whether the Ontario Bank is bound to repay the amount paid on the forged draft. The Court below decided this question in the negative, and from that decision the present appeal is taken. At the very outset it is proper to note that both the Banks acted in this matter with perfect good faith. Nothing in the evidence or in the circumstances of the case, discloses any attempt at surprise, or any want of candor or of the most scrupulous integrity and fair dealing on the part of either of the Banks. It may be urged that there was a want of diligence, perhaps there may have been a certain amount of incaution on the part of the respondents, but no shadow of unfairness or insidious device can rest on any of the incidents which led to the institution of the present action. The suit is to recover the sum of $4,975 paid by the Union Bank to the Bank of Ontario in error on a forged draft, and the latter institution resists their claim, contending that if the money was paid by error, it was through the negligence or want of proper diligence on the part of the Union Bank. Such in plain terms are the issues between the parties, and in view of the facts it must be conceded that the decision of the case is not without difficulty.

Before, however, proceeding to consider the law and the proof in their bearings and application it may not be amiss to advert briefly to two points of importance in considering the contention raised between the appellants and respondents. It is urged by the latter that the head office at Quebec did not advise the Branch at Montreal of the issue of the draft in favor of Deton for $25. Had this precaution been taken the mistake could never have occurred. This is quite true, and no doubt it is a fact of some significance in the case. But it must on the other hand be borne in mind that the draft in question was for a very small amount, and it is also proved that at that time it was not the general custom among Banks to advise such drafts as the one given to Deton. Some indeed observed this precaution, but it was by no means a universal practice at that time. I believe it is so now. I cannot think, therefore, that in the present instance this omission can be regarded as an act of negligence, or even a want of due and proper diligence on the part of the Union Bank. I believe some of my colleagues are of the same opinion. There are some French authorities which sustain the respondents' view in this connection, but they do not apply to this case, and there is no English decision to justify such a pretension. 2. It is contended by the respondents that the appellants were bound in law to know the signature of their officers to the draft, but in the present instance they were equally held to know the contents in the body of the draft—in other words, to detect the forgery, by which the draft was "raised" from $25 to $5,000, and in the case under consideration the change was effected in such a way as to defy the most attentive and skilful scrutiny. This is conceded on all hands. I have no hesitation in expressing my belief that such a pretension as the above is unsustained by any principle of law or by any decision either in France, England or the United States. There may be such rulings in regard to bank bills in circulation, but the doctrine does not apply to promissory notes or to drafts, whether drawn on a branch bank, as in this instance, or on third parties. The English law governs in this matter, and we must look to the English decisions and to American jurisprudence, embodying the principles of these decisions, to guide us in adjudicating on the issue raised here. I have not been able to find any case exactly in point, but some of these authorities are instructive, and are, moreover, in a certain degree applicable to the case under consideration. They are cited in the appellants' factum. [His Honor cited Daniel on Negotiable Instruments, vol. 1, p. 399, sec. 540; vol. 2, p. 327, sec. 1363; vol. 2, p. 325; Parsons on Bills, vol. 2, p. 601; Bank of Commerce v. Union Bank, 3 Comstock N. Y. Rep., p. 230; Story on Bills, par. 262-3, and notes; Marine National Bank v. National City Bank, 59 N. Y. Rep., p. 68; Espy v. Bank of Cincinnati, 18 Wall. 604, and proceeded as follows:—]

So far as these authorities and decisions go, the law as stated seems to me in favor of the appellants. But we must go still further in order to determine whether the law thus enunciated applies to the facts and circumstances of the present case. It is beyond doubt that the amount of this forged draft in the body of the instrument was received by the Ontario Bank in error on a draft by the head office of the appellants at Quebec on the branch house.