

should be accepted in preference to that of the defendant when their stories conflict. But in any case there was no mutual mistake and there was no fraud on the plaintiff's part. The Mortgagees and Purchasers Relief Act, 1915, did not apply. Judgment for the plaintiff for \$3,325 with interest and costs. G. H. Watson, K.C., for the plaintiff. G. N. Gordon, for the defendant.

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TRUSTS AND GUARANTEE CO. LIMITED v. BOAL—SUTHERLAND, J.  
—APRIL 27.

*Trusts and Trustees—Conveyance of Land to Brother—Express Trust for Sale and to Make Certain Payments—Validity of Sale—Advances—Action by Administrators of Grantor—Account—Costs.*]  
—Action for a declaration that the defendant holds certain lands conveyed to him in January, 1915, by his brother Robert Boal, now deceased, as bare trustee for the estate of the brother, represented by the plaintiffs as administrators; to compel the defendant to transfer the lands to the plaintiffs, and to hand over to the plaintiffs such of the personal property of the deceased as has been taken possession of by the defendant; for an injunction restraining the defendant from dealing with the estate of the deceased; and for an account of his dealings with the estate. The action was tried without a jury at Toronto. The learned Judge set out the facts in a written judgment, and stated his conclusion that the conveyance of January, 1915, was upon an express trust to sell the lands, pay \$400 to one Nichols, pay or retain any moneys advanced on behalf of the deceased, and hold the balance for the deceased. The defendant sold the land for \$1,100, which, upon the evidence, was a fair and reasonable price. Part of the \$1,100 was paid in cash, and the defendant paid Nichols \$400 thereout. The sale should be confirmed and carried to completion. From the balance of the money in his hands after deducting the \$400 paid to Nichols, the defendant should be at liberty to deduct any proper advances made by him to or on account of the deceased before the death, and any further proper sums paid in connection with the effecting and carrying out of the sale. Certain personal articles belonging to the deceased, taken possession of by the defendant, belonged to the estate. The defendant had substantially succeeded in his defence, and was entitled to deduct from any balance in his hands his costs of defence. If the plaintiffs and defendant cannot agree as to the amount of the advances of the defendant to his brother's estate, there should be a reference to ascertain the amount. M. J. Folinsbee, for the plaintiffs. W. A. Skeans, for the defendant.