

forged, and I want the money, some one has to pay me the money.' ”

Plaintiff made no attempt to obtain the cheque either from Cook & Co. or the Bank of Toronto. On 24th August plaintiff's solicitors wrote defendants for payment of the amount of the cheque; defendants replied advising that the cheque had been sent by them to the Bank of Toronto on 22nd August, and that they (defendants) were ready to pay it “on presentation by the proper holder.” The writ was issued upon the same day. The man Kitchen who caused all the trouble was prosecuted for forgery, and, doubtless, the cheque was used upon his prosecution, as it was produced upon the trial of this action by the clerk of the County Court of Bruce, who was called by plaintiff, and who says he got the cheque from the local registrar at Sarnia, under some authority from the Attorney-General. It has never yet been indorsed by plaintiff.

Defendants take the position that this cheque has never been presented for payment by plaintiff and indorsed by him; the only answer suggested by plaintiff is that the cheque having been in defendants' possession, they were wrong in sending it back to the Bank of Toronto at Sarnia, and thereby waived any further presentation, or estopped themselves from setting up want of presentation; but it is clear from the undisputed evidence that the cheque was returned to Sarnia with the knowledge and assent of Williscroft, plaintiff's agent, no demand for payment being made at that time, and no request that the cheque should not be returned being made. Plaintiff then could have applied to the Bank of Toronto at Sarnia, or to Cook & Co., for his cheque—it was the step of his agent Williscroft in placing the cheque in the hands of an unreliable person, that set matters going wrong,—but, instead of following up his property, he makes demand upon the bank for payment without producing the document, and, for all the bank knew, at the time this demand was made, the cheque might have been indorsed by plaintiff to some third person to whom they would have been liable to again make payment, if they acceded to plaintiff's demand, without production of the cheque. It, of course, is not the case of a lost or destroyed cheque—the plaintiff knew where it was, and could have obtained possession of it at any time.