

\$1,969.61 which William Hamilton, the president of the William Hamilton Manufacturing Co. Limited, of Peterborough, on the 6th December, 1906, withdrew from the assets of that company for the defendants, giving a receipt therefor as trustee for the defendants, the children of the late George Munro.

A petition for an order for the winding-up of the company was served on the same day, 6th December, and a winding-up order was made under the Dominion statute on the 11th December, 1906.

The plaintiffs were the liquidators of the company under the winding-up order.

The sum of \$1,969.61 withdrawn was debited to an account in the books of the company headed "William Hamilton in trust for Hamilton Munro" (and the others, naming them), at the credit of which there was at the time of the withdrawal a balance of \$6,967.06, made up of moneys received and interest upon them.

Included in this amount was a sum of \$1,340.57, which on the 14th October, 1905, was deposited in the bank to the credit of William Hamilton, executor, and was on that day withdrawn by him and placed to the credit of the company in their account with the same bank.

The placing of the money by Hamilton to the credit of the company was a breach of trust.

When the \$1,969.61 was withdrawn, the company were admittedly insolvent, and the purpose of the withdrawal was admittedly to protect the cestuis que trust and to give them a preference.

The Chancellor held that sec. 99 of the Winding-up Act applied, and that the plaintiffs were entitled to recover from the defendants the amount withdrawn.

The appeal was limited to the \$1,340.57 and interest on it.

The appeal was heard by MEREDITH, C.J.C.P., MACMAHON and TEETZEL, JJ.

G. H. Watson, K.C., for the defendants.

J. Bicknell, K.C., for the plaintiffs.

The judgment of the Court was delivered by MEREDITH, C.J., who said that the money handed over by the trustee to the company was, at the time of the withdrawal, no longer capable of being earmarked, and it was impossible for the cestuis que trust to follow it, and the company were, therefore, simply debtors to the trust estate for the amount which they had received from the trustee, and the withdrawal was in substance and effect a payment by the company to their creditors of so much of what they owed.