simply excludes from consideration, as inapplicable to the case of mere forgeries—such as we are dealing with—the rules as to notice established in regard to genuine bills and notes.

What I have said answers the second and third contentions of counsel for the third parties, but does not affect the question raised by their final contention as above stated. As to the third ground, the Bank of Montreal never were acceptors of any of these cheques, within the meaning of sec. 54 of the Canadian Bills of Exchange Act (see sec. 17, subsec. 2). I, therefore, proceed to deal with the question between defendants and the third parties apart from all considerations as to notice peculiarly applicable to bills and notes of established genuineness.

Where in the course of business, as the result of mistake of fact between them, a loss has fallen on one of two equally innocent and blameless parties, it is held by some Courts in the United States that such loss must remain where the chance of business has placed it: Gloucester Bank v. Salem, 17 Mass. 33. Though this doctrine received some countenance from Mansfield, C.J., who said, in Price v. Neal, 3 Burr. 1357, "If there was no neglect in the plaintiff, yet there is no reason to throw off the loss from one innocent man upon another innocent man," it is now well established in English law that money paid and received under mutual mistake of fact may be recovered back, unless, in all the circumstances, it would be inequitable to permit such recovery: Imperial Bank v. Bank of Hamilton, [1903] A. C. 49; Kelly v. Solari, 9 M. & W. 54; Ryan v. Bank of Montreal, 12 O. R. 39, 14 A. R. 533.

The grounds upon which recovery has been successfully resisted in many cases of forged signatures are two, viz.: that the fact that the person seeking to recover is the banker of the drawer, whose signature has been forged, in the absence of any fault on the part of the payee, deprives him (the banker) of all right to relief; and that a prejudicial alteration of his position by the payee after payment, renders it unjust that he (the payee) should be required to refund. These two grounds demand careful consideration.

For defendants it is contended that, while the duty of the banker to his customer to know his signature is absolute, he owes no such duty to any other person, and no third party can claim any benefit from such an obligation.

It cannot be denied that there is a great mass of authority to the contrary. In Price v. Neal, 3 Burr. 1357, Lord