

in which the position of the holder may be altered the money once paid cannot be recovered back. "That rule," he continued, "is obviously, as it seems to me, indispensable for the conduct of business. A holder of a bill cannot possibly fail to have his position affected if there be any interval of time during which he holds the money as his own, or spends it as his own, and if he is subsequently sought to be made responsible to hand it back." This case is therefore authority "that when a bill becomes due and is presented for payment, and is paid in good faith, and the money is received in good faith, if such an interval of time has elapsed that the position of the holder may have been altered, the money so paid cannot be recovered from the holder, although indorsements on the bill subsequently prove to be forgeries." In Canada this rule is, subject to the amendment hereinafter referred to, applicable to cheques as well as bills and notes. In England, by force of s. 60, it is limited to the two latter instruments.

This decision caused a good deal of concern amongst bankers here, as it practically left them without legal recourse if they had the misfortune to pay a bill or cheque bearing a forged indorsement. In England the danger was confined to customers' bills and drafts at short dates drawn by other bankers. The banks in Canada were on the other hand not protected in the case of cheques payable to order. The only case in which the bank was protected was when the person to whom the money had been paid by mistake had not changed his position. In the case in question the Bank of Liverpool would have been seriously compromised if they had been compelled to repay the money, as they had lost their right of giving notice that the bill had not been paid.

In an able article in the *Canadian Journal of Commerce*, 1897, at p. 242, it is pointed out that the "altered position may have occurred in a very short time." Another writer says, "Negligence is immaterial, and if the holder has had the money during any period, however short, during which his position may theoretically have been altered, you cannot touch him. And this practically cuts your chances down to nil. Short of catching him within five minutes after he leaves your bank I don't see how you can do anything."