

argued that if the department had not settled the account for December, 1901, as was done, then the forgeries would have been stopped, and there would have been a loss of only \$3,115.04, the amount of the first two cheques, which were paid in that month.

Notwithstanding the ingenious argument of defendants' counsel on this point, I am utterly unable to see how, under the facts and circumstances of this case, the receipts given by the accountant can operate to prevent plaintiff from correcting the mistakes that were made in them, or avail as a defence to this action, unless they are sufficient, in connection with the other facts, to create an estoppel. To my mind it is either a question of estoppel or no valid defence at all. If plaintiff is precluded from going behind the receipts, and shewing the real facts, it must be only because he is estopped from doing so by the conduct of his officers and servants.

On this branch of the case I am consequently of opinion that the judgment appealed from is correct and ought to be affirmed.

There remains to be considered the appeal of the Bank of Montreal against that part of the judgment of Anglin, J., which dismissed their claim for indemnity against the three banks which presented the forged cheques for payment.

The trial Judge has found that there was no negligence with respect to these cheques on the part of any of the banks, except that of the Bank of Montreal respecting the one which bore the name of only one of the officials of the department. He absolves the Quebec Bank from negligence with regard to this one, on the ground that there is no evidence that they were aware of the fact that the departmental rule required two signatures. He has also found as a fact that the third party banks did not indorse the cheques in question; but that they merely stamped their names upon them for the purpose of identification and of indicating that they were their property.

In support of the appeal against the third party banks, the appellant urged two main grounds: (1) that the money having been paid under a mistake it might be recovered back; and (2) that these banks in presenting the forged cheques and demanding payment warranted their genuineness.

There can be no doubt that money paid under a mistake of fact can be recovered back as money had and received unless there are special circumstances which would render this inequitable, such, for instance, as payment to an agent who