which one Ott, a clerk of the plaintiffs, had forged their name, and which were paid by the bank and charged to the plaintiffs' account.

The action was tried without a jury at Toronto.

A. C. McMaster, J. H. Fraser, and J. M. Bullen, for the plaintiffs.

I. F. Hellmuth, K.C., C. P. Wilson, K.C., and W. B. Raymond, for the defendants.

MIDDLETON, J., in a written judgment, described the methods adopted by Ott of covering up the traces of his various crimes; they were extremely ingenious. His employment began in February, 1913, and his frauds in March of the same year; he absconded in April, 1915. The learned Judge also described the bank's system of agreements, receipts, and acknowledgments adopted in February, 1914, and said that they were intended to be real agreements and to define the relation between the parties; and these, he considered, relieved the bank from all liability down to the 30th May, 1914. This covered $6,976.37 of forged paper.

The fundamental principle is, that the relation of the bank to its customer is contractual; and that, in the absence of any other express agreement, the contract of the bank is to pay the money intrusted to it to the customer or upon his order. The bank does not discharge itself from its liability if it pays upon a forged cheque, and it is a matter of no importance that the customer has so conducted his business as to render forgery by a clerk easy, or that he has so carelessly drawn a cheque as to facilitate its alteration. A forged cheque is no justification to the bank for parting with the customer's money—it is a mere nullity.

Any conduct on the part of the customer after he has knowledge that a forged cheque has been issued, or that a genuine cheque has been altered, which is calculated to mislead or deceive the banker, or which will facilitate the commission of a fraud upon the banker, will preclude the customer from asserting that his signature is not genuine—but all these cases rest upon the existence of a duty or obligation which it is assumed arises from the knowledge of the existence of the forged document. This duty or obligation arises generally from the contractual relationship of the parties; but the Supreme Court of Canada found that it may also arise when there is no contractual relation, from moral and commercial obligations: Ewing v. Dominion Bank (1904), 35 S.C.R. 133, [1904] A.C. 806.