

Courts take is this, that if the endorsement were not forged the bank could charge the drawer. If then it were in a position to do so even after a judgment by the payee—if it were proved that the endorsement was not forged—the drawer might have to pay twice.

3. Can the payer, that is the bank, sue the wrongful payee to recover the moneys paid although such payee be innocent? The case of the *Imperial Bank v. The Bank of Hamilton*, 1903, A.C. 49, shews that it can. That was a case where the marked cheque for a bank for \$5.00 was raised to \$500.00 and eventually paid by the bank on which drawn to another bank which was the holder. On discovering the forgery the drawee bank sought to recover back the payment and it was held that it could do so.

4. Can the rightful payee sue the wrongful payee? There seems to be no doubt that the true owner of the instrument can recover from the person wrongfully paid the amount paid him. See Halsbury, vol. 2, page 550, and the cases cited in the footnote. Whether such action would be of much avail where if the wrongful payee is the person who effected the forgery, is another question.

If one were writing on the law as it was some years ago an exception would be made as to the right to recover where, in the case of a drawer, there had been negligence. It might have been held in Canada that a person who drew a cheque in such a way that it could be easily raised would be liable for his own negligence if such raising took place. That was the decision in *Young v. Grote*, 4 Bingham 253, but that decision is practically overruled in *Scholfield v. Londesborough*, 1896, A.C. 514. This decision puts an end to any question of negligence in drawing the cheque.

So far I have been considering the theoretical right to recover, the right to recover if there are no circumstances which would make it inequitable that recovery should be had and on this point there are two lines of decisions, those which culminate in *London and River Plate Bank v. Bank of Liverpool*, 1896, 1 Q.B.D., p. 7, where the law is laid down that recovery cannot be had if from a bona fide although unlawful holder on the ground that the position of the parties may have changed, and the other ending in *Imperial Bank v. Bank of Hamilton*, above cited, where it is held that recov-