

I am of opinion that the appeal should be dismissed, and with costs.

HON. MR. JUSTICE SUTHERLAND:—During the argument, I was disposed to attach considerable weight to the argument on behalf of the appellant, that in any event the claim herein should be reduced by \$1,000.

A careful perusal of the evidence and documents, and a consideration of the findings of the trial Judge, have led me to think otherwise.

I agree that the appeal should be dismissed with costs.

HON. MR. JUSTICE CLUTE:—The plaintiff's claim is for \$2,000, money loaned on the 28th September, 1908, and a further sum of \$250 alleged to be paid by the plaintiff for the defendant at his request.

The defence is a denial of the plaintiff's claim. The trial Judge found in favour of the plaintiff on the first item, and in favour of the defendant on the second item, and directed judgment to be entered for the plaintiff for \$2,000 and interest.

This is an appeal by the defendant, the plaintiff not appealing in respect of the \$250. The trial Judge has accepted the evidence of the plaintiff as against the defendant, and if the result rested alone upon the credibility given to the respective parties, I should feel bound by the finding, but the documentary evidence is such that I feel compelled to recognize in it a weight that overbears the finding of the trial Judge to the extent of \$1,000.

On the 30th August, 1907, the defendant had advanced to the plaintiff \$1,000, to be used in the plaintiff's interest in bookmaking on the race-track. The defendant says it was a conditional loan; the plaintiff says it was a partnership transaction, and not a loan.

It is admitted, on both sides, that there were certain losses and certain gains in betting on the turf, and on the 28th September, 1908, the plaintiff handed over to the defendant \$2,000, the defendant giving a receipt therefor to the plaintiff. The plaintiff swears this was money lent; the defendant that it was part of the gains from betting on the turf. The plaintiff says the \$1,000 was lost; the defendant that it was left in the plaintiff's hands for further transactions.