

But the obligation cannot arise unless there is knowledge, and *à fortiori* when the fraud is perpetrated by one who has the skill and ability to conceal his fraud from both parties.

Here the case was in one aspect a hard one on the bank; but the bank could have protected itself in any one of three ways: (1) insisted upon a contract with the customer imposing upon him the duty to state accounts monthly and to accept as genuine all items not objected to in a reasonable time; (2) insisted upon the regular signature of the monthly acknowledgments; (3) delivered the statements and vouchers into the hands of the manager instead of to the fraudulent clerk.

Reference to *Kepitigalla Rubber Estates Limited v. National Bank of India Limited*, [1909] 2 K.B. 1010.

An estoppel could not be based upon the request of the bank for an acknowledgment and a refusal—for the neglect was equivalent to a refusal—to give it. That which is not done cannot be treated as done. Nor could the retention of the vouchers by the plaintiffs be regarded as an acknowledgment of their genuineness. They were delivered to the fraudulent clerk, and never came to the knowledge of the plaintiffs.

The result was that the plaintiffs should recover for all cheques after the 30th May, 1914, less the true amount of the five raised cheques, with such interest as the bank would have allowed up to the date of the writ, and with 5 per cent. interest from the date of the writ to judgment, and costs.

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SUTHERLAND, J., IN CHAMBERS.

JANUARY 2ND, 1917

LINK v. THOMPSON.

*Infant—Custody—Action by Father—Cause of Action—Refusal of Defendant to Answer Questions on Examination for Discovery—Contempt of Court—Order for Re-attendance—Defence to be Struck out upon Default.*

Motion by the plaintiff to commit the defendant for contempt in refusing to answer questions on her examination for discovery.

The plaintiff, the father of a girl of 12 years, sought by this action to obtain from the defendant, the child's maternal aunt, the possession and custody of the child.

The defendant alleged an agreement between the plaintiff and herself by which the plaintiff waived in her favour the right to the possession and custody of the child.