

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

I. F. Hellmuth, K.C., and Christopher C. Robinson, for the defendants.

J. P. MacGregor, for the plaintiff.

MULOCK, C.J., in a written opinion, gave a resumé of the evidence at the trial and the further evidence given before the appellate Court, and stated:—

After careful perusal and re-perusal of the evidence and exhibits, I find myself unable to discover any circumstances, documentary or otherwise, in the case, entitling an appellate Court to disregard the trial Judge's findings as to the credibility of the respective parties; and, therefore, see no ground for disturbing his judgment, and think this appeal should be dismissed with costs.

RIDDELL, J., gave written reasons for agreeing that the appeal should be dismissed with costs. After a brief statement of the facts, he concluded:—

There are curious features in the story of each party and some inconsistencies or apparent inconsistencies; but I cannot find anything to induce me to hold that the learned trial Judge was wrong in giving effect to the testimony of the plaintiff rather than to that of the defendant. It cannot be necessary once more to state the principles upon which an appellate Court proceeds on a conflict of testimony, where the trial Judge has seen the witnesses.

SUTHERLAND, J.:—During the hearing, I was disposed to attach considerable weight to the argument on behalf of the appellant that, in any event, the claim 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.

LEITCH, J., also agreed that the appeal should be dismissed.

CLUTE, J.:— . . . The trial Judge has accepted the evidence of the plaintiff as against the defendant; and, if the result rested alone upon the credit given to the respective parties, I should feel bound by the finding; but the documentary evidence is such that I feel compelled to recognise in it a weight that overbears the finding of the trial Judge to the extent of \$1,000. . . .