In January, 1908, one Heyburn, an employee of the defendant, stole a book of money orders, and, forging the defendant's name, and on two occasions the name of a fellow-employee, issued orders to the amount of $470, which the plaintiffs, who were unaware of the forgeries, paid. They claimed the $470 by the indorsement of the writ of summons and in the statement of claim, but that amount has since been reduced by $100 which they recovered, and they now seek to hold the defendant liable for the balance, $370.

The defendant says he did not issue the orders in question, and that it is impossible to return the orders received from the plaintiffs.

It is not disputed that the defendant did not take reasonable and proper care of the book of money orders delivered to him. If he were an ordinary bailee without more, he would not be responsible. But his liability must be determined upon his contract. "A bailee may assume a greater obligation than the law would impose upon him under the circumstances, that is to say, the law will enforce against him the very terms of his contract in the fair meaning:" Grant v. Armour, 25 O. R. 7, at p. 10. The defendant accepted responsibility for the "due issue and sale" of the orders. The stolen orders were not duly issued and sold. He undertook to account for "each money order" and for the proceeds thereof and to pay over such proceeds to the plaintiffs. He says he is excused, because of the impossibility to account for the orders resulting from the theft committed by Heyburn. The defendant, however, took upon himself to warrant the return of each money order and of the proceeds of each money order, and it is not, upon his contract and authority, open to him to object because of the impossibility: Grant v. Armour, supra; Clifford v. Watts, L. R. 5 C. P. 586. The fact that Heyburn forged Beatty's name to two of the orders and defendant's name to all of them, does not, in view of the terms of the contract, relieve the defendant from the liability he assumed.

It is also said that, as the orders were not countersigned by the defendant, the plaintiffs should not have paid them, and Imperial Bank of Canada v. Bank of Hamilton, [1903] A. C. 49, and other like cases, are relied on to sustain this contention. This argument would be cogent but for the defendant's contract. His liability has to be determined by the fair meaning of that.