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APPELLATE DIVISION.

OCTOBER 8TH, 1915.

B. F. GOODRICH CO. OF CANADA LIMITED v. ROBINS
LIMITED.

*Principal and Agent—Deposit Paid by Principal to Agent on
Negotiation for Lease—Payment over to Lessor—Lease not
Executed—Action against Agent for Return of Deposit—
Evidence.*

The defendants carried on a land agency business in the city of Toronto. The plaintiffs asked the defendants to find suitable premises for the plaintiffs' Toronto business. The defendants brought to the plaintiffs' notice certain premises of which one Stedman was the lessee, which Stedman had placed in the defendants' hands for subletting. The plaintiffs paid to the defendants \$125 as a deposit upon an agreement for subletting; the agreement was not carried out, the terms of the head-lease not being satisfactory to the plaintiffs; and the plaintiffs sued the defendants, as their agents, for the return of the \$125. The action was brought in the County Court of the County of York, and judgment was given for the plaintiffs. The defendants appealed.

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

J. M. Ferguson, for the appellants.

H. E. Rose, K.C., for the plaintiffs, respondents.

MEREDITH, C.J.O., delivering the judgment of the Court, said that the money was paid to the appellants, the agents undoubtedly of the respondents, in order that it should be paid as a deposit to the person from whom an agreement or offer to lease the premises should be obtained. If that were so, and if the deposit was, in the course of the agents' duty, paid over to Stedman, the remedy of the respondents would be against him