not charged to any account in the ledger, and it did not appear in what manner he procured the money to pay the cheques.

Plaintiff sought to recover from defendant the two sums of $1,038.68 and $1,837.65, with interest.

J. H. Moss and C. A. Moss, for plaintiff.

C. Millar, for defendant.

STREET, J. (after setting out the facts):—I held at the trial that, as defendant had ceased to be actually a partner of Thomas Howarth's before the receipt by the latter of the sum of $1,837.65, he could not be charged with it as an actual partner; and that it could not be held that William Askin had been induced to join in paying it over to Thomas Howarth by any holding out of the continuance of the partnership, because William Askin had signed the cheque upon C. W. Anderson & Son in blank, allowing Thomas Howarth to fill it up as he pleased.

As I held defendant liable for the amount of the deposit receipt, and not liable for the $1,837.65, it becomes important to determine whether the $1,181.10 paid out by Thomas Howarth for debts and legacies of John Askin should be deemed to have been paid out of the amount at credit of the estate represented by the deposit receipt, or out of the sum of $1,837.65 received by Thomas Howarth, after John Askin's death, from C. W. Anderson & Son.

Howarth was insolvent when he died, to the extent of some $45,000 to $47,000. His account was overdrawn in the Ontario Bank $81.74 on 29th May, 1901, two days after he had deposited the $1,837.65 to his credit there.

Upon these facts I am of opinion that the payments made by Thomas Howarth amounting to $1,181.10, for debts and legacies of John Askin's estate, should be treated as having been made out of the $1,837.65 rather than out of the moneys deposited with him by John Askin in his lifetime. The latter moneys were received by defendant as a banker, and he was entitled to mix them with his own moneys; the $1,837.65 was trust money which he was bound to keep separate from other moneys; it is true that he did not do so, but mixed it with the other moneys which came to his hands as a banker, and he had paid it out upon other accounts within two days after he received it, in flagrant violation of his trust. We have nothing but what can be gathered from the books of the defaulting trustee, and from the circumstances of the case, as to the account to which he intended to charge