

1909

HORNE ET AL. V. GORDON.

*Feb. 22.

*May 28.

*Partnership—Division of profits—Collateral business affairs—Trust
—Account—Findings of fact.*

APPEAL from the judgment of the Supreme Court of British Columbia(1), reversing the judgment of Morrison J. and maintaining the plaintiff's (respondent's) action with costs.

The action was for the dissolution of an alleged partnership and an account and division of the profits derived from the sale of lands. The plaintiff, Gordon, and two of the defendants (the Hollands), were partners as real estate brokers and, aside from the agency business, entered into investments on their own account in the purchase of three lots of land, making a payment on account of the price. When instalments of the balance became due they took Horne into the transaction, it being agreed that he was to pay 85% of the price and the others to contribute 15%, and that the profits should be divided between them. Horne took over the agreements for the purchase and the lots were eventually conveyed to him. Under a verbal agreement, if a sale of the lands could be effected before the second instalment became due and netted 15% profit, the old partnership was to share in the profits equally with Horne. This sale was not made, but four months after the instalment fell due Horne sold a half interest. At the trial Morrison J. held

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington and Duff JJ.

that no partnership had been proved and dismissed the action. By the judgment appealed from, it was held by Hunter C.J. and Clement J. that Horne was a trustee for the partnership consisting of the plaintiff, himself and his co-defendants. Irving J. was of opinion that Horne could not be called upon to account until he had been re-imbursed the money he had put into the transaction. The defendant Horne appealed to the Supreme Court of Canada in order to have the judgment of Morrison J. restored.

1909
 }
 HORNE
 v.
 GORDON.
 —

After hearing counsel on behalf of the parties to the appeal the Supreme Court of Canada reserved judgment and, on a subsequent day, the appeal was allowed with costs, Girouard and Idington JJ. dissenting. The majority of the court considered that the question being one of fact depending upon the proper view of conflicting testimony the judgment of the trial judge should not have been disturbed.

Appeal allowed with costs.

Lafleur K.C. and *W. S. Deacon* for the appellant.

Wallace Nesbitt K.C. and *Ladner* for the respondents.