

instance, too, in which the principal cannot shift even the moral responsibility from himself by saying that it was the agent who did it, for we have here again a familiar form of fraud in the papers placed in the agent's hands for distribution." There could be no question of waiver or confirmation in this case. The plaintiff was quieted for a time, but only half convinced, by the defendant. Judgment for the plaintiff declaring that the agreement is null and void and directing that it be delivered up to be cancelled, and for payment by the defendant to the plaintiff of \$1,225, with interest from the 3rd August, 1912, and the costs of the action, and dismissing the defendant's counterclaim with costs. A. E. Fripp, K.C., for the plaintiff. G. F. Henderson, K.C., for the defendant.

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VANDEWATER V. MARSH—KELLY, J.—FEB. 26.

*Building Contract—Mistake in Construction of Foundations—Duty as to Laying out Ground—Authority of Clerk of Works—Powers of Architect—Waiver—New Contract—Non-completion of Work—Withholding of Certificate of Architect—Absence of Fraud or Collusion—Premature Action—Extras—Sanction of Architect—Evidence.]—Action to recover the contract-price and payment for extras for the excavation and concrete work in the erection of certain buildings for the defendants Marsh & Henthorn Limited, in the city of Belleville. The defendant Herbert was the architect for the buildings. The contract was dated the 10th May, 1912; the price to be paid for the work contracted for was \$2,400; and, in addition thereto, the plaintiff claimed \$761.65 as extras for additions and alterations made, as he alleged, at the request of the defendants. At the time of the trial, nothing had been paid to the plaintiff, but the work was not then fully completed. The contract provided that the buildings should be rectangular, and difficulties arose because the plaintiff had deviated from rectangular. This error in construction resulted from an improper locating of the lines of the buildings. The plaintiff contended that it was the duty of the defendants to lay out the ground, and that he was misled by stakes placed there, as he said, by the defendants. KELLY, J., said that no such duty devolved upon the defendants, either by contract or usage.—The plaintiff further contended that John Marsh designated to him the location of the buildings; but the learned Judge said that there was no evidence that John Marsh*