the fact." 7 Smith (N. Y. Rep.) 531. Denio, J., in delivering the opinion of the Court of Appeals in this case says, among other things, "the principle which lies at the foundation of these actions, I think, is that the maker who by putting his paper in circulation has invited the public to receive it of any one having it in possession with apparent title, is estopped to urge the *actual defect* of title against a *bona fide* holder." The doctrine of the point is ably discussed by the learned judge, and the cases touching the subject are noticed and discussed. The doctrine is, however, but an elaboration of a great principle of justice, that if one by his act, or silence, or negligence, misleads another, or in any manner affects a transaction whereby an innocent person suffers a loss, the blameable party must bear it. Story's Eq. 386-87.

In *Young* v. *Grote*, 4 Bing., 253, and reported in 12 Moore, 484, also, the very case in principle with the one in hand may be found. It was an alteration by filing spaces or blanks negligently left in a check, and filled by the holder so as to increase the amount and not be detected by inspection of the paper. The bank paid it, and the drawer was held chargeable for the full amount on the ground of his negligence. The same doctrine was held in two Scotch cases, viz: *Ragore* v. *Wylie* and *Graham* v. *Gillespie*, to be found in full in Ross on Bills and Promissory Notes, 194-95. It is true that the case of *Wade* v. *Wittington* in 1st Allen 561, seems to limit the doctrine to cases where the alteration is made by an agent, clerk or confidential party; but this, in my opinion, is against an earlier decision in that State—I refer to *Putman* v. *Sullivan*, 4 Mass. 45, in which no such restriction appears, and is an impracticable limitation.

In *Hall* v. *Fuller*, 5 B. & C., 750, the case was that of an alteration of a bill *perceptible* on its face. The bankers paying it were only allowed to charge the drawer with the original amount put in the draft, for it was negligence on their part to pay the face of it in its altered aspect. Such seems to have been the doctrine applied by this Court in *Worrall* v. *Gheen*, 3 Wr., 388; although the case of *Hall* v. *Fuller*, asserting the same doctrine, does not seem to have been cordially approved in the opinion.

I regard this case as depending on the principles of the other cases cited above, and not that of *Worrall* v. *Gheen*. That was a case of a perceptible alteration, and the plaintiff was allowed to recover only to the extent of the original unaltered note, the holder (the plaintiff) being entirely innocent of the alteration, or of knowing anything about it. But in the case in hand there was no perceptible alteration on the face of the note whatever. The handwriting was all the same, and there was no crowding of words to effect the insertion—all was natural and regular in appearance. The words "and fifty" were inserted in the space between the words "one hundred" and the word "dollars" in the note, by the same hand that filled up the note originally. It had been delivered to him in this condition. The authorities I have referred to hold the drawer of such a note answerable for the full face of the note as altered to any *bona fide* holder of it for value, on the ground of the negligence of the maker in leaving the blank in the note which was thus filled up after its execution, and so we now hold, notwithstanding as between the maker and payee, or other person making the alteration, it would be a forgery and void.

We think this rule is necessary to facilitate the circulation of commercial paper, and at the same time increase the care of drawers and acceptors of such paper, and also of bankers, brokers and others in taking it. This rule will not apply to cases where the alteration is apparent on the face of the paper. There it is possible the rule of *Worrall* v. *Gheen* may apply. The only error, therefore, which we discover in the judgment on the reserved question, was against the defendant in error. By the rule which I have endeavored to deduce from the cases, he was entitled to judgment for the face of the note and interest. But the defendant in error is not a complainant here, and the plaintiff in error makes no complaint that the judgment against him is too small, and as there is no error of which he complains, the judgment is affirmed. —*Pittsburgh Legal Journal.*

Everly v. Durborow.

Where one partner contributed money to the common stock, and the other his time and skill, and the whole was lost: *held*, that the partner contributing the money could not recover any part of his loss from the other.

Sur bill, answer and agreement of counsel as to facts.

Opinion by Sharswood, J. Delivered February 4th, 1871.

The question presented upon the agreed statement of facts is one of some novelty; at least the industry of the counsel has not furnished me with any decisions which throw light upon it. Two persons enter into a co-partnership; one agreeing to contribute $10,000 as capital, the other nothing but his knowledge of the business. After two years the firm is dissolved, its affairs wound up, all its debts paid; and it is found that its entire capital has been lost. The partner who contributed the money capital now calls upon his copartner to bear half his loss, to repay him half the sum he put in. It is beyond a question that the money was put in as stock or capital; it was not an advance or loan to the firm. The article is unequivocal, "Everly shall contribute the sum of ten thousand dollars capital against Durborow's knowledge of the business." Mr. Lindley says: "Whatever, at the commencement of a partnership, is thrown into the common stock, belongs to the firm, unless the contrary can be shown:" Lindley on Partn. 546. What is added does not contradict this. "At the expiration of this partnership this capital shall be returned without interest before final division of profits." But here there are no profits to be divided; there is no capital to return. Everly has lost his money, and Durborow has lost what he set against it, his time and services, enhanced in value by his knowledge of the business.

Bill dismissed with costs.

—*Legal Gazette.*