

Full Court.]

BARRY v. DESROSIERES.

[Jan. 27.

Trespass—Encroachment—Proof of location of city lot—Authority of surveyor to determine.

The posts planted at the time of the survey of a city lot having been destroyed by fire,

Held, on appeal, that a surveyor could not determine the location of the lot by dividing up an apparent shortage among all the lots in the block.

Macdonell, for plaintiff, appellant. *Martin*, K.C., and *Craig*, for defendant, respondent.

Full Court.]

GORDON v. HORNE.

[Jan. 29.

Partnership.

Plaintiff and the two defendants Holland were real estate agents in partnership, but entered into certain investments on their own account (aside from the agency business) in the purchase of three lots, on account of which they paid down \$294. Being unable to meet the succeeding calls when due, they invited defendant Horne into the transaction, he to pay 85% of the purchase money, and the remaining three to contribute 15%, the profits to be divided. Horne took over the agreements to purchase and eventually received a conveyance to him of the lots. There was a verbal agreement that if a sale could be effected before the second instalment of the purchase money became due, and if that sale netted a profit of over 15%, the old partnership should share equally with Horne in the profits. This sale was not made, but four months after the due date of the second instalment, Horne sold a half interest in the property.

Held, on appeal, per HUNTER, C.J., and CLEMENT, J., that Horne was a trustee for the partnership consisting of the plaintiff, himself and his two co-defendants.

Per IRVING, J.—That Horne was not called upon to account until he had been reimbursed the money he had put into the transaction.

A. D. Taylor, K.C., for plaintiff, appellant. *W. S. Deacon*, for defendants, respondents.