

words were struck out by his solicitor, to whom he gave the cheque, and the solicitor substituted the name of his own banker, with whom he deposited it, and to whom it was paid, the proceeds being placed to the credit of the solicitor, who subsequently converted them to his own use in fraud of the drawer of the cheque; but it was held that the bank on which the cheque was drawn was justified in paying it to the bank to which the solicitor had crossed it. Under the Bills of Exchange Act, however, if the drawer of the cheque specially crosses it with the name of a bank, no subsequent holder is now at liberty to strike out such crossing or substitute another, and where such prior crossing is struck out or another substituted, the bank on which the cheque is drawn is to refuse payment: s. 78; and the crossing of a cheque is now by the statute made a material part of the instrument.

In the case of a cheque originally payable to bearer, or which has become so by general indorsement, crossing it may be a protection to some extent against payment to a wrongful holder, but it is not absolutely so. If it is paid by the bank on which it is drawn otherwise than to the bank to which it is crossed, the paying bank becomes responsible to the true owner of the cheque for any loss he may sustain by reason of such payment: s. 78 (2); unless at the time of presentment it does not appear to be crossed, or to have a crossing which has been obliterated, and it is paid in good faith and without negligence: s. 78 (3).

In a recent case an attempt was made to make a bank responsible for payment of a crossed cheque under circumstances which would seem to have justified the expectation that the crossing of the cheque would have afforded protection, but it did not. The case is that of *Great Western Railway Co. v. London and County Bank* (1899), 2 Q.B. 172; (1900), 2 Q.B. 464, which has been noted ante vol. 35, p. 704, and vol. 36 p. 701.

The facts were, that the drawers of the cheque had been induced by misrepresentation to send a cheque, for taxes claimed to be due, to a collector. They crossed the cheque generally, and marked it "not negotiable." The collector took the cheque to a bank with which he had occasional dealings and got it cashed; this bank crossed it to itself, and subsequently presented the cheque to the bank on which it was drawn and received payment. The drawers having found out that they had been deceived by the collector, and that there were really no taxes due, claimed to