

SECOND DIVISIONAL COURT.

APRIL 14TH, 1916.

MURCH v. CITY OF TORONTO.

Principal and Agent—Solicitor and Client—Authority of Solicitor to Receive Moneys for Client—Absence of Ratification or Acquiescence—Evidence—Finding of Fact—Appeal—Right to Recover Money Paid to Supposed Agent and Misappropriated—Deduction of Sum Due by Plaintiff for Costs.

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., 9 O.W.N. 438.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

Irving S. Fairty, for the appellants.

C. W. Plaxton, for the plaintiff, respondent.

RIDDELL, J., in a short written opinion, said that the case, when denuded of irrelevant detail, was reducible to a small compass. The defendants, the Corporation of the City of Toronto, agreed to pay to the plaintiff \$7,000; the defendants placed in the hands of their solicitor a sufficient sum to pay \$5,000, the balance after \$2,000 had been paid; the defendants' solicitor paid the \$5,000 to another solicitor (Lobb), believing him authorised to receive it for the plaintiff; and Lobb paid to the plaintiff only a portion of the \$5,000. The plaintiff sued the defendants for the balance, repudiating the authority of Lobb to receive the money. The question was not whether the defendants' solicitor acted as most solicitors would have acted—no doubt he did. The question was one respecting the authority of an agent. The defendants, owing money to the plaintiff, paid it to a person who affected to act as the plaintiff's agent. Apart from estoppel, acquiescence, ratification, and the like—none of which existed here—a person paying to a supposed agent must make sure of the real agency, express or implied, of such supposed agent.

The learned Judge said that, as the question involved the honour of one solicitor and the prudence of another, he had read and re-read the evidence with great care; and, while there was much upon which to base an argument, the evidence fell short of proving authority on the part of Lobb to receive this money as agent of the plaintiff.

The appeal should be dismissed.

As Lobb became the agent of the defendants to pay the plaintiff, it would be just to deduct from the judgment the amount