The Legal News.

Vol. II. FEBRUARY 22, 1879. No. 8.

ESTOPPEL BY NEGLIGENCE IN THE CUSTODY AND TRANSFER OF NEGOTIABLE INSTRUMENTS.

The decision of the Court of Appeal in the case of *Baxendale* v. *Bennett*, 40 L. T. Rep. N. S. 23, is both important to the commercial world and interesting to lawyers. By it a new principle may be said to be established as governing the above subject; and, of two old and very familiar cases which are to be found in all the text books, one is questioned and the other overruled. These are *Young* v. *Grote*, 4 Bing. 253, and *Ingham* v. *Primrose*, 7 C. B. N. S. 82. The first was the case of a man leaving with his wife some blank forms of cheques, one of which was so carelessly filled up by the latter, that the clerk to whom it was intrusted for presentment was enabled, by the insertion of words and figures, to make it payable for and obtain payment of a larger amount than was intended. The second was the case of the acceptor of a bill tearing it in two *animo cancellandi*, in the presence of a person who picked up the pieces; and, after having joined them together in such a manner as to convey no notice of the cancellation to a stranger, transferred the bill to a *bona fide* holder. In both these cases, as will be remembered, the negligence was held sufficient to estop the party guilty of it from denying the validity of the instruments.

In a recent case (*Arnold* v. *The Cheque Bank*, 34 L. T. Rep. N. S. 729) decided in the Common Pleas Division in April, 1876, these two cases were distinctly and expressly approved, and were supposed to support, though indirectly, the conclusion there arrived at, and yet it is curious to observe that the authorities there directly relied on, and the *rationale* of the decision itself, were exactly the same as in the case under present notice. Both there and here, in fact, the decision of the court may be said chiefly to have rested upon the dictum of Lord (then Mr. J.) Blackburn in *Swan* v. *The North British Australasian Company*, 32 L. J. 273, Ex.), a case which has been so frequently acted upon that it may be said to be the leading one upon the subject of estoppel by negligence. When that case was in the Court of Exchequer the rule had been laid down by Mr. Baron Wilde thus: "If a man has led others into the belief of a certain state of facts by conduct of culpable neglect calculated to have that result, and they have acted on that belief to their prejudice, he shall not be heard afterwards as against such persons to show that the state of facts did not exist." In the Exchequer Chamber, Lord Blackburn stated that this was correct as far as it went, but did not go far enough, and he added the following very important qualification: "The neglect must be in the transaction itself, and be the proximate cause of the leading the party into that mistake; and also it must be the neglect of some duty that is owing to the person led into that belief or (what comes to the same thing) to the general public, of whom that person is one, and not merely neglect of what would be prudent in respect to the party himself, or even of some duty owing to third persons with whom those seeking to set up the estoppel are not privy."

Here it will be noticed that it is laid down that there are two distinct and necessary ingredients in the neglect which will amount to an estoppel, and, if this be so, it is clear that the absence of either of them will prevent its having that effect. The neglect must be in the transaction itself, and be the proximate cause of leading the third party into mistake, and it must also be the neglect of some duty owing to such third party, either individually or as one of the general public. In accordance with this rule, the validity of which cannot, we think, be now called in question, it was held in *Arnold* v. *The Cheque Bank*, that negligence in the custody of a draft, or in its transmission by post, will not disentitle the owner of it to recover the draft or its proceeds from one who has wrongfully obtained possession of it. Lord Coleridge, who delivered the judgment of the court, after quoting the words of Lord Blackburn above set out, said: "*Young* v. *Grote*, when correctly understood, is in entire accordance with the rule thus expressed, and so is *Ingham* v. *Primrose*." In the last mentioned case, at any rate, it would how-