

Assuming this contention to be well founded, it is manifest that the relief the plaintiff would be entitled to is not that the whole proceeds of the cheque should be paid into Court, but only so much of them as has not been applied for the purposes of the old firm; and that part at least of the proceeds had been applied in that way was conceded on the argument.

I am, however, of the opinion that the contention is not well founded.

The case must, in my opinion, be treated just as if, after the proceeds of the cheque had been received by the agents of the old firm, for the bank were its agents to receive payment of the cheque, they had been handed to McRae and Chandler, and afterwards deposited by them to the credit of the new firm.

Unless the proposition can be maintained that a banker, who has money belonging to a partnership firm, would be justified in refusing to honour a cheque properly drawn upon him by the firm, because he knew that the partners who presented it for payment intended to deposit the money when received to the credit of a partnership firm bearing another name, of which those partners were members, and did not know that another partner in the firm which were his customers was a member of that other firm, I can see no ground upon which the bank can be fixed with liability for having concurred in a breach of trust committed by the defendants McRae and Chandler.

That proposition cannot, in my opinion, be maintained. To hold that such a duty as must be applied from it rests upon a banker, would be to hold what, so far as I have been able to ascertain, has never been decided, would interfere seriously with banking business, and would not be in accordance with the law.

To so hold would mean that a debtor to a partnership may not pay his indebtedness to one of the partners if aware that he intends to use the money for the purposes of another firm in which he is and another partner is not a member, without being liable for a breach of trust if the money is so used; and that such a liability would arise could not be seriously argued.

There was, moreover, no evidence whatever of any fraudulent intent on the part of McRae and Chandler in dealing with the cheque, as it was dealt with by them, and there was nothing to shew that in the result any part of the proceeds