

1932

GROFF v. HERMAN

*May 3.
*June 15.

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

Appeal—Evidence—Finding of trial judge on conflicting evidence—Finding set aside by appellate court and restored by Supreme Court of Canada—Ownership of carload of wheat.

APPEAL by the plaintiff (by leave granted by the Appellate Division, Alta.) from the judgment of the Appellate Division of the Supreme Court of Alberta (1) allow-

*PRESENT:—Anglin C.J.C. and Rinfret, Lamont, Smith and Cannon JJ.

(1) 26 Alta. L.R. 9; [1931] 3 W.W.R. 417; [1932] 1 D.L.R. 147.

ing (Clarke and McGillivray, JJ.A., dissenting) the defendant's appeal from the judgment of Boyle J. in favour of the plaintiff.

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The plaintiff and defendant were neighbouring farmers, living near Crowfoot, Alta., and in 1928 they had large quantities of wheat, which they assisted each other in hauling, most of which was shipped through different elevators, but two carloads were shipped directly into the cars over the railway platform. The whole question for determination was whether, on conflicting evidence, the wheat in one of these cars belonged to the plaintiff or to the defendant.

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 with costs in this Court and in the Appellate Division, and restoring the judgment of the trial judge. Written reasons were delivered by Anglin C.J.C. and by Smith J. Smith J., with whom Rinfret, Lamont and Cannon JJ. concurred, after discussing the evidence at some length and after discussing the judgments below, expressed the view that this was an ordinary case of a trial judge hearing and seeing the witnesses and, from their conduct in the box and the circumstances, arriving at a conclusion as to which side was right as to the facts. After reading all the evidence very carefully, the learned judge was not prepared to say that he would have differed with the trial judge on his finding of fact on the whole evidence, and therefore his judgment should prevail. Anglin C.J.C. stated that he concurred in the result of the judgment on the simple ground that the case involved nothing but a question of fact, upon which the trial judge had made a specific finding based upon evidence which, apparently, fully warranted it, and there was nothing in the case to justify the action of the Appellate Division in setting that finding aside, based, as it was, chiefly upon the credibility of witnesses.

Appeal allowed with costs.

O. M. Biggar K.C. and M. B. Gordon for the appellant.

H. A. Ayles for the respondent.