

1902

JOSEPH D'AVIGNON (PLAINTIFF).....APPELLANT ;

AND

W. J. JONES, J. J. RUTLEDGE }
 AND D. W. DAVIS (DEFENDANTS) } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF BRITISH
 COLUMBIA.

Appeal—Concurrent findings of fact—Duty of appellate court.

A judgment based upon concurrent findings of fact in the courts below ought not to be disturbed on appeal to the Supreme Court of Canada if the evidence be contradictory.

APPEAL from the judgment of the Supreme Court of British Columbia affirming the judgment of the Territorial Court of the Yukon Territory.

The action was to set aside a conveyance recorded in the Mining Recorder's Office at Dawson City, in the Yukon Territory, purporting to convey the plaintiff's placer mineral claim, known as No. 13 on Gold Run Creek, to the defendants Rutledge and Davis on the ground that it was practically speaking a forgery. The trial judge (Craig J.) found the facts in favour of the defendants and dismissed the action with costs. On an appeal by the plaintiff to the full court of the Supreme Court of British Columbia, the judgment of the trial court judge was affirmed. The plaintiff then appealed to the Supreme Court of Canada.

Peters K.C. and *Duff K.C.* for the appellant.

Davis K.C. and *Wade K.C.* for the respondents.

The judgment of the court was delivered by

GIROUARD J.—This appeal involves findings of fact by two courts. Both parties charge fraud, forgery and perjury. The two courts below have unanimously

*PRESENT:—Sir Henry Strong C. J. and Sedgewick, Girouard, Davies and Mills JJ.

*Oct. 20,
21, 22.
*Nov. 18.

found in favour of the respondents. It is conceded that the evidence is contradictory. Therefore the appeal should be dismissed with costs.

1902

D'AVIGNON

v.

JONES.

Appeal dismissed with costs.

Girouard J.

Solicitors for the appellant: *Smith & Macrae.*

Solicitors for the respondents: *Wade & Aikman.*
