

STREET, J.

FEBRUARY 13TH, 1905.

TRIAL.

ASKIN v. ANDREW.

Partnership—Liability of Reputed Partner for Moneys Misappropriated by Co-partner—Executors—Imputation of Payments.

Plaintiff was the surviving executor of his father John Askin, deceased. George Andrew, the defendant, carried on business with one Thomas Howarth, in the firm name of "Andrew & Howarth," as private bankers at Oakville, from November, 1881, until November, 1890, when the partnership was dissolved, but defendant allowed Thomas Howarth to use his name in the banking business, which the latter continued to carry on under the former name. On 1st December, 1902, Thomas Howarth died, and he was found to be insolvent. On 21st October, 1899, a deposit receipt was given by Howarth, in the name of Andrew & Howarth, to John Askin for \$1,038.68, and that sum appeared at the credit of an account with John Askin kept by Howarth. It was admitted by defendant that he was originally liable to John Askin for this sum, because defendant had allowed Howarth to hold him out to John Askin as a partner. John Askin died on 26th December, 1900, leaving a will, probate of which was granted in April, 1901, to Howarth and plaintiff, the executors named therein. At the time of John Askin's death, besides the \$1,038.68 at his credit with Thomas Howarth, he had a sum of \$1,837.65 at his credit on the books of another firm of private bankers at Oakville, C. W. Anderson & Son. Shortly after the grant of probate, Howarth sent to plaintiff several blank cheques upon the Anderson bank, which plaintiff signed in blank and returned to Howarth, who filled one of them up for the full amount at the credit of John Askin in the Anderson bank, and deposited it to the credit of Andrew & Howarth's account in the Ontario Bank at Toronto. On 27th May, 1901, Howarth credited this sum in his banking ledger to his own private account. Between 6th and 14th June, 1901, he paid legacies under the will of John Askin to certain legatees to the amount of \$890.35, and later on he paid other debts, legacies, and testamentary expenses, amounting to \$290.75, in all \$1,181.10. These sums were not charged to any account in the ledger or elsewhere, but were paid to the legatees by cheques drawn by Howarth and plaintiff as executors on Andrew & Howarth and paid by Howarth, but they were