

It may be contended that in this latter case the holding by the Crown is ascribable to the exercise of powers incident to its sovereignty, and not to any "entry into the domain of commerce." But neither should the opening in a chartered bank of a current account, necessary for the convenient handling of its moneys to be used in meeting the exigencies of the public service, be deemed an undertaking of commercial transactions implying an abrogation *pro tanto* or *quoad hoc* of privileges and rights peculiar to sovereignty. If it were, the government could not, without seriously endangering public interests, avail itself of the facilities afforded by an institution owing its existence to a parliamentary charter.

Whatever may be the case in the United States, where the immunity of the government from responsibility for the laches or negligence of its officers is founded upon considerations of public policy, in British dominions, where this wholesome privilege is part of the ancient prerogative right of the Crown, no implication of waiver by conduct, no consent express or implied given by any officer (*Regina v. Bank of Nova Scotia*, 11 S. C. R. 1, 11), no inference of extinction or abandonment to be drawn from statutory provisions (*Liquidators of Maritime Bank v. The Queen*, 17 S. C. R. 657, 661), nothing less equivocal, authentic, and compelling than a clear legislative enactment, in express terms taking it away, can be permitted to deprive the sovereign of the protection afforded by this portion of his royal prerogative, if he be minded to claim it: *Chitty on Prerogative*, p. 383.

In my opinion, therefore, plaintiff is entitled to recover from defendants the amount claimed, \$75,705, with interest from the date at which such sum was, or the respective dates at which its component parts were, charged against the account of the Receiver-General of Canada, and were thus converted to the use of defendants. From this, however, must be deducted the sum of \$12,443.77, found upon Martineau's person when arrested, which was taken possession of by the Dominion government. This money Martineau acknowledges to be a portion of that derived by him from his forgeries. Interest upon this latter sum from the date of its recovery must also be credited. Plaintiff shall have the costs of this action from defendants.

The questions raised by the claim of the defendants against the third party banks must now be considered. Counsel for the Bank of Montreal argued that the third party banks are liable as indorsers, or upon warranty or representation that the cheques were genuine, involved in or to