

ported by the decision in the familiar case of Stratford Gas Co. v. Gordon, 14 P. R. 407, as well as by the fact that defendant, as long ago as June last, found no difficulty in meeting this claim. The statement of defence alleges that the statement of claim discloses no ground of action.

For these reasons, I think that the matter must be disposed of in such way as the trial Judge thinks best. He may see fit to deal with this claim and the objection to it himself. No doubt, in some way care will be taken not to prejudice the defendant in any way by allowing a claim to go to the jury which cannot be sustained in law.

The motion must be dismissed, with costs in the cause, but without prejudice to any application that the parties may make to the Judge at the trial. . . .

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JANUARY 11TH, 1909.

DIVISIONAL COURT.

ROSS v. CHANDLER.

*Partnership—Cheque Payable to Firm—Indorsement and Deposit by Partner in Bank to Credit of Another Firm—Liability of Bank to Partner Deprived of Proceeds of Cheque—Discount of Cheque—Absence of Knowledge or Suspicion and of Negligence—Apparent Authority of Partner Making Deposit—Breach of Trust—Participation in—Trover—Conversion of Cheque.*

Appeal by plaintiff from judgment of RIDDELL, J., 12 O. W. R. 341, dismissing the action.

G. F. Shepley, K.C., for plaintiff.

J. Bicknell, K.C., for defendants the Imperial Bank of Canada.

The judgment of the Court (MEREDITH, C.J., MACMATHON, J., TEETZEL, J.), was delivered by

MEREDITH, C.J.:—The action is brought to compel the defendants the Imperial Bank of Canada to pay into Court, to the credit of a partnership firm consisting of the plaintiff and the defendants McRae and Chandler, to which I shall afterwards refer as the old firm, or to a receiver to be ap-