

said that the Graham hogs had not materialized, and therefore his account was overdrawn; that he (defendant) replied that it was, and if he (Colwell) would meet defendant in Toronto he would give him back the money; that they did meet at the Maple Leaf hotel in Toronto, some time in the early part of August, when he said he paid Colwell the \$800 in bank bills.

[There was some corroboration of this by two witnesses who said that in the summer of 1905 they saw defendant counting out money in the hotel mentioned and handing it over to Colwell. The latter said that a settlement did take place at the hotel on 17th August, 1905, but that no money was paid; that a balance of \$1,228.40 was then ascertained in defendant's favour, for which a cheque was afterwards sent to him. It was not until more than a year after that, that plaintiffs' bookkeeper discovered that Colwell had omitted to charge the \$800 to defendant in his return of moneys paid out by him to defendant, although the \$800 cheque was charged by the Dominion Bank at Whitby against Colwell's account. The evidence and correspondence are set out at length in the judgment. The learned Judge proceeded:]

I accept Colwell's statement that through an oversight the entry of the \$800 cheque was not transferred from his diary to the ledger, and was therefore not taken into account in the settlements of 17th August and 13th September, 1905.

The correspondence and the surrounding circumstances are all against defendant, and I prefer to credit those and the evidence of Colwell in reaching a conclusion rather than the evidence of defendant and the witnesses he called.

There will be judgment for plaintiffs for \$800 with interest from 1st January, 1906, and costs of suit.

FALCONBRIDGE, C.J.

JUNE 13TH, 1907.

WEEKLY COURT.

RE MORTON.

Will — Construction — Estate during Widowhood—No Devise over—Widow Taking in Fee Subject to Bequests in the Event of Re-marriage.

Motion by the widow of George Sherry Morton, deceased, for an order determining certain questions arising upon the construction of the will.