

## The Legal News.

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### LIABILITY FOR LOSS OCCASIONED BY FRAUDULENT ALTERATION OF DRAFT.

The case of *Union Bank & Ontario Bank*, a note of which will be found in this issue, presented a very nice question as to which of two innocent parties should be made liable for the loss arising from the fraud of a third party. The judgment now rendered is that of the Court of Appeal, confirming the decision of Mr. Justice Jetté in the Superior Court, a note of which will be found in 2 Legal News, p. 132, and which is reported at length in 23 L.C.J. 66. One Deton, on the 17th September, opened a deposit account with the Ontario Bank at Montreal. On the 19th September he obtained from the Union Bank at Quebec a draft for \$25 upon the agency of the Union Bank at Montreal. On the 21st September he deposited this draft, fraudulently raised in amount to \$5,000, in the Ontario Bank at Montreal. The latter Bank took the precaution of stipulating that the depositor was not to draw cheques against the amount until the draft had been accepted by the Union Bank. The draft went to the Union Bank branch at Montreal in ordinary course, and this branch, having had no advice from its Quebec office, supposed it was all right and paid the money. Deton subsequently obtained from the Ontario Bank \$3,500 on a cheque against his deposit, and fled the country before the fraud was discovered, which was not until six days after the draft was issued at Quebec.

The question was which Bank should suffer the loss of the \$3,500 fraudulently obtained by Deton. The Union Bank claimed to be repaid the whole excess over the original \$25. The Ontario Bank repudiated all liability, but offered to return the \$1,500 which remained at the credit of Deton in the Bank.

Mr. Justice Jetté, in whose judgment the whole case is treated in a very lucid manner, found that the Ontario Bank had taken all the care to guard against fraud that could be ex-

pected of it, and that the Union Bank, in neglecting to advise its Montreal branch of the draft, was in fault. Following, then, the principle which is admitted in the jurisprudence of England, France and the United States, that of two innocent persons the one who has been most negligent must bear the loss, the action of the Union Bank was dismissed. In Appeal, Chief Justice Dorion and the majority of the Court concurred in this view. Mr. Justice Monk did not hold the same opinion as to the negligence of the Union Bank. The forgery was only in the body of the draft, and the alteration was effected so skilfully that it was impossible to detect it. At that time it was not the practice to give advice of drafts drawn at one agency of a Bank upon another branch. On the other hand, the Ontario Bank had opened an account with a forger, and taken a forged draft on deposit, and although it stipulated that no cheques were to be drawn until the draft was accepted, it had not communicated to the Union Bank that any suspicion existed as to the genuineness of the instrument. Under these circumstances, Judge Monk appeared to think that the Ontario Bank was even more to blame than the Union Bank, and he would have maintained the action of the latter.

No precedent could be found exactly in point, but the case of *Bank of the United States v. Bank of Georgia*, 10 Wheaton, 333, in which the judgment of the U. S. Supreme Court was rendered by a very eminent Judge, Story, certainly bears a strong resemblance to it. The facts of that case were as follows:—The Bank of Georgia had, in the ordinary course of business, deposited with the Bank of the United States a number of bank notes, apparently issued by the latter Bank, and received credit for the deposit. These notes were subsequently ascertained to have been forged, and upon the fact being discovered, the Bank of the United States instituted an action to recover back the amount for which credit had been given. Both Banks were, of course, in perfect good faith, as in the Canadian case. Judge Story said:—“The notes in question were not the notes of another Bank, or the security of a third person, but they were received and adopted by the Bank as its own genuine notes in the most absolute and unconditional manner. \* \* \* \*”