

which he told them was held by P. as one of the title deeds. As a matter of fact the solicitor appropriated the \$490 to his own use and never paid it to the original mortgagee.

In an action upon the \$500 mortgage the defendants denied the making of it, and denied that any money was ever advanced by the plaintiff to them upon it.

Held, affirming the findings of MEREDITH, C. J., the trial judge, that the solicitor had the authority of the defendants to receive from the plaintiff the mortgage money on their behalf for the purpose of applying it in part payment of the \$3,500 mortgage.

Held, also, ARMOUR, C. J., dubitante, that the proper conclusion from the evidence was that the plaintiff's name was written in the mortgage at the time of its execution. The instrument on its face bore every indication that the name of the plaintiff was written at the same time as the names of the defendants and the other written portions of it. The positive evidence of the witness who drew it supported the appearance of the document itself, and there was also a presumption, rebuttable of course, in favour of its regularity. The recollection of the solicitor, who was the subscribing witness, was the other way, but he was not positive upon the point. The surrounding circumstances were as consistent with one conclusion as the other, and the benefit of any doubt should be given in favour of the validity rather than of the invalidity of an instrument such as this, regular upon its face, intended by the defendants to be acted upon, acted upon as they intended, and strongly supported.

Holman, Q. C., for the defendants. *S. C. Smoke*, for the plaintiff.

Boyd, C.] YOUNG v. DOMINION CONSTRUCTION CO. [March 28

*Writ of summons—Substituted service—Foreign corporation—
Rules 146, 167.*

Service of process must be, if possible, personal, or, in the case of a corporation, upon the duly constituted agent; the substitutional action is to be followed only when prompt personal service appears by affidavit to be unavailable.

Rule 146 regulates substituted service of process. Rule 167 covers miscellaneous proceedings in the progress of litigation, but is not to be used so as to nullify the special Rule applicable to writs of summons.

And where the plaintiff showed that he knew where the head office of the defendants, a foreign corporation, was, and that they had no office or definite place of business within Ontario, and there was nothing to show that they could not be easily served at the head office, an order for substituted service was vacated.

A. M. Lewis, for plaintiff. *D'Arcy Tate*, for defendants.