

The second action was brought by the Stoffels, husband and wife, against Matchett, to recover moneys overpaid by reason of exorbitant charges for interest and to set aside certain conveyances and mortgages of land made by the Stoffels to Matchett, and for an account, and for other relief.

In the second action a reference had been directed and a report made by a Local Master; but this did not cover four items of the Stoffels' claim aggregating \$861.

The two actions were tried together, without a jury, at Simcoe.  
T. R. Slaght, K.C., for Matchett.  
H. D. Petrie, for the Stoffels.

CLUTE, J., read a judgment in which he stated the facts at length. He held that the Master's report in the second action, not having been appealed against, was conclusive as to the matters disposed of by the Master; also that the Master's finding that 12 per cent. was a reasonable rate in the circumstances, was final and binding upon the parties.

The learned Judge then dealt with the four items above referred to. These were charges made by Barney Stoffel against Matchett. The first of these items, \$351, the learned Judge reduced to \$60; upon the second item, nothing was allowed; and upon the third, \$39.

The fourth item arose out of a land transaction. Barney Stoffel was a timber-jobber. He wished to purchase certain timber lands, and asked Matchett to advance the purchase-money and to take the deed in his own name, upon the understanding that Matchett would convey to Stoffel when the advances were repaid. Matchett contended that the purchase was made by him, and that all that Stoffel was entitled to was to take off the timber. Matchett sold the land after the timber was taken off, for \$350, which, the Stoffels contended, should be credited to them. The learned Judge finds that Matchett held the land in trust; that he was paid by the Stoffels the amount advanced with interest at 12 per cent.; and that he was accountable to them for the \$350 which he realised for the land after the timber and wood had been taken off, with interest from the date of the sale.

In reaching this conclusion, the learned Judge accepted the evidence of a solicitor who acted for the vendors in the sale of the timber land to Stoffel. It was objected that what Stoffel said to Reid was not admissible—that it was hearsay evidence; but, the learned Judge said, it was admissible as part of the *res gestæ*—as a declaration of instructions which accompanied and explained the transaction in issue: Phipson on Evidence, 4th ed., p. 43;