

J. C. Elliott, Glencoe, and D. A. McDonald, Glencoe, for plaintiff.

F. P. Betts, London, for defendants.

FALCONBRIDGE, C.J.:— . . . The statement of claim alleges that on or about 11th March, 1905, plaintiff, by his solicitor, paid to defendants . . . \$2,153.05 in trust to procure the delivery to plaintiff within a reasonable time thereafter of a good and sufficient conveyance of certain lands situate in the village of Glencoe. The cheque was left with defendants by Mr. Alexander Stuart, and the only direct evidence as to what was said when the cheque was handed in is that of Mr. Stuart and of Mr. Henry W. Givens, accountant of defendants.

Mr. Stuart's evidence is very clear and pointed. He says that he told Mr. Givens that it was a cheque sent to him, Stuart, by Mr. Moss, a solicitor at Glencoe, for Mr. Pool, and that he, Stuart, was instructed to give it to them on delivery of a deed of property in Glencoe to be signed by defendants and one C. J. Mills. Stuart further said that he told Givens he was acting a little beyond his instructions in handing the cheque in, but he would leave it with them (defendants) on condition that they would get the deed and deliver it—told them he gave it to them conditionally on getting the deed.

This evidence is not flatly contradicted by Mr. Givens. He says in cross-examination that his recollection is not vivid enough to make him sure, apart from the fact that he did not make any note or memorandum of any stipulation regarding the cheque, because he says it was the practice of the office to have such a stipulation put in writing or to make a special note of it. .

I therefore find this issue in favour of plaintiff.

I refer further to a letter from the manager of defendants to C. J. Mills of 13th May, 1905, which commences as follows: "Dear Sir: Re Pool and Hurdle property. I have your favour of the 12th instant herein. While it may be that you are in a perfectly good position to insist on Mr. Pool completing the purchase with you, we must return the cheque to Mr. Alexander Stuart, of this city, if he insists upon it. He handed in the cheque to us on condition that he was to receive the deed, and, of course, we must either give him the deed or hand him back the money."