

One Higgins had been for many years a rate collector in the employment of the Wantage Rural District Council and for other similar bodies. In this capacity he had been in the habit of receiving from the railway and others cheques for the amounts payable by them for rates, and the cheques so received he used frequently to cash through the branch of the bank at Wantage. He had been in the habit of cashing cheques in this way for fifteen or twenty years, and about fifty or sixty cheques were cashed in the course of each year. On receipt of the money for the cheques, he distributed it among the local bodies to whom he had to account. He was well known to the managers and officials of the bank at Wantage, and the bank were the bankers of the District Council. He kept no account with the bank, nor had he any pass book; each of his transactions with the bank was completely disposed of as and when he brought the cheques. In November, 1898, he falsely pretended to the railway that a rate had been made, and that the railway owed in respect of the same £142 10s. By this means he induced the railway to give him their cheque for that amount. The cheque was drawn on the London Joint Stock Bank, in favour of Higgins or order; it was crossed generally and marked "not negotiable." In accordance with his usual course of dealings, he took this cheque to the bank at Wantage to get it cashed. He handed it across the counter to the bank clerk, and the latter filled up a paying-in slip, which Higgins signed. This slip contained no reference to the cheque itself, but purported to show a payment into the bank of £142 10s. in money, in payment out to Higgins of £117 10s., and a payment to the credit of the district council's account of £25. The business effect of this was that the bank handed to Higgins the amount of the cheque, which he then and there disposed of to his own use. Having thus obtained the cheque, the bank crossed it to themselves, and sent it up to their head office in London for collection. It was duly presented and paid. The question is, whether the bank is liable to account to the railway for the money so paid. Now, if this cheque had neither been crossed nor marked "not negotiable" there could be no doubt as to the right of the bank to retain the proceeds. It would be true to say that Higgins' title to it was defective—see section 29, subsection 2, of the Bills of Exchange Act; but, inasmuch as the bank took the cheque in good faith, and for value, and without any notice of the defect, the railway would have no cause of action against them. What, then, is the effect of the crossing? The effect of crossing a cheque is stated in section 79, subsection 2, of the Act. It is, that, if the banker on whom it is drawn pays it otherwise than to a banker, he renders himself liable to the true owner for any loss he may sustain, owing to the cheque having been so paid. Then, section 80 provides that, if the banker on whom the cheque is drawn pays it in good faith and without

negligence to another banker, he shall stand in the same position as if he had made the payment to the true owner of the cheque. These two sections deal with the liabilities and rights of the banker on whom the cheque is drawn. The next two sections define the position—first, of any person who may take a crossed cheque marked "not negotiable;" and, secondly, of a banker who receives payment for a customer of a crossed cheque. Section 81 provides that a person who takes a crossed cheque marked "not negotiable" shall have no better title than the person from whom he took it had. Section 82 provides that where a banker in good faith, and without negligence, receives payment for a customer of a crossed cheque, and the customer has no title or a defective title, the banker shall incur no liability to the true owner, by reason only of having received such payment. Applying the law as contained in these sections to the facts of the case, it appears to me that Higgins, who, as I have said, had only a defective title to the cheque, could give no better title to the bank, because the cheque was crossed and marked "non negotiable;" but that, though he could only give a defective title to the bank, yet, if the bankers can show that they did no more than receive payment of the cheque, in the manner described in section 82, they are protected. Now, I find as a fact that the bankers received the payment in good faith and without negligence. I find also that they received it for Higgins. It was argued that they did not receive it for Higgins, but for themselves. It was said that they bought the cheque; but if by this expression is meant that they took the cheque without recourse, I am clearly of opinion that the contention is wrong. What the bank did was this. They advanced £142 10s. to Higgins, and he became their debtor to that amount. They then undertook with him to send forward the cheque for collection, and to apply the proceeds when received to the extinguishment of his indebtedness. This, in my opinion, amounted to receiving the money for Higgins. Suppose the bank had not paid anything to Higgins when he gave them the cheque, could it then be argued that, in presenting the cheque, they were not presenting it for him? Clearly not; and I cannot see why the fact that they paid him the money, in anticipation of the payment of the cheque next day in the Clearing-house should make any difference. Only one question then remains, the real question in the case. Was Higgins a customer within the meaning of section 82? Now, whether a person is or is not a customer of a bank must be a question of fact to be determined with reference to the circumstances of each case. It is undesirable to attempt to define what constitutes a man a customer of a bank. It is much better to leave the question at large, so that a jury or the court may deal with each case as it arises. The Act of Parliament has not attempted any definition; banker is defined but not customer, and I think the Legislature wisely omitted to define the expression. Then