

for the defendants with regard to any bills or cheques held by the latter and either drawn upon or payable at the plaintiffs' bank would be a good consideration for such a contract. The defendants would then be the agents of the plaintiffs for the due presentment of the cheques to themselves (the defendants), and, like all paid agents, must use diligence and good faith.

The cheques in question reached the branch of the defendants' bank on which they were drawn, early on the morning of the 3rd October. Between 11 and 12 on that forenoon, the credit balance of Maybee & Wilson, the drawers of the cheques, was \$6,860.44; and, so far as the evidence shewed, none of it was appropriated. It was the duty of the defendants to have then presented these cheques and to have paid them. Instead of doing so, they charged other claims against the account, and at the close of the day an overdraft of \$1,044 was shewn. The defendants had no right to give to any of these items priority over the plaintiffs' cheques.

Reference to *Kilsby v. Williams* (1822), 5 B. & Ald. 815; *Paget on Banking*, 2nd ed., p. 291.

The defendants were liable to the plaintiffs for the damages directly resulting from this breach of duty; and on that ground, as well as on that taken by the trial Judge, the judgment should be upheld.

*Appeal dismissed with costs.*

## HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

FEBRUARY 5TH, 1917.

### \*AVERY & SON v. PARKS.

*Costs—Scale of—Action in Supreme Court—Judgment Directing Reference to Assess Damages and for Payment of Costs forthwith—Damages Assessed at Sum within Jurisdiction of County Court—Rule 649—Application of—"Order to the Contrary."*

Appeal by the plaintiffs from the ruling of the Senior Taxing Officer at Toronto, upon the taxation of the costs of the action, that the plaintiffs' costs should be taxed upon the County Court scale, and that the defendant was entitled to tax his costs on the Supreme Court scale and set off the excess over County Court costs against the plaintiffs' costs—acting upon which a balance of \$2.02 was found in the defendant's favour.