

MCALPINE v. FLEMING—DIVISIONAL COURT—MARCH 21.

Company—Directors—Payments Improperly Made—Liability—Account.]—Appeal by the plaintiffs from the judgment of TEETZEL, J., dismissing the action as against the defendants Fleming, Straith, and Pinchin. The action was brought by Benjamin McAlpine, in the name of the McAlpine Tobacco Co., to recover moneys alleged to have been improperly paid out of the funds of that company by the defendants named, as directors. The trial Judge found that an oral agreement was made between the plaintiff and one Pratt, on the one side, and the defendants Fleming, Straith, and Pinchin, on the other, whereby the latter were to be at liberty—pending the disposal of their stock in a new company which had been formed—to use its funds in paying the debts which, in the amalgamating agreement, the Consumers' Tobacco Co. had covenanted to pay. The Divisional Court (BOYD, C., MAGEE and LATCHFORD, JJ.) held that the payments made could not be regarded as incidental to the main purposes of the company. Reference to *Williams Machine Co. v. Crawford Tug Co.*, 16 O. L. R. 245; *Tomkinson v. South Eastern R. W. Co.*, 35 Ch. D. 675, 680; *Henderson v. Bank of Australasia*, 40 Ch. D. 170, 180. Appeal allowed with costs here and below. The defendants Fleming, Straith, and Pinchin to account to the plaintiffs. Reference to the Master in Ordinary. Further directions and costs of the reference reserved. E. E. A. DuVernet, K.C., and N. Sommerville, for the plaintiffs. D. L. McCarthy, K.C., and Frank McCarthy, for the defendants Fleming, Straith, and Pinchin.

A. E. THOMAS LIMITED v. STANDARD BANK OF CANADA—STANDARD BANK OF CANADA v. A. E. THOMAS LIMITED—DIVISIONAL COURT—MARCH 23.

Company—Guaranty—Seal—Chattel Mortgage—Assignment of Book Debts.]—An appeal by A. E. Thomas Limited from the judgment of TEETZEL, J., ante 379, was dismissed by a Divisional Court composed of MULOCK, C.J.Ex.D., CLUTE and LATCHFORD, JJ. C. St. Clair Leitch, for the appellants. G. H. Kilmer, K.C., for the respondents.