

The action was for a balance of work and materials alleged to have been done and furnished by the plaintiff for the defendants.

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

Erichsen Brown, for the appellant.

F. J. Hughes, for the defendant corporation.

W. D. M. Shorey, for the plaintiff, respondent.

MEREDITH, C.J.O., read a judgment in which he said that the action was brought against the defendants as executor and executrix of the will of T. M. Harris, deceased, for the price of work done and materials supplied in making repairs to and in connection with the boiler in a warehouse which formed part of the estate in the hands of the defendants.

The appellant, in the affidavit filed with her appearance, deposed that she had a good defence to the action upon the merits; that she entered into no contract on her own behalf or on behalf of the estate in respect of the work and materials done and supplied by the plaintiff, and submitted that no judgment *de bonis propriis* could be signed against her. She also deposed that the charges made by the plaintiff were excessive, and gave particulars of the excess, amounting to \$151.72; she also brought into Court \$158, which, as she deposed, was more than the plaintiff was entitled to, and said that she desired to "defend for the difference." She also set up that the repairs were made without compliance with the statutory regulations respecting inspection in advance of commencing the work, and submitted that the plaintiff, therefore, could not recover. She also pleaded the Statute of Frauds and a set-off of \$20 owing to the estate for old lumber purchased and taken away from the aforesaid warehouse.

The affidavit filed by the defendant corporation was made by an officer, who deposed that, before the repairs were ordered, the appellant was consulted, and approved of the plaintiff undertaking the work; that a cheque was drawn in favour of the plaintiff for the amount of his account, and that the appellant refused to sign it, alleging that the price charged was excessive; while the defendant corporation was ready and willing to pay the plaintiff's account. There was in this affidavit no suggestion of defending the action and no statement that the corporation had a defence to it on the merits, but only a submission that neither the estate nor the corporation should be liable for the costs of this action.

The amount claimed by the plaintiff was \$272.01, from which the trial Judge made deductions amounting to \$43.01, and allowed in respect of the set-off \$15.

The view of the trial Judge was, that the corporation had authority to bind the appellant by the contract with the plaintiff