

was not put in evidence, having been destroyed by W. at the request of the appellant.

*Held*, affirming the judgment of the Court below, that the evidence of W. being in part corroborated by the evidence of the appellant, the conclusion arrived at by the trial judges was not wrong, still less so entirely erroneous as to justify this Court as an appellate tribunal, in reversing the decision of the Court below on the questions of fact involved.

Appeal dismissed with costs.

*W. Cassels, Q.C.*, for appellant.

*Blackstock, Q.C.*, for respondent.

April 4, 1892.

Ontario.]

BARTON V. McMILLAN.

*Contract—Deed of land—Evidence—Agency—Statute of frauds—Parol testimony.*

M. owned certain property which was mortgaged and had been advertised for sale under a power of sale in the mortgage. Before the date fixed for the sale M. had made an assignment for the benefit of his creditors, and his wife tried to purchase the property. It was not sold on the day named, and the next day M's wife went to the solicitors of the mortgagee and arranged for the purchase by making a cash payment and giving a mortgage for the balance. She had some other property on which she wished to raise the money for the cash payment, and B. offered to lend the amount at 7 p.c. interest for a year, he taking the wife's property and holding it in trust for that time. B. and M. went to the office of the mortgagee's solicitors where a contract was drawn up in the terms agreed and signed by B. who told the solicitor that he did not know whether the deed would be taken in his own name or his daughter's, but that he would advise him by telephone. On the following day a telephone message came to the solicitors to have the deed made in the name of his daughter which was done; the deed was executed, the money was paid, and a mortgage was given to the original mortgagee as agreed. Subsequently the daughter claimed that she purchased the property absolutely for her own benefit, and an action was brought by M's wife against B. and his daughter to have the daughter declared a trustee of the property subject to repayment of the loan from B. and for specific performance of the agreement with B., the action charging collusion and con-