

facts, so far as given in evidence, that Harty believed McEwan to be the owner and entitled to receive the money. He handed the cheque to the bank (plaintiffs) to be collected, in order that the money might be obtained for McEwan. The money, being paid in New York, was transmitted in effect to plaintiffs, and by them paid out to the extent of \$659.25 on Harty's cheque, which was marked "Re McEwan." He forthwith took the money and paid it to McEwan, and had at the same time and on the same day a settlement of accounts with McEwan (who owed him \$90), with the result that the balance of \$90 in the bank, proceeds of the McEwan cheque, was left there as the money of Harty. The matter was thus closed on 9th January, 1905; on 18th May plaintiffs advised Harty that the New York bank had revoked the payment of the cheque, on the ground that the payee's name had been forged, and re-claimed the money from Harty.

Additional undisputed facts are that Harty saw defendant McEwan indorse the cheque; that he told the bank manager that he knew McEwan, the indorser; and, when the manager said he would cash the cheque at once if Harty would indorse it, he declined, stating that he knew nothing about the cheque except what McEwan told him, and the cheque might not be paid; whereupon he was told that for the purposes of collection he would have to witness the indorsement. This he did, writing beneath his name the words, "without any recourse to me whatever," whereupon plaintiffs in the usual course of business indorsed the cheque, guaranteeing "all prior indorsements" and forwarded it to New York for collection.

Plaintiffs having repaid the money to the New York bank, the amount of the cheque was charged back to defendant's account, and the action is to recover moneys lent or advanced to defendant by way of overdrafts, and in the alternative plaintiffs allege misrepresentation by both defendants as to the indorsement, relying upon which plaintiffs guaranteed the indorsement, collected the amount, and were afterwards compelled to refund the same, etc.

Defendant Harty, having acted honestly, would not be liable unless his representations and the other facts constitute a contractual responsibility. . . .