

compel a conveyance to plaintiff of land purchased by him and conveyed to defendant, or for a declaration that she held the land in trust for him, etc.

H. H. Strathy, K.C., for defendant.

M. B. Tudhope, Orillia, for plaintiff.

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

RIDDELL, J.:— . . . Plaintiff is a retired farmer of some 80 years of age, with a grown-up family of sons, whom, as he says, he has "helped too much," or rather "they helped themselves," though he "never gave them a great deal of money." Some 4 or 5 years ago he came to the conclusion that he should marry and have a home of his own, as apparently his sons had left him, because "a home of your own is worth two of other folks'." He had been a pretty careful man, had done all his own business, bought and sold cattle and horses, conducted his farming operations, sold his grain, paid his rent, banked his money, all without assistance, and I can find nothing to indicate that he was a man of less than ordinary intelligence and strength of mind and character.

He married the defendant—a widow—herself with a family, and they seem to have lived on harmonious terms. There is no evidence of any fiduciary relations existing between the two, and no charge is made that plaintiff relied upon defendant for advice in respect of any business transaction, and no suggestion that he was not perfectly competent to understand and transact ordinary business.

No fiduciary relationship will, of course, be presumed.

Thomas Langstaff, the son of defendant, says that shortly before the transaction in question plaintiff and he were at a creamery, and "after we left the creamery Mr. Jarvis told me . . . one of his sons . . . was trying to rogue him; Robert his name was. He says, 'They have been trying to do me up,' and he says, 'As soon as this fall I get things settled I am going to quit farming; I am going to Markham; there is a house there I can get; I am going to buy it, and I will give it to your mother, and they won't have a chance to get that.'" . . . (Plaintiff denied this.)

About the same time he has a conversation with George Langstaff, another son of defendant, and Langstaff's account