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Legal

THE LIABILITY OF BANKERS*

AN important decision upon the extent of the protection afforded to bankers by section 82 of the Bills of Exchange Act, 1882, has been given by Kennedy, J., in *Hannan's Lake View Central Limited v. Armstrong & Co.* That section provides that "where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur liability to the true owner of the cheque by reason only of having received such payment." Provided, therefore, a collecting banker acts without negligence and in good faith, he is perfectly safe in taking crossed cheques from a customer, and is not imperilled by the fact of the customer's title to the cheque being defective. In the case of a bank there is no difficulty about the requirement of good faith, but, as the present case shows, a serious question may arise whether the banker has acted in any particular transaction without negligence.

The point was considered, and a useful explanation of the phrase "without negligence" given by Denman, J., in *Bissel & Co. v. Fox Brothers.* There the plaintiffs had appointed S. as their traveller. All the cheques, cash, and bills received by S. were to be remitted to the plaintiffs at the end of each week, and none were to be retained without the consent of the plaintiffs. For some years S. remitted all cheques and bills to the plaintiffs by post, and sent them the cash in postal or post office orders. In 1883 he opened an account of his own with the defendants' bank, and paid into this account, without the sanction or knowledge of the plaintiffs, various cheques received by him on account of the plaintiffs, and payable to

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