

MAGEE J.

FEBRUARY 2ND, 1905.

## TRIAL.

ONTARIO SILVER AND ANTIMONY CO. v. ANDREW  
AND ONTARIO BANK.

*Partnership—Liability of Reputed Partner for Moneys Deposited with Co-partner and Misappropriated — Private Bankers—Registration of Partnership—Chartered Bank—Liability for Moneys Misappropriated by Customer to Pay Debt to Bank—Trust—Notice—Alteration of Bank's Position—Cheque.*

Action to recover \$5,826.75, the amount of a cheque given by plaintiffs to Thomas Howarth, then president, to be deposited with a firm of Andrew & Howarth, private bankers, of which Thomas Howarth was a member, to the credit of plaintiffs, and alleged by plaintiffs to have been deposited with defendants the Ontario Bank and applied upon the indebtedness of the firm to the bank.

The partnership between defendant Andrew and Thomas Howarth was formed in 1881. They did business as private bankers at Oakville, and opened an account with the Ontario Bank of Toronto, to the credit of which they from time to time deposited moneys received, and drew cheques upon it. They also borrowed money from the bank upon their own promissory notes collaterally secured by their customers' paper to a greater amount. Their current account with the bank was sometimes overdrawn.

Thomas Howarth died 1st December, 1902.

Defendant Andrew testified that he had in fact retired from the firm in 1891, and that Howarth thereafter carried on the business alone, but still in the name of Andrew & Howarth, Andrew allowing his name to be used and also leaving his money in the business. No notice of the dissolution was given to the Ontario Bank, nor to the customers or the public. A declaration of the partnership had been registered in 1882, but no declaration of the dissolution.

At Howarth's death the liabilities of the business exceeded the assets by \$40,000 or \$50,000.

Plaintiffs had in 1892 acquired a mining lease, and never had any other asset except a small amount of money raised on stock, which had been eaten up in expenses. The lease had remained on their hands, and the company had been dormant, except for a few spasmodic meetings of directors,