

depositor John had died on the 21st November and both the banker and the defendant knew this to be the case. Next morning the local officer asked the head office if he had done right, and one of the plaintiffs (executor of the deceased) complained of the bank's action, with the result that four days later the \$2,750 was taken from the defendant's account and transferred to the account of the estate. The bank paid \$250 to the defendant as part of the current account, but refused to honour his call for the \$2,750. For this amount the defendant brought action against the bank, and the bank upon paying \$2,750 into Court obtained an order from the Master in Chambers staying that action until the executors had an opportunity of making good their claim as against the defendant. Hence the present action, in which questions have been raised affecting the bank which I do not mean to deal with in any way to the prejudice of the bank. The parties have assented to the form of the Chamber order, but it seems to me a better course would have been to bring in the executors as parties to the first action, which has been stayed pending the result of this.

With this preface, a brief narrative of prior events may be given. The testator died of Bright's disease at three in the morning of the 21st day of November, 1910, aged 55 years. He had been living on his farm with his mother 89 years old and his sister aged 65, who attended to household matters and little else. He had made his will on the 29th January, 1910, and the value of the estate was about \$9,000. Apart from this there was a life policy for \$1,000 payable to his brother, one of the executors and plaintiffs. The farm had been sold for \$6,900; he had received cash \$2,000 and a mortgage at $4\frac{1}{2}$ per cent. for the balance \$4,900; this was the chief asset. He had also 3 sums of money, \$2,866 in the Sterling Bank at Alton, \$215 in the Bank of Commerce at Orangeville, and \$118 at the Bank of Hamilton at Orangeville. During his last illness, he was attended by Mrs. Lemon as a nurse from the 16th October, 1910, till his death, with the exception of four days from the 13th to the 17th November. On the 17th November he moved from the farm (he had arranged for living there for a time after the sale) to Mrs. Lemon's house, where he was alive four days longer.

The defendant, a brother of the deceased, was living in Winnipeg, and in response to a letter, at the end of October came down to see his brother and then promised to stay with him, and he did so, taking care of him till the death. For four days between the 13th and the 16th November the only inmates