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POLLARD V. THE GOV. AND CO. OF BANK OF ENGLAND.

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payable at another banker's, sends it down in the morning to that banker to see if it is in order, and will be paid; and if it is, the banker at whose house it is payable initials it and returns it to the banker who is the holder; the bills thus initialed are sent by the holder to the Bank of England for collection in the same manner as cheques. No question in the present case arises as to the effect of initiaing a bill, and returning it so initialed to the holder, the present bill having been held by the Bank of England itself, and not by one of the other bankers. When the Bank of England itself holds the bill, the practice is that the bill is left with the bankers at whose house it is domiciled, and a credit note is given to the Bank of England. The credit note is also treated by the Bank of England in the same manner as cheques."

The case then proceeds to state that the bill in question was taken on the morning it became due to Messrs. Lambton, and upon presentation, "was, in accordance with the above practice," marked by Messrs. Lambton for payment, and that a credit note was given, indicating that it, with other moneys, was in order for payment, and would be paid, of which note the following is a copy:—

"Newcastle-upon-Tyne, February 24, 1866.

"Credit Branch Bank. Four hundred and ninety-seven pounds 16/10—£497 16s. 10d.

"For Lambton & Co.,

"THOMAS JOHNSON."

From this statement it may be inferred that bills held by the Bank of England are initialed in the same way as those held by other bankers; but in the view we take of the case it is not material whether this is so or not.

The case then in paragraph 9 states that "upon the afternoon of the same day—namely, about two p.m.—the clerk of the said branch Bank of England took all the cheques drawn on Messrs. Lambton & Co. to their bank, together with the said credit note, which was admitted into the total amount, and a cheque upon the said branch bank was handed by Messrs. Lambton & Co. to the said clerk for the amount of the balance due to the defendants." It would seem that the word "balance" is used here in the sense of aggregate of the cheques, initialed bills, and credit notes, and not as indicating that a further account was struck in which credit was given to Lambton & Co. for any cheques or bills payable by the Bank of England of which Lambton & Co. were holders; but this is not clearly stated, and it was in controversy at the bar what was meant. It does not, however, seem to be important to ascertain this, for it is explicitly stated that the cheque was given for an amount which included the credit note representing this bill *inter alia*. After the banks had closed to the public, which is at three o'clock, Messrs. Lambton & Co., for the first time, ascertained that the acceptor of the bill had stopped payment, and that the balance to his credit with them was not sufficient to meet this bill. Of course, if they had known earlier that he had stopped payment they never would have done what they did, and if what they had done was still revocable they would have revoked it; they immediately gave notice to the branch bank that

they had paid the bill in error, and required them to take it back. This was done before four o'clock, but after their account was already debited with the amount in the accounts of the Bank of England.

The question in this cause is, whether they still had the right to do this. If the bill was already paid they clearly had not. If what took place amounted to no more than an arrangement amongst the bankers, by which for convenience sake they, at three o'clock, stated the account of what they at that time intended to pay at the later hour of four, but only provisionally, so that the intention was revocable up to the time of actual payment, it would be otherwise; and if, instead of giving a cheque for the amount, the banker had given a credit note expressing that their account was to be debited provisionally with this amount, but subject to alteration and revocation at their pleasure up to a later hour, it would have clearly indicated that there was such an arrangement. But a cheque given purports to be *prima facie* an absolute payment, and it would require very strong evidence to show that it was not so.

The defendants contended that the 10th paragraph in the case shows that the giving of the cheque had no more effect than a credit note to the effect suggested would have had. That paragraph is in the following terms:—"The banks at Newcastle close to the public at three o'clock, p.m. For the purposes of business between the said branch bank and the bankers at Newcastle, who keep accounts with them, the said branch bank remains open after that hour, and until about four o'clock, when it closes for the day. It is the practice, and was so for many years before 1867, for those bankers to attend at the said branch bank between those hours for the purpose of having the day's accounts between them and the said branch bank investigated, and of rectifying any mistakes and errors of any kind that may have arisen in the course of the day and of finding and striking the final balances between them. All mistakes and errors made in the course of the day are subject to correction during that investigation." We cannot think that this statement has the effect attributed to it by the argument of the defendant's counsel. Where money has been paid under a mistake of fact to an agent, it may be recovered back from that agent, unless he has in the meantime paid it to his principal or done something equivalent to payment to him, in which case the recourse of the party who has paid the money is against the principal only: see *Story on Agency*, s. 300; *Cox v. Prentice*, 3 M. & S. 344; *Holland v. Russell*, 9 W. R. 737, 1 B. & S. 424.

It would obviously be of great importance to a banker, who had by mistake paid money, to be entitled to demand it back from the Bank of England, instead of being obliged to have recourse against the customer of that bank; and full effect is given to all that is stated in paragraph 10 by supposing the arrangement amongst the bankers to be that the Bank of England shall not alter its position by paying over the money to its customer, or doing anything equivalent to payment to him, before four o'clock; but in the present case the payment, if it was one, was not made under such circumstances as