

RE DAMOD AND BANK OF HAMILTON—LENNOX, J., IN CHAMBERS—  
JAN. 21.

*Bank—Deposit of Money—Supposed Death of Depositor—Rival Claims—Order Directing Trial of Issue—Money Paid into Court.*—In 1890 an account was opened in the Bank of Hamilton at Simcoe in the name of John Damod, and then and thereafter there were deposits and withdrawals made. On the 12th November, 1896, the books of the bank shewed a balance of \$2,414.25 to the credit of John Damod. These moneys, with subsequent interest, less costs of paying in, had been paid into Court; and there was now in Court the sum of \$4,647.91. The bank claimed a lien upon this fund for costs, \$150. Herman W. Kreplin, administrator of the estate of John Cole, deceased, claimed the moneys in Court for that estate, alleging that the moneys were deposited in the bank by John Cole, and were his own moneys—"John Damod" was a fictitious name. Kreplin moved for payment out of the moneys in Court to him. The Attorney-General for Ontario, having obtained a grant to him of letters of administration of the estate and effects of "John Damod," claimed the moneys in Court—death being assumed by reason of silence and lapse of time. One Harry Damod also claimed the moneys, as sole legatee and executor of John Damod, his brother. LENNOX, J., in a written judgment, said, after setting out the facts, that this was not a case to be disposed of on summary application, but on viva voce evidence so far as available. The learned Judge directed the trial of an issue (Kreplin to be plaintiff and the Attorney-General and Harry Damod defendants) to determine which of the parties was entitled to the money; the claim of the bank to remain in abeyance until after the issue has been determined; and the costs of this application to be disposed of by the trial Judge. J. R. Roaf for Kreplin. Edward Bayly, K.C., for the Attorney-General. J. M. Telford, for the Bank of Hamilton.