

FIRST DIVISIONAL COURT.

NOVEMBER 25TH, 1920.

*KATZMAN v. MANNIE.

Judgment—Return of Car Held for Value of Repairs—Damages for Detention—Election—Revocation—Appeal—Value of Car—Amendment of Judgment—Terms—Costs.

Appeal by the plaintiff from the judgment of SUTHERLAND, J., 46 O.L.R. 121, 16 O.W.N. 362.

The appeal was heard by MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

A. St. G. Ellis, for the appellant.

No one appeared for the defendant, respondent.

HODGINS, J.A., reading the judgment of the Court, said that Sutherland, J., had given judgment in favour of the plaintiff for the return of his motor car, which the defendant had held for a repair-bill of \$67.75, with \$20 damages to the plaintiff and costs fixed at \$75, and directing that, unless the car should be returned in 10 days, the defendant should pay \$800 damages, less the sum of \$67.75, and costs of the action.

The defendant had possession of the car when judgment was delivered on the 16th July, 1919; but when the plaintiff took out the judgment on the 17th September, 1919, it contained an order for the return of the car. The plaintiff now said that this was done by inadvertence, and that he desired judgment for damages instead, urging that they should be increased to \$1,200—the true value of the car, as he asserted.

The effect of the judgment as delivered was to determine that the defendant wrongfully detained the car; and it gave him 10 days to redeliver it. The delay in taking out the judgment and the apparent election of the plaintiff to insist on the return of the car, long after the expiry of the 10 days, and then to appeal against the provision for return, presented a somewhat unusual situation. The Court was in fact now asked to allow the plaintiff, the appellant, not only to change his election, but in so doing to increase the damages.

At the hearing of the appeal it was suggested that the learned trial Judge should be consulted as to whether, as was alleged, he had been in error as to the facts on which he arrived at the value of the car. The trial Judge had informed the Court that he adhered to his opinion that \$800 was the proper amount, in the circumstances.