

derived much benefit if he had done so; but he had a right to do it."

These third party banks had the forger's moneys in their own hands.

Cameron, C.J., in *Merchants Bank v. Lucas*, 13 O. R., says at p. 526: "If it is necessary that there should be affirmative evidence of their being prejudiced by actual doing or refraining from doing, there has been no legal estoppel in this case. But I am of opinion that the principle of estoppel is more extensive in its application, and it will be sufficient if it be shewn that, in the absence of the matter of estoppel, the plaintiffs might have put themselves in a position from which a benefit might accrue to them. It is unimportant whether they would have taken steps to secure the benefit or not."

It is not unreasonable to infer that the change in position of the third party banks, subsequent to the payment by defendants of the forged cheques, is attributable, in part at least, to the fact that such payment was made. They refrained from taking steps which there is every reason to suppose they would have taken in the event of non-payment by defendants on presentation—a fact of which they would undoubtedly have had prompt notice.

Though the inference that the loss sustained is ascribable to the misrepresentation established, is not a conclusion of law, as had been stated by Jessel, M.R., in *Redgraves v. Hurd*, (*Smith v. Chadwick*, 9 App. Cas. 196, and *Smith v. Land and Loan Corporation*, 28 Ch. D. 16), without express evidence that the payments to Martineau by the Sovereign Bank and the Quebec Bank were induced by the fact that the Bank of Montreal had honoured the cheques deposited by him, as a juror I find little difficulty in drawing such an inference of fact.

Upon the ground of estoppel arising from its payment of the forged cheques and the change in the position of the third parties which ensued, rather than for default or breach of duty in failing to detect forgeries of its customer's signature, or upon any conclusive presumption of culpable negligence raised by that misfortune, the Bank of Montreal should, in my opinion, be held not entitled to recover.

Apart from any application of the principles of estoppel, the third parties appear to have a defence to the claim made upon them for repayment. "When one of two innocent parties must suffer by the acts of a third, he who has enabled