

JUNE 7TH, 1907.

DIVISIONAL COURT.

BISHOP v. BISHOP.

Trusts and Trustees—Land Conveyed to Son of Tenant—Agreement to Purchase—Declaration of Trusteeship—Improvements—Conflicting Evidence—Appeal—Duty of Appellate Court—Findings of Trial Judge.

Appeal by defendant from judgment of MAGEE, J., 8 O. W. R. 877.

C. E. Hewson, K.C., for defendant.

W. A. Boys, Barrie, for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., BRITTON, J., RIDDELL, J.), was delivered by

RIDDELL, J.:—The case is a puzzling one, and the learned trial Judge had some difficulty in arriving at a conclusion. In the appeal before us, it was urged that he had not given sufficient weight to the evidence on behalf of the defendant, and had consequently been led into error in his findings of fact. The duty of an appellate Court in an appeal from a trial Judge upon questions of fact has been discussed in more than one case—I know of none in which that is better expressed than *Coghlan v. Cumberland*, [1898] 1 Ch. 704-705: "The appeal from the Judge is not governed by the rules applicable to new trials after a trial and verdict by a jury. Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the Court must reconsider the materials before the Judge with such other materials as it may have decided to admit. The Court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering: and not shrinking from overruling it if on full consideration the Court comes to the conclusion that the judgment is wrong. When, as often happens, much turns on the relative credibility of witnesses who have been examined and cross-examined before the Judge, the Court is sensible of the great advantage he had had