Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of E. R. Whitney, deceased, now represented by Neuberger and another, the Executors of his Will, v. *Joyce and another, from the Court of King's Bench for the Province of Quebec (Appeal Side); delivered the 4th July* 1906.

Present:

LORD MACNAGHTEN.
LORD DUNEDIN.
LORD ATKINSON.
SIR ARTHUR WILSON.
SIR HENRI ELZÉAR TASCHEREAU.

[*Delivered by Lord Macnaghten.*]

THIS is an absolutely clear case, and it may be disposed of in a very few words.

The Appellants have not discharged, or even attempted to discharge, the burden which falls upon a litigant in such a case as this.

The Appellants seek to reverse the Judgment of the Court of King's Bench for the Province of Quebec, which affirmed the Judgment of the Superior Court of Montreal. Now, it is well settled that when the question is whether concurrent Judgments of the Courts below shall be reversed on the ground that the Judges have taken an erroneous view of the facts, it is incumbent on the Appellant to adduce the clearest proof that there is an error in the Judgment appealed from, and, so to speak, to put his finger on the mistake. That rule has often been laid down, but never more distinctly than in an appeal from the very Court from which the present Appeal is brought.

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In the case of *Allen* v. *The Quebec Warehouse Company* (12 A.C. 101), the Judgment of this Board was delivered by Lord Herschell. His Lordship said:—

"It has always been the view taken by this Committee in advising Her Majesty, when the question for determination has been whether the concurrent Judgment of the Judges who have been unanimous below should be supported or reversed, that unless it be shown with absolute clearness that some blunder or error is apparent in the way in which the learned Judges below have dealt with the facts, this Committee would not advise Her Majesty that the Judgment should be reversed."

Then, after quoting Judgments of Lord Kingsdown and Lord Cairns to the same effect, his Lordship goes on to say:—

"Their Lordships entirely adhere to the views thus expressed, and therefore they do not consider that the question they have to determine is, what conclusion they would have arrived at if the matter had for the first time come before them, but whether it has been established that the Judgments of the Courts below were clearly wrong."

In this case six Judges—five in the Court of Appeal and the learned Judge who heard the evidence and saw the witnesses—have come to the conclusion that the Plaintiff Whitney failed to prove the partnership upon which his claim was based. The only difference between the two Courts is that in the one the opinion was expressed that Joyce and Greenshields were to be believed, and that Whitney was not to be believed, while the Court of Appeal has refrained from expressing any opinion on that subject. No error was actually shown or even distinctly alleged. The arguments merely came to this—that the Judges below must have approached the question from a wrong point of view and failed to give just weight to a number of minute circumstances which have little or no bearing on the vital matter in issue.

Nothing, therefore, remains for their Lordships but humbly to advise His Majesty that the Appeal should be dismissed.

The Appellants will pay the costs of the Appeal.