

THE MASTER:—The facts, which are not in dispute, are as follows. There is a sum of \$1,060.97 standing to the credit of "the executors of the estate of the late Job Dickinson." Of the will dealing with this estate William, Elias, and Job (the younger) are the three executors, and the amount in question was deposited to the credit of the account by cheques signed by all three of the executors.

On 2nd June last Job Dickinson served a formal written notice on the bank forbidding them to pay out any of the moneys except on a cheque signed by all three executors. Subsequently two cheques, both dated 27th March, for \$1,000 and \$19.32 respectively, were presented. They were not signed by Job Dickinson, and were therefore refused. Elias Dickinson has instituted a Division Court action against the bank for non-payment of the \$19.32 cheque.

No authority on the exact point was cited by either counsel, nor have I been able to find any in our own Courts. No doubt, on the one hand, it is competent for one executor to act by himself so long as he is acting in good faith. On the other hand, it would seem against reason that a bank, being in no way interested in the matter, should be put in peril because executors have fallen out.

It would seem that the provisions of the Bank Act may properly be extended to the present case. Section 65, subsec. 2, allows repayment of deposits on the receipt of a majority if standing in the names of more than two persons, "except only in the case of a lawful claim by some other person before repayment." The present case seems to come within this reservation. A lawful claim must be taken to mean one which is *prima facie* substantial.

This was apparently the view taken by my predecessor in a case of *Dollery v. Dominion Bank*, decided by him in June or July, 1899 (see *Chambers judgment book*, vol. 37, p. 144).

In the present case the bank are wholly blameless. And unless it can be successfully contended that a deposit receipt is materially different from a current account, I think the bank are entitled to such an order as was made in the *Dollery* case.