

There should be no order as to the costs of the wasted trials; the wife should have her costs of the appeal in the first case, and the husband his in the other two.

LATCHFORD and MIDDLETON, JJ., agreed with MEREDITH, C.J.C.P.

RIDDELL, J., agreed in the disposition of the three cases made by the Chief Justice; but preferred to say nothing as to the probabilities or the evidence in the second case. The Judge presiding at the new trial should be left wholly untrammelled by any expression of opinion by the appellate Court—he must be guided by his own view of the credibility of the witnesses and the probabilities of the case.

MEREDITH, C.J.C.P., did not agree with the view of RIDDELL, J.

*First appeal dismissed; second and third appeals allowed.*

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SECOND DIVISIONAL COURT.

OCTOBER 31ST, 1919.

WANLESS v. SWARTZ.

*Fraudulent Conveyance—Action to Set aside Conveyance of Land by Husband to Wife—Evidence—New Trial.*

Appeal by the defendants from the judgment of LOGIE, J., in favour of the plaintiff, in an action to set aside a conveyance of land made by one of the defendants to his wife, the other defendant, as fraudulent and void against the plaintiff and all creditors of the husband.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

J. E. Jones, for the appellants.

Gideon Grant, for the plaintiff, respondent.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that a majority of the members of the Court was of opinion that there should be a new trial of this action; a minority would allow the appeal and dismiss the action; the case must, therefore, go down to trial again for the purpose of eliciting the material facts more fully and clearly if possible, at which trial the defendants should be examined as witnesses if that was practically possible. All costs should be costs in the action.