

ground of the discovery of further evidence, and upon other grounds, disclosed in affidavits filed on behalf of the defendant. The appeal was taken directly to the Court of Appeal by consent, under sec. 76a of the Judicature Act (as enacted by 4 Edw. VII. ch. 11, sec. 2), and the motion for a new trial was made as if to a Divisional Court.

The appeal and motion were heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, J.J.A., and SUTHERLAND, J., on the 28th and 29th April, 1910.

G. H. Watson, K.C., and G. I. Gogo, for the defendant, argued that the new evidence was so contradictory of some of the testimony given on behalf of the plaintiff at the trial, on which the trial Judge had largely based his findings, that an injustice would be done to the defendant if a new trial were not granted.

R. A. Pringle, K.C., for the plaintiff, opposed the application and appeal.

THE COURT, after discussion, directed a new trial, upon terms as to costs arranged between counsel.

HIGH COURT OF JUSTICE.

BRITTON, J.

APRIL 29TH, 1910.

*BEER v. WILLIAMS.

Devolution of Estates Act—Action by Judgment Creditor against Heirs-at-Law of Intestate to Make Lands of Intestate Available for Payment of Debt—Lands Vesting in Heirs—Administration not Sought—Right of Action—Bar by Statute of Limitations—Possession under Parol Gift—Acts of Ownership—Uncultivated Land.

Action against the heirs-at-law of Nancy Hillis, who died on the 24th May, 1899, intestate, for a declaration that a debt due to the plaintiff was a charge upon certain land which had been conveyed to Nancy Hillis, and for a sale of the land to pay the debt.

William Lammiman the elder died in 1865, leaving a widow, Nancy Lammiman, and children. The defendant William Lam-

* This case will be reported in the Ontario Law Reports.