

nature of an admission, either express or implied, that plaintiff was the author of his own injury.

I think the case was properly left to the jury, and that their findings are sufficient to support the judgment entered at the trial.

See the judgment of the Privy Council in *Peart v. Grand Trunk R. W. Co.*, now reported in 10 O. L. R. 753.

The judgment of the trial Judge should be restored, with costs of this appeal and of the Divisional Court to plaintiff.

APRIL 23RD, 1906.

C.A.

REX v. BANK OF MONTREAL.

Bills and Notes—Forged Cheques—Crown—Forgeries by Clerk in Government Department—Payment by Bank—Negligence—Pass-book—Duty of Customer to Check Accounts—Settlement of Accounts—Audit Act—Estoppel—Laches—Deposit of Cheques in other Banks—Liability over—Duty of Knowing Customer's Signature—Alteration in Position—Mistake—Liability as between two Innocent Parties.

Appeals by defendants from judgment of ANGLIN, J. (5 O. W. R. 185, 10 O. L. R. 117), in favour of the Crown (Dominion Government), for \$71,731.75 and costs, and dismissing the claim of defendants against the third parties, the Quebec Bank, the Sovereign Bank, and the Royal Bank. The action arose out of the forgeries of one Abondeus Martineau, who was a clerk in the Department of Militia and Defence at Ottawa, and who during 1901 and 1902 forged cheques to the amount of \$75,705, drawn in favour of fictitious persons upon the defendants and paid by them and charged against the account of the Receiver-General of Canada, after having been deposited by Martineau to his credit under fictitious names in accounts kept with the third party banks.