

be implied from their presentation of such cheques for payment through the clearing-house. Defendants also claim to recover from each of the three banks to which they paid proceeds of the forgeries, the several amounts thereof, as moneys paid and received by and under mistake of fact.

Upon the evidence I find that the third party banks were not indorsers. They did not become parties to the cheques to pass title thereto. They did not place their names upon them with intent to assume liability, or for any other purpose than to identify as their property such cheques as they had respectively sent to the clearing-house, and to signify to the officer there in charge, to what bank he should credit such cheques. Nothing depends upon the fact that these forged cheques were passed through the Ottawa clearing-house.

Neither did they warrant or represent anything as to the genuineness of the cheques. Defendants did not act voluntarily on the request of the third parties. They paid in assumed discharge of their obligations to the plaintiff. In such cases there is no implication either of warranty or of representation upon which a claim for indemnity could be founded: *Corporation of Sheffield v. Barclay*, [1903] 2 K. B. 580. Neither was there any passing of title by delivery, the cheques being "at home" with the Bank of Montreal.

The third parties resist the claim of defendants upon several distinct grounds, viz.: 1st, that there was negligence on the part of defendants in making the payments which precludes recovery; 2nd, that, by the law merchant, failure on the part of the drawee to give notice of dishonour of a forged bill on the day of its presentment and payment, absolutely discharges a bona fide holder for value who has received payment innocently; 3rd, that a similar statutory obligation, its breach entailing like consequences, is imposed by sec. 54 of the Bills of Exchange Act; 4th, that the fact that defendants paid their own customer's cheque and the change in position of the third parties since payment by defendants render it inequitable that the latter should be permitted to recover.

I have found that, except as to the fourth cheque of the series, there was no negligence on the part of any of the bank officers in passing these cheques. It may be that the special negligence on the part of the Bank of Montreal in regard to the fourth cheque, precludes recovery from the Quebec Bank of the money paid upon it. I find it unnecessary to dispose of this question.

On behalf of the Royal Bank evidence was given to establish that, although, when deposited, the last two cheques