

new firm became insolvent, and the two trustees bankrupt. They resigned their trusteeship, and new trustees were appointed in their place, and they proved a claim against, and received a dividend from, the estate of the two partners. They then brought the present action against the retired partner, claiming payment from him of the debt due to the trust estate, notwithstanding the discharge executed by the former trustees; and the House of Lords (Lord Halsbury, L.C., and Lords Shand, Davey, Brampton, and Robertson) held, affirming the First Division of the Court of Session, Scotland, that the plaintiffs were entitled to recover, on the ground that the discharge was a breach of trust on the part of the trustee partners from which the third partner could not profit, and that the proving a claim against, and accepting a dividend from, the estate of the two partners did not discharge the liability of the old firm; and moreover a power to lend trust money to a firm consisting of certain individuals does not authorize a loan, or the continuance of the loan, to a firm differently constituted, whether including more individuals or less.

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Osler, J.A.]

FAHEY v. JEPHCOTT.

[Oct. 4.

Appeal—Conditional allowance of.—Reduction of damages—Election—Further appeal.

After the plaintiff's damages had been assessed by a jury the trial Judge dismissed the action. The plaintiff appealed, and the Court of Appeal ordered that, if the plaintiff elected to reduce the damages assessed by the jury, her appeal should be allowed with costs, and judgment entered for her for the reduced amount with costs, or otherwise that there should be a new trial.

Held, that the plaintiff was entitled to have a clause inserted in the order of the Court protecting her, in the event of an appeal by the defendant to the Supreme Court of Canada, against her election to reduce the damages.

Gordon Waldron, for plaintiff. *McGregor Young*, for defendant.