

The appeal was heard in the Weekly Court, Toronto.
G. S. Hodgson, for the plaintiff.
G. H. Kilmer, K.C., for the defendant Annie Tucker.

SUTHERLAND, J., in a written judgment, said that the action was originally brought against Annie Tucker alone, the claim being for "money left in custody of the defendant by the plaintiff for safekeeping, \$1,000," with a credit of \$100 for "money returned," leaving a balance of \$900 said to be due.

John Tucker, husband of Annie Tucker, was added as a defendant, but the action was dismissed as against him, and there was no appeal as to that.

It appeared from the evidence that the plaintiff, a boarder in the home of the defendants, became infatuated with Annie Tucker, and sought to seduce her. While the money in the first place was given to her with the suggestion that it was for safekeeping, the evidence which the District Court Judge gave effect to indicated that it was put into the custody of the woman for the purpose of influencing her, and a large part of it was spent by her with his consent. In the end he appeared to have made up his mind that he could not succeed in his improper advances, and then desired to get back his money. On his speaking to her about it, he was told that there was only \$200 left, and this she gave him. After this, on her stating to him that she wished to buy a cow, he let her have \$100 for that purpose. This \$100, the District Court Judge thought, was so separated from the former transaction as to entitle the plaintiff to its recovery.

Once it appeared from the evidence, as it had been found, that the placing of the money in the woman's hands, and the permission given to her to do what she liked with it, were part of a scheme to seduce her from virtue, the claim asserted was shewn to arise *ex turpi causa*, and the plaintiff could not be assisted by the Court in its recovery. Both parties were at fault, and the maxim *in pari delicto potior est conditio possidentis* applied.

Reference to *Holman v. Johnson* (1775), *Cowp.* 341, 343; *Walker v. Perkins* (1764), 3 *Burr.* 1568; *Egerton v. Brownlow* (1853), 4 *H.L.C.* 1; *Clark v. Hagar* (1893), 22 *S.C.R.* 510; *Gallagher v. McQueen* (1898), 35 *N.B.R.* 198, 230; *Farmers' Mart Limited v. Milne*, [1915] *A.C.* 106; *Broom's Legal Maxims*, 8th ed. (1911), pp. 577, 578.

Appeal dismissed with costs.