

from asserting that they are forgeries (p. 228), since *Devaynes v. Noble*, 1 Merivale 530, 535, where Courts have held the depositor, for want of examination of his pass-books and vouchers, chargeable with forgeries debited to his account, it has almost invariably been upon the ground that "his silence is regarded as an admission that the entries are correct." In *Leather Manufacturers Bank v. Morgan*, 117 U. S. 96, the Supreme Court of the United States treat such a case as a settlement of accounts by conduct working an estoppel. In *Blackburn Building Society v. Cunliffe, Brooke, & Co.*, 22 Ch. D. 61, at pp. 71-2, Lord Chancellor Selborne, delivering the judgment of the Court of Appeal, speaks of "the doctrine that a pass-book passing to and fro is evidence of a stated and settled account." This I take to be the true ground upon which the ordinary customer, who has had opportunity to examine his pass-book and vouchers, and has failed with reasonable promptness to notify the bank of such forgeries as by a proper examination he would have discovered, is precluded from objecting to these debit items in his account. That ground, for reasons above stated, is not, I incline to think, available to the present defendants.

But upon another ground of a very different character their defence must fail. To whatever disabilities the circumstances above adverted to might subject plaintiff in this action, were he an ordinary customer of defendant bank, they do not, in my opinion, in any wise embarrass the position of His Majesty as a suitor. Whether the defence which counsel urge is available to a bank against their customer, who neglects the duty of examining his pass-book and vouchers with ordinary diligence, should be regarded as arising from breach by the customer of an implied contract or undertaking on his part to perform this duty, or as an estoppel resulting from conduct by negligence or omission inducing a reasonable belief, and therefore tantamount to a representation, that the statements as rendered by the bank were correct, upon which the bank have acted or abstained from action to their prejudice—in either aspect, if effectual in this action, such defence would involve imposing upon the Crown responsibility for the fraud, the negligence, or the omission of its servants. In the one case the Crown would be deemed by implication to have guaranteed the honesty, the fidelity, and the diligence of its employees; in the other, it would be precluded from shewing the truth by reason of the breach of duty of its servants.