

tion, on Mr. Pardee's own shewing, was to make an agreement upon the term (among others) of one-third cash on signing the agreement, and he made no such agreement. What he did make was an agreement stipulating for \$200 down, and the balance of the one-third cash payment when the title and documents were accepted. I cannot, with deference, agree that these mean the same thing. It is, however, not exactly that, but whether an explicit instruction has been followed. It is, in other words, a question of power and authority, pure and simple; and, in my opinion, there was no power or authority to substitute for one-third cash, on signing the agreement, the term of \$200 down and the balance when the title and documents were accepted. The latter, doubtless, had, in Mr. Pardee's eyes, the merit of giving him so much of the defendant's money in hand, in case there should subsequently be a dispute about his agency for the defendant, and its resulting commission, which if he did not claim, he would be a very unusual agent.

Upon the whole, and without entering upon some of the other matters discussed before us, which, in my opinion, become unimportant in the view which I take of the facts, I think, for the reasons I have given, that the appeal should be allowed and the action dismissed with costs.

MEREDITH, J.A., agreed in the result, for reasons stated in writing.

MACLAREN and MAGEE, JJ.A., and LENNOX, J., also concurred.

Appeal allowed.

JUNE 28TH, 1912.

*MERRITT v. CITY OF TORONTO.

Water and Watercourses—Marsh Lands—Passage over Adjacent Lands—Access to Deep Water—Proprietary Rights—Riparian Rights—Ashbridge's Bay.

Appeal by the plaintiff from the order of a Divisional Court, 23 O.L.R. 365, 2 O.W.N. 817.

The appeal was heard by MOSS, C.J.O., MACLAREN and MEREDITH, JJ.A., CLUTE and SUTHERLAND, JJ.

H. M. Mowat, K.C., for the plaintiff.

H. L. Drayton, K.C., and G. A. Urquhart, for the defendants.

*To be reported in the Ontario Law Reports.