

LATCHFORD, J.

JANUARY 22ND, 1909.

WEEKLY COURT.

DOMINION EXPRESS CO. v. KRIGBAUM.

Principal and Agent—Agency for Sale of Money Orders—Contract—Construction—Undertaking of Agent to Account for Orders and Proceeds—Theft and Forgery by Servant of Agent—Payment of Orders Forged—Liability of Agent to Account—Bailment.

Motion by plaintiffs for judgment upon the pleadings and the admissions contained in defendant's examination for discovery and the exhibits therein referred to.

Shirley Denison, for plaintiffs.

R. J. McLaughlin, K.C., for defendant.

LATCHFORD, J.—The plaintiffs issue what are called "express money orders," by which, when countersigned by agent at point of issue, they agree to pay to the order of a person whose name is filled in by the agent, a certain sum of money. The orders are issued in books which are delivered to those desiring to act as agents. The defendant received such a book of money orders from the plaintiffs, early in 1908. He signed an agreement, which, so far as appears material, is in the following words: "I, L. A. Krigbaum, of the city of Toronto, having been appointed by the Dominion Express Co. as agent for the sale of its signed money orders, do hereby accept the responsibility of due issue and sale thereof, and undertake to account for each money order and the proceeds thereof . . . to hold in trust such proceeds . . . and to pay over the whole of said proceeds from time to time to the express company, as required, after deducting, as may be authorized by it, my lawful commission, and not to deal with or use such money orders or the proceeds, either in whole or in part, in any other manner."

The defendant had acted as agent for the plaintiffs in issuing similar orders from November or December, 1906, and used the orders in remitting to his creditors.

The commissions charged upon the orders were divided between the agent and the company, the agent retaining one-third and paying the company two-thirds.