

MAY 22ND, 1902.

DIVISIONAL COURT.

BATZOLD v. UPPER.

Evidence—Corroboration—R. S. O. ch. 73, sec. 10—Action against Administrator.

Appeal by plaintiff from the judgment of the County Court of Elgin.

Shirley Denison, for plaintiff.

W. A. Wilson, St. Thomas, for defendant.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—The action is brought by the plaintiff, Elizabeth Batzold, a widow, to recover from the defendant, who is the widow and administratrix of one Upper, a sum of \$300 alleged to have been intrusted to Upper in his lifetime for investment for the plaintiff.

The action was tried before Hughes, Co. J., and a jury at St. Thomas. The plaintiff swore that she had handed the money in question to the deceased for investment, telling him that it was money which her husband had directed her to lay aside for the benefit of two of her daughters for their education. The only corroboration to her evidence was the statement of Violet Batzold, one of the two daughters in question, who swore that she had heard her mother counting out \$20 bills to Upper, and had heard Upper say that she would get a larger interest than if she paid it into the bank, and that she could have the money back when she wanted it.

The defendant moved for a nonsuit on the ground that there was no corroboration. The learned Judge left the following questions to the jury:

1. Did Mrs. Batzold pay or hand over any money to Mr. Upper? The answer was, "Yes."

2. How much money, if any? Answer, "\$300."

3. Was it handed to Mr. Upper to invest for her daughters, including Violet Batzold? Answer, "Yes."

The 4th question is of no importance here. The 5th question was: "For what purpose was the money handed to Mr. Upper, if it was not for the benefit of the daughters? Answer, "For no other purpose."

The Judge, having reserved the defendant's motion for a nonsuit, considered that and the plaintiff's motion for