

pointed by the Court on behalf of the old firm, \$56,251.27, being the amount of a cheque dated 8th March, 1907, drawn by the St. Maurice Construction Company on the Bank of Montreal, and payable to the order of the old firm, which, as the plaintiff asserts, was converted to their own use by the bank.

The facts, as to which there is practically no dispute, are fully set out in the opinion of the trial Judge which is reported 12 O. W. R. 341, and the only question for decision is, whether or not, upon that state of facts, the defendants the Imperial Bank, by their dealings with the cheque, were, as against the old firm, guilty of a conversion of it, or parties to a breach of trust of which the defendants McRae and Chandler, as it is contended, were guilty, in applying property of the old firm to the use of a firm of McRae, Chandler, & McNeil, which I shall call the new firm, of which the plaintiff was not a member and in which he was not interested.

That the defendants McRae and Chandler were entitled to obtain payment of the cheque and to indorse it in the name of the old firm is not open to question, and indeed, according to the testimony of the plaintiff himself, that was what he expected and intended them to do.

It seems equally clear that Mr. Hay, the assistant general manager of the bank, with whom the transaction took place, had notice of the intended and of the actual application by McRae and Chandler of the proceeds of the cheque, so far as the depositing of them to the credit of the new firm was an application of them, for that they should be so deposited was the object of the transaction in which the parties were engaged.

The indorsement of the cheque, and the receipt by McRae and Chandler of the proceeds of it, being, as I have said, acts within their authority, it follows that the acts of the bank in presenting the cheque for and receiving payment of it and handing over the proceeds to McRae and Chandler, cannot render the bank liable to the old firm for the conversion of the cheque or for the payment to it of the proceeds.

It was, however, contended that in placing the proceeds of the cheque to the credit of the new firm, McRae and Chandler were guilty of a breach of trust, and that the bank were parties to the breach of trust, and are liable with McRae and Chandler to answer for it to the old firm.