

F. E. Hodgins, for plaintiffs.

R. U. McPherson, for defendant.

The judgment of the Court (MACMAHON, J., STREET, J., LOUNT, J.) was delivered by

MACMAHON, J.—The plaintiffs are the executors of the estate of John David Thewes, who died on the 6th September, 1900, at the age of seventy-four or seventy-five years; and the action is brought to recover from the defendant the sum of \$1,000 received by the defendant under the following circumstances:—Thewes was a farmer living in the township of Romney, in the county of Essex; he and the defendant, who is a farmer and cattle dealer in the same township, being on terms of intimacy. Thewes lived alone on his farm, and becoming ill, he was, in February or March, 1899, removed to St. Joseph's hospital, in Chatham, where until his death he occupied a room, never leaving the hospital. He advertised his farm for sale, and the defendant, desiring to purchase, saw Thewes, on the 10th or 11th May, who agreed to sell for \$2,500, the defendant to pay in cash the difference between that sum and the amount of a mortgage thereon held by a loan company in London, for \$1,000, and the interest then due thereon and the accrued taxes. The defendant on the 12th May paid \$300 odd, and before Thewes would sign the deed he insisted on Coulter depositing the balance of the purchase money, amounting to \$1,000, to his (Thewes's) credit in the Merchants Bank, Chatham, which the defendant did and brought to Thewes, at the hospital, a savings bank deposit book therefor.

On the 29th May, Coulter went to the hospital, and he stated that Thewes desiring him to withdraw the \$1,000 from the bank, Thewes signed his name on a piece of paper, which he (Coulter) took to the bank, but the bank would not pay the amount on deposit unless upon a receipt signed by Thewes therefor, and Coulter was given a blank receipt, which Thewes signed,—the body of the receipt being filled in by Coulter. Coulter, having received the money from the bank, stated when in the witness box that he on the same day handed it over to Thewes, who, after counting it, folded it in a piece of paper which he put in his breast, inside his clothing.

When Thewes died, the money was not found in his possession.

In July, Thewes gave to the Rev. Pierre Langlois an order addressed to Coulter, saying: "I ask Father Langlois