

The defendants G. R. Deacon and Campbell should . . . be held liable to the extent to which they shared.

Probably the most convenient manner of fixing the liability is to direct judgment against each for the amounts received by them by the cheques issued on the 6th September, 1905, with interest from that day. But, if any question arises, the matter may be spoken to in Chambers.

The appeal should be allowed and judgment entered for the plaintiffs as indicated. . . . The plaintiffs are entitled to their costs throughout.

HIGH COURT OF JUSTICE.

RIDDELL, J.

JUNE 10TH, 1910.

*JOHNSON v. BIRKETT.

Evidence — Examination of Plaintiff for Discovery — Death of Plaintiff—Continuation of Action by Executor—Tender of Depositions of Deceased as Evidence on Behalf of Executor—Principal and Agent—Moneys Intrusted to Agent for Purchase of Stock—Purchase of Stock by Agent on his own Behalf—Intention to Appropriate Part to Principal—Absence of Evidence of Good Faith and Information Given to Principal—Scale of Costs—10 Edw. VII. ch. 30 (O.)

This action was brought by Mrs. Johnson in September, 1908, against Dr. Birkett, for the return of \$500 alleged to have been paid by her to the defendant in 1906. After the pleadings had been delivered, i.e., in February, 1909, she was examined for discovery. She died in December, 1909, and her executor obtained an order to continue the action in his name.

The action was tried before RIDDELL, J., without a jury, at Toronto, on the 7th June, 1910.

The plaintiff offered as evidence the examination for discovery of the deceased Mrs. Johnson. The defendant objecting, the trial Judge allowed the examination to be marked for identification only, and the trial proceeded. The plaintiff then read certain parts of the examination for discovery of the defendant, and rested his case. The defendant called no evidence.

W. C. Mackay, for the plaintiff.

J. C. Sherry, for the defendant.

* This case will be reported in the Ontario Law Reports.