

HON. MR. JUSTICE LENNOX.

APRIL 3RD, 1914.

BRODEY v. LEFEUVRE.

6 O. W. N. 175.

Principal and Agent—Secret Dealings—Account—Commission—Costs.

LENNOX, J., gave judgment in favour of the principal for the moneys received by an agent from such principal where the agent had recently dealt with the principal's property as his own.

Action for \$3,832.48 moneys alleged to have been paid to the defendant for duties and services to be performed, but not performed, and moneys received by defendant to the use of the plaintiff.

A. Cohen, for plaintiff.

R. B. Beaumont, for defendant.

HON. MR. JUSTICE LENNOX:—In the circumstances of this case the defendant is not entitled to commission, and is bound to account to the plaintiff for his receipts beyond actual disbursements. He deceived the plaintiff and secretly dealt with the plaintiff's property as his own. *Prima facie* he is bound to account on the basis of the consideration, \$23,500, stated in his agreement with Mrs. Hurwitz, but his actual net profits could only be ascertained by a reference. He admits that counting the \$275 paid him by the plaintiff he had net receipt of the amount of \$466.33 at all events; and the plaintiff's counsel not insisting upon a reference here will be judgment for his amount with costs according to the tariff of this Court.

Execution stayed for thirty days.

I may add that even if the plaintiff were only entitled to recover the commission he paid the defendant, \$275, I would still direct the payment of costs on the Supreme Court scale.