

## FRASER v. FRASER

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
COURT OF ALBERTA

*Trusts—Transfer of land—Oral understanding—Evidence of—Sufficiency—  
Claim against estate.*

1932  
\*Oct. 6, 7.  
1933  
\*Feb. 7.

APPEAL by the plaintiff appellant from the decision of the Appellate Division of the Supreme Court of Alberta (1), allowing (Simmons, C.J.T.D. and Clarke J.A. dissenting) the defendant respondent's appeal from the judgment of Ewing J. in favour of the plaintiff appellant.

The trial was upon an issue directed by Ford J. upon an application by the plaintiff by way of originating notice. The plaintiff's action was brought against the estate of his deceased father for a portion of the proceeds of the sale of the father's farm which had been transferred to the father by the plaintiff.

The trial judge maintained plaintiff's action; but that judgment was reversed by a majority of the Appellate Division, Mitchell, Lunney and McGillivray JJ.A.

On the appeal to this Court, after hearing argument of counsel, the Court reserved judgment, and on a subsequent day delivered judgment allowing the appeal and restoring the judgment of the trial judge, with costs out of the estate.

*Appeal allowed.*

*N. D. Maclean K.C.* for the appellant.

*W. N. Tilley K.C.* for the respondents.

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\*PRESENT:—Rinfret, Lamont, Smith, Cannon and Crocket JJ.

(1) (1932) 26 Alta. L.R. 322; [1932] 1 W.W.R. 863; [1932] 2 D.L.R. 816.