

Province of Manitoba.

KING'S BENCH.

Full Court.]

ROBLIN v. JACKSON.

[March 6.

Money had and received—Recovery of one cestui que trust of proceeds of his property received from trustee by another—Mixing of goods.

County Court Appeal. Defendant shipped a quantity of wheat in a car from Blake Siding, in Manitoba, to Duluth with instructions that the wheat was to be unloaded at Roland and cleaned and dried at the plaintiff's elevator there. This was done and the wheat was thereby reduced in bulk to about 573 bushels. The plaintiff's employees, in reloading it into the car, supposing it to be the plaintiff's wheat, added about 260 bushels of plaintiff's own wheat and forwarded the car to its destination. Defendant had obtained an advance of money from one Brown, the repayment of which he secured by transferring to Brown the bill of lading for the wheat, with the agreement that Brown should sell it and, after deducting the amount of the loan, pay the balance to the defendant. Brown afterwards sold all the wheat in the car including plaintiff's 260 bushels, received the proceeds, paid himself and accounted to defendant for the balance. So far as appeared neither Brown nor defendant knew until afterwards that any of the wheat so sold belonged to plaintiff. Plaintiff had a verdict in the County Court for the amount realized by defendant for the 260 bushels and defendant appealed, contending that there was no contract or privity express or implied between plaintiff and himself as to plaintiff's wheat or its proceeds; that defendant had not received the price of the wheat; that the payment, if any, by Brown to defendant was voluntary; and that in any case a demand was unnecessary to be made before action on defendant for a return of the wheat or payment of its value or proceeds; and that it was necessary to shew that the money received by defendant was the identical money that Brown had received for plaintiff's wheat.

Held, that Brown, as regards the wheat in question, stood in fiduciary relation towards both plaintiff and defendant, and that the proceeds of property sold by a trustee without the consent of the owner can, in equity, when traceable, be followed as fully as the property itself, if unconverted, could have been: *In re Hallett, Knatchbull v. Hallett*, 13 Chy. D. 696; and that, so long as such money can be definitely traced, it makes no difference that it has been mixed with other money, and this rule applies not only in the case of a trustee in the narrow and technical sense but to any person in any kind of a fiduciary position to others. There was a mixture of goods by accident, and the owners became tenants in common