

ment of a bank cheque upon a false endorsement. The exact question is, whether the payment by a bank of a cheque drawn upon up it, made payable by the drawer's mistake to a wrong order, but presented by a person of the exact name of the designated payee, will protect the bank. The *Journal of Commerce* answers this in the negative, upon the ground that it has been decided that a payment by a bank to a wrong person of the same name—"the wrong John Brown"—will not protect the bank. This was held in *Graves v. American Exchange Bank*, 17 N. Y. 207. One judge dissented in that case, and it has been severely criticized by Mr. Morse in his work on Banking. We do not know that such a holding is wrong. The drawer or drawee must lose; the drawer was not at fault, and so, although it is hard on the drawee, he should lose. But that is not this case. This is not the case of a payment to "the wrong John Brown." The payment was to a person answering the drawer's written direction, although not answering his intention. If the right man had endorsed the cheque in his proper name and presented it, he could not have got the money. How can the drawee dive into the mind of the drawer and ascertain his intention, especially when there is nothing to put him on his guard? Is not the drawer estopped by his mistake? We are inclined to think so, provided, of course, that there was no circumstance of suspicion nor anything calling for extraordinary inquiry. What more had the drawee a right to demand of the endorser than identification as a man of the designated name? Suppose we mean to draw our cheque in favor of William B. Astor, but instead of that we draw it in favor of Chauncey M. Depew; will any one say that the bank would not be justified in paying it to Depew, and that the bank rather than ourselves must get back the money from Depew? We are inclined to believe that it is a fair question of fact whether the bank made sufficient and reasonable inquiry, and if it did, that the drawer and not the bank must suffer the consequences of the drawer's mistake. The *Graves* case was put on the ground that title could not pass without endorsement according to the drawer's intention, but it seems to us that where the drawer has made a mistake he is estopped to deny the validity of a payment in exact accordance with his apparent intention. The nearest analogy we have found is *Lennon v. Brainard*, 36 Minn. 330, of which the syllabus is as follows: "Where a draft which was intended for 'C. A. R.' was erroneously endorsed payable to 'C. R.', and was shown to have been enclosed in a letter duly addressed and mailed to 'C. A. R.' at his place of business in a distant city, but mis-

carried and was never received by him, and fraudulently endorsed and collected by a stranger, held, in a subsequent action to recover the amount of the draft by the true owner, that in the absence of any identification of the fraudulent endorser, or that any person bearing the name 'C. R.' so endorsed, lived in or received his mail at the time in the city to which the letter was sent, the mistake in the original endorsement was not sufficient to raise an issue for the jury upon the question of plaintiff's negligence, and a verdict was properly directed." The court said that there was no evidence of "mistake or carelessness of the plaintiff," thus implying that if there had been, the result might have been different.—*Albany Law Journal*.

Mr. Edwin F. Palmer, of Vermont, writes to us criticizing some points of Mr. Justice Bowen's translation of the passage in Virgil about Fame. Being a reporter he may be deemed an authority on the great author of reports. He says "slumbering eye" is exactly contrary to the sense of the original, which is "*Tot vigiles oculi*," and that "slumbering eye" does not accord with "all-vigilant ears" and with "she never in sweet sleep closes her eyes." He is undoubtedly right. Therefore read, "sleepless" or "watchful" eye. Mr. Palmer continues: "Lord Coke quoted one of these celebrated lines of Virgil on Fame, in describing an estate in abeyance. In 4 Kent Com. 259, is the following note: 'And Lord Coke, in Co. Litt. 342b, said that an estate placed in such a nondescript situation had the quality of fame—*inter nubila caput*.' The original is—*et caput inter nubila condit*. John Locke, in his treatise on the Conduct of the Understanding, section 39, quotes line 175 as follows: 'To these latter one may for answer apply the proverb, 'use legs and have legs.' Nobody knows what strength of parts he has till he has tried them. And of the understanding one may most truly say that its force is greater, generally, than it thinks, till it is put to it. '*Vires que acquirit eundo*.' The line quoted by Coke is rendered by Lord Justice Bowen: 'With her forehead touches the Heaven;' and the line quoted by Locke, thus: 'And she gathers speed as she flies.' These two lines in their English dress hardly have any application to the subjects treated by Coke and Locke. It is true that this might not be a complete test, but I submit that the exact meaning of the original is not given by the translation." So we think, and we would suggest for the former, "she hides her head in the clouds," and for the latter, "and she gathers strength as she flies," or perhaps better, "and her stature grows as she flies"—the meaning being that rumors grow as they are circulated.—*Albany Law Journal*.