

This is an appeal from a decision of Justice Anderson dismissing the appellant's motion for a non-suit at the end of the plaintiffs' case. We have carefully reviewed the evidence and in our view there was a **prima facie** case before the trial judge. The evidence is primarily in the testimony of Mrs. Houweling and the inquiries which she directed to Nellie Corkum and in the failure to obtain the deposit. Both were agents in the employ of the appellant which had a contractual duty of care to the respondents. That evidence raised issues for the consideration of the trial judge. We would also note that there is a portion of the record which is not before us. While the trial judge did not give reasons for dismissing the motion the issues were clearly placed before him. The fact that the respondents relied on the bank does not relieve the appellant of its duty under the contract which was to protect the client. While leave to appeal is granted the appeal is dismissed with costs to the respondent which are fixed at \$1,000.00 payable forthwith.

J.A.

Concurred in:

Chipman, J.A.

Freeman, J.A.

