customer of plaintiffs, $573, the amount of an overdrawn account, and to recover from McEwan and Harty the balance due upon a cheque indorsed by McEwan and then by Harty and deposited to credit of the latter. Subsequently it transpired that the indorsement by McEwan was not that of the payee. The trial Judge held that the plaintiffs had not established by evidence that a forgery had been committed. It was not proved against Harty that McEwan was not entitled to the money.

The appeal was heard by MEREDITH, C.J., MACLAREN, J.A., TEETZEL, J.

W. E. Middleton, for plaintiffs.

M. J. O'Connor, Ottawa, for defendant Harty.

TEETZEL, J.:—The Chancellor dismissed the action against defendant Harty because the evidence, which was most imperfectly given, failed to prove that defendant McEwan was not the real McEwan named in the cheque, and that he had no right to indorse if as he did; but upon the main question, as to the liability of defendant Harty, assuming that the indorsement of the cheque in question by defendant McEwan was a forgery, the trial Judge expressed no opinion.

The motion was for a new trial, on the ground of surprise, and upon the argument we expressed the opinion that plaintiff had established a case for a new trial upon terms; but counsel for defendant Harty argued that, assuming that the Court should find that the indorsement was a forgery, defendant Harty could not, upon the evidence, he held liable to plaintiffs, and consequently a new trial in reference to the question of forgery would be fruitless, and we were asked therefore to determine his liability, assuming that the indorsement was a forgery.

For the purpose of considering the question, I adopt the following findings of fact by the trial Judge:

"Defendant McEwan, being in possession of the cheque in question, of which he claimed to be the owner, indorsed and handed it to the other defendant, Harty, to be collected and paid over to him, McEwan. Defendant McEwan appears to be unversed in affairs, and went to the other defendant as one who had done business for him. I find on the