bound to know the hand writing of that part. The second exception I take to be this, that, if a bank takes its own bank bills, and they are forgeries, it cannot recover what it has paid for them. I find only one case, decided by Judge Story, on this point. He says a bank is bound to know its own paper, and if it accepts forged notes it is responsible. That decision does not reach the present case; this is not a bill of the Union Bank, but it is a draft issued by that bank, thus coming very near to the case decided by Judge Story, though not quite like it. The jurisprudence being deficient on the point, we must see what principle can be found for our guidance. The Ontario Bank did not cash this draft at the time it was received. They took it on the special condition that it must be paid by the Union Bank before any cheques were drawn against it. Therefore, if the Union Bank had not paid the draft, they would not have lost anything. The Ontario Bank was misled by the only party who could know what was the amount of the draft. The Ontario Bank took the precaution to ascertain whether it would be paid, and it was led by the Union Bank into the error of believing that the draft was really a genuine draft. It is a principle of both English and American law that where one of two innocent persons has to suffer a loss, the one through whose fault or carelessness the loss has occurred must bear it. The party in fault here is not the Ontario Bank. If this bank had paid the money at once, the loss would not have occurred in consequence of the information given by the Union Bank; but the loss was subsequent to the false information given by the Union Bank, and under these circumstances it is clear to my mind that the loss must be borne by the Union Bank. No doubt, it may be argued that the Union Bank was not bound to know the handwriting in the body of the draft, but only the signature, but there is no decision that goes to that extent. If we take the French law, there is no doubt that the Union Bank would have to lose. (His Honor cited Pothier and Pardessus.) But it is a case governed by English rules, and I think that while there is no case quite in point, the principles of English law lead us to the same conclusion.

Ramsay, J. This case has to be decided by the law of England as it stood on the 30th May, 1849, Art. 2340 C.C. The date is unimportant in the present case. It seems to be unquestionable that according to that law the acceptor of a bill, the signature of which is genuine, but altered as to the amount since it passed from the hands of the drawer, and who had paid the same, could recover back the amount he had overpaid owing to the forgery. The cases of *Smith* v. *Chester* (1 Durn. & E. 654), and *Jones* v. *Ryde* (5 Taunt. 487), support this pretension. In the latter of these cases, Chief Justice Gibbs points out the distinction between the case before him and the case of *Price* v. *Neale* (3 Bur. 1354) and the case of *Baillie* v. *Gingell* (3 Esp. 60.) It is quite evident, on general principles, that this must be true. The acceptor or payee got no value for his money, and consequently he had a right to recover back what he had paid, precisely on the same principle that any one who had received a counterfeit shilling from another by mistake could recover back his money. But it is contended that the acceptance differs from payment in this, that the acceptance is a deliberate recognition and a warranty of the whole bill. If this proposition be true, then there is an end to the discussion, but the authorities cited by appellant contradict this pretension. Daniel distinctly says the acceptor guarantees the signature and not the body of the bill. The one he has means of knowing about, the other he has not. The same doctrine is laid down in the case of the *National Bank of Commerce* (in New York) & *The National Mechanics' Banking Association* 55 N.Y. Rep. 211, cited by respondent. Indeed, it is difficult to understand how any other doctrine could prevail. Starting from this point, appellants contend that they were not bound to know that the draft had been altered, that their acceptance covered only the signature, which was genuine. They say, moreover, that they were led into error by the fact that the draft had passed by the Ontario Bank,—that if the unknown Detcn had presented the draft himself they would have made enquiry, which would have resulted in discovery. In a word, they say that the Ontario Bank had passed upon them a forgery, and that, therefore, the respondents were obliged to return them the money and exercise their recourse