or custodian so implicitly, he ought to be compelled to answer whatever the custodian does with it.

The point, however, which strikes me most forcibly is that in the above cases, the courts, in holding that there was no delivery or issue of the notes, were not referred to sec. 40 of the Act, which provides that as between *immediate parties*, and as regards *remote parties other than holders in due course*, the delivery in order to be effectual, must be under the authority of the party drawing or accepting it, or if conditional, that the condition has been performed.

But, here comes the difference. By sub-sec. 2 of sec. 40, "If the bill is in the hands of a bonâ fide holder, a valid delivery of the bill to him is to be conclusively presumed." This section is not cited in *Ray* v. *Willson*, or in *Home Bank* v. *Hubbert*, and it is intended, no doubt, to preserve to a bonâ fide holder the protection he has always been entitled to. The delivery in both of these cases was, no doubt, in violation of the conditions upon which, as between the maker and his agent, the notes were to be delivered or circulated, but, for the protection of the bonâ fide holder, the valid delivery must be conclusively presumed.

The decisions above mentioned really place such notes upon the same plane as if the maker had signed a note, and put it in a drawer, from where it is stolen, and put in circulation by the thief. Of course, in such a case the maker would not be liable, because he never delivered or issued it, and an endorsee must take the risk of that, as he must of its being a forgery, but in these cases, the maker knew or should have known, that he was putting in the power of his custodian or agent, the power to swindle a bonâ fide endorsee by issuing the note contrary to instructions, and he, the maker, should suffer from the fraud of one whom he has trusted, rather than an innocent holder. It may be that I have not grasped the meaning of the decisions or rather the reasoning of them.

It appears that in *Smith* v. *Prosser* (1907), 2 K.B. 735, the endorsee was put upon inquiry by the fact that the note when offered to him was not complete, and he therefore knew that the custodian had received an incomplete instrument, and that very fact implies that he had some limited authority.

If *Ray* v. *Wilson* had been rested upon the ground that the plaintiff was not a holder without notice, and the other point not dealt with in the way it was, it would not have puzzled the writer so much.

I cannot see how sec. 40 is ever to have any application unless in a case like this.

Yours, J. R.