

of this Court, since the trial of this action, the judgment, pronounced at that trial, establishing the will propounded by the plaintiff, could not well be disturbed; though, but for that additional evidence, the Chief Justice would have been in favour of allowing the appeal and dismissing the action.

There were circumstances connected with the case which made it one of those in which the conscience of the Court should not be satisfied as to the validity of the will until all available evidence, material to the issue between the parties, had been adduced and the plaintiff's claim well-proved.

Having regard to the learned trial Judge's findings, and to the additional evidence, the Chief Justice was not able to find that that had not now been done.

But the case was one in which the defendant should have her costs of the litigation, throughout, out of the estate of the testator, down to and including the trial, because the case was one requiring careful investigation, and one in which strict proof of the validity of the will was needed—proof of which all persons disappointed by it had a right to demand; and her costs of this appeal, because it was well-brought, and the plaintiff retained her judgment largely upon the evidence adduced by her, by the leave of this Court, since the trial, evidence which should have been adduced by her at the trial.

RIDDELL, J., agreed in the disposition of the case as set out in the judgment of the Chief Justice.

LENNOX and ROSE, JJ., also agreed.

Appeal dismissed.

FIRST DIVISIONAL COURT.

APRIL 26TH, 1918.

*MACKAY v. CITY OF TORONTO.

Municipal Corporations—City Corporation—Services of Accountant Employed by Mayor—Remuneration—Absence of By-law and Contract under Seal—Municipal Act, secs. 8, 10, 214, 249, 258 (1)—Executed Contract—Benefit of Services—Ratification by Corporation of Act of Mayor—Necessity for By-law—Knowledge—Intention.

An appeal by the plaintiff from the judgment of MIDDLETON, J., 39 O.L.R. 34, 11 O.W.N. 440.