

WILLIAM JOHN WELLER (DE- }
FENDANT) } APPELLANT;

1910
*Feb. 16.
*Feb. 17.

AND

THE McDONALD-McMILLAN COM- }
PANY (PLAINTIFFS) } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

Appeal—Practice—Concurrent findings of fact.

The Supreme Court of Canada will not interfere with concurrent findings on questions purely of fact unless satisfied that the conclusions appealed from are clearly wrong.

APPEAL from the judgment of the Court of Appeal for Manitoba affirming the judgment of Macdonald J., on an interpleader issue, whereby it was adjudged that money paid into court to abide the result of the trial of the issue was the property of the plaintiffs.

While the defendant was in the employ of the plaintiffs, as superintendent of their works as contractors for the construction of a railway, he entered into a contract with the Canadian White Co. for the building of certain bridges forming part of the line. This sub-contract was made in the defendant's name, but, on being shown to the plaintiffs, they consented that it should be so made. During the time that the defendant was building the bridges under this sub-contract, he continued to draw his salary from the plaintiffs, but, on their completion, he claimed the

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

1910
 WELLES
 v.
 McDONALD-
 McMILLAN
 Co.
 —

amount due for this part of the work on the ground that he had undertaken the contract solely on his own behalf.

The Canadian White Co. applied for an interpleader order, and, on their application, affidavits were filed by both parties setting forth their respective claims, the money due was deposited in court, and an order was made for the trial of an issue to decide between the parties to this appeal as to whom they belonged. It was necessary for the decision of the issue to determine the relationship existing between the parties prior to the contract with the Canadian White Co. and the trial judge held that the defendant was the servant or agent of the plaintiffs, and that the contract in question had been made by him for the benefit of his employers. This decision was affirmed by the judgment appealed from.

J. Edward O'Connor for the appellant.

C. P. Fullerton for the respondents.

The judgment of the court was delivered by

THE CHIEF JUSTICE (oral).—The only question at issue on this appeal is one of fact, the determination of which depends largely, if not entirely, on the weight to be attached to the evidence given by the two witnesses, Weller and McMillan. The trial judge who saw the witnesses and had opportunities to test the relative merits of the different versions of the facts, which we have not, came to the conclusion that McMillan's version was absolutely correct and finds as a fact

that the contract was made by Weller for the respondent company and that they are entitled to the money in dispute.

The conclusion reached by the trial judge has the unanimous approval of the Court of Appeal, a matter not lightly to be disregarded.

The jurisprudence of this court is well settled; we will not interfere with the concurrent findings of two courts on a pure question of fact unless we are satisfied that the conclusion reached is absolutely wrong.

Appeal dismissed with costs.

Solicitors for the appellant: *Morice & O'Connor.*

Solicitors for the respondents: *Aikins, Robson, Fullerton & Coyne.*

1910

WELLER

v.

MCDONALD-

MCMILLAN

Co.

The Chief

Justice.