NOTES OF CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

COURT OF APPEAL.

Q. B.] [March 2.

FRYER v. SHIELDS.

Insolvent Act of 1875—Privileged claim—Action for wages.

The plaintiff sued for wages as a clerk of the defendants who pleaded their discharge in insolvency. The plaintiff replied that his claim was privileged and relied upon the 63rd section of the Act as entitling him to recover personally against the insolvents, notwithstanding their discharge to which he had not consented.

Held, reversing the judgment of the Court below for the plaintiff in demurrer to the replication, that the privileged claims are not within the class of debts to which a discharge does not apply without the consent of the creditors thereof, and that the remedy of the plaintiff was against the estate of the insolvents either before or after discharge, and not personally against the insolvents.

Mulock, for appellant.

G. Kerr, jr., for respondent.

Q.B.] [March 2.

THE AGRICULTURAL SAVINGS AND INVESTMENT SOCIETY v. THE FEDERAL BANK.

Cheque — Signed endorsement — Liability of Bank paying same.

One S. by forging an application for a loan and a mortgage in the names of J. T. B. and J. B., and representing certain facts as to the land to the plaintiff's agent who contented himself with the representations of S., and certified a valuation to the plaintiff, procured the completion of a supposed loan. Cheques payable to the order of the supposed borrowers were obtained by S. who forged the names of the payees to the cheques, endorsed his own name and procured payment of the cheques from the defendants upon whom they were drawn. The fraud was not discovered for some time, during which the cheques were returned to the plaintiffs at the end of the month as paid, whose officers signed the usual acknowledgment of the correctness of the account.

Held, affirming the judgment of the Queen's Bench that the defendants having undertaken the responsibility of paying cheques payable to order were bound to pay the proper parties, and that they could not charge the plaintiffs with moneys wrongly paid.

Held also, that the acknowledgment of plaintiffs of the correctness of the account at the end of the month, was at most an acknowledgment of the correctness of the balance on the assumption that the cheques had been paid to the proper parties.

Held also that the plaintiffs were not estopped from recovering by their agent's negligence, as it did not occur in the transaction itself and was not the proximate cause of the loss to the defendants.

Robinson, Q. C., and *Kerr*, Q. C., for appellants.

Bayly, for respondents.

C. P.] [March 2.

PIPER v. SIMPSON & LOWRY.

Lease—non-execution of by one lessee—Action on covenant for rent.

The defendants and one C. being in possession of premises under a covenant from the plaintiff for a lease, the plaintiff caused a lease to the three to be drawn which was executed by the defendants on the representation that C., the manager of the business, had executed a counterpart thereof. As a fact C. had refused to execute the lease and had not executed any lease. The defendants and C. continued to occupy the premises and paid some rent.

Held, affirming the judgment of the Common Pleas, that upon the evidence there was no intention by either the plaintiff or the defendants that the latter should be dealt with apart from C.; that there was no delivery of the deed, and that therefore the plaintiff could not recover rent on an action upon the covenant.

Bethune, Q.C., for appellant.

MacKelcan, Q.C., for respondent.