

When his statement of defence is delivered, the question of its validity can be tried as on a demurrer, if the facts are not in dispute.

The motion is dismissed; costs in the cause. Defendant should in every way facilitate a trial of the action.

DECEMBER 17TH, 1906.

DIVISIONAL COURT.

HORWOOD v. MACLAREN.

Architect—Work and Material Ordered for Building—Absence of Authority from Owners or Contractors—Warranty of Authority—Personal Liability—Principal and Agent.

Appeal by defendant from judgment of MABEE, J., at the trial, in favour of plaintiffs for \$295 and costs, in an action for the price of work and material.

Glyn Osler, Ottawa, for defendant.

E. F. Burritt, Ottawa, for plaintiff.

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by

CLUTE, J.:—Plaintiffs are stained glass manufacturers; defendant is an architect practising in the city of Ottawa.

In the spring of 1905 defendant was employed by the trustees of the Cobden Methodist Church to prepare plans and specifications and supervise the construction of a new church at Cobden.

The whole contract was let to one Simpson, including the windows in question.

Defendant admits that he was not authorized either by the contractor Simpson or the trustees to enter into a contract for either of them.

According to plaintiffs' evidence, the defendant telephoned plaintiffs asking them to put in a tender, which they did. The following is a copy: