

on or before the 7th day after their deposit, and as to the ninth and tenth cheques, on or before the 3rd day following their deposit (allowing for accumulated interest not credited). In the case of the Royal Bank notice would have been effective if received in the case of the eleventh cheque, on or before the 6th day following its deposit, and of the twelfth cheque, on or before the 8th day after its deposit. In each case a still later notice would have enabled the bank to protect themselves as to part of the amounts of these cheques which, except three, were paid by defendants on the day after their deposit with one of the third party banks. The second cheque, deposited 24th December, 1901, was paid 26th December, 1901; the 5th, deposited 18th April, 1902, was paid 21st April, 1902, being the second juridical day after its deposit; and the last cheque, deposited 15th October, 1902, was paid 17th October, 1902.

In the case of every cheque of the series, therefore, the position of the recipient bank was altered to their prejudice after the day on which payment was made by defendants. This clearly distinguishes the present case from *Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49, in which the face value of the forged cheque had been obtained by the depositor from the former bank before its presentation for payment at the latter. The Privy Council, in holding the want of notice of the forgery to the Imperial Bank on the day of payment to be unavailing as a defence, lays distinct stress upon the fact that "no loss has been occasioned by the delay in giving it:" p. 58. The question presented for my determination, therefore, is not concluded by that decision. I have not overlooked the language found at p. 57 of the report, where Lord Lindley, speaking for the board, says: "Quite apart from the fact that the appellants were not prejudiced by want of notice on the day of payment, it appears to their Lordships that the stringent rule referred to . . . does not really apply to this case." His Lordship was speaking of the well known rule in regard to genuine bills and notes laid down in *Cocks v. Masterman*, 9 B. & C. 902, "reasserted in even wider language by Matthew, J., in *London and River Plate Bank v. Bank of Liverpool*," [1896] 1 Q. B. 7. That rule in no wise depends upon negligence, and involves a conclusive presumption of prejudice for want of notice on the day of presentation for payment. The Judicial Committee held it inapplicable to "a simple forgery," whether or not actual prejudice resulted from notice not being promptly given. But I understand that this judgment