

THE
ONTARIO WEEKLY REPORTER.

(TO AND INCLUDING MARCH 1ST, 1902.)

VOL. I.

TORONTO, MARCH 6, 1902.

No. 8.

FERGUSON, J.

FEBRUARY 24TH, 1902.

TRIAL.

HULL v. ALLEN.

Evidence—Parol Evidence to Establish Trust—Admission of.

This was an action for an account of defendant's dealings with certain properties transferred to him by plaintiff as security for an indorsement, and for other relief.

The plaintiff, among other things, asked for a declaration that the purchase made by the defendant of a lot of land, known as "the Merrill lot," was made by him as trustee and agent for the plaintiff, and that the plaintiff was entitled to the profits and an account. There was no writing evidencing the alleged trust.

W. Nesbitt, K.C., and A. S. Ball, Woodstock, for the plaintiff.

J. P. Mabee, K.C., for the defendant.

FERGUSON, J., *held*, that the plaintiff was at liberty to prove by parol evidence (if he could do so) the existence of the alleged trust.

The authorities are conflicting. *Bartlett v. Pickersgill*, 1 Cox 15, 1 Eden 515, 4 East 577, *Heard v. Piley*, L. R. 4 Ch. 548, *James v. Smith*, [1891] 1 Ch. at p. 387, and *Rochefoucauld v. Boustead*, [1897] 1 Ch. 196, discussed.

Held, however, that the evidence in this case failed to prove the trust.

As to the claim for damages for the defendant's failure to "bid in" the farm known as "the Hoffman farm," at the sale thereof under the power in a mortgage, in violation