

FIRST DIVISIONAL COURT.

JUNE 11TH, 1920.

BOWLER v. REDMAN.

Trusts and Trustees—Property and Money Transferred to Person to Keep till Return of Transferor from War—Transfers Absolute in Form—Finding and Declaration of Trust—Breach of Trust—Sale of Property to Third Person with Notice—Judgment for Return of Money and Payment of Value of Property.

Appeals by the defendants from the judgment of the County Court of the County of Peterborough in favour of the plaintiff in an action to recover \$855 paid by the plaintiff to the defendants upon what the plaintiff alleged were false and fraudulent misrepresentations.

The judgment appealed from was for the recovery of \$300 from both defendants and of an additional sum of \$148.49 against the defendant Redman, with costs against both defendants.

The appeals were heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, J.J.A.

R. R. Hall, for the defendant Vass, appellant.

G. W. Hatton, for the defendant Redman, appellant.

G. N. Gordon, for the plaintiff, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that the plaintiff was a returned soldier. Before entering upon active service, he transferred to the defendant Redman all his money and property, being a Ford automobile and \$228 on deposit in a bank. On his return from overseas, the plaintiff asked the defendant Redman to return him the car and money, also the part of his pay which he had directed the authorities to pay to the defendant Redman while he (the plaintiff) was overseas. The defendant Redman refused, saying that the transfers to her were gifts, and that she had sold the car to the defendant Vass for \$300.

The learned County Court Judge found that the transfers were obtained by undue influence, were improvident, and should be set aside; also that the transfers were made on the representation of the defendant Redman that she would keep the moneys and the car for the plaintiff, and return them to him if he should come back from the war; but the learned Judge dismissed the action in so far as the plaintiff claimed the return of his assigned pay.

The plaintiff's testimony, accepted by the County Court Judge, fully justified the plaintiff's allegation that the bill of sale