

I have found there was no want of proper care on the part of their officials, without very mature consideration reject as unavailing to the Bank of Montreal for their defence the failure of the depositor himself to check over his pass-book, or, if this duty was intrusted to an employee, to exercise reasonable diligence in supervising the conduct of his clerk in discharging the trust committed to him: *Leather Manufacturers Bank v. Morgan*, 117 U. S. 96, 116. If the employer has not been negligent in the selection of his employee, it seems at first a little difficult to understand upon what principle he should, though relieved of responsibility for his clerk's dishonesty in committing a forgery, be liable for his dishonesty in concealing it. Yet, in regard to fraudulent checking, it is said that the bank cannot be in a worse position, because its depositor employs a dishonest clerk for this purpose, than it would have been had this important work been intrusted to honest hands: *Critten v. Chemical National Bank*, 171 N. Y. 219, 230. But see *The Chatterton Case*, *The Times*, 21st January, 1891; *Paget on Banking*, p. 123. The employer is held responsible in the latter case probably because the clerk omits a duty which he was employed to discharge, and which his employer was bound to perform or cause to be performed, whereas the actual forgery is an act of commission entirely outside the scope of the clerk's employment.

But, though the relation of customer and banker is recognized as that of mandant and mandatory (*Scholfield v. Londesborough*, [1896] A. C. 514, 537, 545, 548, 550), no English authority establishes any contractual obligation on the part of the banker's customer to examine his pass-book. Indeed, there is modern English authority for the proposition that the customer in regard to his pass-book and vouchers owes to his bank no duty which he must discharge at the peril of being bound, if he omits it, by the debit entries contained in the pass-book, as by a settled account. See *Chatterton v. London and Counties Bank*, referred to at length in *Sir John Paget's work on Banking*, pp. 120 et seq.

[Reference to the *Vagliano Case*, 23 Q. B. D. 243, [1891] A. C. 107.]

No evidence of the custom or course of dealing between banker and customer was offered at the trial of this action. Counsel dealt with the matter not as depending upon evidence, but as a question purely of law—a legal inference from or incident of the relation of banker and customer.

[Reference to *Commercial Bank of Scotland v. Rhind*, 3 Macq. H. of L. 643.]