

Full Court.]

McINNES v. FERGUSON.

[March 14.

*Yearly hiring—Action for wrongful dismissal—Burden of proof.*

In an action for wrongful dismissal, where the contract was for a yearly hiring, the defendant rested his defence wholly on the ground that plaintiff left his service voluntarily. This plaintiff denied. The employment of plaintiff by defendant for a year being admitted.

*Held*, that the onus of establishing his defence rested upon defendant, and the case having been treated by the trial judge as if the onus rested upon plaintiff, and that he must fail if the weight of evidence was not in his favour: that the appeal must be allowed, and judgment entered in plaintiff's favour with costs.

MEAGHER, J., dissented on the ground that the evidence was contradictory and that there was nothing in the judgment appealed from to lead necessarily to the conclusion that the trial judge regarded the burden of proof as resting upon plaintiff.

*H. B. A. Ritchie*, Q.C., for appellant. *H. McInnis*, for respondent.

Full Court.]

JONES v. SMYTHE.

[March 14.

*Trust deed—Construction of provisions—Estate conveyed by—Words "upon such attaining."*

T. C. K. conveyed a number of railway bonds to trustees in trust to pay the interest and dividends to himself for life, and after his death to his wife, E. K., until the youngest of his two daughters, B. K. and T. K. should attain the age of 21 years, and "upon such attaining" to hold the said bonds to the sole and absolute use of the said B. K. and T. K., share and share alike, and of the survivor of them in case of the death of either of them: provided in the event of the said B. K. and T. K. dying leaving children, then and in such case, in trust to transfer and assign such bonds unto such children, etc. T. C. K. died in February, 1880; his youngest daughter, T. K., died in February, 1882; his wife, E. K., died in September, 1882. The surviving daughter, B. K., attained the age of 21 years in May, 1890, and subsequently married.

*Held*: 1. affirming the judgment appealed from, that B. K., having attained the age of 21 years and married was entitled to the whole fund absolutely, and not only to a life estate with a gift over to her children, if any.

2. The words "upon such attainment" were properly applied to the event which had happened, namely the death of the younger daughter under 21 and the attaining of that age by the elder.

*Harrington*, Q.C., for appellant. *McInnes and Cahan*, for respondent.