

An appeal by the defendant from the judgment of the Judge of the District Court of the District of Thunder Bay, in favour of the plaintiff, for the recovery of \$145 and costs.

The plaintiff's claim was against the defendant, as administrator of the estate of Elias Benjamin, deceased, for \$765.58, the amount of the plaintiff's claim as filed against the estate, which the defendant had refused to pay. The items of the claim were: \$78.43, the amount of a bill paid by the plaintiff for hospital accommodation of the deceased; \$92.15, undertaker's bill; \$300, the amount of a promissory note made by the deceased in favour of the plaintiff; \$295, remittances from time to time made by the plaintiff to the deceased while in ill-health.

The defendant set up that the moneys sued for were the moneys of the deceased, and counterclaimed for \$500 alleged to have been expended by the deceased in building a house for the plaintiff and for \$200 owed by one Werda to the deceased and said to have been paid by Werda to the plaintiff.

The County Court Judge allowed the plaintiff the items of \$300 and \$295, disallowed the items of \$78.43 and \$92.15, and allowed the defendant's counterclaim for moneys expended in building the house at \$450, but disallowed the counterclaim for \$200 paid by Werda.

The plaintiff did not appeal; the defendant's appeal was on the ground that his claim for the \$200 should have been allowed.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, J.A.

W. A. Dowler, K.C., for the appellant.

W. Lawr, for the plaintiff, respondent.

FERGUSON, J. A., reading the judgment of the Court, said that the plaintiff admitted the receipt of the \$200, but said that it was received in payment of a debt. His testimony was that, before the giving of the note for \$300, and before the loan for which the note was given, the deceased was indebted to the plaintiff in another sum of \$237; that the plaintiff asked the deceased for a note, but the latter refused to give one, saying that Werda owed him \$200, and that he would go with the plaintiff to Werda and direct Werda to pay him, and that he (the deceased) would pay the difference, \$37, in cash; that both of these things were done; that the plaintiff accepted this arrangement instead of the note; that the \$200 was paid by Werda after the deceased had gone away and after the date of the \$300 note. The only evidence in support of the defendant's counterclaim for the \$200 was the admission of the plaintiff, qualified in the way indicated.