R. 797, decided by the Court of Appeal on appeal from the judgment of MABEE, J., and affirmed by the Supreme Court of Canada.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

G. H. Watson, K.C., for the defendant.

A. B. Morine, K.C., for the plaintiff.

MEREDITH, J.A.:—The *Goldstein* case was decided upon its facts, and so is not a case binding upon any Court in any other case; this case must, therefore, be determined upon its facts, even if the result be so unfortunate and discreditable to the administration of justice that in two cases, in which there is no sort of substantial difference in their facts, there should be diametrically opposite judgments. There is no such means of escaping any such possible result as that which in *Australasian, etc., Co. v. Smith*, 14 App. Cas. 321, was said to be proper, that is, a new trial of the two cases together.

But there is really nothing in this case to justify any different findings from those which were finally reached in the *Goldstein* case. Going over the case, as independently as possible of any