

of it was applied for purposes other than those of the old firm.

It may be that in depositing the proceeds of the cheque to the credit of the new firm, a technical breach of trust was committed by McRae and Chandler, but, whether or not a breach of trust, technical or otherwise, was committed, the bank are not, in my opinion, chargeable with being parties to it.

In the view I have taken as to the real nature of the transaction between the parties, it is unnecessary to refer to the cases cited by the learned counsel for the plaintiff or to the provisions of the Bills of Exchange Act to which he referred.

In my opinion, the appeal should be dismissed with costs.

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JANUARY 11TH, 1909.

DIVISIONAL COURT.

WALKER v. WABASH R. R. CO.

*Railway—Injury to Servant and Consequent Death—Collision of Trains—Evidence as to Cause of Collision—Negligence—Contributory Negligence—Disobedience of Rules of Railway Company—Construction of Written Rules—Questions for Jury—Functions of Trial Judge—Instructions to Jury—Mistrial—New Trial.*

Appeal by defendants from judgment of MAGEE, J., in favour of plaintiff, after the trial of the action with a jury at St. Thomas, and motion by defendants, in the alternative, to reduce the damages by the amount of a policy of accident insurance which was carried by the husband of the plaintiff.

The plaintiff was the widow of John James Walker, who was killed on 2nd January, 1908, in a collision between a train on which he was engine-driver and a train of the defendants, and she brought this action to recover compensation for his death, for the benefit of herself and her deceased husband's two children.

H. E. Rose, K.C., for defendants.

J. B. Davidson, St. Thomas, for plaintiff.