

HON. MR. ABBOTT—Yes.

HON. MR. SCOTT—I do not concur in that view, but I can quite understand the banks being so largely interested, that they would like to put the question beyond a doubt. According to our Interpretation Act, the word “person” would cover a bank. I understand this is simply legislation in the direction of the law as it exists—that it is very desirable that a bank or an individual who pays a cheque should have all the rights against the preceding endorsers who guarantee, as a matter of fact, the antecedent endorsements. Any man who takes a cheque from Brown and passes it over to anyone else guarantees that Brown’s signature is genuine. It passes from one to another, each taking it on the faith of the other, and it is only fair that all the antecedent endorsers should be held liable; whether it is a bank or an individual who pays, it is only right that there should be the same recourse. Each one who puts his name on a cheque is a guarantee to the succeeding one. I am inclined to think that the Bill is not necessary—that the courts would construe it as I have indicated, but I have no objection to the amendment going to make it perfectly clear.

HON. MR. ABBOTT—I would like to point out to my hon. friend a clause or two in the Act which convince me that the Bill is needed. The 29th section of the Act says:

“A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—

“(a.) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;

“(b.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect.”

Now, the bank that pays a cheque becomes the holder of it by paying it, and it is a question whether, after it has been presented, it does not become overdue, or if paid, becomes extinct. Then, section 55, with reference to the liability of an endorser, provides that the endorser of a bill by indorsing it—

“Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer’s signature and all previous endorsements.”

So there is where the difficulty comes in—is the bank a holder in due course of

a cheque which it has paid? That is the point, and there is evidently a difficulty there, because it is only in favour of a holder in due course that an endorser becomes guarantor of the previous endorsement.

HON. MR. POWER—The hon. gentleman will see, in the case of a bill payable to the drawer’s order, the acceptor, by accepting, guarantees the capacity of the drawer to endorse a valid endorsement. If the bank is not a holder in due course under section 55, which the hon. gentleman has just quoted, the bank would not be able to resort to the other endorsers. I do not mean to contend that my construction of the amendment is the correct one, but I think the Bill is capable of being so interpreted. The hon. gentleman said that when we looked at the preceding subsection of section 24 we would see what the real effect of this measure is. The clause now before the committee says “the whole being subject to the provisions and limitations contained in the last preceding subsection.” That, however, as I understand it, does not apply to the first portion of section 24, but only to the proviso—

“Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery, etc.”

These are the things to which this reference in the last two lines of the clause applies; but to the beginning of section 24, as I understand it, the language of this section does not apply. The wording of that section is as follows:—

“Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.”

I do not mean to say that my view of it is correct; but, as the matter is a very important one, and as we have plenty of time ahead of us, I think it might be well if the hon. gentleman did as he proposed—let the committee rise, and then hon. gentlemen would have an opportunity of considering the clause at their leisure, and if my view is wrong there is no harm done, and if there should be something in it, the Bill would require amendment.