

The result is to make the defendants the Imperial Trusts Company a party or privy to Harbottle's breach of trust, and, therefore, accountable to the plaintiffs in respect of the cheques so received by the company, amounting in all to \$2,719.45, but from which should, I think, be deducted the sum of \$2,167.10, the proceeds of the four cheques drawn by Harbottle and deposited to the plaintiffs' credit in the plaintiffs' bank. These deposits were made while Harbottle was still secretary, and ought, under the circumstances, to be ascribed to an intention on his part to refund to the plaintiffs so much of the proceeds of their cheques which he had wrongfully deposited with these defendants, and not to a repayment generally upon account. If he had withdrawn from these defendants the whole \$2,719.45, and had deposited it in the Dominion Bank to the plaintiffs' credit, I do not see how any question could have been successfully raised. The wrong would, in that case, so far as these defendants are concerned, have been fully repaired; and the same result should, I think, follow *pro tanto*, upon the partial reparation effected by the repayments in question.

The actions should, therefore, stand dismissed as against the defendants the Imperial Bank and the Dominion Bank, with costs, including the costs of the appeal; and the plaintiffs should have judgment against the Imperial Trusts Company for \$552.35, with interest from the 15th November, 1907; and, of course, with costs of the action and of this appeal, in so far as those defendants are concerned.

The costs in appeal will, of course, include those of the former hearing (when there was a disagreement of the Court, and a reargument was ordered.)

MACLAREN, J.A., was of opinion, for reasons stated in writing, that all three defendants should be held liable for all the cheques received by them irregularly. He agreed, with some hesitation, that the amount of the restitution cheques should be deducted from the amount of the cheques improperly deposited by the secretary with the Imperial Trusts Company.

MEREDITH, J.A., was of opinion, for reasons stated in writing, that the action was properly dismissed as against all three defendants.

MAGEE, J.A., agreed in the conclusions of GARROW, J.A., for reasons stated in writing.