

In the American cases in which the duty of examination by the depositor is clearly affirmed, and knowledge is imputed to him of all that such an examination carefully and honestly made would give, and in the English cases in which the customer, aware of forgeries and failing to communicate such knowledge to his bank, has been deemed to have adopted such forgeries (*McKenzie v. British Linen Co.*, 6 App. Cas. 82, 110, and *Ogilvie v. West Australian Mortgage and Agency Corporation*, [1896] A. C. 257, 270), the defence available to the bank is treated, not as the breach of an implied contract, but rather as an estoppel, entitling the bank to resist, in the former class of cases, the opening of the settled account between itself and its customer, and in the latter the repayment to the customer of the forgeries held to be ratified or adopted, without proof that even the most prompt and complete discharge by the customer of the duties imposed upon him would have enabled the bank to recover the whole or any part of the moneys obtained by the forger.

The arguments for the imposition upon the customer of the duty which defendants contend he owes them in regard to the pass-book are cogent, and the American cases, if binding as authorities, would be conclusive in favour of the bank. The English authorities do not appear at all so strongly to support defendants' contention. . . .

[Reference to *Paget on Banking*, p. 120; *Hart on Banking*, pp. 200, 203.]

In disposing of the present action on this question, I should, on the other hand, have to consider a matter not urged by counsel for plaintiff. Although the evidence upon this point is not wholly satisfactory, I think it may fairly be inferred that the Bank of Montreal had, from month to month, in their own hands the means of detecting discrepancies between their accounts and those of the department caused by these forgeries. . . . It is difficult to account for the failure of careful bank officers to notice that each of the monthly reimbursement cheques from January, 1902, to February, 1903, was drawn for a smaller sum than the bank books and statements shewed to be due. . . . It is still more difficult to understand how, during this period, if the books of the Ottawa branch of the Bank of Montreal were balanced, these discrepancies remained undiscovered, or, if discovered, why an investigation, which would undoubtedly have unearthed the forgeries, did not promptly follow. . . .