

defendants were willing to return the notes to the plaintiffs, the amount of the note or notes so returned should be credited upon the amount of the damages assessed. The defendants should have 15 days within which to elect to return or not return the notes.

Inasmuch as the plaintiffs made express charges of fraud, not proven, and did not in the original statement of claim seek to recover upon the ground upon which they eventually succeeded, there should be no order as to costs.

CLUTE, J.

APRIL 9TH, 1919.

*JOHNSTON v. BRANDON.

Partnership—Solicitors—Misappropriation by Solicitor of Funds of Client—Liability of Ostensible Partner—Holding out—Client not Dealing or Relying upon Credit of Ostensible Partner—Costs.

Action to recover \$5,332.23, moneys alleged to have been collected by the firm of Ogilvie & Brandon, solicitors, on account of the plaintiff.

Brandon, who alone was sued, denied that he was in fact a partner of Ogilvie, although his name appeared in the firm.

The action was tried without a jury at Hamilton.

T. R. J. Wray, for the plaintiff.

W. S. MacBrayne, for the defendant.

CLUTE, J., in a written judgment, after stating the facts, said that the plaintiff had the utmost confidence in Ogilvie and trusted entirely to him in regard to her business, and not to Brandon. The plaintiff was a widow, and Ogilvie was her confidential adviser both before and after Brandon's name appeared in the firm. Whatever holding out there may have been by Brandon to the public that he was a member of the firm, the plaintiff never acted upon such holding out, and was not affected by it. It was not suggested that Brandon had anything to do with the transactions which resulted in a loss to the plaintiff or that he in any way misappropriated any part of the funds which the plaintiff placed in the hands of Ogilvie for investment or otherwise. Brandon was in fact Ogilvie's salaried manager or managing clerk. The business was Ogilvie's, carried on in the name of Ogilvie & Brandon, that name appearing upon the sign at the offices where the business was carried on and on the letter-heads used at the office.