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No. 11

APPELLATE DIVISION.

NOVEMBER 8TH, 1915.

DAVISON v. FORBES.

Evidence—Discovery of Fresh Evidence—Motion for New Trial—Leave to Adduce Evidence before Appellate Court—Rule 232(3)—Terms—Costs.

Appeals by the defendants from the judgment of KELLY, J., ante 22.

The defendant Forbes also moved for a new trial.

The appeals and motion were heard by FALCONBRIDGE, C.J. K.B., MACLAREN, J.A., RIDDELL and LATCHFORD, JJ.

Wallace Nesbitt, K.C., J. W. Bain, K.C., and Christopher C. Robinson, for the appellant Forbes.

R. McKay, K.C., for the appellant Haines.

W. N. Tilley, K.C., and J. T. White, for the plaintiff, respondent.

RIDDELL, J., delivering an interim judgment of the Court, said that the crux (or one of the cruxes) of the case was whether the plaintiff knew that, while the defendant Haines was ostensibly selling out to Forbes, he was in fact buying out the plaintiff with Forbes. The affidavit upon which a new trial was asked set out: (1) statements made by the plaintiff to his brother that he knew the facts; and (2) that the affiant (the defendant Forbes) did not know that the plaintiff's brother was aware of these facts, nor was the affiant informed to that effect until after judgment had been given by KELLY, J. This affidavit was the only one filed.